Position of Dutch Municipalities and Provinces regarding the proposal for a Cloud and AI Development Act (CADA)

Position Paper

About VNG and IPO

The Association of Netherlands Municipalities (VNG) and the Association of Dutch Provinces (IPO) are the advocacy organisations and knowledge platforms for all Dutch municipalities and provinces. We act in the interest of local and regional government and its residents. We achieve this by exerting influence at the national and European level and placing societal challenges at the forefront. We also help authorities to implement legislation. Together, we ensure a strong and resilient local and regional government.

Dutch local and regional authorities (municipalities, provinces, and water authorities) work closely together with national government on implementing the Netherlands' Digitalisation Strategy (NDS). The design and implementation of European legislation and regulation form an integral part of this strategy.

Introduction

Dutch local and regional authorities are **strong advocates of the introduction of new European legislation that would significantly strengthen the digital autonomy and sovereignty of the European Union** and its entities. Digital autonomy and sovereignty have become highly pressing issues in recent years. We must acknowledge that, across Europe, we have been naïve for far too long when it comes to outsourcing and procuring critical technologies.

Digital dependency on non-European tech companies increasingly threatens our ability to maintain control over the confidentiality, agility and resilience of our digital infrastructure, data and systems. This is due in

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part to a years-long focus on merely user-friendliness and cost-efficiency and the subsequent lack of serious market alternatives for critical domains (such as cloud computing, office software and AI) and a significant shortage of technological expertise within government. This situation is concerning because it poses risks to the ability of democratic institutions to make independent decisions, to the security of sensitive data belonging to citizens and businesses and the continuity of critical public services. It is also very likely that the current situation leads to higher costs.

This position paper follows after the contribution of the VNG to the Call for evidence. Dutch municipalities and provinces welcome several aspects of the proposed Cloud and AI Development Act (CADA), but also have concerns regarding a number of elements in the current proposal.

Summary

In short, we call for:

Autonomy (Articles 16-44)

- **Upholding the EC proposal for a system of standards and certification**, including the introduction of a four-tier structure of sovereignty levels;
- **Limiting discretion as much as possible with regard to the requirement for public authorities to apply the sovereignty levels**, while not making these requirements absolute. After all, public bodies are already somewhat free to prioritise European IT solutions, but practical experience shows that a robust framework is lacking to significantly accelerate this transition;
- **Maintaining the proposal for a EuroCloud Federation** and ensuring its focus on governance and control by and for public authorities through the use of open-source building blocks and cooperation with steward-owned organisations.
- Strengthening the proposal through **a critical assessment of the criteria that constitute the Union Assurance Levels (particularly levels 2 and 3) to ensure that they adequately safeguard digital sovereignty and sufficiently preclude non-European legal influence**;
- Ensuring that the proposal makes it easier, rather than more difficult, for contracting authorities to **promote the use of European IT solutions through public procurement processes**;
- Reinforcing the proposal's **ambitions regarding the uptake of open-source software**;
- **Ensuring that data governance is adequately considered where necessary for digital autonomy and sovereignty**, including attention to authoritative data sources, data interoperability and reusable data products, in order to prevent new dependencies and safeguard public control over information provision;
- **Clarifying the conditions relating to the proposed mandatory migration period of 12 months** as a consequence of the sovereignty risk assessment;

Data Centre Capacities (Articles 10-15)

- A prudent approach to the development of European data centre capacities is required to support Europe's strategic autonomy, AI ambitions and economic and societal development. Europe should have the ambition to develop sufficient, future-proof data centre and computing capacity in a timely manner to support a competitive European digital economy and reduce strategic dependencies. From a strategic point of view, particular attention should be given to cross-border regions and innovation clusters that can contribute to European AI and digital infrastructure ambitions.
- At the same time, future demand for data centre and computing capacity remains difficult to predict. While an increase in capacity to support competitiveness, innovation, scientific excellence and strategic autonomy may in theory be necessary, this still requires further research, taking into account both public and private data centre capacity. Potentially necessary additional capacity should be developed under conditions that safeguard societal value and take account of local and regional circumstances regarding energy, grid capacity, physical space, water and the environment.
- In addition, **the most significant risks associated with capacity expansion must be addressed**, such as:
  - The utilisation of existing **data centre capacity is opaque and needs to be more transparent**;

- Large portions of both current and future data centre capacity are being absorbed by the very non-European companies on which we seek to become less dependent;
- **The data centre capacity market lacks transparency**, making it difficult for public authorities to safeguard public and societal value through policy interventions;
- **A lack of geographical distribution of data centre capacity**, due to the absence of instruments and binding norms to encourage a more balanced allocation based on regional conditions and European strategic interests. In several Member States, including the Netherlands, a shortage of physical space and limitations in electricity grid capacity are hindering further expansion. Regional terms of establishment should also be applicable outside of acceleration zones;
- Local and regional authorities must be structurally and meaningfully involved at an early stage in the designation and implementation of acceleration zones, taking into account regional conditions such as grid congestion, spatial constraints, sustainability, water availability and competing societal and economic uses of scarce resources;
- The justification for the return on investment associated with expanding data centre capacity appears to depend heavily on the added value of generative AI. Different AI applications, however, require different types and levels of computing capacity and greater insight is needed into what type of capacity is required, where and when, including for AI training and inference. Research highlights the value of small and specialised language models for many use cases, while advanced and large-scale AI models may be important for strategic applications in fields such as science, health, mobility, security and defence. The development of European computing capacity should therefore take account of this diversity in applications and their respective requirements.
- The problem of **depreciating assets**, which servers inevitably are.

Cloud and AI Leadership (Articles 3-9)

- In the area of European AI leadership, to take greater account of recent technological developments and academic insights. Bearing in mind that digital autonomy should also extend beyond cloud infrastructure to data, metadata, AI models and AI services, this means **supporting a diverse and competitive European AI ecosystem, ranging from smaller, specialised and manageable AI applications to advanced and large-scale models where these provide clear societal, scientific or economic value**. This requires sufficient computing capacity and the conditions for responsible development and deployment. In this context, support for strong regional and cross-border innovation ecosystems that connect public authorities, research institutions and businesses would be an asset to Europe's competitiveness and strategic autonomy.
- European investments should also contribute to strengthening Europe's own technological and industrial base, including the development of technologies such as energy-efficient digital infrastructure.

In the following part we will elaborate on the points above.

Autonomy (Articles 16-44)

Europe needs an ambitious legislative framework that helps to significantly accelerate the transition towards digital autonomy and sovereignty. The current proposal contains a number of elements that Dutch municipalities and provinces believe will make a strong contribution to achieving this transition.

We are particularly pleased to see that a layered and relatively comprehensive set of criteria has been established in Annex II to define the requirements that autonomous and sovereign cloud services should meet. In today's cloud market, sovereignty washing – whereby providers make various substantive claims regarding sovereignty that do not withstand closer scrutiny – is a widespread problem. It is also important to adopt **a risk-based approach**, under which different levels of autonomy and sovereignty are linked to different risk categories and the corresponding mitigating measures.

Furthermore, we are highly supportive of the proposed system of standards and certification. Accelerating the transition towards digital autonomy and sovereignty **requires cloud services to meet certain quality standards before they are brought to the market**. This will help safeguard key considerations such as exit strategies, system interoperability and data portability. These requirements should explicitly include the use of open standards and open APIs. Cloud sovereignty should not result in new dependencies on European providers but should enable interoperability and portability across providers and technologies.

Additionally, the proposed sovereignty requirements should complement existing cybersecurity and resilience frameworks, including the BIO, NIS2 and Zero Trust principles. It should be clear how the different requirements relate to each other and that they do not create unnecessary duplication or conflicting obligations.

Moreover, we see lots of potential in the proposed European public sector cloud federation. It is highly beneficial for European governments to pool their resources and jointly organise the development and procurement of cloud services. **The EuroCloud Federation can make a significant contribution to reducing digital dependencies by placing governance and control in the hands of public authorities**.

It is important that this approach is maintained, as Dutch municipalities and provinces are keen to avoid creating new forms of vendor lock-in with European providers. In addition, the EuroCloud Federation should make use of open-source building blocks and work together with steward-owned organisations and cooperatives. European ownership does not in itself prevent vendor lock-in. Portability, interoperability and credible exit possibilities should therefore be explicit requirements. This also requires sufficient attention to the governance and management of the data that public authorities use across cloud and AI environments. In particular, authoritative data sources, interoperability and the ability to develop and reuse data products are important conditions for maintaining control over public information and avoiding new dependencies on technology providers.

At the same time, Dutch local and regional authorities believe that the current proposal still contains a number of risks that we hope will be addressed during the further refinement of the legislation. Firstly, **we would like to draw attention to the discussion surrounding rigidity versus flexibility in complying with the proposed Union Assurance Levels** (UALs). The UALs cannot be made entirely absolute at the expense of all other considerations, for example in situations where adequate solutions for the required UAL are simply not available on the market.

Nevertheless, Dutch municipalities and provinces consider it of great importance that the discretionary powers of public authorities in this area are subject to very strict limitations, in order to accelerate the transition towards digital autonomy and sovereignty. **A mandatory framework is required for a transition of such scale and, moreover, provides the necessary reliability, long-term certainty and level playing field for (European) market participants to make an effective contribution to that transition**.

Notwithstanding the above, **we are concerned about the mandatory 12-month migration period as mentioned in Article 29.6**. The phrasing 'shall not exceed' seems quite absolute and very possibly does not appear to do justice to considerations of practical implementation. Article 30.4 rightly sums up several grounds for exemption to apply the UALs in procurement and these should also apply to Article 29.6.

Furthermore, **we are concerned about possible loopholes in the criteria for Union Assurance Levels (UAL)** as set out in Annex II. As of yet it is unclear whether UAL 2 and 3 would suffice for critical public services, since only UAL 4 explicitly and definitively excludes the possibility of the cloud provider being 'subject to the control of a third country or a legal entity established in a third-country'.

In that context, we also see a potential risk that, if the proposed criteria are not sufficiently clear and robust, **local and regional authorities that already wish to steer towards the use of European IT solutions could be restricted by uncertainty introduced by this new legislation**. More concretely, legal grounds that public authorities are currently already using to steer towards autonomy must not be undermined by the newly introduced criteria. We therefore call for a highly detailed legal analysis to be made of the current proposal and its implications for public procurement.

More specifically with regard to the procurement context, **we would like the legislative proposal to reflect a more ambitious open-source software approach**. In particular, Article 41 could be strengthened by a presumption that a procurement requirement for open-source software (as well as open standards) is a priori objectively justifiable. Existing proprietary market players will otherwise be incentivised to context any such requirements that are not accompanied by extensive motivation why this is justified from an autonomy perspective in a specific tender. Such a presumption would shift the burden of proof of such a requirement not to be conductive to digital to market players.

Additionally, Dutch municipalities and provinces wish to draw attention to the scale of the transition that, in our view, European public authorities are facing. We support the ambitions set out in the proposed legislation, which are considerable. However, **it is crucial to ensure that local and regional authorities are adequately equipped and supported in order to successfully deliver this transition**. The practical feasibility of this transition is very important, and this may mean that Dutch municipalities and provinces require more time than the one-year implementation period envisaged in the proposed legislation following its entry into force if they are not adequately equipped and supported with practical guidelines and sufficient funds.

The feasibility of this transition also depends on the impact on existing contracts, IT architectures and migration costs. Possible future requirements for higher Union Assurance Levels may require public authorities to adapt existing contracts, change parts of their IT architecture or migrate services and data to other environments. These changes can involve significant financial and organisational costs. Sufficient transitional periods, practical guidance and financial support should therefore be provided to ensure that these requirements can be implemented in a feasible and proportionate way.

That being said, we would like to reiterate how pleased we are that the Commission is putting forward an ambitious legislative framework for digital autonomy and sovereignty. The priority now is to preserve the proposal's clearly strong elements while further refining the legislation where necessary.

Data Centre Capacities (Articles 10-15)

It is encouraging to see that the Commission is paying attention to data centre capacity in Europe. The availability of such capacity plays an important role in safeguarding several of Europe's strategic interests. A strong European digital economy and the further development and application of AI require sufficient and future-proof digital infrastructure. Europe should therefore create the conditions for strategic growth of data centre and computing capacity where this contributes to European competitiveness, innovation and digital autonomy. Identifying how and where the necessary capacities can be accommodated under acceptable conditions requires an integrated approach in which the economic and societal value of additional capacities is weighed alongside its impact on energy systems, physical space, water availability and the environment. Regional constraints should therefore not primarily be treated as a reason to limit ambition, but as conditions that need to be addressed when determining where and how necessary capacity can responsibly be developed. Furthermore, the Commission is right to recognise that, in many parts of Europe, obtaining planning permits and other approvals for the development of data centres can be a lengthy process.

Europe should avoid relying solely on current demand projections when assessing future infrastructure needs. Strategic investments in digital infrastructure can themselves stimulate innovation, attract talent and create new economic opportunities. At the same time, Dutch municipalities and provinces believe that the ambition to expand Europe's data centre capacity needs to be accompanied by a stronger evidence base and appropriate instruments for public authorities to steer this development.

There are several risks associated with data centre expansion that need to be addressed. Firstly, the proposal appears to be based on the assumption that Europe's current data centre capacity is insufficient, which may be accurate but is very difficult to substantiate due to a severe lack of research on this topic. In order to support public authorities in exercising greater oversight of this issue and to develop evidence-based policy, **it is essential to enhance transparency regarding the actual use of existing data centre capacities**. Therefore, the proposal should place greater emphasis on introducing instruments to improve transparency

regarding the utilisation of data centre capacity, as well as mechanisms that enable public authorities to steer and regulate developments in this area.

In addition, the current proposal lacks sufficient coherence between the chapter on data centre capacity and the chapter on digital autonomy and sovereignty. From the perspective of digital autonomy and sovereignty, **a major issue with much of the data centre capacity currently available in Europe is that it is owned by non-European operators**. If the expansion of data centre capacity is intended to strengthen Europe's strategic position, as it should, then the legislation ought to introduce instruments and mechanisms to address this problem in the near future, including greater clarity on when and how public authorities should be able to steer private data centre capacity from a digital sovereignty perspective. This could include provisions that significantly increase transparency in areas such as actual capacity utilisation and energy consumption within the data centre market, as well as measures that safeguard European utilisation and thereby create more societal value. Such safeguards would enable local and regional authorities, working alongside national governments, to exercise far greater strategic direction over these issues.

Closely related to this is **the lack of instruments and mechanisms to achieve a more balanced and strategically desirable geographical distribution of data centre capacity across the Union**. For example, the current proposal does not contain obligations or binding norms for Member States that currently have less data centre capacity to appoint more or larger acceleration zones. This risks pushing Member States that already supply much of Europe's data centre capacity even further, which will not efficiently contribute to the Commission's goal in light of already limited physical space and grid capacity. In addition, **the legislation as proposed requires more clarity on the role of local and regional authorities**, which in the Netherlands are mandated to decide over physical space and the energy grid, in the designation of acceleration zones. We support the plans to simplify and speed up the permitting process where this is possible and provide transparency to companies involved. However, it is important that the proposal of the Commission takes into account the existing national legislation, legal competences of the different levels of government and digital systems currently available for urban planning and granting of permits. The principles of subsidiarity and proportionality provide for situations like this where local and regional authorities are closest to its citizens and can take into account the different interest and support among citizens.

Underlying all of the above is the fact that public financial resources are exceedingly scarce. Investing in the expansion of European data centre capacity is costly, and **it is therefore essential to reflect carefully on both the necessity and the desirability of such investments**. This assessment would be greatly aided by the introduction of binding norms and criteria that place the creation of societal value at the heart of any decision to expand data centre capacity. Such criteria should take account of factors including sustainability and environmental impact, as well as the allocation of scarce energy resources and physical space. This assessment should be standardised for all Member States in order to prevent a race to the bottom.

Moreover, the Commission must recognise that data centres primarily consist of **servers, which are in essence rapidly depreciating assets**. Their value declines quickly because ongoing technological advances cause both storage capacity and computing power to become relatively inefficient and, ultimately, obsolete. This particular form of digital infrastructure simply is **not as straightforwardly a sound economic and societal investment as many forms of physical infrastructure, such as roads and railways**. For this reason, Dutch local and regional authorities believe that Europe should exercise a degree of caution when it comes to committing public resources to such investments.

Cloud and AI Leadership (Articles 3-9)

We support the ambition to strengthen Europe's position in the field of AI. AI has significant potential to contribute to societal well-being, innovation and solutions to major societal challenges. Large language models and other advanced AI applications can play an important role in the development, including by improving public services, accelerating research and innovation, and increasing productivity across sectors. Europe should therefore create the conditions in which these technologies can be developed and applied responsibly and at scale. This requires not only the adoption of AI, but also a strong European AI ecosystem in which companies, knowledge institutions and public authorities are able to develop, scale and deploy competitive AI technologies and applications. Particular attention should be given here to cross-border

innovation ecosystems, which can bring agglomeration effects and serve as engines for European AI excellence, innovation and deployment.

We also welcome the fact that the proposal focuses not only on research, but also on the development of new ecosystems and, to some degree, on concrete applications and reuse within the public sector. In particular, the Grand Challenge on public-sector AI and the proposed Centres for AI could be of worth to local and regional authorities. At the same time, an ambitious approach to AI should remain focused on societal and economic value rather than on technological scale as an objective in itself. AI should be deployed where it demonstrably creates value, is proportionate in its use and can be deployed with adequate safeguards for fundamental rights, sustainability and long-term management.

The AI Leadership Initiative and several of the Grand Challenges appear to be strongly based on the assumption that upscaling elements such as computing capacity and autonomous AI systems will generate economic and societal returns. While future technological and market developments remain uncertain, Europe should maintain the flexibility to support different types of AI capabilities and applications where these contribute to societal, scientific or economic objectives. European investments should also strengthen leading research and innovation clusters that can accelerate the development and application of advanced AI technologies. However, there are various reasons to doubt the assumptions that upscaling in itself will generate such returns. These include the rapid development of model architectures, the high costs of the frontier models, the aforementioned short depreciation periods of specialised hardware and the overall uncertain value case for large-scale generative AI. **This calls for a more adaptive strategy than the one currently presented. European investments should be periodically and independently reassessed**. They should focus not only on computing capacity, but also on the conditions required for concrete and responsible deployment, including the availability of high-quality data, the necessary talent and professional expertise, interoperable technical building blocks and sustainable long-term management. Alternatives should also be considered, such as smaller and specialised models and a focus on reusable components. This would reduce the risk of Europe becoming locked into one or few hardware or model paradigms. At the same time, different types of AI models and advanced frontier models can contribute to societal, scientific and economic value, depending on the use case and strategic objective. An adaptive European approach should therefore retain sufficient flexibility to respond to technological developments and evolving societal, scientific and economic needs. Cooperation between regions, universities, research centres and industry across borders. Strong cross-border ecosystems can accelerate innovation, strengthen European competitiveness and contribute to strategic autonomy.

For Dutch municipalities and provinces, and the public sector more broadly, **the guiding principle should be to use the AI solutions that are most appropriate for the specific public objective, taking into account functionality, manageability, societal value and strategic relevance**.
This may include both smaller, task-oriented models and more advanced models, depending on the specific use case and objective. Local and regional authorities should therefore be structurally involved in the governance and prioritisation of the Grand Challenge on public-sector AI and in the design of the Centres for AI. They should not be treated solely as end users, but as co-designers, development partners and joint commissioning authorities. New European procurement and support structures should also build on existing national and intergovernmental frameworks and must not create further fragmentation or overlapping accountability requirements. Support from the EU should primarily focus on elements such as open and interoperable AI building blocks and collective implementation and procurement conditions. The development of a European AI infrastructure will only contribute to digital autonomy and sovereignty if its management, funding, continued development and public control are structurally secured.

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