

Scoring

What credit institutions should consider when implementing the new data protection regulations

PwC Legal supports you regarding the implementation of the EU General Data Protection Regulation (GDPR)

In mid-May 2017, the German legislator adopted a new Federal Data Protection Act (BDSG). This is based on certain derogations provided for in the General Data Protection Regulation (GDPR) and, in certain respects, complements the provisions in the EU's basic GDPR adopted in May 2016.

Both the GDPR and German Federal Data Protection Act apply as of 25 May 2018. For credit institutions, the implementation phase of the new data protection provisions has already begun. Affected institutions need to update their information and disclosure processes. Of particular interest to credit institutions is the concept of 'Scoring'.

The Concept of Scoring

Scoring refers to the collection or use of probability values for certain personal behavioral characteristics (the Data Subject) in order to determine whether to conclude, execute, or terminate a contractual relationship with the Data Subject.

The current applicable provision for the permissibility of scoring in Germany is § 28b of the Federal Data Protection Act. This provision lays out the prerequisites for admissibility of the scoring procedure. A few prominent examples applied to credit institutions include:

- The data used to determine the probability value is essential for calculating the credit risk default probability based on a recognized mathematical and statistical method.
- Scoring has to be connected to a relevant legal decision by the credit institution. The legitimate interest of the data subject in excluding the processing and/or use of the data should not override the interests of the controller.
- The probability calculation of a probability may not be based exclusively on address data. If the address is used for the purpose of scoring, the data subject has to be notified in advance. The notification must be documented.

Legal action required

The GDPR does not contain any explicit rules on scoring, rather more general provisions. When implementing the GDPR, credit institutions cannot avoid the need to analyse and clarify their existing scoring processes for potential adjustments in their scoring processes. However, credit institutions should identify the relevant legal issues and take appropriate measures to ensure compliance. In particular client notification obligations have to be observed, especially regarding the logic used for the scoring procedure or the data types used for the calculation of the probability values.

Our Services

- Legal expertise and advice on potential options and considerations related to data protection
- Legal advice and support for the implementation of the GDPR and BDSG
- Acting as an external data protection officer (Article 37 GDPR)

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