

Protection of fundamental rights in the face of technological developments

Europe and International

In Europe and in international networks, too, over the past few years, BZK has stood up for the protection of fundamental rights in the face of technological developments. In that light, over the next few years, BZK plans to take part in a study into the feasibility of an international legal framework for AI, within the ad-hoc committee for Artificial Intelligence at the Council of Europe. We also plan to continue our membership of the Committee for Media and the Information Society. Within the European Union, BZK participates in the High Level Expert Group on Artificial Intelligence, which in April 2019 issued ethical guidelines for reliable AI. Based on this and other Directives, at the start of 2020, the European Commission published a White Paper on AI. In the BNC fiche (Evaluation of New Commission Proposals) on this White Paper, the Cabinet outlined the Dutch contribution to the protection of fundamental rights. The Netherlands supports the position of the Commission that further regulation is needed in order to secure fundamental rights in the face of AI developments. The Netherlands favours a learning approach, according to which research and experiments must be used to demonstrate whether and if yes which additional regulations are needed.

Over the past few years, the Netherlands has also worked to develop a policy and vision on AI. These efforts have not gone unnoticed. Studies into the AI strategies of various countries undertaken by the Cyber Policy Center at Stanford University reveal that the Netherlands is a pioneer in the field of a human rights-based national AI strategy.

Digitalisation and democracy

Democratic control over decision making processes must still be maintained even in times of crisis. For that reason, supported by professional and local interest groups in local democracy, the Minister of BZK took the initiative to institute a temporary legal provision in this exceptional situation, in the form of an emergency Act that enables digital decision making. This temporary Act, that is initially valid for the period through to 1 September 2020, makes it possible for example for Provincial Executives, municipal councils, the island council and the governing boards of water authorities to meet in a digital environment and to take legally binding digital decisions.

Specifically in the current situation, this means that the public administration is able to pass resolutions it considers to be in the interests of all local residents.

We are supporting local government in the implementation of this temporary Act and assisting them to manage digital consultation and participation, in the form of practical guides, Q&A sessions and videos.

The Minister of BZK is working alongside the VNG on a form of local digital democracy that is both inclusive and secure. Via the collaboration programme Democracy in Action (DiA), BZK, the VNG and the professional associations and interest groups are supporting all parties that have a role to play in local democracy in the digital era.

Early 2018 saw the launch of a living lab within which municipalities received support for the implementation of a variety of (open source) participation tools. Thanks to this living lab, the participation platforms Consul and OpenStad and the accompanying participation tools have been further developed. A number of municipalities are now actively employing these tools to involve local residents in the process of policy development. The Municipality of Groningen, for example, with support from the living lab, has been working on a digital participation programme for the residents of the Oosterpark District.

They were granted a budget of 25,000 euros to improve local environment, based on ideas they submitted to the platform. The various ideas were then put to the vote and the results put straight into practice. In 2019, the experience acquired in the living lab was used to further roll out the approach. In January 2020, the upscaling programme was ready for implementation. Also in 2019, we organised a series of summer schools on 'digital democracy'. The original plan was for the participants to work on a manifesto on this theme. To increase the impact of the programme, the decision was taken to instead develop a toolkit with prospective action plans for local government. The toolkit was completed at the start of 2020. To improve access to council information, at the start of 2020, efforts were focused among others on broad implementation of the 'open council information standard'. Using this standard ensures that all council documents are published in the form of open data: standardised and reusable.

Legislation

Rapid technological developments demand long-term safeguarding of public values in the form of legislation. The Council of State issued an unsolicited recommendation on digitalisation to the Cabinet. The recommendation and Cabinet response dealt among others with the implementation of laws supported by ICT and legislation independent of technology. In the autumn of 2019, we started work on preparing a 'Guide to legislation and ICT'. Wherever necessary, we are issuing proposals for changes to the Instructions for the regulations and the Integrated Consideration Framework for Policy and Legislation. We expect to conclude these activities towards the end of 2020.

The Bill for the Modernisation of Electronic Governmental Traffic offers citizens and businesses the right to submit applications and other official notices to government, in digital format. The Bill also offers legal protection to citizens in respect of digital communication with government. The Bill was presented to the Dutch House of Representatives on 18 July 2019. The Bill for the Modernisation of Electronic Governmental Traffic deals with the rights of citizens, while the Digital Government Bill deals with the facilities that enable electronic administrative traffic. The Digital Government Bill was adopted by the Dutch House of Representatives in February 2020, and is now under discussion within the Senate of the States General.

The Bill on Electronic Publications enables all levels of government to publish their general announcements and notices in digital format, on a central website (overheid.nl), and makes it possible for citizens, in turn, to be informed of relevant notices, by email. The Bill was unanimously adopted by the Dutch House of Representatives on 10 December 2019. The consultation about the Decree on Electronic Publications and the Electronic Publications Regulations was concluded in February 2020.

At the start of 2019, an amended Initiative Bill Open Government was presented to the Dutch House of Representatives and the Senate. The aim of the Open Government Act (Woo) is to increase the transparency of government. This is vital for public confidence and for the legitimacy of government. Over the past year, national and local governments have mapped out the consequences of the Bill, in a series of implementation tests.

New technology and the steady advance of digitalisation in society mean that the Dutch government is required to review its legislation and regulations, and not only at national level. The agenda of the new European Commission is therefore relevant. Digitalisation has been identified as a top priority in that agenda, based around the key themes Single digital gateway, accessibility, eIDAS and public values. The efforts of the Netherlands are focused on a human centric approach to AI and algorithms, among others.

Data

The first Government Data Agenda, NL DIGITAAL, was published in March 2019. The revised agenda was sent to the Dutch House of Representatives in April 2020. This agenda describes how data can be used even more effectively in policy making, and considers the efforts of government to solve problems facing society. The agenda also focuses specifically on protecting public values and fundamental rights. Many of the actions outlined in the agenda have already been implemented. For example, a study has been completed to identify who reuses open data, and to specify their needs. To meet the needs of these (re)users, data.overheid.nl has been expanded to include additional datasets and search parameters. Government organisations that wish to get to grips with data can seek assistance from the Learning and Expertise Centre for Data-driven Working Practice (LED). In the course of 2019, the LED prepared guidelines for responsible use of data in public space. In the spring of 2020, a progress report on the Government Data Agenda was submitted to the Dutch House of Representatives. Key themes in this agenda are public values, data in order, the provision and sharing of data and data-driven working practice within government. To avoid duplications, the action lines from the Digital Government Agenda will not be reported on separately in NL DIGIBeter, starting in 2020. The House of Representatives also received a letter about the renewal of the Open Source Software (OSS) policy by national government and the full Cabinet response to the 'digitalisation strategy and data strategy of the EU' and the European Commission's White Paper on AI'. A Cabinet response to the investigation into the supervision of the use of algorithms by government was also sent to the House of Representatives in April 2020.

Follow-up

As well as continuing social dialogue on public values and organising and monitoring vital in-depth studies, in 2020-2021, we are focusing on the (further) development of specific policy instruments that can make a contribution to the earliest possible safeguarding of public values and fundamental rights in the face of technological change. We are also focusing attention on digital democracy and participation, and open source Council and States General information, as well as continuing our legislation agenda.

Actions 2020-2021

Attention for public values

- At the start of 2021, we will have completed a Human Rights Impact Assessment for governments. This will assist government organisations to detect risks to human rights at an early stage in the process of digitalisation, to allow them to take the appropriate action. This action has emerged from the Cabinet response to the Middendorp motion.
- At the end of 2020, we will present the design principles for AI systems that will contain practical guides to assist developers in preventing discrimination by AI systems. In the process of digitalisation, and in particular AI, discrimination is one of the greatest risks to public values and fundamental rights.
- In 2020, we will continue to invest in informing the public. Following on from the special addition of the Donald Duck magazine on AI and fundamental rights, we are developing a dilemma game entitled 'Tech Doubts' (*Tech Twijfels*). The aim of the game is to teach schoolchildren to think about the threats and opportunities for human rights offered by new technologies. We expect to launch this game in September 2020.
- We are continuing to encourage cross-society dialogues on the effects of digitalisation. Depending on the progress of the corona crisis, these will take place during the Public Spaces conference to be held in the spring of 2021. Public Spaces is a collaborative venture between academics, civil society organisations and the media (broadcasting organisations, libraries, museums and Wikipedia), aimed at reconsidering the way in which the Internet operates today, from the perspective of public values. During the conference, together with Public Spaces, BZK will offer a podium to digital (government) services designed from the perspective of public values. A series of public dialogues will also be organised.
- We are continuing to maintain contact with experts on public values and digitalisation. The Ministries of BZK, OCW and SZW are organising a joint hackathon at the end of 2020, to elaborate instruments designed to recognise and prevent discrimination in digital decision making, based on algorithms and AI.
- At the end of 2020, the results of the multidisciplinary project Calculemus-FLINT will be presented. The project considers the interaction between legislation and ICT. The aim is to develop an instrument for 'translating' legislation and regulations into (automated) decision making rules for implementation in practice. The outcome will be rules for implementing agencies that can be better applied, while providing greater clarity and legal certainty to citizens. The background to this development lies in the fact that the application of laws and rules requires a solid foundation that can be established by translating the rules into (ICT) systems and technical processes. Essential questions include how the analysis and interpretation of laws is organised, and how the translation of laws and regulations into systems and processes can be designed to be transparent and governable.
- The National Action Plan on Human Rights 2020 will also consider the impact of digitalisation. The focus is placed on access to government facilities. Action points have been formulated with regard to the provision of information, contact points and digital inclusion. It will include the development of a digital roadmap for litigants seeking justice.
- We will investigate the possibility of introducing a Code for the protection of children online (based on an English model). Children are not always aware of the risks (for example in respect of privacy) they run when using social media, gaming or following digital education. The aim of the Code is to encourage the private sector, as producers of software (and government authorities that commission the development of that software) to take account of children's rights right from the design stage. This could mean that businesses are required to place the highest possible level of privacy protection in the software, at *default* level. Or at least to make it very simple for children to do this for themselves.
- National, provincial and municipal government and the water authorities will work together on an (intergovernmental) code for good digital public administration. Given the wide scope of the code and the numerous stakeholders involved, the consultation process is taking longer than initially expected. The aim of the code is to translate existing principles for good public administration (in the offline world) into new policy principle (for the online world). Alongside this substantive translation, the new code also aims to increase awareness among public servants of the importance of the responsible use of technology.
- Also in 2020-2021, a series of studies will be completed, among others into the effects of self-learning algorithms employed by private parties on consumers who make use of those algorithms (consciously or subconsciously). The Netherlands Scientific Council for Government Policy (WRR) will be publishing its study into the effects of AI on public values and finally the Council for Public Administration (ROB) will use its research programme to encourage the (political) discussion about the legitimacy of using data to guide behaviour.

- Policy and research into AI and public values for the whole of government will be harmonised within the AI collaborative platform. Knowledge is also shared, within this platform, backed up by a digital database and a newsletter.
- On an international scale (Council of Europe and European Commission), over the next few years we will continue to focus attention on taking account of public values and human rights in digitalisation, for example in using AI (following on from the European Commission White Paper on AI in 2021). On a broader international scale, together with the Ministry of OCW, BZK is involved in the AI Guideline currently being developed by UNESCO. We are also working alongside the OECD on ethical principles for responsible data use.

Digital democracy

- We support lower levels of government in implementing the temporary emergency Act on digital decision making, and are assisting them to support digital consultation and participation by publishing practical handouts, Q&As and videos.
- In 2020, we are continuing the Living Lab for Local Digital Democracy launched in 2018 that assists municipalities working together to develop *open source tools* for public participation, so that even more municipalities are able to make use of the digital participation tools.
- In 2020, more municipalities and provinces will sign up to this (open source) council information standard. The total number of affiliated members will rise to around 250 municipalities. By the end of 2021, we expect this to be around 300.
- To increase awareness and knowledge of the impact of digitalisation, in 2020 we will be attending a series of meetings, conferences and workshops organised by the partners. These include the 'Council on Saturday' and the 'Festival of Implementation' of the VNG.
- We expect a study into successful methods for online democracy in Estonia and a number of other European countries to be published in the summer of 2020. This study will help clarify how these methods can also be employed in the Netherlands.

Legislation

- The Manual on Legislation and ICT will be completed by the end of 2020 and proposed in the Instructions for Regulations and the Integrated Consideration Framework for Policy and Legislation.
- The purpose of the Digital Government Act (Wdo) is to enable Dutch citizens and businesses to log in more securely and more reliably to (semi)government organisations. The Wdo allows citizens to use private login means, alongside their public login means the DigiD. The Wdo also imposes compulsory standards. In that sense, the Wdo is the Dutch implementation of the EU Directive for access to government websites and apps. According to the schedule, the Wdo should come into force at the start of 2021.
- An amendment to the Passport Act is planned for 1 January 2021, necessary to allow the introduction of the electronic Dutch Identity Card.
- In 2020, parliament will be discussing the Bill for the Modernisation of Electronic Governmental Data Interchange. The new Bill is an amendment to the General Administrative Law Act (Awb), that entitles citizens to do business with government, via digital means. It is not yet clear when consideration of this Bill will be continued. The schedule is for the Bill to come into force in 2021. In support of the implementation of the Act, pilots are currently underway at municipalities, provinces and water authorities.
- In 2020, the Senate will be discussing the Bill on Electronic Publications. The purpose of this Act is to improve access and awareness of all legally required announcements, notices and notifications of (proposed) government decisions not addressed to one or more stakeholders, by streamlining the publication regulations. The results of the consultation in the Senate will be integrated in the Decree and the Regulation. The Decree will then be submitted to the Council of State for recommendation. According to the schedule, the Bill on Electronic Publications will come into force on 1 January 2021.
- In 2020, a collective Act on the Personal Records Database (BRP) will be submitted to the House of Representatives. Among the regulations contained in this Act are extensions for the registration of stillborn infants and a compulsory municipal address facility for the homeless. An experimentation regulation will also be introduced, that creates room for pilot projects with the BRP, for example for the registration and use of email addresses and other contact data.
- Work is underway on a Bill that reinforces the role of the Minister of BZK in assisting municipalities in investigating whether a person is required to be registered as a resident at a particular address. As a result, the National Address Quality Programme (LAA) will be structurally embedded in the law. At the end of 2020, we will be reporting to the House of Representatives on the progress of the LAA. The amendment to the law is planned to come into force on 1 July 2021.

- During the autumn of 2020, the Reuse of Government Information Act will be presented to the House of Representatives. This Act is expected to come into force in 2022. The Act is an implementation of the European Directive on Public Sector Innovation (PSI). This 'open data Directive' regulates access to public data for citizens and businesses, for the purpose of reuse.