

# The Dutch Critical Care Triage Guideline on Covid-19. Ageist or not?



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# The Dutch Approach to the Corona Virus

Range of (legal) measures fighting the Covid-19 pandemic

Legal basis incomplete: Public Health Act, local and regional emergency regulations

(Potential) clashes with Constitutional rights: private life and human integrity vs health (care)

Ad hoc measures:

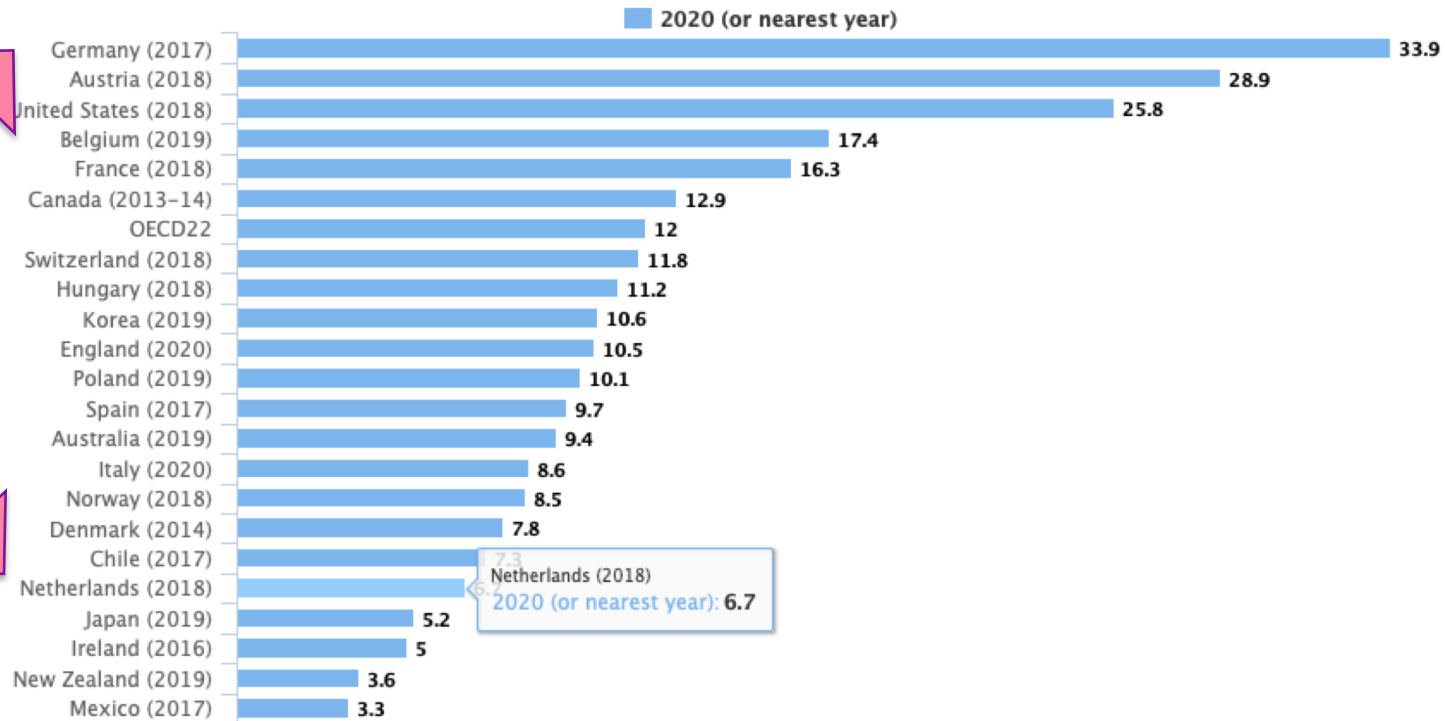
- 'Corona-app Act'
- Mandatory testing?
- Corona Act (restrictive measures)

# Data (daily new cases)



Status 6 Nov. 2020; 596 ICU beds occupied Covid19 patients (58%)

## Data (2):critical care beds compared (OECD)





# Dutch hospital airlifts patients to Germany amid virus surge

By PETER DEJONG and MIKE CORDER    October 24, 2020



Ezafun

# Self-regulation: Covid-19 Guidelines Health Professionals

- Covid-19 triage guideline ICU admission phase 3 C, 16 June 2020 ('Code Black')
- Developed by Medical Doctors Assoc. icw other health groups (HC Inspectorate, Hospitals, Patients Groups, etc.)
- Absolute scarcity, medical selection criteria insufficient; highest level escalation model
- Aim: to organise and allocate health care: guarantee continuity of care



# 'Code Black'

- Only applicable ICU care
- Both COVID-19 and other ICU patients
- 'first come, first serve' not appropriate and justified
- Priority to patients with short term admission (expected) (Clinical Frailty Scale)
- Priority to health professionals (exposure COVID-19)
- Selection based on age categories (0-20; 20-40; 40-60; 60-80; 80+): 'fair innings' argument
- Irrelevant: social status, disability, ethnicity, nationality, sex; own fault
- Lottery as last resort option

## ‘Code Black’ II

- Authorised by the MoH, on request
- Triage as part of the standard of ‘good care’, as defined by national law

# Justification

- Ethics: 'Fair innings' argument
- Law: understanding the non-discrimination concept (GC no 20, CESCR)
  - 'Any distinction excluding patients is prohibited.... but differentiation can be permissible'
  - Reasonable, objective & proportionality aim – and effect of measure
  - Last resort measure
  - Decision-making process: 'democratic deliberation'
  - Mechanisms for legal redress
- Least onerous, but necessary option

# Discussion

- Response MoH: unwillingness to ration
- What if max ICU beds has been reached?
- Doctors' response?
- Legal status Code Black; consequences?
- Part of professional standards?

# Relevance to Ukraine?

- Sufficient capacities (beds, equipment, staff)
- Public debate
- Need for a 'Code Black'?
- Role of the medical professions/MoH



## Reference



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# **View. The Dutch Critical Care Triage Guideline on Covid-19: Not Necessarily Discriminatory**

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## **Abstract**

Recently, the Dutch Medical Doctors Association (Federatie Medisch Specialisten en de Koninklijke Nederlandsche Maatschappij tot bevordering der Geneeskunst) drafted the 'Covid-19 triage guideline ICU admission' that has age cut-offs that deprioritise or