
Public Consultation: Cloud Computing Advice Note

Response from the American Chamber of Commerce Ireland
(AmCham).

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The American Chamber of Commerce Ireland

The Voice of US-Ireland Business

The American Chamber of Commerce Ireland (AmCham) is the collective voice of US companies in Ireland and the leading international business organisation supporting the Transatlantic business relationship. Our members are the Irish operations of all the major US companies in every sector present here, Irish companies with operations in the United States and organisations with close linkages to US-Ireland trade and investment.

AmCham welcomes the opportunity to provide feedback to the Office of the Government Chief Information Officer at the Department of Public Expenditure NDP Delivery and Reform on its draft updated Cloud Computing Advice Note.

The uptake of cloud services within public sector bodies can help to streamline processes, enhance efficiencies, cut costs, and strengthen security. Further, as the document notes cloud *“will become ever more significant as it supports Artificial Intelligence, Internet of Things and Big Data into the future.”* It is important that Ireland’s public sector keeps pace with technological advances and uses them to their full potential.

AmCham has long advocated for the implementation of a cloud first policy requiring public sector bodies to first consider cloud, before any other options, when upgrading or introducing a new service. It is therefore positive to see this reflected in the Advice Note; *“all new government systems should be developed to exploit the opportunities presented by cloud deployment, where possible, and all existing systems should be reviewed for cloud capability.”* It is also good to see the draft Advice Note’s acknowledgement that *“cloud computing services are suitable for any public service information or system, subject to appropriate considerations and risk assessment.”*

However in general AmCham would like to see a greater emphasis placed on the benefits of using cloud for public services and on the merits of a cloud first approach. For example, the document repeats and highlights the phrase *“A cloud-first approach does not mean a cloud-only approach.”* Although this may be the case in certain circumstances, the emphasis placed on this fact risks undermining the many cases where cloud is the best option. Likewise, the document focuses heavily on the risks associated with using cloud. Whilst it is important that risks are properly understood and taken into consideration, the document disproportionately focuses on risks and as such may deter public sector bodies from considering cloud going forward. This is at odds with Government’s digitalisation goals as placing a disproportionate emphasis on the risks of public cloud discourages its adoption and therefore limits the ability of the public sector to digitally transform and effectively adopt new capabilities, such as AI.

Instead, the Advice Note should demonstrate best practice risk management and provide guidance. The document notes that there is a risk-based assessment example included in Annex 1, but this space is left blank. As the Advice Note acknowledges, *“successful utilisation requires knowledge, understanding and strong support.”* The document could focus more on providing practical guidance to public sector bodies in utilising cloud. In general, the draft Advice Note provides a considerable amount of commentary but is limited in the actionable advice that it provides.

There are elements of the document that AmCham finds concerning and would like to seek further clarity on, primarily the sub section of the “*Considerations*” part of the document titled “*Data Sovereignty*.” The requirements for data sovereignty, as noted in the Advice Note, indicate a very strict interpretation of the term. There appears to be no basis in either EU or Irish law for this interpretation. AmCham would question the choice to include this interpretation within the draft Advice Note, and appreciate more information regarding where these requirements originate, and under what circumstances a public sector body would be expected to apply them, e.g. in the cloud procurement process.

Under this section it is further misleading that the CLOUD Act is mentioned alongside the Chinese Cyber Law. The two are not of similar concern, indeed the EU and US are currently working towards a bilateral agreement on electronic evidence to give legal certainty to governments and businesses on both sides of the Atlantic. This is a positive signal and should be acknowledged by the draft Advice Note.

This section of the draft Advice Note further risks creating confusion in regard to the EU-US Data Privacy Framework. Here the document acknowledges the European Commission’s adequacy decision for the EU-US Data Privacy Framework, meaning that personal data can flow from the EU to the USA without any further safeguard being necessary. Indeed, this month the first review of the EU-US Data Privacy Framework concluded that US authorities have put in place the constitutive elements of the framework, including the implementation of safeguards to limit access to personal data by US intelligence authorities to what is necessary and proportionate to protect national security, and the establishment of an independent and impartial redress mechanism. However, the draft Advice Note undermines the merits of this agreement by noting that the adequacy decision might be subject to a legal challenge, and by advising public sector bodies to “*monitor*” it. This creates a lack of clarity and places the responsibility of monitoring development in this space on public sector bodies that may not have the expertise or resources to adequately do so. As it is communicated currently, it gives the impression that adopting cloud will lead to more work for public sector bodies, and this shouldn’t be the case. Again, this risks deterring certain public sector bodies from considering cloud.

The document in general, and the “*Considerations*” section in particular, needs to provide greater clarity for both public sector bodies and cloud service providers regarding the cloud procurement process.

AmCham would further stress the importance of continued engagement with industry on this topic, so that Government can gain a greater understanding of how cloud service

providers operate, and that cloud service providers can better understand the needs of public sector bodies.