

The Right to a Human Decision

The right to a human decision, enshrined in Art 22 GDPR, has a long pedigree - both as a constitutional right, and a technical requirement to ensure 'humans in the loop'. But is it still fit for purpose in a world of high-dimensional automated decision-making? In this paper, I explore the different motivations for the right to a human decision, from ensuring accurate decisions to protecting individual dignity, and conclude that it has failed on all counts. What is required instead, I suggest, is a shift from the protection of human *decisions* to different mechanisms to foster human *agency*. This can no longer be achieved by a focus on humans *in* the loop alone: legal mechanisms need to provide additional and/or alternative mechanisms to frame and contest automated decision-making. Instead of a generalised right to humans *in* the loop, the article explores different ways of ensuring human involvement *before*, *after*, and *above* the loop.