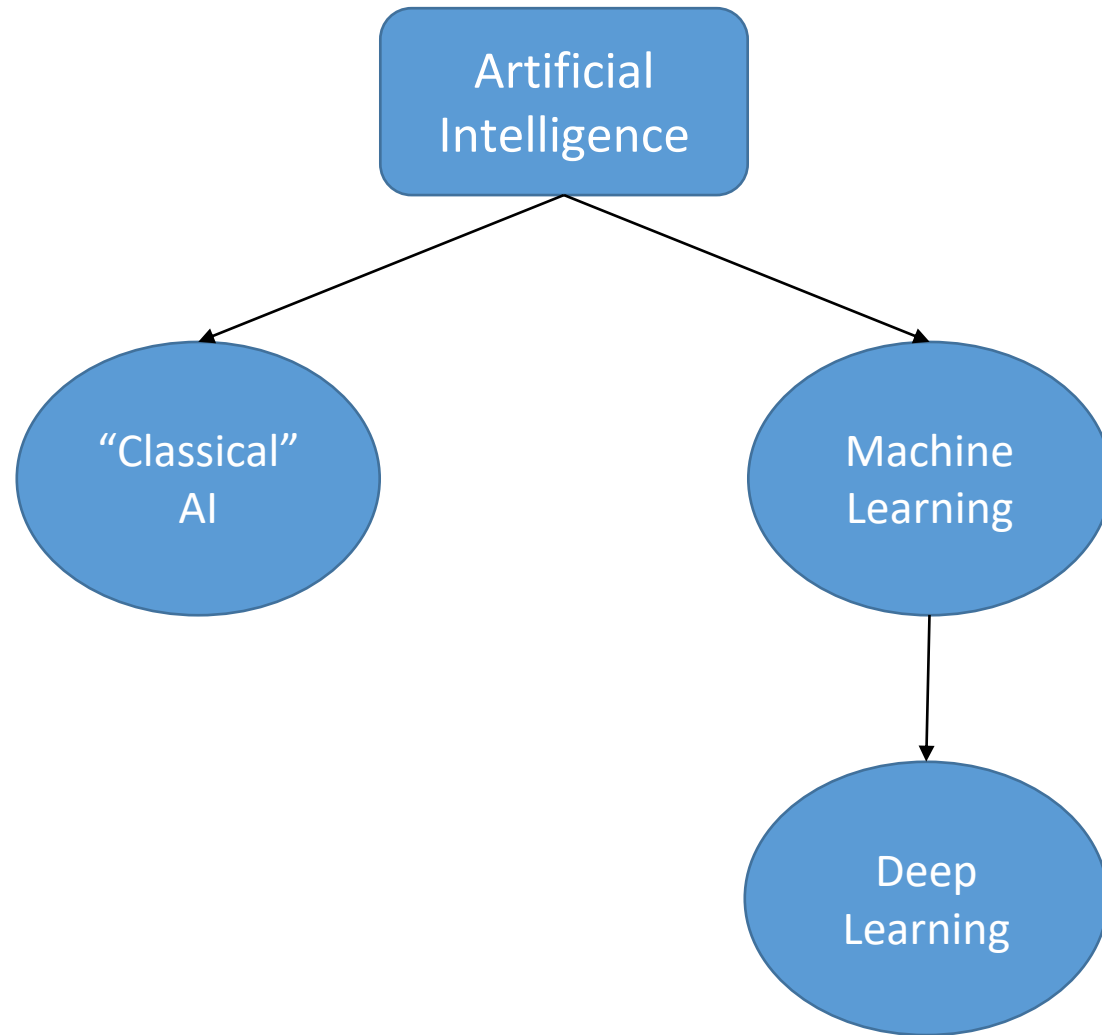


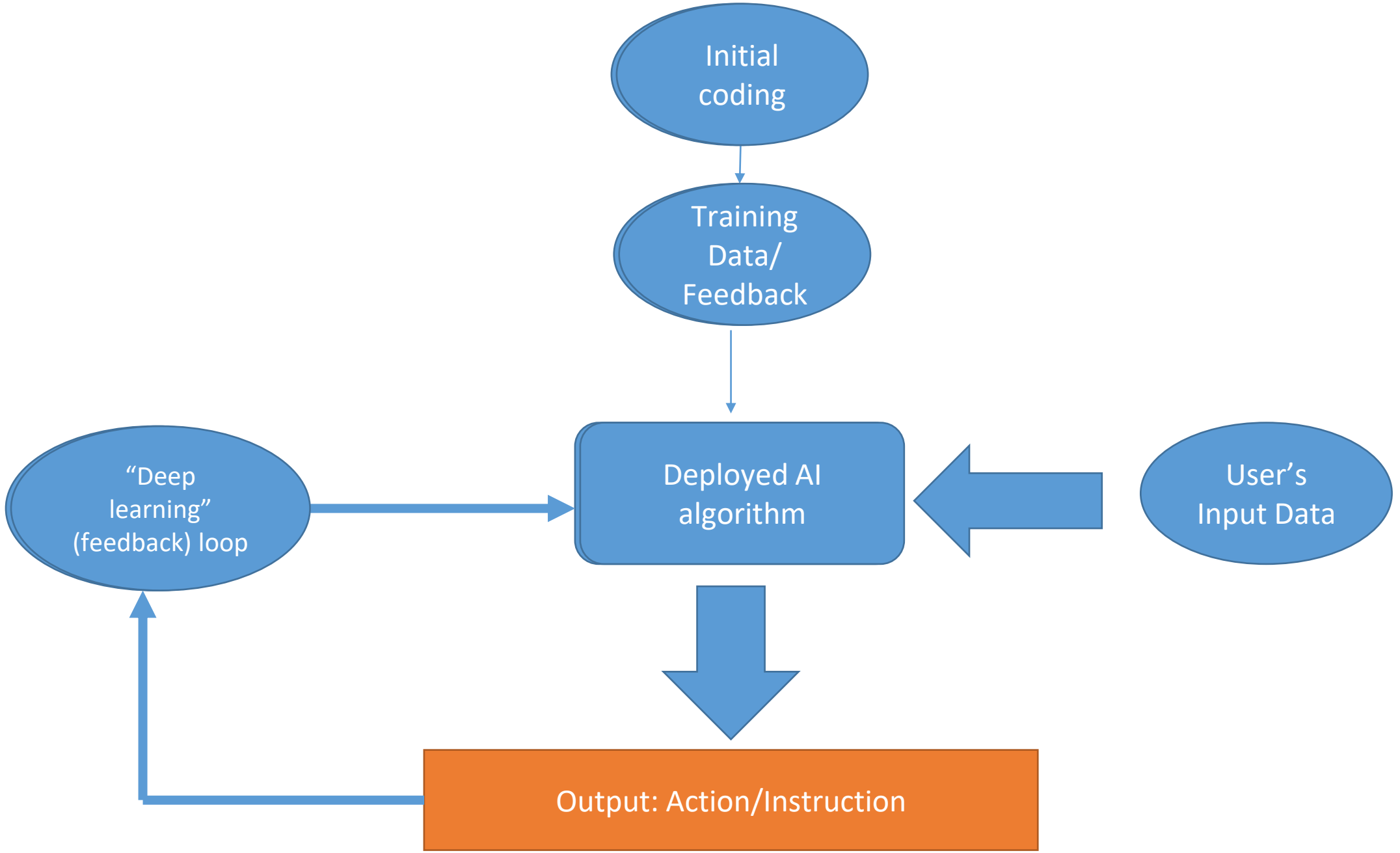
Algorithmic Contracts and Consumer Law –
Thoughts from ELI's Guiding Principles and Model Rules
for Algorithmic Contracts project

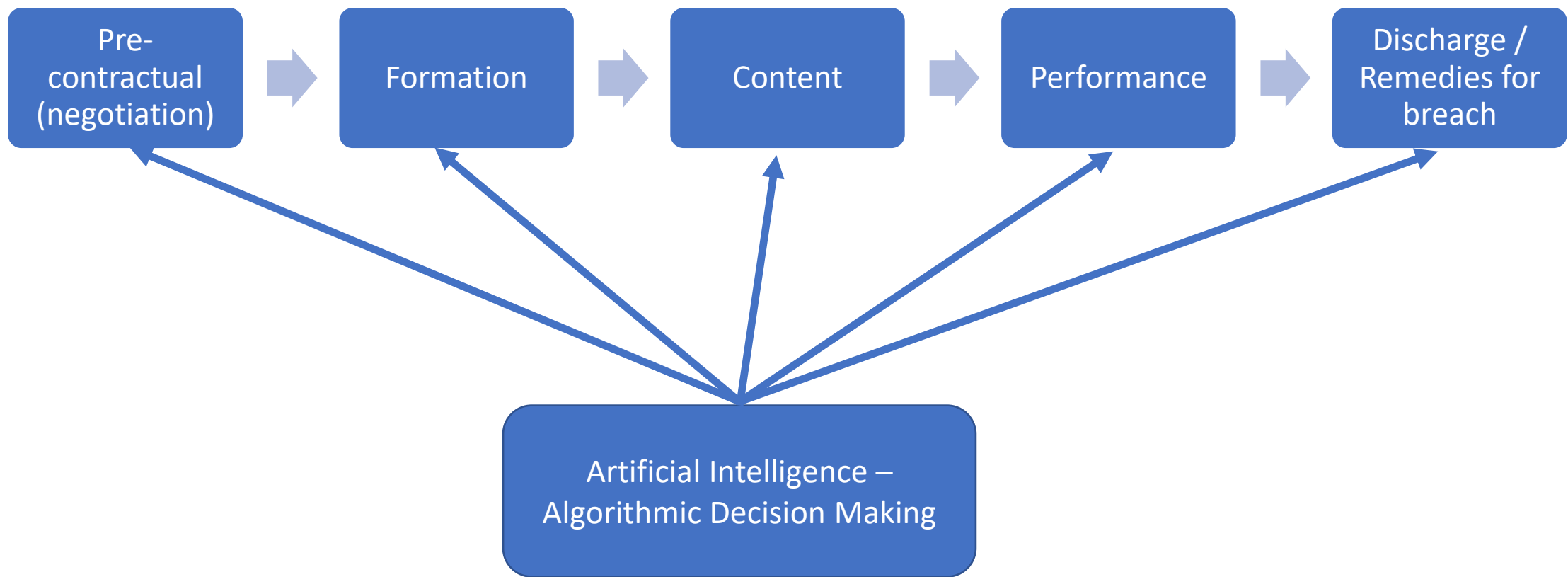
Professor Christian Twigg-Flesner (Warwick)

University of Reading, 23 November 2023



Foundation Models
Generative AI
"ChatGPT"

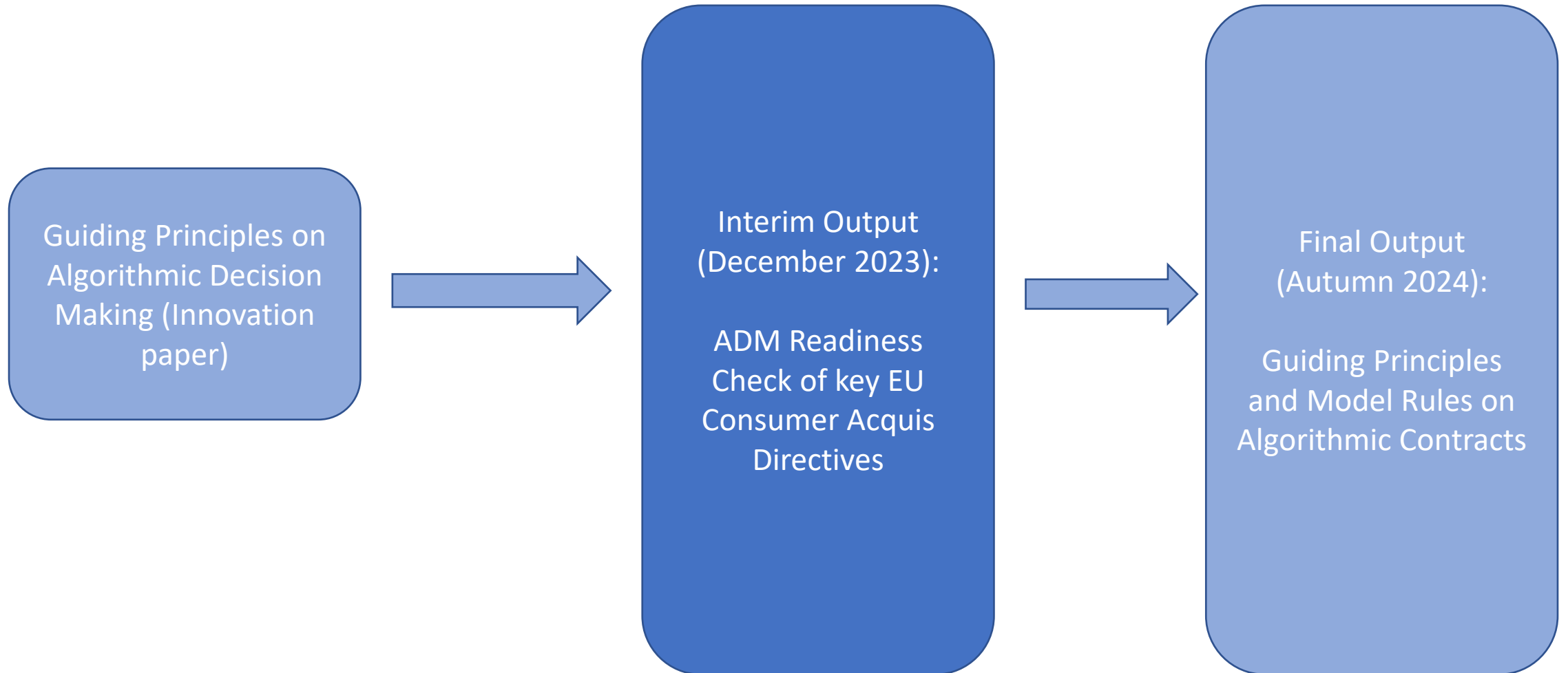




What is “ADM”?

- **ADM:** “a computational process, including AI techniques and approaches, that, fed by inputs and data received or collected from the environment, can generate, given a set of pre-defined objectives, outputs in a wide variety of forms (content, ratings, recommendations, decisions, predictions etc)” (ELI ADM Innovation Paper)

Work Packages



ADM Readiness Test for EU Consumer Law

- **ADM Readiness:** How would the consumer law acquis cope with the widespread use of ADM (bearing in mind its *protective* and *enabling* functions)?
 - EU Consumer Law would be “ADM ready” if it can adequately deal with the use of digital assistants by consumers
 - Getting to ADM readiness: What, if anything, needs to be done to the consumer law acquis to enable the use of digital assistants without jeopardising current levels of consumer protection?



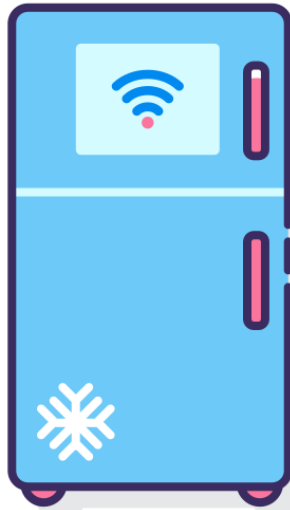
Provider



Contract 1



Consumer



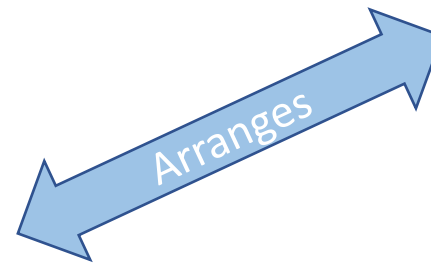
Digital Assistant



Contract 2



Sellers – contracting parties



Arranges

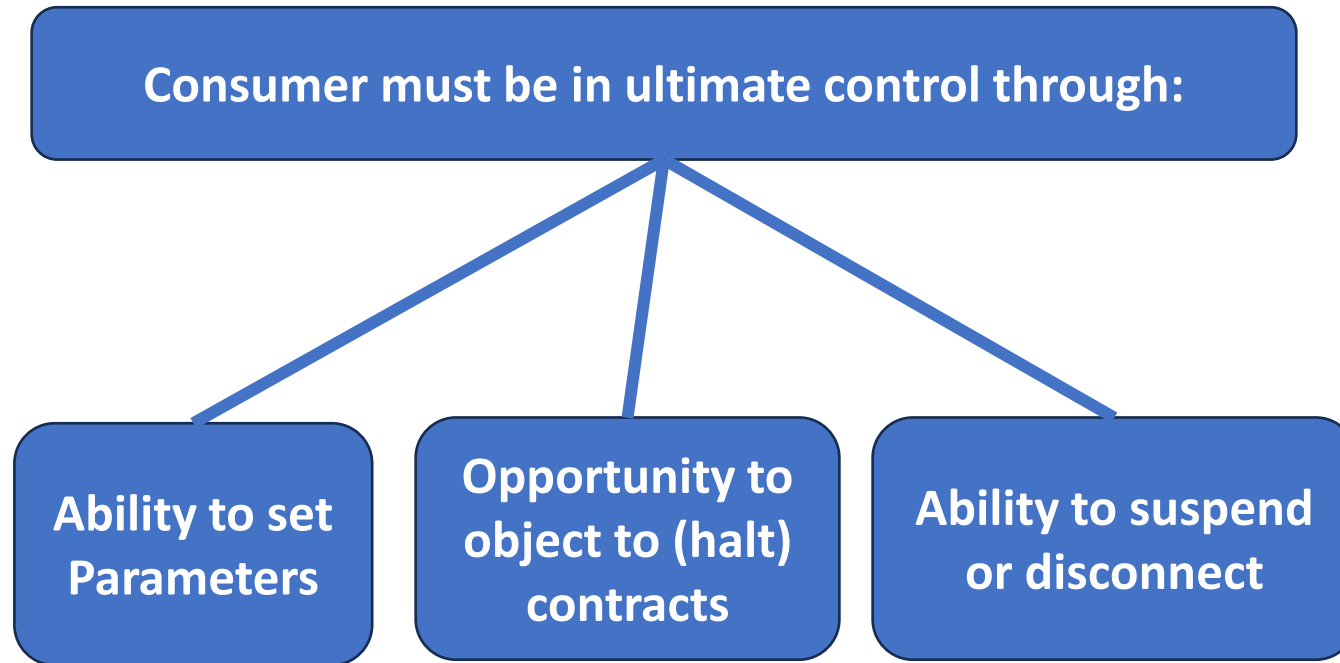
ADM Readiness Test for EU Consumer Law

General Principles

P1: Attribution of digital assistant's actions to consumer

Mitigated by design requirements for digital assistants so
consumer retains ultimate control

Digital Assistant – Core Design Requirements



Attribution and Unexpected Decisions

Solution in EU Consumer *acquis* now:

Non-conformity under Contract 1 under the DCD

But: remedies?

Situation akin to “mistake”?

(For national law – EU Consumer Law engaged by formation of valid contract)

ADM Readiness Test for EU Consumer Law

General Principles

**P2: Consumer Law applies to
“algorithmic contracts”**

**P3: Pre-contractual information duties
continue to apply**

ADM Readiness Test for EU Consumer Law

General Principles

**P4: Principles of “non-discrimination”
and “no barrier”**

P5: Disclosure of use of digital assistant

Drafting examples from directives

Directive	Provision	Possible drafting of text
Unfair Terms (93/13/EEC)	Annex – Grey List	<i>A term requiring the use of digital assistants by a consumer to conclude the contract or to conclude it in certain conditions</i>
E-Commerce (2000/31/EC)	Art.9	<i>Member States shall ensure that their legal system allows contracts to be concluded by automated means. Member States shall in particular ensure that the legal requirements applicable to the contractual process neither create obstacles for the use of algorithmic contracts nor result in such contracts being deprived of legal effectiveness and validity on account of having been made by automated means.</i>
Consumer Rights (2011/83/EU)	New	<i>(1) “Consumers have the right to use digital assistants for concluding contracts with traders. Any contractual terms or agreements which directly or indirectly waive or restrict this right shall not be binding on the consumer.” (2) “Traders shall not design, organise or operate their online interfaces in a way that prevents consumers from using digital assistants for systems for concluding contracts with traders.”</i>

ADM Readiness Test for EU Consumer Law General Principles

P6: Protection of digital assistant from manipulation

**P7: Ability to determine parameters/
disclosure of pre-set parameters**

P8: Digital Assistants and Conflicts of Interest

Next steps for the ELI Project

Development of ADM Principles into “Guiding Principles”

Development of Model Rules

**Big question: contract conclusion, unexpected decisions
etc.**

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Rules for Algorithmic Contracts project

Questions and Comments

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