



Third-country Associations Joint Statement on EUCS (EU Cybersecurity Certification Scheme for Cloud Services)

Financial institutions headquartered outside of the European Union (EU) support the recently signed [‘Joint Statement on EUCS’](#) by the Association for Financial Markets in Europe (AFME), the European Banking Federation (EBF), the European Payments Institutions Federation (EPIF), the European Savings Bank Group (ESBG) and Insurance Europe (IA), which voiced concern over proposed localisation/sovereignty requirements.

Third-country financial institutions support the establishment of a cybersecurity scheme by the EU institutions, which can increase awareness of cybersecurity while harmonising, and lifting, standards across the Union. A cybersecurity certification, however, should focus on relevant and appropriate technical cybersecurity standards that would result in a benefit to cybersecurity and would not result in targeted requirements that would disadvantage third-country financial institutions in utilizing cloud services.

Representing a wide range of non-EU financial institutions, we therefore would like to raise serious concerns with the ‘Primacy of EU Contracts’ criteria that would apply from the most basic assurance level, EL1, to the highest assurance level, EL4. This would severely impact the freedom for third-country financial institutions to contract as they do not contract according to the legal systems of EU Member States. Further the requirement for cloud contracts to be based “only” on the law of an EU Member State does not reflect common contractual practice and does not allow for third-country financial institutions to reflect the legal systems of their home jurisdictions. This criteria, in its current form, would not be achievable for non-EU financial institutions to implement without significant changes to their contracting and operational practices.

1. **Primacy of EU Law (CS-EL1 to CS-EL4):** In Level 1, EUCS would require suppliers to have their cloud contracts governed by the law “only” of an EU Member State. As a general matter, global financial institutions contract for cloud services with a single cloud services provider on an enterprise-wide, framework agreement basis for the various services that are consumed among affiliates of the FI group. This framework agreement will include appropriate terms to ensure that the cloud services provider complies with applicable regulatory requirements in the EU for services performed for the benefit of EU entities within the FI group. A framework agreement for all services will logically be contracted through the financial institution’s head office, and not a subsidiary entity, and will adopt the governing law of the head office location. Practically, there is little justification to require a contract between a non-EU CSP and a non-EU customer to be governed “only” by the legal system of an EU Member State. This requirement, even within Level 1, would disadvantage non-EU businesses and result in EUCS not being usable for the majority of those businesses.

Third-country associations equally support the ‘Joint Statement on EUCS’ which proposes that the EUCS should have sovereignty requirements removed, including the ‘Primacy of EU Law’ criteria, and the EU instead adopt an implementing act which focuses purely on technical requirements.