NO ACCEPTANCE WITHOUT CONTROL

KLAUS MÜLLER
THE FEDERATION OF GERMAN CONSUMER ORGANISATIONS

The thought of using Artificial Intelligence (AI) and algorithmic decision-making (ADM) processes in our daily lives makes many of us feel insecure. Most consumers see more risks than opportunities, an attitude brought about by the black-box nature of algorithms and AI. When an organisation or public authority makes a decision supported by an algorithm, one can feel that one is at the algorithm's mercy, finding it incomprehensible. Widespread consumer distrust of AI and ADM processes will make it difficult to improve their societal acceptance and therefore make it challenging to apply them in the business sector and in policy-making. Without trust on the consumer side, there can be no progress.

Consumer distrust is justified

There are various examples that justify consumers' distrust of AI and ADM. A hotel's ranking on a hotel booking platform is determined, in part, by the commission paid to the platform: the higher the commission, the higher the ranking. However, often such platforms appear to be neutral and independent to the consumer. It is therefore understandable that a consumer might feel misled.

Online shopping must also be scrutinised carefully. The sheer amount of information that is available on individual consumers enables companies to continuously refine their price differentiation down to the individual level. Pricing strategies can - like price fixing at a macro level - lead to a very different problem: when intelligent algorithms finetune pricing or conditions, not only does market competitiveness take a hit, but the consumer is also hurt by being charged higher prices.

ADM processes are not risk-free for the consumer in the financial services and insurance sectors either. Selected groups of consumers can be discriminated against, once a profile of their financial capability and psychological and socio-economic characteristics has been created. The potential for damage is great, with the possibility of being charged higher interest rates on loans and higher insurance premiums.

The use of algorithms can also raise questions of liability, for example in the case of Smart Homes. The highly complex nature of ADM systems and AI makes it practically impossible for the consumer to prove the existence of a defect in the system. Who is liable, if the manufacturer of such connected

devices has low safety standards, which allow a hacker to break into the Smart Home network?

No green light without trust

A multitude of questions arises from the use of algorithms and AI. The challenges faced by political processes, the economy and society at large in this respect must be addressed sooner rather than later. The Federation of German Consumer Organisations, "Verbraucherzentrale Bundesverband" or "vzbv" in short, is looking to the future, asking itself what measures need to be taken for algorithms and AI to be advantageous to society. Measures that build trust in the technology will be the only ones to succeed in this.

The two factors that can inspire trust and acceptance in consumers are transparency and control: on the one hand, automatic decisions must be transparent and easy to understand. On the other hand, there must be a system in place which ensures that decisions are made within legal and accepted ethical frameworks.

As such, vzbv is advocating the establishment of an independent audit system that is capable of checking and monitoring socially relevant AI and ADM processes. The system can thus verify that the AI system or ADM process being audited adheres to legal requirements, such as rights to equal and fair treatment, and consumer protection legislation, such as data protection. It could potentially analyse AI's impact on individuals and its broader impact on society. Emphasis should be placed on processes that may have a significant negative influence on consumers and/or that affect large numbers of consumers and society at large.

Urgent action is required. Policy makers must now re-align the legal framework with what is happening in practice. In addition, political decision makers must drive the discourse about ethical principles and engage civil society in it. There are 5 essential elements to this discourse:

1. Enabling decisions to be appealed:
   Consumers should have the right to request the review of a specific decision, including the right to outline why they disagree with a decision, to request an explanation of the decision, and to be able to appeal the decision. This review should be carried out by a human being. The right to appeal should include outcomes from ADM processes that do not rely on

personal data. This right to challenge decisions would, for example, apply to cases in which erroneous, distorted data was used in the decision-making process or to correct an unreasonable decision.

2. Introducing consumer rights to information, a labelling and information requirement and disclosure requirement:
   In order to fulfil the consumer's need for information on societally relevant ADM processes, consumers must be able to obtain information whenever an ADM process has been or is being employed. They must be able to request information on the databases and criteria used in the decision-making process, and the basic logic of how the ADM process itself functions. If the data used in algorithms is incorrect or incomplete, mistakes will be pre-programmed. ADM processes must also be subject to a labelling and disclosure requirement.

3. Aligning liability:
   A lack of transparency in ADM processes coupled with the increasing complexity in determining cause and effect in the case of damage to the consumer, has the potential to force consumers to pick up the tab for any damage caused. Thus, any gaps in contract and liability legislation must be closed.

4. Intensifying research efforts:
   Any research that analyses the potential consequences of ADM processes is still in its infancy. In order to achieve a level of transparency in ADM processes which makes them comprehendible, and to better assess potential individual and societal impacts from the use of ADM processes, research efforts, for example in the field of "explainable AI", must be fostered and intensified.

5. Debating ethical principles and societal consequences:
   The ways in which to deal with societal and ethical consequences of the deployment of ADM processes, such as the loss of human autonomy, must be publicly and broadly debated, and finally negotiated. Outcomes from such a debate could for instance become the tenets of an Ethics by Design approach, in which the creators of ADM processes must include certain legal and ethical principles from the get-go when programming and designing the ADM process.

What success looks like today

The German regulatory authority supervising financial markets, the "Bundesanstalt für Finanzdienstleistungsaufsicht" or "BaFin" in short, already subjects algorithm-based systems used in high-frequency trading on the stock market to strict rules. Algorithmic trading is required to be labelled as such and any changes to the algorithm must be documented. The supervisory authority of the stock exchange has the right to inspect an algorithm at any time and prohibit its use in order to prevent breaches to and eliminate abuse of trading rules.

This example proves that ADM processes and AI can be transparent and that their surveillance is feasible. Considering this success, critics will find arguments against regulation, for example that regulation of ADM processes stalls progress and competition, or that it is simply impossible to put into practice, difficult to wield. Introducing algorithm supervision would assuage consumers' doubts and fears. Critics who block such supervision are standing in the way of ADM processes and AI being more widely accepted. It is evident that without consumer trust, there will be no societal acceptance, and without transparency and a regulatory mechanism, public distrust of ADM processes and AI is here to stay.