Use of Microsoft Products and Services: Findings and Recommendations

47th DPO Day Online Editon

Adeline Morris Massimo Attoresi Snezana Srdic Zsofia Szilvassy
EDPS

8th May 2020

Table of contents

Inter-Institutional Licence Agreement

Inter-Institutional Licence Agreement (2018)

- Negotiated umbrella agreement
  - Master Business Services Agreement
  - Enterprise Agreement
- Enrolments
- Standard documents, e.g.
  - Online Services Terms
  - Product Terms
  - Data Protection Addendum

Procurement Process

- Commission = lead institution
  - manages the contract
  - assists other institutions with implementation
- Other institutions = controllers
  - accountable
  - ensure data protection by design and default

Microsoft as Controller

Microsoft as Controller

- Unilateral amendment
- Limited data protection obligations
- Insufficient purpose limitation

Unilateral Amendment

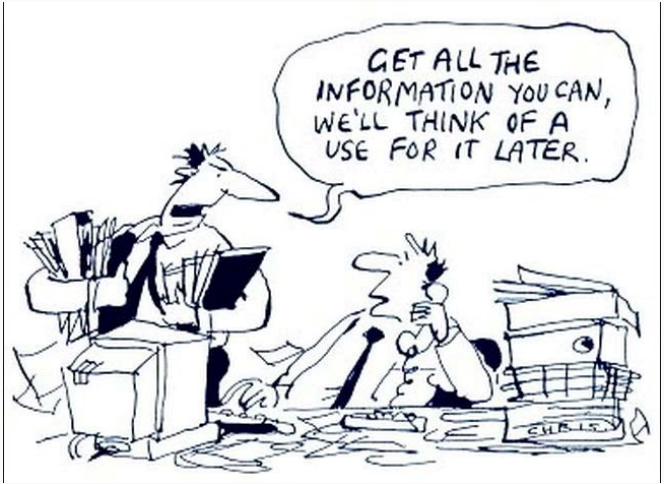
- Unlimited right to modify standard documents
- Standard documents may trump negotiated provisions
- Recommend: unambiguous order of precedence + changes by common agreement

Limited Obligations

- Negotiated terms only cover data *provided* through use of the *online services*
- Microsoft decides how other categories of data protected
- Recommend: broaden scope to cover all personal data

Insufficient Purpose Limitation i

Insufficient Purpose Limitation ii



Consequences

- Dual legal regime: GDPR and Reg. 2018/1725
- Makes supervision and enforcement messier
- Brings in legitimate interests processing by the back door?
- Recommend: institutions be sole controllers

Controller-Processor Agreement

Controller-Processor Agreement

- Controllership rights
- Sub-contractors
- Audit rights
- Recommend: comprehensive controller-processor agreement

Sub-Processors

- General authorisation is limited in scope
- No other authorisations?
- Insufficient information on sub-processors
- Don’t want to authorise? Stop using Microsoft software

Recommend:

- prior authorisation for all sub-processors
- full information
- institutions give authorisation freely

Audit Rights

- ‘Security audits’ arranged by Microsoft
- Not data protection audits?
- Not audits ‘conducted by the controller’

Recommend:

- detailed, effective audit rights
- full information
- regular, risk-based audit programme

Data Location, Transfer, Disclosure

Data Location

- Some data *provided* through use of ‘core’ *online services* stored in EU
- Other data can be transferred outside EU/EEA
- Route taken by data in transit unknown

International Transfers

- Limited instructions on what to transfer, when and for what purpose
- No detailed safeguards
- SCCs not compliant

Unauthorised Disclosure

- Microsoft can disclose if considers has a legal obligation
- Protocol and Reg. 2018/1725 may not protect institutions

Consequences

- Difficult to check compliance if data outside EU/EEA
- Difficult to protect data in transit if don't know route
- Difficult for data subjects to enforce rights if no safeguards
- Difficult to enforce EU law to prevent disclosure

Recommend:

- location of data specified for each service
- complete safeguards for transfers
- strict controls + full info on disclosure
- control over sub-processors

Technical Measures

Technical Measures

- Block unlawful flows
  - functional controls (e.g. diagnostics configuration)
  - network filters (as necessary)
- Test applied measures
  - indeed seek provider's support, yet...
  - challenge provider's assumptions and statements

Planning New Services

Planning New Services

- Cloud Computing GLs still valid
  - This guidance details them on the contractual part
- ‘Cloud option’ methodology
  - High level assessment on whether ‘candidate’ to the cloud. If so…
  - Identification of available solution or requirements for procurement.
  - Assessment of the specific DP risks in supporting the targeted processing

Questions and Answers