Colloquium organized by the Council of State of the Netherlands and ACA-Europe

“An exploration of Technology and the Law”

The Hague 14 May 2018

General Report
General Report for the

Colloquium on the exploration of Technology and Law

The Hague, 14 May 2016

This questionnaire was answered by 29 ACA members from the following 28 countries: Austria, Belgium, Croatia, Cyprus, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg1, Netherlands, Norway, Poland, Portugal, Romania (twice2), Serbia, Slovakia, Slovenia, Spain, Switzerland, Turkey, United Kingdom and Sweden.

1 We received joint answers from the Conseil d’Etat and the Cour administrative du Grand-Duché de Luxembourg.
2 We received answers from both the Legislative Council and the High Court of Cassation.
Introduction

In preparation for the ACA colloquium on 15 May 2018, a questionnaire designed to survey the field was sent to the ACA members in the summer of 2017. The aim was to identify subjects in the area of technology and law that would be suitable for discussion by the ACA Europe members at the colloquium. A total of 28 responses were received.

At the time the questionnaire was sent, it was stated that a second, more substantive, questionnaire would be drawn up. In part given the high response and the very useful answers from many members, the subjects suitable for discussion at the colloquium were quickly identified. It was therefore decided, in contradiction to the previous announcement, not to send out a second questionnaire. Instead, two papers were drafted to serve as background to the discussion at the colloquium. This general report provides a summary and overview of the responses received, and it therefore also explains the selection of subjects for discussion at the colloquium.

The questionnaire consisted of five parts with questions about the following subjects:

1. digital decision-making;
2. digital proceedings;
3. digital dispute settlement in the public sector without involving the courts;
4. technology-neutral legislation; and
5. digital enforcement.

The respondents were asked to indicate in each part whether the subject was considered suitable for discussion at the colloquium. The questionnaire concluded with two open questions about future technological developments that may affect judges or legislative advisors. An analysis of the answers showed that the majority thought that subjects 1, 5 and 4 were suitable for discussion at the colloquium. In addition, subjects 1 and 5 are closely related and can therefore be discussed together. The subjects of digital decision-making and digital enforcement have therefore been combined to serve as a basis for the colloquium alongside technology-neutral legislation.
Subject 1: digital decision-making

I. Is it already present in practice?

The answers to the first question of the questionnaire showed that digital decision-making is used in the majority of ACA countries, albeit generally on a limited scale. Examples given were automatic decisions relating to tax law, pensions, traffic fines and social insurance law. It is striking that ACA members were not always clear about whether and when digital decision-making was used in the decision-making process.

The extent to which decisions are made digitally varies. In some cases, data and software are used only to support decision-making. In Belgium, for example, individuals who may be entitled to financial assistance (student grants or compensation for nuisance caused by public activities) are identified automatically and digitally. These people can then be actively contacted. In France, the national education council (l’administration de l’éducation nationale) uses algorithms for data processing to direct new students to universities or educational institutions in line with their profiles, their wishes and the available capacity at these institutions.

Other countries allow fully automated decision-making. Automatic decisions about taxation were frequently cited in this context. In Estonia for example, decisions about tax refunds or tax liabilities are taken automatically on the basis of tax returns filed online.

Conditions

A number of reports also include information about the conditions required for automatic decision-making.

For example, Hungarian administrative law (General Administrative Procedure Act) includes provisions about the use of an ‘automatic decision-making procedure’ by administrative bodies. This procedure can be adopted in cases where all the evidence and relevant data are known to the authorities, in which there is no discretionary power involved in the decision-making process and in which there are no opposing interests of other parties. This applies, for example, to traffic fines. The decision is then taken and communicated without human involvement.

In Spain, on the other hand, decisions that might be taken on the basis of objective criteria by machines, such as decisions about traffic fines and tax returns filed online, are, in principle, always made and signed by a civil servant.

There are specific rules in Romania relating to the presence of a signature. That country has an electronic system for issuing penalties when vehicles use national roads without having paid the toll required by law. The Romanian High Court of Cassation has stated that an automatic decision with a digital signature is valid only if the communication with the person concerned also proceeds electronically in accordance with the procedures required by law. If the automatic decision (in this case the notification of the fine) is sent by post, the signature of the relevant civil servant is therefore required. In the example referred to here, the law does not require electronic communication. A digitally-produced notification of this kind that is subsequently sent by post to the person concerned will therefore be valid only if it is signed by the relevant civil servant.
In Portugal, the new Code of Administrative Procedure (CAP) established a firmer basis for the use of electronic resources for administrative purposes. These standards were established to allow for more electronic administration but not to permit automated decision-making processes. Nevertheless, provisions were included for automatic decision-making for the purposes of obtaining electronic certificates or notification, as provided for in Article 14-4 of the CAP.

In addition, several legislative and regulatory provisions were recently adopted in France to regulate the use of algorithms. For example, an act of 7 October 2016 stipulates that people must be informed when an administrative decision has been made on the basis of algorithmic processing. The persons concerned have the option of requesting information about certain elements in the procedure relating to them.

In some cases, whether or not decision-making is fully automatic depends on the outcome of the decision. In Estonia, automatic decisions are taken only when a favourable decision is granted pursuant to a request from the person concerned (for example in the field of tax law). When a request is rejected, the decision must be taken by an official.

II. What are the consequences?

The answers show that the consequences of digital decision-making and expectations in this respect vary. However, the concerns expressed about the consequences of digital decision-making are not preventing its introduction. It is often decided to proceed with digital decision-making because there are a number of important benefits. These positive consequences were mentioned in the reports by a number of ACA countries, including those from Portugal, Lithuania and the Netherlands.

**Benefits**

A small number of ACA members referred to the positive consequences of automatic decision-making. Portugal noted that the increasing use of big data and algorithms accelerates decision-making relating to matters such as permits, subsidies and fees. The report from Lithuania also noted that digital collaboration between administrative bodies can make procedures faster, simpler and cheaper. Finally, automated decision-making takes less time and it is, according to the Dutch rapporteur, therefore more efficient. The time saved can then be used for more difficult decisions in which more circumstances have to be taken into account.

**Drawbacks**

Nevertheless, these and other reports raise concerns about the negative consequences of digital decision-making. These concerns are often related to the compatibility of automatic decisions with a number of general principles of administrative law and legal protection.

For example, the report from Cyprus explained that automated decision-making was introduced before it was possible to properly consider its relationship with a number of general principles of administrative law that are fundamental to a democratic society such as transparency, government liability, effective legal protection and the legality of administrative acts. The Belgian rapporteur pointed out that the objections to automatic decision-making primarily relate to the right to proper administration, including the right
to be heard, the obligation incumbent on administrative bodies to give reasons for their decisions (see Article 41 of the EU Charter) and the existence of effective legal protection. Can an automatic decision, for example, comply with the existing standards for judicial review, in particular with regard to the reasons for the decision? The report also explains that automatic decisions are currently taken in Belgium only when there is little or no margin of appreciation. In those cases, any judicial review is limited to the question of whether the administrative body has correctly decided whether or not the legal conditions have been met. Otherwise, there is little difference in terms of the judicial review between decisions made by civil servants and automatic decisions made without the intervention of civil servants. In both cases, however, the decision-making process must be transparent enough to permit judicial review.

The report from Lithuania also emphasises the risk of grounds not being stated when decisions are taken automatically. This is because automatic decisions often fail to include an extensive evaluation of the circumstances of the case. By contrast with automatic decisions, civil servants can explain the background of a decision better and therefore delimit any dispute during the course of a review.

The report from the Netherlands also discusses a number of drawbacks of automatic decision-making. On the basis of a recent referral ruling on this subject, the report explains that automatic or partially automatic decision-making can lead to the assessment underlying the decision being unclear and non-controllable due to a lack of transparency relating to the choices made, and the data and assumptions used: the 'black box'. Accordingly, automatic decision-making can result in a procedural inequality between the parties and it conflicts with the principle of equality of arms. This rapporteur states that it is interesting to see how the various administrative judges approach this matter.

Data Protection
A number of reports, including those from Belgium, France and Ireland, discuss privacy concerns about the consequences of digital decision-making, generally referring to the obligations arising from Article 15 of the Data Protection Directive (Directive 95/46/EC). Article 15 prohibits Member States from attaching legal consequences to decisions that significantly affect a person and which are based solely on automated processing of data intended to evaluate certain personal aspects relating to that person, such as performance at work, creditworthiness, reliability, conduct, etc.

The Belgian report explains, among other things, that automatic decision-making is, in principle, prohibited under Article 12(a) of the Belgian Data Protection Act. Any decision that has a substantial impact on an individual may not be taken exclusively on the basis of automatically generated data with the intention of evaluating certain personal aspects relating to that person. In addition, France has legal provisions requiring that no judicial decision (décision de justice) may be taken on the basis of

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Article 12(a):
'A decision which produces legal effects concerning a person or significantly affects him may not be taken solely on the basis of the automated processing of data intended to evaluate certain personal aspects relating to him. The prohibition referred to in paragraph 1 shall not apply if the decision is taken in the context of a contract or is based on a provision made by or pursuant to a law, decree or ordinance. The contract or provision must include appropriate measures to protect the legitimate interests of the person concerned. The person must be given at least the opportunity to put forward his point of view in a useful way.'
procedures, automatic or otherwise, of this kind that result in the analysis of the personal aspects of an individual. The same applies to every individual decision with legal effects based solely on automated processing intended to determine the profile of the person concerned or evaluate specific personal aspects. In France, therefore, algorithmic processing can serve as a tool in decision-making or even as a basis for decisions that are not intended to 'shape' the behaviour of the person concerned, or by way of exception if they are made at the request of the person and that person has been informed accordingly.

III. Is there a public debate on this subject?

In the majority of ACA countries where there is no digital decision-making as yet, there is little or no discussion of the subject. In Spain, a discussion is taking place in response to developments at the local level. Increasing efforts are being made here at the local level to establish 'smart cities' and there are discussions about the practical benefits of digital decision-making and technology. In the countries that have already introduced digital decision-making, the discussion generally focuses on the consequences discussed here.

IV. Is it a suitable subject for the colloquium?

Most countries find digital decision-making to be a suitable subject, particularly with a view to an exchange of experiences and to learn from each other. Concrete suggestions to this effect have also been made. These often target the relationship with general principles (effective legal protection and the balancing of interests) and the legal assessment framework. A small number of countries do not consider this to be a suitable subject. They are the countries with no experience with digital decision-making.

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4 Article 10 of Act 78-17 of 6 January 1978 known as the 'loi informatique et libertés' (Data Protection Act).
Subject 2: digital proceedings

I. Is it already present in practice?

The reports show that forms of digital proceedings can be used in almost all countries. However, the analysis shows that there is not always a clear definition of what is meant by digital proceedings. The reports discuss subjects ranging from the digital submission of procedural documents to complete digital proceedings.

E-filing

When discussing digital proceedings, the reports generally refer to the digital initiation of proceedings and the digital submission of documents to judicial institutions. Almost all countries have statutory arrangements for these matters. Documents can often be submitted through a digital portal (e-filing) or by e-mail, as is usual in Sweden, where legal proceedings can be initiated by e-mail and where a digital application is not used. The Swedish rapporteur stated that this has worked satisfactorily until now.

The digital submission of procedural documents and communications with judicial institutions are sometimes mandatory for certain parties involved in proceedings. Companies, government bodies and barristers in Hungary must use the available digital platforms. This is optional for private parties. This dual system means that judicial institutions sometimes have to communicate with parties both electronically and on paper. Lawyers and other highly educated representatives (tax specialists, accountants etc.) in Estonia are required to communicate digitally with the judicial institutions unless they have a valid reason to use a different format. It is striking that legal institutions in Estonia have the competence to send procedural documents to parties using the contact details of parties that are obtained from social networks.

E-court

A small number of countries including Ireland, the United Kingdom and Lithuania also have completely paperless proceedings: e-courts. Fully digital proceedings are generally only possible in a limited number of types of proceedings and the option is not available for all proceedings. The United Kingdom, for example, has a digital platform known as the Penalty Tribunal, which deals with matters such as parking fines. Appellants can submit their documents digitally and the decision is usually made and published digitally. In addition, the United Kingdom has a number of proceedings that are paperless, such as proceedings at the business and property courts. Completely paperless proceedings are referred to as 'e-case' in Lithuania. Judicial institutions in Lithuania have a dedicated platform: the E-service platform for courts. Parties involved in proceedings can submit all their written documents through this platform and monitor progress.

Remote litigation is another form of digital litigation mentioned in the reports. Audio and video recordings are used in Lithuania. Hearings are always recorded and it is possible to organise videoconferencing so that the parties are not obliged to be present in the courtroom during the hearing. Estonia has comparable digital proceedings at which witnesses and experts can also be heard remotely. In addition, a project has been launched in Norway with the aim of digitalising both civil procedures and criminal proceedings from start to finish by 2020. The submission of the documents, the preparations for the case, the hearing and the issuing of the decision will be digital. This
means that the case documents will be digitally stored and processed. However, the project is not intended to eliminate traditional procedural elements such as oral hearings.

Digital proceedings are considered a good development by many ACA countries. Digitalisation helps to make justice faster and more efficient, argue Greece, Romania and Spain. Nevertheless, a number of drawbacks were also mentioned. For example, the introduction of digital proceedings results in the creation of a distinction between members of the public who have a mastery of new technologies and others who have not because of a lack of knowledge or resources such as a computer. Another potential drawback is the threat to data protection. This is an area that requires attention during the introduction of digital proceedings, at which time questions also arise about possible malfunctions in the digital system. The regulations relating to the submission of procedural documents by post will be different from those for filing digital documents. When can a digital document be considered to have been received and what is the approach to possible malfunctions? The reports from the Netherlands and Lithuania dealt with a number of these issues. In the Netherlands, the legislature has now included a provision in the law for excusable failures to meet deadlines owing to malfunctions in the digital system for data processing at judicial institutions or in access to those systems.

II. Is it a suitable subject for the colloquium?

The subject of digital proceedings is generally considered to be a suitable subject, even though some reports point out that the other subjects may result in a more interesting discussion. A possible drawback is that the discussion of this subject will probably focus on the practical implementation of digitalisation.
Subject 3: digital dispute settlement in the public sector without involving the courts

I. Is it already present in practice?

The replies showed that the use of digital dispute resolution in public law prior to a court procedure is not found in most countries or that the rapporteurs are not familiar with it. The small number of examples mentioned are seen in the field of private law (inter alia, consumer law) and they involve private parties.

The examples mentioned are technologies used and supplied by commercial bodies to predict the chances of success and the legal costs of a judicial procedure by using existing knowledge systems that include legally relevant information such as case law. These are often freely accessible databases. This information is then analysed by computers that can use this data to predict the outcomes of future cases (for example with deep learning). On the basis of this outcome, a decision is made about, for example, whether judicial proceedings are likely to succeed. These types of forecasting systems were mentioned in the reports from Spain, France and the Netherlands and they are mainly used by commercial parties such as law firms.

These programs sometimes analyse the chances of success on the basis of the judges working on a case or previous legal decisions by a specific judge. The report from France, for example, refers to the Supra Legem system, a private initiative that is freely accessible. This system makes it possible to evaluate the number of annulments/rejections/revocations etc. in certain fields of law on the basis of the judges working on a case and the president of the court. It makes it possible, for example, to analyse the speed of annulments or rejections made by a given judge in specific fields of law. The rapporteur from Luxembourg is also familiar with a similar system and is not in favour of the possibility of establishing links between the profiles of specific judges and court cases. Even though these drawbacks can be avoided by establishing systems managed by the government, it will be difficult to prevent the creation of private systems for the analysis and prediction of judicial proceedings in the future.

The Dutch report suggests three possible ways of using computer systems for digital dispute resolution in the Dutch public sector. In the first place, parties could be given access to knowledge systems through a portal. This would allow them to make a better assessment of their chances of success and the legal feasibility of their positions. Secondly, access can be given to expert systems. An expert system uses a questionnaire and a decision tree to arrive at a conclusion based on the requested information. This option would also allow parties to make an assessment of their chances of success. Finally, there are the Early Case Assessment methods. On the basis of documents collected by the computer, an analysis and an estimate can be made of the risks and the costs of initiating legal proceedings.

Finally, at the European level, the reports from Latvia and Ireland drew attention to the Online Dispute Resolution Platform of the European Commission for non-court-based alternative dispute resolution. This platform was established with the aim of resolving contractual conflicts out of court between consumers and sellers about the online purchase of services or products. It should be noted that this type of digital dispute settlement is not in the public but in the private sector.
II. If not, should it be introduced?

The discussion about the introduction of a digital system for dispute settlement is not widespread. Some countries believe a system of this kind could be useful because of its potential benefits such as increased transparency, faster legal proceedings, better risk analysis etc. At the same time, a number of drawbacks were also pointed out, such as a possible conflict with judicial independence and constitutional principles.

For example, Cyprus pointed out that the use of algorithm systems does not do justice to legal thinking since the outcome of a case will be determined in advance without the special circumstances of a specific case being taken into account. This would amount to applying precedents and a system of this kind would therefore be contrary to judicial independence and consequently prevent the development of justice through case law. Finland and Greece also pointed out these drawbacks.

Questions that arise are: how should pre-defined algorithms be established and used? And what impact do predictions have on judges, lawyers and principles such as judicial independence, a fair trial and the rule of law?

A university ‘Robot Judges Competition’ will be organised in Estonia this year to further develop ideas about digital dispute resolution. The aim of this competition is to make it possible to address legal issues more easily and efficiently in an automated way.

Finally, a question that still arises in digital dispute resolution is the extent to which it is desirable for a computer to conduct reviews using open standards that can be interpreted differently in different circumstances, examples being standards such as proportionality and good faith. The state of the art is currently not such that dispute settlement can be left entirely to computers. If the technology were to reach a sufficiently advanced stage, the question still remains of whether digital dispute resolution using computers is desirable.

III. Is it a suitable subject for the colloquium?

This subject was found to be less suitable than the others. A relatively large group did not consider it a suitable subject because it is more relevant for barristers and because it plays a greater role in civil disputes.
Subject 4: Technology-neutral legislation

I. Is it already present in practice?

It should be noted in advance that the questions relating to this sub-issue were interpreted differently by the rapporteurs, possibly because the questions were not formulated strictly enough. The report from Cyprus stated that it was unclear what technology-neutral legislation entails, precisely because there is no universal definition.

A number of countries focused their answers to the questions on the use of paper and digital signatures. The report from Germany also discussed the procedural deadlines and the differences between digital and written documents. The majority of the rapporteurs looked at the subject in a more general way.

Despite this lack of clarity in the definition, governments must, in their role as legislators, create room for new developments. To make legislation sustainable, or future-resilient, it can be made technology-neutral in several ways.

Technology-neutral interpretation

The first variant to emerge from the reports is that legislators use standards that permit the use of several types of technology. The legislature formulates the standards broadly and in such a way that they can include new technological developments, as the report from Lithuania explains. Other countries also have an approach of this kind, as is apparent from the replies of Cyprus, Ireland and Romania (Legislative Council). Many of the examples given relate to legislation in the field of information technology (data protection, e-commerce, etc.).

However, technology neutrality in legislation is interpreted differently in Poland. In Polish law, technology neutrality is a principle laid down by law for the digitalisation of public bodies. It follows from this principle that all providers of digital products must be treated equally. The inclusion of this principle in the law is thought to maintain freedom of choice for private individuals with respect to the use of technology. A discussion about this topic is currently ongoing in Spain. It relates to service provision by public bodies, and it is argued that the services should not force citizens to use specific software.

Legal basis required?

Lithuania noted in its report that changes to legislation in the light of future developments, and therefore the use of technology-neutral standards, have not proven necessary since the existing legislation has been recently and fully revised and adapted to the current state of the art. In addition, the report from Portugal explained that legal certainty requires new technological developments to be accompanied by legal arrangements for the settlement of legal disputes but also pointed out that judges have a role to play if there is a legal vacuum.
II. If not, will problems result?

This question was answered in varying ways and to a limited extent. The report from the Netherlands identified a dilemma relating to the use of technology-neutral standards and there is an ongoing discussion about this subject. On the one hand, it is argued that technology-neutral legislation actually furthers citizens’ legal certainty. Laws with more technology-neutral concepts will age less quickly, and so judges will not need to push at the limits of the law as much. On the other hand, it was noted that technology-neutral legislation may undermine legal certainty. The legislature must use ‘vaguer’ concepts to anticipate future developments in legislation. The use of concepts that can be interpreted in multiple ways reduces legal certainty for citizens.

The report from Poland discussed above, in which it was stated that the principle of technology-neutral legislation has been incorporated separately in Polish law, indicated that there is criticism of the guarantees that the inclusion of the principle should offer. The criticism focuses specifically on the risk of vendor lock in the tendering of public services owing to Microsoft’s large market share.

In Greece, the absence of a complete legal framework for digital proceedings poses problems for judges. The law requires, for example, that a request for destruction must be submitted on paper (one original and two copies) and there is no provision for electronic copies. This means that, when e-filing is used to submit a request online, a request must also be submitted on paper. In Greece, the legislature has not yet adapted legislation relating to digital proceedings to take the use of technology into account.

Finally, the report from Luxembourg cites the example of the lack of legislation relating to crowdfunding, as a result of which investors are inadequately protected against fraud. Platforms for crowdfunding can also circumvent regulations designed to prevent money laundering and the financing of terrorism.

III. How do judges approach technology-neutral legislation

The questions to this answer also varied. A number of reports said that judges’ approaches to the question of technology-neutral legislation depend on the circumstances of the specific case. The report from Norway specified that the interpretation of technology-neutral legislation depends on the legal area: judges working in areas of criminal and administrative law will apply a stricter interpretation than their counterparts in private law.

A number of reports discussed the different methods that judges can use to interpret the law. Judges can adopt a teleological approach in which they look at the goal and the tenor of the law. They can also use an approach based on legal history in which they take into consideration the intentions of the legislature at the time of the drafting of the text. They can also take the legal system into account. The approach used also depends on the legal area, explained the report from Sweden, and a strict interpretation is more likely when fundamental rights are concerned, according to the reports from Latvia, Spain and Slovenia.
In the Netherlands, judges use the different interpretation approaches to arrive at a reasonable solution. The different approaches can be used even if the legal text does not address new technologies. If the text is so clearly written that the judge must take it into consideration, it is the role of the legislature to amend the law. The report from Hungary explained that judges usually interpret the legal texts strictly. It is usually not possible to interpret them more broadly if specific technical terms are used. In Belgium also, judges are more conservative and cautious when dealing with new technologies. They therefore favour a strict interpretation of the legal provisions.

Finally, the Dutch report noted that the scope for legal interpretation available to a judge depends on whether international treaties and EU law are important in a given case: if directly applicable international or EU norms are relevant in a case, they will, in principle, take precedence over the legal text.

IV. Is it a suitable subject for the colloquium?

This subject is considered suitable by almost all countries. One rapporteur did not consider it a suitable subject because the technology-neutral legislation does not, in his view, represent a problem for judges. In addition, one report stated that the subject is suitable for discussion only in combination with another subject.
Subject 5: digital enforcement

I. Is it already present in practice?

Almost all ACA reports mentioned the benefits of using digital enforcement technologies. A comparison was regularly made with the subject of digital decision-making that has already been discussed here. The distinction between the two subjects is not always clear.

Definition
Digital enforcement usually refers to data-driven checks and profiling by government authorities used to identify risk profiles for the purposes of additional monitoring. The examples of digital enforcement that were given related mainly to fiscal enforcement (audits) and the imposition of fines for speeding infringements. As discussed earlier, these decisions often qualify for digital decision-making.

Examples
In Germany, the tax authorities are permitted to use data analyses to check tax returns. In a number of countries, including the Netherlands, administrative bodies have additional powers. The tax authorities in those countries can use data analyses to generate reports about tax returns that may indicate a higher likelihood of fraud. This enables the tax authorities to carry out targeted investigations of the risk reports and to impose fines on that basis. There is a legal basis for the collection of data. This legal basis makes it possible to collect and use seventeen different types of personal data for the data analyses. A discussion is currently ongoing in Poland about the introduction of a similar legal basis in order to make it possible to easily obtain personal information about taxpayers, such as data from telecommunication and postal companies. In Romania, intelligent audit systems, data analysis and machine learning are not yet being used on a large scale. The benefits of using big data and the development of audit standards are, according to the Legislative Council of Romania, that the audit system can generate unbiased diagnostic analyses.

As far as decisions about speeding infringements are concerned: the report from the Netherlands stated that penalties for speeding are imposed automatically. A machine detects an infringement and imposes the corresponding fine automatically. Furthermore, chips in cars and cameras that register licence plates are used in Norway to collect tolls.

Non-fiscal examples
The reports also mentioned a lot of examples of digital enforcement that are not related to fiscal enforcement or fines for speeding infringements. For example, Portugal uses a passport database (the Portuguese Electronic Passport Information System) during the procedure for issuing new passports. The report from Latvia stated that the country has a system for the electronic registration of the presence of employees at construction sites. The resulting data can then be used by various government bodies for enforcement purposes. Data analyses are used in Belgium to detect discrimination against job applicants and the resulting data can then be used in any subsequent prosecution.
Judicial review
The judicial review of digital enforcement decisions is a subject that was raised by a number of rapporteurs. For example, the report from Spain brought up the question of how to deal with the right to be heard and the right to defence in cases of data analyses relating to tax matters that are conducted in response to targeted audits. In addition, a small number of reports pointed out that there was a potential conflict between fundamental human rights and the use of data for digital enforcement. However, the rapporteur from Belgium did not believe that there were any objections from the point of view of an administrative court as long as automatic data analyses do not violate fundamental rights such as privacy and legal equality. On the other hand, the same report pointed out that data mining and data matching for prosecution purposes could result in new forms of undetected or indirect discrimination. It is therefore essential to have a clear understanding of how these technologies work and to safeguard transparency in this area. In line with this suggestion, the report from Croatia pointed out that digital enforcement is an obstacle to critical legal thinking.

II. Is it a suitable subject for the colloquium?

Most rapporteurs thought that digital enforcement was a suitable subject for the colloquium. Because of the overlap, a few rapporteurs suggested that this subject should be combined with the subject of digital decision-making.

Cofunded by the Justice programme of the European Union