

CHAPTER 9

NETHERLANDS

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I. Is there a national act containing a legal definition of Automated Administrative Decisions?

There is no unambiguous definition or categorisation of automated administrative decisions used by Dutch administrative authorities, let alone a Dutch national act containing a legal definition of automated administrative decisions¹. There are many public policy documents that contain a definition and/or categorisation of different types of automated systems used by administrative authorities in their decision-making process². For example, the Guidelines for the application of algorithms by administrative authorities and public information on data-analyses (*Richtlijnen voor het toepassen van algoritmen door overheden en publieksvoorlichting over data-analyses*), which were issued by the Ministry of Justice and Security and correspond to the review standards of the Central Government Audit Service (*Auditdienst Rijk*), define an algorithm as a mathematical formula or model executed by a computer to solve a problem, answer a question, make a prediction, take a decision, or inform a decision³. These Guidelines also contain a classification of algorithms, ranging from simple rule-based models to complex case-based systems, such as deep learning algorithms⁴. The Guidelines refer to the definition of artificial intelligence (AI) in the Strategic Action Plan for Artificial Intelligence (SAPAI, *Strategisch Actieplan voor Artificiële Intelligentie*), issued by the Ministry of Economic Affairs and Climate Policy⁵. The SAPAI, in turn, refers to the definition

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¹ Netherlands Court of Audit, *Aandacht voor algoritmes* (2021).

² M. Hoekstra, L. Dom, A.F. van Veenstra, *Quick scan AI in de publieke dienstverlening III* (2024), 12.

³ Ministry of Justice and Security, *Richtlijnen voor het toepassen van algoritmen door overheden en publieksvoorlichting over data-analyses* (2021), 3.

⁴ *Ibid.*, 3-4.

⁵ Presently called the Ministry of Economic Affairs.

issued by the European Commission, defining AI as systems that display intelligent behaviour by analysing their environment and taking actions – with some degree of autonomy – to achieve specific goals⁶.

Automated administrative decisions can, however, fall within the general definition of a decision (*besluit*) in Article 1:3(1) of the Dutch General Administrative Law Act (GALA, *Algemene wet bestuursrecht*), which defines a decision as a written decision by an administrative authority (*bestuursorgaan*) containing a legal act under public law⁷. As a sidenote, the fact that a decision has to be in writing is meant to exclude merely oral decisions but not to exclude decisions that are issued electronically⁸. The aforementioned legal definition of a decision is quite broad, covering both single-case decisions⁹ (*beschikkingen*) and decisions of general scope (*besluiten van algemene strekking*), whether informed or made by an automated system or not¹⁰. The specific type of (automated) decision determines which GALA rules apply¹¹ and which court has jurisdiction to review it.

If the automated decision constitutes a single-case decision, recourse must be made to the administrative courts (*bestuursrechter*) to challenge it. As part of that challenge, the administrative court may rule indirectly on the legality of the general binding regulation (*algemeen verbindend voorschrift*) or policy rule¹² (*beleidsregel*) underlying the single-case decision. This type of judicial review is called incidental review (*exceptieve toetsing*). Administrative courts are, however, generally not

⁶ Ministry of Economic Affairs and Climate Policy, *Strategisch Actieplan voor Artificiële Intelligentie* (2019), 9. See also Art. 3(1) EU AI Act, that defines an AI system as a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.

⁷ Cf. District Court of Amsterdam 17 May 2022, ECLI:NL:RBAMS:2022:3066, para. 4.2, in which the court regarded a screenshot of a digital notification as a decision as defined by Art. 1:3(1) GALA.

⁸ *Kamerstukken II 1988/89, 21221, 3, p. 37, Kamerstukken II 2001/02, 28483, 3, p. 6-7*. See also Division 2.3 GALA, containing rules on electronic communication between administrative authorities and citizens.

⁹ As defined by Art. 1:3(2) GALA.

¹⁰ Compare Council of State (*Raad van State*), *Digitalisering. Wetgeving en bestuursrechtspraak* (2021), 51-54.

¹¹ Art. 3:1 GALA.

¹² As defined by Art. 1:3(4) GALA.

allowed to review general binding regulations or policy rules directly¹³. Thus, if a challenged automated decision constitutes a general binding regulation or a policy rule, recourse must be made to the civil courts (*civiele rechter*). The same goes for an action against the use of an automated decision-making process in and of itself or an underlying Act of Parliament (*wet in formele zin*). This is because the decision by an administrative authority to use an automated system, such as an algorithm or an AI system, the use of said system, and underlying Acts of Parliament do not constitute decisions as defined by Article 1:3(1) of the GALA¹⁴. Recourse must also be made to the civil courts for class action lawsuits against automated administrative decision-making processes¹⁵. This rather tricky distinction between different types of decisions and the corresponding routes for judicial review has led to the fact that the leading Dutch case law on automated administrative decisions comes from both the administrative courts and the civil courts¹⁶. It also means that an automated administrative decision-making process may be challenged before both the administrative courts and the civil courts, depending on the legal nature of the decisions and the parties involved¹⁷.

¹³ Art. 8:3(1) GALA. For a critical review, see Commissie Verruiming bevoegdheden bestuursrechter van de Vereniging voor bestuursrecht (VAR), *Verbreiding van bestuursrechtspraak. Noodzaak en consequenties van een groei-model voor bestuursrechtelijke rechtsbescherming* (2023), 139-152.

¹⁴ Council of State, *Digitalisering. Wetgeving en bestuursrechtspraak* (2021), 55. Cf Ministry of Justice and Security, *Richtlijnen voor het toepassen van algoritmen door overheden en publieksvoorlichting over data-analyses* (2021), 14, referring not only to decisions but to outcomes as well. As for Acts of Parliament, these are issued by the First and Second Chamber of the States General (*Eerste en Tweede Kamer der Staten Generaal*), which are not deemed to be administrative authorities under Art. 1:2(2) GALA.

¹⁵ Council of State, *Digitalisering. Wetgeving en bestuursrechtspraak* (2021), 55-56. See, for example, District Court of The Hague 5 February 2020, ECLI:NL:RBDHA:2020:1878 (*SyRI*). Legal entities, such as interest groups and NGOs, may also have standing before administrative courts under Art. 1:2(3) GALA if their statutes and factual activities strive to protect the interests involved in the contested decision.

¹⁶ ABRvS 17 May 2017, ECLI:NL:RVS:2017:1259 (*AERIUS I*), ABRvS 18 July 2018, ECLI:NL:RVS:2018:2454 (*AERIUS II*), District Court of The Hague 5 February 2020, ECLI:NL:RBDHA:2020:1878 (*SyRI*).

¹⁷ Council of State, *Digitalisering. Wetgeving en bestuursrechtspraak* (2021), 56. Cf. Dutch Data Protection Authority (DPA, *Autoriteit Persoonsgegevens*), *Advies artikel 22 AVG en geautomatiseerde selectie-instrumenten*, (2024), F. Çapkurt, *Rechtsbescherming tegen bestuurlijke gegevensverwerkingen: toegang, toetsing en schadevergoeding* (2024).

II. Is there a general legal basis (either at the constitutional level or in the Administrative Procedure Act) for the use of algorithmic automation and/or artificial intelligence (AI) by public authorities (government, agencies, local authorities, and specialised bodies)? If no such legal basis exists, are there any legislative provisions that permit public authorities to experiment with algorithmic automation or AI?

Dutch constitutional and administrative law provides no *general* legal basis for the use of algorithmic automation, including AI systems, by administrative authorities¹⁸. There are, however, many sector-specific rules on the use of algorithmic automation by administrative authorities¹⁹. These rules usually provide a legal basis for the use of algorithmic automation in a more or less specific context, sometimes after the algorithm has already been in use by the administration²⁰. The thinking behind this sector-specific (rather than general) regulation seems to be that the content of the regulation of algorithmic automation is dependent on the context in which it is used, such as healthcare, social security, spatial planning, and investigation and enforcement²¹. The reasoning behind the lack of a (prior) legal basis for the use of algorithmic automation by administrative authorities is that it falls within their discretion to use algorithms to support their tasks, unless the law provides otherwise²². Indeed, the Dutch General Administrative Law

¹⁸ As defined by Art. 1:1 GALA.

¹⁹ For an overview as per 1 September 2018, see Council of State, *Digitalisering. Wetgeving en bestuursrechtspraak* (2021). See also C.J. Wolswinkel, *Normering van geautomatiseerde besluitvorming: tijd voor wetgeving?* in B. Aarrass, C.L.G.F.H. Albers, R. Oortle (eds), *Digitalisering in de rechtsverhouding tussen burger en overheid. Zoeken naar een balans tussen instrumentaliteit en waarborg* (2022).

²⁰ See, for example, Art. 3 Administrative Enforcement of Traffic Regulations Act (*Wet administratiefrechtelijke handhaving verkeersvoorschriften*) and Art. 64 and 65 Structure of the Implementing Organisation Work and Income Act (*Wet SUWI, Wet structuur uitvoeringsorganisatie werk en inkomen*). See also P. Olsthoorn, *Big Data voor Fraudebestrijding*, Netherlands Scientific Council for Government Policy (WRR, *Wetenschappelijke Raad voor het Regeringsbeleid*) Working Paper 21 (2016), *Kamerstukken I* 2021/22, 35447, H, 7 and 9-10.

²¹ Netherlands Scientific Council for Government Policy, *Opgave AI. De nieuwe systeemtechnologie* (2021), 299-304.

²² N.H. van Amerongen, Y.E. Schuurmans, *Advies van een deskundige of algoritme? De toetsing van 'black box'-besluiten door de bestuursrechter*, in P.J. Huisman, A.R. Neerhof, F.J. van Ommeren (eds), *Verwant met verband: Ruimte, Recht en Wetenschap. Vriendenbundel voor prof. mr. J. Struiksma* (2019), 25-26 with reference to CRvB 9 November 2004, ECLI:NL:CRVB:2004:AR4719, C. Adriaansz, *De rechtmatigheid van algoritmische besluitvorming in het licht van het zorgvuldigheidsbeginsel en het motiveringsbeginsel*, 100 *Nederlands Tijdschrift voor Bestuursrecht* 100 (2020), T.L.J. Drouen, B.M.A. van Eck, *Toezicht op het gebruik van algoritmen door de overheid. Tijd voor een zorgplicht*, 1 *Tijdschrift*

Act (GALA, *Algemene wet bestuursrecht*) does not rule out that a decision (*besluit*) can be the (direct) result of an algorithmic process²³. The presumption that it falls within the discretion of administrative authorities to use an algorithm does not detract from the fact that the (experimental) use of algorithmic automation by administrative authorities is limited by general constitutional and administrative law norms, such as the general principles of good administration (*algemene beginselen van behoorlijk bestuur*), the General Data Protection Regulation (GDPR or AVG, *Algemene verordening gegevensbescherming*) and the GDPR Implementation Act (UAVG, *Uitvoeringswet Algemene verordening gegevensbescherming*), and the Open Government Act (Woo, *Wet open overheid*)²⁴. Moreover, the influence of algorithmic automation on the administrative decision-making process and the potential consequences for citizens has led to a growing awareness of the importance of legal bases for the use of algorithmic automation by administrative authorities. The Data Processing by Partnerships Act (WGS, *Wet gegevensverwerking door samenwerkingsverbanden*) is an illustrative example of this shift, as this law creates a legal basis and safeguards for already existing data processing by partnerships of public (and private) actors²⁵.

As for the scope for the public administration to experiment with algorithmic automation, including AI systems, the Guidelines for the application of algorithms by administrative authorities and public information on data analyses (*Richtlijnen voor het toepassen van algoritmen door overheden en publieksvoorlichting over data-analyses*) mention – in rather cautious terms – that it is desirable to achieve clarity on how transparency can and will be demonstrated. When in doubt, administrative authorities are advised to initiate a discussion on this matter and to communicate it publicly²⁶. The Guidelines thus implicitly allow leeway for experimenting with algorithmic automation, while also emphasising the importance of ensuring transparency for public servants and the community at large. Exploratory research on the use of

voor Toezicht 32 (2020), C.J. Wolswinkel, *AR meets AI. Een bestuursrechtelijk perspectief op een nieuwe generatie besluitvorming*, 4 *Computerrecht* 22 (2020), with reference to Supreme Court 16 February 2016, ECLI:NL:HR:2016:240.

²³ Council of State, *Digitalisering. Wetgeving en bestuursrechtspraak* (2021) 79-80. Cf C.J. Wolswinkel, cit. at 19, 65.

²⁴ See the answer to the fourth question.

²⁵ Artt. 1.6, 1.8, 1.9, 2.23 and 3.2(d) Data Processing by Partnerships Act, *Kamerstukken I* 2021/22, 35447, H, 7 and 9-10. See also the answer to the fourth question.

²⁶ Ministry of Justice and Security, *Richtlijnen voor het toepassen van algoritmen door overheden en publieksvoorlichting over data-analyses* (2021) 29.

AI applications by Dutch administrative authorities shows that a significant portion of AI applications is used to experiment, meaning that these AI applications are not yet fully implemented in the organisation²⁷.

III. Do public authorities rely on algorithmic automation/AI in their daily operations? If yes, to what extent? Which areas are most affected by automation (e.g., security, policing, immigration, transport, tax management, welfare, health and employment services, education, justice, or digital identity)?

Since the 1980s, Dutch administrative authorities have increasingly incorporated computer systems into their decision-making processes²⁸. Today, automation influences a range of policy areas across all levels of government. Exploratory research from 2018 shows that 48% of the responding administrative authorities make use of algorithms, with 10% of the remaining administrative authorities planning to start using them in the near future. The responding ministries use algorithms most frequently (63%), followed by municipalities (50%), implementing organisations (48%), and water authorities (40%). The two responding provinces indicated that they do not use algorithms. Algorithms are mainly used by administrative authorities to signal increased risks, such as a risk of early school leavers, fraudsters, or the subsidence of foundations. The algorithm thus serves as a tool to detect an increased risk, enabling administrative authorities to allocate resources specifically to subject the identified cases or groups to additional control or investigation. Administrative authorities also use rule-based algorithms to assess applications for a subsidy, permit, or benefit, or to support internal processes. Additionally, algorithms are deployed to predict situations in the short term, so that they can be acted upon. These intelligent decision support systems are primarily used by the water authorities (*waterschappen*)²⁹. Many of the responding administrative authorities emphasise that while the algorithm may detect a problem or provide advice, the outcomes are always reviewed or further

²⁷ A.F. van Veenstra *et al.*, *Quick scan AI in de publieke dienstverlening* (2019), 17; M. Hoekstra, C. Chideock, A.F. van Veenstra, *Quick scan AI in de publieke dienstverlening II* (2021) 17; M. Hoekstra, L. Dom, A.F. van Veenstra, *Quick scan AI in de publieke dienstverlening III* (2024), 17.

²⁸ J. Wolswinkel, *AERIUS*, in T. Barkhuysen *et al.* (eds), *AB Klassiek. Standaarduitspraken bestuursrecht, opnieuw en thematisch geannoteerd* (2022).

²⁹ Cf. Dutch Water Authorities (*Unie van Waterschappen*), *AI-kompas. Deel I: Het bestuurlijk kader* (2024).

investigated by a civil servant before a decision is made³⁰. Rule-based algorithmic decision-making processes without a human in the loop are primarily used by implementing agencies (*uitvoeringsorganisaties*) that need to issue large numbers of decisions, such as the Tax Administration (*Belastingdienst*) or the Education Implementation Service (*Dienst Uitvoering Onderwijs*)³¹.

The number of advanced AI applications based on self-learning algorithms within the public administration is still limited, but not non-existent³². Three quick scans of AI applications within the Dutch administration show a significant increase in applications between 2019 and 2024³³. According to the most recent quick scan from 2024, municipalities account for over one third (39%) of the AI applications examined in the quick scans. Partnerships of administrative authorities are next in line, accounting for 46 of the 266 (17%) examined AI applications³⁴. These quick scans contain nine categories of AI applications³⁵. They are listed below in order from most to least frequently identified in the quick scans. First, knowledge processing,

³⁰ S. Doove, D. Otten, *Verkenkend onderzoek naar het gebruik van algoritmen binnen overheidsorganisaties*, (2018). Cf Netherlands Court of Audit, *Aandacht voor algoritmes* (2021), 20.

³¹ Netherlands Court of Audit, *Aandacht voor algoritmes* (2021), 15, Council of State, *Digitalisering. Wetgeving en bestuursrechtspraak* (2021), 45-46 and 49-50, Netherlands Institute for Human Rights (College voor de Rechten van de Mens), *An open and frank approach: transparent use of algorithms by the government. Call for a legal transparency requirement in the government's use of algorithms* (2023), 4.

³² J. Schellevis, W. de Jong, *Overheid gebruikt op grote schaal voorspellende algoritmes*, *NOS Nieuws*, 30 May 2019, <https://nos.nl/artikel/2286848-overheid-gebruikt-op-grote-schaal-voorspellende-algoritmes-risico-op-discriminatie> (accessed January 2026), M. Hoekstra, L. Dom, A.F. van Veenstra, *Quick scan AI in de publieke dienstverlening III* (2024), 29. Cf. Council of State, *Digitalisering. Wetgeving en bestuursrechtspraak* (2021) 51, Netherlands Court of Audit, *Aandacht voor algoritmes* (2021).

³³ A.F. van Veenstra *et al.*, *Quick scan AI in de publieke dienstverlening* (2019), M. Hoekstra, C. Chideock, A.F. van Veenstra, *Quick scan AI in de publieke dienstverlening II* (2021), M. Hoekstra, L. Dom, A.F. van Veenstra, *Quick scan AI in de publieke dienstverlening III* (2024). These quick scans found 74 applications in 2019, 165 applications in 2021, and 266 applications in 2024.

³⁴ M. Hoekstra, L. Dom, A.F. van Veenstra, *Quick scan AI in de publieke dienstverlening III* (2024), 18.

³⁵ A.F. van Veenstra *et al.*, *Quick scan AI in de publieke dienstverlening* (TNO 2019) 9, M. Hoekstra, C. Chideock, A.F. van Veenstra, *Quick scan AI in de publieke dienstverlening II* (2021) 10, M. Hoekstra, L. Dom, A.F. van Veenstra, *Quick scan AI in de publieke dienstverlening III* (2024) 15. Cf Netherlands Court of Audit, *Aandacht voor algoritmes* (2021) 19-21, Netherlands Scientific Council for Government Policy, *Opgave AI. De nieuwe systeemtechnologie* (2021) 446-447, Netherlands Court of Audit, *Focus op AI bij de rijksoverheid* (2024), 17.

archiving, and anonymisation, meaning the processing and archiving of information and the anonymisation of personal data in documents. Second, inspection and enforcement, meaning the prediction of safety risks, the identification of behavioural patterns for enforcement or prevention, and the identification of potential fraudsters. This category of AI application supports the work of human inspectors. Third, process optimisation, meaning the optimisation of processes to make them more efficient and effective, requiring fewer resources or less time to complete a task. Fourth, customisation and services, meaning the personalisation of services for citizens and businesses. This category mainly involves chatbots. Fifth, knowledge acquisition, forecasting and policy development, meaning gathering new information and making predictions on which (policy) decisions are based. Sixth, (real-time) monitoring and sensing, such as by using drones, image recognition in the physical environment, and media analysis. Seventh, the detection of crime. Eighth, maintenance, meaning determining the optimal time for maintenance or replacement for the management of public spaces, such as 'just-in-time maintenance' (JIT). Eighth, the enhancement of the democratic process by, for example, supporting a municipal council (*gemeenteraad*). Research by the Netherlands Court of Audit (*Algemene Rekenkamer*) from 2024 shows that the administrative authorities investigated are using 120 AI systems in practice, rather than merely as experiments, out of a total of 433 reported AI systems³⁶. These AI systems primarily concern applications that do not directly affect citizens and businesses. For instance, administrative authorities use AI systems to gather or process knowledge or to optimise internal processes. Some of the AI systems do have a direct impact on citizens and businesses, such as AI systems used for inspection and enforcement or to improve services for citizens and businesses.

In addition to the research discussed above, reference can also be made to the Algorithm Register (*Algoritmeregister*) of the Dutch government and similar registers of the municipalities of Amsterdam and Utrecht³⁷. Most of the registered algorithms are used by municipalities. Furthermore, the Algorithm Register indicates the risk category of the algorithm (impactful, high-risk, or other)³⁸ and whether the algorithm has been subjected to an impact assessment, such as a Data Protection Impact Assessment (DPIA) or an Impact Assessment on

³⁶ Netherlands Court of Audit, *Focus op AI bij de rijksoverheid* (2024), 4.

³⁷ See <https://algoritmes.overheid.nl/>, <https://algoritmeregister.amsterdam.nl/> and <https://data.utrecht.nl/dataset/algoritmeregister-utrecht> (accessed January 2026).

³⁸ On this categorisation, see *Kamerstukken II 2023/24 26643, 1149, p. 19-20*.

Human Rights and Algorithms (IAMA). However, registration of algorithms is currently done on a voluntary basis and will be made mandatory at a later stage, making it impossible to determine precisely how many algorithms, including AI systems, are used by the Dutch government based on these registers³⁹. Research shows that a significant number of AI systems used by the Dutch government are not actually registered in the Algorithm Register⁴⁰.

As for digital identity, DigiD is used as an identification method within the digital environment of Dutch administrative authorities. MijnOverheid serves as a personal website for interactions with administrative authorities and shows which personal information is registered by them. MijnOverheid also contains a Berichtenbox, a digital mailbox where one can receive messages from administrative authorities⁴¹.

IV. What legal requirements – e.g. in terms of privacy, cybersecurity, quality of the datasets, impact assessments, transparency obligations, access to codes, the right to explanations, compulsory human involvement, and the right to obtain a review or remedy – apply to the use of algorithmic automation or AI by public authorities? Are there sector-specific regulations on Automated Administrative Decisions (e.g., public procurement, taxation etc.)?

Like many other countries, the Netherlands has adopted a ‘wait and see’ approach regarding the regulation of government use of algorithmic automation, including AI⁴². This means that, initially, guidelines are developed for experimentation, which can be adjusted in line with technological developments and the experience gained from their use. This experience can then be taken into account by the legislator when developing potential legal safeguards⁴³.

³⁹ Cf. A.C.M. Meuwese, *Artificiële intelligentie en bestuursrecht: menselijk én digital*, 2 *Nederlands Tijdschrift Voor Bestuursrecht* 37 (2022), 57-58, Dutch Data Protection Authority, *Rapportage AI- & Algoritmerisico's Nederland* (2023), 12.

⁴⁰ Netherlands Court of Audit, *Focus op AI bij de rijksoverheid* (2024), 14.

⁴¹ Cf. CRvB 9 September 2021, ECLI:NL:CRVB:2021:2174, with reference to National Ombudsman (*Nationale ombudsman*), SVB: *Digitaliseren = informeren. Een onderzoek naar de communicatie van de SVB over digitalisering*, report 2017/001 (2017), National Ombudsman, *Hoezo MIJNoverheid? Onderzoek naar knelpunten voor burgers bij MijnOverheid/de Berichtenbox*, report 2017/098 (2017).

⁴² Council of State, *Digitalisering. Wetgeving en bestuursrechtspraak* (2021), 65.

⁴³ *Kamerstukken II* 2019/20, 26643, 682, p. 5.

The regulation in force in the Netherlands regarding the use of algorithms by administrative authorities can be divided into several categories. Incidentally, the European AI Act is not included here, as it is still uncertain what impact it will have on Dutch regulations⁴⁴. The first category of regulation concerns data protection law under the GDPR and the GDPR Implementation Act. However, this regulation only applies when the administrative authority (*bestuursorgaan*) processes personal data in the use of algorithms. Moreover, the Dutch legislator has used Article 40 of the GDPR Implementation Act to create a general exemption for fully automated decision-making that does not involve profiling if the administrative authority takes suitable measures to safeguard the data subject's rights and freedoms and legitimate interests. As a result, data protection law has only limited normative value for the use of algorithms by administrative authorities⁴⁵. Nonetheless, the administrative authority must comply with the GDPR when processing personal data, including the principles of lawfulness, fairness, transparency, purpose limitation, data minimisation, accuracy, storage limitation, integrity and confidentiality, and accountability, as outlined in Article 5 of the GDPR.

A second category of regulation concerns a form of soft law, namely guidelines drawn up by administrative authorities themselves⁴⁶. An example is provided by the algorithm registers discussed in the answer to the third question⁴⁷. Another example is provided by the Guidelines for the application of algorithms by administrative authorities and public information on data analyses (*Richtlijnen voor het toepassen van algoritmen door overheden en publieksvoorlichting over data-analyses*), cited in the answer to the first question⁴⁸. The intention is for administrative authorities to apply these Guidelines according to a 'comply or explain' mechanism. The Guidelines also apply to the procurement of private development of algorithms for administrative authorities. The Guidelines include requirements related to risk awareness, transparency and explainability, data recognition, auditability, accountability, validation, testability, and public

⁴⁴ A.C.M. Meuwese, C.J. Wolswinkel, *Een Wet op de Artificiële Intelligentie? De Europese wetgever haalt de nationale*, 92 *Nederlands Juristenblad* (2022).

⁴⁵ A.C.M. Meuwese, cit. at 39, 61. See also C.J. Wolswinkel, cit. at 19, 66-67.

⁴⁶ Council of State, *Digitalisering. Wetgeving en bestuursrechtspraak* (2021), 66-69, C.J. Wolswinkel, *Normering van geautomatiseerde besluitvorming: tijd voor wetgeving?*, cit. at 19, 28.

⁴⁷ Council of State, *Digitalisering. Wetgeving en bestuursrechtspraak* (2021) 66-67.

⁴⁸ For a critical review of these Guidelines, see C.J. Wolswinkel, cit. at 22, 320.

information. They also reference the importance of an impact assessment, such as a Data Protection Impact Assessment (DPIA), an Impact Assessment on Human Rights and Algorithms (IAMA), or a Child Rights Impact Assessment (KIA, *Kinderrechten Impact Assessment*)⁴⁹. The Council of State has hinted that failing to carry out an impact assessment could be detrimental for the administrative authority when defending its automated decision in court⁵⁰. Research by the Netherlands Court of Audit (*Algemene Rekenkamer*) shows that for a majority of all the reported AI systems and one-third of the reported high-risk AI systems, no impact assessment has been conducted. Where an impact assessment has been conducted, it is noticeable that it is not carried out in a uniform manner⁵¹. Moreover, the Guidelines stipulate that administrative authorities should not, in principle, use algorithms that are too complex to be reasonably explained⁵². With regard to public procurement, reference can be made to the Model clauses for municipalities on the responsible use of algorithmic applications (*Modelbepalingen voor gemeenten voor verantwoord gebruik van algoritmische toepassingen*), developed and published by the municipality of Amsterdam for broader use⁵³. At the central level, a Working group on public procurement of algorithms and AI (*Werkgroep publieke inkoop van algoritmen en AI*) has been established, which is working on an Algorithm Framework (*Algoritmekader*) with measures for the public procurement of algorithms and AI⁵⁴.

A third category of regulation can be derived from case law. In this context, it should be noted again that the Dutch General Administrative Law Act (GALA, *Algemene wet bestuursrecht*) does not rule out that a decision (*besluit*) can be the (direct) result of an algorithmic process. On the other hand, the principles and procedural rules laid down in the GALA were written primarily for human decision-making and may thus be at odds with algorithmic decision-making without a

⁴⁹ Cf Central Government Audit Service, *Onderzoekskader Algoritmes* (2023).

⁵⁰ Council of State, *Digitalisering. Wetgeving en bestuursrechtspraak* (2021), 79.

⁵¹ Netherlands Court of Audit, *Focus op AI bij de rijksoverheid* (2024), 26-29.

⁵² Cf Art. 1.9(6) Data Processing by Partnerships Act (WGS, *Wet gegevensverwerking door samenwerkingsverbanden*).

⁵³ See <https://openresearch.amsterdam.nl/page/80967/modelbepalingen-voor-gemeenten-voor-verantwoord-gebruik-van> (accessed January 2026). Cf. Art. 14 General Government Terms and Conditions for Public Service Contracts 2018 (ARVODI 2018, *Algemene rijksvoorwaarden voor het verstrekken van opdrachten tot het verrichten van diensten* 2018).

⁵⁴ See <https://minbzk.github.io/Algoritmekader/onderwerpen/publieke-inkoop/> (accessed January 2026).

human in the loop⁵⁵. This tension has resulted in leading case law of the Dutch administrative and civil courts (*bestuursrechter en civiele rechter*), which interprets fundamental rights – such as the right to respect for private life under Article 8 of the European Convention on Human Rights (ECHR) – and the general principles of good administration (*algemene beginselen van behoorlijk bestuur*) – particularly the duty to give reasons⁵⁶ (*motiveringsbeginsel*), the principle of due care⁵⁷ (*zorgvuldigheidsbeginsel*) and the proportionality principle⁵⁸ (*evenredigheidsbeginsel*) – in the context of automated administrative decision-making. In this way, the general principles of good administration serve as a safety net where more specific rules are lacking⁵⁹. Although these principles are primarily aimed at decisions as defined by Article 1:3(1) of the GALA, they can also be relevant for other actions of administrative authorities, based on Article 3:1(2) of the GALA and Articles 3:14 and 6:162 of the Dutch Civil Code (*BW, Burgerlijk Wetboek*)⁶⁰. The rules arising from this case law can be summarised as follows⁶¹. An administrative authority has the obligation to disclose, fully, promptly, and on its own initiative, the decisions made and the data and assumptions used in an appropriate manner so that these decisions, data, and assumptions are accessible to third parties⁶². This obligation to disclose applies particularly to customised input data (*maatwerkinputgegevens*), meaning the data specific to the decision to be made, which the user must enter themselves. Not all customised input data need be disclosed, as long as the decision clarifies which choices have been made regarding these data. This obligation to disclose does not (necessarily) apply to standard input data (*standaardinputgegevens*)

⁵⁵ Council of State, *Digitalisering. Wetgeving en bestuursrechtspraak* (2021) 79-80. See also CJ Wolswinkel, cit. at 19, 65.

⁵⁶ Art. 3:46 GALA.

⁵⁷ Art. 3:2 GALA.

⁵⁸ Art. 3:4(2) and 4:84 GALA.

⁵⁹ M.M. Groothuis, *Beschikken en digitalisering. Over normering van de elektronische overheid* (2004), C. Adriaansz, cit. at 22, 241, Council of State, *Digitalisering. Wetgeving en bestuursrechtspraak* (2021), 69-74, C.J. Wolswinkel, cit. at 19, 67, with reference to *Kamerstukken II 2017/18, 34851, 3*, p. 121, Dutch Data Protection Authority, *Advies artikel 22 AVG en geautomatiseerde selectie-instrumenten* (2024), 10-13.

⁶⁰ C.J. Wolswinkel, *Het algoritme van de Afdeling: de realiteit van complex bestuursrecht*, *Ars Aequi* 778 (2019).

⁶¹ This summary is based in part on Council of State, *Digitalisering. Wetgeving en bestuursrechtspraak* (The Hague 2021) 73-74.

⁶² ABRvS 17 May 2017, ECLI:NL:RVS:2017:1259 (*AERIUS I*), paras. 14.3-14.4, Supreme Court 17 August 2018, ECLI:NL:HR:2018:1316, CRvB 15 May 2019 ECLI:NL:CRVB:2019:1737. Cf. CBB 8 October 2015, ECLI:NL:CBB:2015:318, para. 4.5.3.

unrelated to the specific decision, meaning the complete dataset. However, these standard input data must be made available if a party concerned⁶³ (*belanghebbende*) indicates that it needs the data to support its appeal, and the data were not made known or accessible with the contested decision. The party concerned should, where possible, specify the data in question so that the administrative authority can provide access as precisely and clearly as possible⁶⁴. This obligation is based on the duty to give reasons and the principle of due care, as well as the related requirements of transparency and explainability. These principles and requirements require any decision made using an automated system involving algorithms and AI to have a sufficient level of transparency, verifiability, and accountability, ensuring that it is clear to a citizen which data were used and how those data relate to the decision, thereby preventing the decision from becoming a ‘black box’⁶⁵. This obligation is also linked to the principle of equality of arms, which requires that (partially) automated decision-making be understandable and reviewable, enabling the citizen to make informed use of legal remedies and allowing the administrative court to provide legal protection. Furthermore, the civil court has placed this obligation in the context of the right to respect for private life under Article 8 of the ECHR⁶⁶. Lastly, case law has established that electronically recorded data relevant to the case falls under the ‘documents relating to the case’ as per Articles 7:4(2) and 8:42(1) of the GALA⁶⁷. This means that the administrative authority is required to submit these documents to the party concerned and the administrative court. There are provisions for keeping these documents confidential if confidentiality is required for compelling reasons⁶⁸. Compelling reasons are not present if the Open Government Act (*Woo, Wet open overheid*) requires the documents to be made public, either on request or of the administrative authority’s own accord⁶⁹. It is clear that – through the case law discussed above – the administrative and civil courts have attempted to strike a balance between protecting citizens’ rights and ensuring that the resulting

⁶³ As defined by Art. 1:2 GALA.

⁶⁴ ABRvS 18 July 2018, ECLI:NL:RVS:2018:2454 (*AERIUS II*), paras. 23.3-23.5.

⁶⁵ See CRvB 9 November 2004, ECLI:NL:CRVB:2004:AR4716, CRvB 12 October 2006, ECLI:NL:CRVB:2006:AY9971.

⁶⁶ District Court of The Hague 5 February 2020, ECLI:NL:RBDHA:2020:1878 (*SyRI*).

⁶⁷ Supreme Court 17 August 2018, ECLI:NL:HR:2018:1316.

⁶⁸ Art. 7:4(6) and 8:29 GALA.

⁶⁹ Art. 7:4(7), 7:6(4) and 8:29(2) GALA in conjunction with Art. 3.1(1) Open Government Act.

requirements remain manageable for administrative authorities⁷⁰. The case law also makes it clear that administrative authorities cannot only guarantee technical transparency but must ensure that its automated decisions are explainable to third parties, particularly the citizens affected by these decisions⁷¹.

A fourth category of regulation concerns sectoral rules. A number of these sectoral rules have already been mentioned in the answer to the second question. An important example of sectoral regulation regarding the use of algorithms and AI by administrative authorities is the relatively new Data Processing by Partnerships Act (WGS, *Wet gegevensverwerking door samenwerkingsverbanden*). This law pertains to so-called partnerships, defined as associations of participants who jointly process data for an objective of significant public interest established by, or pursuant to, this law⁷². Examples include the Regional Information and Expertise Centres (RIEC's, *Regionale Informatie- en Expertisecentra*), which combat organised and subversive crime, and the Infobox for Criminal and Unexplained Assets (iCOV, *Infobox Crimineel en Onverklaarbaar Vermogen*), which produces reports indicating where potentially criminal or tax-evaded assets may be concealed. Partnerships and their participants are designated by, or pursuant to, this law⁷³. These participants may include both administrative authorities and private parties⁷⁴. Additional safeguards apply to private parties, such as the requirement that the partnership's objective cannot reasonably be achieved without the involvement of the private party, and that administrative authorities must also participate in the partnership⁷⁵. Additionally, this law contains several general safeguards, which can be summarised as follows⁷⁶. First, the partnership is required to ensure adequate and uniform technical and organisational measures to promote the quality of the joint automated data analysis⁷⁷. Second, there is an obligation for human intervention when presenting a result obtained from automated data analysis to assess whether the result has been

⁷⁰ C.J. Wolswinkel, *Willekeur of algoritme? Laveren tussen analoog en digitaal bestuursrecht* (2020), 39, Council of State, *Digitalisering. Wetgeving en bestuursrechtspraak* (2021), 21 and 97.

⁷¹ C.J. Wolswinkel, cit. at 70, 39, Council of State, *Digitalisering. Wetgeving en bestuursrechtspraak* (2021), 39-43.

⁷² Art. 1.1 Data Processing by Partnerships Act.

⁷³ Art. 3.1 Data Processing by Partnerships Act.

⁷⁴ Art. 1.3(1) Data Processing by Partnerships Act.

⁷⁵ Art. 1.3(3), 1.4(3), 1.5(4), 1.7 and 3.3 Data Processing by Partnerships Act.

⁷⁶ C.J. Wolswinkel, cit. at 19, 68-69.

⁷⁷ Art. 1.9(1) Data Processing by Partnerships Act.

produced in a careful manner⁷⁸. Third, the partnership must provide explanations about the patterns and indicators used, or other underlying logic, in a manner accessible to the public⁷⁹. Fourth, the partnership is obligated to correct inaccuracies in source files and report them to the organisation from which the personal data originated⁸⁰. Fifth, it is prohibited to use algorithms, particularly self-learning algorithms⁸¹ whose outcomes are not traceable and cannot be verified⁸².

V. Who builds the algorithmic technologies used by public authorities? Are these developed by public entities, private companies, or a hybrid body?

The algorithmic technologies employed by the Dutch administration are developed by public, private, and hybrid entities⁸³. The development of algorithmic technologies and data analysis are frequently outsourced to private ICT companies. Particularly at the decentral level, there is often a lack of in-house expertise needed to develop these technologies⁸⁴. For instance, exploratory research from 2024 shows that half of the AI applications used by municipalities involve anonymisation tools or software purchased from an external private party⁸⁵. At the central level, however, research shows that a majority of the AI systems used by the central government have been developed in-house⁸⁶. When private parties develop government software, clear and transparent agreements must be made in advance on matters such as responsibility, data usage, ownership of data and

⁷⁸ Art. 1.9(2) Data Processing by Partnerships Act.

⁷⁹ Art. 1.9(3) Data Processing by Partnerships Act.

⁸⁰ Art. 1.9(4) Data Processing by Partnerships Act.

⁸¹ *Kamerstukken II 2020/21*, 35447, 13.

⁸² Art. 1.9(6) Data Processing by Partnerships Act.

⁸³ Cf. Art. 1.1 and 1.3(1) Data Processing by Partnerships Act, which indicate that the members of such partnerships may include both public and private entities. See also M. Misérus, T. Kreling, *Staat licht in jacht op uitkeringsfraude burgers volledig door, tot verbazing van privacy-experts*, *De Volkskrant*, 23 April 2021.

⁸⁴ Association of Netherlands Municipalities (VNG, *Vereniging van Nederlandse Gemeenten*), *Impactanalyse Richtlijnen voor het toepassen van algoritmen door gemeenten (tweede fase)* (The Hague 2020) 3, CJ Wolswinkel, cit. at 70, 18-19 and 40, M. Hoekstra, C. Chideock, A.F. van Veenstra, *Quick scan AI in de publieke dienstverlening II* (2021) 13, 21 and 27.

⁸⁵ M. Hoekstra, L. Dom, A.F. van Veenstra, *Quick scan AI in de publieke dienstverlening III* (2024) 18 and 29.

⁸⁶ Netherlands Court of Audit, *Focus op AI bij de rijksoverheid* (2024), 30.

technology, maintenance, and know-how⁸⁷. The initiatives mentioned in the answer to the previous question regarding public procurement, including the Model clauses for municipalities on the responsible use of algorithmic applications (*Modelbepalingen voor gemeenten voor verantwoord gebruik van algoritmische toepassingen*) developed by the municipality of Amsterdam, contribute to this. Moreover, the administrative authority (*bestuursorgaan*) remains ultimately responsible for complying with the rules mentioned in answer to the previous question, even when outsourcing to private parties⁸⁸.

VI. Is there a centralised infrastructure for digital data management, or are there several infrastructures? If the latter is true, is interoperability guaranteed, and to what extent? Are there any rules or procedures governing the exchange of information between different administrative bodies?

The Dutch government has long faced challenges with its ICT policy in general, and more specifically with its ambition to create a unified central digital infrastructure⁸⁹. Although there is a movement towards a unified government approach to the use of data files, there are currently no enforceable rules regarding the use of a centralised infrastructure for digital data management⁹⁰. Legislation is being prepared to further embed the so-called Generic Digital Infrastructure (GDI, *Generale Digitale Infrastructuur*) in the Digital Government Act (*Wet digitale overheid*)⁹¹. At present, the GDI is outlined in various policy documents, which highlight the importance of data exchange, standardisation, and existing networks⁹². Another relevant general law is the Archive Act (*Archiefwet*), which contains provisions regarding the

⁸⁷ Council of State, *Digitalisering. Wetgeving en bestuursrechtspraak* (2021), 23.

⁸⁸ Council of State, *Digitalisering. Wetgeving en bestuursrechtspraak* (2021), 37. Cf J.C.A. de Poorter, J. Goossens, *Effectieve rechtsbescherming bij algoritmische besluitvorming in het bestuursrecht*, *Nederlands Juristenblad* 2777 (2019), with reference to B.M.A van Eck, M.A.P. Bovens, S. Zouridis, *Algoritmische rechtstoepassing in de democratische rechtsstaat*, *Nederlands Juristenblad* 2101, (2018).

⁸⁹ *Kamerstukken II 2014/15, 33326, 5, p. 57 and p. 113-114*. Cf Netherlands Court of Audit, *Focus op AI bij de rijksoverheid* (2024), 23, Netherlands Court of Audit, *Het Rijk in de cloud. Donkere wolken pakken samen* (2025).

⁹⁰ P. Olsthoorn, *Big Data voor Fraudebestrijding*, Netherlands Scientific Council for Government Policy Working Paper 21 (2016), 203.

⁹¹ See <https://www.digitaleoverheid.nl/overzicht-van-alle-onderwerpen/i-strategie-rijk-2021-2025/generieke-voorzieningen/> (accessed January 2026).

⁹² See <https://www.digitaleoverheid.nl/mido/generieke-digitale-infrastructuur-gdi/> (accessed January 2026).

management of and access to government archives. Information related to algorithms used by administrative authorities also falls within the scope of the Archive Act. This means that this information must be preserved and managed in its context in a proper, organised, and accessible state⁹³. The Guidelines for the application of algorithms by administrative authorities and public information on data analysis (*Richtlijnen voor het toepassen van algoritmen door overheden en publieksvoorlichting over data-analyses*) emphasize the need to address the future storage of information relating to algorithms as early as the design phase⁹⁴. All in all, the importance of the interoperability of algorithms, including AI systems, is pursued in general terms within the framework of the GDI but is not (explicitly) mentioned in the Guidelines for the application of algorithms by administrative authorities and public information on data-analyses or the Model clauses for municipalities on the responsible use of algorithmic applications (*Modelbepalingen voor gemeenten voor verantwoord gebruik van algoritmische toepassingen*).

Furthermore, there is sectoral legislation that contains rules on the exchange of data between different administrative authorities. These include, for example, the previously mentioned Data Processing by Partnerships Act (WGS, *Wet gegevensverwerking door samenwerkingsverbanden*) and the Structure of the Implementing Organisation Work and Income Act (Wet SUWI, *Wet structuur uitvoeringsorganisatie werk en inkomen*). These laws contain provisions regarding the mutual provision of data between the participants in the partnerships. For instance, Article 62(1) of the Structure of the Implementing Organisation Work and Income Act stipulates that the relevant administrative authorities must provide each other, on their own initiative and upon request, free of charge, with all data and information necessary for the implementation of the Act. Article 1.5 of the Data Processing by Partnerships Act states that each participant in the partnership must provide the categories of data designated by, or pursuant to, the Act to the partnership insofar as it is necessary for the purpose of the partnership, unless the participant considers there to be compelling reasons to refuse. Additionally, both laws contain provisions that designate the relevant administrative authorities or the participants

⁹³ Art. 3 Archive Act.

⁹⁴ Ministry of Justice and Security, *Richtlijnen voor het toepassen van algoritmen door overheden en publieksvoorlichting over data-analyses* (The Hague 2021) 11 and 26.

in the partnership as data controllers as referred to in Article 26(1) of the General Data Protection Regulation⁹⁵.

⁹⁵ See, for example, Art. 1.4 Data Processing by Partnerships Act and Art. 62(3) and 64(2) Structure of the Implementing Organisation Work and Income Act.