

International: Cloud computing guide should become 'minimum benchmark'

By Asta Puraite



The International Working Group on Data Protection in Telecommunications issued - on 24 April 2012 - a 'Working Paper on Cloud Computing - Privacy and data protection issues' (the Guide), which specifically examines the processing of personal data in cloud computing environments. 'There is still uncertainty in relation to cloud computing, especially when it concerns privacy, data protection and other legal issues', reads the Guide. 'The recommendations in this paper are intended to help reduce that uncertainty'. In particular, the Guide recommends implementing data

protection standards within the cloud, privacy impact and risk assessments, greater transparency, security, accountability and independent audit provisions.

"Further support may be needed, for example regulated sectors like the financial services should seek reinforcement of such guidelines from the FSA so cloud providers realise that such guidelines become not just best practice but the minimum benchmark, then the cloud industry could see more take-up of cloud in regulated sectors", Vinod Bange, Partner in the IT, Telecoms and Competition Group at Taylor Wessing LLP, told DataGuidance. "The 'independent audit' guidelines are very welcome indeed, but again, we would need regulators backing this so there is clarity for cloud customers that they can rely on such audit status."

The Guide recommends that further efforts be put into research, third party certification, standardisation, Privacy by Design technologies and other related schemes in order to achieve 'the desired level of trust in cloud computing'. Legislators should reassess the adequacy of existing legal frameworks to allow cross-border transfer of data, and consider additional necessary privacy safeguards.

"The guide splits and apportions the challenges amongst the various parties and it pulls no punches; topical issues are clearly put on the table", said Bange. "For example, one of those issues is around greater transparencies into the specifications and cloud supply chain - this is representative of the concern shared by many customers who feel that a lack of transparency hinders their take-up of cloud services. [W]ith greater transparency and more focus on sound governance, the cloud provider can help the data controller achieve clarity on where the cloud data protection benchmark actually lies. If the parties adopt the spirit of the guidelines into their negotiations and are prepared to genuinely document this into the agreements, then we could say that the guidelines would be a success. That may, of course, be asking too much too soon."

The Guide also recommends best practices in terms of location audit trails, technical measures, immediate overwriting and encryption. The Guide provides specific guidelines for controllers and service providers.

Jim Runsten, Partner and Head of the IT Sector Group at Bird & Bird, said: "My initial thoughts are that the recommendations are rather conservative and preserve the current regime rather than being forward looking and assisting the future development of cloud computing services. I believe that many of the recommendations go too far and may be preserving the existing [data protection] regime. I do believe [the

Guide] is comprehensive enough but not practical, as cloud computing services, especially SMEs, will by their very nature have to be built on standard services, terms & conditions, and as such, cannot be delivered cost efficiently with all the requirements and restrictions built in the recommendations. The cloud computing services will not be provided as cost-efficiently as necessary so there is a risk that the evolving paradigm will not evolve as quickly as it otherwise could have. Many SMEs will not have the capability, funds or competence to make all the assessments that is required according to the recommendations."

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