

March 10, 2025

# When Worlds Collide: EU Data Protection, Artificial Intelligence and Trade Secrets

---

## The Court of Justice of the European Union Rules on Disclosure Obligations for Companies Using Automated Decision-Making

---

### SUMMARY

On February 27, 2025, the Court of Justice of the European Union (“CJEU”) ruled on the interaction of the EU’s General Data Protection Rules (“GDPR”) with trade secrets and artificial intelligence (“AI”).

In case C-203/22, *Dun & Bradstreet Austria*, the CJEU clarified the disclosure obligations under the GDPR for companies using automated decision-making, in particular “profiling” based on personal data for credit risk assessments.

The CJEU ruled that a person affected by a decision taken by a company based on automated decision-making may require the company to provide a clear explanation of the process involved and the criteria used to reach the decision. The CJEU also ruled that companies need to provide information in a concise, transparent, intelligible and easily accessible form.

Companies may not simply refuse to provide the information by invoking trade secret protection. Where a company alleges that the information at issue contains protected data of third parties or trade secrets, it must provide it to the relevant national authority or court, which will determine how much of the information the person requesting it may receive.

Companies using automated decision-making should therefore review their internal policies to comply with the GDPR and the CJEU’s ruling and prepare for potential complaints from affected individuals and stricter enforcement from EU Member State courts and data protection authorities. Businesses must be prepared to provide persons affected by their automated decision-making, authorities and courts, with sufficient and easily digestible information about the logic and method through which automated decisions are taken.

## BACKGROUND AND THE CJEU'S JUDGMENT

Article 15(1)(h) of the GDPR gives the right to any person to obtain from the entity controlling data processing activities ("Controller") (i) confirmation whether automated decision-making, including profiling, was used; and (ii) meaningful information about the logic involved, as well as the significance and the envisaged consequences for the person affected by it. Profiling refers to any form of automated processing of personal data to assess personal aspects of a person, in particular to analyse or predict aspects concerning that person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements.

Dun & Bradstreet Austria ("D&B") is an Austrian company that provides automated credit score assessments. An Austrian telecoms operator refused to enter a mobile telephone contract with an individual ("CK") on the grounds that CK did not have sufficient creditworthiness according to D&B's automated credit score assessment. Following a complaint by CK, the Austrian data protection authority ordered D&B to disclose "meaningful information" – as required under the GDPR – about the underlying logic behind the automated decision-making based on CK's personal data.

D&B challenged that decision in an Austrian court, alleging that such information was a trade secret and could not be disclosed to CK. The Austrian court found that D&B breached Article 15(1)(h) of the GDPR by failing to provide CK with meaningful information pursuant to that provision. In particular, the Austrian court found that D&B had not provided CK with a sufficient explanation to enable her to understand how the predictions on the probability of her future behaviour had been established. Unable to have access to the relevant information following the judgment, CK sought to enforce the decision in the Administrative Court of Vienna ("Referring Court").

The Referring Court sought guidance from the CJEU through the preliminary ruling procedure and asked it to interpret the scope of the obligation on Controllers to disclose "meaningful information" about the underlying logic behind automated decision-making.

### Disclosure Obligations in the Context of Artificial Intelligence

The CJEU ruled that a person affected by a decision taken by a company based on automated decision-making may require it to provide a clear explanation of the process involved and the criteria used to reach the decision. The CJEU also ruled that companies need to provide the information in a concise, transparent, intelligible, and easily accessible form. In particular, the description of the criteria relied on in reaching the automated decision should be clearly explained to enable the person affected to (i) understand the process which led to the outcome at stake; and (ii) verify the accuracy of his/her personal data. Importantly, the complexity of the technical operations involved do not relieve the Controller from the obligation to provide information. However, an explanation simply consisting of a complex mathematical formula, e.g., an algorithm, will be insufficient to satisfy the obligation under the GDPR.

The right to the protection of personal data is not an absolute right and must be balanced against other fundamental rights, such as the protection of intellectual property and the freedom to conduct a

business. But companies may not simply refuse to provide the information invoking trade secret protection. Where a company alleges that the information at issue contains protected data of third parties or trade secrets, it must provide it to the relevant national authority or court, which will determine how much of the information the person may have access to.

---

### IMPLICATIONS

This judgment has significant implications for businesses operating in the EU that rely on AI-driven profiling, particularly in the financial, banking, healthcare, and insurance sectors.

Businesses must be prepared to provide persons affected by their automated decision-making, authorities, and courts, with sufficient and easily digestible information about the logic and method through which automated decisions are taken. Companies should also allow for the rectification of errors in cases where algorithms are based on inaccurate data.

The CJEU made clear that the protection of trade secrets cannot automatically override the right to access to information under Article 15(1)(h) of the GDPR. When trade secrets are invoked, companies must still disclose the information to the relevant authority or court, which will then balance the rights and interests at issue and determine the information to which the person concerned can have access.

Companies using automated decision-making should therefore review their internal policies to comply with the GDPR and the CJEU's ruling and prepare for potential complaints from affected individuals and stricter enforcement from EU Member State courts and data protection authorities.

\* \* \*

# **SULLIVAN & CROMWELL LLP**

## **ABOUT SULLIVAN & CROMWELL LLP**

Sullivan & Cromwell LLP is a global law firm that advises on major domestic and cross-border M&A, finance, corporate and real estate transactions, significant litigation and corporate investigations, and complex restructuring, regulatory, tax and estate planning matters. Founded in 1879, Sullivan & Cromwell LLP has more than 900 lawyers on four continents, with four offices in the United States, including its headquarters in New York, four offices in Europe, two in Australia and three in Asia.

## **CONTACTING SULLIVAN & CROMWELL LLP**

This publication is provided by Sullivan & Cromwell LLP as a service to clients and colleagues. The information contained in this publication should not be construed as legal advice. Questions regarding the matters discussed in this publication may be directed to any of our lawyers or to any Sullivan & Cromwell LLP lawyer with whom you have consulted in the past on similar matters. If you have not received this publication directly from us, you may obtain a copy of any past or future publications by sending an e-mail to [SCPublications@sullcrom.com](mailto:SCPublications@sullcrom.com).