



CULLEN

INTERNATIONAL

Protecting the digital consumer

Overview of EU rules

BITS seminar
Brussels
March 15, 2016

Michèle Ledger

Overview

- EU sector specific rights
- EU horizontal rights
- National rights
- Inconsistencies



Personal data

€€€€

Personal data + €€€€



AVMS
(Editorial
responsibility)



ECS
(Conveyance
signals)

Payment services






ISS
(At a distance,
individual request)

Services
(Economic activity)

EU sector specific rights

Sector specific rights

| AVMS Directive  | Telecoms Package  | Electronic Commerce Directive  | Services Directive |
|--|---|--|--|
| Minors specifically protected | USO | Protection when placing an order | Non-discrimination |
| Protection against content containing incitement to hatred based on race, sex, nationality, religion | Number portability | Information to be provided when contracting | Information rights (redress, contact details of associations providing assistance) |
| Protected against certain types of advertising & advertising time limits | Cannot be locked in for more than 2 years Must have access to 12 month contracts too | Right to know that advertisement & who is behind | Information on general contract clauses |
| Minors specifically protected | Affordable tariffs | | Existence of after sales guarantees |
| | Quality of service | | Right to know main features of service + price |
| | + e-privacy | | Quality of service (information on) |

EU horizontal rights

Horizontal rights

| | Consumer Rights Directive | Unfair Commercial Practices Directive | Data Protection Regulation |
|------|---------------------------|---------------------------------------|----------------------------|
| ISS | v | v | v |
| ECS | v | v | v |
| AVMS | v | v | v |



INTERNA

Some rights (fully harmonised)

Ban on misleading and aggressive commercial practices

Black list of unfair commercial practices

Harmonisation of pre-contractual information

Information on online ordering process

Right to withdraw

Ban on additional fees/payments

Delivery within 30 days

National rights



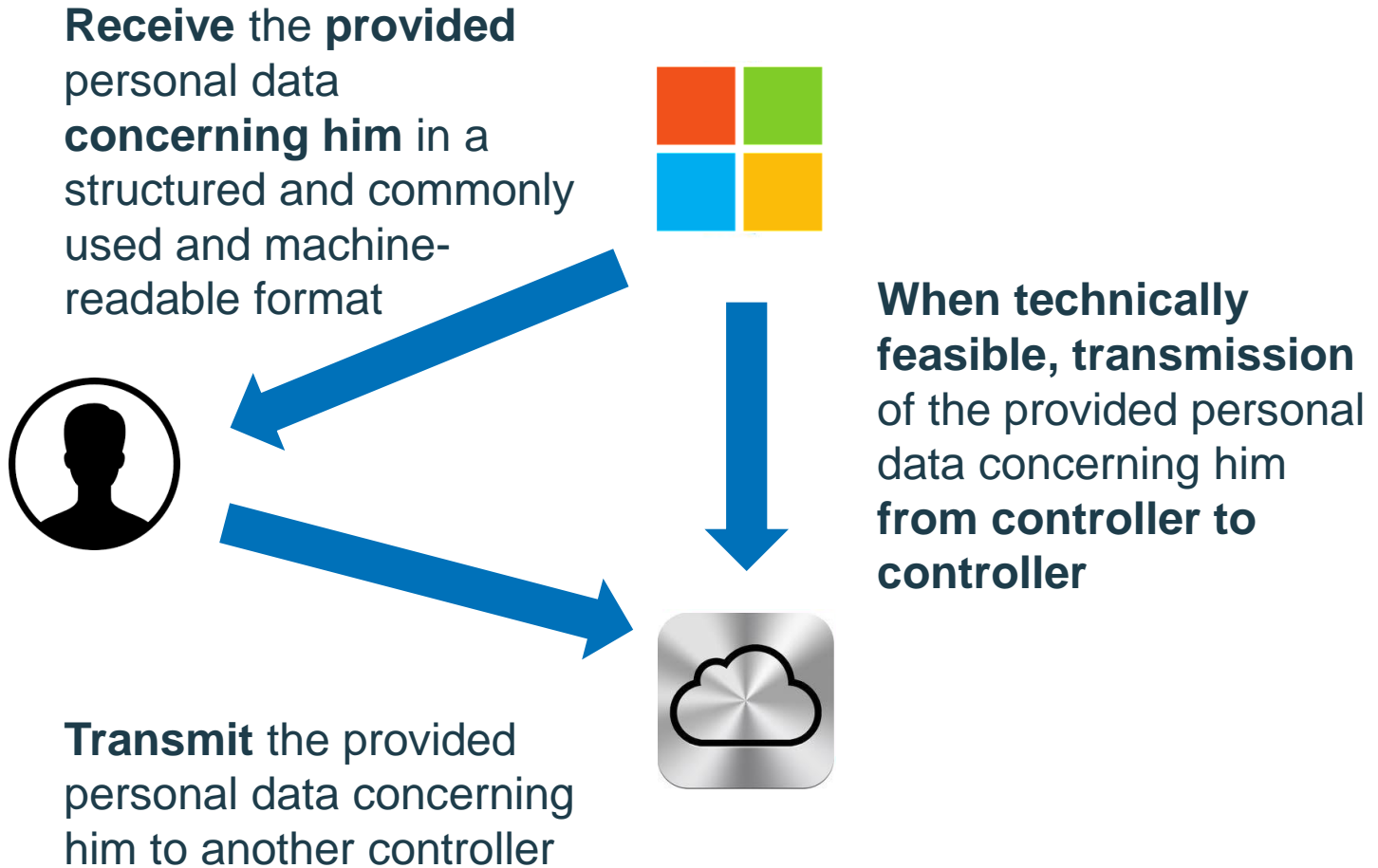
Inconsistencies

Some inconsistent rights

- ✓ **Portability (or right to retrieve)**
- ✓ **Contract duration**

General Data Protection Regulation

Right to data portability



A right to retrieve proposed directive on digital contracts

Technical means to retrieve

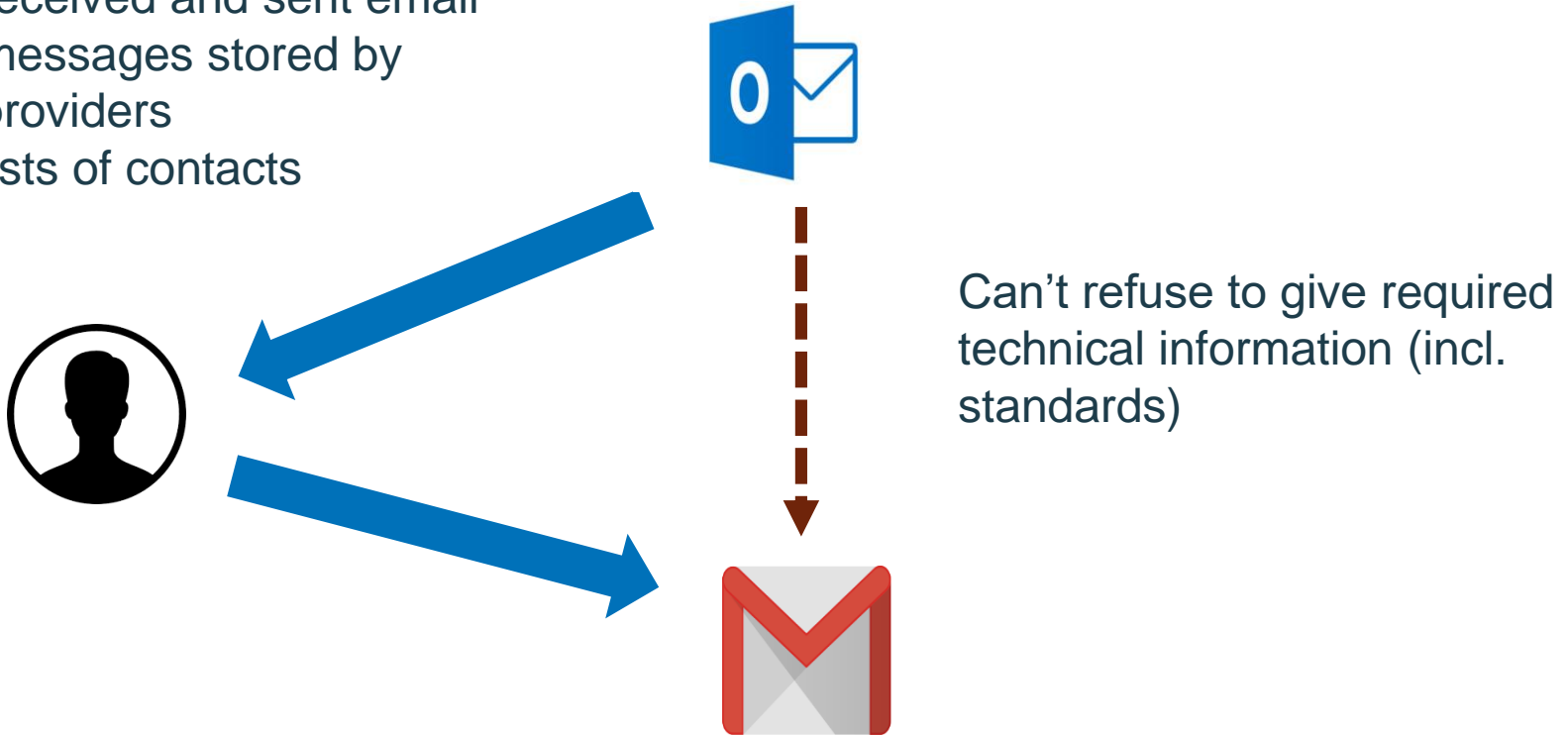
Content provided by the
consumer and any other
data produced/generated
through the consumer's
use of the digital content
**in commonly used
format**



Email portability

Bill on the digital republic (France)

- received and sent email messages stored by providers
- lists of contacts



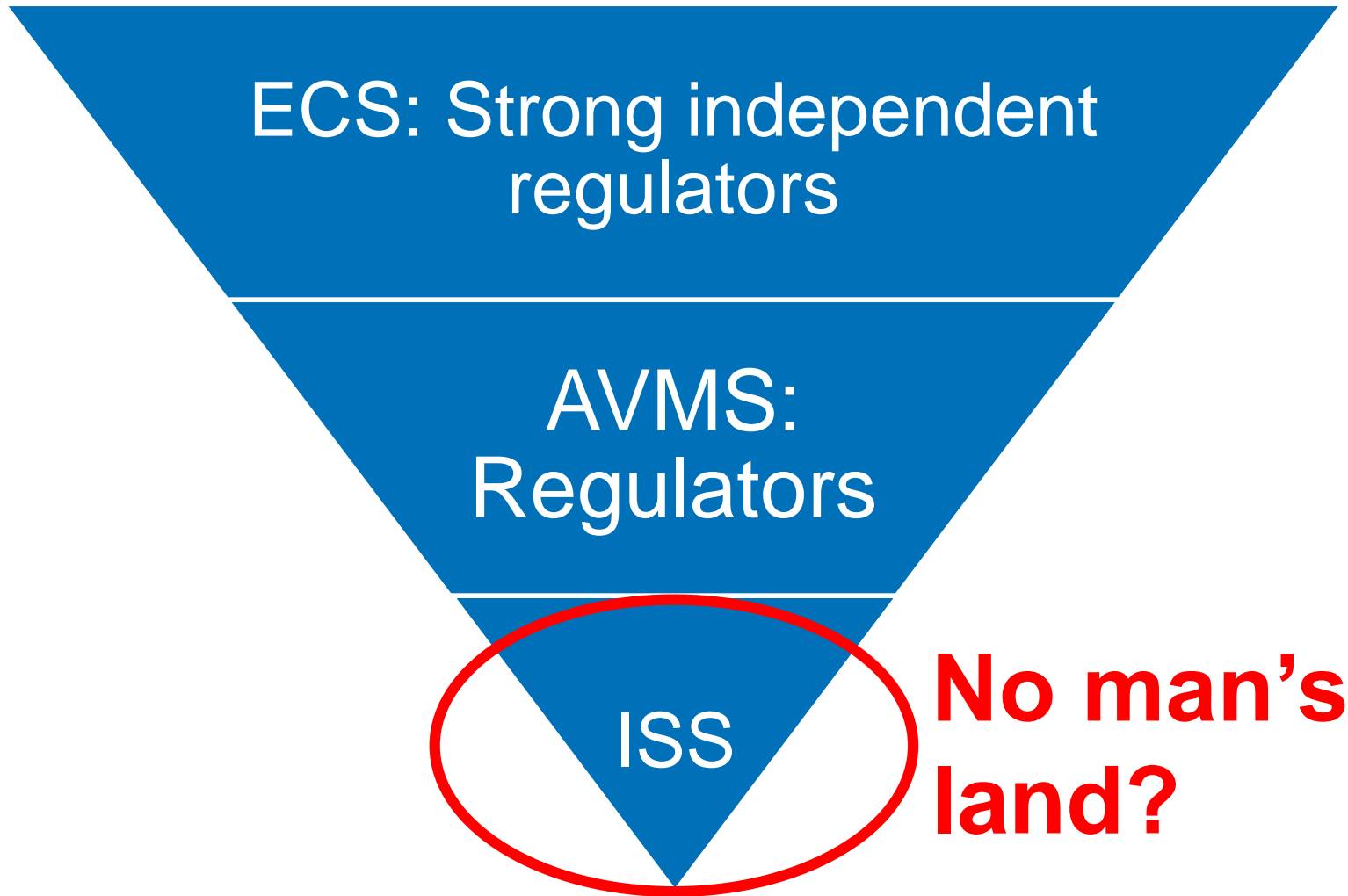
Portability and right to retrieve

| | Beneficiaries | Suppliers | Type of data | Next |
|-------------------------------------|----------------------|--|--|--------------------------------|
| Number portability | Subscribers | ECS | Telephone numbers | Role for NRA |
| Data portability | Data subjects | Data controllers | All personal data provided by them & concerning them | Adoption then guidance by WP29 |
| Digital content | Consumers | Suppliers of digital content but not ECS | Video, audio, chats, tweets, ratings,... | Adoption |
| Email portability (French proposal) | Consumers | Providers of email services | Received and sent emails Contacts | Adoption |

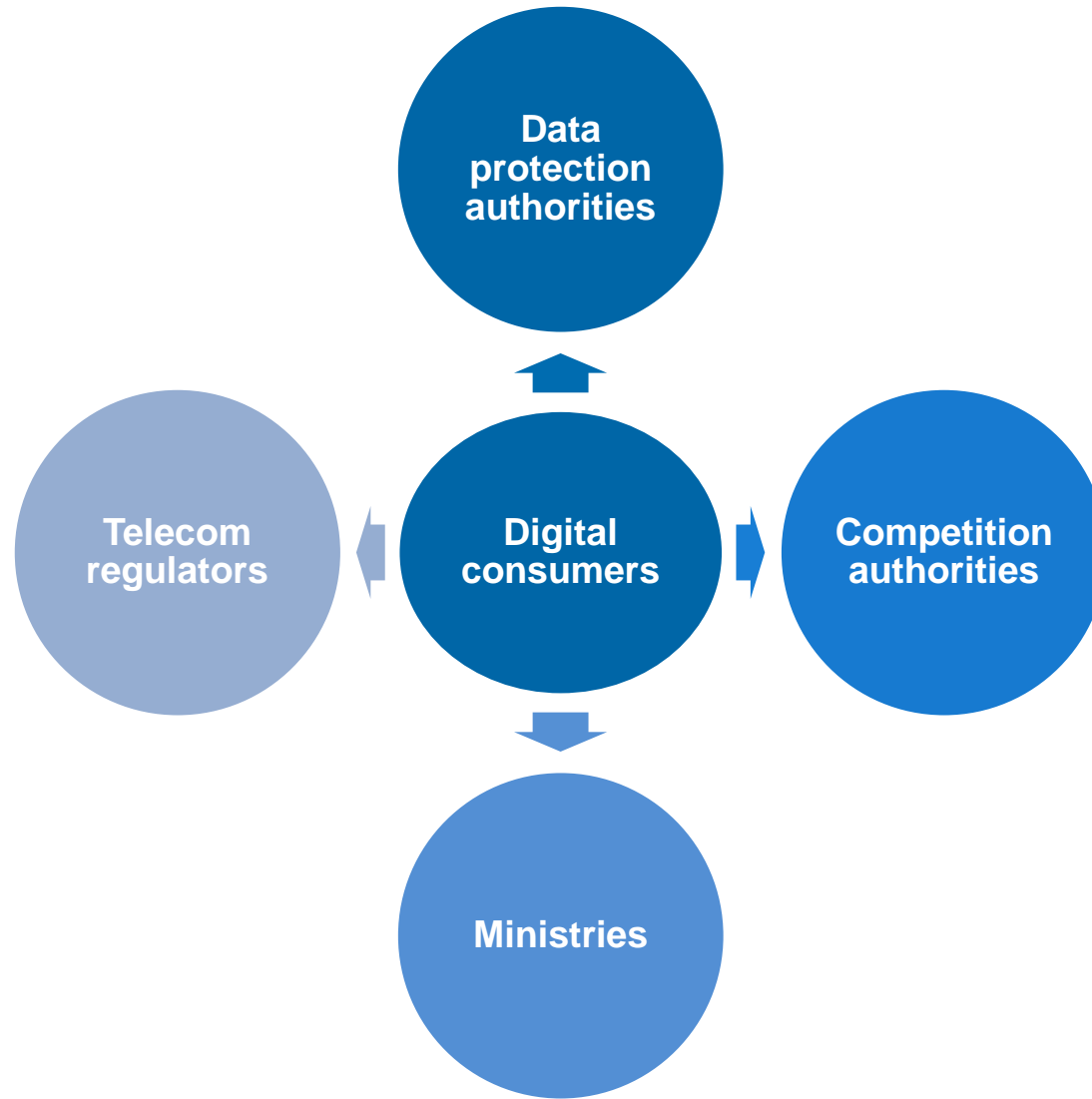
Contract duration

| Type of service | Max contract duration | Source |
|---|--|--|
| ECS | 24 months | Universal Service Directive |
| Digital content contracts (i.e. video, TV, games, cloud, SNS) | 12 months (right for consumer to terminate after 12 months, with 14 day notice) | Proposed directive on certain aspects concerning contracts for the supply of digital content (COM(2015) 634 final) |

Unequal protection and enforcement?



The role of regulators/authorities



Consumer
protection
associations

The time is right to rethink

- REFIT of consumer protection directives
- Review of telecom package
- Review of AVMS
- Review of e-privacy
- Process of adoption of proposed directive on digital content

- Shame about the Ecom Directive