Netherlands

Strategic Action Plan for AI

In September 2019, the Dutch government set out The Strategic Action Plan for Artificial Intelligence.[633] The AI Plan sets out three broad themes – "Capitalising on societal and economic opportunities," "Creating the right conditions," and "Strengthening the Foundations." The key goals are public-private partnerships, international cooperation, an "inclusive approach that puts people first," and "a country that is at the forefront of AI applications which serve the interests of people and society."[634] Under this plan, government commits to protect public values and human rights, further defined as prohibition of discrimination, protection of privacy, freedom of speech, human dignity and autonomy, the right to a fair trial, and human rights.

The Dutch AI strategy follows the Dutch Digitalization Strategy (2018), the first Cabinet-wide effort to formulate key priorities for digitalization, data and AI. Within the Digitalization Strategy the government "supports and endorses the guidelines established in the EU's recent communication on 'Ethics guidelines for trustworthy AI.'"[635] The government also commits to creating a "responsible innovation toolbox (including impact assessments, handbooks and guidelines)" and making knowledge available in the areas of transparency, explainability and accountability. Through the Transparency Lab initiative, the "government is working with businesses and supervisory bodies to assess how algorithms and their practical applications can be made more transparent and verifiable." The government seeks to "ensure that as many Dutch companies and public organizations as possible actively participate in the pilot phase of the High-Level Expert Group's ethical guidelines for AI."

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[633] *The Strategic Action Plan for Artificial Intelligence* (2019), https://www.government.nl/binaries/government/documents/reports/2019/10/09/strategic-action-plan-for-artificial-intelligence/Strategic+Action+Plan+for+Artificial+Intelligence.pdf

[634] T*he Strategic Action Plan for Artificial Intelligence - Summary* (2019), https://www.government.nl/binaries/government/documents/reports/2019/10/09/strategic-action-plan-for-artificial-intelligence/Strategic+Action+Plan+for+Artificial+Intelligence+Summary.pdf

[635] Dutch Digitalization Strategy (2018), https://www.nederlanddigitaal.nl/documenten/publicaties/2019/11/13/english-version-of-the-dutch-digitalisation-strategy-2.0

Across the Dutch documents reviewed, the concept of Fairness is mentioned only in reference to GDPR & AI High-Level Expert Group Ethical Guidelines. Rule of Law is mentioned in reference to AI developed within legal and ethical frameworks and the work of The Minister for Legal Protection. Fundamental Rights are defined as "privacy, non-discrimination and autonomy." In addition to these goals, Accountability and Transparency appear in multiple times in all government documents.

The Netherlands Organisation for Science Research (NWO) and the Ministry of Economic Affairs & Climate Policy jointly developed a public-private research programme that funds research on explainable, socially aware and responsible AI.[636] The Special Interest Group of AI, SIGAI, representing all computing science academic institutes and researchers in the Netherlands that perform AI research also published Dutch Artificial Intelligence Manifesto highlighting the importance of socially aware, explainable and responsible AI.[637]

The public administration within the Kingdom is layered and sometimes disconnected. However, the government organizations and the Association of the Netherlands Municipalities (VNG), the Ministry of the Interior and Kingdom Relations commit to focusing on "ethics in, by and for design and the transparency of algorithms when government experiments with AI for public tasks."

On August 27, 2020 the Dutch Data Protection Authority (Dutch DPA) approved the first 'code of conduct' in the Netherlands, the Data Pro Code[638] drafted by NL Digital, the Dutch industry association for organizations in the ICT sector

Predictive Policing

Dutch Police, in collaboration with Utrecht University and the University of Amsterdam, established the National Police Lab AI to

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[636] NWO, First national research agenda for Artificial Intelligence (Nov. 21, 2019), https://www.nwo.nl/en/news-and-events/news/2019/11/first-national-research-agenda-for-artificial-intelligence.html

[637] *Dutch Artificial Intelligence Manifesto* (2008), http://bnvki.org/wp-content/uploads/2018/09/Dutch-AI-Manifesto.pdf

[638] Wanbound BV, *Data Processing Agreement* (Apr. 2018), https://www.wanbound.com/wp-content/uploads/2018/05/Nederland-ICT-Data-processing-agreement-UK-Part-2.pdf

develop **"AI techniques to improve the safety in the Netherlands in a socially, legally and ethically responsible way."[639]** In alignment with the government's commitment to experiment with technology to solve social issues, Dutch Police has launched pilot projects with predictive policing to anticipate and prevent crime that might be committed by a certain person or at a certain location.

The first is the Sensing Project in Roermond where police uses cameras and other sensors to systematically monitor all people driving in and around Roermond and create a risk score, effectively transforming the "city into a living lab where every person travelling by car is subjected to mass surveillance and other human rights violations".640 The project violates the principles of human rights, informed consent, right to privacy and data protection, right to due process and non-discrimination. Amnesty International calls on the Dutch government to "halt the Sensing project and comparable 'experimental' predictive policing projects" and to "implement a mandatory and binding human rights impact assessment requirement applicable to the public sector." [8]

Second predictive policing project is *Criminaliteits Anticipatie Systeem* (Crime Anticipation System or CAS) implemented nationwide in 2017. The use of CAS to predict crime locations makes the Netherlands the first country in the world to deploy predictive policing on a national scale.[641] To date, none of the systems in use by Dutch police have been subjected to a comprehensive human rights evaluation.

The System Risk Indication Decision

In early 2020, a Dutch court ruled that the System Risk Indication algorithm (SyRI) algorithm, used to combat fraud in government programs, violated Article 8 of the European Convention on Human Rights.[642] In the landmark decision, the Court ruled that the principle of transparency was

[639] Innovation Center for Artificial Intelligence, *Police Lab AI,* https://icai.ai/police-lab-ai/

[640] Amnesty International, *We Sense Trouble* (2020), https://www.amnesty.org/download/Documents/EUR3529712020ENGLISH.PDF

[641] Strikwerda, Litska (Aug. 2020), *"Predictive Policing: The Risks Associated with Risk Assessment."* The Police Journal. https://doi.org/10.1177/0032258X20947749.

[642] *Europe Limits Government by Algorithm. The US, Not So Much,* Wired (Feb. 7, 2020), https://www.wired.com/story/europe-limits-government-algorithm-us-not-much/

not observed, because there is no insight into the risk indicators and the operation of the risk model. The Court also advised that there is a risk that inadvertent links are established with the use of SyRI on the basis of bias, such as a lower socio-economic status or an immigration background.

The UN Special Rapporteur on Extreme Poverty and Human Rights explained that the decision challenged the "systematic, legislatively sanctioned, used of digital technologies in welfare state on human rights ground."[643] In a filing with the court, the Special Rapporteur voiced concern that "SyRI has consistently been rolled out in poorer and more vulnerable areas of municipalities", and that the Dutch government has denied access to information about the data and 'risk models' used in the algorithm." The Special Rapporteur called the decision, "a clear victory for all those who are justifiably concerned about the serious threats digital welfare systems pose for human rights."[644] In April 2020, Data Processing by Partnerships Act was introduced by the government. Where SyRI was related to public data sharing, this bill expands the data surveillance and sharing to all data stored in public and private storage.[645]

AI Registry

In September 2020, Amsterdam launched an AI registry in beta version to detail how city government uses algorithms to deliver services. "Each algorithm cited in the registry lists datasets used to train a model, a description of how an algorithm is used, how humans utilize the prediction, and how algorithms were assessed for potential bias or risks. The registry also provides citizens a way to give feedback on algorithms their local government uses and the name, city department, and contact information

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[643] UN HROHC*, Brief by the UN Special Rapporteur on extreme poverty and human rights as Amicus Curiae in the case of NJCM c.s./De Staat der Nederlanden (SyRI) before the District Court of The Hague (2019),*
https://www.ohchr.org/Documents/Issues/Poverty/Amicusfinalversionsigned.pdf
[644] UN HROHC*, Landmark ruling by Dutch court stops government attempts to spy on the poor – UN* expert (Feb. 5, 2020),
https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25522&LangID=E
[645] AlgorithmWatch, Automating Society Report 2020,
https://automatingsociety.algorithmwatch.org/wp-content/uploads/2020/10/Automating-Society-Report-2020.pdf

for the person responsible for the responsible deployment of a particular algorithm."[646]

Public Participation

The Electronic Announcement Act requires national governments to publish official publications on the internet rather than on paper.[647] All AI policies are accessible by public via the websites of The Dutch Parliament and the Digital Government.[648] The government also commits to improving the basic digital skills of all citizens and ensuring the accessibility of government services and information and organizing assistance for those with less digital skills.

Participation in the development of Dutch digitalization plan and strategic action plan is geared more towards public agencies, private companies, universities and research institutes than the citizens directly. Taskforce AI that created the initial AI report is a public-private partnership, and its new initiative "Dutch AI Coalition (NL AIC) is a cooperation between the different research centers.[649] National Innovation Centre for AI (ICAI) is also a national network between knowledge institutions, industry and government.[650]

Fundamental Rights and OECD AI Principles

The Netherlands has endorsed Universal Declaration of Human Rights, The European Union (EU) Charter of Fundamental Rights and The

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[646] Khari Johnson, *Amsterdam and Helsinki launch algorithm registries to bring transparency to public deployments of AI*, VentureBeat (Sept. 28, 2020), https://venturebeat.com/2020/09/28/amsterdam-and-helsinki-launch-algorithm-registries-to-bring-transparency-to-public-deployments-of-ai/

[647] European Commission, *Digital Government Factsheet 2019 – Netherlands* (2019), https://joinup.ec.europa.eu/sites/default/files/inline-files/Digital_Government_Factsheets_Netherlands_2019_0.pdf

[648] Netherlands, House of Representatives, https://www.houseofrepresentatives.nl; Netherlands, Digital Government Agenda, https://www.nldigitalgovernment.nl/digital-government-agenda/

[649] HSD Foundation, *New Dutch AI Coalition Demands National* Approach (July 23, 2019), https://www.thehaguesecuritydelta.com/news/newsitem/1329-dutch-ai-coalition-demands-national-approach

[650] Innovation Center for Artificial Intelligence, https://icai.ai/

European Convention on Human Rights (ECHR).[651] However, there are differences in the legislative and institutional frameworks in the four constituent countries and The Office of the High Commissioner for Human Rights (OHCHR) recommends that the State party "establish a national human rights institution in Aruba, Curaçao and Sint Maarten."[652] OHCHR is also "concerned that the anti-discrimination provisions of the Netherlands, including the Equal Treatment Act 1994, do not prohibit discrimination based on all grounds, including color, language, social origin, property, birth or other status."[18]

The Netherlands has endorsed the OECD AI Principles. "The Netherlands is following the European approach to responsible AI and wants European values and standards to be embedded in AI applications at an early stage (in the design and development phase."[1]

The Dutch government agrees with the conclusions of the Joint Committee of the Advisory Council on International Affairs (AIV) and the Advisory Committee on Issues of Public International Law (CAVV) advisory report that meaningful human control is required in the deployment of autonomous weapon systems and responsibility and accountability attribution needs to be taken into account in the design stage of weapon systems.[653] Government also views that a moratorium on fully autonomous weapon systems to be currently unfeasible.

Algorithmic Transparency

The Netherlands is subject to GDPR, and the government advocates that a European regulator should be able to "impose ex-ante obligations on large digital platforms with a gatekeeper role."[654] In alignment with GDPR

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[651] The European Union (EU) Charter of Fundamental Rights in the Netherlands https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-eu-charter-in-netherlands_en.pdf

[652] UN HROHC, *UN Treaty Body Database,* https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/NLD/CO/5&Lang=En

[653] Advisory Council on International Affairs *Government response to AIV/CAVV advisory report no. 97, Autonomous weapon systems: the need for meaningful human control (Mar. 2, 2016),* https://perma.cc/J37M-UQ33

[654] Government of Netherlands, *Dutch position on competition policy in relation to online "platforms"* (Nov. 10, 2019), https://www.government.nl/documents/publications/2019/10/11/dutch-position-on-competition-policy

requirements, the Dutch Data Protection Authority (Dutch DPA) is established. Dutch DPA advised that it is concerned with lack of transparency and poor data security practices in the public sector, policing, criminal justice, and that digital government will be one of its three core focus areas for 2020-23.[655]

Despite all the actions taken already in the Netherlands, there are also several concerns about these actions and how the government proceeds with its priority goals. The findings in the report of the Temporary Committee on the Digital Future (TCDT) of the Dutch House of Representatives (published in May 2020) concludes that the House of Representatives has only discussed digitisation in a fragmented way; not all of the risks, opportunities and public values have been addressed; and many laws and rules in the field of digitisation are determined in the European Union.[656] The TCDT proposes that a standing committee for Digital Affairs be established after the elections.

Although Dutch government publicly commits to human rights and OECD AI Principles, the eagerness of the Kingdom to combine and then share all its data, as well its enthusiasm for techno-solutionism especially in the fields of justice administration and law enforcement are reasons for concern. The Netherlands government has strong commitment to advance the AI capabilities and applications. It is creating the tools and space required in collaboration with private companies and knowledge institutes. However, the citizens who are impacted by the government's data-sharing practices and experiments in social arena are not meaningfully included in the discussions. The reality of cases like SyRI and CAS clashes with the public commitment to ethical AI principles in strategy documents. The

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[655] Dutch Data Protection Authority, *Focus Dutch Data Protection Authority 2020-2023*, https://autoriteitpersoonsgegevens.nl/sites/default/files/atoms/files/ap-dataprotectie_in_een_digitale_samenleving_-gb_wtk.pdf

[656] House of Representatives, The temporary committee on the Digital Future (TCDT), *Summary of the report Update required. Towards greater parliamentary control of digitisation*, https://www.houseofrepresentatives.nl/members-parliament/committees/temporary-committee-digital-future/summary-report-update-required

Netherlands has not endorsed Social Contract for AI [657] Universal Guidelines for AI,[658] or the GPA Resolution on AI Accountability.[659]

Evaluation

The Netherlands has taken positive steps towards the rights-based deployment of AI with endorsement of OECD AI Principles, GDPR, and well-established protections for personal data. The country is expected to expand algorithmic transparency with the example set by Amsterdam AI registry initiative. And the Dutch court should be credited with a landmark decision concerning the use of secret algorithms in government services. Still the rise of predictive policing as well as risk-based systems that may adversely impact minority and vulnerable groups raise concern. The Netherlands is a member of the Global Partnership on AI. Future public adoption of AI systems is expected to be aligned with responsible and human-centric development and use of AI, respecting human rights and fundamental freedoms.

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[657] AIWS.Net, *Social Contract for the AI Age*, https://aiws.net/practicing-principles/aiws-social-contract-2020-and-united-nations-2045/social-contract-for-the-ai-age/
[658] The Public Voice, *Universal Guidelines for AI Endorsement,* https://thepublicvoice.org/AI-universal-guidelines/endorsement/
[659] Global Privacy Assembly, *Adopted Resolution on Accountability in the Development and Use of Artificial Intelligence* (October 2020) https://globalprivacyassembly.org/wp-content/uploads/2020/10/FINAL-GPA-Resolution-on-Accountability-in-the-Development-and-Use-of-AI-EN-1.pdf