Anonymised version

Case C-594/25

Request for a preliminary ruling

Date lodged:

9 September 2025

Referring court:

Landgericht Lübeck (Germany)

Date of the decision to refer:

4 September 2025

Applicant:

KL

Defendant

Vodafone GmbH

Landgericht Lübeck (Regional Court, Lübeck)

Order

In the case of

KL, […]

- Applicant -

[…]

v

Vodafone GmbH, […]

- Defendant -

[…]

concerning requirements under the General Data Protection Regulation

the 15th Civil Chamber of the Regional Court Lübeck […] on

4 September 2025, following the hearing on 3 July 2025, ruled as follows:

I. The proceedings are stayed.

II. The following questions are referred to the Court of Justice of the European Union for a preliminary ruling on the interpretation of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation, GDPR, OJ 2016 L 119, p. 1):

1. Is Article 6(1)(f) of the GDPR to be interpreted as meaning that it applies to situations in which it is necessary to rule on the lawfulness of the transfer of information by mobile phone companies to private-law credit information agencies which does not involve negative payment experiences or any other failure to perform as contractually agreed, but relates to mandating, performing and terminating a contract ('positive data')?

2. If the answer to Question 1 is in the affirmative: Is Article 6(1)(f) of the GDPR to be interpreted as meaning that it cannot in any event justify the transfer of positive data from mobile phone companies to private-law credit information agencies without the consent of the data subjects if those agencies subsequently use the data transferred for profiling purposes (scoring)?

3. If Question 1 is answered in the negative or Questions 1 and 2 are answered in the affirmative: Is Article 82(1) and (2) of the GDPR to be interpreted as meaning that there is also a loss of control giving rise to damage where positive data have been transferred by mobile phone companies to private-law credit information agencies without the consent of the data subject and have been deleted there at the earliest after significantly more than a year and the consumer concerned was informed of the transfer of the data at the time the contract was concluded?

Grounds

I. Facts of the case and the dispute in the main proceedings

The applicant is seeking a prohibitory injunction against and compensation from the defendant for non-material damage in relation to the transfer of personal data.

1. The defendant is a telecommunications company. The parties are connected by a mobile phone contract entered into on 9 December 2021. By entering into the contract, the applicant received a SIM card and thus the possibility to make phone calls and exchange and receive data via the mobile phone network made available by the defendant. In the context of the conclusion of the contract, the defendant made available to the applicant a data protection information sheet, in which it is stated, inter alia:

> *'...*
>
> *4. Creditworthiness assessment*
>
> *a. Examination by SCHUFA (...)*
>
> *We transfer personal data relating to the application for and performance and termination of the contract collected in the context of the contractual relationship, such as your name, date of birth and IBAN, as well as data on failure to perform as contractually agreed or fraudulent conduct to (...) SCHUFA Holding AG (...) ('SCHUFA'). The legal bases for such transfers are Article 6(1)(b) and Article 6(1)(f) of the GDPR, in conjunction with our legitimate interest in minimising the risk of default and preventing fraud. The data exchange with SCHUFA (...) also serves to fulfil legal obligations to perform creditworthiness assessments on customers (Paragraphs 505a and 506 of the Bürgerliches Gesetzbuch (German Civil Code)). SCHUFA (...) processes the data received and also uses them for the purpose of profiling (scoring) in order to provide its contractual partners in the European Economic Area and Switzerland and, if applicable, other third countries (in so far as an adequacy decision of the European Commission exists for these) with information, among other things, to assess the creditworthiness of natural persons ('creditworthiness scoring').*
>
> *Independently from the creditworthiness scoring, SCHUFA supports its contractual partners by means of profiling in the detection of anomalous situations (for example, with the aim of preventing fraud in the context of mail order sales). To that end, an analysis of the requests of SCHUFA's contractual partners is carried out in order to examine them in the light of possible anomalies. That calculation, which is carried out individually for each contractual partner, may also include address data, information on whether and in what function there is, in generally accessible sources, an entry of a person of public life with consistent personal data, as well as aggregated statistical information from the SCHUFA database. This procedure does not affect the creditworthiness assessment and creditworthiness scoring.*

Further information on SCHUFA's activity can be found online at www.schufa.de/datenschutz.'

On 10 December 2021, the defendant forwarded to SCHUFA Holding AG ('SCHUFA') the following data concerning the mobile phone contract concluded the previous day: name, date of birth, address, date of conclusion of the contract and contract number. The applicant had not given his consent to the transfer of the data to SCHUFA.

On 19 October 2023, SCHUFA, which, by its own account, has information concerning 68 million natural persons, published in a press release its decision to delete telecommunications data from the accounts. In that context, SCHUFA also stated that the positive data had been included in the creditworthiness score, as they were likely to have an impact on the risk of default. The press release is worded as follows:

'3. What influence can the deletion have on my score?

First of all, our analyses in the run-up to the deletion have shown that the scores only change marginally on average. For 53 percent of people, the score will be lower after deletion, for 47 percent it will be higher (the higher the better). The impact on the bank score, the score most frequently provided by SCHUFA for credit decisions, was analysed.

4. Why is my score improving or deteriorating?

Information on the existing contract has a positive effect on the creditworthiness score, especially for people who already have a long-standing contractual relationship (more than five years) with a telecommunications company. People for whom little or no further data was available at SCHUFA also benefited from information on contract accounts in the telecommunications sector. However, if numerous contracts are reported by telecommunications companies, this can – statistically speaking – have a negative effect on the creditworthiness score, as each individual contract is linked to a payment obligation.'

2. The applicant claims that, when he concluded his mobile phone contract with the defendant, he was unaware that the defendant would transmit contractual data to SCHUFA. The applicant assumes that the SCHUFA entry which the defendant caused by the transfer has an impact on his SCHUFA score. That would undermine the applicant's development opportunities in the way he organises his life, for example as regards his choice of telecommunications operator, access provider or type of contract that SCHUFA considers more valuable than another in any particular case.

The applicant requested that the defendant should be ordered not to transfer in the future positive data of the applicant, that is to say, personal data which do not involve payment experiences or any other failure to perform as contractually

agreed, but information relating to mandating, performing and terminating a contract, to credit information agencies, namely SCHUFA, without the consent of the applicant. In addition, he requested that the defendant be ordered to pay the applicant non-material damages of an appropriate amount, the amount of which was left to the discretion of the court, but a minimum of EUR 5 000. In addition, the applicant would like the court to find that the defendant is obliged to compensate the applicant for any future material and non-material damage that is not yet foreseeable at this stage that the applicant will suffer as a result of the unauthorised processing of personal data.

3. The defendant takes the view that the transmission of the contractual data to SCHUFA was lawful. The transfer of positive data to credit information agencies following the conclusion of the mobile phone contract is justified in order to safeguard legitimate interests. The transfer of data serves, in particular, to prevent fraud. Joint collection of positive data is essential for mobile phone companies in order to increase the chance of recognising fraudulent customers prior to the conclusion of the contract. Only the existence of a common data pool enables them to check and recognise the (true) identity of an individual and to know whether a person is trying to conclude mobile phone contracts using his or her real name or a false name. On the basis of positive data, in particular the registration date, the defendant can also see how many mobile phone contracts the data subject concluded within which period. The conclusion of a large number of mobile phone contracts within a short period is an indication that there is an increased risk of fraud for mobile phone companies such as the defendant. The transfer of data also protects consumers against over-indebtedness. Credit information agencies such as SCHUFA receive positive consumer data from their contractual partners, enabling them to better recognise over-indebtedness patterns than individual traders who take over the credit risks of consumers. Finally, the transfer of data ensures the functionality of the credit information agencies, which is essential for economic transactions. Moreover, the transfer of data makes it possible to make more precise forecasts of the risk of default.

4. A court hearing was held on 3 July 2025 and the applicant presented oral argument, in particular with regard to the alleged damage. The applicant, who was heard personally, stated that his SCHUFA score was currently poor, at 67 per cent. He has no explanation for that. However, he does not live in a state of great concern on that account. That court also heard the parties regarding the intended stay of proceedings with a view to implementing a preliminary ruling procedure.

II. The provisions of national and EU law that may be applicable in the present case

1. Article 8 of the Charter of Fundamental Rights of the European Union

(1) Everyone has the right to the protection of personal data concerning him or her.

(2) Such data must be processed fairly for specified purposes and on the basis of the consent of the data subject or some other legitimate basis laid down by law. (…)

2. Article 52 of the Charter of Fundamental Rights of the European Union

(1) Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

3. Article 82 of the GDPR:

(1) Any person who has suffered material or non-material damage as a result of an infringement of this Regulation shall have the right to receive compensation from the controller or processor for the damage suffered.

(2) Any controller involved in processing shall be liable for the damage caused by processing which infringes this Regulation. (…)

(3) A controller or processor shall be exempt from liability under paragraph 2 if it proves that it is not in any way responsible for the event giving rise to the damage.

(…)

4. Article 6(1)(f) of the GDPR

(1) Processing shall be lawful only if and to the extent that at least one of the following applies:

(…)

(f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

III. Reference to the Court of Justice

The success of the action depends on the interpretation of EU law.

1. Applicability of European Union law

The applicant seeks compensation under Article 82 of the GDPR and is also seeking an order for a prohibitory injunction under the GDPR. The temporal, material and territorial scope of the GDPR, in particular Article 82 thereof, is met. In accordance with Article 99(2) of the GDPR, the GDPR entered into force on

25 May 2018. The disputed transfer of positive data relating to the mobile phone contract concluded took place after that date on 10 December 2021.

The material scope of the GDPR is also met. The defendant also processed (positive) personal data (name, address, date of birth, date of conclusion of the contract, contract number) within the meaning of Article 2(1) read in conjunction with Article 4(2) of the GDPR. The transfer of those data to SCHUFA constitutes processing of those data in that sense. Finally, the territorial scope of the GDPR (Article 3(1) of the GDPR) is also met. The defendant is the controller of the processing within the meaning of Article 4(7) of the GDPR. It has its seat in Germany, that is to say, within the European Union.

2. Question 1

Must Article 6(1)(f) of the GDPR be interpreted as meaning that it applies to situations in which it is necessary to rule on the lawfulness of the transfer of information by mobile phone companies to private-law credit information agencies which does not involve negative payment experiences or any other failure to perform as contractually agreed, but relates to mandating, performing and terminating a contract ('positive data')?

It is largely settled in the relevant case-law in the German-speaking area that the question of the lawfulness of the transfer of positive data to credit information agencies must be decided decisively on the basis of the requirements of Article 6(1)(f) of the GDPR (see, for example, Oberlandesgericht Koblenz (Higher Regional Court, Koblenz, Germany), judgment of 12 May 2025 – 11 U 1335/24 – DE:OLGKOBL:2025:0512.11U1335.24.00; Oberlandesgericht Schleswig (Higher Regional Court Schleswig, Germany), judgment of 22 November 2024 – 17 U 2/24 – DE:OLGSH:2024:1122.17U2.24.00).

However, the chamber has major doubts in this respect.

In accordance with Article 8(2) of the Charter of Fundamental Rights of the European Union, the limitations of the fundamental right to the protection of personal data at issue in the present case require a legal basis. It follows from this requirement for a legal basis that the law itself must 'lay down clear and precise rules governing the scope and application of the measure in question' (Court of Justice, judgment of 8 April 2014, C-293/12, EU:C:2014:238). The legislation must be sufficiently precise to enable data subjects to anticipate and adapt to the consequences. In particular, it is unacceptable to allow particularly serious interference without an indication of the specific objective circumstances (Court of Justice, judgment of 21 December 2016, C-201/15, EU:C:2016:972). European primary law therefore also requires sufficient regulatory density (see, for example, Calliess/Ruffert/Kingreen, *EU-GRCharta*, 6th edition, 2022, Article 52 paragraph 62). It is necessary not only for a legislative provision to be adopted, but also for this to be done with sufficient precision and depth (Court of Justice, judgment of 6 December 2005, C-66/04, EU:C:2005:743). The requirements of

precision increase in that regard with an increased degree of interference (Court of Justice, judgment of 8 April 2014, C-293/12, CR 2015, 86-90, EU:2014:238).

The present Chamber has major doubts as to whether Article 6(1)(f) of the GDPR in any event satisfies those requirements for the area which is decisive in the present case of the transfer of positive data of private market participants to credit information agencies also organised under private law.

Doubts as to the precision of Article 6(1)(f) of the GDPR were already raised during the legislative procedure and discussed (without a consensus being reached). During the legislative procedure, some Member States (such as France) also raised objections to the vague criterion of 'legitimate interests' as legitimation of processing without consent (see in this regard, for example, in detail: Kühling/Buchner/Buchner/Petri, *DS-GVO*, 4th edition, 2024, Article 6 para. 142 with further references).

The present chamber also has major doubts as to whether Article 6(1)(f) of the GDPR, in any event for the area of life at issue in the present case of massive transfer of positive data between private companies, can constitute a sufficiently precise legal basis. In that regard, the chamber assumes in principle that the transfer of positive data constitutes a significant interference with fundamental rights. The right to the protection of personal data, as provided for in Article 8 of the Charter of Fundamental Rights of the European Union, constitutes, under the conditions of modern mass society profoundly influenced by digital systems, an essential fundamental right (for the parallel provisions of the Grundgesetz (German Basic Law): Bundesverfassungsgericht (Federal Constitutional Court, Germany) decision of 6 November 2019 – 1 BvR 16/13 – DE:BVerfG:2019:rs20191106.1bvr001613). In the present case, the requirements relating to the precision of the legal bases should be similarly high. That should, moreover, apply in particular to the area of the transfer of positive data which is the subject of the dispute in the present case. In the context of these massive data transfers, which affected (and, apart from mobile phone data, still affect) millions of people, there is a need to regulate a range of fundamental rights issues, such as the question of which type of data items may be transferred to which type of companies under which conditions, to which organisations such data may be transferred, how long the data may be stored by credit information agencies, how these data are used and for what purposes, to whom they may be subsequently released and, in particular, how these items can be combined in a coherent overall concept, including accompanying rules on security and transparency.

The present chamber has major doubts as to whether Article 6(1)(f) of the GDPR meets that regulatory need in relation to the transfer of positive data in a sufficiently precise form, in that the answer is de facto entirely entrusted to an unspecified balancing of interests by the courts and, as a result, it is ultimately the judiciary alone that is entrusted with the regulation of those extensive and complex facts by means of decisions in individual cases.

In contrast, it seems consistent with the requirements relating to the precision required of the aforementioned legal bases to see the European legislator as having an obligation to issue clear and sufficiently precise provisions regarding the questions that arise, or alternatively to interpret the question of the lawfulness of the transfer of positive data to credit information agencies for the general prevention of fraud as a subcategory of Article 6(1)(e) of the GDPR, thus giving national legislatures the opportunity to adopt specific rules under Article 6(2) of the GDPR.

In that context, the chamber considers whether the doubts indicated above could be resolved by the fact that Article 6(1)(f) of the GDPR could be interpreted in accordance with fundamental rights as meaning that it is to be excluded as a legal basis for the transfer of data, in any case, for the transfer of positive data.

In the case-law of the Court of Justice, that question has not yet been definitively settled. Admittedly, there is case-law relating to the processing of data by SCHUFA, from which it is apparent that the Court uses Article 6(1)(f) of the GDPR as an assessment criterion (in particular, Court of Justice, judgment of 7 December 2023, C-26/22, paragraph 74, EU:C:2023:958). However, that case-law concerns only the limited field of the processing of negative data, but not the field of the positive data at issue in the present case.

3. Question 2

If the answer to Question 1 is in the affirmative: Must Article 6(1)(f) of the GDPR be interpreted as meaning that it cannot in any event justify the transfer of positive data from mobile phone companies to private-law credit information agencies without the consent of the data subjects if those agencies subsequently use the data transferred for profiling purposes (scoring)?

In that regard, the referring court assumes, in principle, that companies which transfer data – like the defendant in the present case – pursue legitimate interests within the meaning of Article 6(1)(f) of the GDPR by registering positive data. In particular, data processing for fraud prevention purposes is possible in the light of the GDPR. It is true that the transfer of positive data does not directly serve any of the interests indicated by the defendant, since, logically, the transfer of the data after the conclusion of the contract cannot preventively protect against fraud on the part of the applicant. However, the registration of data indirectly benefits companies and their interests in that they participate in SCHUFA's overall system and thus contribute to enabling others to access this data. The same applies to the defendant's interest in being able to assess the credit and default risk of future customers. As the defendant has explained in a comprehensible manner, a default on receivables is a regular occurrence in the mobile phone sector because, often when also supplying hardware, continuing obligations particularly prone to fraud are concluded with a credit risk.

The referring court also concurs with what is probably the prevailing case-law according to which the transfer of positive data may also be necessary to pursue legitimate interests within the meaning of Article 6(f) of the GDPR. On this matter, most recently, the Oberlandesgericht Schleswig-Holstein (Higher Regional Court Schleswig-Holstein, Germany) (judgment of 10 July 2025, file reference 5 U 28/25, not yet published) ruled as follows:

> It is [not] apparent by what other means the aforementioned existing interest could be pursued equally effectively (…).
>
> A system of fraud prevention and prevention of identity theft that has only a retrospective effect is not as appropriate as the reporting of positive data. Negative data is in fact not sufficient to prevent the aforementioned fraud scenarios because negative data cannot be available in the case of a falsified identity and negative data is not yet available when a large number of mobile phone contracts are concluded within a short period of time (…).
>
> The same applies, in so far as it is proposed not to conclude contracts or to turn to prepaid services, where the defendant's employees become aware of anomalies in the conclusion of a contract. This is not equally appropriate to prevent fraud, as it is not clear which anomalies are meant and how this can be implemented in an area where contracts are concluded to a large extent online, especially where anomalies have occurred with other suppliers, that is to say, the supplier concerned has no possibility of becoming aware of them without information such as that at issue. In addition, a more labour-intensive acquisition with higher control thresholds or modified service concepts will not do justice to the highly automated mass business of telecommunications service providers and, as a result, may be a milder but not equally appropriate means of achieving the legitimate interest, especially since this is ultimately likely to have an impact on prices (…).
>
> Similarly, the possibility of selling mobile phones only subject to retention of title would not protect telecommunications companies against fraudulent conduct. A surrender claim to this effect would, as a rule, be ineffectual vis-à-vis fraudsters whose identity and address are often unknown. (…) Additional or more intensive measures to recover property are therefore not possible. Moreover, mobile phones suffer significant losses in value when they are first put into service, so that the effort required to recover them often exceeds their residual value and a retention of title would make no economic sense.

The referring court shares that view (as does, for example, the Higher Regional Court Koblenz, judgment of 12 May 2015 – 11 U 1335/24 – DE:OLGKOBL:2025:0512.11U1335.24.00; by contrast, that view is denied by the Landgericht München I (Regional Court Munich I, Germany), final judgment of 25 April 2023 – 33 O 5976/22 – GRUR-RS 2023, 10317, ECLI not published).

However, the referring court has major doubts, and is of the opinion that these doubts have not been clarified in the Court's case-law to date, as to whether Article 6(1)(f) of the GDPR can be interpreted as meaning that the abovementioned interests in favour of data processing may outweigh the conflicting interests of data subjects, in any event in situations such as the present one, in which the credit information agency which receives the data then also uses them for profiling (scoring) purposes.

In the context of balancing interests, account must be taken on the one hand of the applicant's right to the protection of personal data as expressed in Article 8 of the Charter of Fundamental Rights of the European Union. This essential fundamental right (see above) under the conditions of modern mass society profoundly influenced by digital systems also protects the holders of fundamental rights, also vis-à-vis private entities, in their right to decide for themselves which data will be disclosed to third parties – and which will not.

On the other hand, account must be taken of the defendant's interest in pursuing the abovementioned objectives in the exercise of its right freely to pursue an economic activity and to protect its financial interests.

The referring court has major doubts as to whether Article 6(1)(f) of the GDPR can be interpreted as meaning that, in balancing these two interests, both of which are also protected as fundamental rights, the interest of the company may prevail.

In that regard, the chamber starts from the principle that, in any event, there is an overriding interest worthy of protection for the data subject where the purpose of the data processing is also – as in the present case – the creation of a personality profile or where a large number of different items of data are to be comingled (a line of argument also taken by Kühling/Buchner/Buchner/Petri, *DS-GVO*, 4th edition, 2024,, Article 6 para. 153; *NK-DatenschutzR*/Schantz Art. 6 para. 106). In that regard, Buchner/Petri argue convincingly as follows:

> 'It must, in principle, be considered that there is an overriding interest worthy of protection of the data subject where the purpose of the data processing is to create a movement, use or personality profile. The creation of such profiles is regularly associated with risks to the rights and freedoms of the data subject (…). In the present case, a balancing of interests must therefore, as a rule, be in favour of the data subject. The same applies when data are linked. Where datasets are to be linked, reproduced or enriched, this justifies that the data subject is particularly worthy of protection. This applies all the more if the combination of data is accompanied by a sizeable number of data processors (…)' (Kühling/Buchner/Buchner/Petri, *DS-GVO*, 4th edition, 2024, Article 6, para. 153.

In accordance with the case-law of the Court, when a balancing of interests to the detriment of the controller, it is also to be taken into account, where data

processing is particularly extensive, that that processing concerns potentially unlimited data and has a significant impact on the user.

> (Furthermore, the processing at issue in the main proceedings is particularly extensive since it relates to potentially unlimited data and has a significant impact on the user, a large part – if not almost all – of whose online activities are monitored by Meta Platforms Ireland, which may give rise to the feeling that his or her private life is being continuously monitored, Court of Justice of the European Union, judgment of 4 July 2023, C-252/21, EU:C:2023:537).

It is likely that such a situation exists in the present case. According to the data protection information provided by the defendant, the transfer of data at issue in the present case is also part of an overall system operated by SCHUFA, the purpose of which is also to create a personality profile which culminates in an overall score to record the creditworthiness of the persons concerned. To that end, a large number of data items which, in themselves, are not linked to one another are also reported by a vast number of data processing actors and are then comingled by SCHUFA in a system that is largely opaque for data subjects. This overall system is also particularly likely to give rise to a feeling on the part of the persons concerned that their private life is being constantly monitored without sufficient opportunities for influence.

In its judgment of 25 April 2023 (see above), the Regional Court Munich I also convincingly sets out its arguments in relation to balancing interests:

> ‘In the case in dispute, the particular intensity of the impairment and thus – conversely – the weight of the consumers’ interests concerned lies in the fact that the data subjects must disclose personal information independently of a concrete contractual requirement and the concrete contract concluded (namely after conclusion of the contract) and independently of their own misconduct in order to pursue abstract-general objectives, from which the consumer may only benefit in a next step, if at all, (…) and above all may only benefit indirectly (as a result of better tariffs/contract conditions or a ‘better’ score following a successful fight against fraud).
>
> In that regard, the defendant – which, incidentally, is neither a bank with a consequent risk of increased default nor a law enforcement authority – together with the credit information agency, ultimately makes a collection of data without reason (since it takes place after the conclusion of the contract), in particular for the purposes of combating fraud, which to a large extent concerns consumers for whom there is neither a credit risk nor the risk of identity theft or any other fraudulent conduct.
>
> This is a serious infringement of the interests of the consumers concerned. In this respect, the (…) right to the protection of personal data as expressed in

> Article 8 of the EU Charter of Fundamental Rights is an argument in favour of consumers.
>
> The collection of data by the defendant also leads to a considerable imbalance in information between the consumer on the one hand, and the contractual partner or the credit information agency on the other, which considerably weakens the position of the consumer and, consequently, his or her rights, for example, contractual autonomy. This is all the more so as there may be an indirect compulsion to disclose as much information as possible in order to avoid negative assessments based solely on non-existent information. (…)
>
> (c) To that extent, any intention on the part of the legislature to transfer positive data as well, and indeed to do so all the more in comparison with negative data, which the defendant seeks to deduce from Paragraph 31 of the Bundesdatenschutzgesetz (Federal Law on Data Protection, 'the BDSG'), cannot be used as an argument in favour of the defendant. In calculating scores on the basis of negative data registered with them, credit information agencies perform a function approved by the legal order and desired by society (see Bundesgerichtshof (Federal Court of Justice, Germany, 'BGH' GR 2020, 405), but the transfer of negative data, unlike the transfer of positive data, takes place in connection with possible 'misconduct' on the part of the person concerned and not 'without reason', a fact that must be taken into account for data users when balancing up the different interests' (Regional Court Munich I, final judgment of 25 April 2023 – 33 O 5976/22 – op. cit.).

Those doubts on the part of the referring court are further reinforced by other circumstances to be taken into account for the interpretation of Article 6(1)(f) of the GDPR.

In interpreting Article 6(1)(f) of the GDPR, account could be taken, in particular, and taking into account the regulatory objective of a uniform level of data protection in the European Union, of the differentiated balancing of interests of the provision in force prior to the entry into force of the GDPR (Albers/Veit, *Beck Online-Kommentar Datenschutzrecht*, 'DS-GVO Art. 6 para. 63 to 72', 52nd edition 1.5.2025,). In this respect, it is striking that the previous German data protection law only considered the transfer of positive data to be permissible specifically for banking transactions (Paragraph 28a(2) of the Federal Law on Data Protection, old version, available online at https://dejure.Org/gesetze/BDSG_a.F./28a.html). Moreover, in particular for telecommunications companies, it was rejected outright that there was any overriding interest in data transfer (Kühling/Buchner/Buchner/Petri, *DS-GVO*, 4th edition, 2024, Article 6, para. 159 to 166a).

The independent federal and state data protection supervisory authorities in the Datenschutzkonferenz (Data Protection Conference) also stated that the transmission of positive data was not lawful in a decision of 11 June 2018:

> ‘Processing of positive data concerning individuals by credit information agencies: Commercial and credit information agencies, in principle, may not collect so-called positive data on private individuals on the basis of Article 6(1)(f) of the GDPR. In the case of positive data – that is to say, information which does not involve negative payment experiences or other failure to perform as contractually agreed – data subjects, as a general rule, have an overriding interest worthy of protection in determining the use of their data themselves. In that regard, if the data are transferred by a controller to a credit information agency, the transfer of those data is, as a general rule, unlawful under point (f) of the first sentence of Article 6(1) of the GDPR. If a credit information agency wishes to collect positive data on private individuals, this generally requires a valid consent of the data subjects within the meaning of Article 7 of the GDPR.’ (https://datenschutzkonferenz-online.de/media/dskb/20180611_dskb_verarbeitung_positivdaten.pdf)

The referring court’s doubts are also not mitigated by the fact that the data transferred are in themselves only non-sensitive data which do not interfere significantly with the personality rights of the data subjects, in the present case, of the applicant. That line of argument disregards the fact that it is precisely inherent in the collection of data by credit information agencies and the subsequent profiling (scoring) to store data items which are apparently of little relevance in themselves, but then to combine and merge them into an overall profile which purports to be able to make meaningful statements on the economic personality profile, which then has very significant consequences for the data subjects and their participation in economic life, affecting their fundamental rights to a high degree – whereby it is the experience of the chambers following a number of personal hearings – as in this case – that for the people concerned, as a general rule, it remains incomprehensible how their individual score was calculated.

Nor is court convinced by the objection raised in particular by the defendant that the data transferred in the present case (and in comparable cases) cannot, by their very nature, have a relevant influence on the individual score of the people concerned. Rather, in the opinion of the present chamber, the high level of relevance to fundamental rights of the process at issue stems from the fact that it is largely unclear for the consumers concerned how and in what manner the data transferred have an impact. In particular, the information provided by SCHUFA itself in this regard, as reproduced above, is vague, unclear and not capable of effectively countering the subjective feeling of being monitored that arises. In short, it is apparent from the information only that telecommunications data sometimes have an influence on the score – according to a template communicated only in rudimentary form, sometimes depending on the duration of the contractual relationship or number of contracts, an influence that is negative in

a small majority of cases (53 percent of cases) and positive in the rest (47 percent). What SCHUFA means by a 'marginal' influence and whether that indication is credible is something the persons concerned cannot examine.

The chamber is convinced that nothing else follows from the fact that, according to the defendant's submissions, data subjects – like the applicant in the present case – could as a general rule have expected such data processing, since companies, like the defendant in the present case, announce the transmission of the data to SCHUFA in the context of the conclusion of the contract by means of data sheets. First, that argument is not convincing, if only because the announcement of future data processing can be relevant for the purposes of classifying the practice as unlawful or lawful only if it actually gives the person concerned room for manoeuvre. Otherwise, the announcement would be a mere formality, but with significant consequences, which would run counter to the obligation, repeatedly emphasised by the Court, to interpret the GDPR in such a way as to also make the level of protection for which it provides effective in practice. In fact, there is nothing to indicate that, in the present case, the data sheet gives the persons concerned any effective room for manoeuvre in practice, since, in the practical reality of standardised procedures for the conclusion of mass business, consumers do not have any realistic possibilities to negotiate deviations from the envisaged routines in the contractual situation. The only real option for action, if any such option exists at all, would be to waive the conclusion of the contract, which would amount to excluding citizens wishing to insist on compliance with their rights guaranteed by the GDPR from participating in contemporary communication opportunities and contractual models. Such an interpretation would thus deprive the GDPR of any practical effectiveness.

Taking an overview, the chamber therefore has major doubts as to whether Article 6(1)(f) can be interpreted as justifying the transfer of the data at issue, as took place in this case. There is as yet no clear case-law of the Court on this issue.

6. Question 3

If Question 1 is answered in the negative or Questions 1 and 2 are answered in the affirmative: Must Article 82(1) and (2) of the GDPR be interpreted as meaning that there is also a loss of control giving rise to damage where positive data have been transferred by mobile phone companies to private-law credit information agencies without the consent of the data subject and have been deleted there at the earliest after significantly more than a year and the consumer concerned was informed of the transfer of the data at the time the contract was concluded?

It appears to the present chamber that it has not yet been conclusively clarified in the case-law of the Court of Justice whether, in circumstances such as those in the present case, there is a loss of control giving rise to damage within the meaning of Article 82(1) and (2) of the GDPR. The relevant case-law in the German-speaking area accepts in part that there is no loss of control within the meaning of the

relevant case-law where the data have not been transferred to unknown persons but have been transferred to a named company (Higher Regional Court Schleswig, judgment of 22 November 2024 – 17 U 2/24 – DE:OLGSH:2024:1122.17U2.24.00; Landgericht Freiburg (Regional Court Freiburg, Germany), judgment of 27 November 2024, – 8 O 8021/24 – DE:LGFREIBG:2024:1127.808021.24.0A) and the applicant was also informed of the use of the data within SCHUFA (Higher Regional Court Koblenz, judgment of 12 May 2025, – 11 U 1335/24 – DE:OLGKOBL:2025:0512. 11U1335.24.00). By contrast, it is likely that a recent ruling by the Federal Court of Justice could be understood to mean that even in such a situation, it could be affirmed that there was a loss of control within the meaning of the case-law of the Court of Justice (BGH, judgment of 13 May 2025, – VI ZR 67/23 – para. 19, ECLI currently still unknown).

This chamber tends to interpret the previous case-law of the Court of Justice of the European Union as meaning that it is likely that damage has occurred in the present case in the form of a loss of control. In that regard, the chamber assumes that the mere loss of control and, thus, the resulting infringement of the right to self-determination in respect of information, is sufficient to substantiate that damage has occurred and also sees confirmation of that view in the most recent decision of the Federal Court of Justice (BGH, judgment of 18 November 2024 – IV ZR 10/24 – DE:BGH:2024:181124UVIZR10.24.0). According to that case-law, even just short-term loss of control over one's own personal data as a result of an infringement of the General Data Protection Regulation may constitute non-material damage within the meaning of the rule. It is not necessary, in that regard, for there to have been specific misuse of those data to the detriment of the data subject, nor other additional tangible negative consequences (BGH, judgment of 18 November 2024, – VI ZR 10/24 – DE:BGH:2024:181124UVIZR10.24.0, which is why, in the present case, the question as to whether or not the applicant is concerned about the loss of control is relevant only for the amount of the damage, not for the assumption of damage in principle). In the present case, there appears to be a sufficient infringement of general personality law, as manifested in the right to self-determination of information, in the form of a loss of control, to establish the existence of damage. The right to self-determination of information, also protected by the Charter of Fundamental Rights of the European Union, includes the power of individuals to decide in principle themselves when, where and within which limits personal life situations are revealed. As a result of the registration of positive data with SCHUFA, the applicant lost control over his data. This infringed the applicant's right to decide himself whether, where and to whom he wishes to disclose such data.

The arguments to the contrary of the abovementioned courts, according to which the data were transferred only to SCHUFA and were not on a list freely accessible on the internet, are not convincing. They disregard the fact that, as a result of the data transmission alone, the data subjects, at least initially, no longer have control over their data. It is true that they remain free to object a posteriori to data processing under Article 21 of the GDPR. However, at least temporarily, they

cannot change the fact that the data are stored at SCHUFA and are also available to the intended group of recipients. The mere fact that the applicant in the present case (unlike cases of data release to the free internet or the dark web) knows to which organisation the data were transferred does not alter the fact that this was done without justification and that the applicant's right to decide himself and independently to whom he wishes to disclose such data was thereby infringed. However, in the light of the divergent case-law set out above, including case-law of higher courts, this appears to the referring court to need clarification and also, on the basis of the Court's previous case-law, not to have been answered with complete clarity.

[…]

[Names of judges]