Position paper of the Netherlands on the European Commission proposal regarding legislation for a coordinated European approach on the human and ethical implications of Artificial Intelligence (AI) 18 December 2019

Mrs Ursula von der Leyen, President of the new European Commission (hereafter: Commission), has announced that she will put forward legislation for a coordinated European approach on the human and ethical implications of artificial intelligence: "In my first 100 days in office, I will put forward legislation for a coordinated European approach on the human and ethical implications of Artificial Intelligence”

In addition to an investment package put together by the Commission and the EU Member States,\(^1\) provisions are being considered from an industry policy and internal market perspective on the 'horizontal elements' of data transparency, liability and traceability. The focus hereby is not only on the challenges, but also on the opportunities that Artificial Intelligence (AI) has to offer to the European economy and society. During the hearings devoted to the Commissioner Reynders, Breton and Executive Vice President Vestager, sectoral proposals were announced that would deal with the 'human and ethical aspects' of AI. The Commission will base itself in part on two reports of the external High-Level Expert Group AI: the first report contains ethical guidelines for reliable AI\(^2\), including guarantees for human control and human supervision in the implementation of AI. In addition, an ethical approach provides clear conditions for grasping the opportunities provided by AI, and not just combating the potential risks. The second report dated June 2019\(^3\), contains policy and investment recommendations for reliable AI.

Main message of the Netherlands regarding legislation for a coordinated European approach on the human and ethical implications of artificial intelligence

The position of the Netherlands on AI has been set out in the Strategic Action Plan for Artificial Intelligence (SAPAI) and the policy letters on 'AI, public values and human rights' (Ministry Interior and Kingdom Relation's) and 'Safeguards for the risks of data analyses conducted by the government' (Ministry of Justice and Security).\(^4\) Dutch policy aligns with the European 'human-centric AI approach', in which humans are the focus in the development and application of reliable AI technologies, and which ensures fundamental rights,\(^5\) with AI benefiting humans and society as a result. With this human-centric position, Europe could assume a unique position (also in a competitive sense) on the world stage with regard to countries such as the US and China. In order for Dutch and European policy to align properly, it is important that at least the following starting principles are incorporated in future legislation for a coordinated European approach to AI.\(^6\)

1. European approach to AI legislation: The Netherlands is in favour of a European approach to legislation and supports the human-centric approach of the Commission with regard to the development of AI policy and legislation.

2. The Netherlands advocates a 'learning' approach in which research, experiments and pilots should indicate whether problems arise and if so, where. Subsequently, we need to examine and determine how these problems can be resolved using existing instruments, including legislation and regulations. If new legislation and regulations seems to be required, based on this learning approach, the question is whether this should be 'generic' (i.e. applicable to the entire AI domain) and/or application-specific. In this light, it is important that the results of the learning approach are made available quickly, allowing any necessary investments in generic legal safeguards to be made timely, wherever possible. This should contribute to creating and maintaining sufficient trust in AI

\(^1\) The Commission has indicated that the entire EU should invest €20 billion in AI research, of which €7.5 billion in extra research funding will be made available from Horizon 2021 in the forthcoming Commission period.


\(^3\) Parliamentary papers II, 2019/2020, 26 643, No. 642.


\(^6\) In addition to the elements mentioned, which are important for the future legislation on a coordinated EU approach to AI, it is important that there is attention at European level for other elements, such as Lifelong Development, with an eye to the consequences of AI and digitalisation on the job market.
applications in society. This should entail leaving enough opportunity for exceptions to be allowed or additional legal safeguards to be made possible for specific domains or sectors, wherever necessary. The measures must be ones that are efficient and can be implemented, while also safeguarding public values and human rights.

3. Since AI is still in development, the Netherlands supports the Commission in its view that safeguards should primarily be implemented through policy principles or guidelines (i.e. ‘soft’ law). In this context, the aforementioned letter to the NL House of Representatives, on the risks of data analyses conducted by the government, contains guidelines for the deployment of AI by government bodies, which will be tested for effectiveness and execution feasibility in the Ministry of the Interior and Kingdom Relation’s Transparency Lab. However, in order to provide a strong base for such safeguards, which also brings legal certainty, the Netherlands also is of the opinion that it should be investigated whether these safeguards can be incorporated in European legislation. Moreover, the Netherlands envisions safeguards regarding the deployment of AI by government bodies that can only be arranged by law. Another point for investigation is the degree to which legal frameworks are suited for the following cases: self-driving cars, P2P energy markets, judges, self-efficacy and content moderation on platforms (but also the NL Ministry Interior and Kingdom Relation’s Transparency Lab).

4. The Netherlands supports the Commission approach regarding the development of AI policy. The external High-Level Expert Group AI mentioned earlier has developed ethical guidelines on reliable AI. After their publication in April 2019, a period of EU-wide pilots with these guidelines began (lasting until December 2019), as well as an ongoing consultation process to collect ideas and viewpoints. This included a consultation, which has been announced to take place in mid-December 2019. Based in part on all of these outcomes, the Commission will decide upon the desired approach required to safeguard the ethical principles. The possibilities include testing guidelines against existing legislation and regulations, developing supplementary guidance for existing regulations, developing soft law (i.e. standardisation or certification) or actually embedding it in new legislation and regulations.

5. The Netherlands is in favour of the Commission investigating (i) which lacunae exist in relevant legislation, and (ii) whether future legislation for a coordinated European approach to AI should include extra provisions related to liability or accountability, as well as transparency and traceability, in the deployment of AI systems. The designated route is a ‘learning’ approach, in line with point 2. For AI applications in general, it is better to consider the entire mix of policy instruments, including legislation and regulations.

6. As studies of the European Commission (and pilots related to AI) have demonstrated, it is important that the EU and Member States work together and invest in encouraging the development of human-centric AI applications. The Netherlands supports the Commission in strengthening and combining European research networks on Artificial intelligence in the framework of the current Horizon 2020 Framework Programme (e.g. the ICT-48-2020 call that closed on 13 November 2019) and similar calls in the framework of the future Horizon Europe Framework (and Digital Europe) programme.