Public Consultation

Draft Code of Conduct for Data Portability
and Cloud Service Switching
for Infrastructure as a Service (IaaS) Cloud services

Topic of the Public Consultation

The Art. 6 of the coming Free Flow of non-personal Data Regulation proposed by the European Commission ask the industry to develop Codes of Conduct to ensure effective portability of data between Cloud services (i.e. easy switch from one cloud provider to another or to on premise facilities of Cloud users).

In anticipation of this regulation, industry players[1] developed a draft Code of Conduct for Infrastructure as a Service (IaaS), on which all stakeholders (CIOs, Business Users, Providers, Academics, etc.) are welcome to provide feedback to update this draft, and help the drafting team to finalize a document during the summer 2018.

Once finalized, the document will be subject to approval of the SWIPO IAAS Working Group by simple majority, with a double minority blocking system where one third of providers of the WG and one third of the users of the group should not vote against the proposition.

If your organization is not already an expert member of the SWIPO IAAS Working Group, feel free to apply using the answer to this consultation (see Identification section hereunder).

How to participate?

1. Complete the present document answering the question and/or

2. Comment the draft Code of Conduct (downloadable here: http://cloudswitching.eu/wp-content/uploads/2018/06/20180608-Cloud-Portability_CoC_Draft_V016-PublicConsultation.docx

3. Send both or one of the 2 completed files through email: **consultation@cloudswitching.eu**

Deadline for feedbacks:
July 2nd 2018, 11:00 CET

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[1] The 17th April 2018, the SWIPO (Switching & Porting) IAAS Working Group has been started by the European Commission's Digital Single Market Cloud Stakeholder group. Co-chairs are Alban Schmutz (CISPE / OVH) and Freddy Van den Wyngaert (EuroCIO). Current members include representatives of Alibaba, Aruba, AWS, CERN, CIO Platform, City Network, Credit Suisse, EGI, Enter, Gigas, Google, IBM, Ikoula, Linkbynet, Matilan, NTUA, Oracle, Outscale, Prologue, Santander, UkCloud and UpCloud.

Identification

First Name: Damir
Family Name: Filipovic
Role: Secretary General
Organization: Open Cloud Foundation
Email: df@europa-insights.com

You are:
  X Providers of IAAS cloud services
  X User of IAAS cloud services
  __ Other. Please specify _____

Are you an SME: **No**

Would you like to join the SWIPO IAAS Experts Group: **Yes**

Questions

The SWIPO IAAS Core Drafting Group is expecting feedbacks on its draft Code. Feel free to comment the document itself. In complement, the Core Drafting Group is also expecting specific feedbacks on the following questions (thanks to answer directly in this document):

Question 1 Points of controls

Both a self-assessment and third-party certification may be possible under this Code of Conduct. For both, points of controls will be developed in order to ensure that cloud infrastructure services will be able to Adhere to the Code of Conduct.

Which points of controls would you suggest? (multiple answers expected)

Both self-declarations and third-party certifications should be accepted and valid. For both, there should be a control framework that would assist CISPs and their Customers to assess compliance with the code.

In addition to the control framework, its paramount that the Portability Code includes model clauses.

Should Code define minimum level and commitment to SLAs? It could help the customers to know if there is a certain standard when being part of this. It could also be that the definition of open standards is needed, to ensure openness of the switching and porting.

Question 2 Testing points

In order to ensure effective portability of IaaS services, tests should be performed before switching from a cloud infrastructure service to another, and once the transfer completed.

In your opinion, which tests should be performed? For each of them who should perform it (Provider / Customer)? Who makes the final attestation? Should it be agreed by parties? Aligned with common standards?

In case of third party certification, this should be done by SAE3000 accredited bodies under. Both provider and customer should be able to perform the test of compliance with the Code. In case of self-assessment, it is done by provider and with the ability of the Customer to test.

It would be better if self-assessment and certification are done against widely adopted standard(s)/model clauses, against the back drop of the Code Control Framework.

Question 3 Benefits to SMEs

The proposed "Free Flow of non-personal Data Regulation" aims to enable easy switching from one cloud service to another. Taking the SMEs' perspective into account in any Code of Conduct is key.

Do you think that the current draft will help SMEs (from both IAAS customer and IAAS provider sides) to benefit from the regulation? Yes

If "no", how could it be better achieved?

The current draft Code of Conduct is bringing sufficient clarity to both communities (users and providers). We suggest adding a list of use cases for CISPs in case of porting. These use cases can be developed and updated regularly, in line with all ongoing market and technological developments. Users are today are working with several cloud providers at the same time and run their applications and services in multiple cloud environment at the same time so this should be taken into account.

Question 4 Contractual specifications

Do you think that the section "7. Contractual specifications" covers all necessary items? Yes / No

If "no", how would you improve it?

We consider necessary to develop standard model contractual clauses (please see also comments under Q7) based on the Code to ensure the proper implementation in practice. It would not be useful to have a Code, with general principles that can be overridden by the service agreement. Using standard contract model clauses could ensure that most, if not all, necessary items are covered.

Question 6 Guarantees in the case of bankruptcy

The Art. 6 of Free Flow of non-personal Data The regulation asks for "guarantees for accessing data in the case of the bankruptcy of the provider" (see section 8.1.2 f of the draft Code).

Which mechanisms would you suggest making this guarantee effective?

This is an important point. We are not sure that through one single code such complex issue that covers many legal areas can be covered but is important that there are clear provisions in the code what happens and what are obligations for all parties involved related to cloud services in case of bankruptcy. We believe that the most important is to communicate early and make sure the users have enough time to move their data. It would be useful that once the company files for bankruptcy, this is communicated as early as possible to customer to have time to move data.

Question 5 Governance

Do you think that the section "9.1 Governance" of the draft Code of Conduct will help to meet the objectives of the Code to ensure effectiveness of transfers? __Yes__

If "no", how would you improve it?

The Governance of the Code should maintain a balance between the interest of users and providers. Wide market acceptance and the corresponding representativity should provide a sufficient mechanism to create trust and manage the Code in the best interest of both parties.

For IaaS services and considering their unique European representativity, we would welcome a proposal by EuroCIO and CISPE to support the Code governance mechanism.

Question 7 Opportunity of the Code

Do you think this draft Code answers the regulation in a way that is useful to implement for industry players? **Yes** /

If yes, would you use it at a contractual level? **Yes**

Please, feel free to comment:

Yes, provided the Code includes appropriate, widely accepted model clauses for portability and the corresponding control framework allowing both providers and their customers to verify compliance, independently.
A label for certified/self-declared services could be considered to ensure optimal transparency on which IaaS service are portable and those who are not. There are already existing good examples of such codes in cloud industry.

Question 8 General comments

Feel free to share with us any general comments you would like share with us:

Through its members, The Open Cloud Foundation represents directly and indirectly more than 100 providers and more 1,000 users. We strongly support open source-based services, interoperability and reversibility as key operating principles, and therefore support this work and look forward to contributing to its implementation. The Cloud market is evolving at high speed, and development of such Codes of Conduct are great tools to have an incremental approach over time to enable the cloud market to be as open as possible.

We would suggest this first Cloud infrastructure Code of Conduct should be adopted as fast as possible, in order to help the market (users and providers, especially the smallest ones), to implement quickly a first set of principles/recommendation/rules, that would be able to be extend over time if needed. The governance mechanisms seem fitted for that purpose and allow yearly upgrades of the Code.

We would also suggest that the Code of Conduct on the SaaS group could be built coherently regarding the work already done by the IaaS working group. Once the IaaS Code approved, the work on SaaS would gain to be developed at higher speed.

Timeline

17th April 2018   – Start of the SWIPO IAAS Working Group

10th June 2018   – First draft Code of Conduct by the Core Drafting Group and Experts

11th June 2018   – Start of the Public Consultation on the draft IAAS Code of Conduct

28th June 2018   – End of Public Consultation

4th/5th July 2018   – Public Presentation of the results of the Public Consultation
                               & discussion by SWIPO IAAS Experts and Core Drafting Group

Sept/Oct   – Approval of the IAAS Code of Conduct by SWIPO IAAS Experts

Annex
Initial text proposed by the European Commission (extract)

Please find hereunder the extract of the Article 6 of the "Free Flow of non-personal Data Regulation" as it was initially drafted in the proposed regulation by the European Commission.

In order to understand the whole objectives of the regulation, this article should not be read separately of the whole document. You will find the global the full text of the Proposition by the European Commission here: http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=46830

Article 6

Porting of data

1. The Commission shall encourage and facilitate the development of self-regulatory codes of conduct at Union level, in order to define guidelines on best practices in facilitating the switching of providers and to ensure that they provide professional users with sufficiently detailed, clear and transparent information before a contract for data storage and processing is concluded, as regards the following issues:

(a) the processes, technical requirements, timeframes and charges that apply in case a professional user wants to switch to another provider or port data back to its own IT systems, including the processes and location of any data back-up, the available data formats and supports, the required IT configuration and minimum network bandwidth; the time required prior to initiating the porting process and the time during which the data will remain available for porting; and the guarantees for accessing data in the case of the bankruptcy of the provider; and

(b) the operational requirements to switch or port data in a structured, commonly used and machine-readable format allowing sufficient time for the user to switch or port the data.

2. The Commission shall encourage providers to effectively implement the codes of conduct referred to in paragraph 1 within one year after the start of application of this Regulation.

3. The Commission shall review the development and effective implementation of such codes of conduct and the effective provision of information by providers no later than two years after the start of application of this Regulation.