



The Consumer Voice in Europe

BEUC's contribution on Cloud Computing for the Public Hearing in the ITRE Committee, European Parliament, 29 May 2013

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BEUC Note on Cloud Computing for the Public Hearing

In the ITRE Committee, European Parliament, 29 May 2013

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BEUC agrees with the European Commission that the developments in cloud technology can and already do provide numerous benefits to consumers.

Consumers increasingly place their data 'in the cloud' and compute with remote services, away from their own hardware devices.

Cloud services allow consumers to **benefit** from:

- Larger storage capacities;
- More convenience
- More ubiquitous access to their preferred data services.
- Cloud computing should/could offer a potential increase in the reliability and security of their data and allow consumers to interact with other people in very innovative ways.

However, cloud computing also can entail **significant risks** for consumers when **putting their personal life into the cloud**:

- Cloud computing services can trigger a number of personal data protection risks, mainly a lack of control over personal data as well as insufficient information with regard to how, where and by whom the data is being processed/sub-process.
- Furthermore, consumers are exposed to potentially unfair contract terms, which could leave consumers without redress for potential damages due to the loss or misuse of their data.

BEUC's Response to the Commission's Strategy:

The European Commission's Cloud Computing Strategy is welcome as an initiative, but it clearly lacks ambition. It does not or not in a satisfactory way address key consumer issues related to the cloud – but consumer trust will not flourish if this will not be done. The strategy fails to provide guidance on the most important consumer issues related to cloud computing.

I will explain that in more detail:

Firstly, we have concerns in particular as regards the Commission Strategy's Key action number 2 on Safe and fair contract terms and

Secondly we have identified a number of missing measures and activities which are necessary if we want to ensure that consumers are confident in using cloud services and thus engage with the Digital Single Market.

These concern data protection, data portability, copyright related issues and net neutrality.

1) Safe and fair contract terms for consumers

Under key action 2, the Commission proposes measures to ensure fair and safe contracts for cloud computing services.

We fully agree with the Commission's analysis which describes the current situation as characterised by a lack of legal certainty and a proliferation of unbalanced contracts which are complex and use extensive disclaimers.

The result is unfair contract terms being imposed on consumers and thus a lack of confidence in digital services and a reluctance to use these services.

To tackle these problems, the Commission proposes several measures, most significantly the use of the proposed regulation on a Common European Sales Law (CESL) and to establish a complementary optional contract law instrument to cover aspects outside the CESL proposal. In addition, model contracts for business-to-consumer (b2c) transactions should be developed with industry.

This maybe sounds good and well thought through, but is actually a very bad solution for European consumers:

The suggested measures are all voluntary: OPTIONAL law which industry can use or avoid according to their preference: the Commission pushes the very concept of consumer protection to the point of absurdity: the EU will protect consumers by relying on industry self-discipline to use fair contract terms according to an optional model – or to continue to exploit the current legal uncertainty and use unfair, non-transparent contracts.

Instead, BEUC calls for a solid regulatory legal framework for consumers, which requires the modernisation of the current consumer law acquis via non-optional legislation. Regarding the CESL proposal, it should be turned into a smaller, non-optional instrument and we ask you to support this approach in the pending discussions.

What we would need in the shorter term for cloud computing is **guidance** on transparency requirements and unfair contract terms to clarify the application of the UCT legislation to digital content contracts, including for cloud computing services.

Special attention needs to be paid to common contract terms which do not comply with the data protection legislation or existing legislation at EU level ensuring the effective application of consumer law such as the Rome I and Brussels I regulations.

2) Data Protection

Consumer confidence is essential to economic recovery. According to a recent Eurobarometer survey (No. 390), a lack of consumer trust is a significant barrier to the development of e-Commerce and the digital economy.

As the Commission's strategy points out, the current EU data protection law review is key in ensuring that people will be able to be confident that their expectations and needs will be honoured by the business they entrust with their personal data when going on the cloud.

Innovation will only be able to be rolled out on a large scale if people trust the way their data is being handled.

If we do not get this piece of legislation right, consumers will not be confident in cloud computing:

A solid and strong framework for personal data protection in Europe will also create a competitive advantage for European companies and SMEs. The right to the protection of personal data should not be eroded or undermined simply because it became easier or more profitable to break it in the digital environment.

I will briefly highlight some key aspects of the pending review on data protection in relation to cloud computing

Transparency: Consumers need to know what will happen with their personal data in the cloud

The Problem is that privacy policies of cloud computing services include complex legal terms which often fail to comply with the principles of transparency and fairness, aiming exclusively at complying with legal requirements rather than informing consumers.

They are often entirely obscure on issues where clear explanations matter the most:

As for instance the question of whether data is shared with or sold to third parties, who these third parties are and what they intend to do with the data, the use of cookies and other data collecting technologies and data retention limits.

BEUC asks you thus to support proposals in the data protection review to improve transparency and information through privacy notices and standardisation of privacy policies.

Applicable law: Consumers need to be confident that they will be protected by European law and not by any off-shore jurisdiction chosen by business to circumvent European standards

Problem: Cloud computing is based on the concept of location independence, which implies information and personal data is transferred across jurisdictions. As a result, it is difficult to determine which law applies to a specific cloud computing service.

BEUC asks you to support that approach that if an operator offers cloud services to European consumers, they must comply with EU law, irrespective of whether the data controller or processor is established in the EU.

Law enforcement: Consumers must be confident that their personal data processed in the cloud will not be given to third country administrations or law enforcement agencies.

Codes of conduct for industry on data protection issues of cloud computing as suggested by the Commission's strategy are good only if they full fill minimum requirements in

terms of monitoring and sanctions, complaint handling and redress for consumers. Endorsement by the Data Protection Authorities is a MUST.

3) Data portability

If we want European cloud market, the mobility of the customer / consumers is key.

Our main point here is that the CC Strategy fails to set out concrete measures that will ensure that B2C services will be compatible, in particular **to avoid lock-in situations** – where consumers cannot switch a provider if they want or need to. This can be due to contractual reasons (long contract period agreed and fees due if not respected by consumers), or technical:

We request that the barriers between providers of similar cloud services (eg: two music streaming platforms, two online storage platforms, etc) are reduced as much as possible to allow for easy switching and mobility between services.

In addition, a consumer-friendly interoperability policy between cloud services providers should include DIRECT transfers of data between competing platforms, if so desired by the consumer in order to avoid that the consumer has to download all his data / content back on his PC and up again to the new cloud.

4) Copyright related issues

Accessibility is the main advantage of cloud computing services for digital content.

Consumers should be able to access content, no matter whether it is music, audiovisual content or books from different devices at the location of their choice and irrespective of their nationality or place of residence.

BUT: The current concept of copyright and copyright management is based on territoriality and thus simply NOT compatible with cloud computing;

Whilst the Commission has well describe the problems that consumers face in that respect and thus acknowledges the need to act here, the European Commission has so far not demonstrated sufficient political willingness to adopt the necessary regulatory actions that would help establish a single market of digital content. I mainly refer here to copyright and to the necessary review of the copyright directive.

Copyright levies

Likewise, the current systems of copyright levies does not correspond to the needs of the digital environment and are outdated with respect to the reality of cloud computing, as was stated by Mr Antonio Vitorino in his final recommendations – a phase out of levies in the digital environment. There needs to be a follow up to the recommendations now.

Net Neutrality

The Cloud Computing Strategy does not say anything about Net Neutrality. Net neutrality means that any piece of (publicly available) content on the Internet should be accessible by anyone, at any time, from any point of the network and using any device.

Consumers must be able to access any cloud services of their choice using any telecom operators' (they one that they use) access to Internet services. This means without discrimination between or against certain cloud computing services.

An analysis of the relationship between Cloud Computing and Net Neutrality is necessary.

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