

DOJ Releases White Paper on CLOUD Act



In April 2019, the U.S. Department of Justice (DOJ) has published a White Paper discussing the U.S. CLOUD Act. "CLOUD Act" is the acronym for "Clarifying Lawful Overseas Use of Data Act" which has been passed by US Congress in early 2018. The Act amends the U.S. Stored Communications Act and came into force on 23 March 2018.

The white paper discusses why the CLOUD Act is necessary, and its scope. The 9-page summary is being complemented by links to the legislative text, further statements plus FAQ's. The White Paper emphasizes that it is fully in line with what the Cybercrime Convention requires the U.S. to do. The DOJ justifies the CLOUD Act by reference to Article 18 CCC, which is interesting. The way the U.S. DOJ "sells" this argument could make forget that this topic has always been most disputed among signatory states. The DOJ provides the following sweet summary: "Article 18(1)(a) of the Budapest Convention requires each party to the convention to adopt national laws under which relevant authorities can compel providers in their territory to disclose electronic data in their possession or control. This requirement contains no exception for data that a company controls but chooses to store abroad.

After the Microsoft case, the CLOUD Act clarified U.S. law in a manner that ensures that the United States complies with its obligations under the Convention." However, since the adoption of the CCC times have changed. It may not have been noted by many that, on 28 February 2017, the relevant working group of the CCC (the "Cybercrime Convention Committee, "T-CY") has adopted a T-CY Guidance Note #10 with the title " Production orders for subscriber information (Article 18 Budapest Convention)". The Guidance Note more broadly discusses the entire Article 18, though. This guidance note pretty much supports the U.S. view on how the CLOUD Act matches the CCC. It can be found here: <https://rm.coe.int/16806f943e>.