

Our position

EU Cloud Rulebook and related cloud initiatives

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3.4 trillion in 2021, directly supports more than 4.9 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Executive summary

In order to ensure that 75% of European enterprises take up cloud computing services, big data and Artificial Intelligence by 2030 – as envisioned by the European Commission – a clear, consistent and future-proof EU Cloud Rulebook will be required. For this, the European internal market should remain open to products and services from across the world that meet the EU’s high standards of privacy and security. Preventing cloud providers from offering their services to the European market simply because of their headquarters’ location or the nature of their corporate ownership, is not policy that fosters innovation and growth in Europe’s economy. Rather, these impediments would create lag’s in the region’s digital transformation, which would supersede the short-term benefits achieved for some Member States. European Governments and enterprises would have less choice of more expensive cloud services, which would diminish their resilience and place them at a disadvantage vis-a-vis their international competitors. Furthermore, the current geopolitical situation only underlines the importance of cooperation with trusted and democratic partners, particularly in resilience and cybersecurity, incident reporting and prevention as well as in developing digital skills.

Introduction

Cloud computing is foundational to many of the priority areas identified by the European Commission, including deploying artificial intelligence and IoT devices, as well as building resilience via robust cybersecurity approaches. Building and nurturing an open, competitive and sustainable cloud ecosystem is paramount to the ongoing recovery and future growth of Europe’s economy.

In its 2020 European Strategy for Data, the European Commission announced an action to create an EU Cloud Rulebook, a coherent framework around the different applicable rules (including self-regulation) for cloud services in the EU. A clear, consistent and future-proof set of rules for cloud can speed up cloud adoption by European businesses. Therefore, **the European Commission’s plans for an EU Cloud Rulebook can bring much-needed clarity and coherence to the European cloud market and boost trust in the use of new technologies.** However, the lack of clarity over which rules apply to cloud use and the increasing number of sectoral regulations, hampers cloud adoption in Europe – particularly in highly regulated industries.

EU Cloud Rulebook

As the Commission’s work on the Rulebook progresses, AmCham EU would like to put forward suggestions that will help the Rulebook be a successful, useful and practical tool for cloud providers and users alike. These suggestions are drawn from the private sector’s expertise and are intended as an aid to the European Commission as it seeks to implement policies to further the region’s growth and digital transformation.

Legal status

The legal status of the announced Rulebook is unclear as of yet. While the Rulebook will likely not be a directive or a regulation, there are still several other legal and soft-law options available. The Commission should bring more clarity on the instrument it intends to recur to for the Cloud Rulebook (eg a recommendation, a decision, or more general guidance). This will create more transparency for

market players, providers and users alike, and it will allow them to provide more useful contributions. In all circumstances the Commission should also consult market players ahead of publications.

Relationship with other initiatives

The Rulebook should not introduce new legislation or new mandatory requirements for cloud providers. New requirements should be agreed under the ordinary legislative procedure, after extensive stakeholder consultation and a thorough impact assessment. In recent years, the EU has introduced a significant number of new legislative instruments that regulate cloud computing, including the General Data Protection Regulation (GDPR), the Network and Information Security (NIS) Directive I and II, the Free Flow of Non-Personal Data Regulation, the Digital Operational Resilience Act (DORA), the Digital Markets Act (DMA) and Digital Services Act (DSA). Some of these are in the process of implementation, such as NIS II. At the same time, several initiatives with significant impact for cloud providers and users, including the AI Act, the Data Act and the Cyber Resilience Act are under active consideration by the co-legislators and are expected to be adopted by 2024. In the case of non-legislative initiatives, for instance cloud certifications, these should be included only after they become fully applicable (which normally is a later date than when they are officially adopted). Similarly, with regard to self-regulatory tools, the Rulebook should include operational Codes of Conduct, such as the EU Cloud Code of Conduct, the Cloud Infrastructure Services Providers in Europe (CISPE) Code of Conduct, and Switching Cloud Providers and Porting Data (SWIPO) Codes for Data Portability and Cloud Service Switching. In this ever-evolving regulatory environment, it is important for the Rulebook to act as a tool to simplify compliance rather than form a further layer of regulation. Furthermore, the Rulebook should not aim to presuppose any legislation or its implementation, particularly where governance structures and models are already foreseen in the basic acts.

Diversity of market

It is also important that the Rulebook reflects the diversity of the cloud market and does not turn into a mandatory compliance checklist for cloud providers and users. Different cloud users have different needs and business models which provide for a vibrant and innovative ecosystem. Similarly, cloud users often have their own sectoral regulatory requirements to follow (eg financial services regulations) in addition to any baseline requirements. The Rulebook should acknowledge this complex and varied regulatory landscape by acknowledging that it does not represent an exhaustive list of regulations and self-regulatory tools that all cloud providers need to comply with in the same way. Cloud users need to remain in charge of selecting the cloud providers that best meet their technological and regulatory needs, and should not be constrained by political or legal requirements limiting their choice of providers.

Other EU cloud initiatives

In parallel with the EU Cloud Rulebook, the Commission is planning to propose guidelines for public procurement of cloud services and establish an EU online marketplace for cloud initiatives. In line with the EU Data Strategy, both initiatives aim to enhance cloud adoption across Europe. The following section discusses AmCham EU's view on these initiatives building on the industry's best practices and long-standing experience in this sector.

EU Cloud Marketplace

The European Commission's intention to establish an **EU online marketplace for cloud services** is an opportunity for the EU to enhance cloud adoption in Europe by regrouping all services on a single point of access and thus facilitate matching users' needs to existing offers. Currently, **a number of questions** still surround the concept of the announced marketplace, for instance will it be limited to public sector or rather focus on industrial solutions? What will be the role of the operating companies and how to ensure impartiality? Will the EU Rulebook constitute the only criteria for entry into the marketplace or would the consortium that will be in charge of setting up the operations of the marketplace have discretion to do so separately?

As mentioned above, to best meet cloud users' needs that are often specific to their sector, the European Commission should opt for an **open and non-discriminatory design and governance model for the marketplace**. This will create a broad set of solutions and technologies to ensure the very relevance of the marketplace. In this context, the European Commission and the consortium working on the marketplace should consult with all relevant stakeholders early on in the process. They should also provide clarity on the vetting criteria as soon as possible to enhance legal certainty.

Public procurement

Government and public agencies across the world are adopting cloud to benefit from the **speed, scalability, agility, cost-effectiveness, privacy and security features of cloud solutions**. These also allow for new ways of work, which were essential during the COVID-19 pandemic and remain relevant today.

While the **Member States guidelines on adopting cloud computing** is ongoing, the lack of transparency about its status and direction hinders contributions from cloud providers and users. The European Alliance for Industrial Data, Edge and Cloud has been consulted, but – despite the deep expertise and decades-long commitment of American companies – it has remained closed to any non-EU cloud providers. Several AmCham EU members have long-standing customer relationships with European governments, helping administrations to better connect with and serve EU citizens. American companies comply with the EU's regulatory framework for data protection, privacy and processing, but they have also put in place robust measures to increase the control of the European customers, including European governments, over their data. These measures include sophisticated security safeguards such as deployment of encryption tools, industry-leading contractual commitments to customers with regard to the treatment and protection of their data, or partnerships with European technology providers.

As the European Commission continues to work on guidance to Member States on cloud computing procurement, AmCham EU would like to offer **our views on what we believe are best practices and necessary components of a forward-looking and future-proof public procurement framework** to foster the adoption of cloud computing by the public sector:

1. **Privacy and security:** Member States should retain the flexibility to procure the technology solutions that best meet their needs and provide them with the appropriate controls over their data. EU governments and public agencies need to have a broad choice of cloud providers that are best-in-class in privacy and security, comply with existing European legislation, and follow internationally-recognised standards or apply a voluntary certification (eg the ISO 27000 series), and European best practices such as the EU Cloud Code of Conduct or the CISPE Code of Conduct.

Not all government use cases require strict measures such as in-country offerings and data localisation. Any new blanket requirements for data localisation and/or EU headquartering or ownership requirements for cloud providers (eg in public procurement frameworks or in cybersecurity certification schemes) should be rejected. They do not enhance the security of the service or its data, they restrict choice and innovation and run counter to open approaches with likeminded partners that would otherwise encourage the growth and resilience of Europe's digital economy.

2. Sustainability/energy efficiency: The European Commission has recognised that cloud computing and edge computing will be among those digital technologies that will contribute to achieving the sustainability goals of the European Green Deal. Advancing the sustainability of cloud operations is equally important for many AmCham EU members, who have pledged to be carbon neutral – or even carbon negative – in the next years. They also support the conversation around advancing common metrics for measuring the sustainability of data centres, as part of the revision of Energy efficiency rules and as a contribution to the achievement of climate neutral data centres by 2030. Several of our members also participate in the European Green Digital Coalition. Thus, public procurement guidelines should reflect on the importance of energy-efficient data centres which will be essential for the sustainable use of edge and cloud computing technologies.
3. Skills: For the public sector to take full advantage of the opportunities presented by the adoption of technology and the digital transformation, it is critical to equip its employees with the right skills. Alongside procuring technology, Member States should prioritise skilling initiatives for their government's workforce in order to create an enabling environment and attract and retain talent that successfully achieves digital transformation. Partnerships with the private sector in this area can be particularly useful, given the vast expertise and comprehensive training and skilling programs that many cloud providers have already put in place.
4. Multi-stakeholder approach: The European Commission and Member States should involve all actors of the cloud ecosystem in the design and implementation of the public procurement framework for cloud. Cloud companies are not mere service providers; they can act as true digital transformation partners and advisors to public sector entities and offer their in-depth expertise to ensure successful deployment of cloud in the public sector. In that context, the European Commission should open the public procurement guidelines to a wide public consultation involving national administrations, public agencies and cloud providers to gather the widest possible feedback.
5. Avoiding prescriptive requirements: As public authorities transition towards a Cloud First approach, it is important that they are supported in developing an approach to procurement that is suitable for the cloud. The European Commission and Member States should support competence building so that procurers can design their tenders based on commercial cloud industry standards and best practices (including industry-recognised accreditations and certifications). This can avoid placing unnecessary restrictions on the services they can use and ensure access to innovative and cost-effective cloud solutions, without compromising on security controls, privacy or auditing capabilities. The Commission's guidelines should also acknowledge existing agreements between cloud providers and local public sector customers, and ensure there is no confusion for the customers on how the guidelines align with local agreements and best practices.

6. Effective compliance and supervision: The European Commission and Member States should simplify the overall enforcement and supervision rules established by the various digital legal acts to avoid over-reporting and a challenging compliance environment. They should promote use of new technologies and support public-private partnerships.

As members of AmCham EU, we stand ready to work with the European Commission, Member States and other relevant stakeholders to enable a framework for public procurement that abides by the WTO Government Procurement Agreement. This will benefit European governments and citizens alike, and it will secure the attainment of the EU's Digital Decade targets without creating artificial market access barriers to the adoption of cloud computing.

Conclusion

The upcoming EU Cloud Rulebook and guidelines for Member States on cloud computing procurement are tools which should bring much-needed clarity and coherence to the European cloud market, support wider adoption and boost trust in the use of new technologies. To increase the deployment of cloud solutions across the EU, the European Commission should position the Rulebook as an instrument to help compliance, reflecting best practices in self-regulation and simplifying implementation of EU regulations. In addition, to develop a future-proof set of public procurement guidelines, the Commission should adopt a transparency and open approach, benefiting from industry's experience and best practices, many of which are already deployed in projects with governments and local authorities across Europe.

As members of AmCham EU who offer cloud solutions across Europe, we believe that the Cloud Rulebook package should contribute to an open, competitive and sustainable cloud ecosystem. Preventing cloud providers from offering their services to the European market based on their origin would not be an approach that promotes innovation and growth in Europe's economy.