

# Common Scope and Approach to Article 6 of the Free Flow of Non-personal Data Regulation and use of Codes of Conduct for Cloud Services

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## Introduction

The European Commission wants to enforce the regulation on the Free Flow of Non-Personal Data by means of a self-regulatory process where stakeholders from the industry, from both user and provider sides, define through a code of conduct how organizations can be enabled to switch from providers and port their data into a new environment of their choosing. The European Commission wants to avoid vendor lock-in and create a competitive European digital market where it must be easy to switch from provider, including the porting of business data involved. The full text of the regulation can be found here:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1546942605408&uri=CELEX:32018R1807>

The groups working on both codes of conduct and the supportive documents named themselves “SWIPO” as a reference to a shorter name from **S**witching from provider and **P**orting non-personal data.

## SWIPO Mission Statement

***SWIPO is an industry driven initiative that provides guidance and governance between Cloud Service Providers and Cloud Service Customers to ensure safe and effective switching from provider and the portability of non-personal data in the light of article 6 on the "Free Flow of Non-Personal Data" regulation.***

## SWIPO principles

- Switching between service providers and data porting must be possible, effective, not cost consuming and easy.
- The ability to port data without hindrance is a key factor in facilitating user choice and effective competition on markets for data processing services.
- In order to take full advantage of the competitive environment, professional users should be able to make informed choices and to easily compare the individual components of various data processing services offered in the internal market, including in respect of the contractual terms and conditions of porting data upon the termination of a contract.
- Trust enhancement in the security of cross-border data processing is a key factor to improve the legal certainty for companies as regards compliance with the applicable security requirements

when organizations outsource their data processing activities to service providers, including to those in other Member States

- All security requirements related to data processing that are applied in a justified and proportionate manner on the basis of Union or national law in compliance with Union law in the Member State of residence or establishment of the natural or legal persons whose data are concerned will continue to apply to processing of that data in another Member State

## The regulation

In light of Article 6 of the Regulation on the Free Flow of non-personal Data linked to porting of data and the room for self-regulation provided, it was proposed that Codes of Conduct should provide for all types of cloud-offered services, namely, IaaS, PaaS and SaaS. In the light of the above there are elements within the respective Codes that cover:

- Technical aspects
- Exit processes
- Governance considerations
- Cloud contracts, legal considerations
- Regulatory aspects.

The Codes of Conduct should be effective and should therefore take into account the interests of Cloud Service Providers (CSPs) as well as the interests of Cloud Service Customers (CSCs). **The development and market implementation of the Codes of Conduct are self-regulatory and industry driven.**

### Note

The organizations that have been involved in the development of the Code of Conduct make notice of the fact that, although the regulation clearly states the regulation is about “the free flow of non-personal data”, business data in nature can hold personal data as well as non-personal data. Throughout this document the usage of the words “non-personal data” should be read as “business data holding personal **and** non-personal data”.

## Article 6

The development of the Codes of Conduct has been an initiative from the European Commission and was intended to be a self regulatory and industry driven process, where the European Commission acted as an observer during the development process. In order to understand the baseline out of which the codes originated, a full quote article 6 of the regulation is printed below;

### *Porting of data*

*1. The Commission shall encourage and facilitate the development of self-regulatory codes of conduct at Union level ('codes of conduct'), in order to contribute to a competitive data economy, based on the principles of transparency and interoperability and taking due account of open standards, covering, inter alia, the following aspects:*

*(a) best practices for facilitating the switching of service providers and the porting of data in a structured, commonly used and machine-readable format including open standard formats where required or requested by the service provider receiving the data;*

- (b) minimum information requirements to ensure that professional users are provided, before a contract for data processing is concluded, with sufficiently detailed, clear and transparent information regarding the processes, technical requirements, timeframes and charges that apply in case a professional user wants to switch to another service provider or port data back to its own IT systems;*
- (c) approaches to certification schemes that facilitate the comparison of data processing products and services for professional users, taking into account established national or international norms, to facilitate the comparability of those products and services. Such approaches may include, inter alia, quality management, information security management, business continuity management and environmental management;*
- (d) communication roadmaps taking a multi-disciplinary approach to raise awareness of the codes of conduct among relevant stakeholders.*

*2. The Commission shall ensure that the codes of conduct are developed in close cooperation with all relevant stakeholders, including associations of SMEs and start-ups, users and cloud service providers.*

*3. The Commission shall encourage service providers to complete the development of the codes of conduct by 29 November 2019 and to effectively implement them by 29 May 2020.*

Due to the differences of cloud computing from an infrastructure and software point of view, the industry created two separate codes of conduct;

## IaaS Code of Conduct

In this document the code of conduct is described where Cloud Service Providers that deliver Infrastructure-as-a-Service (IaaS) to Cloud Service Customers should adhere to.

## SaaS Code of Conduct

In this document the code of conduct is described where Cloud Service Providers delivering Software-as-a-Service (SaaS) solutions should adhere to. It includes a questionnaire and guidance that Cloud Service Providers are to supply to their customers to provide transparency of the porting process of non-personal data.

Both codes are supported by separate documents that are part of the full set, being:

## Common Scope and Approach (This document)

This common scope and approach document delivers insight on how the Codes of Conduct have been developed, how they are maintained and how to use the codes of conduct and the mandatory supportive documents. This document also provides insight on the role of the European Commission during the development of the codes and their further involvement.

## Common General Governance

The common general governance document delivers insight on how participating organizations are to adhere to the code, how the legal entity is set up and how changes to any code is handled, including a complaints procedure.

## Common Terminology

The common terminology document delivers a listing of terms being used in the codes of conduct and the accompanying supportive documents.

## Common Legal Aspects

In the common legal aspects the elements of the codes that have a legal component are described, including how contractual agreements may be enforced by both CSP and CSC during the process of switching provider and/or porting data

## Implementation of the Codes of Conduct

The Codes of Conduct are developed and maintained by a legal entity. This legal entity operates without interference from the European Commission and consists of Cloud Service Providers (CSPs) and Cloud Service Customers (CSCs). Both providers and customers are part of the board that is responsible for the maintenance and further development of the codes and the supportive documents. Any organization can become a member to express adherence to the codes. The members are bound to the governance and statutes from the legal entity.