

The Next Frontier for Private Law: Rules and Legal Fictions for an AI-Human Hybrid Society

**Second Annual Conference on Fairness in Digital
Markets and Artificial Intelligence
– Synthetic Imaginaries of Digital Fairness**

Teresa Rodríguez de las Heras Ballell

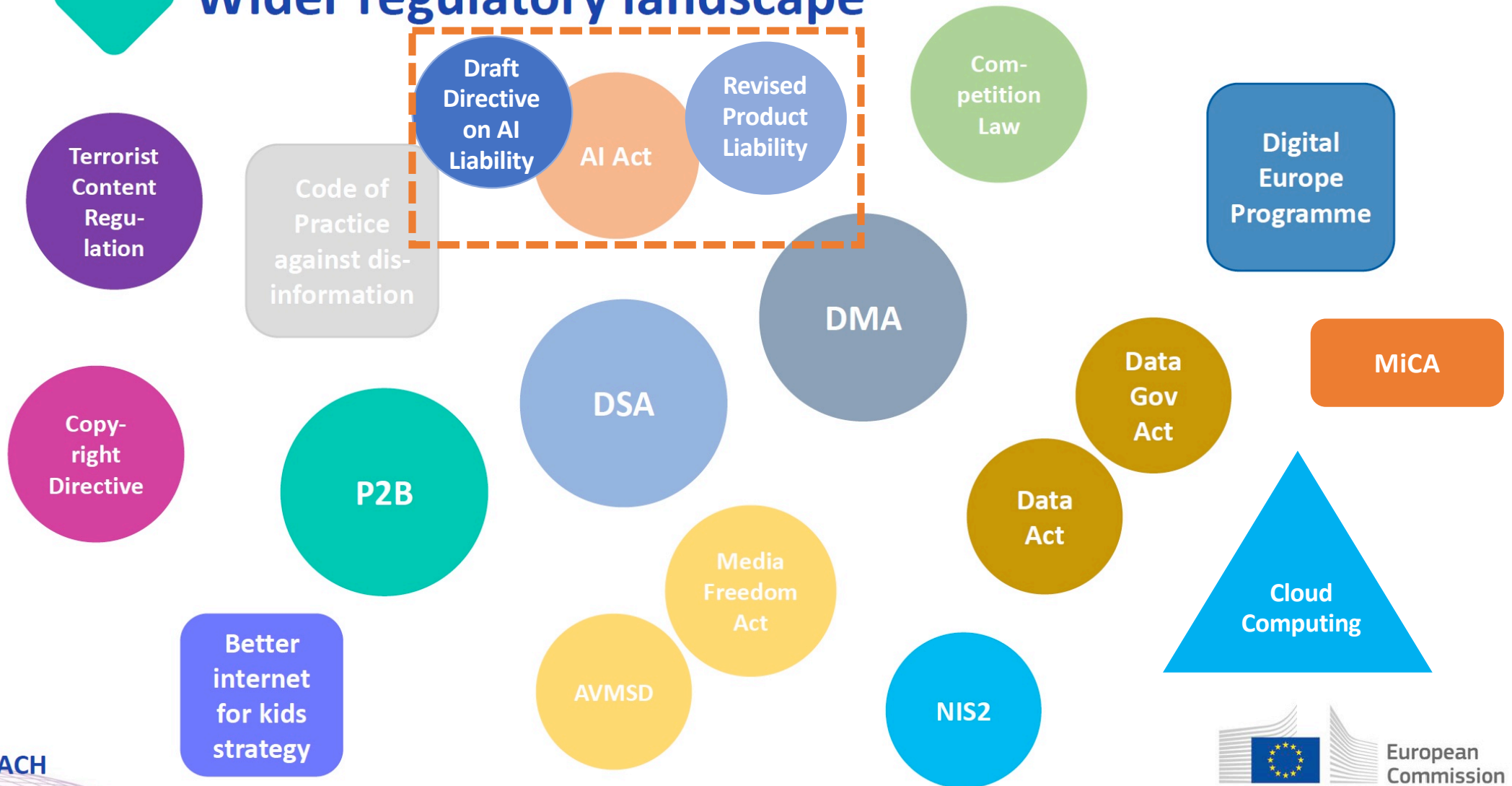
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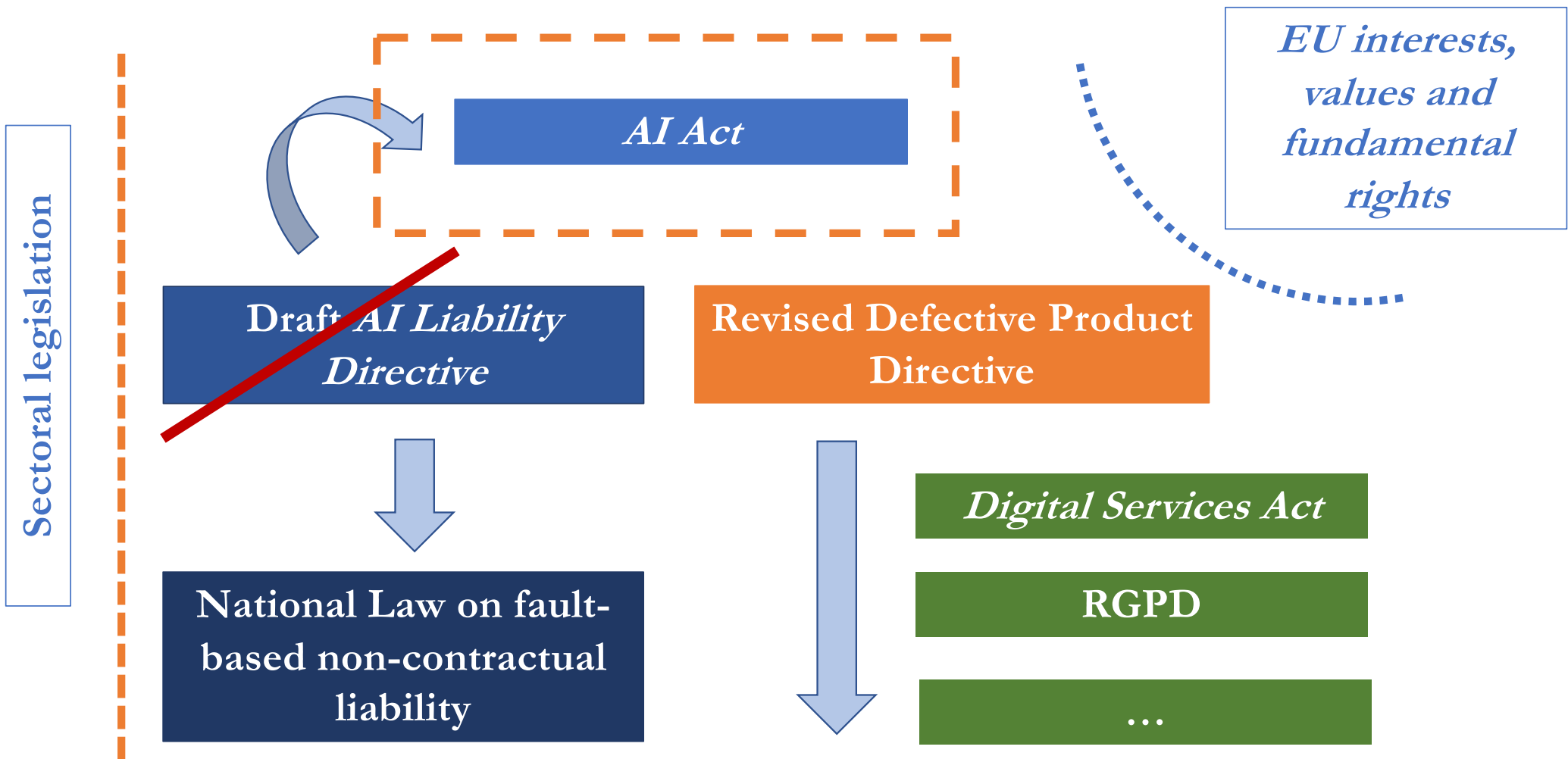
President of the European Law Institute (ELI)

Director of the Research Chair AI Foundations and Frontiers

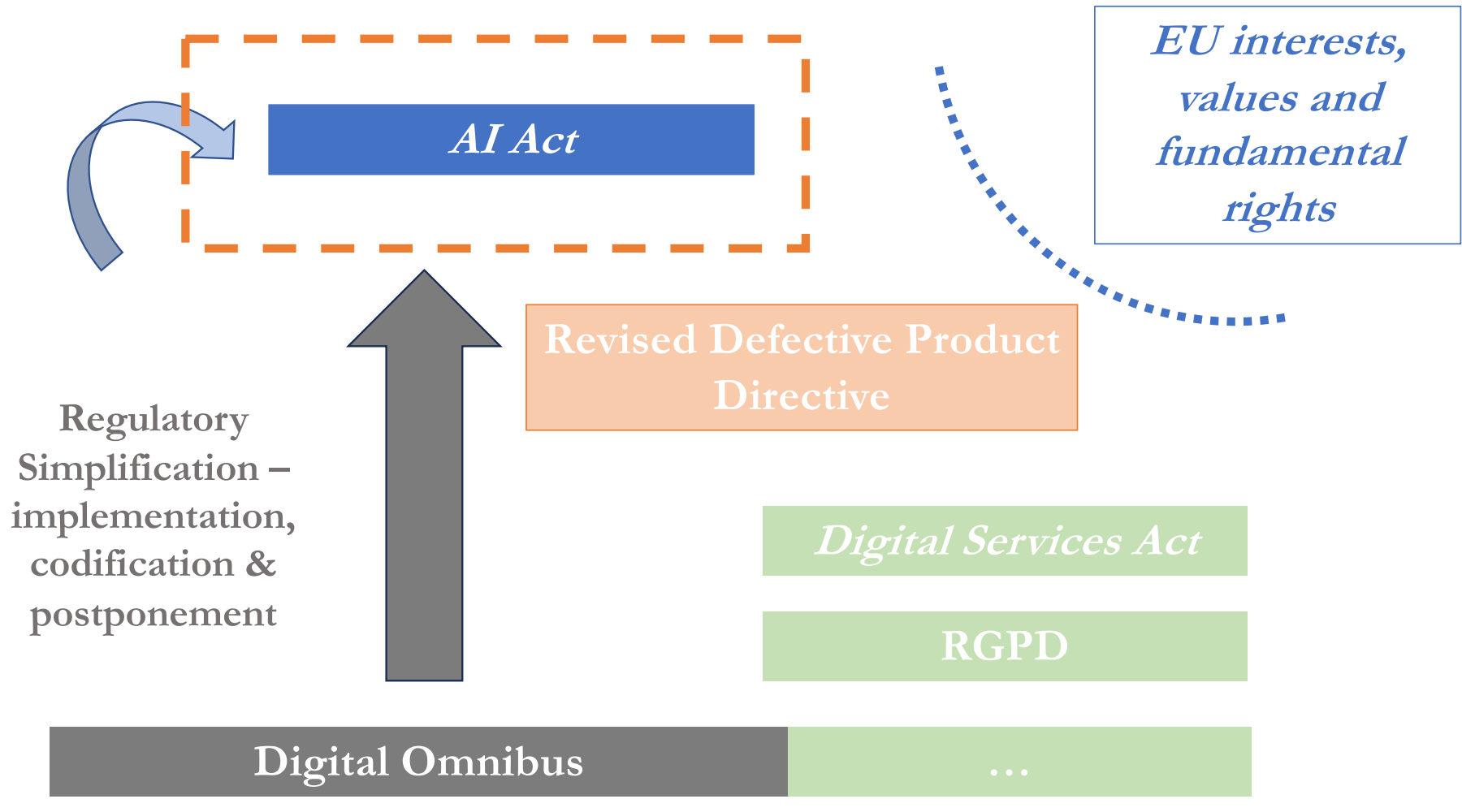
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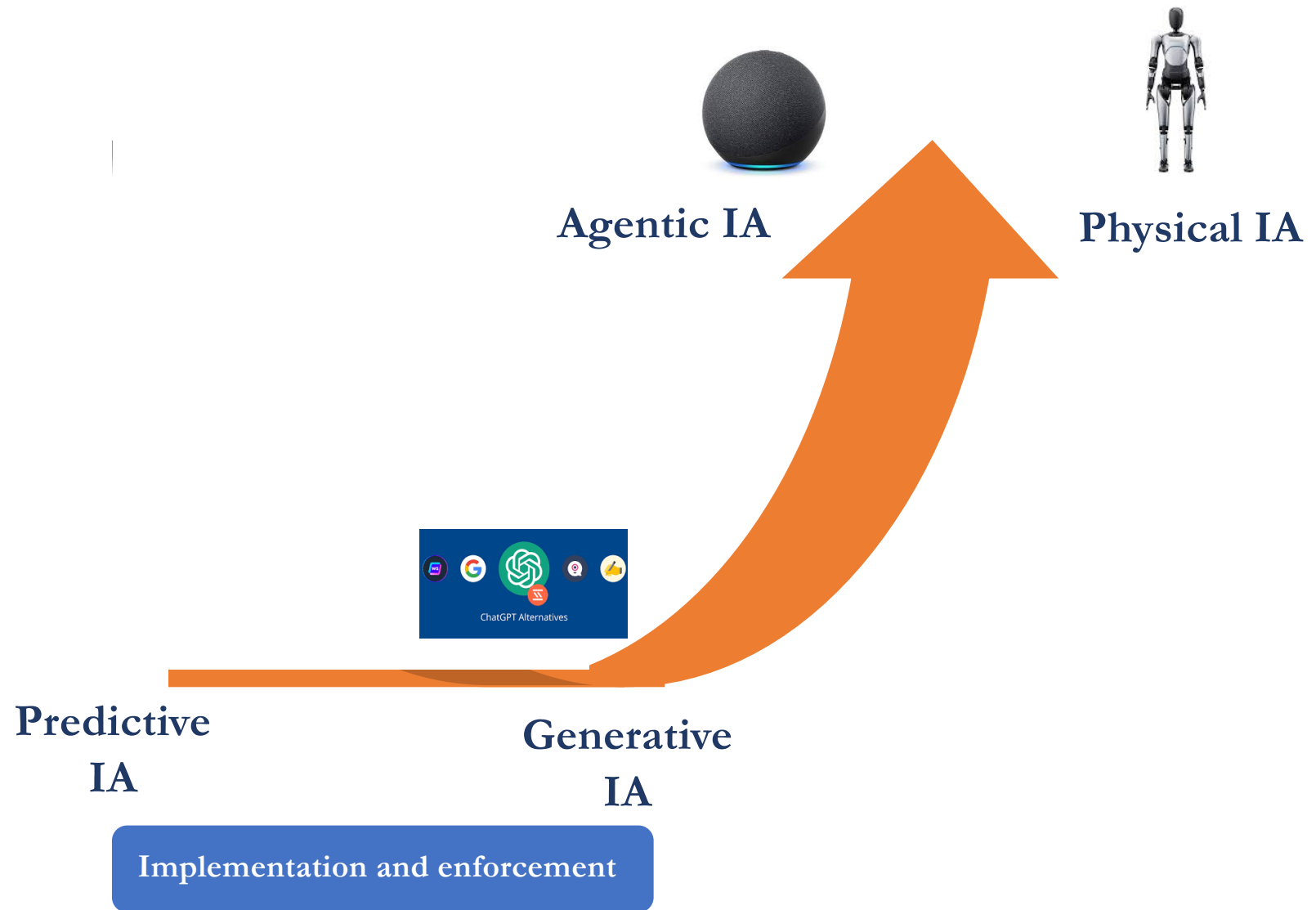
Wider regulatory landscape

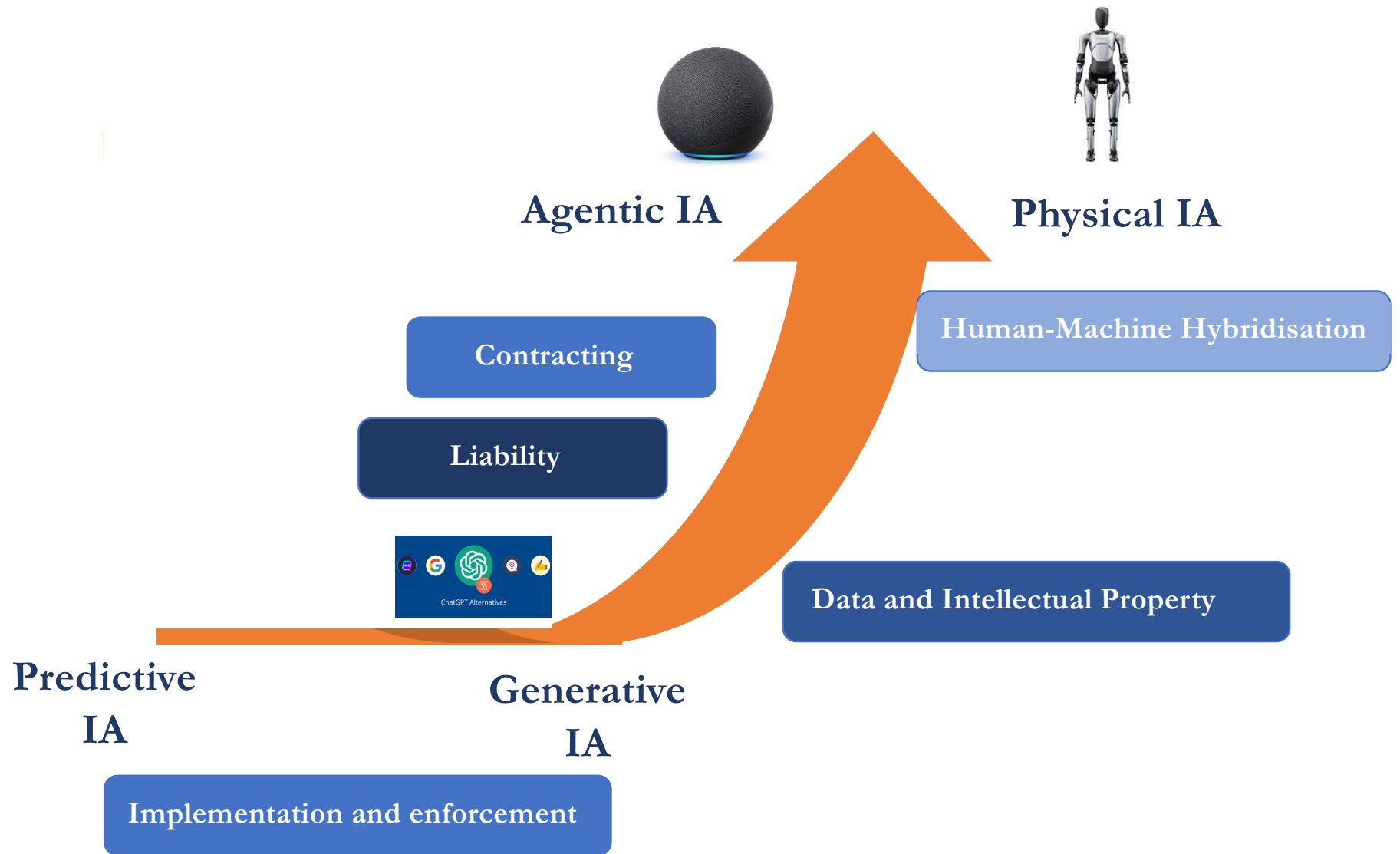




Sectoral legislation







**AI-Human Hybrid Society –
Possible scenarios and policy options**

Perils

Dystopia



Promises

Utopia

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Policy options

**Only Humans: *minimal
hybridisation***
Refusal, prohibition, exclusion

**Human-AI:
*hybridisation by absorption***
Assimilation, equivalence, inclusion

**AI: emergence of
artificial forms**
Parallel recognition





'La joven de la perla', generada con la herramienta "Outpainting" de DALL-E 2. DALL-E 2/OpenAI

ORIGINAL IMAGE



DALL·E 2 VARIATIONS





ELI Guiding Principles on ADM in Europe



UNCITRAL WG IV on E-Commerce
Use of AI in international trade

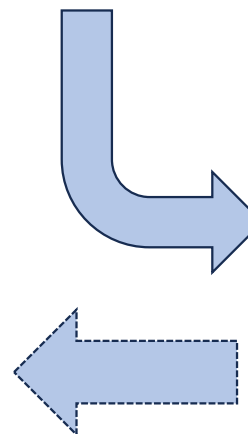


- Guiding Principle 1: Law-compliant ADM.
- Guiding Principle 2: Non-discrimination against ADM.
- Guiding Principle 3: Attribution of decisions adopted by ADM
- Guiding Principle 4: Disclosure that the decision-making is automated.
- Guiding Principle 5: Traceable decisions.
- Guiding Principle 6: Reasoned 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

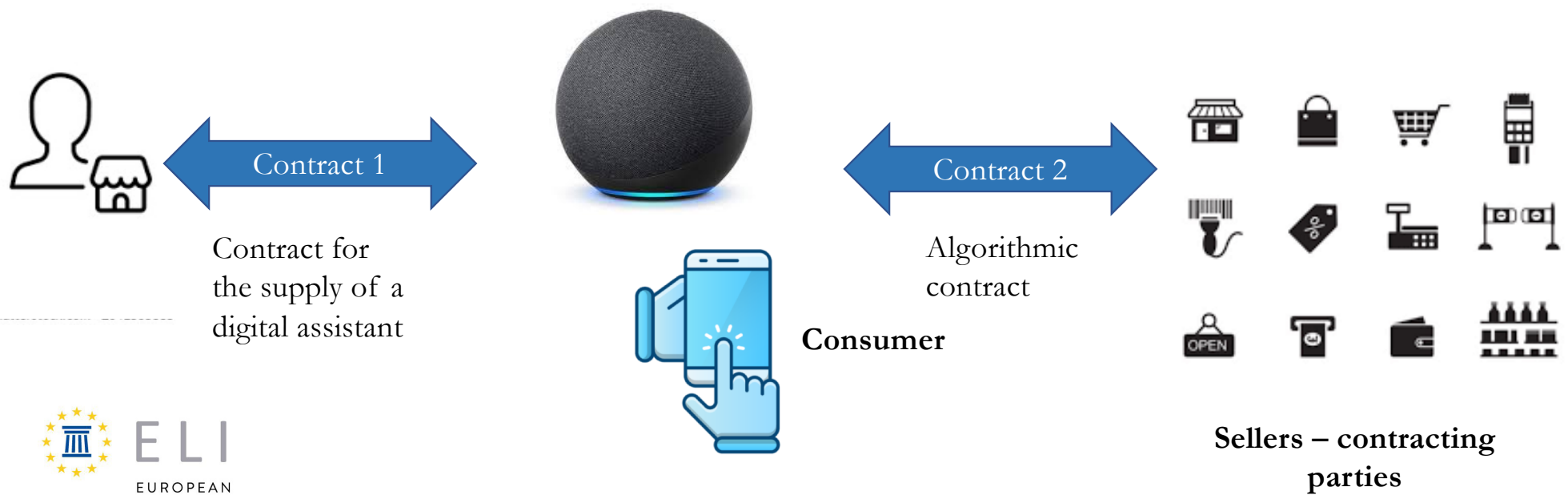


EU Proposals

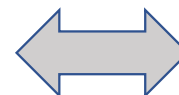
AI Liability Directive
Revised Directive on Defective Product
Pilot project on Novel forms of contracting



ELI Algorithmic Project
ADM-readiness test on B2C



Buyers – smart store



Sellers – smart warehouse



ELI Guiding Principles and Model Rules on Algorithmic Contracting

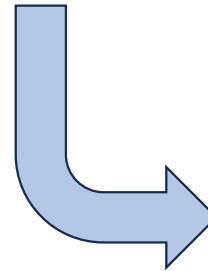


**United
Nations**

UNCITRAL WG IV on E-Commerce
Use of AI in international trade



Model Law on Automated Contracting July 2024



Legal recognition rules

Decision and action attribution rules

Contracts in machine code and with dynamic
information

Error rules

Treatment of unexpected or unforeseen action

Typology of risks

1). Mistake

2). Errors and malfunction

3). Unexpected decision

Options to consider

Non-attribution

Defects of consent

Liability

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