



The Consumer Voice in Europe

BEUC contribution to the European Commission's Expert Group on Cloud Computing Contracts

Unfair Contract Terms in Cloud Computing Service Contracts Discussion Paper

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Disclaimer

This paper was submitted by BEUC as a contribution to the European Commission's Expert Group on Cloud Computing Contracts for the meeting of the expert group on 6 March 2014.

It describes a number of typical problematic clauses found in B2C contracts for the supply of cloud-based services which could be considered unfair under existing legislation including consumer protection, data protection and copyright law.

Please note that this not a BEUC policy position paper but an informal working document for the discussion of the Expert Group.

I. Structure of the paper

In this discussion paper we refer to the question of unfair contract terms in contracts for the supply of cloud computing services. It follows a two-fold approach, taking into account the current EU legislation, namely the Unfair Contract Terms Directive¹.

- Firstly, we briefly refer to unfairness by lack of transparency and what the legal consequences might be of a term not provided in plain, intelligible language.
- Secondly, we list and discuss contract terms that could be considered unfair under existing legislation including consumer law and, where applicable, data protection and copyright rules. Some of these clauses will be discussed in more detail in the forthcoming meetings and/or by the Sub-Group on Data Protection.

In the annex to this paper we provide relevant examples.

Note: This paper is mainly based on the B2C unfair terms legislation. However, we would be interested to hear from the experts if the discussions on the relevant topics are also important for cloud computing contracts in which one of the parties is a SME.

II. Unfairness by Lack of Transparency

The Unfair Contract Terms Directive has a broad scope and applies to all consumer contracts for the supply of goods and services. Furthermore, its application is irrespective of whether the consumer paid a monetary price or not as a counter performance. Thus, contracts for the supply of 'free' cloud computing services are covered as well.

The Directive establishes that the contract terms shall be drafted in "plain, intelligible language" (article 5) and that the consumer "should actually be given an opportunity to examine all the terms" (whereas 18). Although there is no practical guidance in the Directive about the application of these requirements, it is commonly understood that the contract terms shall be presented in a way that consumers can comprehend the implications of entering into the contract.

However, evidence shows that consumers, for different reasons, very often do not read or understand the terms and conditions². This problem is particularly relevant in the digital environment, including contracts for the supply of cloud computing services, due to information overload and the way information is designed and presented³ in the form of contract terms.

¹ Directive 93/13/EEC of 5 April 1993;

² See for example the recent behavioural economic study commissioned by DG JUSTICE regarding the information notice of the CESL proposal.

³ In a study commissioned by BEUC, Professor Natalie Helberger analysed this problematic and presented different policy recommendations taking into account behavioural economic findings regarding consumer perception of information.

We will not make reference here to the form requirements since this issue has been discussed in the previous meeting. We would nevertheless like to make some remarks concerning the legal consequences of terms which are not presented to the consumer in “plain, intelligible language”.

In this regard, the Unfair Contract Terms Directive does not indicate what would be the fate of such clauses and whether the consumer is bound by them. Thus, it is the national law which would come into play to define the legal consequences of a contract term that is not “transparent”. However, only few legal systems have assigned a specific effect e.g. declaration of unfairness and non-binding character of the concerned term on the consumer (e.g. Austria, Germany and Latvia).

The Draft Common Frame of Reference (see II - 9:402) deals with this issue in a satisfactory manner by declaring that a term infringing the transparency requirements shall not be binding on the consumer. Similarly, the Commission’s proposal for a Common European Sales Law indicates that terms not negotiated by an individual must be brought to the consumer’s attention, otherwise the trader would not be able to invoke them against the consumer (see article 70). In the case of the CESL proposal, this provision would apply only to those contracts concluded under the second regime⁴.

We believe this question should be dealt with by an eventual revision of the Directive. In the short-term it could be also addressed in guidelines for the implementation of the unfair contract terms legislation, but this solution would be insufficient to fill the legal lacunae.

Q: What elements should be taken into account to assess unfairness by lack of transparency?

III. Typical Unfair Contract Terms of Cloud Computing Service Contracts

Below we provide a list of common clauses found in contracts for the supply of cloud computing services. However, these are not exclusive to these types of contracts and some of them can be found in other contracts concluded online, such as for the supply of digital content products or other services which are not cloud-based (e.g. air transport, concert tickets, car hiring, etc).

1. Lack of proportionality between the rights and obligations of the parties

Some clauses established consumer obligations not proportionate to those of the trader. For example, social networks usually require consumers to keep contact information updated or else do not allow the consumer to transfer the account to

⁴ This is a fundamental governance issue of the proposal that BEUC and consumer groups have been questioning since its adoption. For a policy position please refer to: BEUC preliminary position paper on the European Commission’s Common European Sales Law Proposal (Ref.: X/2012/014 - 21/03/12) available at www.beuc.eu

other parties without written permission (see annex, example 1-a). Thus, it would not be difficult to see the consumer in breach of contract for not updating his personal information.

Other examples of a lack of proportionality include **special conditions or limitations on consumers exercising their rights:**

In some contracts, in order to exercise any kind of right, by way of example but not limited to breach of contract, damages, annulment/voidance/cancellation of contract, etc., the full payment of the amount due in accordance with the provisions of the same contract, shall be carried out.

Finally, in some cases, specific limitation periods for the exercise of any action [act] or objection [exception] (usually 1 or 2 years from the time of the event which causes the limitation occurs), are set and defined.

Q. These clauses could be considered unfair under the general unfairness test of the Unfair Contract Terms Directive. Do you think there are elements specific to cloud computing services that should be taken into account to establish the lack of balance in the parties' rights and obligations?

Would the assessment of these elements be different in paid and 'free' cloud computing contracts?

2. Implied agreement (browse-wrap licences)

Some contracts include clauses that imply a tacit agreement on the terms and conditions upon use of the service (See in annex, example 2-a). Browse-wrap agreements are *per se* not prohibited under EU consumer law. However, it is necessary to consider that in the digital environment, when mere use implies the collection and processing of personal data, such agreements might not comply with the requirements of data protection legislation.

Additionally, the acceptance of the terms and conditions by the mere use of the website might not allow consumers to become aware of the legal consequences of entering into a binding agreement. This is unfair under the (Annex I point i) of the Unfair Contract terms Directive:

- (i) irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract;

Q: To what extent suppliers of cloud computing services should obtain, for the mere access to the website, the explicit consent of consumers in order to ensure that they are aware of the contractual conditions (if the accessibility implies the conclusion of a contract)?

Would it be necessary to distinguish between the agreement on the contract terms and the agreement on the collecting and processing of personal data?

3. Right to suspend the Service

In the majority of the contracts examined, the supplier is entitled by specific clauses to suspend services, often at its sole discretion. In some contracts, specific cases where the right of suspension may be implemented are provided. The most common case involves delayed payment of service fees. There are often other cases. Sometimes contract terms provide that non-compliance by the customer with any of the provisions of the general requirements of the contract entitle the supplier to suspend the service.

In some cases, contractual terms allow the supplier to suspend the service without a specific cause/reason/motivation (in this regard see the contract drafted by stating that Dropbox: “*we reserve the right to suspend or end the Services at any time, with or without cause, and with or without notice*”). It is also pointed out that often the right to suspend does not require a written notice or a notice of compliance (notice to comply).

Q. Would it be appropriate that the contract provides specific cases in which the supplier is entitled to suspend the services that are the subject of the contract? Should these cases differentiate between contracts in which the contracting party is a consumer or a SME?

Should we envisage the need that the suspension of the services is preceded by a notice to user (that, in the specific cases of delay or failure in payments, gives to user a time limit within which he may fulfill)?

4. Hidden payment obligation

In order to access trial versions of cloud computing services, consumers might be asked to provide their credit card details. These clauses indicate that after a certain period of time and upon expiration of the trial period, the credit card of the consumer will be charged for the service to be supplied after that date (e.g. Spotify claims “*For some trials, we will require you to provide your payment details to start the trial. At the end of such Trials, we may automatically start to charge you for the Premium Service on the first day following the end of the Trial, on a recurring monthly basis. By providing your payment details in conjunction with the Trial, you agree with this charge. If you do not want this charge, you must change your Subscription to the Free Service through your Spotify account’s settings before the end of the Trial*”, [see annex, example 4]).

These clauses would be incompatible with the new requirements of the Consumer Rights Directive for payments in distance contracts, unless they are accompanied by the ‘confirmation button’ of article 8(2) of the Directive⁵.

⁵ “The trader shall ensure that the consumer, when placing his order, explicitly acknowledges that the order implies an obligation to pay. If placing an order entails activating a button or a similar function, the button or similar function shall be labeled in an easily legible manner only with the words ‘order with

Q. How these clauses should incorporate the CRD requirements? For example, should the clause indicate that the consumer's relevant means of payment (e.g. credit, debit card) will be charged only after he or she explicitly agrees so at the end of the trial period?

5. Authoritative language version

Where there are divergences between two versions of the terms and conditions, the version with the language in which the contract terms were originally drafted are considered to be the authoritative one. This is the case for example with Twitter and Tuenti general conditions (see annex, examples 5a and b respectively).

These types of clauses might contravene:

- National legislation establishing language requirements. This is the case in France where the Grand Instance Court of Paris in a recent case stated that clauses giving prominence to other language versions but French are illegal⁶.
- The principle of *pro consumatore* interpretation of article 5 of the Unfair Contract Terms Directive:
"Where there is doubt about the meaning of a term, the interpretation most favourable to the consumer shall prevail."
 This could happen, for example, if the interpretation of the English version (designated as the authoritative one) is against the more favourable interpretation of the Spanish, French (...) version to the consumer.

Q. Should the authoritative language version be the one used for the conclusion of the contract taking into account the pro-consumatore interpretation principle of the unfair contract terms directive?

Would this situation be different in a contract in which one party is a SME?

6. Mandatory arbitration clauses

Consumers are asked to apply to arbitration proceedings in foreign countries to dispute performance of the service (i.e. the French and English version of Spotify oblige the consumer to apply a "mandatory binding arbitration" procedure in the US,

obligation to pay' or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the trader. If the trader has not complied with this subparagraph, the consumer shall not be bound by the contract or order." (Article 8 (2) second paragraph).

⁶ TGI, 31 janvier 2012, N°RG:09/08186: « La clause d'un contrat de transport aérien qui stipule que "le document ci-après est une traduction des conditions de transport rédigées originellement en langue anglaise. Cette traduction a pour objectif d'aider les passagers de langue française. Cependant, en cas de divergence, seule la version anglaise fait foi" est illicite en ce qu'elle indique que la version anglaise prévaudra sur la traduction française en cas de divergence, dès lors que l'article 2 de la loi du 4 août 1994 dispose que "dans la désignation, l'offre, la présentation, le mode d'emploi ou d'utilisation, la description de l'étendue et des conditions de garantie d'un bien, d'un produit ou d'un service, ainsi que dans les factures et quittances, l'emploi de la langue française est obligatoire.»

governed by the “US Federal Arbitration Act”). These clauses are very common in cloud computing service contracts where providers are located in the US.

These clauses are manifestly against Annex I point q) of the Unfair Contract Terms Directive:

(q) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, unduly restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with another party to the contract.

Q. is it possible to identify basic elements that should be included in arbitration clauses of cloud computing service contracts (e.g. distinction between internal complain handling and independent ADR; non-mandatory and / or binding nature of the arbitration settlement?

7. Limitations to the consumer ownership of the content supplied to the cloud

Some cloud computing service providers include in their contract terms the possibility to use the content supplied by the consumer at their discretion, including the deletion of the consumer files (e.g. Dropbox reserves the right to delete the consumer's content if the account has been inactive for 90 days or if the premium subscription has expired and the storage space must consequentially be reduced to the level of a free account, (see annex, example 7-a)).

Particularly with social networks cloud service contracts, users agree to grant a global licence for all content supplied to the cloud (e.g. on Facebook: *"For content that is covered by intellectual property rights, like photos and videos (IP content), you specifically give us the following permission, subject to your privacy and application settings: you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook (IP License). This IP License ends when you delete your IP content or your account unless your content has been shared with others, and they have not deleted it."* See annex, example 7-b).

The global transmission of IP rights over future works is forbidden in some Member States like France⁷. Furthermore, French legislation establishes that any assignment of IP rights must define the scope and destination of the rights, concerning the place and timeframe for the use of the works⁸. These requirements vary from country to country⁹ therefore it is necessary to see in each Member State whether these types of clauses are compatible with the relevant national copyright

⁷ *La cession globale des oeuvres futures est nulle* (article 131-1, Code de la Propriété Intellectuelle)

⁸ *La transmission des droits de l'auteur est subordonnée à la condition que chacun des droits cédés fasse l'objet d'une mention distincte dans l'acte de cession et que le domaine d'exploitation des droits cédés soit délimité quant à son étendue et à sa destination, quant au lieu et quant à la durée* (article 131-3, Code de la Propriété Intellectuelle).

⁹ For an overview of the national provision see L. Guibault and B. Hugenholtz (2012), Study on the conditions applicable to contracts relating to intellectual property in the European Union.

legislation. Due to the typical imbalance between the powers of the two parties in such circumstances, the unfairness control of such contract terms is also a crucial aspect.

Q. Is it justified to request the consumer's agreement to grant a licence over the content he/she supplied and that is protected under copyright law? To what extent this would be necessary to develop innovative cloud-based products?

If the answer to the first question is possible, under what circumstances that licence would be necessary? Is it necessary to make a distinction between paid and 'free' services?

8. Implied consent for the collection and processing of personal data

The consent of consumers is one of the legitimate grounds for the collection and transfer of their personal information. For consent to be valid, it needs to be specific, informed and free. Consent needs to be given in an unambiguous way, which has been interpreted by the Article 29 Data Protection Working Party as requiring an active behaviour from the consumer. The Article 29 Data Protection Working Party clarified the conditions for the consent to be valid and indicated that the mere passive behaviour does not suffice¹⁰.

Consumers need to be specifically informed about the data that will be collected, the purposes and any third parties to whom the data might be transferred. However, the privacy terms of many cloud computing service contracts are not transparent enough and do not disclose the necessary information to the users; they go as far as including vague terms to refer to possible third parties to whom the data might be transferred without further clarification.

Consumers have no choice but to agree to such terms; otherwise they will not be able to use the service. It needs to be examined whether such terms can be considered "irrevocably binding" on the consumer to terms they had no real opportunity of becoming acquainted with before the conclusion of the contract (Annex I of the Unfair Contract Terms Directive). For example, when Google changed its privacy policy in March 2012, the explicit consent of the consumer was not asked and consumers did not have the reasonable possibility to opt-out from the new practices. Therefore, it could be considered that the consumer is irrevocably bound by the new policy.

Q. The framework of Directive 95/46/EC, national legislation and the interpretation of the Article 29 Working Party defines when the consent is valid. However, if the consumer has no choice but to accept, can this consent be considered 'free'?

Topics that will be covered by upcoming meeting but we decided to include them nevertheless in case time allows further discussion:

¹⁰ Article 29 Data Protection Working Party, Opinion 15/2011 on the definition of consent.

9. Processing of personal data for secondary non-compatible purposes

Personal data must be collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes.

This requirement can be problematic when internet companies such as Facebook include terms in their privacy policy or terms of use which hold that the company may gather, process and sell all personal information about a data subject that he has shared, shares or will share anywhere on the internet. This requirement might also be problematic with regard to the placing of cookies with the aim of behavioural targeting. If obtained, the data subject's consent qualifies for the infinite gathering of personal data about them as most cookies have a termination date of ten years or more. Furthermore, the gathered personal data must be adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed (see annex, example 9). This again may be relevant in case of overly broad contractual terms or unspecified use of cookies.

Additionally, the Working Party 29 issues an opinion on purpose limitation (WP 203, 03/2013) that discusses criteria for non-compatibility.

**Q. Taking into account the requirements of Directive 95/46/EC, to what extend these types of clauses should be considered unfair?
Do you think that this type of processing of personal data is necessary to the development of innovative cloud services?**

10. Unilateral change of terms and conditions

The supplier reserves the right to change unilaterally the terms and conditions or the service performance. Furthermore, the continuous use of the service implies the acceptance of such changes. (e.g. Spotify: *"Occasionally we may, in our discretion, make changes to the Spotify Service and Agreements. When we make changes to the agreements that we consider material, we'll notify you through the service. By continuing to use the Service after those changes are made, you are expressing and acknowledging your acceptance to the changes"*, see annex, example 10-a).

Consumers are usually asked to regularly check the terms and conditions in order to be informed of the relevant changes (e.g. Google terms *"We may modify these terms or any additional terms that apply to a Service to, for example, reflect changes to the law or changes to our Services. You should look at the terms regularly. We'll post notice of modifications to these terms on this page. We'll post notice of modified additional terms in the applicable Service. Changes will not apply retroactively and will become effective no sooner than fourteen days after they are posted. However, changes addressing new functions for a Service or changes made for legal reasons will be effective immediately. If you do not agree to the modified terms for a Service, you should discontinue your use of that Service."*). This clause

was recently declared unfair by the Berlin Regional Court¹¹ after a lawsuit introduced by the German Consumer Association VZBV.

Particularly in the digital environment, changes in the service and the agreements might be necessary to implement new technologies or innovate in the service. However, if those changes involve a negative impact on the performance of the service (i.e. reduction of storage capacity, or number of reproductions of the audiovisual content supplied on-demand), the consumer should be given the possibility to terminate the contract at no cost.

The Unfair Contract Terms Directive establishes that these types of clauses shall specify a valid reason for the contractual modification [Annex I points j) and k)].

Some national legislators due to the minimum harmonisation character of the Directive have provided stricter provisions. For example, in the Austrian Consumer Protection Act (Section 6, paragraph 1, nr 5) suppliers can only unilaterally increase the price of the service under certain conditions, namely: in the event of a price increase, there has to be the possibility of a price decrease; the increase must be based on objective parameters, defined in the contract, and the price change shall be independent from the suppliers' will (i.e. it should not be up to the supplier to decide that there is a reason to increase the price).

This issue will be discussed by Roberto Yanguaz Gomez

11. Limitation of liability

Most of cloud-based services are provided in their "state" and as "available". Moreover, through contractual clauses suppliers can claim that they are not responsible for any problems with the access or performance of the service.

National legal systems generally include contract law remedies in case a service is not performed in conformity with the contract; however the mandatory nature of the national provisions is not always clear. This is partially due to the lack of EU harmonisation in the area of consumer service contracts.

Consequently, service suppliers could include contract terms excluding such liability in some Member States (e.g. Google Drive: *"Some Jurisdictions provide for certain warranties, like the implied warranty of merchantability, fitness for a particular purpose and non-infringement. To the extent permitted by law, we exclude all warranties"*, see annex, example 11-a)).

Additionally, most cloud providers include a list of issues for which they are not accountable. Some of them are specifically linked to external factors such as malfunctioning of the internet connection (e.g. LinkedIn: *"LinkedIn disclaims all liability for any malfunctioning, impossibility of access, or poor use conditions of the LinkedIn site due to inappropriate equipment, disturbances related to internet service providers, to the saturation of the internet network, and for any other reason"* see annex, example 11-b)), while others do not make any distinction between a lack of conformity caused by internal or external factors (e.g. Tuenti:

¹¹ Judgment of the Berlin Regional Court ruled on November 19, 2013 - Case No. 15 O 402/12, not yet final and binding.

"under no circumstances will Tuenti be responsible for (...)" see annex, example 11-c))

The scope of liability clauses seems to be also problematic. They usually go beyond the service performance and include any type of damages in the user's properties (e.g. Twitter: *"The Twitter Entities make no warranty and disclaim all responsibility and liability for: ... (ii) any harm to your computer system, loss of data, or other harm that results from your access to or use of the Service or any Content."* see annex, example 11-f)).

These types of clauses are considered unfair under the Annex I point b) of the Unfair Contract terms Directive:

(b) inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the seller or supplier or another party in the event of total or partial non-performance or inadequate performance by the seller or supplier of any of the contractual obligations, including the option of offsetting a debt owed to the seller or supplier against any claim which the consumer may have against him;

Q. Under what circumstances would it be justified to (legally) allow an exoneration of liability of the supplier of cloud computing services (e.g. due to the influence of external factors)?

12. Contractual limitation of any compensation due by the supplier

Some companies include clauses limiting the quantitative extension of their liability (if any!). This is the case for example of Google Drive (*"to the extent permitted by the law, the total liability of Google and its suppliers and distributors for any claims under these terms, included for any implied warranties, is limited to the amount that you paid us to use the service (or, if we choose, to supplying you with the service again)"*, see annex, example 3-a)); LinkedIn (*"five times the most recent monthly fee that you paid for a Premium Service, if any, or US \$100, whichever amount is greater"*, see annex, example 3-b)) and Twitter (*"in no event shall the aggregate liability of Twitter Entities exceed the greater of one hundred US Dollars (US \$100.00) or the amount you paid twitter, if any, in the past six months for the services giving rise to the claim"*, see annex, example 3-d)).

Other companies like Dropbox introduce a threshold but clarify that in some American states (sic) such limitations are not allowed and therefore do not apply. (*"\$20 of the amounts paid by you to Dropbox for the past three months of the services in question. Some states do not allow the types of limitations in this paragraph, so they might not apply to you"*, see annex, example 12-c))

Under EU law, these clauses could be considered unfair under the Annex I points b) and q) of the Unfair Contract Terms Directive:

(b) inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the seller or supplier or another party in the event of total or partial non-performance or inadequate performance by the seller or supplier of any of the contractual obligations, including the option of offsetting a debt owed to the seller or supplier against any claim which the consumer may have against him;

(q) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, unduly restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with another party to the contract.

Q. How these clauses could be re-written in order to comply with the specific provisions of the unfair contract terms directive? Should we make a difference between paid and 'free' cloud service contracts?

13. Assignment and subcontracting

Contracts often contain clauses entitling the supplier to sell/transfer/assign the entire contract or certain rights or obligations/duties arising therefrom, at its sole discretion and without the consent and/or notice to the user. The latter on the other hand may never assign the contract. In the event that it can do it, the written consent of the supplier must exist (for example, Codero's Terms of Service include: *"this Agreement may not be assigned by you without our express written consent. Codero may assign any or all of its rights and obligations to others at any time"*). Some contracts also provide a right to the supplier to change subcontractors at its sole discretion.

Q. If the supplier assigns the contract or some rights or obligations deriving from it, it would be envisage the obligation for the supplier to inform the user, giving him the possibility to terminate the contract?

14. Jurisdiction and applicable law

Related to the previous point, standards terms and conditions of cloud services include jurisdiction and applicable law clauses. Such clauses usually designate the courts and the law of the country of establishment of the cloud service provider, generally the US (see annex, examples 14).

The European legal framework on international Law, namely Brussels I¹² and Rome I¹³ regulations contain specific rules on jurisdiction and applicable law in consumer contracts, which come into play provided that certain conditions apply i.e. targeted activity of the provider towards the consumer.

¹² Regulation (EC) 44/2001 of 22 December 2000.

¹³ Regulation (EC) 593/2008 of 17 June 2008.

It would be important for the Expert Group to analyse how these provisions apply to contracts for the supply of cloud computing services in order to develop a model clause to inform consumers about the possibility to apply to the courts of their domiciles and that the higher protection granted by the law of their habitual residence will apply - provided that certain conditions apply.

Q. What minimum elements should be included in jurisdiction and applicable law clauses? Would it be sufficient a disclaimer claiming that the consumer may be protected under his own legislation or it is necessary to be more specific?

15. Transfer of consumers' personal data in corporate mergers

In case of fusion, a merge, transfer or ceding of corporate rights between companies, the user's personal data is automatically transferred without obtaining the specific consumer's consent (e.g. Twitter: *"In the event that Twitter is involved in a bankruptcy, merger, acquisition, reorganization or sale of assets, your information may be sold or transferred as part of that transaction. The promises in this Privacy Policy will apply to your information as transferred to the new entity"*, see annex, example 8-a). Basically, these types of clauses insist on the transfer of personal data to commercial societies without the consumer's specific consent, including the risk of use of personal data for different purposes than the ones initially collected and/or the transfer of data to third country jurisdictions which do not provide for an adequate level of protection.

Other companies who also foresaw this possibility, also claim that consumers will be notified of this situation and will be given with "choices" that consumer might have regarding their personal information. (i.e. Dropbox disclaims: *"If we are involved in a merger, acquisition, or sale of all or a portion of our assets, your information may be transferred as a part of that transaction, but we will notify you (for example, via email and and/or a prominent notice on our website) of any change in control or use of your Personal Information or Files, or if either become subject to a different Privacy Policy. We will also notify you of choices you might have regarding the information"* see annex, example 15-b). However, the consumer is most often given the choice to either accept the new rules or stop using the specific services. It must be ensured that such "choices" include, for example, the possibility to withdraw from the contract at no cost.

Q. Despite the fact that in any event, the cloud provider has to comply with its obligations according to Articles 10, 11 and 14 of Directive 95/46/EC, do you think that in these situations the consumer should be given with the possibility to withdraw from the contract?

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