

# NETHERLANDS

*Netherlands is trying to find a balance between stakeholders and interests concerning national security, economic security and digitalisation, thereby becoming a digital polder power within the EU.*

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## Introduction

The impact of digitalisation has moved high up the agenda in the Netherlands. In the run up to the Parliamentary elections of March 2021, every political party acknowledged the impact of digitalisation on major themes such as sustainability, economic growth, education and employment. The consequences of digitalisation are visible throughout the Netherlands and are still in full development. A lack of attention to, and knowledge of, the digital domain resulted in the establishment of a permanent Parliamentary Committee on Digital Affairs in 2021, whose main goal is to provide parliamentarians with new and necessary knowledge on digitalisation, within their specific portfolio and beyond.

“Digital sovereignty” has become a frequently used buzzword in Dutch politics, especially when recapitulating the EU’s aspiration to enter the digital geopolitical arena. The term encompasses numerous dimensions in national security, economic security, democracy and the rule of law. Without detailing numerous interpretations of digital sovereignty, the quest for digital sovereignty is a goal shared by policy-makers, citizens, businesses and non-governmental organisations in the Netherlands.

This not only demonstrates the comprehensive scope of the concept, but also its complexity. The European Parliament refers to digital sovereignty as “Europe’s ability to act independently in the digital world and should be understood in terms of both protective mechanisms and offensive tools to foster digital innovation (including in cooperation with non-EU companies)”.<sup>96</sup> For the Dutch Cabinet, it is “the ability to act as a global player, in cooperation with international partners, on the basis of our own insights and choices, to safeguard the Dutch public interests in the digital world and to be resilient in an interconnected world”.<sup>97</sup> While these definitions are comparable in wording, the differences of detail and emphasis reflect how the interests of the EU and the Netherlands are not always completely aligned.

## A Dutch Digitalisation Vision

The Netherlands is still exploring its precise course of action. The Netherlands’ Digitalisation Strategy (NDS), first adopted in 2018 and annually reviewed, emphasises the digitalisation opportunities for the Dutch economy and society, including public interest, constitutional rights, and digital trust. It prioritizes Artificial Intelligence (AI), digital connectivity, data transfer, digital skills and inclusion, digital government and digital resilience.<sup>98</sup> Furthermore, the Dutch government details its specific position on various EU digitalisation policies in the publications of the Working Group for the Assessment of New Commission Proposals. This interdepartmental working group discusses every new Commission proposal among all ministries, and the publication (a ‘fiche’) stipulates the Dutch position, and the way forward for the Netherlands. For example, the Dutch government states in a fiche about the EU’s Digital Compass 2030, that it welcomes the EU’s efforts to create a digital single market and it highlights the increasing geopolitical dimension of digitalisation. In particular, attention is given to privacy breaches and national security issues caused by dependencies on foreign actors. Based on this focus, the government endorses the efforts of the European Commission concerning the Digital Compass 2030. Nevertheless, the fiche also mentions the government’s regret that the White paper on AI<sup>99</sup> and the EU Cybersecurity strategy<sup>100</sup> are omitted from the Compass. In addition, the Dutch government strongly supports the EU’s emphasis on international partnerships based on the core values of the EU. However, the Dutch government considers civil society organisations to be slightly overlooked in the Compass, despite their crucial role in signalling early warning signs on the impact of new technological applications.

In addition to a fiche on the Digital Compass 2030, the Dutch government also wrote fiches on the Digital Services Act (DSA) and the Digital Markets Act (DMA). The DSA in particular has been subject to public debate in the Netherlands, with the government publishing a non-paper on the DSA package and the short-term holiday rental market for residential spaces. While the Dutch government supports the opportunities arising from the platform economy, there is a need to restore the balance between economic freedoms on the one hand and public interests on the other. Therefore, the Dutch government welcomes the updates that the DSA includes in the e-commerce guidelines of the EU concerning the role, responsibility and liability of intermediaries concerning the dissemination of illegal content. However, there are still too many uncertainties regarding the rules that can be imposed on platforms and the Dutch government desires a clarification and reconsideration of the EU legal framework.<sup>101</sup> Secondly, the DMA has also been positively perceived within the public Dutch debate and by the Dutch government. Within the EU, the Dutch government, together with France and Belgium, pushed for regulations for platforms with a gatekeeper function in 2020.<sup>102</sup> Numerous elements that these countries pushed for were adopted in the DMA, including the authority to *ex ante* impose obligations on platforms with a gatekeeper function, adjustments to European competition guidelines and adjustments to the threshold for reporting mergers and acquisitions at the Commission to include digital mergers and acquisitions that are currently evading supervision. The Netherlands, Germany and France are now taking this one step further by proposing an amendment to the DMA to assess all digital mergers and acquisitions "by large digital platforms with a gatekeeper position".<sup>103</sup> One side note to the DMA from a Dutch perspective is the lack of focus on companies that acquire a gatekeeper function by combining various services. Therefore, the Netherlands has specifically asked the European Commission to detail how the individual companies' ecosystems are included in the identification of gatekeepers.<sup>104</sup>

## Key issues in the Netherlands

Three key issues concerning digital sovereignty have arisen from the national debate on digitalisation.<sup>105</sup> First, is the ability of the government to govern national digital infrastructure, in particular 5G networks. Secondly, the balance between national and economic security interests, the use of industrial policies and a strong liberal market tradition. Thirdly, the dominant position of foreign platforms and their use of citizen's data, although this is less extensively discussed compared to the first two topics.

The first of these issues involves the ability to govern the use of critical infrastructure in order to protect national security interests. Electricity, access to the internet, drinking water and payment transactions are examples of critical processes, and if these processes fail it could lead to large-scale social disruption. Government, industry and emergency services are working closely to continuously improve and guarantee the protection of such vital products, services and processes.<sup>106</sup> Since 2019, the roll out of 5G networks have been under close scrutiny, as it will be critical infrastructure for the next generation of technology. In an EU context, the Dutch government called for increased cooperation and coordination between EU Member States. The publication of the EU's 5GToolbox in 2019 was well-received within the Netherlands.<sup>107</sup> In 2020, three large telecom providers (KPN, Vodafone and T-Mobile) acquired frequencies through the Dutch mobile communication auction. While it seems that only national parties have acquired the frequencies, KPN's network is still largely dependent on Huawei technology – and Huawei employees have certain user rights on the KPN networks.<sup>108</sup> Two elements seem to be key in the debate: espionage risks from foreign entities providing the specific technological know-how and financial considerations.

From a Dutch citizens' perspective, addressing espionage risks is deemed to be a government responsibility. They consider it a primary task of the Government to protect citizens, and 43% of Dutch citizens agree that the government should not buy equipment for the Dutch telecom networks from Chinese companies, because the Chinese Government may use it to spy on Dutch citizens.<sup>109</sup> Thirty six per cent were neutral in this regard and 21% disagreed. On the contrary, only 27% of the Dutch citizens would change their consumption behaviour. They would rather not have a Chinese phone, because of the risk that the Chinese Government could use it to spy on them. Forty-one per cent of the Dutch citizens do not mind having a Chinese mobile phone and 32% answered 'neutral'. This shows the discrepancy between individual and government responsibility in the Dutch debate on 5G providers. This directly corresponds with the second element; financial considerations. While consumers may purchase a Chinese phone based on their competitive prices and advanced technological applications, companies must compare their risk analyses against the actual costs of mitigating these risks. KPN, for example, stated that it could attract more in-house administrators or analyse codes and implement strict monitoring of logfiles to determine the exact procedures and identify possible breaches. While such measures can mitigate the risks, they are also time and resource consuming, making it a less attractive option for profit-driven companies.<sup>110</sup> In other words, digital sovereignty is not only about the will to be less dependent on foreign actors, but also about the financial capabilities of companies and governments to actually take steps to create less dependency.

Secondly, the Netherlands is still finding its way in balancing national and economic security interests, the use of industrial policies and a strong liberal market tradition. The Netherlands has a strong liberal market tradition with little to no market interference. However, economics and politics have become significantly intertwined due to the state-backed enterprises that are largely headquartered in China. In response to hostile mergers and acquisitions

from both the US and China, the Netherlands State Secretary of Economic Affairs Mona Keijzer, tried to break the taboo surrounding industrial policies in the Netherlands in 2020. Stating that *"the Netherlands must discard its fear for industrial politics"*, she advocated for provisional public investments in key private sectors that are essential to the competitiveness of the Dutch economy. She underlined her statement by allocating €25.5 million for quantum technology.<sup>111</sup> This complements the efforts outlined in the Knowledge and Innovation Covenant (2020-2023), representing business, knowledge partners and government. In this covenant, the partners confirm their commitment to invest €4.9 billion (€2.05 billion from private and €2.85 billion from public funds) in key innovation themes.<sup>112</sup> The multi-stakeholder model is characteristic of the Dutch political landscape, oftentimes referred to as the consensus-based 'polder model'. In identifying opportunities and challenges concerning digital sovereignty, the polder model can be a driving force and an additional challenge. With the inclusion of a more diverse palette of actors, challenges can be better identified and corresponding solutions and opportunities can be better executed with sufficient support and cooperation from all parties. However, the diverging interests of stakeholders and the consensus-based model can also impede effective and decisive decisions in this domain.

Lastly, the dominant position of multinational (social media) platforms and the use of citizen's data is becoming a subject of discussion in the Netherlands. The US business model depends on the free flow of data, thereby enabling companies to use large data sets to innovate, scale-up and expand their business. On the other end of the spectrum, China strictly regulates all data and numerous popular Western platforms are banned for state security reasons. Currently, the EU is trying to establish its position in the debate by introducing a third way. In the words of Margrethe Vestager: "The point, of course, is to push for real global standards, standards that build on privacy, on the integrity of digital and the dignity of the individual as the starting point."<sup>113</sup>

While there is no call to ban platforms that spread illegal or harmful content in a similar way as the Chinese government, there is a call for regulation within the Netherlands. Especially after the storming of the US Capitol, and the subsequent Twitter ban imposed on former US President Trump, the discussion of whether social media platforms could and should self-regulate became an issue of concern.<sup>114</sup> Besides the question of who should regulate and what can or cannot be published, the (mis)use of data collected by platforms is also gaining prominence in the Dutch debate. For example, the Dutch Data Protection Authority is analysing TikTok and whether the app provides enough information to the users about their privacy.<sup>115</sup> In addition to analysing large platforms, the impact of the GDPR on small and medium sized enterprises is central in the debate. The GDPR has been successfully implemented, however, for citizens and for small- and medium sized enterprises compliance remains a challenge.<sup>116</sup>

The intentions underpinning the GDPR have been clear. Consumers need to provide consent to companies to use their data, and companies need valid reasons to keep the personal data of consumers. In addition to this, every citizen can request access to companies that keep their data and can demand that the data be deleted if there is no necessity to keep it for their services (and, of course, assuming that there is no legal obligation to keep the data). In practice, it has led to 64,857 complaints, 72,031 known data breaches, 5,880 interventions, and 142 investigations resulting in 12 actual fines in the Netherlands in the period of 2018-2020.<sup>117</sup> These numbers show that the system works and is flexible enough to adjust to new technologies or to a massive increase in internet usage such as the surge during the COVID-19 pandemic.<sup>118</sup> Nevertheless, the discussion remains as to whether the data of Dutch consumers is properly protected. With an average of four fines per year, a company does not seem to run excessive risks. Two conclusions can be drawn from this number; either companies adhere strictly to GDPR regulations or the data of Dutch citizens is still not adequately protected.<sup>119</sup>

## How to focus on the digital issues of tomorrow?

The EU has been a pioneer in the field of digital policies, with the GDPR as the flagship of the EU's internationally established authority. That said, all of the adopted policies have been initiated to mitigate undesirable effects rather than to prevent the undesirable effect from happening in the first place.<sup>120</sup> To secure its position as the leading digital regulator, now is the time to focus on imminent issues. Creating synergies and cooperation with leading tech companies is key in the race for 6G development. Currently, China holds around 35 per cent of 6G-related patents and is striving to be the global leader of 6G development in the coming years.<sup>121</sup> The European Commission has already earmarked €900 million, matched by co-funding from industry, for research and development of 6G.<sup>122</sup>

The first set of 6G projects will form the basis for a human-centred Next Generational Internet (NGI) and address the Sustainable Development Goals (SDGs) to contribute to the twin transition.<sup>123</sup> The Commission intends to closely involve Member States in discussing the course of action and its flagship Smart Networks and Services project (SNS). The Netherlands needs to call for more attention to be given to the commercialisation of 6G rather than focusing solely on paving a path towards 6G. While tackling technological, societal and economic challenges and building 6G networks from a human-centred perspective is a first step; not losing the companies developing 6G networks through foreign mergers and acquisitions is a second and vital step in reclaiming EU dominance in this field.

Early funding to boost the commercialization of innovation will be key, as will be funding for scale-ups. One approach to explore is to set up a venture capital firm similar to IN-Q-Tel in the US. This firm invests in start-up companies to support US Intelligence capabilities and was established once government agencies recognised they were no longer the innovation

leader.<sup>124</sup> In the Netherlands, the national growth fund (or the so-called Wopke-Wiebes-fund, after the two ministers who initiated the fund) is similar to this. This fund is dividing €20 billion in a period of five years among projects that will boost the growth capacity of the Dutch economy. For example, the QuantumDeltaNL is one of these projects that receives €615 million to invest in quantum computers, quantum networks and quantum sensors.<sup>125</sup> It is important to ensure that not only must the research and development side of these projects be financed, but that the commercialization of innovation and scale-ups is also considered.

Secondly, the Netherlands needs to push for a broader adoption of the EU's digital identity. The eID provides EU citizens with a tool to control their online identity and data as well as access to public, private and cross-border services.<sup>126</sup> By putting the consumer centre-stage instead of companies, the EU can establish a true human-centric system with one digital identity that enables consumers to easily shift from company to company or platform to platform with one identity and e-wallet, instead of having individual logins for every site or application.

In conclusion, the Netherlands is already positioning itself as a digital frontrunner. Its digitalisation strategy is ambitious and the non-paper with France and Germany shows its willingness to be a European driving force. Now, it is key to press ahead to ensure that the fruits of digitalisation are felt at every level.



## Endnotes

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