

EU: Data Protection Review Must Foster User Trust, Leave Breathing Room for Innovation

Privacy law can be a key enabler, or inhibitor, of cloud computing. Such laws must give customers the confidence that their data will not be used or disclosed in unexpected ways while also allowing providers to move data through the global cloud in the most efficient way possible. As such, the review of the European Union's data protection framework is an opportunity to both improve user privacy and advance the global cloud.

In this case, EU lawmakers can achieve these goals through forward-looking solutions that ensure the protection of European citizens online while also preserving the ability of companies to innovate and create new products and solutions that meet user demands. In order to accomplish these goals European privacy legislation should allow for effective measures to protect user privacy and earn customers' trust; provide a harmonized set of rules and legal certainty for businesses and users; and, develop a differentiated approach to the definition of personal data that takes into account the context and risk of the data processing.

Unfortunately, several proposed reforms could raise significant hurdles to cloud computing — within the EU itself — and globally. As the review progresses, the EU must ensure that the revised privacy framework includes:

- **A workable, technologically neutral framework to meet evolving technology needs.** Technology changes quickly — and cloud is a perfect example of the speed of technological change. Highly prescriptive and Europe-centric rules could cordon off European cloud users from the global cloud and fail to recognize new and evolving technologies.
- **A context- and risk-based approach to privacy and avoiding blanket rules to data protection.** In a rapidly changing technology environment, there are numerous legitimate contexts for collecting and processing data. In particular, this includes ensuring the ability to examine and manage data for security purposes.
- **An internal market for the free flow of data, with a harmonized level of personal data protection.** Harmonization within the EU is a critical step to provide legal certainty and consistency for both businesses and consumers. The proposal makes progress in this regard, and it's important to see it through the final regulation.

What is needed is not a rigid framework that acts as a "checklist" for privacy compliance in Europe, but rather clear rules that balance respect for the basic rights of individuals and enterprises with the need for continued technological progress. If the rules are too prescriptive, they will undermine Europe's privacy goals. New products and technologies that lie outside the specific parameters of the regulation will undercut European privacy goals by both retarding technological progress and leaving less choice for European consumers.

It should be noted also that this same global approach must be taken in EU initiatives to establish a Digital Single Market for cloud computing. The European Commission's cloud-focused work on standards and certifications, contract terms and conditions, and the EU Cloud Partnership, all part of the Commission's EU Cloud Computing Strategy, as well as the forthcoming European Parliament report on cloud, must take a global view rather than focusing on the EU alone.

Privacy is a necessity in the digital environment. As with the development or revision of any data privacy law, the end goal of Europe's review should be a framework that works in practice to deliver high standards for user privacy while advancing Europe's digital economy and encouraging the type of innovation that underscores cloud computing.