

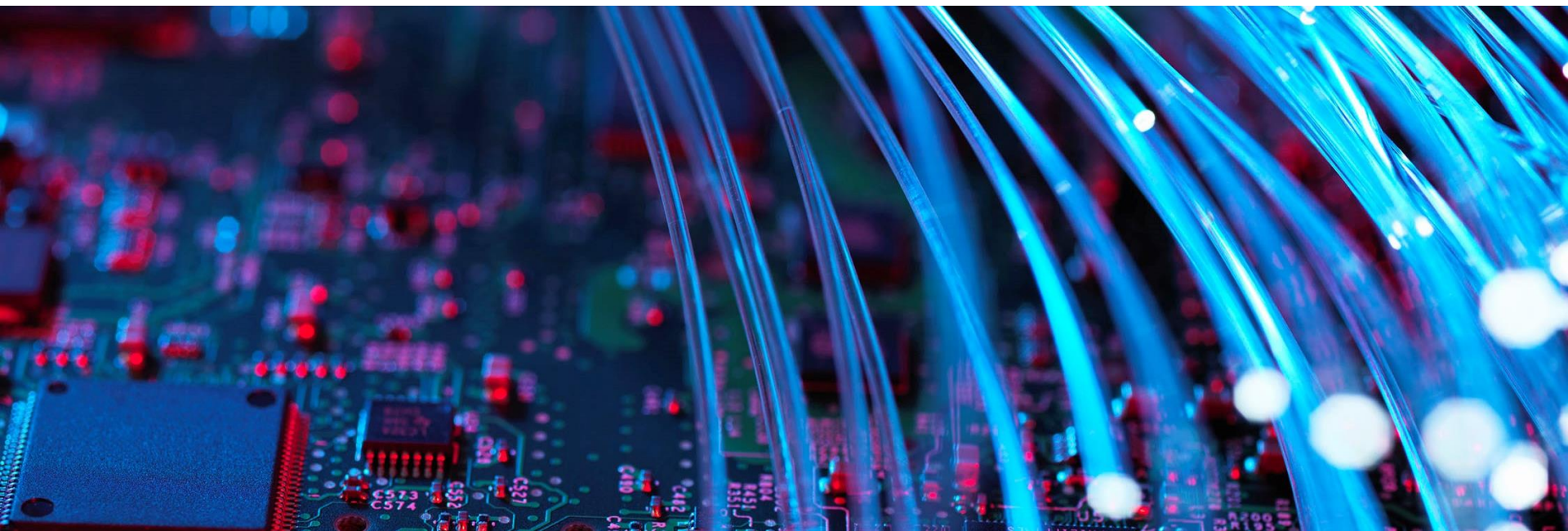
**Baker  
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# Is My AI Racist?

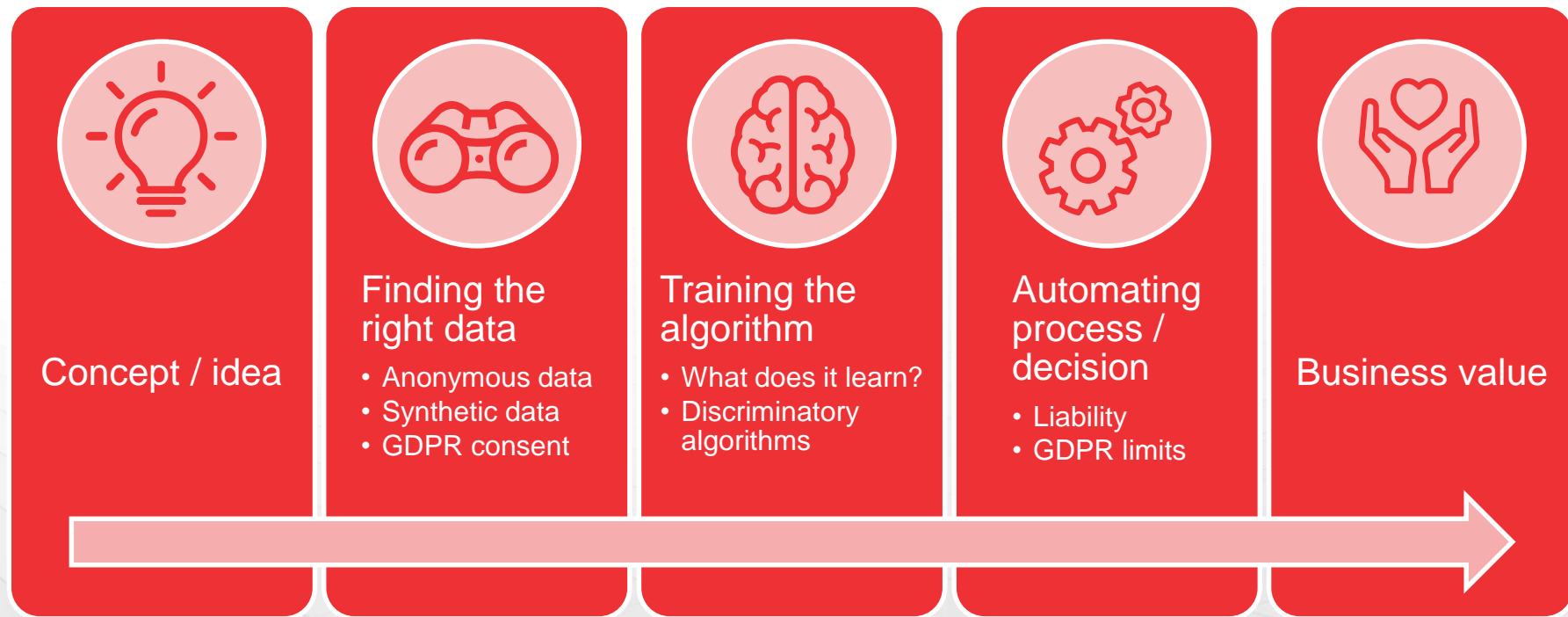
Or: How Not To Break The Law With  
Machine Learning & AI

Dr. Lukas Feiler, SSCP, CIPP/E

sec4dev, 25 February 2021



# How not to break the law with AI & ML



# The discriminatory algorithm as a GDPR risk

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- Discrimination
  - e.g., the algorithm determines a correlation between Norwegian-sounding last names and willingness to pay higher prices → a higher price is offered to all Norwegians
  - Correlation vs. causation – bad/insufficient data!
  - prohibition of discrimination under (Austrian) Equal Treatment Act violated
- „Legitimacy“ of the processing purpose?
  - no legitimate purpose – principle of purpose limitation (Article 5(1)(b) GDPR) violated

# Automated decision making through machine learning – 1 of 2

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- Automated individual decisions are generally prohibited
  - if they have legal effects or similarly severely affect the data subject
    - e.g., contract termination, refusal of line of credit, non-hiring decision (Recital 71 GDPR), price differentiation (WP251rev01)
- By way of an exception only permissible if (Article 22(2) GDPR)
  - necessary for the conclusion / performance of a contract concluded with the data subject (no sensitive data)
  - legal basis under national law
  - express consent of the data subject

# Automated decision making through machine learning – 2 of 2

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- Additional requirements if automated decision is permissible
  - Granting data subjects the rights to
    - „human intervention“
    - express his/her point of view
    - contest the decision
  - Requirement to inform data subjects about
    - the existence of the automated decision making process
    - logic involved (WP251rev01: „*sufficiently comprehensive for the data subject to understand the reasons for the decision*“) → explainability of AI?
    - significance/consequences of the decision
- Transparency requirements vs. protection of trade secrets  
Recital 63 sentence 5 GDPR (and § 4(6) Data Protection Act in Austria)

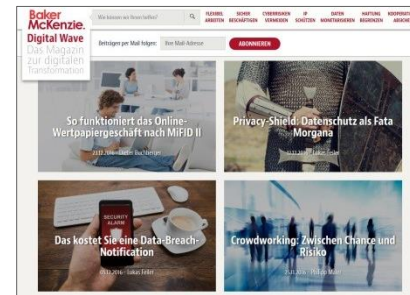
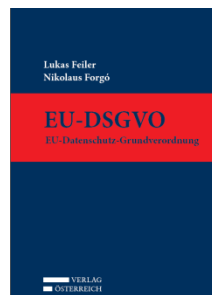
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