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The Use of Artificial Intelligence in Judicial Decision Making

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Agenda

1. Introduction to the MAKI-Project
2. Constitutional Law Aspects of Use of AI in Judicial Decision-Making
3. Impact of EU AI Act on Use of AI in Judicial Decision-Making
4. Concluding Remarks

MAKI = „Massenverfahrens-Assistenz mithilfe von KI“

An AI-enabled Assistant for Mass Proceedings

- Research Scope
 - Legal and technical framework for the use of artificial intelligence in judicial decision-making
 - Ensuring acceptance and legal conformity of the planned procedure
- Research Questions
 - Identification of the legal and technical limits of the use of AI in judicial decision-making („drawing the red line“)
 - Prepare Recommendations for the use of AI in judicial decision-making (best practices, gold standard)

MAKI



?



Research Approach: Analysis According to Use Scenarios

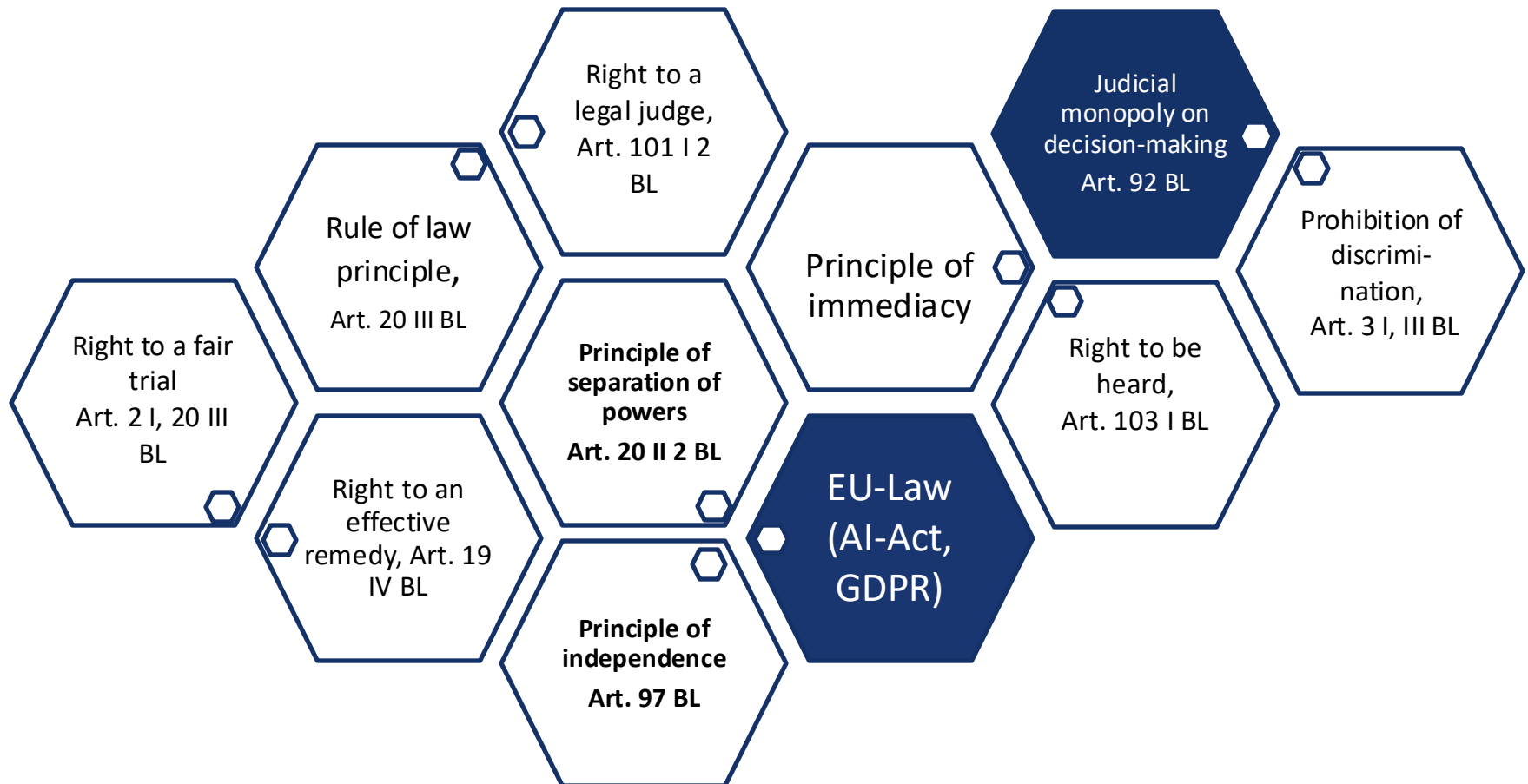
Substituting judicial decisions by AI

- „Robo-Judge“
- „Instance Zero“
- Mass Proceedings

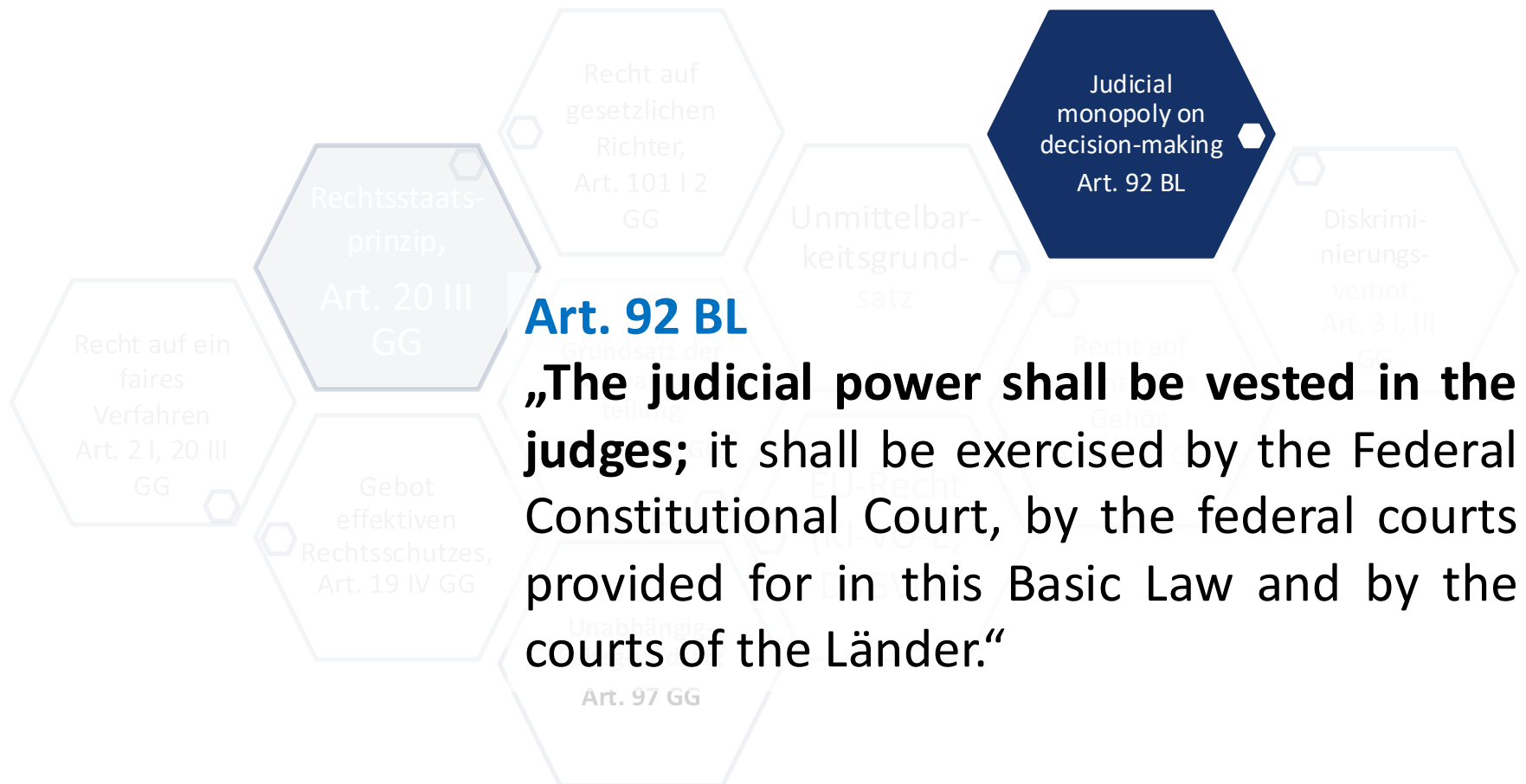
Supporting judicial decisions by AI

- Metadata and information extraction
- Automatic keywording and indexing
- Search engines and research
- Text editing and relation
- Pattern recognition and classification
- Text block and text generation
- Dialogue systems
- Anonymisation
- Speech and image recognition

Legal Research Questions



Legal Research Questions



Judicial monopoly on decision-making, Art. 92 BL (1)

- **Scope**
 - Function
 - Conceptions of the following expressions crucial for material scope of the guarantee
 - “judicial power “
 - „judges “
- **Conclusions for the use of information technology systems**
 - Expression „**judicial power**“ **only partly open to the disposition of the lawmaker**
 - If activities fall within this expression, high requirements of Art. 92 BL have to be met
 - **Requirement of a human judge cannot be derived from Art. 92 BL (deviating domin. opinion)**
 - **De facto (in most scenarios):** human judge required due to the constitutional qualification characteristics and only limited capabilities of information technology systems!
 - Benchmark-Test: system must *be able to solve a case (even an unfamiliar one) appropriately and on the basis of the applicable law*
 - **Exception:** fact-poor cases that only raise simple legal questions without any scope for legal or factual evaluation.
 - Situation that is equivalent to a mathematical-logical, arithmetical operation with variables known to the system; e.g. claim für compensation for denied boarding according to Art. 4 (3) EU Passenger Rights Regulation
 - already too difficult: claim for compensation for flight cancellation according to Art. 5 (1) lit. c, Art. 7 (1) EU Passenger Rights Regulation („extraordinary circumstances “)

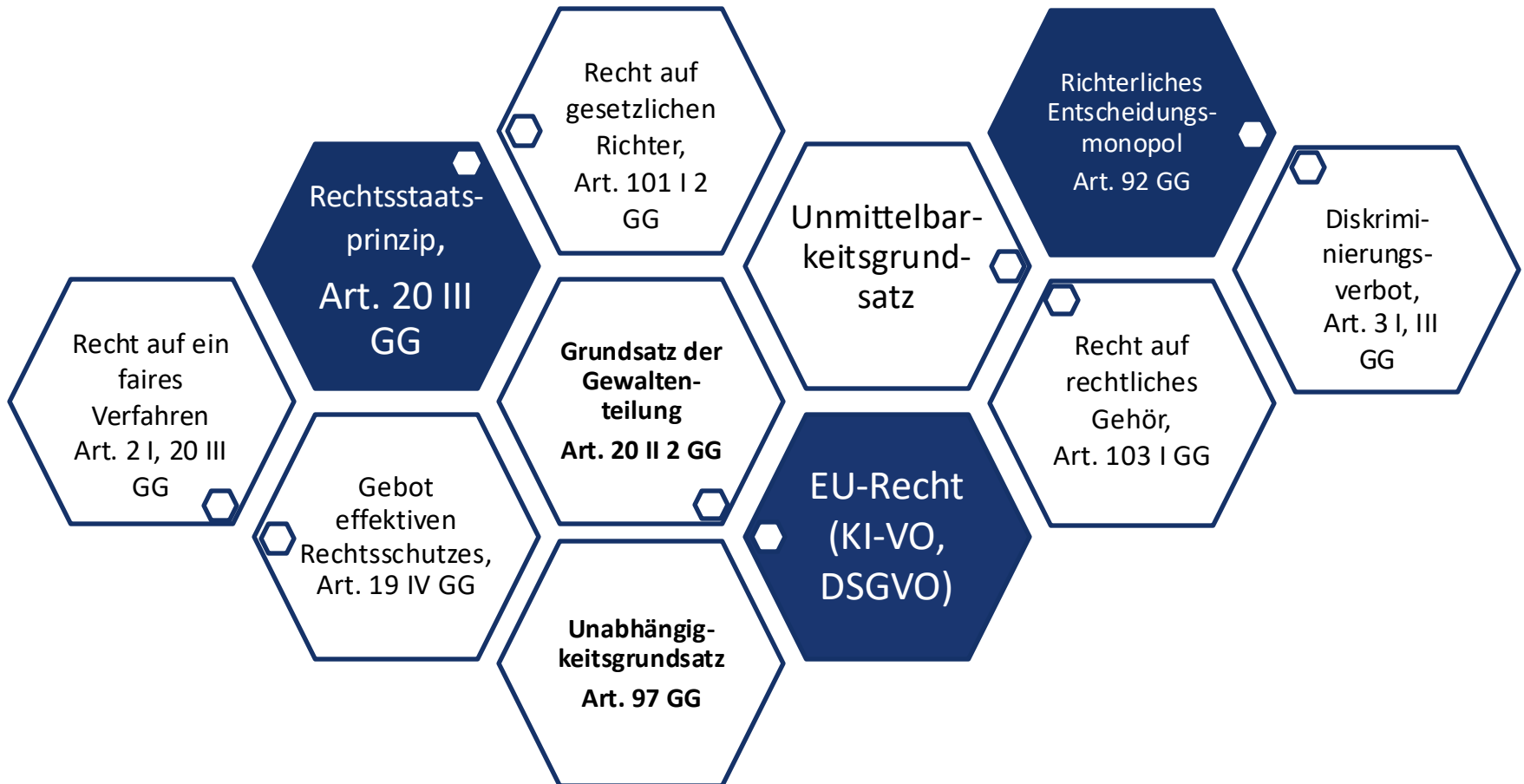
Judicial monopoly on decision-making, Art. 92 BL (2)

- Use of information technology systems instead of a judge (**decision-replacing use**)
 - Possible legislative approaches:
 1. Procedure without ultimate binding effect („judicial power“ element)
 - Proceeding that leads to a legal title with AI-supported examination (with legal effect)
 - lack of ultimate binding effect, e.g. by enabling a possible entrance into ordinary court proceedings (even after issuance of the automated decision within a specific time period)
 - see German small claims procedure (Mahnverfahren), where strict requirements of Art. 92 BL do not apply
 2. Additional automated „Instance Zero“
 - only possible in exceptional circumstances (s. above)
 - Strict requirements of Art. 92 BL must be met.
 - Relatively limited scenarios for decision-replacing use that meet high development costs(!)
- Use of information technology systems to support the judge (**decision-supporting use**)
 - In line with Art. 92 BL as long as strict requirements are met
 - Examination of use scenarios necessary

Judicial monopoly on decision-making, Art. 92 BL (3)

- Use scenarios **outside the scope of Art. 92 BL** (mere administrative tasks)
 - Metadata and information extraction
 - Anonymisation
- Use scenarios **within the scope of Art. 92 BL**
 - Tasks preparing the judicial decision and requiring some sort of legal expertise
 - Information extraction:
 - Automatic keywording and indexing
 - Search engines and research
 - Text editing and relation
 - Pattern recognition and classification
 - Text block and text generation
 - Dialogue systems
 - Speech and image recognition
 - **Consequence:** Final decision-making and control by human judge in most cases necessary

Legal Research Questions



Scope (1)

- Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (EU Artificial Intelligence Act)
 - ELI: <http://data.europa.eu/eli/reg/2024/1689/oj>
 - laying down a **uniform legal framework** in particular for the **development, the placing on the market, the putting into service and the use of artificial intelligence** systems (AI systems) in the Union
- Scope of Application
 - Temporal scope
 - In force since 1.8.2024
 - Differentiated system of applicability → Art. 113 AI-Act (chapter I, II from 2.2.2025 anzuwenden)
 - Territorial scope
 - Also applicable to manufacturers based in third countries if the output of the AI system is used in MS (Art. 2 I lit. c AI-Act)
→ „market place principle“ resp. **place of use principle**

Scope (2)

- Personal scope

- **Provider, Art. 3 No. 3 AI-Act:**

„a natural or legal person, public authority, agency or other body that develops an AI system or a general-purpose AI model or that has an AI system or a general-purpose AI model developed and places it on the market or puts the AI system into service under its own name or trademark, whether for payment or free of charge “

- **Deployer, Art. 3 No. 4 AI-Act:**

„natural or legal person, public authority, agency or other body using an AI system under its authority except where the AI system is used in the course of a personal non-professional activity “

- **Art. 25 (1) AI-Act** (role changes possible)

- **Consequences for the use in (civil) court system**

- developing company and justice ministry = provider

- courts (not single judge) = deployer

Scope(3)

- Material scope

- **AI-System (Art. 3 No. 1 AI-Act):**

„a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments “

- **Recital 12**

„[...] Moreover, the definition should be based on key characteristics of AI systems that distinguish it from simpler traditional software systems or programming approaches and should not cover systems that are based on the rules defined solely by natural persons to automatically execute operations. [...]“

- See also [EU Commissions Guidelines on the AI definition, 2025](#)

- Traditional software is not within scope of AI-Act

- **P: rule based AI-Systems (disp.)**

- **Mixed systems → fall within scope**

Key Structures

- Risk based approach
 - Depending on the potential threat to civil rights and democracy, an AI-system is categorised into ‘risk levels’
 - For all AI-Systems: Provider and deployer shall ensure context based **AI Literacy** for persons applying AI-system
 - Art. 4 AI-Act
- Regulatory structure of the AI Act
 - General provisions, Art. 1-4
 - Prohibited practices, Art. 5
 - Specific Duties for high-risk AI systems, Art. 6 ff.
 - Transparency duties for specific AI systems, Art. 50
 - Specific duties for GPAI, Art. 53 ff.
 - Measures in support of innovation, Art. 57 ff.

High-Risk Classification (1)

- Art. 6 AI-Act particular relevance
 - Far reaching duties for high-risk systems
 - Far reaching duties for providers and deployers

Article 6

Classification rules for high-risk AI systems

2. In addition to the high-risk AI systems referred to in paragraph 1, AI systems referred to in Annex III shall be considered to be high-risk.
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.

Notwithstanding the first subparagraph, an AI system referred to in Annex III shall always be considered to be high-risk where the AI system performs profiling of natural persons.

High-Risk Classification (2)

- Conclusions for the use of information technology systems in judicial decision making
 - Decision-replacing use in the sense of ‘instance zero’ would fall under the area of high-risk AI
 - Exception of Art. 6 (3) Subparas 1 and 2 not available
 - AI Act does nevertheless not prohibit decision-replacing use
 - Rec. 61 has no binding effect

„[...] The use of AI tools can support the decision-making power of judges or judicial independence, **but should not replace it**: the **final decision-making must remain a human-driven activity**. [...]“

High-Risk Classification (3)

- **Decision-supporting use:** classification dependant on functions provided by AI system (e.g. extracting information, generating text, analysing and relating information provided by parties etc.)
 - Relevant criteria (Art. 6 (3) Subparas. 1 AI-Act):
 1. **risk of harm** to the health, safety or fundamental rights of natural
 2. **degree of influencing the outcome of decision making (material influence)**
 - Metadata and information extraktion
 - see Subpara. 2 lit. a) (metadata extraction) resp. lit. d (information extraction)
 - Automatic keywording and indexing
 - Subpara. 2 lit. d)
 - Search engines and research
 - Subpara. 2 lit. d)
 - Text editing and relation
 - Subpara. 2 lit. d), resp.. lit. b) (e.g. enhancing language level)

High-Risk Classification (4)

- Pattern recognition and classification
→ Subpara. 2 lit. c) and d)
 - **Text block and text generation**
→ **partly Subpara. 2 lit. d) → Automation Bias**
 - **Dialogue systems**
→ **partly Subpara. 2 lit. d) → Automation Bias**
 - Anonymisation
→ Subpara. 2 lit. d)
 - **Speech and image recognition**
→ **partly Subpara. 2 lit. d) → Automation Bias**
- **Conclusions:** Decision-supporting use in the functional scope of **MAKI assistance** is to be categorised as **high-risk AI**

Contact Information



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