# Data Protection in Credit Scoring by Credit Information Agencies

Simon Henseler, le 6 octobre 2025

Simon Henseler, Datenschutz beim Kreditscoring von Auskunfteien, Eine Untersuchung zum Profiling (mit hohem Risiko) und zur automatisierten Entscheidung, Zurich 2025. Available as open access publication.

When a bank grants a loan, an online shop sells goods on account, or a company provides services in advance, there is always a risk that the borrower, buyer or customer may not fulfil its obligation at all, not fully, or not on time. To help creditors assess this risk, credit information agencies offer different kinds of services that evaluate the creditworthiness of individuals seeking credit. These services include **credit scores**, which are numerical evaluations of a person's creditworthiness, calculated based on an agency's model.

The processing of personal data for the purpose of evaluating a person's creditworthiness – particularly, through credit scoring – is an important and widely discussed use case of data protection law. This stems from the conflicting interests at stake : Data protection and the protection of personality rights, in particular the interest in transparency and the use of appropriate information, contrast with the protection of the credit-providing economy, namely the interest in being able to assess credit risks and prevent payment defaults. The resulting and often novel **data protection issues** under Swiss and European law are examined in the dissertation summarized here.

Apart from the introduction and the summary in the form of theses, the dissertation is divided into four parts. **Part 1** explains the concept of credit scoring, explores its economic rationale, introduces the actors involved, describes its functioning, and provides an overview of the data and data sources used. This part is based not only on publicly available information, but also on the results of a survey conducted among Swiss credit information agencies.

**Part 2** is devoted to fundamental questions of data protection law. It clarifies the material and territorial scope of data protection law and the roles of the actors involved (i.e., controller or processor). Additionally, it highlights the fundamental differences between the approach of the Swiss Federal Act on Data Protection (FADP) and the EU's General Data Protection Regulation (GDPR).

**Part 3** of the thesis addresses the admissibility under data protection law of calculating credit scores as (high-risk) profiling. After explaining the essential concepts of profiling, personality profile (within the meaning of the old FADP) and high-risk profiling (as defined in the FADP), the processing principles are examined and applied to credit scoring. The comprehensive and in-depth analysis of the calculation of credit scores as profiling in light of the processing principles forms the core of the dissertation. Part 3 concludes with a discussion of possible grounds for justification under the FADP and the legal basis for profiling under the GDPR.

**Part 4** of the dissertation addresses the question of whether – in light of the CJEU's decision in the SCHUFA case (judgment C-634/21 of 7 December 2023) – the calculation of credit scores can also be classified as an automated decision. After brief preliminary remarks on terminology, the purpose of the regulation on automated decisions in data protection law is analysed. The thesis then examines the legal criteria of an automated decision under the FADP and the GDPR, and concludes by answering the aforementioned question in the negative.

The dissertation ends with a **summary** in the form of theses**.** Among them, the following appear particularly noteworthy :

- Profiling qualifies as high-risk profiling (according to Art. 5 lit. g FADP) if its input constitutes a personality profile as defined in the old FADP. The high risk to the data subject's personality or fundamental rights is not an independent requirement for high-risk profiling.
- To be suitable for evaluating a person's creditworthiness, data must be relevant for this purpose, either according to general life experience or from a mathematical-statistical perspective. The mere possibility of false conclusions, for example, those drawn from a person's address, is irrelevant.
- The period during which a credit information agency may use data to evaluate a person's creditworthiness must be based on statutory time limits, namely the ten-year limitation period of Art. 127 Swiss Code of Obligations under the FADP and the (at least) five-year observation period of the EU's Capital Requirements Regulation under the GDPR.
- The principle of data accuracy does not prohibit the processing of inaccurate data but requires that appropriate measures be taken to address inaccuracies. This also applies to value judgments and probability statements, such as credit scores.
- 31 para. 2 lit. c FADP provides for a special (overriding) interest that may justify proces-

sing activities for the purpose of evaluating a person's creditworthiness. This provision, particularly its sections 1–4, which exclude high-risk profiling and the processing of data older than ten years and data relating to minors, does not establish general requirements for processing activities undertaken to assess creditworthiness.

- The credit score is merely the output of a profiling. It does not constitute a decision (within the meaning of Art. 21 FADP and Art. 22 GDPR), even if a creditor draws strongly or exclusively on the credit score in making its credit decision.

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