

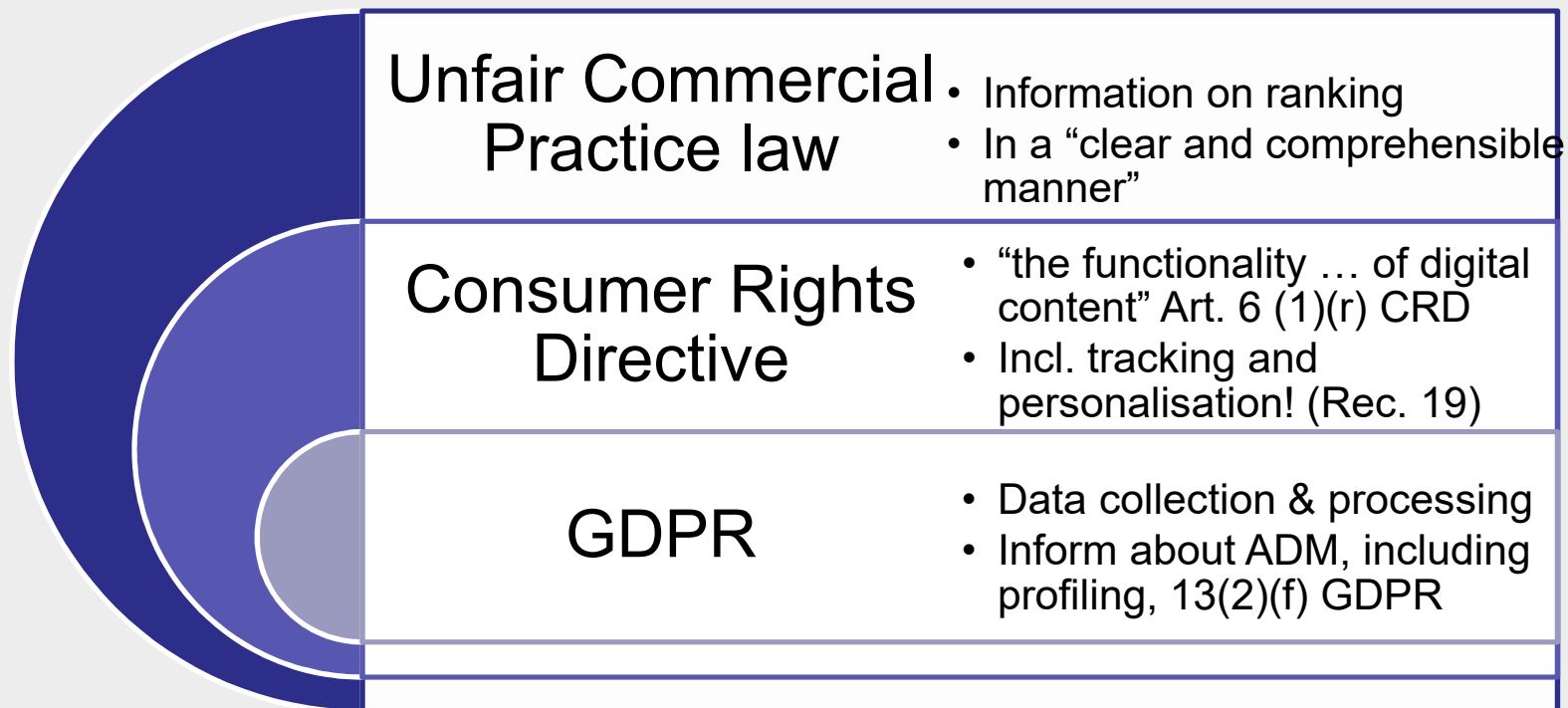


How are consumers informed, and do they have a choice when it comes to online profiling?

Prof. Dr. Natali Helberger

Brussels, 17 February 2020

Several layers of information obligations



Do consumers have a choice?

- Consumers – upon receiving information – must be able to undertake **action** to protect their interests: exercise **choice** and/or her **rights**
- **Choice is restricted**
 - ☐ Cookie-walls & lock-ins
 - ☐ Interconnectedness of services
 - ☐ The digital reality
- **Limited awareness of & intention to use rights**



(Strycharz, Helberger, Ausloos, Data Protection or Data Frustration? Individual perceptions and attitudes towards the GDPR, 2020)

Transparency can only go so far

- Unfair 'pricing' in so-called 'free services'
- Data-driven manipulation
- Dark patterns (deceptive choice architectures and manipulative website design)
- Inclusion, exclusion & situational monopolies



12 Facebook GDPR popup (mobile)

(Forbrukerradet, Deceived by design, 2018)

Institute for Information Law - IViR

Important role for Unfair Commercial Practice Directive (UCPD)

- UCPD could go some way to address concerns of the profiled consumer, **but**:
- Concept **vulnerable consumer** needs re-consideration
 - “particularly vulnerable to the practice or the underlying product because of their mental or physical infirmity, age or credulity”
- More guidance needed on **digital ‘undue influence’**
 - “exploiting a position of power in relation to the consumer”
- Need to update **annex**
 - “Making persistent and unwanted solicitations by *telephone, fax, e-mail* or other remote media” (Annex 1 UCPD)

Accommodating future forms of commercial communication



Conclusion

- Progress in mandating better consumer information
- More work needed to realize real choice & effective rights
- Pressing consumer protection concerns about profiling & targeting cannot be addressed by transparency & choice only
- Unfair commercial practice law potentially important instrument to address concerns but need for more guidance & further modernisation in light of digital practices

Thank you for your attntion

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