



Ms Neelie Kroes  
Vice-President of the European Commission  
Responsible for the Digital Agenda  
European Commission  
BERL 10/224  
1049 Brussels Belgium

11 December 2012

Dear Vice-President Kroes,

**RE: Commission communication “Unleashing the potential for Cloud computing in Europe”**

We would like to express our support for the Communication on Cloud Computing, released on 27 September 2012.

Cloud is an important pillar of the digital single market and has a considerable potential to foster growth, not only in digital industries, but also in the “traditional” sectors of the economy.

BUSINESSEUROPE supports the approach of the communication, aimed at identifying specific barriers to cloud development, as well as concrete actions to tackle them. In particular, we believe that for the development of cloud computing it is essential to establish an appropriate EU data protection framework, ensuring an adequate level of protection without imposing disproportionate costs and excessive burdens on companies.

The development of a cloud-friendly climate, through the promotion of fair and transparent contract models, is also crucial. However, given the complex and dynamic nature of cloud computing, a degree of flexibility and contractual freedom must be ensured.

In view of the implementation of the EU cloud computing strategy, you will find at annex our views on these and other key elements of the Communication.

I trust that you will give your best attention to our views and remain at your disposal should you wish to discuss this further.

Sincerely yours,

Markus Beyrer

11 December 2012

## **ANNEX TO BUSINESSEUROPE LETTER TO VICE-PRESIDENT KROES ON THE COMMISSION COMMUNICATION ON CLOUD COMPUTING**

BUSINESSEUROPE believes that a fully developed digital single market can drive productivity, innovation and growth in all sectors of the economy and cloud computing is a fundamental piece of its construction.

Cloud computing is the storing, processing and use of data on remotely located computers accessed over the internet. Cloud computing will enable business – and especially SMEs – to take advantage of the digital revolution, cutting costs, optimising their operations and opening up on new opportunities by increasing their presence globally. Users will be able to access new services, products and applications. In addition, public administrations will have the possibility to use cloud to reduce costs and improve their efficiency.

The Commission communication concludes that a full EU cloud strategy can increase EU GDP by € 957 billion and lead to 3,8 million new jobs by 2020. Setting up the right framework in Europe to allow cloud computing to deliver on this potential is therefore crucial.

Promoting fast and harmonised adoption of cloud computing across Europe is of utmost importance. The Commission's strategy to identify specific barriers to cloud and attempt to tackle them through specific actions is the right approach. We welcome in particular the reference to the importance of confidence-building and trust in cloud solutions. This is key to foster interest in demand for cloud.

BUSINESSEUROPE strongly recommends that the Commission ensures a future-proof implementation of the strategy without prescribing, dictating or promoting a specific business model, but only sets out the principles and objectives, leaving markets develop adequate solutions. In the following comments, BUSINESSEUROPE highlights some important aspects that must be taken into account in the debate on cloud computing.

### **1. Establish an appropriate data protection framework in the EU**

Data protection rules should enable, rather than hinder, the development of cloud computing. The data protection regulation, which is currently being negotiated, will have a huge impact on the development (or lack thereof) of cloud computing in Europe. In this context, the Communication does not sufficiently address the data protection aspect, vaguely mentioning the need for Council and Parliament to work "swiftly towards the adoption of the proposed regulation as soon as possible".

BUSINESSEUROPE recommends that the discussions and the negotiations around the data protection framework explicitly take into account the implications for cloud computing and vice versa. In particular, it is fundamental to establish a framework which provides

legal certainty and ensures trust, without imposing disproportionate burdens which would discourage companies' take up of cloud computing. For instance, while it is certainly important to provide safeguards in the case of international data transfer, the requirements should not have the effect of disrupting emerging digital business models creating unnecessary complications and delays.

The Communication also underlines the importance of establishing "the necessary conditions for the adoption of cloud-friendly binding corporate rules". BUSINESSEUROPE believes that it is very important to reduce the administrative burdens related to binding corporate rules and expand their applicability across different groups of companies and not only within the same group.

## **2. Address fragmentation of the digital single market**

Cloud computing is cross-border by definition. The Commission rightly points out that fragmentation of existing rules within the single market is an obstacle for both business and consumers who wish to take advantage of cloud. Different regimes across Members States in terms of licensing and taxation, together with uncertainties over applicable law, can make the use of cloud very complex and problematic for potential providers and users. BUSINESSEUROPE believes it is of utmost importance to promote harmonisation and tackle regulatory barriers in this field.

For instance, copyright licensing agreements are key for the development of cloud services and the Directive on Collective Rights Management (CRM) should be rapidly adopted to facilitate cross-border licensing concerning music content in the cloud.

The current regulatory fragmentation in the digital single market also affects the level of trust of both business users and consumers and the facilitation of cloud operations. A solution would be enhancing e-identification tools and promoting the use of trust services, ensuring that the discussions which will take place in the coming months on the draft regulation for electronic identification and trust services take into consideration potential elements related to cloud.

## **3. Ensure industry-led standardisation**

Cloud computing require secure and technical compatible solutions. The Communication underlines that a wider use of standards, together with the certification of cloud services to show that they meet these standards, could help cloud take-off. The Commission also suggests that the European Telecommunications Standards Institute (ETSI) should coordinate with stakeholders the identification of the necessary standards for cloud.

BUSINESSEUROPE acknowledges the importance of standardisation and interoperability to increase security and trust in the cloud. However, we consider that standardisation should be voluntary, led by industry and respond to market and consumers' needs. Standardisation for cloud should not become a top down attempt to impose specific policies or technological order, but rather a bottom up process that develops appropriate practices to address need and favour innovation in the cloud. The standards and processes which are already in place to ensure interoperability should be properly taken into account. Only in this way it will be possible to ensure appropriate variability in models represented and flexibility in implementation.

Certification may also be an issue, especially if it requires third parties or dictates “a” specific certification, because of the costs and burdens that it implies. It is better to rather develop a framework of what companies should be able to offer, creating at the same time conditions for them to develop appropriate and innovative ways to develop such solutions.

It is also extremely important to take into account the global aspect of standardisation, especially in the ICT sector, where standards are often developed outside Europe. The objective must be the development of global standards and technical specifications, avoiding regional and national deviations.

#### **4. Maintain flexibility of contract terms and conditions**

The Communication identifies the uncertainties related to the applicable law and jurisdiction in the cloud environment as one of the major barriers to its development. The Commission observed that contracts with cloud providers are often insufficiently specific and balanced, with provisions that can be undesirable for users. Therefore, the creation of model contract terms is presented as suitable to overcome those barriers.

BUSINESSEUROPE agrees on the need to promote fair and transparent cloud service contracts, which will ensure legal certainty and establish of a “cloud confident” climate. However, standardisation of contract terms and conditions should be addressed very carefully, because cloud contracts may reflect different business models, often with high level of complexity, and cover a considerable number of specific services and users’ categories. Thus, in order to deliver a future-proof framework for cloud, we recommend a certain degree of flexibility and contractual freedom, particularly in the case of business-to-business contracts.

The reality of cloud computing will also considerably change in the coming years and it is now premature to define models where practices are still in development. Rather than focusing on the development of premature models, it would be best to guarantee useful guidance for users to evaluate the terms presented, as well as ensuring appropriate disclosure and transparency.

#### **5. Foster high-speed broadband development**

The roll out of high speed broadband in Europe is an essential condition to allow cloud computing unleashing its potential. Cloud requires a well-functioning, widely developed and secure network, providing high speed connection at competitive price, as underlined in the Digital agenda. The targets set out in the Digital agenda, particularly 100% of fast broadband coverage by 2020, still remains to be achieved.

BUSINESSEUROPE calls for actions which facilitate and promote favourable conditions for private investments in this area, through measures taken at EU and Member state level and providing adequate level of funding, not least through the Connecting Europe Facility.

At the same time, bottlenecks impeding the development of infrastructure, such as issues related to authorisations and permits, lack of transparency on applicable rules and to the lack of coordination between the competent authorities, need to be identified and addressed.

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