



UNIVERSITÄT
DES
SAARLANDES

INSTITUTE OF
LEGAL INFORMATICS

AI tools for the Judiciary and the European AI Act

Ritsumeikan University

01.03.2025

Prof. Dr. Georg Borges

- Chair of Civil Law, Legal Informatics, German and International Business Law, and Legal Theory, Saarland University
- Managing Director, Institute for Legal Informatics, Saarland University
- Former judge at the Higher Regional Court of Hamm
- Member of the Hörst-Görtz-Institute for IT Security (HGI) (2005-2015)
- Member of the Board, German eJustice Conference [EDV-Gerichtstag]
- Member of the Administrative Board, Data Protection Foundation
- Member of EU Commission “Expert Group on liability and new technologies, New technologies formation” (2018-2020)
- Member of the EU Commission “Expert Group on B2B Data Sharing” (2022-2025)
- Distinguished Visiting Professor, University of Johannesburg (since 2023)
- Visiting Professor, Keio University, Tokyo (since Sept 2024)



Agenda

- I. Introduction: AI systems for the justice system**
- II. The European AI Act at a glance**
- III. AI tools for the judiciary as high-risk AI systems**
 1. The regulation of risk management for high-risk AI systems
 2. High-risk AI systems according to Art. 6 para. 2 AI Act
 3. The change of roles at high-risk AI systems
 4. AI systems in the Judiciary as high-risk AI systems?
- IV. Transparency obligations and eJustice**
- V. eJustice and the right to explanation (Art. 86 AI Act)**
- VI. Conclusion**





AI systems for the justice system

Introduction: AI systems for the justice system

Judicial work - a lot of work for AI systems

Summary of pleadings

- » High performance of generative AI systems

Information extraction

- » Text recognition
- » Identification and compilation of relevant information

Preparation of court decisions

- » Compilation of existing text modules
- » Drafting of text by generative AI system

Deutsches Richtergesetz

Inhaltsübersicht

Erster Teil: Richteramt in Bund und Ländern

Erster Abschnitt:	Einleitende Vorschriften
Zweiter Abschnitt:	Befähigung zum Richteramt
Dritter Abschnitt:	Richterverhältnis
Vierter Abschnitt:	Unabhängigkeit des Richters
Fünfter Abschnitt:	Besondere Pflichten des Richters
Sechster Abschnitt:	Ehrenamtliche Richter

Zweiter Teil: Richter im Bundesdienst

Erster Abschnitt:	Allgemeine Vorschriften
Zweiter Abschnitt:	Richtervertretungen
Dritter Abschnitt:	Dienstgericht des Bundes
Vierter Abschnitt:

§ 1

Berufsrichter und ehrenamtliche Richter
 Die rechtsprechende Gewalt wird durch Berufsrichter und durch ehrenamtliche Richter ausgeübt.

Zweiter Abschnitt:	Überleitung von Rechtsverhältnissen
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Introduction: AI systems for the justice system

Automated judicial decisions

Example: "FraUKe"

Frankfurt judgement configurator electronic

('Frankfurt judgement configurator electronic')

– FRAUKE's services

- Information extraction from pleadings
- Comparison with information from databases
- Subsumption using an algorithm
- Preparation of a draft judgement

– Field of application: Air passenger law





Introduction: AI systems for the justice system

Use of generative AI systems in the Brazilian justice system

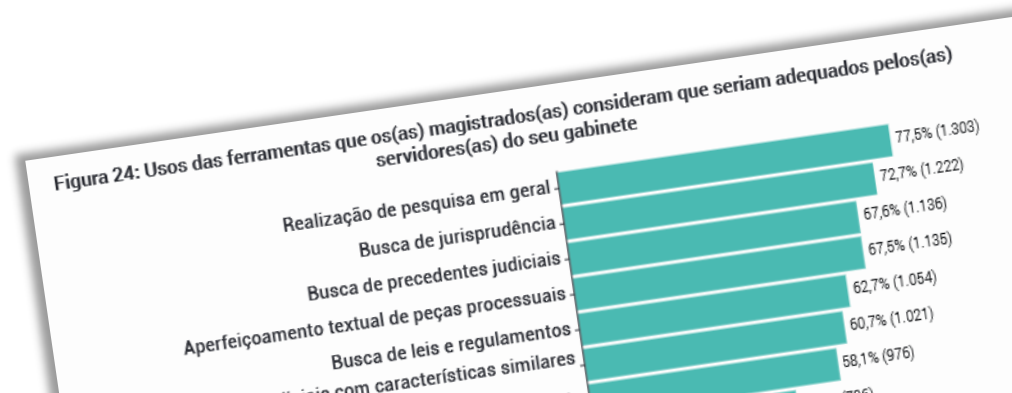
Study: **O USO DA INTELIGÊNCIA ARTIFICIAL GENERATIVA NO PODER JUDICIÁRIO BRASILEIRO** (The use of generative artificial intelligence in the Brazilian judiciary (2024))

Author: *Juliano Souza de Albuquerque Maranhão*

Investigation of the use of generative AI systems based on a survey of Brazilian judges



- Current use of generative AI systems in the Brazilian justice system (study, p. 63 f.)
 - Text editing
 - Text improvement
 - Summarising texts
 - Text creation
 - Translation
 - Research (search for precedents)
- Desire for the use of generative AI systems for drafting and revising legal texts (judgements, decisions, certificates), study, p. 83)



Introduction: AI systems for the justice system

Necessity of the use of AI systems

Example: Air passenger rights



▪ **Special features**

- Dispute despite very simple legal issues
- Automation on the part of the parties
- Electronic communication with the court

▪ **Effects on courts**

- Disproportionate number of cases
- Disproportionate scope of pleadings

Automation as a requirement of the rule of law (Functioning of the courts)

Generalisation: necessity of AI systems

- Investigation of facts in extensive cases
- Settlement of mass proceedings



The European AI Act at a glance



The area of application

Material scope of application

- **AI systems**
 - Definition 'AI system' (Art. 3 no. 1): software, based on machine learning
- **General-purpose AI models** (Art. 3 no. 63): content of neural networks
- **Important exceptions and restrictions:**
 - Research and development, Art. 2 para. 6
 - Data protection, Art. 2 para. 7 (GDPR has priority)
 - Consumer protection, product safety, Art. 2 para. 9
 - Use of AI systems in the course of a purely personal non-professional activity, Art. 2 para. 10

The area of application

Temporal scope of application



■ Application over time in four steps, Art. 113

- Chapters I and II (Prohibitions, Art. 5)
 - » February 2025
- Chapter III Section 4 (notifying authorities, notified bodies), Chapter V (General purpose AI models), Chapter VII (Governance), Chapter XII (Penalties), Article 78 (Confidentiality)
 - » August 2025
- Chapter III Art. 6 para. 2 (High-risk AI systems referred to in Annex III), Chapter IV (Transparency obligations), VI (Measures in support of innovation)
 - » August 2026
- Chapter III, Art. 6 para. 1 (High-risk AI systems according to Annex I)
 - » August 2027





The area of application

Spatial scope of application

- **Broad extraterritorial scope of application, Art. 2 para. 1**
 - *Providers placing on the market or putting into service AI systems or placing on the market general-purpose AI models in the Union, irrespective of whether those providers are established or located within the Union or in a third country, lit. a)*
 - *Deployers of AI systems that have their place of establishment or are located within the Union, lit. b)*
 - ***Providers and deployers of AI systems that have their place of establishment or are located in a third country, where the output produced by the AI system is used in the Union, lit. c)***

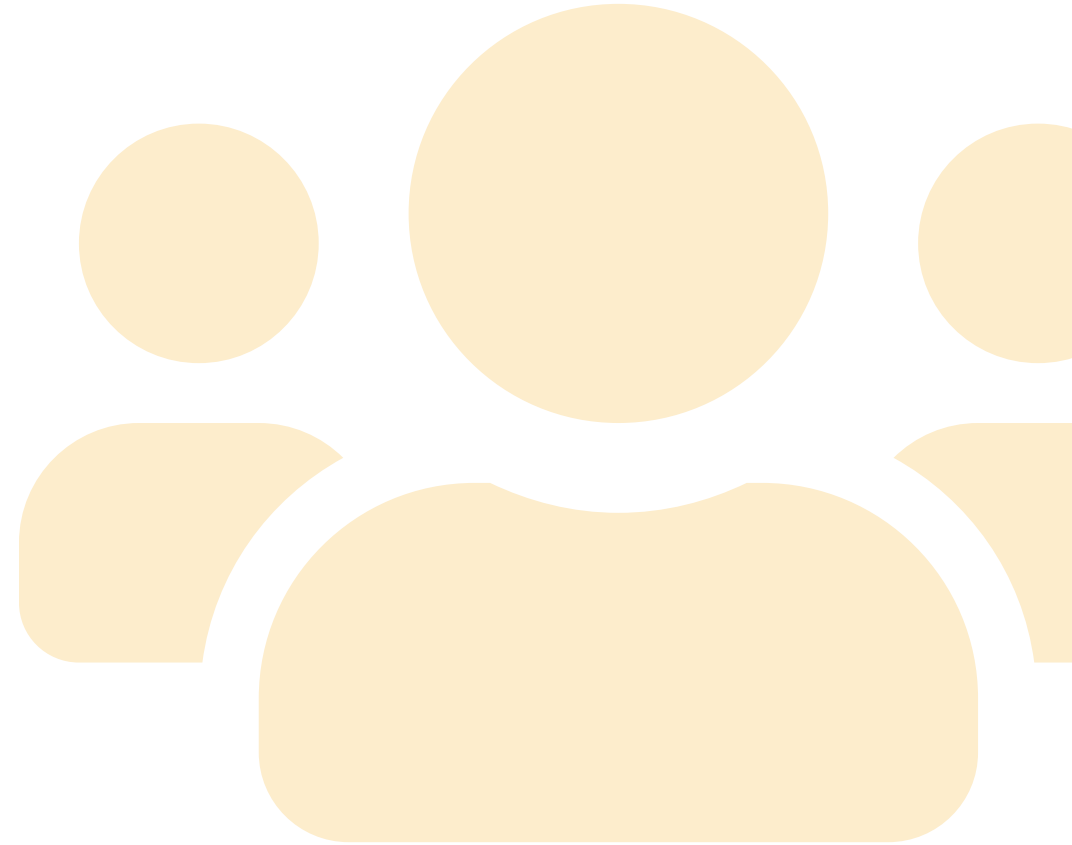
Regulatory concept and content

Content of the law at a glance 113 articles (13 chapters) and 13 annexes	
Chapter I	General provisions (Art. 1- 4)
Chapter II	Prohibited AI Practices (Art. 5)
Chapter III	High-risk AI systems (Art. 6 - 49)
Chapter IV	Transparency obligations for providers and deployers of certain AI systems (Art. 50)
Chapter V	General-Purpose AI Models (Art 51 - 56)
Chapter VI	Measures in support of innovation (Art. 57 - 63)
Chapter VII	Governance (Art. 64 - 70)
Chapter VIII	EU database for high-risk AI systems (Art. 71)
Chapter IX	Post-market monitoring, information sharing and market surveillance (Art. 72 – 94)
Chapter X	Codes of conduct and guidelines (Art. 95 - 96)
Chapter XI	Delegation of power and committee procedure (Art. 97 - 98)
Chapter XII	Sanctions (Art. 99 - 101)
Chapter XIII	Final provisions (Art. 102 - 113)

The EU AI Act at a glance

Addressies of duties under the AI act

- Provider (Art. 3 no. 3)
= the developer of an AI systems
- Deployer (Art. 3 no. 4)
= the entity running the AI system
- Authorised representative (Art. 3 no. 5)
- Importer (Art. 3 no. 6)
- Distributor (Art. 3 no. 7)
- Not covered:
 - Users of AI systems
 - Users of AI generated contents



Provider and deployer of AI systems

- Example: A German judge is using the German version the LawTech Legal Support System distributed by LawTech GmbH, designed to support Attorneys. The system is developed by LawTech, Inc, CA and adjusted for European Law. The System is able to suggest relevant case law for specific legal aspects. The Saarland Ministry of Justice has bought the system and operates it for all Saarland courts.

LawTech, Inc, CA



LawTech GmbH, Germany



Judge, Germany



Transparency obligations

Obligations for AI-generated content, Art. 50 AI Act

- **Obligation to clarify the use of AI systems for communication, para. 1**
- **Obligation of providers of AI systems to “watermark”, para. 2**

Article 50

Transparency obligations for providers and deployers of certain AI systems

(2. Providers of AI systems, including general-purpose AI systems, generating synthetic audio, image, video or text content, shall ensure that the outputs of the AI system are marked in a machine-readable format and detectable as artificially generated or manipulated.

- **Obligation of deployers of AI systems to label "deep fake", para. 4**

(4) Deployers of an AI system that generates or manipulates image, audio or video content constituting a deep fake, shall disclose that the content has been artificially generated or manipulated.

Rights to individuals

- **Rights of appeal for everyone, Art. 85**
- **Right to explanation, Art. 86**
 - Area of application: Decisions based on the output of an AI system
 - Subject: person affected
 - Obligated: deployer of an AI system
 - Object
 - Role of the AI system in the decision-making process
 - Main elements of the decision



Interim result on the AI Act

- **No comprehensive legal framework for AI systems**
- **Product safety law for AI systems**
 - Safety requirements for AI systems
 - Infrastructure for creating technical standards
- **Limited additions**
 - Prohibitions
 - Transparency
 - Rights of individuals
- **AI Act as an element of the legal framework for AI systems**



AI tools for the judiciary as high-risk AI systems



AI tools for the judiciary as high-risk AI systems

The regulation of risk management for high-risk AI systems

Risk management for high-risk AI systems

The regulation of risk management for high-risk AI systems at a glance

Chapter III High-risk AI systems (Art. 6 – 49)	
Section 1	Classification of AI systems as high-risk (Art. 6 - 7)
Section 2	Requirements for high-risk AI systems (Art. 8 - 15)
Section 3	Obligations of providers and deployers of high-risk AI systems and other parties (Art. 16 - 27)
Section 4	Notifying authorities and notified bodies (Art. 28 - 39)
Section 5	Standards, conformity assessment, certificates, registration (Art. 40 - 49)

- Central concept for the AI Act
- Risk management
 - » applies only to high-risk AI systems
- Supervision much stricter for other AI systems

Risk management for high-risk AI systems

The concept of the high-risk AI system

- **Two different concepts**

- 1. AI systems as a safety component of a regulated product, Art. 6 para. 1 in conjunction with Annex I**

- » AI system as a high-risk AI system if the product is subject to European product safety legislation and subsequently requires a conformity assessment by an independent third party

Objective of the AI Act:	Supplement to European product safety legislation with regard to AI systems
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Risk management for high-risk AI systems

The concept of the high-risk AI system

- **Two different concepts**

- 2. AI systems for use in high risk areas, Art. 6 para. 2 in conjunction with Annex III**

- » Two-tier system for categorisation as a high-risk AI system
 - 1) Use of the output of the AI system in a high-risk area
 - 2) Specific risks posed by the system, Art. 6 para. 3

Objective of the AI Act:	Product safety law for software including risks for personal rights
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Risk management for high-risk AI systems

Obligations of providers of high-risk AI systems

- **Obligation to manage the risk, Art. 16**
 - Risk assessment, Art. 9
 - Testing and, if necessary, certification of high-risk AI systems, Art. 9
 - Data governance, Art. 10
 - Technical documentation, Art. 11
 - Record-keeping, Art. 12
 - Ensuring human oversight, Art. 13
 - Cybersecurity, Art. 15
- **Quality management system, Art. 17**
- **Monitoring**





AI tools for the judiciary as high-risk AI systems






High-risk AI systems according to Art. 6 para. 2 AI Act

Concept: Two-stage assessment

- (1) Use of an AI system in high-risk areas of Annex III
- (2) Significant risk of the AI system for people

Number 1	Biometrics
Number 2	Critical infrastructure
Number 3	Education and vocational training
Number 4	Employment, workers management and access to self-employment
Number 5	Access to and enjoyment of essential private services and essential public services and benefits
Number 6	Law enforcement
Number 7	Migration, asylum and border control
Number 8	Administration of justice and democratic processes

Area of the use of an AI system's output

Fear		1 + 2 + 4 + 5 + 7 + 20 + 25	Eyebrows raised and pulled together, upper eyelid raised, lower eyelid tense, lips parted and stretched
Happiness		6 + 7 + 12 + 25 + 26	Duchenne smile
Interest		1 + 2 + 12	Eyebrows raised, slight smile

Barrett et al, *Emotional Expressions Reconsidered*, p. 7

Example:

- Emotional AI Ltd, Shanghai, develops the AI system „*Readme*“ to recognise emotions for interviews of all kinds
- The system is operated by AI Analytics, Inc., San Francisco and used for analyses of job interviews as a service for employers
- Siemens AG, Munich, has AI Analytics create analyses for decisions on hiring applicants

■ AI Act is applicable (Art. 2 - Use of the output in the EU)

- » Readme is a high-risk AI system
- » Emotional AI is the provider of the high-risk AI system
- » AI Analytics is the deployer of the high-risk AI system

Stage 2: Significant risk assessment (Art. 6 (3) AI Act)

Art. 6

Classification rules for high-risk AI systems

(3) By derogation from paragraph 2, an AI system referred to in Annex III shall not be considered to be high-risk where it does not pose a significant risk of harm to the health, safety or fundamental rights of natural persons, including by not materially influencing the outcome of decision making. [...]

- » The majority of AI systems in high-risk areas are **not high-risk AI systems**
 - *but*: Assessment of people by AI systems



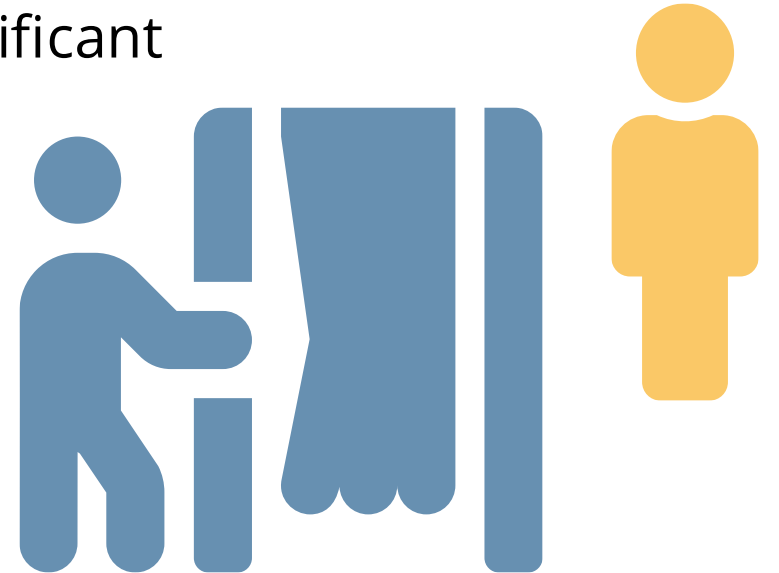
AI tools for the judiciary as high-risk AI systems

The change of roles at high-risk AI systems

Risk management for high-risk AI systems

The change of roles at high-risk AI systems

- Art. 25, Role change from distributor, importer, deployer to provider
- Customisation and change of purpose can result in significant problems
- **Customisation** of the AI system
 - » can trigger the classification as provider
- **Problem:** AI systems often undergo customisations



Risk management for high-risk AI systems

The change of roles at high-risk AI systems

▪ Changes of purpose

- » can trigger the classification as provider
 - *Risk*: Change of purpose due to change in area of use
 - *Examples*:
 - Lawyer uses ChatGPT/AI tool for lawyers for statement of claim
 - Judge uses ChatGPT/AI tool for judges for judgement



Risk management for high-risk AI systems

The change of roles at high-risk AI systems

Conclusion:

- Deployer
 - » is forced into a consumer-like role
- Customisation of AI systems
 - » hardly economical for niches/small-scale operations
 - » high legal risks for operators and service providers
 - » loss of potential from AI utilisation in the high-risk area





AI tools for the judiciary as high-risk AI systems



AI systems in the Judiciary as high-risk AI systems?

Risk management for high-risk AI systems

The concept of the high-risk AI system

- **First step: Content used in high risk area**

Example: „FraUKe“

Frankfurter Urteils-Konfigurator elektronisch
(*Frankfurt judgement configurator electronic*)

– Features of FraUKe

- Text recognition (pleadings)
- Extraction of information from pleadings
- Comparison with databases
- Generation of a draft text (judgement) using text modules



Risk management for high-risk AI systems

The concept of the high-risk AI system

- **Problem: vagueness**

Example: Systems supporting the judiciary

- Example: „FraUKe“
- Question: „FraUKe“ as high-risk AI system?



Annex III

8. Administration of justice and democratic processes:

(a) AI systems intended to be used by a judicial authority or on their behalf to assist a judicial authority in researching and interpreting facts and the law and in applying the law to a concrete set of facts, or to be used in a similar way in alternative dispute resolution;

- » AI in text recognition tool sufficient for character as AI system?
- » Separation sufficient for non-applicability of the AI law

Risk management for high-risk AI systems

Second stage: Significant risk, Art. 6 para. 3

Article 6

Classification rules for high-risk AI systems

(3) By derogation from paragraph 2, an AI system referred to in Annex III shall not be considered to be high-risk where it does not pose a significant risk of harm to the health, safety or fundamental rights of natural persons, including by not materially influencing the outcome of decision making.

The first subparagraph shall apply where any of the following conditions is fulfilled:

- (a) the AI system is intended to perform a narrow procedural task;
- (b) the AI system is intended to improve the result of a previously completed human activity;
- (c) the AI system is intended to detect decision-making patterns or deviations from prior decision-making patterns and is not meant to replace or influence the previously completed human assessment, without proper human review; or
- (d) the AI system is intended to perform a preparatory task to an assessment relevant for the purposes of the use cases listed in Annex III.

Risk management for high-risk AI systems

Use Cases and classification of AI systems

- Summary of pleadings
- Text recognition
- Identification and compilation of relevant information
- Compilation of existing text modules
- Drafting of judgments by generative AI systems
- Search for precedents



Transparency obligations and e-justice

Transparency obligations and eJustice

Generation of texts by AI systems

- Texts for lawyers
- Texts for judges / other judicial officers

Article 50

Transparency obligations for providers and deployers of certain AI systems

(2) Providers of AI systems, including general-purpose AI systems, generating synthetic audio, image, video or text content, shall ensure that the outputs of the AI system are marked in a machine-readable format and detectable as artificially generated or manipulated. Providers shall ensure their technical solutions are effective, interoperable, robust and reliable as far as this is technically feasible, taking into account the specificities and limitations of various types of content, the costs of implementation and the generally acknowledged state of the art, as may be reflected in relevant technical standards. This obligation shall not apply to the extent the AI systems perform an assistive function for standard editing or do not substantially alter the input data provided by the deployer or the semantics thereof, or where authorised by law to detect, prevent, investigate or prosecute criminal offences.

Transparency obligations and eJustice

Generation of texts by AI systems

- Texts for lawyers
- Texts for judges / other judicial officers

Article 50

Transparency obligations for providers and deployers of certain AI systems

(4) Deployers of an AI system that generates or manipulates image, audio or video content constituting a deep fake, shall disclose that the content has been artificially generated or manipulated. This obligation shall not apply where the use is authorised by law to detect, prevent, investigate or prosecute criminal offence. Where the content forms part of an evidently artistic, creative, satirical, fictional or analogous work or programme, the transparency obligations set out in this paragraph are limited to disclosure of the existence of such generated or manipulated content in an appropriate manner that does not hamper the display or enjoyment of the work.

Transparency obligations and eJustice

Generation of texts by AI systems

Texts for lawyers / judges / other members of the judiciary

Art. 50 para. 2

Content of the marking obligation

- Note » as part of the text or as a separate note
- Inseparable connection with text ("watermarking")? debatable; in my opinion no (the unusability of AI systems is not intended)

Art. 50 para. 4

Text for informing the public about matters of public interest

- » Court decisions as texts to inform the public? (+/-)



eJustice and the right to explanation (Art. 86 AI Act)

eJustice and the right to explanation (Art. 86 AI Act)

■ Art. 86 » Right to an explanation of decisions

Art. 86

Right to Explanation of Individual Decision-Making

- (1) **Any affected person subject to a decision which is taken by the deployer on the basis of the output from a high-risk AI system listed in Annex III**, with the exception of systems listed under point 2 thereof, and which produces legal effects or similarly significantly affects that person in a way that they consider to have an adverse impact on their health, safety or fundamental rights **shall have the right to obtain from the deployer clear and meaningful explanations of the role of the AI system in the decision-making procedure and the main elements of the decision taken.**
- (2) Paragraph 1 shall not apply to the use of AI systems for which exceptions from, or restrictions to, the obligation under that paragraph follow from Union or national law in compliance with Union law.
- (3) This Article shall apply only to the extent that the right referred to in paragraph 1 is not otherwise provided for under Union law.

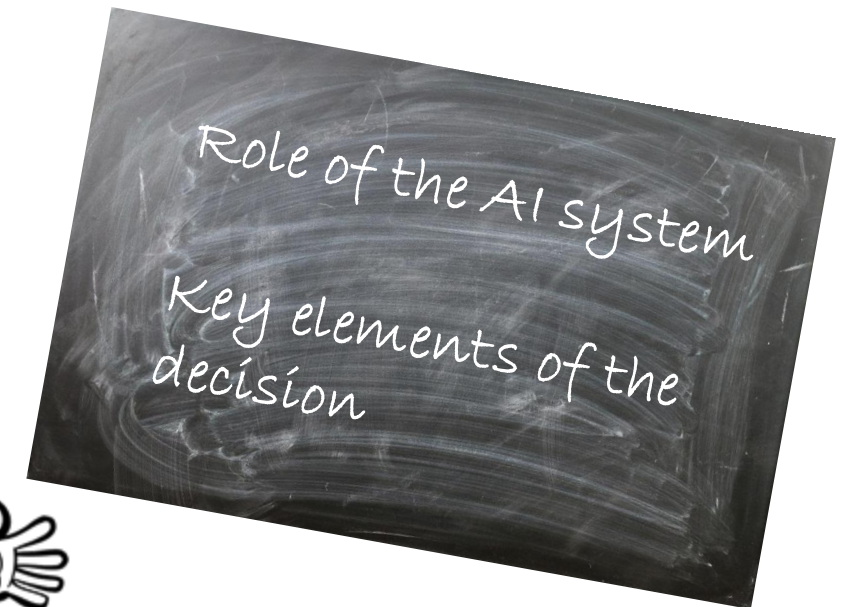
eJustice and the right to explanation (Art. 86 AI Act)

- **Facts of the case**

- Decision,
- "due to" the result of a high-risk AI system
- Thesis: "due to" if the judge is aware of the output of the AI system

- **Legal consequence:** Right to declaration of

- Role of the AI system
- Key elements of the decision



Conditions of the right to explanation according to Art. 86 AI Act

1. Decision

- Like Art. 22 GDPR » assessment is „decision“
- *Important*: human-made decisions are also covered

2. Output of a high-risk AI system in accordance with Annex III

- a) AI system
- b) Utilisation of the output in the high-risk area of Annex III

3. Output as the basis for the decision

- » Consideration of the result for the decision



Object and content of the right to explanation



- (1) Role of the AI system in the decision
- (2) Key elements of the decision

- **Reference point: Decision**
 - » Cascades of decisions
 - Siemens AG: Decision (on recruitment)
 - AI Analytics: Assessment of the candidate
- **The role of the AI system in the decision**
 - Reference point: Output of the AI system
- **Subject of the explanation**
 - Consideration of the output for the decision
 - Weight of the output for the decision (?)

Object and content of the right to explanation

- **The main elements of the decision**

- Elements = information (facts, assessments)
- Significance
 - Significant if the outcome of the decision can depend on it?
 - Significant if part of the basis for decision-making (consideration)?

- **"Explanation"**

- Specification of the essential elements
 - » what information was taken into account?
- Not: Information on
 - Significance of the elements for the decision
 - How do the elements come about





Conclusion

Conclusion

- AI tools are being used by courts for various tasks
- AI Act is not an obstacle for uses of AI by courts
- Challenge: Classification as high-risk AI systems
Thesis: Most use cases are not to be classified as high-risk
- Requirements for high-risk AI tools uses by courts are unclear





Thank you very much!

Prof. Dr. Georg Borges

georg.borges@uni-saarland.de

www.rechtsinformatik.saarland





Thank you very much!

Prof. Dr. Georg Borges

georg.borges@uni-saarland.de | www.rechtsinformatik.saarland



...further reading:

Borges, G.: The right to explanation in the European AI Act, 2024 IEEE Smart World Congress, S. 1979 – 1986

