

Microsoft Cloud Computing Research Centre

1st Annual Symposium, Cambridge 2014

Policy, Legal and Regulatory Implications of an EU-Only Cloud

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Calls for “EU-only cloud”, post-Snowden

August 2013

- Deutsche Telekom: "E-mail made in Germany"
- Atos: "Schengen system" for data

October 2013

- Deutsche Telekom: German-only routing aim

November 2013

- German Interior Minister: legal framework for hindering interception

February 2014

- Merkel / Hollande: build up European communications network



'An EU-only Cloud?' – WHY?

- Policy objectives – express vs undeclared
- Restrict foreign LEA access / facilitate domestic LEA access?
- Promote EU infrastructure (economic protectionism / state aid)?
- Protect fundamental rights (especially privacy / data protection)?
- Encourage EU cloud use & single EU cloud market?
- Negotiating stance?

'An EU-only Cloud?' = WHAT?

CLOUD + EU + ONLY

“Cloud”

“CLOUD”

- What service model: IaaS / PaaS / SaaS?
- Even if “EU-only” IaaS / PaaS is possible...
 - Many popular **SaaS** services are US-based / controlled
 - **websites** (including EU) may use US IaaS / PaaS
- Ban EEA users from using them?
 - Impractical (eg. Facebook, Twitter)
 - Trade law issues
 - Many online sites collect info, cloud-based or not

“EU”

“EU”

Several possibilities:

1. Use only EEA providers?
2. Confine physical location to the EEA?
3. Process data only in accordance with EEA laws?

Underlying issues:

- Confusion due to conflation of physical location, access, and / or legal jurisdiction
- Broad scope of “processing” in data protection laws

“EU” = only EEA providers?

- What is an “EEA provider”?
 - EEA incorporation / sub or branch of non-EEA parent?
 - What about “linked establishment” (Google Spain case)?
- Supply chain issues
 - How far down do you go: eg. data centre, connectivity, etc?
 - Possible research: map supply chains
- EU-only sourcing of everything?
 - Practicalities
 - Avoiding ‘Fortress Europe’ and trade law disputes

“EU” = EEA physical location?

- Physical location of what?
 - Data centres / other equipment / data / people?
 - What about routing and role of telcos / ISPs?
 - What about remote access to facilities / data from outside EEA?
- Objections include:
 - Obstacles to innovation and efficiency
 - Practical implementation
 - Human rights, inc. freedom of expression and to communicate

“EU” = process only under EEA laws?

- Problems with jurisdiction based on geo-location
- ‘Long-arm’ reach of EU data protection laws
- Lack of harmonisation **within** EEA
- Again, practical compliance issues
- Commercial drivers are also complex
- What about ‘virtual jurisdiction’ as an alternative?

“Only”

“ONLY”

- Problems due to multiple applicable laws
 - Even for EEA providers (eg. SWIFT case)
 - What if a non-EEA actor uses an ‘EU cloud’?
 - Risks of fuelling an enforcement / sanctions arms race
 - Extraterritoriality is a growing challenge
- Long-term solution = international agreement...
- ... but what about the foreseeable future?



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