ELI Guiding Principles for Automated Decision-Making

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INPUTS

human-based inputs, machine-generated data, or interactions with the environment

PRE-DEFINED OBJECTIVES

TECHNIQUES

OUTPUTS

content moderation; rating, ranking, predictions or recommendations; online advertising; complaint handling and dispute resolution; tracing traders; algorithmic management in platforms; credit scoring; pricing, trading and investing, or compliance

zeit2017 (2260★)
99.6% positive feedback

♡ Save

Based in China, zeit2017 has been an eBay member since Nov 29, 2016

🔖 Items for sale   🏪 Visit store   ✉ Contact

Feedback ratings ⓘ

★★★★★	250	Item as described
★★★★★	250	Communication
★★★★★	248	Shipping time
★★★★★	262	Shipping charges

Detailed Feedback Ratings

➕ 347 Positive   ⬤ 8 Neutral   ➖ 1 Negative

Feedback from the last 12 months

Feedback ratings

See all feedback

➕ Gerne wieder.......Dankeschön
Oct 26, 2020

Everything is a Recommendation

Ranking

Rows

Over **80%** of what people watch comes from our recommendations

Recommendations are driven by **Machine Learning**

Scoring details   ⋮ ✕

James Moore

| Gini index | Status Edit ✓ |
| 0.82 | Approved |

0.25	Gender	Male
0.15	Date of Birth	13.10.1985
0.11	Marital status	Married
0.12	Type of work	Entrepreneur
0.1	Salary	$110 000

@matthew:matrix.org

Power level
Admin (100)

USER OPTIONS
Jump to read receipt
Share Link to User
Mention
Ignore

ADMIN TOOLS
Deactivate user ①

Deactivate user?

Deactivating this user will log them out and prevent them from logging back in. Additionally, they will leave all the rooms they are in. This action cannot be reversed. Are you sure you want to deactivate this user?

Cancel   Deactivate user ②
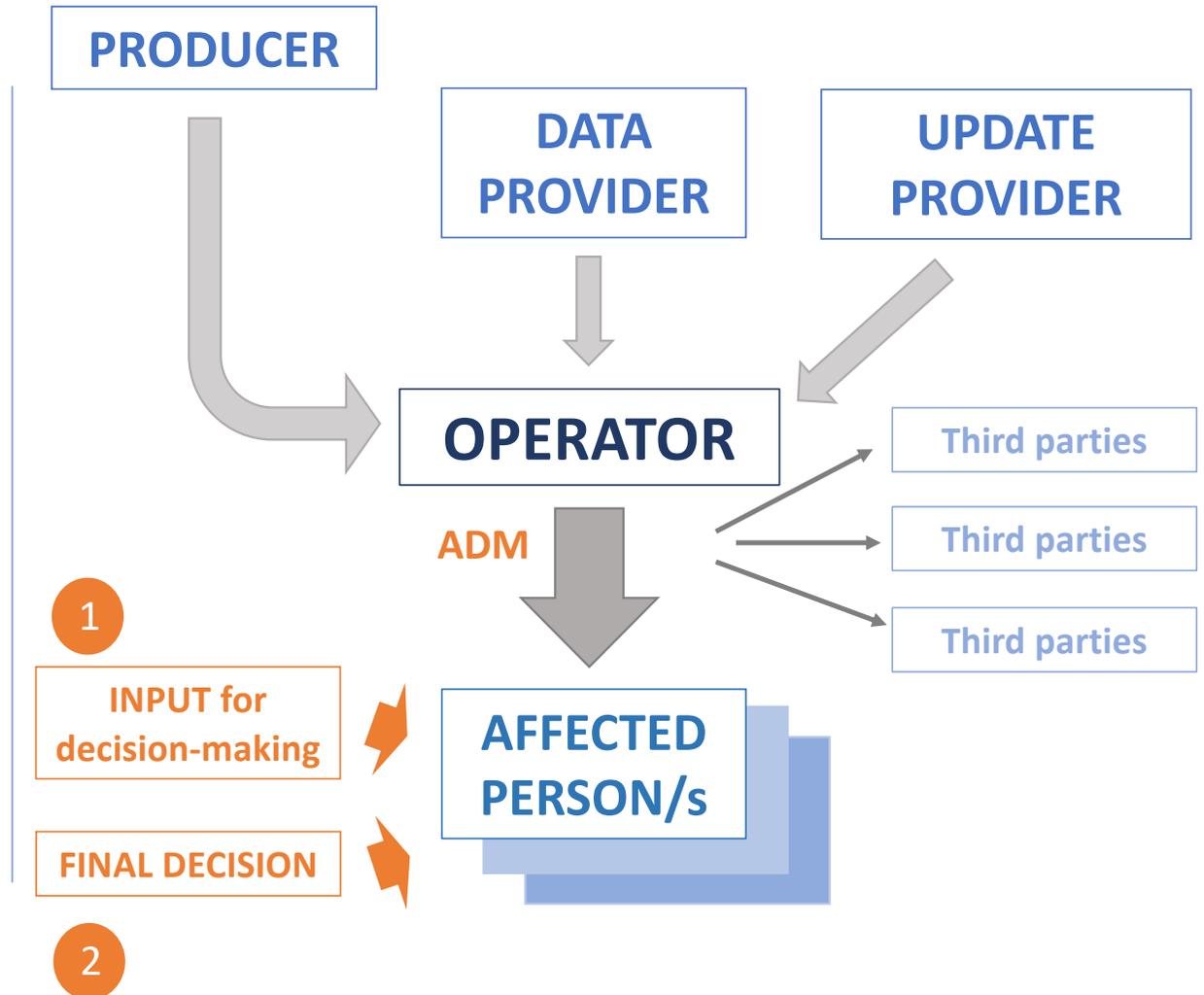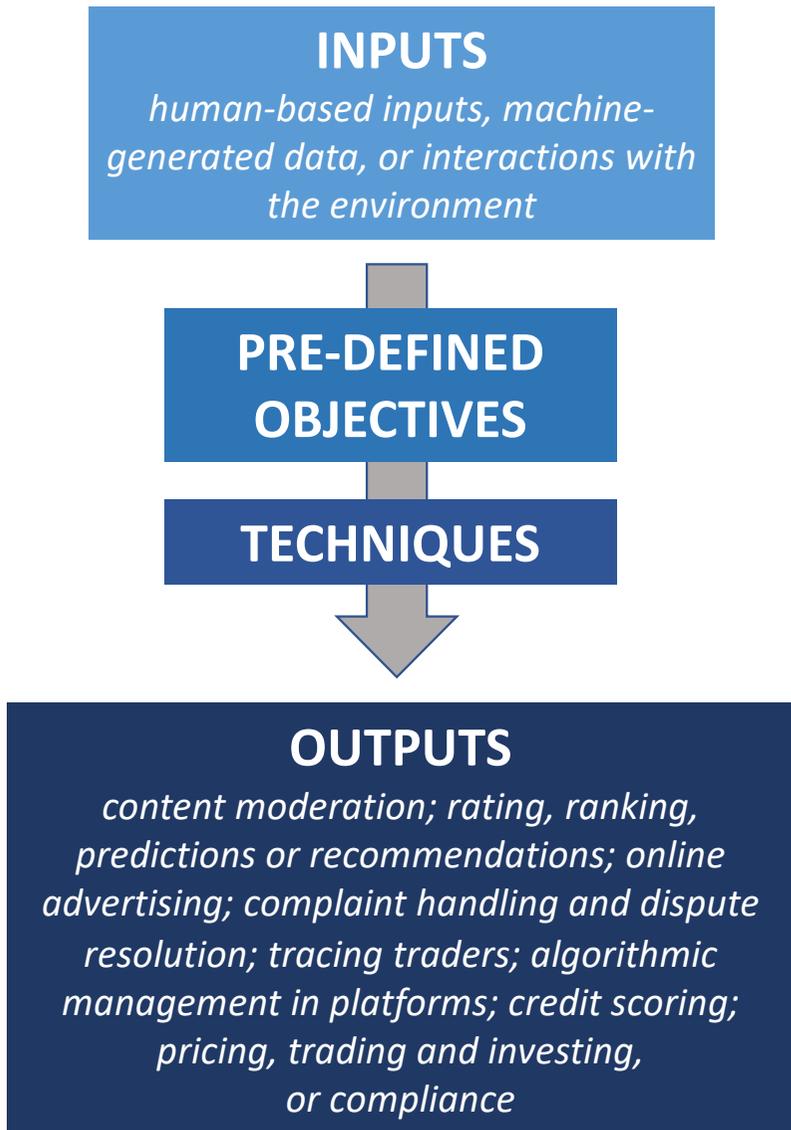
Vendor / lessor

Provider

Operator

Algorithmic
Agent /Delegate

Consumer –
Principal?

Sellers – contracting
parties
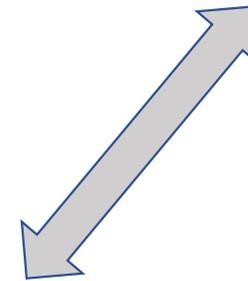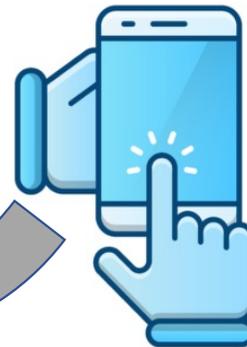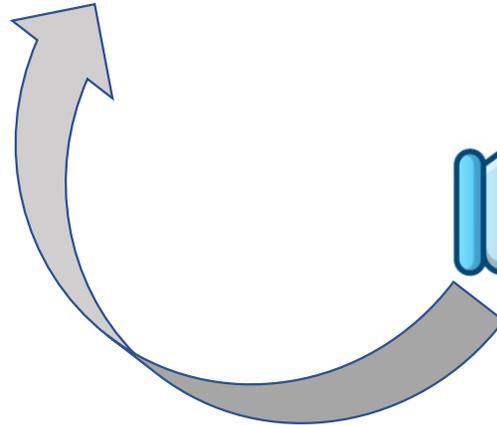
12 Guiding Principles

Title

Principle

Explanation

Illustration

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GDPR

P2B Regulation

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DSA

DMA

AI Act

Proposal of Directive on platform work

Guiding Principle 1: Law-compliant ADM.

Guiding Principle 2: Non-discrimination against ADM.

Guiding Principle 3: Attribution of decisions adopted by ADM

Guiding Principle 4: Disclosure that the decision-making is automated.

Guiding Principle 5: Traceable decisions.

Guiding Principle 6: Reasoned decisions

Guiding Principle 7: Allocation of risks to the operator

Guiding Principle 8: No limitations to the exercise of rights and access to justice

Guiding Principle 9: Human oversight/action

Guiding principles 10: Human review of significant decisions

Guiding Principle 11: Responsible ADM

Guiding Principle 12: Risk-based approach for ADM

Are the decisions adopted by ADM or with the support of ADM valid and enforceable?

Are the decisions and actions made by ADM equivalent to human decisions and actions?

Can we simply apply the functional equivalence to declarations, agreements, performance actions, remedies, actions, settlements? Even if there is no human intervention in each and every action of the ADM?

...

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Can we simply apply the functional equivalence to declarations, agreements, performance actions, remedies, actions, settlements? Even if there is no human intervention in each and every action of the ADM?

…

To whom to attribute the legal effects
To whom to allocate liable for the damages caused

Are ADM-specific rules needed?
Legal/regulatory requirements: impact on private law

Guiding Principle 1: Law-compliant ADM.

An operator that decides to use ADM for a particular purpose shall ensure that the design and the operation of the ADM are compliant with the laws applicable to an equivalent non-automated decision-making system

Guiding Principle 2: Non-discrimination against ADM.

As a general rule, ADM shall not be denied legal effect, validity or enforceability solely on the grounds that it is automated.

**Guiding Principle 11: Responsible ADM**

Operators should acknowledge the potential impact of the ADMs they employ on the socioeconomic context (democratic values, fundamental rights and liberties, human dignity, social cohesion, etc), and ensure that they use ADMs responsibly.

## Guiding Principle 3: Attribution of decisions adopted by ADM

The decision adopted by ADM shall be attributed to the operator. The operator shall not deny the attribution of a decision solely on the grounds that it has been adopted by automated means.

Guiding Principle 7: Allocation of risks to the operator

The risks that the ADM may cause any harm or damage shall be allocated on the operator.

DATA PROVIDER

DEVELOPER

DATA PROVIDER

OPERATOR

ADM

Third parties

Third parties

Third parties *relying on...*

Attribution of legal effects – no repudiation

Error

AFFECTED PERSON/s

No excuse to comply with and bear consequences on the sole grouns of automated means
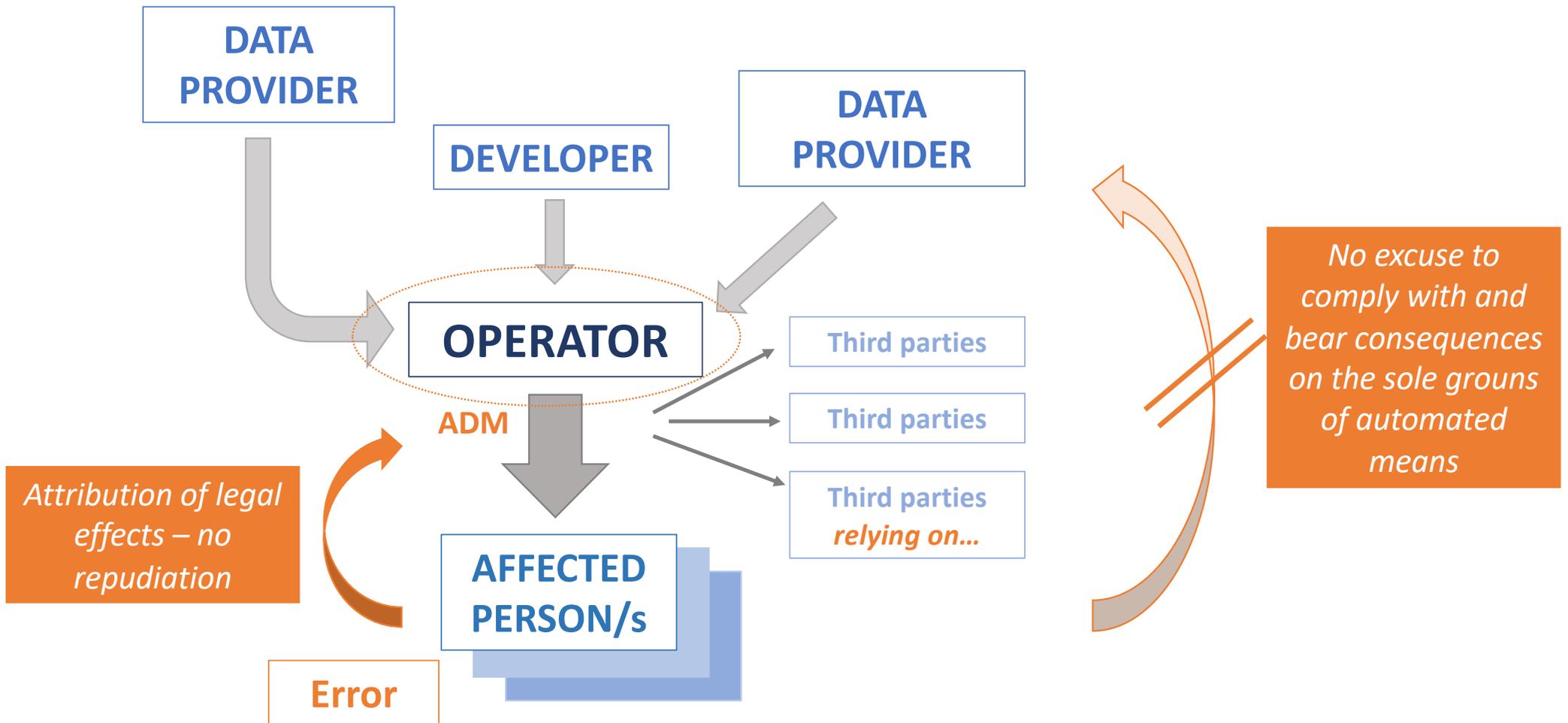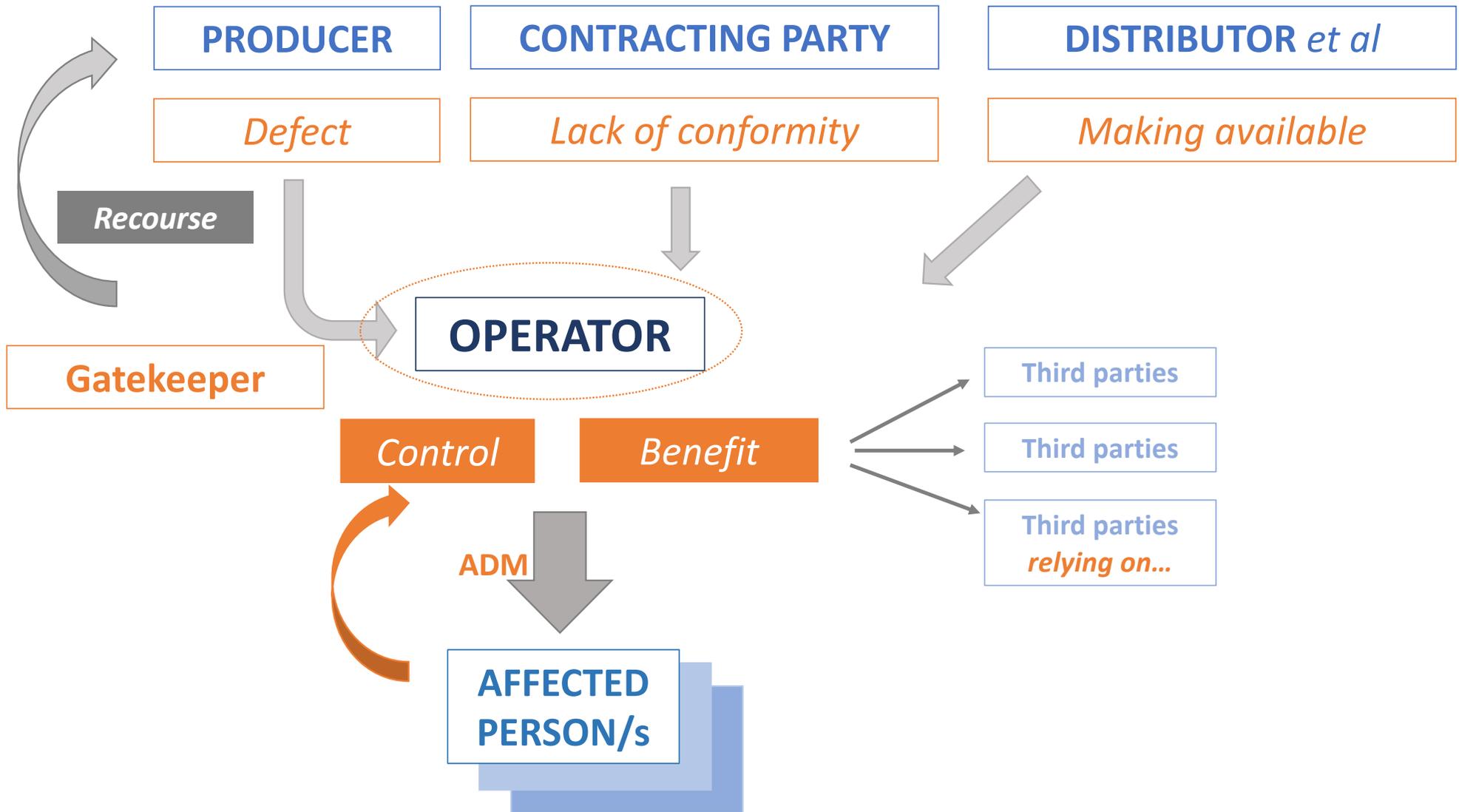
Guiding Principle 4: Disclosure that the decision-making is automated.

Unless it is obvious or unnecessary from the circumstances and the context of use or exempted by the law, it shall be disclosed that the decision is being adopted by automated means.

How the information is effectively disclosed depends upon the context of use and the circumstances surrounding the operation of the ADM.

- continuous and recurrent use of ADM throughout the contractual relationship cycle

- in other situations, the information needs to be disclosed at the moment that the affected person begins to interact with (or be affected by) the ADM if there was no prior contact between the parties or a long-term relationship that may render a previous disclosure feasible

Guiding Principle 5: Traceable decisions.

ADM shall be designed and operate in a manner that enables the traceability of any decision.

Traceability is a decision-specific exercise, upon request or under certain circumstances

Guiding Principle 6: Reasoned decisions

The complexity, the opacity or the unpredictability of ADM is not a valid ground for rendering an unreasoned, unfounded or arbitrary decision.

Beyond transparency   Reasonable: decisions, interests and rights, costs

Guiding Principle 8: No limitations to the exercise of rights and access to justice

Automation shall not prevent, hamper, or render unfeasible the exercise of rights and the access to justice by the affected persons. An alternative human-based route to exercise the rights should be available

Group of cases 1

the affected person can only exercise a right by resorting to an algorithmic process

Group of cases 2

the affected person is deprived of the possibility of exercising a right or access to justice solely on the grounds that the contested decision was made by ADM

Guiding Principle 9: Human oversight/action

The operator shall ensure reasonable and proportionate human oversight over the operation of ADM taking into consideration the risks involved and the rights and legitimate interests potentially affected by the decision.

Guiding principles 10: Human review of significant decisions

Human review of selected significant decisions on the grounds of the relevance of the legal effects, the irreversibility of their consequences, or the seriousness of the impact on rights and legitimate interests shall be made available by the operator.

(beyond) GDPR	DSA	Directive on Platform Work
Articles 13(2)(f), 14(2)(g) and 15(1)(h) GDPR	Statement of reasons	Written statement of reasons for significant decisions
'meaningful information about the logic' involved in ADM, and 'the significance and envisaged consequences of such' automated processing	*'as precise and specific as reasonably possible' …And necessary*	*decisions likely to significantly affect a person's legal or contractual status, to impact their rights, or restrict, suspend or terminate the affected person's account –limitation or the termination of the exercise of rights – should be reasoned.*

Future work

International Principles for ADM in international trade

Algorithmic Contracts

ADM-readiness test in consumer contracts

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