Guiding Principles
for Automated Decision-Making in the EU
ELI Innovation Paper

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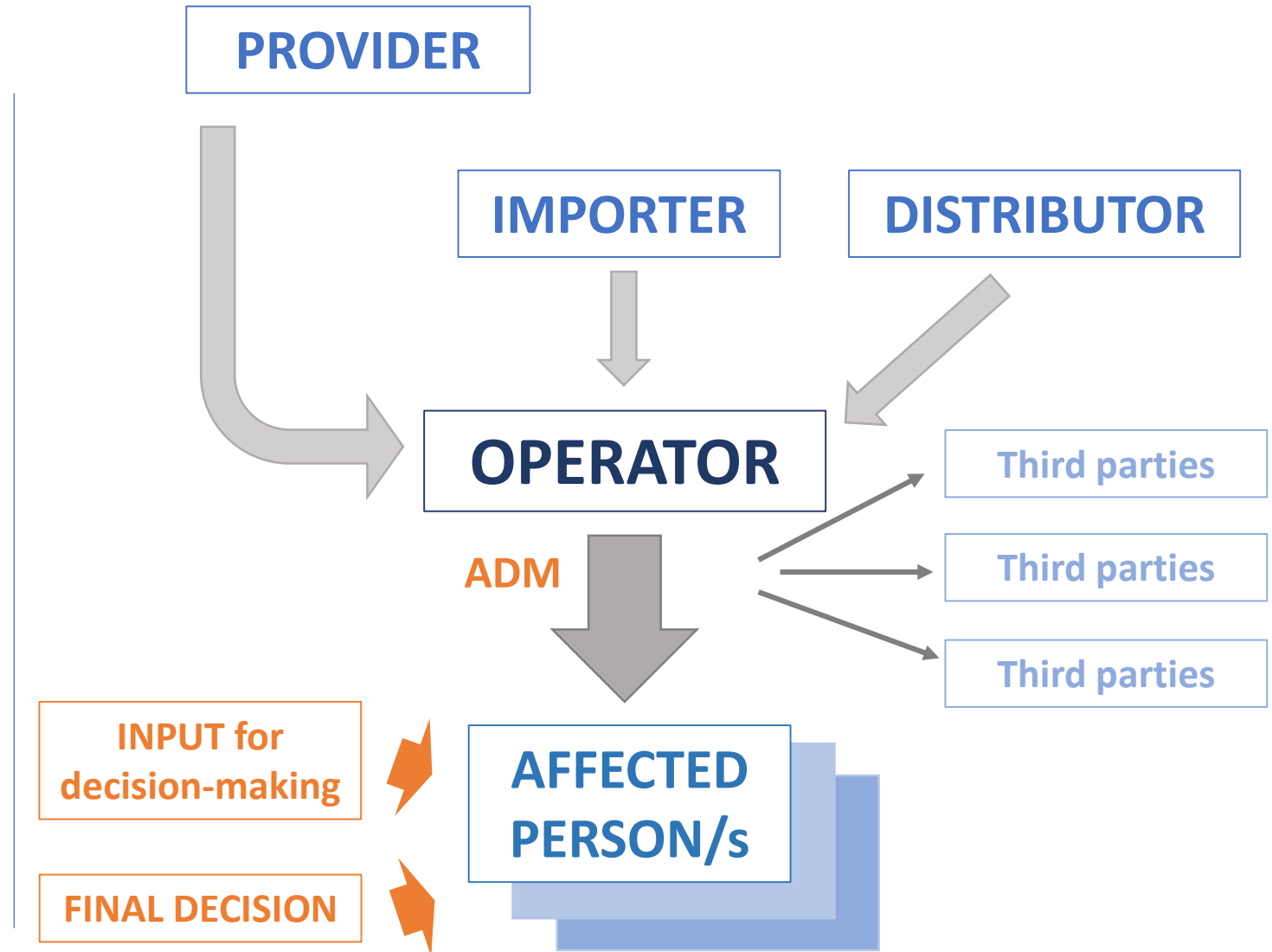*(University Carlos III of Madrid and ELI Executive Committee Member)*

ELI
EUROPEAN
LAW
INSTITUTE

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

PROVIDER

IMPORTER

DISTRIBUTOR

OPERATOR

ADM

Third parties

Third parties

Third parties

INPUT for decision-making

FINAL DECISION

AFFECTED PERSON/s

12 Guiding Principles

Title

Principle

Explanation

Illustration

GDPR

P2B Regulation

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DSA

DMA

AI Act

Directive on platform work

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 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 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.

Guiding Principle 5: Traceable decisions.

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

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.

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.

Illustration A. A bank has implemented an ADM to assess the creditworthiness of credit applicants and screen eligible loan requests. The applicant has to fill out a questionnaire and submit their request via the bank app. The entire process is fully automated. The applicant is informed by way of a final decision of the refusal of the loan request or its acceptance. Only if loan conditions need to be discussed further will the applicant deal with bank staff. The applicant may not be aware that the submission and the screening process are fully automated. This process might not be sufficiently evident. Therefore, the bank has to ensure that the app alerts the applicant that the decision is made by ADM.

Illustration B. An electronic appliances store has installed a customer service robot at the main entrance of their premises. The robot processes basic complaints and settles claims at a primary stage. As the complaints are handled in situ, it is obvious for any affected person that it is interacting with an automated system and that a decision will be made by ADM

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 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.

Illustration A. An e-recruiting programme implemented by a service company ranks applicants, shortlists eligible candidates, and finally selects the chosen candidate who automatically receives an offer of employment. The recruitment decision is attributed to the company, as it is the operator.

Illustration B. A health insurance app implemented by an insurer enables the user to fill out a health questionnaire and to put forward an insurance proposal. The app assesses the eligibility conditions, calculates the premium, and accepts or rejects the insurance request. The decision to refuse the proposal or to conclude the insurance contract is attributed to the insurer operating the app. The insurer is the operator of the ADM and becomes the contracting party vis-à-vis the insured upon the acceptance of the insurance proposal.

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.

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.

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.

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 12: Risk-based approach for ADM

These Guiding Principles shall be applied on a risk-based approach