



UNIVERSITÄT  
DES  
SAARLANDES

INSTITUTE OF  
LEGAL INFORMATICS

# AI Certification Potential and Challenges

**Interdisciplinary Workshop on AI Certification**  
**Sao Paulo | 29 April 2026**

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- Director of Institute of Legal Informatics, Saarland University
- Judge, Oberlandesgericht Hamm [higher regional court] (2012-2015)
- Member of the Hörst-Görtz Institute for IT Security (HGI) (2005–2015)
- Member of the Board, EDV-Gerichtstag e.V. [German Association for eJustice]
- Member of the Board, Stiftung Datenschutz [Data Protection Foundation]
- Member, EU Commission Expert Group on “Liability and new technologies, New technologies formation” (2018-2020)
- Member, EU Commission „Expert Group on B2B Data Sharing” (2022-2025)
- Distinguished Visiting Professor, University of Johannesburg (since 2023)
- Visiting Professor, Keio University, Tokyo (since 2024)



# Institute of Legal Informatics – Fields of Research

- AI / Autonomous Systems
- Data Protection
- IT-Security
- Industry 4.0 / Cloud Computing
- Legal Informatics / Legal Tech
- Big Data
- eJustice / eGovernment
- [www.rechtsinformatik.saarland](http://www.rechtsinformatik.saarland)



**Amtsgericht 4.0**



**A-DigiKomp**



**MONTAGSPOST**



# Institute of Legal Informatics – Education and outreach

## ▪ Education

- Master's degree „IT and Law“ (LL.M.)
- Focus area „IT Law and Legal Informatics“
- Summer School „IT Law and Legal Informatics“
- Certificate „IT Law and Legal Informatics“

## ▪ Events

- Symposia/Workshops/Seminars
- E.g. GDPR! Data protection in practice.

## ▪ Services for the public

- GesetzMobil [collections of laws]
- JuraPush, BGH-Push [law and Federal Court of Justice newsletter]
- IT-Recht.Karriere [career portal]



# Master's degree (LL.M.) „Informationstechnologie und Recht“ [IT and Law]

- Interdisciplinary teaching
- 14 modules
- Part time studies possible
- Professors as mentors
- Study period: 1 year (~ 2 terms)





# SUMMER SCHOOL 2026

IT Law and Legal Informatics

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# Agenda

## I. Introduction: AI regulation and certification

## II. Certification, quality seals and conformity assessment

1. Certification between quality seals and conformity assessment
2. Elements of the certificate/quality seal
3. Elements of the test

## III. Certification and law

1. Subject of legal regulation
2. Conformity assessment and CE marking in European product safety law
3. Certification in data protection law



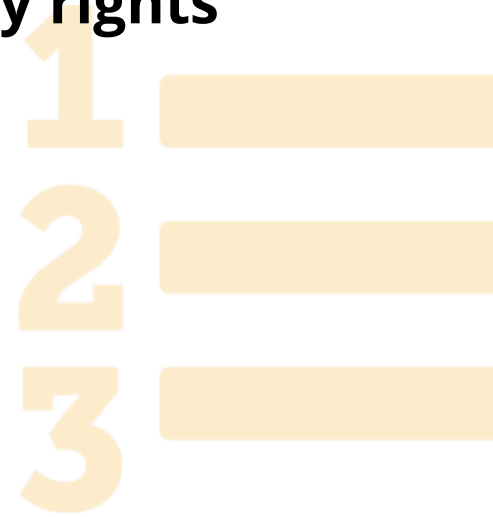
# Agenda

## **IV. The EU AI Act and certification**

1. The EU AI Act at a glance
2. Conformity assessment in the EU AI Act

## **V. Challenges of AI certification as a means of protecting personality rights**

## **VI. Conclusion**





**Introduction**  
**AI regulation and certification**

# Introduction

## Certification as a

### Instrument of legal regulation

<b>Product safety law</b>	Conformity assessment for specific products
<b>IT security law</b>	IT security certification
<b>Sectoral certification (banking law)</b>	Certification requirements
<b>GDPR</b>	Optional data protection certification

### Basis of trust

*Example:* logo for recognised data altruism organisations, Art. 17 Data Governance Act (2023)



# Introduction

## ■ Certification and law

- Subject matter and significance (what is certification, what is conformity assessment?)
- Legal framework for certification/conformity assessment
- Scope of application (what must be tested/certified)?
- Procedure (how is conformity tested/certified?)
- Legal consequences (what is the legal effect of testing/certification?)



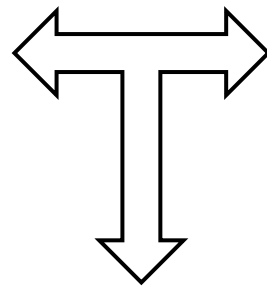
**Certification, quality seals and conformity assessment**

# Certification, quality seals and conformity assessment

## Certification between quality seals and conformity assessment

### Quality seals

- Quality seal » Confirmation / assessment
- Quality seal = synonym for certificate



### Conformity assessment

= the activity of verifying that a standard or technical specification was applied in the design, manufacturing, installation, maintenance or repair of a device or system.

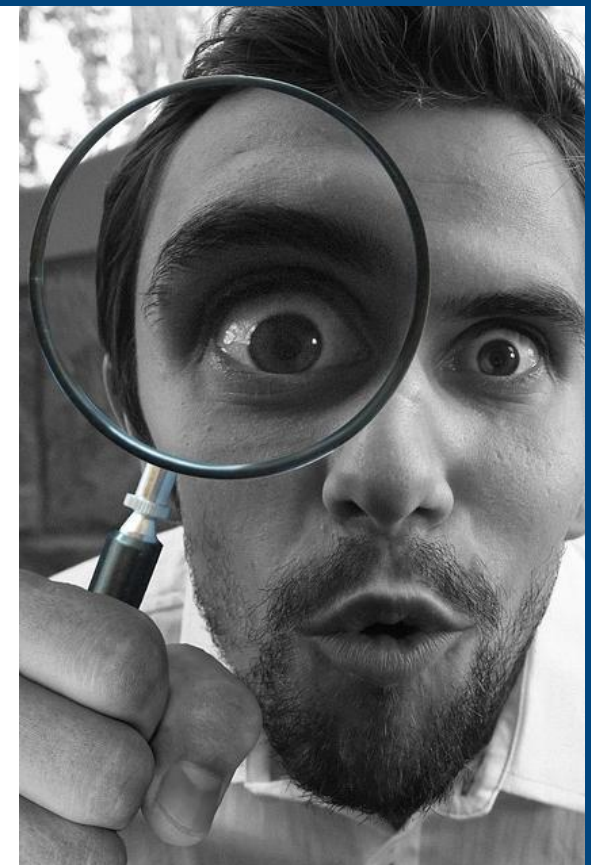
## Certificate and certification

- Certificate » Confirmation
- Very different certificates
- Certification
  - » Process leading to a certificate
  - » Usually, verification of compliance with certain requirements

# Certification, quality seals and conformity assessment

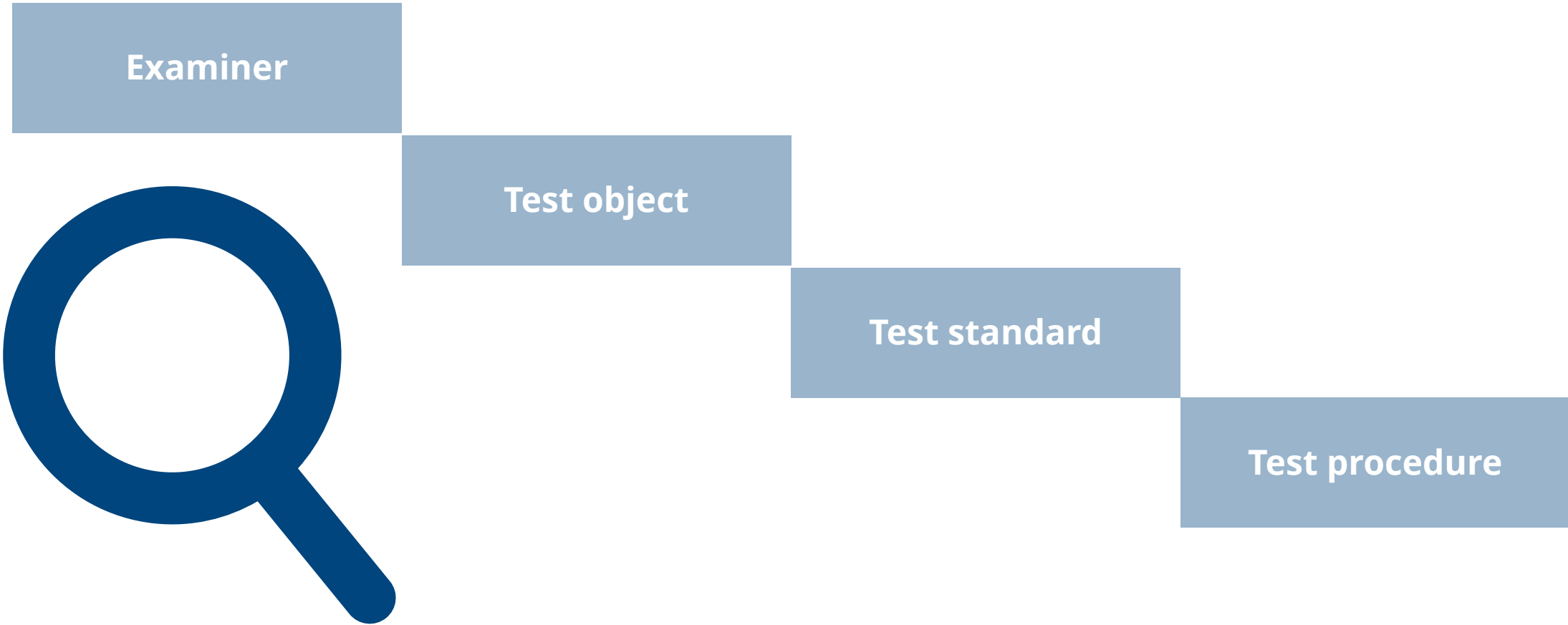
## Elements of the certificate/quality seal

- Statement (content)
  - Evaluation
    - *Assessment Quality (good/bad, better/worse, suitable/unsuitable, attractive/unattractive, etc.)*
    - *Compliance with requirements (legal, technical, ethical...)*
  - Fact, esp. event (e.g. participation in an event, performance of a test)
- Subject of the statement (product, service, person)
- Author of the statement (auditor)
- Circumstances (time, place, etc.) of the statement
- Period of validity of the statement (for assessments)
- Other elements, if applicable



# Certification, quality seal and conformity assessment

## Elements of the test





# Certification and law



Certification and law



**Subject of legal regulation**

# Certification and law

## Subject of legal regulation

### Certificate/quality seal

- Statement
- Subject of the statement
- Originator of the statement
- Circumstances of the statement
- Validity period of the statement (for evaluations)
- Any additional elements

### Verification

- Reviewer
- Subject of the audit
- Test criteria
- Test procedure

### Legal significance

of the certificate

of the audit

of the absence / non-  
performance

of defects in the test /  
certificate

# Certification and law

## Subject of legal regulation

- **Use of the certificate (who/when/where/what for, etc.)**
- **Content of legal provisions**
  - Permission/prohibitions regarding implementation/use
  - Modalities of implementation/use
- **Legal consequences**
  - of the examination
  - of the certificate

- **Combination of subjects of regulation**
  - Comprehensive regulation of all/numerous aspects  
*Example:* Audit/attestation of annual financial statements
  - Regulation of partial aspects
    - Prerequisites without legal consequences
    - Use without regulation of prerequisites/legal consequences
    - Procedure as a whole or aspects of the procedure



Certification and law



**Conformity assessment and CE marking in European product safety law**



# Certification and law

## Conformity assessment and CE marking in European product safety law

- **Product safety law** » Regulations on product safety requirements
- **Concept of European product safety law**
  - Objective: Placing safe products on the market in the EU
  - Definition of safety requirements through legal acts
  - Regulation of safety requirements for specific products
  - Requirement for conformity assessment for certain products
  - Monitoring of compliance by supervisory authorities
    - » Recall of products

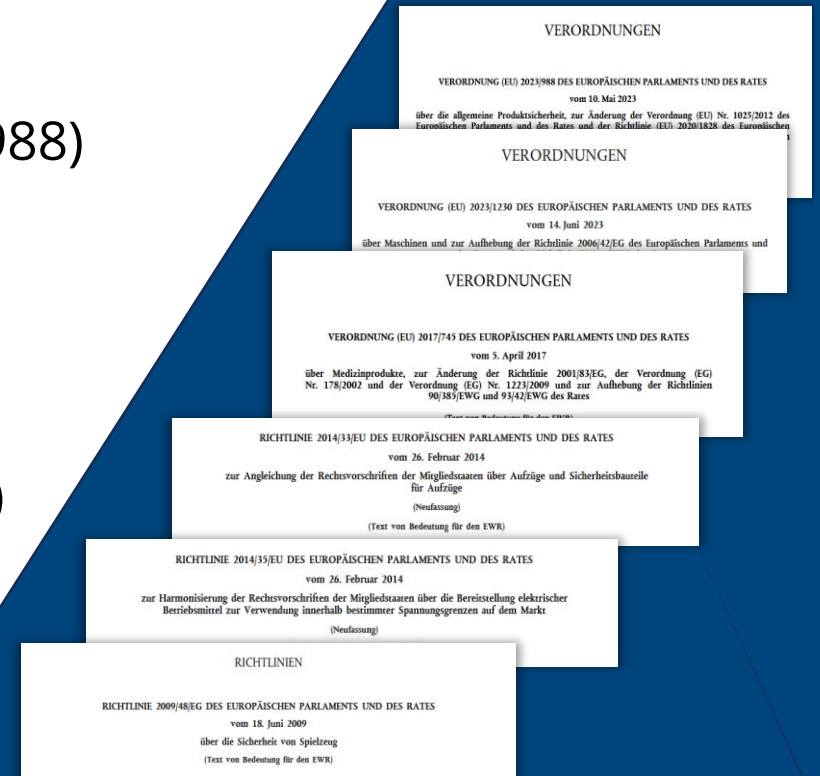
**EU warnt: Nudel-Rückruf von  
bekannter Marke – Verzehr kann zu  
Bleivergiftung führen**

# Certification and law

## Conformity assessment and CE marking in European product safety law

### ■ Legal sources of European product safety law

- Numerous regulations and directives
- General Product Safety Regulation (Regulation (EU) 2023/988)
  - » for *all* consumer products (subsidiary)
- Machinery Regulation (Regulation (EU) 2023/1230)
  - » for machinery and its components
- Specific regulations/directives for products/systems
  - Medical Devices Regulation (Regulation (EU) 2017/745)
  - Lift Directive (Directive 2014/33/EU)
  - Low Voltage Directive (Directive 2014/35/EU)
  - Toy Safety Directive (Directive 2009/48/EC)



# Certification and law

## Conformity assessment and CE marking in European product safety law

### ■ **Conformity assessment**

- Conformity assessment as an important instrument of product safety law
  - » Manufacturers' obligation to perform conformity assessment
- CE marking as a declaration of conformity by the manufacturer

### ■ **Differentiation of requirements**

- Reference to technical safety standards
  - » Requirements defined by technical standards for each product

### ■ **Differentiation of procedures**

- Basic rule: self-testing
- Exception for particularly dangerous products: testing by a qualified body





Certification and law



**Certification in data protection law**

# Certification and law

## Certification in data protection law

### Data protection certification

GDPR  
(25 May 2018)

- major debate in Germany approx. 10-15 years ago
- Development of a DS certification for the cloud (Trusted Cloud Data Protection Profile 2015)



#### GDPR » Certification as an option for proving suitability

- Art. 43, 42 Framework conditions for DS certification
- Art. 28(5) Certification as proof of the suitability of the processor
- Art. 46 para. 2 Certification as proof of suitable guarantees for transfers to third countries



# The EU AI Act and certification



The EU AI Act and certification



**The EU AI Act at a glance**

# The EU AI Act at a glance

## Regulatory contents

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

# The EU AI Act at a glance

## Regulatory contents

- **Exceptionally broad area of application ('AI systems')**
- **Four regulatory concepts of AI with different protection concepts**
  - (1) Prohibition of certain AI practices (Art. 5)

*Examples: Subliminal techniques, harmful and detrimental social scoring, biometric identification procedures in public spaces*
  - (2) Protection against high-risk AI systems (Chapter III, Art. 6–49)
    - » Obligation of the provider for risk and quality management
  - (3) Transparency obligations for certain AI systems (Art. 50)

*Examples: labelling of AI systems as such, disclosure of deep fakes*
  - (4) No requirements for other AI systems/ Infrastructure for AI development
- **Differentiation: AI systems, high-risk AI systems, GPAI models**



# The EU AI Act and certification

## Elements of risk management for high-risk AI systems

- **Overview of the rules on high-risk AI systems**

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

- Demanding requirements for high-risk AI systems
- Extensive obligations for providers and deployers of high-risk AI systems
- Supervision much stricter for other AI systems

# The EU AI Act and certification

## Elements of risk management for high-risk AI systems



### Classification of AI systems as high-risk AI systems

- 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

# The EU AI Act and certification

## Elements of risk management for high-risk AI systems



### Classification of AI systems as high-risk AI systems

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 posing risks for personal rights

# The EU AI Act and certification

## Elements of risk management for high-risk AI systems

### Elements of risk management (Art. 9 – 15 AI Act)

- Risk management, Art. 9
- Data governance, Art. 10
- Technical documentation, Art. 11
- Recording-keeping, Art. 12
- Transparency/provision of information to deployers, Art. 13
- Human oversight, Art. 14
- Cybersecurity, Art 15

# The EU AI Act and certification

## Elements of risk management for high-risk AI systems

- **Obligations of providers**

- Art. 16 lit. a) – l)

- Risk management in accordance with Art. 9-15, Art. 16 lit. a)
- Quality management system in accordance with Art. 17, Art. 16 lit. b)
- Conformity assessment in accordance with Art. 43, Art. 16 lit. f)
- Issuing an EU declaration of conformity in accordance with Art. 47, Art. 16 lit. g)
- Affixing the CE marking to the high-risk AI system, Art. 16 lit. h)
- Registration of the high-risk AI system in accordance with Art. 49, Art. 16 lit. i)

# The EU AI Act and certification

## Interim result

- The EU AI Act as specific **product safety legislation** for AI systems and AI models
- Supplement to existing product safety law for products with AI components
- Extension of product safety law to include protection of privacy
- Selective additions (prohibitions, transparency)



The EU AI Act and certification



**Conformity assessment in the EU AI Act**

# The EU AI Act and certification

## Conformity assessment in the EU AI Act

### ■ Regulation

- Art. 43           »       Obligation to verify conformity
- Annex VI, VII   »       Conformity assessment procedure
- Art. 41           »       „Common specifications“ (Standards for conformity assessment)

### ■ Concept and elements

- (1) Standards for conformity assessment
- (2) Responsibility for conformity assessment
- (3) Procedures for conformity assessment
- (4) Indication and demonstration of conformity assessment
- (5) Surveillance of conformity assessment

# The EU AI Act and certification

## Conformity assessment in the EU AI Act

### ▪ **Scope and procedure**

- Responsibility and procedure for conformity assessment
- Principle: Self-assessment by the provider of the AI system/AI model
- Exception: Assessment by notified bodies
- Subject matter: High-risk AI systems pursuant to Art. 6(1) with mandatory third-party conformity assessment under applicable law

### ▪ **Notification and proof of conformity assessment**

- Self-assessment
  - Affixing of the CE marking
- Third-party assessment
  - Issuance of the certificate by a notified body
- Entry in the high-risk AI database

Unbeschadet der in dieser Verordnung enthaltenen spezifischeren Verfahrensrechte gilt für  
allgemeinem Verwendungszweck Artikel 18 der Verordnung (EU) 2019/1020 sinngemäß

### Verhaltenskodizes für die freiwillige Anwendung bestimmter An

(1) Das Büro für Künstliche Intelligenz und die Mitgliedstaaten fördern und er  
Verhaltenskodizes, einschließlich damit zusammenhängender Governance-Mechanismen  
Anwendung einiger oder aller der in Kapitel III Abschnitt 2 genannten Anforderungen  
Risiko bergen, gefördert werden soll, wobei den verfügbaren technischen Lösungen und be  
die die Anwendung dieser Anforderungen ermöglichen, Rechnung zu tragen ist.

(2) Das Büro für Künstliche Intelligenz und die Mitgliedstaaten erleichtern die Aufste  
Bezug auf die freiwillige Anwendung spezifischer Anforderungen auf alle KI-Systeme, einsch  
Grundlage klarer Zielsetzungen sowie wesentlicher Leistungsindikatoren zur Messung der  
einschließlich unter anderem folgender Elemente:

- a) in den Ethik-Leitlinien der Union für eine vertrauenswürdige KI enthaltene anwendbar
- b) Beurteilung und Minimierung der Auswirkungen von KI-Systemen auf die ökologische  
Hinblick auf energieeffizientes Programmieren, und Techniken, um KI effizient zu gestal
- c) Förderung der KI-Kompetenz, insbesondere der von Personen, die mit der Entwicklung  
von KI befasst sind;
- d) Erleichterung einer inklusiven und vielfältigen Gestaltung von KI-Systemen, unter  
inklusive und vielfältiger Entwicklungsteams und die Förderung der Beteiligung der Int
- e) Bewertung und Verhinderung der negativen Auswirkungen von KI-Systemen auf s  
Gruppen schutzbedürftiger Personen, einschließlich im Hinblick auf die Barrierefreiheit f  
sowie auf die Gleichstellung der Geschlechter.

(3) Verhaltenskodizes können von einzelnen KI-System-Anbietern oder -Betreibern o  
dieser Anbieter oder Betreiber oder von beiden aufgestellt werden, auch unter Einbeziehu  
deren Interessenvertretungen einschließlich Organisationen der Zivilgesellschaft und K  
können sich auf ein oder mehrere KI-Systeme erstrecken, um ähnlichen Zweckbestimm  
Rechnung zu tragen.

(4) Das Büro für Künstliche Intelligenz und die Mitgliedstaaten berücksichtigen

# The EU AI Act and certification

## Conformity assessment in the EU AI Act

### ■ Voluntary certification of AI systems

- No provisions on voluntary conformity assessment/certification of AI systems
- Art. 95 "Codes of conduct"
  - (1) Codes of conduct for the voluntary application of requirements for high-risk AI systems to other AI systems, Art. 95(1)
  - (2) Codes of conduct for the voluntary application of specific requirements to (any) AI systems, Art. 95(2)
- Code of conduct may include risk management
- Code of conduct may contain any enforcement mechanisms

# The EU AI Act and certification

## Conformity assessment in the EU AI Act

- **Conclusion**

**AI Act does NOT exclude voluntary certification**

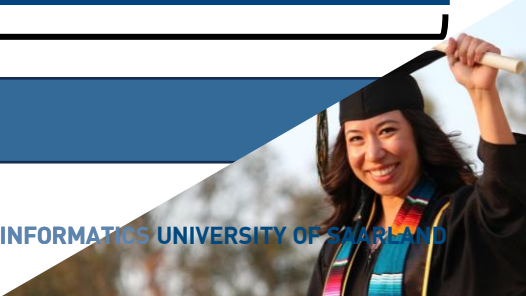


**codes of conduct (Art. 95)**

Approach 1  
high-risk AI (Art. 95(1))

Approach 2  
additional requirements (Art. 95(2))

**Voluntary conformity assessment possible**





# Challenges of AI certification as a means of protecting personality rights

# Challenges of AI certification as a means of protecting personality rights



## Problem: Standards for AI systems, especially for personality protection

- bias
  - » can be difficult
  - » Definition of bias highly controversial
- Discrimination » Result of a difficult legal review



## Possible ways of dealing with difficulties

- (1) Waiver/postponement of the obligation to assess conformity
- (2) Simplification of conformity assessment
- (3) Waiver of AI in high-risk areas

# Challenges of AI certification as a means of protecting personality rights

## Different possible strategies of dealing with difficulties:

### (1) Waiver/postponement of the obligation to assess conformity

- Postponement to December 2027 by Digital Omnibus on AI Regulation
- Further postponement?

### (2) Simplification of conformity assessment

- Demand for amendment of the AI Act by industry
- No material simplification of the conformity assessment in Digital Omnibus on AI

### (3) Abandoning AI conformity assessments according to technical standards

### (4) Refrain from developing AI in Europe

### (5) Refraining from using AI systems in Europe?

# Challenges of AI certification as a means of protecting personality rights

## ■ **Waiver of conformity assessment**

- No possibility of waiver in cases covered by Article 6(1) of the AI Act
- (necessity of standards for the application of applicable law)
- Waiver of conformity assessment in cases under Article 6(2) (AI Act)?
- Necessity of personal data protection through product safety law?  
or: Necessity of conformity assessment
- Efficiency of the protection of personality rights through product safety law?

## ■ **Postponement of conformity assessment**

» Obviously yes

## ■ **Simplification of conformity assessment**

» Obviously yes



**Conclusion**

# CONCLUSION

## Potential and promising regulatory approaches for AI certification

- Need for conformity assessment of AI systems for application of applicable law
- The AI Act establishes the necessary legal framework for the development and application of specific rules for conformity assessment of AI systems
- Voluntary application of rules on conformity assessment
  - » AI Act requires promotion
- No regulation on voluntary AI certification
  - » Potential for development and testing
- Extension of conformity assessment to protection of personality rights
  - » Highly demanding task for research
- Hasty obligation for conformity assessment in AI Act
  - » Need to improve the AI Act



# Thank you very much for your attention!

**Prof. Dr. Georg Borges**

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## Further reading:

*Borges, G., et al, The potential of AI certification. The Carat Project, Tagungsband IRIS 2026, p. 262 - 274.*

