

Exploring the “Right to Explanation” of Automated Decision-Making: From the EU GDPR to the AI Act

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Abstract

Providing algorithm explanations is an essential measure to solve the opacity and unaccountability problem of artificial intelligence (AI). Since the General Data Protection Regulation (GDPR) came into force in the European Union (EU) in 2018, many discussions about how the GDPR requires algorithms to have sufficient transparency and accountability have revolved around the debates on the "right to explanation." By asking the data controller to reveal how the algorithms come to a decision, the "right to explanation" is believed to help address the automatic decision-making bias and support the remedies of such bias. However, due to the ambiguity of the wording in the GDPR, the theory of whether there is a "right to explanation" under the GDPR and how this right should be exercised has not yet been conclusive.

Recently, developments in both practical and doctrinal aspects provide a new basis for discussing the norms and practices of the right to explanation. In 2021, the Amsterdam District Court made a judgment that was seen as the very first recognition of the right to explanation by the courts in the EU. Subsequently, the Court of Justice of the European Union (CJEU)'s rulings in the SCHUFA case and the Dun & Bradstreet Austria case further deepened the theoretical development regarding the right to request an explanation. Furthermore, the Artificial

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Intelligence Act (AI Act), passed by the European Union in 2024, clearly includes the right to explanation.

The development above appears to be an opportunity to examine the efficacy of the right to explanation and further expand the discussion of the safeguard mechanisms of automatic decision-making. In this context, this article will re-examine the right to explanation in the EU laws, and analyse how to protect the rights of data subjects by ensuring transparency in an algorithmic automated decision-making system. This article examines the dilemma of the GDPR's right to explanation by analyzing case law, including judgments from the Amsterdam court and the CJEU, engaging with the European Data Protection Board's discussions, and comparing relevant provisions in the GDPR and the AI Act, with the aim of clarifying its implementation and strengthening data subject protection in the context of automated decision-making.

This article concludes that the right to explanation has practical and doctrinal difficulties. Therefore, to achieve appropriate protection for data subjects, the establishment of personal rights and systematic supervision are necessary.

Keywords: right to explanation, automated decision-making, algorithm, General Data Protection Regulation (GDPR), EU Artificial Intelligence Act (AI Act)