

WEBINAR

*Contracts, SLAs and Code of Conduct*  
for Cloud Computing  
*15 July 2014*

CSA Cloud Bytes



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**ICT Legal Consulting** is a law firm with offices in Amsterdam (International Desk), Milan, Bologna and Rome and presence in fourteen other countries (Australia, Austria, Belgium, Brazil, France, Germany, Greece, Poland, Portugal, Russia, Spain, Turkey, United Kingdom and USA).

The Firm offers a **unique expertise in Information and Communication Technology (ICT), Intellectual Property (IP), Privacy and Data Protection Law**. Our lawyers regularly advise multinational companies and innovative SME's on legal issues related to: privacy, data protection, IT contracts, e-health, e-commerce, e-marketing, advertising, cloud computing, Web 2.0 Service Providers' liability, Internet content providers' liability, online gambling, online gaming, e-signatures, digital retention of documents and telecommunications.

We have developed significant expertise in the following **sectors**: cloud computing, big data & analytics, internet of things, media & entertainment, banking/financial and insurance services, healthcare, fashion, energetic and smart grids and e- Government.

Our main goal is to turn legal advice into strategic advice to create competitive market advantages.



# STRUCTURE OF THE WEBINAR

1. CLOUD SERVICE AGREEMENTS
2. UPDATE ON CODE OF CONDUCT, PLAs AND OTHER STANDARDISATION ACTIVITIES



# Cloud Computing

## Contractual TIPs & recommendations

Lucio **Scudiero** LL.M., Associate, ICT Legal Consulting

ICT Legal Consulting – piazza San Salvatore in Lauro, 13 – 00186 Rome – Italy

T: (+39) 06 97 84 24 91 | M: (+39) 333 90 54 194

[lucio.scudiero@ictlegalconsulting.com](mailto:lucio.scudiero@ictlegalconsulting.com) - [www.ictlegalconsulting.com](http://www.ictlegalconsulting.com)



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# Contractual structure

- Terms of Service (ToS)
- Service Level Agreement (SLA)
  - Privacy Level Agreement (PLA)
- Acceptable Use Policy (AUP)

## CLOUD COMPUTING: contractual challenges

- Applicable **law & Jurisdiction**
- Allocation of **responsibilities**
- **Variation** of terms/parties
- **Portability / migration / transfer back vs. lock-in**
- **Termination**
- **LEAs access** to data into the Cloud
- **SLA + PLA**

# Applicable Law & Jurisdiction



# Allocation of responsibilities





# Changes & Amendments



# Vendor Lock-in & Portability



# Termination



# Law Enforcement Agencies

## Access to data into the Cloud



# Service Level Agreement & Privacy Level Agreement



# CONCLUSIONS

Cloud Customers

Cloud Providers

### *Business trends are changing!*

- In order to remain competitive CLOUD PROVIDERS have to:
  1. Tailor their services to client's needs
  2. Take into account user concerns
  3. **Demonstrate compliance and transparency**

Best practices

+

Legal & Contractual safeguards

=

Customers' Trust



CUSTOMERS' TRUST = BUSINESS





# THANK YOU!

Contact Us

[lucio.scudiero@ictlegalconsulting.com](mailto:lucio.scudiero@ictlegalconsulting.com)

(+39) 06 97 84 24 91

[www.ictlegalconsulting.com](http://www.ictlegalconsulting.com)

## **European Lawyer specialized in the areas of Information Technology, Privacy and data protection, and Internet Law.**



Associate at ICT Legal Consulting, Lucio carries out its activities in Italy and throughout Europe by providing legal assistance and consultancy services to multinational corporations, companies and innovative start-ups on a wide range of legal issues related to technology law. Lucio enjoys an outstanding reputation as a Lawyer for the Internet sector and he is appreciated thanks to his ability to combine technical skills, legal knowledge and a regulatory-oriented approach, gained during his service at the European Data Protection Supervisor in Brussels. He holds an LL.M in EU Law at Leiden University (the Netherlands) and a combined Bachelor and Master's Degree in Law at University of Napoli Federico II (Italy). Author of scientific publications with national and international internet and data protection law journals, he is Fellow of the European Privacy Association (EPA) and of the Italian Institute for Privacy (IIP).



# Cloud Computing

## Update on Code of Conduct, PLAs, and other standardisation activities

**Paolo Balboni, Ph.D.**

Founding Partner - ICT Legal Consulting

[paolo.balboni@ictlegalconsulting.com](mailto:paolo.balboni@ictlegalconsulting.com)

[www.ictlegalconsulting.com](http://www.ictlegalconsulting.com)



# Official documents published

- o [Art.29WP Opinion 05/2012 on Cloud Computing](#)
- o [European Cloud Strategy](#)
- o [European Cybersecurity Strategy](#)
- o [Cloud Service Level Agreement Standardisation Guidelines](#)
- o [CNIL's recommendations for companies using cloud computing services](#)
- o Italian DPA [Cloud Computing: il Vademecum del Garante](#)
- o Irish DPC [Data Protection in the Cloud](#)
- o ICO [Guidance on the use of cloud computing](#)

## So what?

- All the documents need to be read in close connection with the EU Commission Proposal for a **General Data Protection Regulation**
- From the official documents and the actual and forthcoming applicable data protection legislation we can draw a **checklist** of information that, on the one side, the CSP has to disclose and, on the other side, the client must carefully analyse and assess.

# Privacy checklist <sup>(i)</sup>

A CSP will have to share:

1. Information about its **identity** (and the representative in EU, if applicable), its data protection role, and the contact details of the Data Protection Officer or of a "privacy contact person"
2. CSP will have to describe in which **ways the data will be processed** and provide information on data **location** and **subcontractors**
3. How data **transfer** may take place and on which legal ground (mainly model contracts, binding corporate rules – SH principles are currently under revision)

# Privacy checklist <sup>(ii)</sup>

4. Data **security** measure in place, with special reference to:

- availability of data
- integrity
- confidentiality
- transparency
- isolation (purpose limitation)
- intervenability

5. Way to **monitoring** CSP data security

6. Possibility to run **audits** for clients or trusted third-parties

# Privacy checklist <sup>(iii)</sup>

7. Personal data breach notification policy

8. Data portability, migration, and transfer back assistance

9. Data retention, restitution and deletion policies

10. **Accountability**, meaning the policies and procedures CSP has in place to ensure and demonstrate compliance, **throughout CSP value chain** (e.g., sub-contractors)



# Privacy checklist <sup>(iv)</sup>

- 1 1. **Cooperation** with clients to respect data protection law, e.g., to assure the exercise of data protection rights
  
- 1 2. Management of **law enforcement request of access** to personal data
  
- 1 3. **Remedies** available for the customer in case of CSP breach of contract.

# UPDATES

- Cloud Select Industry Group on **Code of Conduct**
- Other **Standardisation Activities**

# Final recommendations

- **Tip:**
  - Have a look at the [Privacy Level Agreement](#) ([PLA](#)) Outline for the Sale of Cloud Services in the European Union
- **Recommendation:**
  - Make a choice based on CSP. Transparency and accountability (next to service levels and price).



# THANK YOU!

Contact Us

[paolo.balboni@ictlegalconsulting.com](mailto:paolo.balboni@ictlegalconsulting.com)

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[www.ictlegalconsulting.com](http://www.ictlegalconsulting.com)



**Paolo Balboni, Ph.D., is a top tier European ICT, Privacy & Data Protection lawyer and serves as Data Protection Officer (DPO) for multinational companies.** As a frequently invited speaker, Balboni has spoken at more than 30 international conferences around the world in the last 2 years on ICT, Privacy & Data Protection legal matters. He is a regular invited expert on the revision of the EU General Data Protection Regulation to the European Parliament. Balboni is the author of the book [Trustmarks in E-Commerce: The Value of Web Seals and the Liability of their Providers](#) (Cambridge University Press) and of numerous papers on European ICT, Privacy & Data protection law. Balboni is the Scientific Director of [European Privacy Association](#), Cloud Computing Sector Director and responsible for Foreign Affairs of [Italian Institute for Privacy](#). He is admitted to the Bar in Milan and the Founding Partner at [ICT Legal Consulting](#). Together with his team, he provides legal advice across Europe to multinational companies, especially concerning personal data protection, IT-contracts, cloud computing, e-commerce, e-marketing, advertising, Web 2.0 service providers' liability, Law Enforcement Agency (LEA) access to information and databases, digital contract and document management, and intellectual property rights. He also advises celebrities on privacy and copyright matters. He has considerable experience in the following areas: IT - including Cloud Computing, Big Data & Analytics, Media & Entertainment, e-Health, Fashion, Banking, Anti-Money Laundering (AML) and Counter-Terrorist Financing (CFT). He co-chairs the [Privacy Level Agreement \(PLA\) Working Group of Cloud Security Alliance](#) and was the legal counsel chosen for the projects of European Network and Information Security Agency (ENISA) on '[Cloud Computing Risk Assessment](#)', '[Security and Resilience in Governmental Clouds](#)', '[Procure Secure: A guide to monitoring of security service levels in cloud contracts](#)' and 'Common Assurance Maturity Model – Beyond the Cloud (CAMM)'. Paolo Balboni is actively involved in European Commission studies on new technologies and data protection. Balboni is Lecturer at the [Master Digital Media Management](#) at the [European Institute of Design](#) and Research Associate at [Tilburg University](#). He obtained his Law Degree with distinction from the University of Bologna in 2002, a Ph.D. from Tilburg University on Comparative ICT Law. He speaks fluent Italian, English and Dutch and has a good knowledge of French, German and Spanish.