# LEIDEN UNIVERSITY

A THESIS SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS

FOR THE MASTER OF SCIENCE IN CRISIS AND SECURITY MANAGEMENT.

## 'HI SYRI'

*A research into the framing of 'data protection' elements within the political discourse about the linking of personal data.*

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June 30, 2020

# ACKNOWLEDGEMENTS

I wish to express my sincere appreciation to my supervisor, Daan Weggemans Msc, who has the substance of a genius. Without his persistent help, guidance and encouragement, this thesis might not have been realized. I have been extremely lucky to have a supervisor who cared so much, not only about my work, but also about my future. His sincere support for me to build a career in cybersecurity has motivated me and got me excited to start a new phase in my life. I would also like to thank my second reader, Dr. Els de Busser, for her time and help in fine-tuning my research focus.

Completing this work would have been all the more difficult were it not for the support and friendship provided by my friends and fellow CSM graduates, Divya Kaushik and Katharina Schulze. I will always be grateful for your company and positive energy during the thesis writing process.

Finally, I would like to thank my mom and dad, sisters and brothers for their unconditional support and love.

# ABSTRACT

SyRI is a digital instrument which aims at identifying social security frauds by linking all sorts of data. The instrument does not stand on itself, but is part of a bigger technological development. It relies on the advent of Big Data which is used to predict trends and enhance decision-making processes. Such instruments not only bear benefits for the security domain, but also potentially clash with important rights, such as the one to data protection. This thesis aims to outline the political discourse on the framing of data protection and proportionality within the SyRI discussion.

Based on a review of parliamentary papers, media reports and literature, it is concluded that the frames through which the Minister and State Secretary of Social Affairs and Employment, political parties and the media approach data protection and proportionality, change over time. The results indicate that the interplay between actors causes frames to be selected, modified or consistently repeated. On this basis, it is recommended that discussions about the use of far-reaching instruments, such as SyRI should be joined by not only political parties, but also the media and civil society organisation. Further research is needed to identify the triggers that cause parties to engage in these discussions in order to strengthen the protection of the right to data protection.

# ABBREVIATIONS

| | |
|---|---|
| **AP** | Data Protection Authority |
| **CDA** | Christian Democrats Party |
| **CHARTER** | Charter of Fundamental Rights of the European Union |
| **CoE** | Council of Europe |
| **D66** | Democrats 66 |
| **DPD** | Data Protection Directive |
| **ECHR** | European Convention on Human Rights |
| **ECtHR** | European Court of Human Rights |
| **EU** | European Union |
| **FNV** | Dutch Federation of Trade Unions |
| **GDPR** | General Data Protection Regulation |
| **LSI** | National Steergroup Intervention teams |
| **PDA** | Political Discourse Analysis |
| **PIA** | Privacy Impact Assessment |
| **PvdA** | Labour Party |
| **PvdD** | Party for the Animals |
| **RvS** | Council of State |
| **SARI** | System Anonymous Risk Indication |
| **SIOD** | Social Security Intelligence and Investigation Service |
| **SP** | Socialist Party |
| **SUWI** | Work and Income Implementation Structure |
| **SVB** | The Social Insurance Bank |
| **SyRI** | System Risk Indication |
| **SZW** | Minister of Social Affairs and Employment |
| **UWV** | Institute for Employee Benefit Schemes |
| **VVD** | People's party for Freedom and Democracy |
| **WBP** | Personal Data Protection Act |
| **WOB** | The Government Information Act |
| **WRR** | The Netherlands Scientific Council for Government Policy |

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# I. INTRODUCTION

## 1.1. 'HELLO SYRI'

No not the "intelligent assistant" introduced by Apple, but a digital system employed by the Dutch Government which aims to identify civilians against whom 'concrete' indications of fraud exist. System Risk Indication (*Systeem Risico Indicatie,* hereinafter 'SyRI') – was introduced in 2014 by its anchoring in Dutch law. It is an instrument which allows municipalities to link various data – held by the government – in order to prevent fraud. In the meantime, several parties criticized the use of SyRI. A civil suit has been the result of this criticism as the Dutch state has been sued on the 27th of March 2018. It has been argued that the use of SyRI infringes upon the right to a private life and therefore is in violation of article 8 of the European Convention on Human Rights (hereinafter 'ECHR').[1] Next to that, the plaintiffs rely upon the right to data protection as incorporated in article 8 of the Charter of Fundamental Rights of the European Union (hereinafter 'Charter').[2] This is due to the fact that all kinds of personal information on citizens stemming from municipalities, the tax authority and other governmental institutions are connected to each other without respecting the principle of purpose limitation (Raad van State, 2014). Furthermore, the plaintiffs argue that the use of SyRI cannot be tested against the principle of proportionality as the goal of the tool is formulated too broadly.[3]

## 1.2. RESEARCH QUESTION

The legal procedure started against the Dutch state for the use of SyRI and the arguments used to file the claim – such as violations of the right to data protection and the neglect of the principle of proportionality – have triggered curiosity with regards to the political discourse on and the framing of these elements over the years. Therefore, the following research question will guide this research:

*How have data protection and proportionality been framed within the Dutch political discourse on the use of SyRI over the period 2010-2020.*

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[1] Dagvaarding in de Bodemprocedure tegen de inzet van SyRI door het ministerie van Sociale Zaken en Werkgelegenheid.
[2] Ibid.
[3] Ibid.

Data protection can be shortly described as the protection of personal data against unlawful collection, storage, processing and distribution.[4] Proportionality can be shortly described as a state in which actions and consequences are in balance. In other words, whether the results generated justify the use of SyRI. In order to answer the central research question, a two-stage analysis will be performed. Firstly, the wider political debate – including the Minister and State Secretary of Employment and Social Affairs, politicians and the media – will be analysed in order to find the frames through which the principles of data protection and proportionality have been communicated and presented. A more elaborate description of these terms can be found in the next chapter. Secondly, the identified frames will be used to outline the political discourse on the use of SyRI over the period 2010 – the year in which SyRI was introduced – until the judgement in the SyRI case in February 2020. A detailed research design and the limitations thereof will be discussed in chapter three.

### 1.3. BIG DATA: A WEAPON OF MATH DESTRUCTION?

The use of instruments such as SyRI is part of a bigger technological development as it strongly relies on the advent of Big Data. Big Data has enriched our information society with the promise of predicting trends and enhanced decision-making processes by employment of algorithmic power and automated data analysis of large quantities of digitised data (Strauβ, 2015; Strauβ, 2018). Data has become essential for the daily activities of many organizations (Elgendy & Elragal, 2014). It has therefore been argued that data is now *"the building block upon which any organization thrives"* (ibid, p. 214). The increase in storage capabilities – such as cloud computing –, methods of data collection, smart technologies and social networks have led to the situation in which enormous amounts of data became available to decision makers (ibid; Strauβ, 2018). It is thus assumed that technology is a simple and cost-effective means to manage security risks and challenges (ibid.).

In a security context, measures are increasingly aiming at eliminating potential threats before they become serious. According to Strauβ (2018), this mode of prevention is perfectly complemented by large-scale surveillance based on Big Data analytics. This relation between surveillance, Big Data and control is highlighted by the Snowden revelations of 2013 (Greenwald, 2014). It is assumed that maximum data collection benefits the development of new insights and therefore massive data collection is unavoidable to improve security. 'The bigger the better' is the logic behind Big Data. Instead of searching for a needle within a

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[4] Article 5(1) GDPR

haystack, the whole haystack – in this case the massive amounts of data – is seen as a gold mine (Sætnan, 2018). The key of enhancing decision-making is no longer quality of data, but finding correlation instead (Bollier 2010; Mayer-Schönberger & Cukier, 2013). However, what seems to be neglected, is the fact that correlation does not per se means causation (Strauβ, 2018). Exploring correlations and revealing patterns is a potential of Big Data that might be helpful in certain domains, such as the health sector (ibid). However, this potential is not a given and has numerous drawbacks and risks sticking to it.

The use of big data can reinforce several threats such as automated profiling, social sorting (Schneider, 2018), discrimination and stigmatisation (Schermer, 2011). Profiling can be described as a process in which it is attempted to find correlations between data in databases in order to identify and categorize subjects as a member of a group or category (Hildebrandt, 2008, p.17). In the case of SyRI, data from several governmental databases are linked in order to identify people as potential frauds. Matzner (2018) adds to the definition of profiling that it is not connecting just data, but connecting *decontextualized* data. This means that data which is gathered for a certain purpose, is ripped out of its context and linked to other data, which have similarly been collected for a different purpose. This creates situations in which one of the key principles of data protection, namely purpose limitation, might not be adhered to. The linked data is then analysed by using algorithms. According to Schermer (2011), using data mining algorithms – which are algorithms used to discover knowledge in databases (p. 46) – can only establish the *likelihood* that an individual belongs in a previously established class, such as frauds. When the classification process depends on multiple factors, accuracy of the classification becomes impossible (ibid.). The likelihood that someone forms a risk, can therefore hardly be established. Correct interpretations of analyses are therefore extremely important (Strauβ, 2018). If the results of the predictive analysis are blindly trusted and actions are taken in order to prevent the event, falsification or verification of the prediction becomes impossible (ibid). This increases risks of false positives and might lead to self-fulfilling prophecies. These risks are why O'Neil (2016) refers to the increased use of Big Data as weapons of math destruction.

## 1.4.    ACADEMIC AND SOCIETAL RELEVANCE

According to the Netherlands Scientific Council for Government Policy (*Wetenschappelijke Raad voor het Regeringsbeleid,* hereinafter 'WRR') governments are increasingly aware of the promises of Big Data and therefore are keen on integrating the use thereof in security policies

(Broerders et al., 2017). Big Data analytics in the security domain is expected to provide us with more precise risk analyses and the discovery of unexpected correlations which on their turn might lead to 'better' risk profiles and 'better' targeted inspections (ibid.). Most importantly, it is expected that Big Data analytics will function as an oracle by providing insight into the future which is helpful for creating effective preventive policies (ibid.). Logically, a belief in that the future can be known, creates the urge to anticipate.

However, these potential gains can have a price in the form of individual freedoms and fundamental rights (ibid.). The use of Big Data analytics influences freedom and security – which are both rooted in fundamental rights – when employed in security policies (ibid.). One of the duties of the government is to protect its citizens and ensuring freedom. In order to do so, security measures – such as gathering information – have to be increased, while at the same time maintaining sufficient distance from the personal lives of citizens (ibid.). This distance is important as it distinguishes totalitarian states, such as North Korea, from constitutional states, such as the Netherlands. However, the amount of data that is available nowadays combined with state-of-the-art technology, which allows us to process data in flexible and cheap ways, results in lesser distance between the government and the lives of citizens (ibid.). The possibilities surrounding Big Data and profiling will only grow in the future. According to the Broeders et al. (2017), the number of programmes which are yet on the scale of Big Data is low, but this will probably change in the next years. What was unimaginable in the 90's of the 20th century, is now reality. Browne Wilkinson for instance made the following statement in 1991 (The Public Interest Litigation Project, 2015):

> *"If the information collected by the police, the tax authorities, the social security offices, the health care system and other bodies were to be brought together in one file, the freedom of the individual would be seriously compromised. The file with private information is the emblem of the totalitarian state."*

The use of SyRI and other systems that make use of profiling, are a potential threat to data protection, especially the key principle of purpose limitation. This principle provides that personal data must be collected for a specific purpose and may not be further processed in a way incompatible with this purpose (Forgo et al, 2017). States are only allowed to limit the right to data protection if – together with other requirements – the principle of proportionality

is complied with.[5] However, in the case of SyRI, the tool cannot be tested against this principle due to the broadly formulated aim. At least, this is argued by the plaintiffs. The principle of proportionality is important for the protection of civil freedoms and the constitutional state (Bouwes, 2013; de Moor-van Vugt, 1995). The principle's focus is the justification of governmental intervention and the effectivity of used measures (Bouwes, 2013). No authority should be given which goes further than necessary to reach the goal. This way, proportionality forms a yardstick to keep a balance between the government and civilians (ibid). Without this balance, we could move from a democratic society to a totalitarian state. It is therefore important to closely study the way in which the elements of data protection and proportionality are looked after in the Dutch political discourse on the use of SyRI, as civilians should be protected against the misuse of their personal data. Herein lies the societal relevance of this research.

With regards to the academic relevance; discussions until now have been abstract and have taken place in small circles, while the theme of Big Data seems to keep getting more important, especially with the recent implementation of the GDPR. The discussion has been mostly dominated by technicians and lawyers. [6] The focus has been put on the technical sides of Big Data and how this might impact – among others – data protection and privacy. However, empirical research into the actual discussion about the use of Big Data instruments, lacks. This thesis therefore tries to fill this gap by analysing and identifying the role of data protection and proportionality within debates in order to see how these fundamental principles are framed over time and what lays at the ground of changes. Framing is an interesting approach which is not too often used to outline political discourse as it is usually used in research on media frames. By using framing theory for this thesis, an opportunity to compare this discourse with future discourses on these elements when automated profiling and the use of Big Data have been further developed, is created. This also creates the possibility to track the development of the importance of protecting individuals' rights over time. The use of SyRI leads to questions about the boundaries of technologies. Does merely having the opportunity to use them, also mean that we should? SyRI is not the only Big Data inspired instrument used by the government at the moment and it is certain that the future only holds more of these instruments (Werkgroep Verkenning kaderwet gegevensuitwisseling, 2014)

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[5] article 52(1) Charter; article 8(2) ECHR
[6] See for example Constantiou & Kallinikos, 2015; Elgendy & Elragal, 2014; Munir et al., 2015

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During this research, the judge found that the use of SyRI constitutes an infringement of article 8 ECHR which means that it is no longer allowed to use this system. However, this does not mean that this research loses its relevance. Better yet, this research has become more important. If history is a good predictor, a new similar system will be developed. The Black Box method – SyRI's predecessor – was also stopped due to data protection infringements. As will be seen in the following chapters, fighting and preventing fraud is seen as crucial to the financial well-being of the Netherlands and the exchange of digital data forms an important aspect thereof. Data linking and using algorithms to estimate risks, have been topics of interest since 2005 (Kamerstuk 28870 nr. 149, 2006) and ever since, new ways to add more data sources have been explored. This research will show how data protection at first was not taken as seriously by the political elite as after the interference of the media and civil opponents. When a new data linking instrument is introduced, the discourse as outlined in this thesis might be a helpful reminder to show more interest in the balance between data protection and data linking.

## 1.5. THESIS OUTLINE

This chapter introduced the case of SyRI and the accusations against the system with regards to violations of data protection and the principle of proportionality. Big Data has been identified as the enabler of tools such as SyRI that use profiling to uncover possible frauds. The main goal of this thesis is to the study the wider political discourse on the framing of data protection and the principle of proportionality. In order to do so, the upcoming three parts will first lay out the necessary information on the used terms and the manner in which the research will be conducted. Part II contains the conceptual framework which describes and elaborates on the important concepts such as SyRI, Big Data, data protection and proportionality. Part III of this thesis goes into the theory of framing that will be used to outline the complete discourse and the changes within it.  The research design is described in part IV. A discourse analysis will be employed in order to answer the main research question. Four elements to structure the research are described. First, the Minister of Social Affairs and Employment and his State Secretary are identified as the 'Self'. Secondly, the wider political debate will be studied, which includes the Self, politicians, political parties and the media. Thirdly, one event, namely SyRI, forms the focus of this research. And finally, the wider political debate will be studied from the first mention of SyRI in 2010 until the end of February 2020 in which a judgement in the SyRI case was given. The analysis of this research can be found in part V of this thesis which exists of three separate chapters. Finally, part VI holds a discussion of the findings and the conclusion which will finalize this thesis.

# II. CONCEPTUAL FRAMEWORK

In this part, an overview of the relevant concepts for this research will be provided. These concepts are important in order to come to an answer to the research question: *How have the elements of data protection and proportionality been framed within the Dutch political discourse on the use of SyRI over the period 2010-2020?* This part is divided into four paragraphs. The first paragraph describes the history of SyRI, what SyRI is and whom it is used by. SyRI is defined as a legal instrument in which pseudonymized data from several databases are linked with the aim to prevent and fight fraud. The second paragraph dives into the phenomenon of Big Data. A lot of attention has been given to the topic of Big Data in the last couple of years (Günther et al., 2017).[7] Some paid attention only to the endless possibilities it has brought,[8] while others focused mainly on the harms thereof.[9] The use of Big Data by law enforcement poses certain challenges, such as the neglect of the right to data protection and strain on the principle of proportionality. Data protection is defined as the protection of any information relating to an identified or identifiable person against unlawful collection, processing and distribution. Proportionality can be defined as a state in which actions and consequences are in balance. A further elaboration of these principles can be found respectively in paragraph three and four.

## 2.1.    SYRI

SyRI is a legal instrument in which pseudonymized data from several databases are linked with the aim to prevent and fight fraud. The data used for the analysis is comprehensive and includes among others: personal data, housing data, educational data, health care data and financial data (Wetenschappelijke Raad voor het Regeringsbeleid, 2016). With the help of in-advance determined risk indicators, potential frauds are identified by comparing their profiles to risk models (Werkgroep Verkenning kaderwet gegevensuitwisseling, 2014). If the profile matches the risk model, a second analysis will be performed. If this results in a second match, the data will be decrypted and a risk profile is created (College Bescherming Persoonsgegevens, 2014). A risk notification is sent to the relevant institutions and is included in the Register Risk

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[7] See for example Fichman et al. (2014); Chen et al. (2012); Laney (2001); Constantiou and Kallinikos (2015); Davenport et al. (2012).
[8] See for example Davenport et al. (2012); Davenport and Kudyba (2016); McAfee and Brynjolfsson (2012); Chen et al. (2012), Constantiou and Kallinikos (2015).
[9] Ye et al. (2016); Chen et al. (2014).

Notifications based on which investigations are conducted (ibid.; Wetenschappelijke Raad voor het Regeringsbeleid, 2016).

SyRI is used by a partnership formed of municipalities, the Institute for Employee Benefit Schemes (*Uitvoeringsinstituut Werknemersvezekeringen*, hereinafter 'UWV'), the Social Insurance Bank (*Sociale Verzekeringsbank*, hereinafter 'SVB'), the Inspection for Social Affairs and Employment (*Inspectie Sociale Zaken en Werkgelegenheid*, hereinafter 'SIOD'), the Dutch Labour Inspectorate, the police, the Public Prosecution Department and the Tax Authority. These parties are all part of the National Steergroup Intervention Teams (*de Landelijike Stuurgroep Interventieteams*, hereinafter 'LSI') which was called into being in 2003 in order to further institutionalize and intensify the cooperation of those responsible for social security and employment regulation (Aanhangsel Handelingen nr. 429, 2014). The exchange of digital data forms an important aspect of investigating, detecting and preventing fraud and therefore has added value (Inspectie SZW, 2012). As social security forms an important pillar of the Dutch society, dealing with misuse of social facilities is crucial (Van Ark, 2018). The physical checks of the early social security state have made place for data linking and data analysis in the social security state of the digital era.

The technique used for SyRI was developed within the LSI in consultation with the AP (Aanhangsel Handelingen nr. 429, 2014) – in 2006 and is referred to as the Black Box (Wetenschappelijke Raad voor het Regeringsbeleid, 2016). This is in line with the bigger role for risk analyses and risk profiles which was one of the focus points for the 2007-2010 Enforcement program (Kamerstuk 17050 nr. 331, 2006). The Black Box method made it possible to link data anonymously and was developed in response to criticism of the Data Protection Authority (at that time *College Bescherming Persoonsgegevens*, but currently *de Autoriteit Persoonsgegevens*, hereinafter 'AP') during the *Waterproof* project (ibid.). This project linked data of utility companies to addresses of individuals who collect social benefits, in order to identify so-called 'living together' benefit fraud; beneficiaries who live alone, receive higher benefits than those who live together (Wetenschappelijke Raad voor het Regeringsbeleid, 2016). A low amount of water usage was considered a 'risk indicator' as that person was probably living somewhere else (Inspectie SZW, 2012). An assessment framework set up by the AP has been used to assess the 'Waterproof' project. Several data protection infringements were found, such as the lack of a necessary reason to collect data and the lack of informing audited citizens (College Bescherming Persoonsgegevens, 2007). After this, a

meeting took place between the LSI and the AP in which it was made clear that data can only be linked based on risk profiles with the use of Privacy Enhancing Technologies such as the use of a 'Black Box' in which data is encrypted. This formed the start of 'Black Box, which was used for a total of 22 projects between 2008 and 2014 (Wetenschappelijke Raad voor het Regeringsbeleid, 2016). At that time, Black Box had no separate legal basis and was therefore extracted from public attention (ibid.). However, the AP did conduct official investigations into the use thereof. In 2010, the AP found that no provisions had been made for the secure delivery of personal data, that unnecessary data were not deleted and that those involved where not informed thereof (College Bescherming Persoonsgegevens, 2010). The Minister of Social Affairs and Employment (*Minister van Sociale Zaken en Werkgelegenheid,* hereinafter 'Minister of SZW') wanted to clarify the use of the system and therefore proposed amendments to the Work and Income Implementation Structure Act (*Wet Structuur Uitvoeringsorganisatie Werk en Inkomen,* hereinafter 'SUWI Act'), in which Black Box was renamed initially to System Anonymous Risk Indication (*Systeem Anonieme Risico Indicatie,* hereinafter 'SARI') and then to SyRI.

## 2.2.    BIG DATA

As the technology around Big Data is constantly developing and new applications are arising, the discussion about what defines Big Data is ongoing and no consensus has been reached yet (Broeders et al., 2017). However, most definitions use the three Vs to describe the key characteristics of Big Data. Big Data can then be defined based on large *volumes* of extensively *varied* data which are generated, captured and processed at high *velocity* (Laney, 2001). Naturally, the volume of the data refers to its size, which in case of Big Data is enormous (EMC, 2012). Velocity indicates the frequency in which data is changing or generated (ibid). The different kinds of uses, the ways of analysing the data and the different formats and types of data is referred to as 'variety'(ibid). As Big Data comes from many different sources, the use of the data often does not correspond with the purpose of the produced and collected data (Constantiou & Kallinikos, 2015).

The highness in volume, variety and velocity makes it difficult to handle the data using traditional tools and techniques (Elgendy & Elragal, 2014). Therefore, solutions are needed to manage, store and study the data and extract value and knowledge from it (ibid). This value can be provided by applying advanced analytic techniques on Big Data (ibid). This is what we call

Big Data analytics. To mitigate the influences of human actors when processing and interpreting the data, the potentials of algorithms are explored. Algorithmic processing – even though guided by pre-programmed procedures – can lead to new insights and patterns which have not been considered before (Madsen, 2015). Gillon et al. (2014) argue that the capabilities of algorithms to predict human behaviour in real-time has increased. Where decision making used to require human judgement because of its complexity, algorithms have allowed for automated strategic decision making (ibid.). Analytics are already commonly used in automated fraud detection, however organizations such as the government are still trying to exploit the potentials of Big Data in order to improve their systems. The use of Big Data in this case allows for electronic data across several sources to be matched and perform faster analytics (Cebr, 2012). Furthermore, the use of Big Data about prevailing fraud patterns allows systems to learn new types of fraud and act accordingly (TechAmerica, 2012). However, using Big Data does not only have benefits. One of the biggest concerns of Big Data is privacy. Systematic collection and analysis of personal data over the years has increased, which poses risks for data protection (Munir et al., 2015). Important data protection principles such as purpose limitation and proportionality are threatened by the use of Big Data. Because of Big Data, information that is collected for a different purpose is used out of context for other purposes and the massive amounts of data that are gathered are not in proportion to the purpose of the gathering.

## 2.3.    DATA PROTECTION

It was not until the end of the 19th century that privacy became an interesting topic. The right to respect for private life and the right to data protection are closely related, however they differ in scope. The right to privacy is seen as the 'classic' right which is accompanied by a general prohibition of interference which can be set aside in the public interest (Opinion of Advocate General Sharpston, 2010).[10] The right to data protection is seen as a 'modern' and more active right which has a system of checks and balances in place to protect the processing of personal data (ibid). Personal data is defined as *"any information relating to an identified or identifiable person"* (article 4(1) GDPR; article 2(a) Modernised C108). It concerns information about a person whose identity is already clear or can be made clear from additional information (FRA & CoE, 2018). Personal data covers information relating to one's private life, which also includes professional activities and one's public life (ECtHR, 2000, p. 65).[11]

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[10] CJEU Joined cases c-92/09 and C-93/02
[11] ECtHR, Amann v. Switzerland, No. 27798/95, 16 February 2000

In the ECHR, the right to a private life is included in its article 8. This article states that *'Everyone has the right to respect for his private and family life, his home and his correspondence'*. The element of privacy has allowed the European Court of Human Rights (hereinafter ECtHR) to also protect personal data after the rise of the information society (FRA & CoE, 2018). In order to constitute whether there has been an interference with the right to data protection as part of article 8 ECHR, the ECtHR guides itself by the principles of Convention 108[12] (ibid.). Convention 108 also applies to data processing carried out by the public sector, including law enforcement authorities (ibid). The Convention lays down several principles concerning the fair and lawful collection of data, automatic processing of data and specified legitimate purposes (ibid). Furthermore, data must be adequate, relevant, accurate and not excessive (ibid). The last one means that the amount of data collected should be proportionate.

## 2.4.    PROPORTIONALITY

As seen above, the principle of proportionality plays an important role for the right to data protection. If an interference with the right to data protection is not proportionate, it cannot be legitimate and therefore constitutes a violation of this fundamental right. The elements of data protection and proportionality are therefore intertwined. The principle of proportionality is important for the protection of civil freedoms and the constitutional state (Bouwes, 2013; de Moor-van Vugt, 1995). This principle is focused on the justification of governmental intervention and the effectivity of measures (ibid). Important here are the necessity of governmental intervention, a proper response to certain behaviour and the gravity of an infringement (ibid). Before being able to conclude that a measure is proportionate, a careful analysis of the problem, the choice of the instrument and the effectivity thereof should take place (ibid). No authority should be given which goes further than necessary to reach the goal. Thus, if the same goal can be reached by using less invasive instruments, the principle of proportionality has been violated. This way, proportionality forms a yardstick to keep a balance between the government and civilians (ibid).

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[12] Convention for the protection of individuals with regard to automatic processing of personal data

# III. FRAMING THEORY

In this part an overview of the academic literature with regards to framing will be outlined. Based on this theory the following research question will be answered: *How have data protection and proportionality been framed within the Dutch political discourse on the use of SyRI over the period 2010-2020?* This part will first delve into the question what framing entails. The definition of framing as proposed by Matthes (2012) will be guiding this research. He describes frames as selective views on issues that construct reality in a certain way (ibid., p.249). The choice for this theory will be set out after that. Framing theory has been chosen because it allows to study the discourse on the topic of SyRI as the used frames over-time can be compared to one another. Finally, the sorts of frames that will be studied are issue-specific ones as this invites a more comprehensive analysis (De Vreese, 2005). The frames that can be recognized in this research will be set out per actor.

## 3.1. WHAT IS FRAMING?

According to Druckman (2011, p.285), a frame can be defined as *a statement that places clear emphasis on particular considerations.* Frames guide how the elite construct information, they affect how journalists select their information and they influence both cognitions and attitudes of audience members (Matthes, 2012). The key idea of framing is that actors and audiences do not reflect political and social realities. In contrast, politics and events are subject to selection and interpretation, while interpretation on its turn is subject to negotiation and modification over time (ibid). Therefore, Matthes (2012, p.249) describes frames as *selective views on issues* and as *views that construct reality in a certain way leading to different evaluations and recommendations.* The definition given by Matthes will be used in this research to describe framing. A simple example is that of abortion. One might frame abortion as killing a human life or frame it as a free choice. According to Benford and Snow (2000), political elites, social movements, lobbyists etcetera develop frames about events and issues which they try to inaugurate in the public discourse and media. Successful frames diagnose a problem, project solutions and tactics and motivate to action (ibid.). The idea behind framing is basically that the selection, highlighting and exclusion of certain information enables the shaping of the audience's interpretation of issues and events (Matthes, 2012). The effect of framing therefore occurs when individuals focus on the highlighted considerations when constructing their opinion (Druckman, 2001). For example, if a news outlet states that a rally planned by a hate

group can be seen as "as free speech issue" and the listener takes over this view, we can speak of a framing effect (Druckman, 2011).

Framing is a prominent theory, applied to a wide range of issues. Usually the theory is used by (sub-)disciplines of communication because of its applicability to media studies (Brugman, Burgers & Steen, 2017). The theory is however also associated with research on the perception of information and the effects on attitude. According to Chong and Druckman (2007) frames have been tracked to identify trends, compare media coverage and examine variations across types of media. Media frames and their effect on individuals and audiences are usually the studied topic as the theory of framing is mostly applied in the analysis of media discourses (Ardèvol-Abreu, 2015; Azpíroz, 2014). However, in the past years the interest in political frames and their influence on the media has grown (Azpíroz, 2014). The novel contribution of this research, is that it explores the wider political debate by analysing both media frames and political frames. Where other studies usually focus on the effect of frames on the audience, this research focuses on the interplay between frames and the possible effects thereof on the perspective of politicians.

## 3.2. WHY THIS THEORY

According to Reese (2007), framing is usually understood as a bridging theory. However, almost no studies have actually bridged the various stages of frames from the political elite to the media. This research aims at analysing the discourse on the use and communication of the data protection terms within the wider political debate around SyRI. In order to analyse this discourse, the frames used to communicate about SyRI will be explored and eventually compared and contrasted to see whether the use of certain frames by an entity has changed. In other words, the bridges between the frames will be analysed in order to describe and set out the changes in the wider political discourse on SyRI. The four principles that help describe the framing process are important here: *frame competition, frame selection and modification, frame dynamics,* and *frame consistency* (Matthes, 2012). Frame competition means that there is a certain competition of frames between communicators such as the political elite and the media (ibid.). Issues are open to interpretation, meaning there is a strife to define a dominant one (ibid.). Frame selection and modification refers to the freedom to choose your own frame, which can either be an existing or new one. Arguments of for example the political elite can be shaped and reframed by a journalist (ibid.). If the Minister of SZW framed data protection as being less

important than preventing fraud, the media might either take over this frame and report positively about the government's use of SyRI or might frame SyRI in their own way. Frame dynamics means that frames evolve. It might be that overtime the frames of one actor change because of the use of a certain frame by other actors. For example, a politician might use to frame data protection as less important than fraud prevention, but change his frame after the media framed data protection as an important right which should not be compromised so easily. However, it might not be the frame directly that changes the opinion of the politician, but the fact that news frames on their turn have an effect on the political opinion of citizens (de Vreese, 2004; Druckman, 2009), especially if those frames are continuously on the agenda (Matthes, 2008), which is important around elections (Schemer et al., 2012). Finally, frame consistency refers to the fact that frames are not singular messages, but rather refer to a pattern of issue interpretation (Matthes, 2012). By repeatedly invoking the same patterns, frames can become powerful (ibid.).

There might however be no logical bridge between various stages, creating a situation in which the political discourse on the data protection elements of data protection within SyRI does not change. If this is the case, there are several explanations for it. Firstly, framing effects are weaker when there are competing frames (Chong & Druckman, 2007). Secondly, the frames with weak arguments also have weaker effects and the frames with compelling and convincing facts or those wo appeal to emotions, have stronger framing effects (ibid). Furthermore, prior beliefs of an individual can prevent the frame from having an effect on him (Druckman, 2011). Finally, according to Druckman (2001), credibility of news sources, prior attitudes and communication among individuals are the factors on which framing effects depend. So, according to Matthes (2012), there is enough evidence for framing processes at the stages of political communication processes. Thus, an understanding of the various actors that create, redefine and shape frames can be puzzled together.

## 3.3.    SORTS OF FRAMES

In research we can distinguish between two different sorts of frames, namely issue-specific frames and generic frames (Brugman et al., 2017). Generic frames transcend thematic limitations, are abstract and applicable to a wide range of topics (De Vreese, 2005). These types of frames allow us to identify patterns of frames and effects over time and across topics (Brugman et al., 2017). An example of generic frames are the ones developed by Valkenburg

et al. (1999). They developed four news frames: conflict, economic consequences, human interest and attribution of responsibility. The issue-specific frames on the other hand are unique, concrete and only apply to the specific issue under research (De Vreese, 2005). The ones that will be used in this research can be found in the following paragraph. The use of issue-specific frames creates difficulties for the comparability and generalizability of research results (Brugman et al., 2017). Even though this had scholars argue for a shift from issue-specific frames towards generic frames (Borah, 2011), the study of issue-specific frames has its advantages as it invites a more comprehensive analysis with regards to particular topics (De Vreese, 2005). Furthermore, the communication contexts are considered far more, compared to the study of generic frames (Brugman et al., 2017). This is especially important for this research, as the discourse analysis which will be performed, asks for the analysis of not only language, but also of the identity and context. Therefore – together with the argument that framing research benefits from studying frames that are specific to only one issue (ibid.) - this research will use issue-specific frames.

### 3.3.1 ISSUE-SPECIFIC FRAMES

As will be further elaborated in the next chapter, this thesis recognizes three important actors, namely the Minister and State Secretary of SZW, political parties and the media. The analysis of this research will show that the Minister and State Secretary of SZW together with political parties have three ways of framing data protection in relation to data linking through the use of SyRI. The first type is the framing of data protection as more important than data linking. This frame can be recognized from arguments and questions that focus solely on data protection and privacy aspects of data linking. Statements such as 'data protection or privacy is guaranteed' show that attention has been given to the topic. However, when accompanied by contradictory actions – such as disregarding important advices on data protection issues – this type of frame is no longer applicable. The second type of frame shows that data protection and data linking are viewed as equally important. This frame can be recognized by statements that identify the importance of both data protection and data linking to prevent fraud. It is recognized that there has to be a balance in which data protection violations have to be absolutely necessary and data linking has to be effective. The last type of framing is the one in which data linking is valued over data protection. The focus of statements and questions lies on the necessity to use data linking. There is (almost) no attention for the implications of the use of SyRI for data protection and other aspects.

| Political frames | Description |
| --- | --- |
| Data protection > data linking | Data protection elements are the main focus of the statement and/or questions asked. |
| Data protection = data linking | Data protection and data linking are equally important. Only if data linking is an effective way of tackling fraud, data protection elements may be curtailed. |
| Data protection < data linking | Data linking elements are the main focus of statements and/or questions. |

*Table 1: Political frames*

Next to the political frames, this research also focuses on recognizing media frames. We can distinguish between three frames through which the media reports about SyRI. The first frame is the one through which the media reports negatively about SyRI. This frame can be recognized from the title, the way in which SyRI is described and the attention for the arguments of relevant parties. This is the case when the whole article is used to portray the arguments of the opponent of SyRI or when the title relates to a privacy violation. There is a disregard for the benefits of SyRI. The second frame can be recognized from neutral reporting. Usually the article is merely informative and portrays the discussion between both parties without focusing on either one side. Finally, the third frame is the one through which SyRI is portrayed positively. When this frame is used, the focus of the article lies on the benefits of SyRI for fraud control and the financial results of the system. The attention is given to advocates of SyRI such as the Minister and State Secretary of SZW. There is a total disregard for the problems surrounding SyRI such as data protection violations and discrimination.

| Media frames | Description |
| --- | --- |
| **Negative reporting** | There is a focus on privacy or data protection violation and/or a lot of room is given to the opponents of SyRI. |
| **Neutral reporting** | Informative articles in which the focus lays on portraying both sides of the SyRI discussion. |
| **Positive reporting** | There is a focus on the benefits of SyRI and/or a lot of room is given to the proponents of SyRI. |

*Table 2: Media frames*

# IV. METHODOLOGY

This chapter elaborates on the method used in this research. First, the definition of a discourse analysis and what the method entails will be discussed. Jorgensen and Philips (2002, p.1) define discourse as *a particular way of talking about and understanding the world.* The focus of this thesis will be performing a political discourse analysis. This allows the identification of frames used by the Minister and State Secretary of SZW, politicians and the media, by looking at the language used and the identity of the speaker. It also allows for the discourse as a whole – which exists of all the frames that have been identified during the first step of the analysis – to be analysed in order to see if the framing of data protection elements changes or stays stable. The second part of this chapter explains that the discourse analysis will be performed following a four-step process. After that, the research design as developed by Hansen (2006) will be portrayed. The wider political debate forms the intertextual model, the Minister and State Secretary of SZW form one of the Selves, the implementation and use of SyRI forms the event and the period between 2010-2020 forms the temporal perspective. This chapter ends with a discussion on the validity and reliability of this research.

## 4.1.    DISCOURSE ANALYSIS

This research involves a discourse analysis to approach the research question. The concept of *discourse* has been subject to much debate, in particular coming up with a general definition has led to discussions and different opinions as to how to define and analyse it (Van Dijk, 1997). Unfortunately, a debate on the different conceptualizations of a discourse falls outside the scope of this thesis. Therefore, the definition used by Jorgensen and Philips (2002) will be used. They define a discourse as *a particular way of talking about and understanding the world* (p.1). Discourse does not mean 'ideas', rather it incorporates both material as well as ideational factors, without prioritizing one over the other (Hansen, 2006). Material facts are not disregarded, but studied to see how they are produced and prioritized. The facts presented depend on the particular discursive framing of the issue which on its turn has political effects, such as the creation of policies aimed at a particular minority.

When analysing discourses, language is the significant factor. Language gives meaning and identity to objects, subjects, material structures etcetera (Hansen, 2006). According to Derrida (1978), meaning is established by valuing one element over its opposite by the use of language. For example, in the analysis part of this research, we might see how combating fraud is valued

over data protection or vice versa. Explicit articulations form the starting point for discourse analysis. For instance, the Self (in this research the Minister and State Secretary of SZW) is articulated through a differentiation against the Other (in this case (potential) frauds). Once a discourse is articulated, detailed identity constructions will probably not be identified in new texts. On the other hand, identities might also cease to be important once a new identity is adopted (Hansen, 2006). For instance, if the Minister of SZW implements aggressive policies against frauds because he believes that it is necessary to protect the state from financial harm, then this becomes his identity. He either keeps this identity by arguing for the same positions over and over again or he changes his position to for instance one that values individual's data protection over protection of the state's funds. This then becomes his new identity.

Identity and policy are interlinked: only through the discursive enactment of policy does identity come into being, while at the same time this identity is constructed as the legitimization for the policy proposed (Butler, 1990). Policy discourses construct problems, objects and subjects, while at the same time articulating policies to address them (Shapiro, 1988). At the centre of political activity lies the link between policy and identity which makes the two appear consistent with each other (Hansen, 2006). Part of the identity here is the way 'the other' is spoken about. For instance, frauds have to be painted as the 'evil' and 'bad' ones in order to legitimize aggressive policies targeted at (potential) criminals.

The focus of this thesis lies on analysing the political discourse, which revolves around the use, communication and presentation of the elements of data protection and proportionality within the SyRI debate. Simply said, Political Discourse Analysis (hereinafter PDA) focuses on the analysis of the political discourse (Van Dijk, 1998). The question then is, what can be seen as a political discourse and what not. According to Van Dijk, political discourse is identified by its actors, namely professional politicians, political institutions and other members of government, parliament or political parties. In this sense, politicians are those who are being paid for their activities and who are being elected or appointed as central players in the polity (ibid). However, as politicians cannot be seen as the only participants in the political domain, other recipients in political communicative events, such as the public and pressure groups, should be included (ibid.). Next to the actors, the whole context can be seen as decisive for categorizing a discourse as a political one (ibid.). For instance, by looking at political and communicative events and encounters, occasions, functions and legal or political implications (ibid.).

## 4.2.  PERFORMING A DISCOURSE ANALYSIS

According to Larsen (2002), 'meaning' can be studied by studying language. Therefore, the first step of the analysis is to read the relevant texts in order to classify who the self is and what language is used. The second step is to analyse the dynamic. This means that it will be established how data protection terms in general and proportionality more specifically are spoken about in relation to SyRI. The third step is to analyse the character discourse. This means that it will be established whether the frames fit the Self's character. The fourth step is to analyse the function it has and what effect it generates, meaning that it will be established whether the frame used has caused others to modify their frame, adopt a new frame etc. This way, through the study of language, 'meaning' can be established and the political discourse on SyRI can be analyzed as it is articulated through for example parliamentary papers.

## 4.3.  RESEARCH DESIGN

As described above, the political discourse on the use of data protection terms within the SyRI debate will be analysed through the study of the language used. An inductive approach will be employed in the sense that the data forms the starting point and conclusions towards theory will be drawn from there. To concretize the method of research, Hansen (2006) has developed a structured research design which will be used. Four questions are relevant for structuring the analysis: first, which intertextual model to choose; second, whether to focus on one Self of multiple Selves; third, whether to analyse one particular moment or a longer historical development; and finally, whether to examine one or multiple policy events. Creating a research design which incorporates all intertextual models and studies multiple Selves through several events over a longer period of time, is difficult. Therefore, choices have to be made in order to make this research feasible.

### 4.3.1.  INTERTEXTUAL MODELS

The first choice that has to be made, is what intertextual model to employ. According to Philips and Brown (1993) texts only become meaningful through their interconnection with other texts. All texts, whether implicitly or explicitly, reference previous texts. Kristeva (1980) therefore speaks of 'intertextuality' which she describes as the process in which a text is always a product of other readings and interpretations. Hansen (2006) has developed three intertextual models from which the second model will be employed in this research. This model broadens the

official discourse (model 1) to the wider media debate, oppositional political parties and corporate groups (ibid). The official discourse only detects oppositional discourses if these are explicitly responded to. Therefore, the second model is a better fit, especially since Hansen (2006) argues that the more models included, the stronger the foundation for assessing the hegemony of the official discourse is. Next to that, according to Matthes (2012), single fragments are unable to draw a complete picture of the whole political communication process. Analysis should therefore focus both on political input and media input, as political elites drive the mass communication process while at the same time there is journalistic autonomy. The data that will be used is mainly retrieved from 1) the official governmental channels – such as minutes from debates, parliamentary papers, motions and scientific papers. In total, 56 documents are included in this thesis. And 2) media channels – such as news articles about SyRI written by the chosen media actors. In total, 41 news reports are included in this thesis. Which media that is and the choice for these media channels will be explained in the following paragraph.

### 4.3.2.  NUMBER OF SELVES

The second choice that has to be made in order to define the research design, is the number of Selves. In this context, Self refers to the subject that will be examined (Hansen, 2006). This research has multiple Selves that will be studied: 1) The Minister and State Secretary of SZW; 2) political parties that are represented in the Second Chambers in general; and 3) the media in general. These last two selves however, can be divided into multiple actors. The following political parties will be considered: VVD, PvdA, CDA, Green Party, D66 and the SP as these are the only parties that have actively taken stands in debates. With regards to the media, only written media is analysed and only those who attract more than 2 million visitors a month on their website. This includes the following seven channels: Nu.nl, NOS, AD, De Telegraaf, RTL Nieuws, NRC.nl and De Volkskrant (Grimm, 2019).

The coalition of parties who sued the state for the use of SyRI will be referred to as the *Privacy Coalition* in this research. The Privacy Coalition does not form a subject that will be examined in this research, because their view on SyRI is clear from the beginning and does not change in the meantime. The judicial procedure started by this coalition however, is considered while analysing the discourse as it might affect the framing of other Selves.

### 4.3.3. NUMBER OF EVENTS AND TEMPORAL PERSPECTIVE

The analysis focuses on one event, namely the implementation and use of SyRI. Hansen (2006) states that the term 'event' is defined broadly as it might refer both to a war and a policy issue, such as European Integration. Therefore, the implementation and discussions around SyRI can be seen as one event. Events can be studied at one particular moment or over a longer period of time. The analysis will cover the period from the first time SyRI is spoken about in the political sphere – which starts in 2010 - until the judgement in the SyRI case – which is given in February 2020.

## 4.4. VALIDITY AND RELIABILITY

The validity and reliability of this research are in important aspect. External reliability refers to the extent in which the study can be reproduced (Bryman, 2012). In other words, would different analysts arrive at the same results if they analysed the same texts? Careful attention has to be paid to explicit articulations of identities and constructions of Selves and Others (Hansen, 2006). A weaker analysis is the result of important signs being overlooked, differences being overreacted or exaggerated or connections between identities and policies have not been connected (ibid). External reliability can therefore only exist if the texts are analysed carefully. This logic also goes for validity as it all depends on the force and logic of one's interpretations and arguments (Erasga, 2012). Even then, arguments are subject to counter-interpretations (ibid). The quality of the rhetoric therefore decides the validity of a discourse analysis (ibid). However, according to Philips and Jorgensen (2006) despite this fact, well-founded arguments can remain authoritative over time.

# V. ANALYSIS

The focus of this thesis lays on analysing the political discourse on the use of data protection terms, such as proportionality, during discussions about SyRI. SyRI is a digital instrument employed by the Dutch Government which aims at identifying social security frauds. SyRI is part of a bigger technological development as it strongly relies on the advent of Big Data. Big Data is used to predict trends and enhance decision-making processes by employing algorithms (Strauβ, 2015). Big Data measures – such as SyRI – are aiming at eliminating potential threats before they become serious (Strauβ, 2018). Using Big Data is not harmless as it potentially bypasses important data protection principles such as proportionality and purpose limitation. The massive amounts of data that are linked to each other to identify possible frauds stands not in proportion to the gains of SyRI. Furthermore, information that is collected for a different purpose is used out of context for other purposes.

How data protection is spoken about when discussing SyRI will be portrayed by employing the theory of framing. For the purpose of this thesis, frames are defined as *views that construct reality in a certain way leading to different evaluations on issues and recommendations* (Matthes, 2012, p.249). For the Minister and State Secretary of SZW and political parties, three issue-specific frames can be recognized: 1) data protection is valued over data linking; 2) data protection is viewed as equally important as data linking; and 3) data linking is valued over data protection. The media either reports negatively, positively or neutral about SyRI. Throughout the portrayal of the recognized frames, the framing process will be described as well. Does the framing of an actor change over time? And if so, can this be the result of the framing of other actors? Four framing principles are important here and will be used to help describe the framing process: frame competition, frame selection and modification, frame dynamics and frame consistency. The explanation of these principles can be found in paragraph 3.2. By putting together, the framing process of the relevant actors over time, the discourse on the use of data protection terms during discussions about SyRI will become clear.

It will be noticeable that data protection becomes more important over time and that more political parties are taking a clearer stand. The media seems to play an important role and their framing affects that of political parties. The Minister and State Secretary of SZW however seem to consistently frame data protection in relation to data linking the same way, consistently sending out the same message over and over.

# PART V.I: SAME TECHNIQUE, DIFFERENT NAME

This chapter forms one of the three analytical chapters in which the following research question will be answered partly: *How have the elements of data protection and proportionality been framed within the Dutch political discourse on the use of SyRI over the period 2010-2020.* This chapter focuses on the period between 2010 until September 2014. During this period, SyRI was mentioned for the first time in official government documents and was anchored in law through the SUWI Act and the SyRI Resolution. The research question will be answered by performing a two-step analysis. Firstly, the relevant documents will be scanned for the following data protection terms: data protection, proportionality, privacy, subsidiarity, data minimalization and purpose limitation. The use of these terms in relation to the use of SyRI will constitute the frame through which the actor is communicating. Secondly, by comparing these frames to those used by other actors and by the same actor over time, the framing process becomes clear. Frames can stay consistent, can be modified and compete with one another. These framing processes form the political discourse over time. The results are discussed in the last paragraph.

## 1.1. FROM BLACK BOX TO SARI

An enforcement program for SZW over the years 2011-2014 was published in 2010 under the responsibility of State Secretary De Krom and Minister Kamp, both from the Ministry of SZW (Kamerstuk 17050, nr. 402, 2010). This program contains concrete measures in the area of SZW. The enforcement program mentions that the SIOD has created an environment in which data can be linked safely (Ministerie van Sociale Zaken en Werkgelegenheid, 2010). It is argued that the environment fulfils the requirements of 'privacy enhancing technology' (ibid.). By stating this, data protection is framed as being equally important as using data linking to fight fraud. During a meeting between the standing committee of SWZ and the Minister and State Secretary of SZW in which this new enforcement program has been discussed, the same frame can be detected. Minister Kamp states that the SIOD is exploring all the possibilities of data linking within the privacy framework (Kamerstuk 17050 nr. 408, 2011). He adds to this that linking data held by governmental sources should stay within these borders. This corresponds with what Matthes (2010) refers to as 'frame consistency'.

However, this pattern seems to not hold up in other documents. In the 2010 integral report on enforcement policy –which contains an evaluation of the actions taken that year in the area of SZW –, Minister Kamp and State Secretary De Krom frame data protection as being less

important than fighting fraud (Ministerie van Sociale Zaken en Werkgelegenheid, 2011). The 2010 report mentions the Black Box-project and how it has come to an end in 2010 (ibid.). After this, it is states that the Dutch AP decided to start an official investigation into the Black Box project (ibid.). The AP concluded that the SIOD was violating the Data Protection Act with regards to the information obligation and storage periods (ibid.; College Bescherming Persoonsgegevens, 2010). The change in frames could be due to a certain agitation with this investigation. On the other hand, the accompanying letter of the integral report does mention how social benefit fraud is still a big problem and how this Cabinet stands for a tough approach against fraud with social benefits (Kamerstuk 17050 nr. 414, 2011). This new selective view on the issue - as Matthes (2012) describes frames in his article – can be recognized throughout the integral report. For example, there is an emphasis on using risk analyses, data linking and risk selections as standard work methods of intervention teams (Ministerie van Sociale Zaken en Werkgelegenheid, 2011). More importantly, the Dutch translation of the words 'privacy', 'data protection' and 'proportionality' have not been used once in the report, even though the report introduces the 'new' method for data linking called SARI.

From the minutes of a meeting held in the Second Chambers about regulating social security, it becomes clear that SARI is just another name for the same system (Kamerstuk 31929 nr. 7, 2011). During this meeting, the Dutch Labour Party (*Partij van de Arbeid,* hereinafter 'PvdA') asks whether the AP's policy is blocking the linking of files and whether the government is willing to change privacy laws in order to simplify the use of data linking (ibid.). This question shows that the views of the PvdA with regards to data protection align with those of the Minister and the State Secretary of SZW who view – and therefore frame (Matthes, 2012) – data protection as less important than using data linking to fight fraud. These views are again portrayed when the State Secretary of SZW answers this question by stating that he has issued a statement of objections against the fine of the AP for the use of Black Box (Kamerstuk 31929 nr. 7, 2011). He also mentions how legislation will be revised if necessary, in order to keep the possibility of linking data (ibid.). This is motivated by arguing that the SARI method is a necessary instrument for fraud control (ibid.).

## 1.2. SUWI Act

While the Black Box method was used without a specific legal basis in the law, for SARI a legal basis is created. The AP and the Council of State (*Raad van State,* hereinafter 'RvS') were

asked to advice on the concept legislative proposal to change the SUWI Act and some other acts on social security. These changes to the SUWI Act enable the processing of personal data in the field of social security and related areas, aimed at combating fraud and simplifying data traffic (Kamerstuk 33579 nr. 4, 2013), by anchoring the SyRI[13] instrument (Kamerstuk 33579 nr. 3, 2013). The text of the final Act and its explanatory memorandum will be discussed throughout the advices given by the AP and the RvS to see whether the advices have been honoured by the Minister of SZW. The attitude and willingness of the Minister to implement the advices given by both institutions and the wording in the explanatory memorandum, constitute his view on data protection in contrast with file linking for fraud detecting purposes. This view will be set out after the advices and response thereof are summarized.

### 1.2.1. THE DATA PROTECTION AUTHORITY'S ADVICE

First of all, the AP points out how article 8 ECHR requires legislation to contain provisions governing the types of data that may be processed, the categories of persons from which personal data may be collected and stored, the circumstances under which this is allowed and the procedures to be followed (College Bescherming Persoonsgegevens, 2012). However, as the legislative proposal does not contain any further elaboration of this requirement, the AP advices to arrange this through a general administrative regulation (ibid.). Minister Asscher states that the process of deciding which necessary data will be collected before each project, will be set out in a general administrative regulation (Kamerstuk 33579 nr. 3, 2013). For the rest of the advice given by the AP, the Minister simply states that SyRI can only be used for prevention and enforcement within the domain of the Ministry of SZW and the Ministry of Finances and that only data that is necessary to reach the goals of the domain will be processed in SyRI (ibid.). Thus, the advice given by the AP is not followed, but rather a vague description is given in the explanatory memorandum which still allows a lot of data to be processed and stored.

Secondly, the AP points out that none of the individual measures – under which SyRI – substantiate the need for a concrete, substantive weighing of interests, in accordance with the

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[13] The proposal refers to SARI, but the systems name changes throughout the legislative proces as according to the CoS, the name SARI does not cover the factual function of the system, therefore the name is changed into SyRi – leaving out the 'anonymously' part (Kamerstuk 33579 nr 4., 2013).

proportionality and subsidiarity principle (College Bescherming Persoonsgegevens, 2012). The AP furthermore argues that the intended file linking through the use of SyRI cannot be substantiated by the general knowledge that there are abuses in the field of social security (ibid.). That SyRI has "added value" – as stated in the explanatory memorandum – does not mean that it fulfils a 'pressing social need' (ibid). In response to this, Minister Asscher argues to have changed the explanatory memorandum by explaining how SyRI fulfils all the necessary requirements. Paragraph 3 of the explanatory memorandum goes into the relation between the legislative proposal and the right to data protection. According to the Minister the use of SyRI is allowed under article 8(2) ECHR, first of all, because it serves a legitimate aim, namely protecting the economic wellbeing of the Netherlands (Kamerstuk 33579 nr. 3, 2013). The legislative proposal is supposed to serve as the legal basis for the privacy infringements caused by the use of SyRI (ibid.). Furthermore, the Minister argues that there is a pressing social need as the damage of social benefit fraud has reached €153 million in 2011. The use of SyRI in 2010 has generated € 23 million (ibid.). No other reason is given to explain why there is a pressing social need. No information is given on how conventional methods were (un)able to generate the same amount as the use of SyRI has.

With regards to the proportionality of the measure, it is concluded by the Minister that the requirement thereof has been fulfilled. However, a proper elaboration seems to be missing. Proportionality is supposedly guaranteed because participating parties will prior to a project examine which data is necessary for the specific aim (ibid.). Creating a list of the data that can be used for SyRI is undoable, according to the Minister, as this differs per investigation purpose (ibid). It is argued that the use of SyRI has a 'clear added value' because fines have been issued and it works preventive as people will be less tempted to commit fraud (ibid.). There is no evidence given to substantiate this last argument, neither is it proved that the use of such a system throughout the years has led to less fraud and less social benefit allocations. With regards to the subsidiarity principle, it is shortly stated that the use of SyRI fulfils this requirement. According to the Minister, less-infringing measures are unable to provide for an adequate and efficient execution of government tasks such as battling fraud in this case (ibid.). Investigating each personal case is argued to be undoable. It is not shown how the use of conventional measures is unable to reach the same (or even a better) result.

Thirdly, with regards to data minimalization, the AP concludes that the explanatory memorandum does not include a motivation of the need to link certain data (College

Bescherming Persoonsgegevens, 2012). In addition to this, the AP argues that the file linking has to take place on the basis of in-advance determined and objectified risk indicators. Also, the implementation of the principle of 'select before you collect' has not been properly set out as it is not clear which method is used to select personal data categories for data linking (ibid.). This all together – if kept this way – can lead to a fishing expedition (ibid.). Minister Asscher states that the explanatory memorandum has been changed on this point. However, the only thing that has been added is that prior to a cooperation between institutions, it will be considered which data and indicators are necessary (Kamerstuk 33579 nr. 3, 2013). Nothing is said about which method is used to select data categories and indicators in order to prevent a fishing expedition.

Furthermore, the AP advices to change the data retention periods of SyRI in such a way that it underpins the necessity of keeping certain data in relation to realising the goal (College Bescherming Persoonsgegevens, 2012). Simply stating that risk notifications will be stored for two years because after this time the information might no longer be up-to-date, will not suffice (ibid.). The Minister has neither changed the retention period, nor does he explain why two years is the absolute minimum that is needed to act upon a risk notification. Furthermore, there is no retention or destruction period for the receiver of the notifications (Kamerstuk 33579 nr. 3, 2013), which means that they can store them as long as they want to (ibid.).

Finally, the AP is of the opinion that the information requirement has not been included in an appropriate manner (College Bescherming Persoonsgegevens, 2012). Spreading general folders about possible data linking is not specific enough. The Minister, however, is of the opinion that informing those concerned about the possibility of becoming subject of data linking, is enough (Kamerstuk 33579 nr. 3, 2013).  All in all, the AP objects to the legislative proposal and advises the Minister and State Secretary of SZW not to submit it in this way (College Bescherming Persoonsgegevens, 2012).

The advices given by the AP are either not implemented at all or followed with almost no effort. When talking about the employees who are responsible for analysing the data, the Minister argues in the explanatory memorandum that the privacy of those involved is guaranteed and that privacy is fostered to a maximum. In wording, sentences such as these give the impression that data protection is framed as an important element which is equally important as being able to use file linking to fight fraud. However, when considering the ease with which the advices

of the AP on crucial data protection matters – such as the right to be informed - have been ignored and the lack of a substantive explanation of why the curtailment of the right to privacy is justified, a different frame might be more correct. The frame used by his predecessor – Minister Kamp – in which data protection is viewed as less important than file linking, better fits the overall message of the explanatory memorandum and the reaction to the advices of the AP. This shows that even though the Ministry of SZW has a new Minister, the entity of Minister comes with its own identity. Frames might therefore overtime stay the same – causing frame consistency – even when a different person fulfils the function.

### 1.2.2.    THE COUNCIL OF STATE'S ADVICE

Not only the AP, but also the RvS was asked to advice on the legislative proposal. Most importantly, the RvS is of the opinion that the goal of SyRI is too broad and that the accessibility of the system is easily expandable to not precisely described governing bodies (Kamerstuk 33579 nr. 4, 2013).

First of all, the RvS is of the opinion that SyRI has a broad and vague goal description since the data processing in the proposal is aimed at preventing and combating abuse in the field of social security and labour laws, illegal employment, tax and social insurance contributions, income-related schemes and related wrongdoing (ibid.). Therefore, the RvS deems an accurate description of the goals for which data can be linked, necessary. According to the Minister, this advice has been implemented by having an article-by-article explanation of the articles 64 and 65 of SUWI (ibid.). However, this does not seem to adhere to the advice given by the RvS. The goal is still broad and vague as the legislation itself has not been changed. Rather, the Minister argues that every project will have its own concretised goal, which has to fit the one described by the RvS as being broad and vague. This basically means that almost anything would fall under the goal description and can thus be executed.

The RvS furthermore notes that the use of the term 'increased risk of abuse' is too vague and broad and should either be replaced by a more tailored criterion or clarified by mentioning concrete examples. The reason therefore is that even if someone has two characteristics that indicate a statistically increased chance of committing fraud, the chance of that person actually committing fraud, can still be small. In that case, the risk notification could mean a disproportionate interference in the personal life of the person concerned and therefore the

requirement that a limitation of his fundamental right is proportional, is not met (ibid.). This advice has been implemented (ibid.).

Moreover, the RvS deems that SyRI is easily extendable to undefined bodies. As a result, the standard that the granting of powers – which may entail a restriction of the right to respect for privacy – must be concrete and limited, is not met (ibid.). The advice to sum up which governing bodies will be able to access SyRI, has not been honoured (ibid.). The same counts for the advice to change the procedure of pointing out bodies that can access SyRI from a ministerial decree into a general administrative regulation. By ignoring the RvS' advice, more bodies will be able to access SyRI which in the words of the RvS may entail a restriction of the right to respect for privacy. Finally, the RvS is of the opinion that certain guarantees – which are not mentioned at all or only in the explanatory memorandum – should also be added to the legislative text (ibid.). An example thereof is the guarantee that personal data from SyRI will be used only for the purpose of risk reports. The advice on these points has been honoured by the minister (ibid.).

The advices on important matters have not been implemented by Minister Asscher even though it was clearly stated by the RvS that the right to privacy is being restricted this way. The broad goal in the legislative text has not been changed and undefined bodies have easy access to SyRI. Speedy procedures, easy accessibility and being able to use SyRI in as much situations as possible, seems to have the overhand in the considerations of the Minister. His framing of data protection matters with regards to the use of data linking stays the same, namely data protection is less important.

### 1.2.3.    THE POLITICAL VIEW

The legislative proposal has also been sent to the representatives of the political parties that take place in the standing committee for SZW. Both the People's party for Freedom and Democracy (*Volkspartij voor Vrijheid en Democratie,* hereinafter 'VVD') and the Socialist Party (*Socialistische Partij,* hereinafter SP) seem to be happy with the legislative proposal as they are of the opinion that fraud should be tackled hardly and those who misuse the social benefit schemes should be detected and fined (Kamerstuk 33579 nr. 5, 2013). They both shortly mention that it is important for them that privacy will be guaranteed. None of them however asks how this will be done. The SP seems to be merely interested in the financial gains of SyRI,

while the VVD does ask some questions about privacy related matters, such as privacy guarantees (ibid.). They referred to the processor who is responsible for the first phase of the risk selection. This processor has the key to all the data which can be traced back to people's identities. The VVD mentions how this key protects people's privacy and they therefore wonder how the government is going to prevent this key from being distributed widely (ibid.). Minister Asscher states that it will be documented that only those who are involved in the anonymizing process have access to the key (Kamerstuk 33579 nr. 7, 2013).

With regards to the principle of proportionality, the VVD states how they deem the proportionality requirement of article 8 ECHR very important (Kamerstuk 33579 nr. 5, 2013). Data should therefore only be provided if it serves the eventual purpose. The VVD wants to know which criteria will be used to and who will decide which data are – or are not – important for the purpose of fraud reduction (ibid.). Minister Asscher answers this question by repeating what is already stated in the explanatory memorandum and by adding that the Minister will deny a SyRI project request if the proportionality requirement has not been properly substantiated (Kamerstuk 33579 nr. 7, 2013). For the first time, the Minister of SZW frames data protection as being more important than data linking. Over time the Minister has framed data linking as more important than data protection more than once. It is yet to early to conclude that his statement here breaks the consistency in his frames.

The Christian Democrats party (*het Christen Democratisch Appel,* hereinafter 'CDA'), the PvdA and the SP seem to value the advices of the AP. They want to know whether the adjusted legislative proposal has also been run by the AP and if not, they want to know why the Minister is of the opinion that the AP's objections have been adequately met (Kamerstuk 33579 nr. 5, 2013). The Minister states that the adjusted proposal has not been sent to the AP again, as it is not usually done and the AP's advice has been verbally explained during which time it has also been discussed how the advices would be processed (Kamerstuk 33579 nr. 7, 2013). All in all, the final report drawn up by the standing committee for SZW about the proposal, simply states that there are no reasons to comment on the proposal (Kamerstuk 33579 A, 2013). The SP, PvdA and the CDA all seem to frame data protection in the same manner. They mention that it is important and that they value the AP's advices, while at the same time welcoming the possibility to use data linking while fighting fraud. It can therefore be concluded that they frame data protection as being equally important as using data linking methods. The VVD seems to have a different view on data protection. By asking more in-depth questions about data

protection guarantees, they show that for them data protection is more important than being able to use data linking in the battle against fraud and only if certain conditions are met, should this method be used. The difference in frames of these political parties is what Matthes (2010) refers to as frame competition, meaning that all political issues are open to different interpretations or frames.

With these frames kept in mind, it is surprising that on the 12th of September 2013, the legislative proposal was adopted by the Second Chamber without debate and without vote; meaning that no member of the Second Chamber wanted to say something about the proposal (Handelingen TK 2012/2013 nr. 110 item 3, 2013). The same counts for the adoption by the First Chamber on the 1st of October 2013 (Handelingen EK 2013/2014 nr. 2 item 2, 2013). This does not fit the frames that have been portrayed during the meeting of the standing committee for SZW. Some might even argue that showing no interest might be a frame on itself, namely one in which data protection is not important at all. Especially since the adoption of the changed SUWI Act is a crucial moment; SyRI now has a legal basis in the law. After the adoption of the proposal, the members of the Second Chambers were informed about fraud measures in general (Kamerstuk 17050 nr. 439, 2013). In this letter, Minister Asscher and State Secretary Klijnsma state how data linking offers more possibilities than most people are aware of (ibid.). This unfamiliarity with what is allowed and what not, results in insufficiently utilizing data linking possibilities (ibid.). Therefore, the possibilities of data linking in relation to privacy are explored (ibid.). This sentence would suggest that the Minister of SZW finds data protection and data linking possibilities equally important. However, privacy seems to merely be mentioned just to mention it. The part to which it follows shows that privacy is not the reason for the exploring phase, but rather to make sure that no possibilities are left unused. On the other hand, this does not per se imply that data linking is framed as being more important.

## 1.3. SYRI RESOLUTION

The SUWI Act that has been the focus of the previous chapter, came in to force on the 1st of January 2014. The articles 64 and 65 of this Act were implemented through what is called the SyRI Resolution (*Besluit SyRI)*. The concept of this Resolution was – just as the SUWI Act – sent to the AP and the RvS to advice on. The text of the final Resolution and its explanatory memorandum will be discussed throughout the advices given by the AP and the RvS to see whether the advices have been honoured by the Minister Asscher. The attitude and willingness

of the Minister to implement the advices given by both institutions and the wording in the explanatory memorandum, constitute his view on data protection in contrast with file linking for fraud detecting purposes. This view will be set out after the advices and response thereof are summarized.

### 1.3.1. THE DATA PROTECTION AUTHORITY'S ADVICE

Firstly, according to the AP, the 'select before you collect' principle is again not set out properly in the Resolution (College Bescherming Persoonsgegevens, 2014). The Resolution states that justice is done to this principle since indicators should be clearly mentioned in the processing request. Even in the mandatory Privacy Impact Assessment (hereinafter 'PIA') it is concluded that the principles of data minimalization and purpose limitation have been sufficiently adhered to because the specific objectives and the specific data needed will be stated in the request for the deployment of SyRI.[14] However, the AP is of the opinion that the principle is not elaborated on enough as it is first of all important that a selection is made in advance of as much as possible tailored personal data that can be provided to the minister for processing purposes in SyRI (College Bescherming Persoonsgegevens, 2014). The Minister stays with his first argument and deems it impossible to select data in advance. To this, the Minister adds that there are limits to the data categories that can be used for SyRI which keeps privacy infringements to a minimum (Ministerie van Sociale Zaken en Werkgelegenheid, 2014).

Secondly, the AP argues that the risk indicators should be objectifiable, meaning that facts or other data should demonstrate that a certain indicator indicates the presence of (possible) fraud (College Bescherming Persoonsgegevens, 2014). As the 'select before you collect' principle is part of the proportionality assessment, the AP advices to further elaborate on the principle in the explanatory memorandum (ibid.). Unfortunately, a further elaboration is missing in the explanatory note as it is only stated that indicators should be made sufficiently clear (Ministerie van Sociale Zaken en Werkgelegenheid, 2014).

With regards to the principle of proportionality, the AP concludes that a proper proportionality assessment cannot be made as the proposal does not address the fact that negative personal characters will form the basis of risk profiles which will be used to make risk reports for the purpose of combating fraud (College Bescherming Persoonsgegevens, 2014). As a result, there

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[14] Besluit SyRI (2014, September 1)

is a risk that the privacy interests of those involved are disproportionately affected (ibid.). In response to this, the Minister refers to the explanatory memorandum of the SUWI Act and argues that it also applies to this resolution (Ministerie van Sociale Zaken en Werkgelegenheid, 2014). Furthermore, according to the AP, the subsidiarity principle has been interpreted wrong and therefore is not fulfilled (ibid.). The question is not whether file linking can be done more easier, but whether there are other possibilities to reach the same goal which are less privacy infringing (ibid.). Therefore, the AP advices to further elaborate the principles of proportionality and subsidiarity in the explanatory memorandum (ibid.).

Another point is the fact that the resolution states that no special data will be processed (ibid.). However, the Minister seems to pass by the fact that criminal data also falls under this category and that detention records on their turn fall under the 'criminal data' umbrella (ibid.). The Minister has changed the SyRI Resolution in such a way that it no longer states that special data will be processed (ibid.). Finally, the AP advices the Minister to explicitly evaluate the consequences the Resolution has on data protection (College Bescherming Persoonsgegevens, 2014). There was no mention of such an evaluation at all, even though the Resolution mainly revolves around the processing of personal data (ibid.). The Minister argues that this advice will be taken into consideration when the details of the evaluation will be discussed later on (Ministerie van Sociale Zaken en Werkgelegenheid, 2014). Again, the AP objects to the bill and advises the Minister to not submit it (College Bescherming Persoonsgegevens, 2014).

Just as with the advices that were given on the SUWI Act proposal, important advices given on the Resolution have been shoved aside as well. For example, a further elaboration on the 'select before you collect' principle has been refused by the Minister as he deems this impossible even though the principle is part of the proportionality assessment. The Minister wants to be able to collect all the data that is necessary even though this clashes with important data protection principles. He simply refers to the explanatory memorandum of the SUWI Act when concerns were expressed about the proportionality principle. His attitude and willingness towards the advices of the AP show that data protection is viewed – and therefore framed (Matthes, 2012) – as being less important than the being able to fully exploit data linking possibilities. During the meetings with the standing committee for SZW – which have been discussed in the previous paragraph – it seemed as if Minister Asscher was adopting a new frame to portray data protection in relation to data linking, however his attitude towards the AP's advices better fit his earlier framing in which data protection was viewed as less important.

## 1.3.2.    THE COUNCIL OF STATE'S ADVICE

The RvS was also asked to advice on the concept of the SyRI Resolution. The RvS first of all, points out that the enumeration of data is intended to limit data processing, but is in fact so broad that it is hard to imagine a category of personal data that is not eligible for processing. The list does not seem to be intended to limit, but to have as much scope as possible (Raad van State, 2014). In this regard, the RvS states that even though it will be specified which data is necessary for each individual project, such an assessment in specific cases does not relieve the legislator from the obligation to describe the granting of administrative powers and the associated limitation of fundamental rights as concretely as possible (ibid).  As a reaction to the RvS' advice, Minister Asscher of SZW states how the principle of data minimalization is guaranteed as prior to each project, all parties have to assess which data is necessary (Ministerie van Sociale Zaken en Werkgelegenheid, 2014). He furthermore adds that excluding data in advance is undesirable since projects have different themes (ibid).

Secondly, the RvS advices to further elaborate on the 'select before you collect' principle as it should also be applied to the risk models and not just to the risk indicators (Raad van State, 2014). According to the Minister, he has implemented this advice. However, the only thing that is added to the explanatory memorandum is that the indicators for risk models have to be identified in a sufficiently clear manner (Ministerie van Sociale Zaken en Werkgelegenheid, 2014). Thirdly, just as the AP pointed out already, special data will be processed while the resolution states that this is not the case. Therefore, the RvS advices to review the processing of criminal records (Raad van State, 2014). The Minister has changed any inconsistencies with regards to the processing of special data and has explained that criminal records will not be processed, but only social security numbers in order to find out whether or not someone is being detained (Ministerie van Sociale Zaken en Werkgelegenheid, 2014).

Furthermore, the explanatory memorandum states that risk notifications will be kept in a register. According to the RvS, the rules with regards to the register should be included in the SyRI Resolution and should not be arranged by ministerial decree (Raad van State, 2014). This advice has been implemented by the Minister (Ministerie van Sociale Zaken en Werkgelegenheid, 2014). Moreover, the goal of the register – to inform those about whom a risk notification has been made – does not adhere to the information requirement (Raad van State, 2014). In response to this, the Minister has argued that those about whom a risk

notification is made, will not be informed personally as this would require a disproportionate effort from the government and it would cause citizens to adjust their behaviour (Ministerie van Sociale Zaken en Werkgelegenheid, 2014). Finally, The RvS pointed out that there are no determined storage periods for the risk notifications (Raad van State, 2014). The proposed Resolution offers the possibility to arrange this by ministerial decree. The RvS however advices to simply include this in the SUWI Act (ibid.). With regards to the storage periods, the Minister has decided to include these in the SyRI Resolution (Ministerie van Sociale Zaken en Werkgelegenheid, 2014). Again, the RvS advices the Minister to not submit Resolution this way (Raad van State, 2014).

Despite the criticism of the RvS on the lack of sufficient data protection guarantees, the SyRI resolution came into force on the 1st of September 2014. It became clear again that the unlimited ability to use data linking in order to fight fraud is more important to Minister Asscher than sufficiently protecting personal data. Smaller or technical adjustments to the Resolution have been made, however important data protection elements, such as the data minimalization principle, the 'select before you collect' principle and the right of those involved to be informed, are not taken seriously. A clear pattern can be recognized, which means that according to Matthes (2010) we can speak of frame consistency.

## 1.4. THE DISCOURSE ANALYSIS

### 1.4.1. QUALITATIVE ANALYSIS

In order to analyse the discourse, the frames that have been recognized in this chapter will be set out here and linked to the identities of the actors. Minister Kamp and State Secretary De Krom (both members of the VVD) started off by framing data protection as being equally important to using data linking to fight fraud both in the 2011-2014 enforcement program and during their meeting with the standing committee in which this program has been discussed. In the 2010 Report on Enforcement policy, their view however changed into one in which data protection is less important than fighting fraud. This frame fits with the Minister and State Secretary's membership to the VVD since this party wants to have as less people as possible to depend on social benefits and therefore prioritizes combatting fraud (VVD, n.d.). It also fits the profile sketched by the Dutch Privacy Barometer in which the VVD, together with the PvdA are seen as big threats to privacy (Privacy Barometer, 2017).

This profile also seems to be correct for the PvdA as they also viewed data protection as less important. The new Minister and State Secretary for SZW – Asscher and Klijnsma – are both members of this party and seem to carry on the frame used both by their predecessors and their political party by shoving aside important advices and criticism from the AP and the RvS. For Minister Asscher however this collides with his personal identity as he once criticized the data hunger of the government (AD, 2016).

During a meeting of the standing committee for SZW in which the SUWI Act was discussed, the frames used by the Minister and political parties seem to be different. Minister Asscher for example frames data protection as being more important than data linking, while his party seems to find data protection equally important as data linking. This frame is also portrayed by the SP and the CDA. The VVD – the party of the earlier Minister Kamp and State Secretary De Krom – frames data protection as being more important than the ability to use data linking, which is a frame that had not been used before by Kamp and De Krom. This shows that framing is a dynamic process (Entman, 2004) meaning that frames can change over time. It also shows that the communication process – such as meetings in which all political parties come together and debate –effects their frames. This is what Matthes (2012) refers to as frame selection and modification.

All these frames in which data protection received a higher rank, however did not hold up. The fact that the proposal to change the SUWI Act was adopted without any political party showing interest, brings us to a frame in which data protection is valued less than data linking. The Minister also went back to his original frame in which data protection is viewed as less important than being able to exploit data linking methods. He again easily shoved aside the advices of the AP and RvS and chose accessibility and unlimited possibilities over data protection guarantees. Overall, a certain frame consistency can be recognized with regards to the Minister and State Secretary.

| | Mentioned by Minister and State Secretary of SZW | Mentioned by VVD | Mentioned by PvdA | Mentioned by SP |
|---|---|---|---|---|
| Paragraph 1 [15] | | | | |
| Data protection | 0 | | 1 | |
| Privacy | 3 | | 1 | |
| Proportionality | 0 | | 0 | |
| Subsidiarity | 0 | | 0 | |
| Data minimalization | 0 | | 0 | |
| Purpose limitation | 0 | | 0 | |
| Paragraph 2 [16] | | | | |
| Data protection | 0 | 0 | | 0 |
| Privacy | 9 | 4 | | 1 |
| Proportionality | 13 | 1 | | 0 |
| Subsidiarity | 9 | 0 | | 0 |
| Data minimalization | 0 | 0 | | 0 |
| Purpose limitation | 16 | 0 | | 0 |
| Paragraph 3 | | | | |
| Data protection | 1 | | | |
| Privacy | 1 | | | |
| Proportionality | 3 | | | |
| Subsidiarity | 4 | | | |
| Data minimalization | 3 | | | |
| Purpose limitation | 6 | | | |

*Table 3. Number of times data protection terms were mentioned from 2010 until September 2014*

With regards to the use of data protection terms, table 3 shows that the term 'data protection' has been used only once by the Minister and State Secretary, while the term 'privacy' was used nine times. These terms however seem to be used interchangeably in the sense that when privacy is mentioned, it refers to data protection as well. The terms proportionality, and subsidiarity have been used more often. However, this is due to the assessment of article 8 ECHR which was a necessary part of the explanatory memorandum of the SUWI Act and the SyRI Resolution. The term purpose limitation was used the most during these periods, however it should be kept in mind that it was mostly stated in the sense that the Minister has chosen a wide purpose limitation – which seems to be contradictory – and in response to arguments of

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[15] the period in which SyRI was introduced
[16] the period in which the process of the anchoring of SyRI in the law took place

the RvS and the AP which already included this term. The political parties SP, PvdA and VVD have used these terms to ask questions about the legislative proposals. The VVD has mentioned these terms more often than the other parties, which matches their framing pattern as seen in the previous paragraph.

To conclude this chapter, we have seen that frames are dynamic and can change for several reasons. It was only during a meeting with other political parties who viewed data protection as more important than data linking, that the Minister and State Secretary of SZW adopted this frame. After this meeting, they went back to their original frame in which data linking is valued over data protection.

# PART V.II: ALL EYES ON SYRI

The previous chapter focused on the implementation of the SUWI Act and the SyRI Resolution, which now form the legal basis for the use of SyRI. We saw that the Minister and State Secretary frame data linking as more important than data protection, however when communicating with other political parties who frame data protection as equally important (PvdA, CDA and SP) or as more important than data linking (VVD), they seem to modify their frame into one where data protection is valued over data linking. This chapter focuses on the period right after the implementation of the SyRI Resolution until the start of the judicial procedure against the state for the use of SyRI. In terms of years, this encompasses the period from October 2014 until March 2018. This period can be divided into three parts. The first paragraph shows the period right after the implementation of the SyRI Resolution which starts with a lot of media attention. Therefore, the media form a big actor in this chapter. The second paragraph is focused on the efforts of the government with regards to research and debates. During this period, the media seemed to have quieted down and pieces on SyRI are rarely written. The final paragraph is focused on a short period in which the Privacy Coalition announce that the state will be sued for the use of SyRI. Again, the goal of this chapter is to identify the frames of important actors by scanning the documents for the following data protection terms: data protection, proportionality, privacy, subsidiarity, data minimalization and purpose limitation. Next, these frames will be compared to earlier frames and to those of other actors in order to recognize the framing process and the overall discourse. This contributes to answering the research question: *How have data protection and proportionality been framed within the Dutch political discourse on the use of SyRI over the period 2010-2020?*

## 2.1.  THE BOMB DROPS (2014)

Two weeks after the implementation of the SyRI Resolution in September 2014, the use of SyRI became heavily criticized in the media. Even though the same instrument has been used without a legal basis for years, the framing of SyRI as privacy infringing happened only after the implementation of the SUWI Act and SyRI resolution. According to Olsthoorn (2016), the attention for data linking from for example political parties is closely related to the media's focus on the topic. It all started with the frontpage article published by the Volkskrant on the 1st of October 2014. The title of the article reads *Citizens will soon be screened just like the profile of a criminal is drawn up* (Persson, 2014a). The terms 'privacy', 'data protection' or any other relating terms are not used throughout the article. The article does however refer to the objections of the AP and the RvS and how most of the advices given by them where shoved

aside by Minister Asscher of SZW (ibid.). This is also mentioned in the articles published on the same day by RTL Nieuws (2014a) with the title *private data used against fraud* and NOS (2014) with the title *citizens screened for fraud*. No hard conclusions can be drawn from these articles yet; however it seems as if these news outlets value data protection over data linking methods by shedding a negative light on SyRI. A day later, the NRC published an article about the 'new' law which forms the basis for SyRI (Stokmans, 2014a). The title reads *A single person who uses a lot of water? Suspicious* (ibid.). In contrast to the articles published a day before, this one seems to be more neutral as it shows both the Minister's guarantees as the criticism of the AP and RvS. The same goes for the article published the next day by the NRC. Even though the title reads *Social Affairs may have violated privacy legislation* (Stokmans, 2014b), the article creates the impression that privacy infringements are allowed now because of the legal basis. (ibid.). This article however does raise some questions with regards to the situation before SyRI, which is framed as a possible privacy violation.

Two members of the SP asked the Minister of SZW several questions (Aanhangsel van de Handelingen nr. 428, 2014). They asked the Minister who decided that data could be linked without any legal basis and whether the Second Chamber has been informed about this. The Minister answers that the data linking and analysing took place within the framework of several laws such as the SUWI Act and the Data Protection Act (*Wet Bescherming Persoonsgegevens,* hereinafter 'WBP') and he refers to the moments in which the Second Chamber was informed (ibid.). Another question refers to the fact that the AP said to not have monitored the data linking and asks the Minister whether the AP has been monitoring. The Minister answers by stating that the AP has advised the LSI on the interpretation of the norms set out in the WBP. He furthermore adds to this that the responsibility for adhering to these norms stayed with the LSI itself and that the AP could investigate ex officio. These questions are an interesting example of what Matthes (2010) refers to as *frame dynamics*. The frame used by the NRC in which SyRI's predecessor is viewed as privacy infringing, has affected the SP's view on data linking and privacy. However, it should be kept in mind that these questions relate to the Black Box method. The SP's previous framing of data protection as equally as important as data linking, still holds up here as their questions mainly refer to the lack of a legal basis.

The Democrats 66 (*Democraten 66,* hereinafter 'D66') were also triggered to ask for clarification by the article of the NRC (Aanhangsel van de Handelingen nr. 429, 2014). The questions are almost the same as those from the SP, resulting in almost identical answers, except

for the last question which asks how the Black Box project was amended at that time in response to the conclusions and advices of the AP (ibid.). The minister responded that security plans had been drawn up and that the retention periods had been adjusted (ibid.). With regards to the information requirement of those involved, the Minister argues that they have been informed via house-to-house papers. Those whose personal data has been processed or included in a risk report, were not personally informed thereof as this would require a disproportionate effort from the government and would release the modus operandi to which calculating citizens could adjust their behaviour (ibid.). It becomes clear from these answers that the main frame portrayed by the Minister – namely data linking is more important than data protection – was already present during the use of the Black Box method.

That frames are indeed dynamic and can change due to the perception of other views, becomes again evident. In the previous chapter we saw that the legislative proposal for the SUWI Act was sent to the permanent committee for SZW and that they had no reasons to comment on the proposal at that time. Most parties in the committee seemed to frame data protection as being equally important to data linking, except for the VVD who at that time valued data protection over data linking. The committee as a whole now tends to value data protection over data linking due to the media attention. The committee requested the Minister to respond to the media coverage and to send them the SyRI Resolution, to clarify the consequences thereof and to point out the adjustments made to the Resolution after receiving the advices of the AP and the RvS (Commissie Sociale Zaken en Werkgelegenheid, 2014). As a response to the questions, the minister basically just sums up what he already argued after the advices were sent to him and thus stays with his main frame (Kamerstuk 17050 nr. 489, 2014).

More news articles followed later. The Volkskrant for example published an article on their front page on November 8th 2014 in which it compared the little commotion about SyRI in the Netherlands to the commotion similar situations have caused in Germany (Volkskrant, 2014). Words such as 'control state' set the tone of the article and the little fuss about SyRI is described as 'bizarre' (ibid.). The Volkskrant thus stays negative towards SyRI. This view is also maintained in the article titled *A lot of data and limited hard numbers*. This time the focus of the article lays almost exclusively on the proportionality of SyRI and similar systems. On this notion, the author asks the question whether processes without measurable outcomes can be efficient? He then concludes that the objections against the privacy violations are clear, however the only thing that the government can use as an argument against this are visible

results, but those seem to be missing (Persson, 2014b). The negative view of SyRI can also be recognized in the first article published by The Telegraaf. The article focuses on fraud detecting systems in general and their sensitivity to privacy. It mentions SyRI as an example of a system that registers more people than just fraudsters (Telegraaf, 2014).

The last article of the year is published by RTL Nieuws and is about Minister Asscher's nomination for the Big Brother Awards for the implementation of SyRI (RTL Nieuws, 2014b). This article is rather neutral and does not do more than merely stating what SyRI is. During a general meeting, the SP refers to this nomination as *cynical* since Minister Asscher has written his PhD on privacy (Kamerstuk 17050 nr. 501, 2015). The SP furthermore wonders whether the use of SyRI has generated any positive results as this would show that SyRI works (ibid.). First of all, this might show that the SP frames data protection and data linking as equally important since they are fine with using SyRI as long as it is proportional. However, it also shows that the SP might disregard other concerns if SyRI generates positive results. Furthermore, this is an interesting question and may be the result of the article published in the Volkskrant as seen above. If this is the case, the way in which the media frame data protection and SyRI does influence the political elites and their views. Even though no conclusions can be drawn, the Minister also notices the dynamics of the changing frames. He states that something special is going on as everyone thought SyRI was a good idea and now there seem to be all sort of concerns (ibid.). He goes on to say that a project such as SyRI does not just happen and that if it was indeed an invasion of privacy, someone in the Second Chambers would have said something about it (ibid.). This is an interesting remark and also partly shows that the change of perspectives that can be noticed with political parties, is due to the media attention, just as Olsthoon (2016) argued.

That frames are dynamic can also be noticed from the rest of the answers given by the Minister. He argues that fundamental rights such as privacy are not limited, and that that is a good thing because there are always other rights at stake (Kamerstuk 17050 nr. 501, 2015). In the case of SyRI there is a balance (ibid.). With regards to SyRI itself, the Minister points out that SyRI has all kinds of guarantees - partly on the basis of advice from the RvS and the AP. There are several thresholds that have to be crossed before data can be linked and then again conditions apply to the use of the data. All of this together creates a situation in which the data links are used proportionately and for a legitimate purpose (ibid.). His answers show a more neutral

frame in which data protection and data linking are viewed as equally important instead of his main frame in which data linking had the overhand.

## 2.2. TIME TO DISCUSS AND INVESTIGATE

In the previous paragraph, we saw the media attention given to the topic of SyRI and how this attention resulted in political parties asking privacy related questions. That frames are dynamic was clearly visible in the previous chapter. The years after 2014 are media quiet and articles with regards to SyRI are only published sporadically. In 2015, an opinion piece was published in the NRC by Tommy Wieringa – who later on joins the Privacy Coalition – about how civilians seem to choose safety and surveillance over freedom and privacy (Wieringa, 2015). It is mentioned how SyRI is one of the governments ways to control its inhabitants, thus shedding a negative light on SyRI (ibid.). This same negative view is portrayed in the other articles published throughout 2015 and 2016. What is interesting, is that the main arguments are not about SyRI, but about privacy in general, discrimination and control states. However, SyRI is constantly mentioned as an example in these contexts, thus creating a negative association with the system. For example, SyRI is mentioned in an article on China's social credit system (Vlaskamp et al., 2015). It is argued that the NSA tries to recognize terrorists, Google tries to recognize our preferences and the Dutch SyRI system of the Ministry of Social Affairs tries to recognize fraudsters (ibid.). Furthermore, SyRI is mentioned briefly between the lines in an article about privacy problems of a 'waste pass' (Geels, 2016). Finally, SyRI is mentioned in an article about racism and discrimination (Schuilenburg, 2016). Thus, a mere four articles are published over a time span of three years.

However, during this period other parties have not stood still. The Minister of SZW shared the results that the intervention teams achieved by using SyRI. According to the Minister, a result of € 20,5 million can be measured (Kamerstuk 17050 nr. 508, 2015). The words privacy, data protection or proportionality are not mentioned in the report. This is interesting, as the fulfilment of the proportionality principle also relies on the results that are generated. This is especially interesting since these results are from the Black Box period and could have vowed for SyRI's importance. The focus on the results of SyRI without linking this to data protection implications, shows how the Minister stays with his main frame in which data linking is valued over data protection. The results were briefly discussed during a general meeting in 2015. A member of the VVD states how his party is glad that the Minister is so committed to detecting

fraud. He argues that the approach is bearing fruit and that the amount of fraud detected is a great result (Kamerstuk 17050 nr. 520, 2015). As we saw in the previous chapter, the VVD was the party that asked specific questions about the relation between the use of SyRI and data protection infringements. No questions are asked about data protection this time, not by the VDD nor by any other political party. This does show a different frame than the one portrayed before by the VVD. The VVD seems to imply that as long as results are visible, data protection issues are no longer important, therefore implying that data protection is less important than data linking. Moreover, the VVD is the only party that even comments on the results of SyRI. Whether this disinterest is a result of the little attention that the media has donated to the topic of SyRI, is a question that has to stay unanswered. However, it can be said that no reaction, is a reaction, and it might be a powerful one.

After this general meeting, no attention has been given to SyRI in political debates nor in the media. However, SyRI has been part of governmental research into the use of Big Data. Both reports try to create the impression that SyRI is privacy-friendly, thus framing the elements of data protection and data linking as being equally important and balanced. In 2016 the report on Big Data and the use thereof in a free and safe society, was published by The Netherlands Scientific Council for Government Policy (Wetenschappelijke Raad voor het Regeringsbeleid, 2016). SyRI is mentioned in the report as one of the cases in which Big Data is used in the security sector. It is referred to as a developed but controversial analysis system (ibid.). Nothing is said about any privacy or data protection problems flowing from the use of SyRI specifically. However, the use of Big Data in the security domain does carry the worries of privacy and freedom (ibid.). The report has been drawn up on the basis of a request by the government who wishes to increase the effectivity of the security domain while at the same time improving the safeguarding of privacy and data protection (ibid.)

A background study for the report on Big Data was conducted by an investigative journalist – Peter Olsthoorn. His report is also published by the WRR. A lot of focus is put on how the comments of the AP and the RvS have been processed and how there are good reasons for the advices that have been put aside (Olsthoorn, 2016). Olsthoorn argues how the requirements set by the AP with regards to file linking, are met by SyRI. He furthermore adds that opposite to the portrayal of SyRI in the media as the ultimate invasion of privacy, SyRI prevents arbitrary and incorrect data use (ibid.). He finally states that several governmental departments struggle with privacy. The inspection of SZW argues how they try to abide by the rules laid out in the

WBP, such as proportionality and subsidiarity, which was initially done insufficiently, causing the creation of a false image in the media (ibid.). The report also offers the stage to other institutions to give their opinion about SyRI and privacy. The SVB for instance argues that the SyRI decision provides the Intervention Teams with a "privacy-safe" environment for file comparison (ibid.). The VNG Knowledge Centre for Enforcement and Compliance believes that adequate safeguards for privacy have been built into the legislation which were missing when SyRI was used without legislation (ibid.).

## 2.3. SEE YOU IN COURT

It stays quiet on the side of the Minister, political parties and the media after the publication of these reports. However, the parties that form the Privacy Coalition do not sit still. They submitted a request under the Government Information Act (*Wet Openbaarheid Bestuur,* hereinafter 'WOB') to consult public information sources on the use of SyRI. According to these parties, they received strongly censured documents about the preparations of the SyRI projects, but no results and evaluation reports (Bij Voorbaat Verdacht, 2017). On the 19th of January, the Privacy Coalition launched their public campaign (The Public Interest Litigation Project, 2018). Both articles written on the announcement are relatively neutral. For example, the Telegraaf portrays the comments of the AP and RvS, the opinion of the Platform for Civil Rights Protection and finally the argument of the Ministry of SZW (De Telegraaf, 2018). Nu.nl merely summarized what SyRI is and shortly states the objections of the Platform for Civil Rights Protection against the use of SyRI (Nu.nl, 2018). Their formulation is careful when doing so, as they state that the system *would* violate the right to privacy instead of saying that the system violates privacy (ibid.).

In the following week, apparently the Ministry for Social Affairs and Employment and the Privacy Coalition consulted each other in order to come to a compromise. Unfortunately, no compromise was reached, meaning that the conflict about SyRI had to be settled in court. After two months of silence, the state is sued on the 27th of March 2018 (Bij Voorbaat Verdacht, 2018). RTL Nieuws is the only medium that published an article on the same day in which only the side of the Privacy Coalition is portrayed, again shedding a negative light on SyRI (Teunis, 2018).

## 2.4. DISCOURSE ANALYSIS

### 2.4.1. QUALITATIVE ANALYSIS

In order to portray the discourse, the identified frames throughout this chapter will be set out and linked to the identity of the actors. Minister Asscher and State Secretary Klijnsma – both members of the PvdA – kept consistently framing data protection as less important than data linking throughout the years. According to Matthes (2012), by repeatedly invoking the same pattern, frames can become powerful. The framing used by the Minister and his State Secretary is in line with the identity of their political party. According to the Privacy Barometer (2017), the PvdA is seen as a big threat to privacy. The only time a more balanced frame was portrayed, was after the Minister noticed that the ideas of political parties with regards to SyRI were changing – possibly because of the media attention. He then adopted a frame in which data protection and data linking are equally important by spending more time on privacy guarantees.

With regards to the political parties, the SP and D66 asked questions about the Black Box method after the NRC portrayed this method as privacy infringing. The SP stays with their main frame here in which data protection and data linking are equally important, even though the impression is created that positive financial results would quickly modify their perspective. For the D66 it was the first time they actively participated in the SyRI discussion. Just as the SP, they frame data protection and data linking as equally important. This is in line with their privacy standpoint as portrayed on their website. The D66 welcomes initiative such as SyRI as long as it does not cross the line (D66, 2017). The VVD, however, seems to have modified their frame from one in which data protection was more important, to one in which it is less important than data linking. This actually better fits their profile as the VVD wants to have less people depend on social benefits (VVD, n.d.).

| | Mentioned by Minister and State Secretary of SZW | Mentioned by VVD | Mentioned by PvdA | Mentioned by SP | Mentioned by D66 |
|---|---|---|---|---|---|
| **Paragraph 1** | | | | | |
| Data protection | 0 | | | 0 | 0 |
| Privacy | 6 | | | 1 | 2 |
| Proportionality | 5 | | | 0 | 0 |
| Subsidiarity | 5 | | | 0 | 0 |
| Data minimalization | 0 | | | 0 | 0 |
| Purpose limitation | 2 | | | 0 | 0 |
| **Paragraph 2** | | | | | |
| Data protection | | | | | |
| Privacy | | | | | |
| Proportionality | | | | | |
| Subsidiarity | | | | | |
| Data minimalization | | | | | |
| Purpose limitation | | | | | |
| **Paragraph 3** | | | | | |
| Data protection | | | | | |
| Privacy | | | | | |
| Proportionality | | | | | |
| Subsidiarity | | | | | |
| Data minimalization | | | | | |
| Purpose limitation | | | | | |

*Table 4. Number of times that data protection terms were mentioned from October 2014 until march 2018.*

With regards to the use of data protection terms, table 4 shows that only during the period after the implementation of the SyRI Resolution, terms such as privacy, proportionality and subsidiarity are used. The terms subsidiarity and proportionality are always used together by the Minister and usually only as a way to tell that a municipal's request to use SyRI has to specify in which way it adheres to these principles. The term 'privacy' has been used multiple times by the Minister in order to explain that privacy is not an absolute right, but one that can be limited. The period overlaps with the time in which a lot of media attention was given to the topic of SyRI as can be seen in table 5.

| | 2014 | | | 2015 | | | 2016 | | | Jan-March 2018 | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | N | B | P | N | B | P | N | B | P | N | B | P |
| **Nu.nl** | | | | | | | | | | 0 | 1 | 0 |
| **NOS** | 1 | 0 | 0 | | | | | | | | | |
| **AD** | | | | | | | | | | | | |
| **De Telegraaf** | 1 | 0 | 0 | | | | | | | 0 | 1 | 0 |
| **RTL Nieuws** | 1 | 1 | 0 | | | | | | | 1 | 0 | 0 |
| **NRC.nl** | 0 | 2 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | | | |
| **De Volkskrant** | 3 | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | | | |

*Table 5. Number of articles published by newspapers categorized by frame[17]*

Media outlets mostly report negatively about SyRI. The Volkskrant, together with the NRC, is seen as a broadsheet in the Netherlands. The focus of these papers lies mostly on politics and the economy (Boukes & Vliegenthart, 2017). The Volkskrant dedicated five articles to SyRI which all shed a negative light on the system. The NRC published four articles, from which two where rather neutral and two were negative. One of the latter, is however written by a member of the Privacy Coalition. These news outlets have published the most about SyRI, offered room to opinion pieces and dived further into the material. (ibid.). The other news outlets, such as the AD and the Telegraaf are seen as tabloids who usually devote more attention to gossip etcetera (ibid.). The AD for example has not mingled into the SyRI discussion over this period. The Telegraaf published two articles, one when all the media attention started and one after the announcement of the Privacy Coalition to sue the state. The first one was negative about SyRI and the latter was rather informative and neutral. RTL Nieuws published three articles about SyRI, from which 2 were negative and one was more neutral. The NOS and Nu.nl both only published one article. The NOS reported negatively about SyRI. Nu.nl only published a more neutral article about the judicial procedure started by the Privacy Coalition in 2018.

To conclude this chapter, the Minister and State Secretary show a consistent framing pattern, while other political parties, are modifying their frames. This could be caused by all the media reports in which SyRI is mostly framed negatively.

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[17] N= negative; B= balanced/neutral; P= positive

# PART V.III: TURNING TABLES?

The previous chapter focused on the period right after the implementation of the SyRI Resolution until the beginning of 2018. We saw that the Minister and State Secretary of SZW still consistently frame SyRI as more important than data protection. We also saw that the D66 and the SP actively took part in the discussion and that their framing was affected by the negative media attention. This chapter focuses on the period from March 2018 – the month in which the state was sued for the use of SyRI – until the judgement of February 5th 2019. This period can be divided into four parts. The first paragraph focuses on a period in which a debate about Big Data took place and political parties are filing motions to disclose the working of SyRI. The second paragraph shows that the discussion moved from the national level to the local level. The political parties in the local Council of Rotterdam actively and explicitly take a stance against SyRI. The third paragraph focuses on a period in which everyone seems to turn on SyRI, including the Mayor of Rotterdam. This paragraph includes a good example of what Matthes (2012) refers to as *frame dynamics*. Finally, the fourth paragraph is focused on the period around the court hearing until the judgement in the SyRI Case. Again, the goal of this chapter is to identify the frames of important actors by scanning the documents for the following data protection terms: data protection, proportionality, privacy, subsidiarity, data minimalization and purpose limitation. Subsequently, these frames will be compared to earlier frames and to those of other actors in order to recognize the framing process and the overall discourse. This contributes to answering the research question: *How have data protection and proportionality been framed within the Dutch political discourse on the use of SyRI over the period 2010-2020?*

## 3.1.  WELCOME GREEN PARTY

In the previous chapters, the Dutch Green party (*GroenLinks)* has not explicitly taken a stance with regards to SyRI. One of its members however will be more actively critiquing SyRI in de upcoming period. During a meeting of the standing committee for Security and Justice about Big Data on the 30th of May 2018, the Green party is the first one to mention SyRI and ask about the complications for privacy and the verifiability of its algorithms (Kamerstuk 26643 nr. 543, 2018). Therefore, their first engagement is immediately one in which data protection is valued over data linking.  Other parties, such as D66, also go into the verifiability of the algorithms used by SyRI (ibid.). Minister Dekker of Security and Justice answers these questions partly by arguing that the first line of checks is in the Second Chambers (ibid.). He goes on by saying that both the First and Second Chambers have adopted the changes to the

SUWI Act and the SyRI Resolution unanimously (ibid.). As a reaction to this, the spokeswoman for the Green party admits that blame has to be taken where it is due, because the Second Chambers decided on such an important topic without even debating about it (ibid.). It becomes clear from the Big Data debate that SyRI and its implications for data protection are placed higher on the agenda then before. Political parties are initiating discussions about SyRI and asking more in-depth questions. Parties seemed to keep themselves aloof in the past, but now seem to be more interested. For example, the spokesman for CDA during this debate admits that he has made a note to look into SyRI more closely. This could all be thanks to the judicial procedure started by the Privacy Campaign earlier that year. The framing of SyRI as a privacy violation seems to be changing the perspectives of political parties as well.

In response to the debate about Big Data, members of the parties D66, the Green party and the SP submitted a motion to disclose the working of algorithms and analyses methods which are used by the government and have a considerable impact on civilians (Kamerstuk 32761 nr.117, 2018). A second motion was filed by members of D66 and the Green party to disclose the databases, algorithms and analyses methods of SyRI and to perform an audit (Kamerstuk 32761 nr. 118, 2018). This shows that these parties are showing more and more interest in SyRI and that they start to value data protection over data linking. This counts especially for D66 and the Green Party. State secretary Van Ark of SZW responded to this last motion by stating that as long as the judicial procedure against the state for the use of SyRI is still going on, the information as asked in the motion cannot be disclosed as this might harm the litigation interest of the state (Kamerstuk 32761 nr. 122, 2018). She furthermore argues that the risk models have not been made public at the request of the Privacy Coalition as this would release the modus operandi of SyRI which can lead to (potential) offenders adjusting their behaviour accordingly (ibid.). This led to the motion being prolonged. The State Secretary takes over the framing pattern of her predecessor by valuing data linking over data protection. Only by disclosing the information requested, can it be made sure that personal data is protected sufficiently. However, the State Secretary values the use of SyRI more than she does data protection.

The change in perspectives that is noticeable from political parties such as D66 and the Green Party, cannot be noticed from the Minister and State Secretary of SZW. The Dutch Federation of Trade Unions (*De Federatie Nederlandse Vakbeweging,* hereinafter FNV) wrote State Secretary Van Ark a letter in which they asked her to review her position with regards to the motion to disclose information on SyRI. She starts by stating that she would like to emphasize

once again that SyRI has a legal basis, that the use of SyRI takes place within the legal protection system and that the use of SyRI is covered with many privacy guarantees (Kamerstuk 32761 nr. 129, 2019). She furthermore argues that all the rules relating to the processing of personal data are adhered to. With regards to the information requirement as part of the DPA, the State Secretary is still of the opinion that merely informing people of the possibility that their personal data will be processed and will be included in a risk register, suffices. The concept of frame consistency, such as Matthes (2012) describes, is very visible when analysing the perspectives of the Minister and State Secretary. Data linking through the use of SyRI is still valued over data protection as the information requirement is simply disregarded.

After the debate and the motions filled in response to that, it stays quiet for the rest of 2018. A mere three articles have been published by the big news outlets. One of the articles published in the Volkskrant focuses on the problems flowing from the use of artificial intelligence and smart computers (Verhagen, 2018). It mentions SyRI and the concerns of its use for privacy, inequality and discrimination (ibid.), thereby shedding a negative light on the system. The other two articles were both published by the NRC and focused on the use of SyRI over the years and the upcoming judicial procedure (Van Lonkhuyzen, 2018a; Van Lonkhuyzen, 2018b). Both articles portray the arguments of the privacy coalition, even though the second article also mentions how the criticism of the RvS and AP on retention periods have been followed up on. Therefore, the first article reports more negatively about SyRI, while the second article seems to create a more balanced view.

Apart from the articles published by the bigger news outlets, one article published on an online medium gained attention. It is titled *High Risk Citizens* and led to the Green party asking the Minister and State Secretary of SZW questions about the results of the use of SyRI in Capelle aan den Ijssel (Aanhangsel van de Handelingen nr. 1037, 2018). As it turned out, in 62 of the 113 cases in which a risk notification was made, no fraud was committed. This led the Green party to ask them if this changed their mind about the motion to disclose the work method of SyRI (ibid.). The State Secretary – also on behalf of the Minister – answers by stating that the information should be kept secret in order to prevent people from adjusting their behaviour (ibid.). She goes on by emphasizing the importance of tackling fraud (ibid.). Again, here the main frame as used by the Minister of SZW over the years can be identified. Even after it is brought to the attention that the personal data of those who have not committed fraud have been subject to investigation, data protection is still not valued over data linking. Even though the

article, the questions asked and the response thereon are not so much about data protection in the first place, it does show a couple of things. First of all, it shows that the way something has been framed, affects the perspective of the audience.  The article could have mentioned that 51 fraud cases have been detected thanks to SyRI. This might have lowered the chance of the Green Party asking questions. Even though it was already clear from their motion to disclose information about SyRI that the Green Party values data protection over the possibility of data linking, the frame used in the article has emphasized their view.

## 3.2.  NEW YEAR, NEW PLAYERS

After 2018 being a quieter year in the sense of news articles and debates, 2019 has been a year in which more attention is drawn to SyRI. The first news article of the year was published by the AD and states that the judicial procedure against the state for the use of SyRI has shown that we have entered a new privacy-era in which privacy matters are no longer a theme of interest just for academics and conspiracy thinker, but a matter of interest to everyone (Klaassen & Rosman, 2019). The title of this article reads *Big Brother has to take a step back, but how do we control Facebook and Google?* (ibid.). This article sheds a negative light on the use of SyRI and links it to privacy violations.

Just as the article argues, SyRI's privacy issues have become a topic of interest to everyone. In the previous chapters we saw that the actors engaging in discussions about SyRI were limited to the Minister and State Secretary of SZW, national political parties, the Privacy Coalition and the media. This changes in 2019. This shows first of all how the views and frames used by the opponents of SyRI have had a big influence on other parties and has led them to select these frames for their communication as well. On February 4th 2019, the SP fraction in Rotterdam submitted questions about the use of SyRI in 2 neighbourhoods in Rotterdam. These questions were asked in response to privacy objections from parties who take place in the LSI (SP Rotterdam, 2019a). The Municipal Executive of Rotterdam first of all claims that it is important to not just start a project, but to be careful as we're dealing with personal data. He goes on to say that the objections of the parties are merely about whether or not to perform a joint Data Protection Impact Assessment and not so much about the use of SyRI itself (Burgemeester en Wethouders van Rotterdam, 2019a). The SP furthermore asked the Municipal Executive to cease the use of SyRI due to the pending judicial procedure and their own objections to the secretive methods of SyRI (SP Rotterdam, 2019a). The Municipal Executive argues that the

use of SyRI is legally allowed under the SUWI Act which is not changed by the judicial procedure (Burgemeester en Wethouders van Rotterdam, 2019a). Here we see that the framing of the Municipal Executive is in line with the main frame of the Minister of SZW in which the ability of data linking is valued over data protection.

With regards to the SP fraction in Rotterdam, they follow the footsteps of their national political party, although the fraction in Rotterdam seems to take a clearer stand by valuing data protection over data linking. The SP requested a general debate about the house visits taking place in two neighbourhoods in response to SyRI risk notifications (SP, Rotterdam 2019b). The SP wanted the municipality to postpone these house visits because the end results may be illegitimate after the judicial procedure (ibid.). The debate took place on the 21st of March 2019. The SP argues first of all that SyRI violates the cornerstone of privacy, namely purpose limitation.[18] D66 asks whether certain privacy conditions are fulfilled, because if this is the case, we might not be using the wrong approach.[19] However, that is not a certainty. The PvdA is worried whether the personal data shared with the municipality is treated within the judicial framework.[20] Different than its national party, the Rotterdam branch of the SP is far more explicit in framing data protection as more important than the ability to use SyRI. The D66 and PvdA are a bit less explicit, but both value data protection over data linking. For the D66 this is in line with their previous views, however for the PvdA there seems to be a change. The PvdA was not very involved to begin with and at best framed data protection and data linking as equally important. The Mayor of Rotterdam – who takes place in the Municipal Executive – tries to take away some of the concerns by saying that he will stop using SyRI if it turns out that this approach is wrong.[21] He furthermore states that SyRI is used carefully and that privacy aspects are guarded. The concerns and frames used by the SP, Denk, D66 and PvdA have seemed to modify the views of the Mayor. When the Municipal executive was asked to cease the use of SyRI, they argued that SyRI was legally allowed and that the judicial procedure has not changed that. The Mayor now however seems to portray a more balanced view by arguing that he will stop the use of SyRI if it turns out to be wrong, but until that time, SyRI will still be used.

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[18] Zevenbergen, A. van (member of the SP), general debate local Council, Rotterdam, 21 March 2019.
[19] Arsieni, N. (member of D66), general debate local Council, Rotterdam, 21 March 2019.
[20] Eikeren, K. van (member of PvdA), general debate local Council, Rotterdam, 21 March 2019.
[21] Aboutaleb, A. (Mayor of Rotterdam), general debate local Council, Rotterdam, 21 March 2019.

During the debate, two SyRI-related motions were submitted. The first one is submitted by the SP among others in which it is requested to involve the local Council of Rotterdam in the decision-making process of using digital algorithms. Their concern lies with the inability to hold someone accountable afterwards if it turns out that SyRI is neither effective nor proportional (El Ouali et al., 2019a). The second motion was submitted by the same parties which requested to suspend the investigations around benefit fraud until a judgement has been reached in the SyRI case. One of the considerations here is that the principle of purpose limitation is violated which causes a break of trust between the government and citizens (El Ouali et al., 2019b). The SP keeps explicitly framing SyRI as privacy violating and therefore valuing data protection over data linking.

SyRI is not only a topic of interest on the local level, but also on the national level. During a general debate of the standing committee for Security and Justice, the Green party takes its chance to say something about SyRI and privacy. The party refers to a letter written by the minister for legal protection in which he argues that privacy and security are not in conflict, that privacy is essential but not sacred and that infringements can be proportionate and effective (Kamerstuk 32761 nr. 148, 2019). The point that the Green Party was trying to make is that these wise words had been used in the context of horizontal privacy while they should have been used during discussions and at the moment that the decision to use SyRI was made. The Green party stays with its main frame in which data protection is valued over data linking.

The same counts for D66 as they tried to put SyRI on the agenda for a separate debate (Handeling nr. 99 item 12, 2019). Until then, discussions about SyRI always came up during general debates. The VVD, CDA and two other parties who have not spoken up about SyRI, do not support this request. (ibid.). Untill now, the CDA seemed to value data protection as equally as important as data linking, however denying this request shows that data linking is valued over data protection. The same counts for the VVD who changed their framing pattern after positive results of data linking were shared. The Green party, PvdA and SP do support the request for a separate debate (ibid.). With regards to the Green party and the SP, this is consistent with their previous framing pattern. However, for the PvdA, it is only after their Rotterdam branch spoke out against SyRI that they have adopted a frame in which data protection is more important than data linking. As there was no majority, a separate debate will not take place, but instead a thirty-member-debate will be planned. However, on the day of the judgement in the judicial procedure, this debate had still not been planned.

The PvdA fraction in Rotterdam – just as we saw with the SP – starts to take heavier stands and keeps up their overall frame. On the 2nd of July 2019, the AD published an article about the PvdA fraction in Rotterdam demanding the municipality of Rotterdam to stop using SyRI as there is no knowledge about the algorithms used and the invasion of privacy (Liukku, 2019a). The fractions of the CDA and VVD are not happy about the change of views here and argue that there has been no new information that should turn them against SyRI (ibid.). The framing of these two parties is in line with the views of their national parties, namely data linking through the use of SyRI is more important than data protection. The AD reports balanced about SyRI by merely referring to it as controversial and by portraying two sides of the discussion. Even though the Volkskrant did the same in their article a couple days earlier, their coverage is more negative. Their title for instance reads *SyRI, the government's fraud system, fails: not one fraud case detected yet* (Huisman, 2019a).

### 3.3.   THE NET IS CLOSING IN

On the third of July 2019 the Municipal Executive of Rotterdam ended the SyRI project in its preparational phase because of a lack of progress with regards to the conditions around the use of SyRI (Burgemeester en Wethouders van Rotterdam, 2019b). A lack of clear judicial foundation for the use of SyRI caused the municipality to obtain external advice about privacy and information sharing (ibid.). With this advice, a new project plan was created, however the LSI was of the opinion that the interpretation of the law was too strict. New negotiations have not led to a desired result (ibid.). A modified frame is noticeable here. Where the Municipal Executive was framing data linking over data protection, it now does the opposite. In this sense, Matthes (2012) speaks about frame dynamics. This means that frames are dynamic and change over time due to the exposure to other actors' frames. Especially the SP and PvdA have taken very explicit stands against SyRI in the period before this announcement which could have influenced the Municipal Executive.  The drastic change in frames is even more noticeable from the statement of the Mayor during a debate about SyRI one day later. Aboutaleb argued how he finds integral approaches such as SyRI disproportional and therefore unacceptable (Bij Voorbaat Verdacht, 2019). He furthermore argued how he wanted to use file linking solely to fight fraud, without using unnecessary information such as health information and criminal records, but the LSI did want to use this information (ibid.).

A balanced article is published in the Volkskrant about Rotterdam quitting the use of SyRI (Huisman, 2019b). The article repeats the arguments of State Secretary Van Ark and that of the Privacy Coalition. The article published in the AD is more negatively towards SyRI as it does not portray the arguments of the SyRI proponents, creating one-sided coverage of the topic (Liukku, 2019b). Instead it mentions Aboutaleb's arguments and those of the SP and FNV who have argued from the beginning that the SyRI method invades upon people's privacy (ibid.).

The fact that the use of SyRI was ceased, did not stop the discussions about the topic. The SP for example still asked some questions after the announcement. One of the questions was why the privacy issues only came up for discussion at this stage of the SyRI investigation? (Burgemeester en Wethouders van Rotterdam, 2019c). This question is in line with the Rotterdam fraction of the SP's framing over time. The answer however, seems to show that the Mayor's view actually never changed, although his framing seemed to trigger that impression. The Mayor argues that there was no discussion about the privacy implications of SyRI as it has a legal basis, but that there was only a difference of opinion about the implementation thereof (ibid.). This shows that the Mayor does value data protection in a sense, but only when it comes to sensitive personal data such as health care records and criminal records.

After these questions, the focus on SyRI shifts back to the national level. Interesting new players become part of the discussion. One of them is the United Nations Special Rapporteur on extreme poverty and human rights. He wrote a letter on the 26th of September 2019 as Amicus Curiae for the judicial procedure against the state. The Rapporteur first of all argues that the right to privacy is at stake and that a particularly stringent proportionality assessment is in order, given the lack of legislative scrutiny accorded to SyRI before its adoption, as passing SyRI into law was a mere formality (Alston, 2019). This proportionality assessment, according to the Rapporteur, can be done by assessing the ability of SyRI to achieve its objective (ibid.). Until now, however, the benefits of SyRI have remained vague as the state has refused to indicate the amount of fraud that has been detected (ibid.). The financial costs of SyRI also seem to be higher than communicated. Next to that, SyRI knows other costs which cannot be financially measured, such as the discriminatory impact (ibid.). This letter and the appearance of the Rapporteur together with Bart van der Sloot – a privacy and Big Data expert – at a current affairs programme, was summarized and published by the NOS (NOS, 2019a). This one-sided message sheds a negative light on the use of SyRI.

As the first court hearing is approaching, four more articles are published in news outlets. The AD published two articles in which it is not per se negative about SyRI, but rather argues in a balanced way that using data analysis is fine, but the secrecy coming with it, is not (Van der Lee, 2019). One of the articles also shortly mentions why the State Secretary of SZW is not willing to reveal the SyRI method (Van de Kool, 2019). The last article concludes that we should be blessed to live in a country in which we can ask the court to test whether the government can strike a good balance between our right to privacy and the fight against crime and fraud (AD, 2019f). The opinion piece written by Tommy Wieringa – part of the Privacy Coalition –in the NRC, at first sight seems to be as balanced as the articles published in the AD. He argues that fraud must be detected, however he questions whether it is worth it to violate everyone's privacy to detect fraud violations of some (Wieringa, 2019) However, by referring to *the governments disproportionate data hunger* he immediately sheds a negative light on the use of SyRI (ibid.). This negativity towards SyRI is also noticeable in an article published by the NRC a day before the court hearing. A lot of attention is given to the opponents of SyRI – such as the UN rapporteur and privacy expert Bart van der Sloot – but not to the advocates thereof (Driessen, 2019a). Even though, the Minister and State Secretary of SZW are no longer commenting on SyRI due to the judicial procedure, their earlier arguments could have been repeated, as is done with the opponents' arguments (ibid.).

## 3.4. WELCOME TO COURT

On the day of the court hearing on October 29th 2019, several articles were published in the media. The NRC published a neutral article in which it summarizes the arguments of the Minister and State Secretary on the one hand and those of the Privacy Coalition on the other (Driessen, 2019b). On the same day, the AD also published an article, but theirs was more negatively towards SyRI. It only mentions that SyRI has a secret work method and the criticism of the UN Rapporteur (AD, 2019). The Volkskrant dedicated two articles to SyRI. The first one is focused on the use of SyRI in a poor neighbourhood in Rotterdam (Huisman, 2019c). It sheds a negative light on SyRI by referring to it as a 'dragnet which damages privacy' and asking the question why it is only released on poor neighbourhoods and not on rich ones. The second article is more balanced and portrays the statements of both parties in the court hearing and the questions asked by the judge (Huisman, 2019d). However, the arguments of the Privacy Coalition are written in the introduction of the article in a bigger font size, which attracts more attention. On the 29th of October RTL Nieuws published an article about SyRI in which it

answers four questions (RTL Nieuws, 2019a). The answers are all based on information from the privacy coalition that sued the state. This results in a one-sided negative report about SyRI. The same counts for the article published by the NOS on the same day which only gives the floor to SyRI's opponents (Schellevis, 2019a).

What is more interesting, is a motion submitted by the Party for the Animals (*Partij voor de Dieren,* hereinafter 'PvdD), together with the SP and the Green party, on the same day as the court hearing in which it requests an evaluation of the use, efficiency and legality of SyRI (Kamerstuk 35300 G., 2019). The PvdD was one of the parties who voted for a separate debate about SyRI and by submitting this motion, frames data protection over data linking. Prime Minister Rutte asked the PvdD to prolong the motion until after the ruling of the court in the SyRI case (Handeling EK 2019/2020 nr. 4 item 6, 2019). After the court hearing, SyRI still remains a topic of interest for both the media and politics. The NRC published an opinion piece four days later in which a negative light is shed on SyRI. Statements about proportionality being hard to find and that the right to privacy should outweigh the government's interest in innovation, are made (NRC, 2019). During a general meeting held on November 13th 2019, several political parties, under which the SP, mention SyRI. The SP for example asks the State Secretary of SZW if she agrees with him that SyRI does not function properly (Kamerstuk 26448 nr. 629, 2019). Even though this question is not related to privacy per se, Van Ark argues that the privacy of those involved is protected because the information is pseudonymised (ibid.). She furthermore adds that she does not want to put SyRI in a bad spotlight as the judicial procedure is still pending and the guarantees of SyRI can still be debated (ibid.). It seems as if the State Secretary is realizing that there might be some privacy implications to SyRI, but her framing of data linking opportunities is still higher than that of data protection since she keeps arguing that there are no privacy violations.

The D66 released a pamphlet on the 19th of November 2019 about what they refer to as *the Digital Revolution.* The pamphlet also mentions SyRI and argues that there is no clear framework yet and that databases that dig through the data of innocent people, should be limited so that the Second Chambers can maintain control (Verhoeven, Van Vliet & Gerritsen, 2019). As long as this is not the case, experiments such as SyRI should not be used (ibid.). During a debate a day later, the D66 asks the Minister of Security and Justice if he is willing to cease the use of technologies such as SyRI until a public debate has taken place and guarantees are in place (Handeling TK 2019/2020 nr. 26 item 7, 2019). The D66 emphasizes that there needs to

be a balance between privacy, the presumption of innocence and public security (ibid.). It is very clear from both the publication of the pamphlet and the question asked during the debate, that the D66 is consistently framing data protection over data linking. After this debate, the D66 and the CDA submitted a proposal to stop using facial recognition systems and far-reaching algorithms as it contributes to the disappearance of privacy (Handeling 2019/2020 nr. 27, item 12, 2020). Three articles were published about this (Modderkolk, 2019; Nu.nl, 2019; Schellevis, 2019b). These articles are rather neutral as they merely summarize the proposal and the considerations of the parties for submitting it.

Exactly one month after the court hearing, SyRI received an award for its privacy violations (NOS, 2019b; RTL Nieuws, 2019b; Metselaar, 2019). The articles reporting about this, are rather neutral. However, what is interesting is the reference of the NRC to an earlier article in which members of the Second Chamber look back on the passing of the SUWI Act in 2013 (Pelgrim, 2019). This article does shed a negative light on SyRI as it only gave room to those who now disagree with using SyRI, such as the D66. After this, no more debates took place in which SyRI was mentioned. The media also only reported about SyRI on the day of the judgement – 5th of February 2020. The judge ruled that SyRI is indeed an infringing privacy and violating article 8 ECHR.

## 3.5. DISCOURSE ANALYSIS

### 3.5.1. QUALITATIVE DISCOURSE ANALYSIS

In order to portray the discourse, the identified frames throughout this chapter will be set out and linked to the identity of the actors. Minister Koolmees and State Secretary Van Ark have replaced Asscher and Klijnsma. This time, the Minister and his State Secretary are not from the same political party. Minister Koolmees is a member of D66, while Van Ark is a member of the VVD. Both parties welcome technological initiatives, but unlike the VVD, the D66 clearly mentions that these initiatives should not cross a line (D66, 2017).  Even so, the State Secretary and Minister have taken over the framing pattern of their predecessors by valuing data linking over data protection. For example, only by disclosing information about SyRI, can it be made sure that personal data is protected sufficiently. However, the information is not disclosed in order to prevent citizens from changing their modus operandi. Even after it seems that the State Secretary is realizing that there might be some privacy implication to SyRI, she still frames the ability to use SyRI as more important than data linking. Just as could be seen in the previous

chapters, the concept of frame consistency, such as Matthes (2012) describes, is visible when analysing the perspectives of the Minister and State Secretary. This is interesting, because these posts have been fulfilled by three different people who were all from different political backgrounds.

With regards to the political parties, new parties took part in the discussion about SyRI. This chapter showed us that SyRI and its implications for data protection were placed higher on the agenda. Discussions about SyRI were initiated by political parties who actively took a stance against the use thereof. For example, the Green Party joined the SyRI debates this chapter and from the beginning framed data protection as more important than data linking. The same counts for the PvdD who submitted a motion on the same day as the court hearing in which it requested an evaluation of the use, efficiency and legality of SyRI. The judicial procedure against the state by the Privacy Coalition and their framing of SyRI as a privacy violation, might have been the cause for that. In the previous chapters, we saw that some parties such as the SP and D66, had already talked about SyRI and – usually in response to media reports – asked questions about it. Until now their framing of data protection and data linking was rather balanced. In this chapter, however, both parties frame data protection as more important than data linking and keep consistently doing so. The framing is far more explicit then it was in previous chapters. This is especially the case for the Rotterdam branch of the SP. These local branches of the political parties joined the discussion in this chapter an immediately spoke out against the use of SyRI. This is especially interesting when it comes to the Rotterdam branch of the PvdA. They frame data protection over data linking and even demand the Municipality of Rotterdam to stop using SyRI. After this, it is noticeable that their national political party also starts framing data protection as more important than data linking. This actually clashes with the results of the Privacy Barometer (2017) which indicated the PvdA together with the CDA and VVD as the biggest threats to privacy. For the CDA and VVD, the results correspond with their framing. These parties are almost not involved in any discussions, but showed that they value data linking over data protection by voting against a separate debate for SyRI and by blaming the Rotterdam branch of the PvdA for their change in perspective.

Even though the Municipal Executive of Rotterdam does not form a 'Self' in this research, it is interesting to show that their framing of SyRI in relation to data protection starts of positively, but changes quickly after several parties – under which the SP, D66 and PvdA explicitly called

SyRI 'a privacy violation' and demanded the Municipality to terminate its use. In this sense, Matthes (2012) speaks about frame dynamics.

## 3.5.2. QUANTITATIVE DISCOURSE ANALYSIS

| | Mentioned by Minister and State Secretary of SZW | Mentioned by D66 | Mentioned by Green party | Mentioned by SP |
|---|---|---|---|---|
| **Paragraph 1** | | | | |
| Data protection | 0 | 0 | 0 | 0 |
| Privacy | 1 | 1 | 1 | 1 |
| Proportionality | 0 | 0 | 0 | 0 |
| Subsidiarity | 0 | 0 | 0 | 0 |
| Data minimalization | 0 | 0 | 0 | 0 |
| Purpose limitation | 3 | 0 | 2 | 0 |
| **Paragraph 3** | | | | |
| Data protection | | | 0 | |
| Privacy | | | 1 | |
| Proportionality | | | 0 | |
| Subsidiarity | | | 0 | |
| Data minimalization | | | 0 | |
| Purpose limitation | | | 0 | |
| **Paragraph 4** | | | | |
| Data protection | 0 | 0 | | |
| Privacy | 2 | 3 | | |
| Proportionality | 0 | 0 | | |
| Subsidiarity | 0 | 0 | | |
| Data minimalization | 0 | 0 | | |
| Purpose limitation | 0 | 0 | | |

*Table 6. Number of times that data protection terms were mentioned from April 2018 until February 2020.[22]*

Table 6 shows that data protection terms are used far less in comparison with the previous chapters. This is interesting since the topic of SyRI has only become more prominent. On the

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[22] This table does not include the statistics for the Rotterdam branches of political parties and the Municipal Executive of Rotterdam.

other hand, the low numbers can be explained by the fact that the discussion around SyRI has also focused on other concerns, such as discrimination and arbitrariness.

| | April 2018 – Dec 2018 | | | 2019 | | |
|---|---|---|---|---|---|---|
| | N | B | P | N | B | P |
| **Nu.nl** | | | | 0 | 1 | 0 |
| **NOS** | | | | 1 | 3 | 0 |
| **AD** | | | | 3 | 3 | 0 |
| **De Telegraaf** | | | | | | |
| **RTL Nieuws** | | | | 1 | 1 | 0 |
| **NRC.nl** | 1 | 1 | 0 | 2 | 2 | 0 |
| **De Volkskrant** | 1 | 0 | 0 | 2 | 3 | 0 |

*Table 7. Number of articles published by newspapers categorized by frame*

Table 7 shows first of all that only the two broadsheets gave attention to SyRI right after the state was sued for their use of SyRI. The other news outlets – except for the Telegraaf – only dedicated their attention in 2010. Most of the articles written, shed a negative light on SyRI. What is however noticeable, is that articles that follow up on a specific event, such as the awards for privacy violations and the proposal to stop using far-reaching algorithms, are more neutral and merely a portrayal of the event. While on the other hand, articles written about subjects in which SyRI is mentioned, such as comparisons to other privacy violating systems, the articles are more negative.

# VI. DISCUSSION AND CONCLUSION

This thesis focused on the framing of data protection elements and proportionality within the Dutch political discourse on the use of SyRI over the period 2010-2020. This resulted in an overview of the frames used by the Minister and State Secretary of SZW, political parties and the media. From the three analytic chapters, several conclusions can be drawn and the following research question can be answered:

*How have data protection and proportionality been framed within the Dutch political discourse on the use of SyRI over the period 2010-2020?*

## 6.1. ANSWER TO THE RESEARCH QUESTION

The research question will be answered by summarizing the results per actor. Subsequently, the noticeable changes in the framing of data protection and proportionality will be outlined and linked to the theory of framing.

With regards to the Minister and State Secretary of SZW and political parties, three frames have been recognized: 1) data protection is valued over data linking; 2) data protection and data linking are both equally valued; and 3) data linking is valued over data protection. The Minister and State Secretary of SZW overall have framed data protection and proportionality as less important than using SyRI as a method of data linking to combat fraud. During the researched period, three different Ministers and State Secretaries were involved who all had different political backgrounds. All of them however, consistently framed data protection as less important than data linking. Within the theory of framing, this is referred to as *frame consistency*. On some occasions, however, their framing was more balanced. This could be due to the frames used by political parties during debates. For example, towards the end, when more criticism was expressed about the use of SyRI, the emphasis of the arguments used by the Minister and State Secretary was put on the 'privacy guarantees' of SyRI. The change in framing can be explained by what is referred to as *frame dynamics*. This was also noticeable during the debates of the local Council of Rotterdam where the mayor spoke more balanced about the relation between data protection and data linking after noticing concerns of the political parties. From the inclusion of the Black Box method into the discussion, we learned that the frame of the Minister has not changed over time, even though the employment of the

Black Box method was ceased due to data protection infringements. The *frame selection* therefore took place far before the introduction of SyRI and was empowered by the lack of discussion in the first stages of SyRI. This became clear after the Minister of SZW argued that if SyRI was indeed an invasion of privacy, someone in the Second Chambers would have said something about it. Even though the framing of the Minister and State Secretary was not able to prompt many others to take over this frame, it could be argued that the judicial procedure against the state empowered them to keep using this frame. Mainly because they did not want to put SyRI in a bad spotlight. Not even after it is brought to the attention that personal data of people who have not committed fraud were subject to investigation.

With regards to political parties, the PvdA is a party that started with framing data protection as less important than data linking. They asked the Minister of SZW whether he was prepared to change privacy laws in order to simplify the use of data linking. After this, they seem to distance themselves from the topic, until the Rotterdam branch openly speaks out against the use of SyRI in Rotterdam. The PvdA is eventually e the one that demands the municipality of Rotterdam to cease the use of SyRI. The principle of *frame modification* is clearly visible here. The VVD on the other hand, started by framing data protection as more important than data linking, but not much later showed no interest in the topic of SyRI. Specific privacy-related questions were shoved aside after the Minister shared positive results of the Black Box method − SyRI's predecessor. The VVD mentioned how they were glad that the Minister was so committed to detecting fraud and how the approach is bearing fruit. Their new adopted frame in which data linking is more important than data protection becomes visible when the VVD does not support the request for a separate SyRI debate and when they resent the PvdA for changing their perspective on SyRI without the presence of new information. This actually shows the importance and effects of framing, because even without new information, political parties can change their perspectives.

The SP at first welcomed the SyRI initiative and was very interested in the financial gains of the system. After criticism of the media, the SP asked the Minister if SyRI had generated positive results as this would show that the instrument works. It could therefore be concluded that they valued data linking over data protection. Over the years, however, the SP started to put data protection higher on the agenda. For example, their Rotterdam branch became very active and outspoken about SyRI. The party requested to cease the use of SyRI, requested

debates about SyRI and even filed a motion to stop the use of SyRI. The principle of *frame modification* over time, therefore strongly applies to the framing process of the SP.

The Green party only joined the discussion after the state had been sued for the use of SyRI. They immediately framed data protection as more important than data linking and the disclosure of the algorithms and analysis methods of SyRI. This also counts for the D66, who joined the discussion after the media gave SyRI due consideration, a bit earlier than the Green party did. The D66 tried to put SyRI on the agenda for a separate debate and in the end released a pamphlet on the digital revolution, including SyRI as an important topic. For these parties, the principle of *frame* selection can be recognized. They both only joined the discussion after other parties had critically expressed their concerns about SyRI. The exposure to such frames might have moved the Green party and the D66 to also value data protection over data linking.

With regards to the media, the Volkskrant was the first one to publish an article about SyRI and has published the most articles with a negative connotation. Their framing was immediately negative and their articles seemed to be more explicit. Titles such as *a lot of data and limited hard numbers, Citizens will soon be screened just like the profile of a criminal is drawn up* and references to the 'control state', had the overhand. After several media outlets reported negatively about SyRI, the frames of political parties changed; although sometimes only temporarily. The effect of the media frames became visible as political parties that did not engage in the discussion from the start, joined the discussion after negative media attention. As they tended to take over the framing of the media, we can speak of *frame selection.* The negative portrayal of SyRI in the media did become a powerful frame as it pushed political parties to dive deeper into the materials about SyRI. It was noticeable throughout the years, that when media reported on current situations, the articles were more balanced. But when writing an article in which SyRI was included, the tone became far more negative.

## 6.2. RECOMMENDATIONS

The use of instruments such as SyRI is part of a bigger technological development as it strongly relies on the advent of Big Data. Measures are increasingly aiming at eliminating potential threats. Governments are increasingly aware of the promises of Big Data and are keen on integrating the use thereof in security policies. Combating fraud is seen as crucial to the financial well-being of the Netherlands and the exchange of data between different

governmental organizations, forms an important aspect thereof. The amount of available data combined with state-of-the-art technology results in a larger interference with citizens' personal life. Therefore, the use of Big Data is not without threats to important rights, such as the one to data protection. Even though the judge has ruled that SyRI violates article 8 ECHR, the development of similar systems will not cease. For example, the Black Box method was also stopped due to data protection infringements. Another perfect example, is that of the Municipality of Nissewaard who uses a system similar to SyRI. Just as the Green party argued during a Big Data debate: blame has to be taken where blame is due. She said this in reference to the fact that the Second Chambers decided on such an important topic without even debating it.

This research only focused on SyRI, but several other far-reaching systems which interfere with the right to data protection are used and being developed. It is therefore recommended to also analyse the political discourses on the framing of data protection principles within debates relating to those systems. By doing so, we can draw on the past framing patterns and move to a more alert and data protection friendly discourse.

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