

Letter of 23 April 2020 to the President of the House of Representatives by the State Secretary for Social Affairs and Employment, Tamara van Ark, on a court judgment regarding SyRI

By letter of 6 February 2020 the House requested a response to the court judgment on the System Risk Indication (SyRI), and asked me to address the question of how the judgment will be implemented. The letter also asked whether I would instruct municipalities to stop using SyRI and if so, by when. The present letter sets out my response to the judgment and my replies to the questions submitted by the House.

On 5 February 2020 The Hague District Court gave judgment in the case regarding SyRI, an instrument for preventing and combating fraud and misuse involving benefits, allowances and taxes. The court held that the instrument is in contravention of higher law¹ because, in its current form, it does not offer adequate privacy safeguards. According to the court there is an imbalance between the public interest served by the instrument and its infringement of individual privacy. As a result, SyRI's legal foundation is in breach of higher law, and the court ruled that the legislation in question is therefore non-binding. This means that in its current form, SyRI can longer be used. At present there are no SyRI projects pending, and no new applications have been received for some time. Given the court's judgment, it is highly unlikely that new applications will be received in the future. Any that might be received will not be processed.

I have studied the judgment and, after conferring with my colleagues in the government, I have decided not to appeal against it. The court underscored the importance of combating fraud and the use of new technologies to that end, and emphasised that social security is one of the pillars of Dutch society.

Our social security system is thus important for this country's prosperity. Abuse of the system undermines public support, and this is why it is crucial to combat fraud in order to maintain our social system. The use of new technologies, such as data analysis and algorithms, is legitimate, as the court itself noted. In my letter of 9 April 2018 the minister and I informed the House about enforcement measures for the period between 2018 and 2021.² In order to maintain our social security system, it is important to prevent abuse and deal with it when it occurs. Our point of departure in this regard is that responsibility for following the rules lies with the people themselves. From the point of view of prevention it is important to avoid unintentional infringement of the rules. At the same time, we will take action in cases of intentional abuse; we must send the message that fraud does not pay. New technologies offer an opportunity to prevent and combat fraud effectively and efficiently by linking data and using algorithms. In the court's view the use of such resources is legitimate. Therefore, the importance of enforcement is not at issue here, and regular enforcement activities, such as risk-based monitoring and cooperation within the National Intervention Team Steering Group (LSI), must continue.

In its judgment the court emphasised that, when it comes to the use of new technologies, the government has a special responsibility to ensure that there are adequate safeguards for individual privacy. In the court's view the SyRI instrument does not meet this standard in its current form. In light of the recently presented government guidelines on data analyses³ and the court's judgment, I would like to explore the use of risk models more broadly within the social security system, with particular attention to the safeguards that exist to protect privacy. Besides offering adequate safeguards, any

¹ SyRI was found to be in breach of article 8, paragraph 2 of the European Convention on Human Rights (ECHR).

² Parliamentary Papers, House of Representatives, 2017/2018, 17 050, no. 541.

³ Letter to parliament on the risks of government data analyses, 8 October 2019, <https://www.rijksoverheid.nl/documenten/kamerstukken/2019/10/08/tk-waarborgen-tegen-risico-s-van-data-analyses-door-de-overheid>.

instrument used for this purpose must be efficient and effective in combating fraud and provide added value to the parties that wish to use it. The current instrument has not proved its worth in this regard. It is partly for that reason that I do not intend to appeal against the judgment. The implications of the right to privacy as it relates to new technologies are not yet fully clear. I would like to develop a new instrument, which will draw on the lessons learned in this regard from SyRI. An exploratory study to this end will involve those parties that have experience with SyRI, such as the Association of Netherlands Municipalities (VNG), the Employee Insurance Agency (UWV), the Social Insurance Bank (SVB), the Tax and Customs Administration, the Benefits Intelligence Agency (IB) and the Social Affairs and Employment Inspectorate. I will engage in dialogue with these parties about the specific difficulties that have arisen with regard to the use of SyRI. In addition, I would like to take this opportunity to draw up a list of future needs.

I would also like to look beyond the current situation. In developing a new instrument, I would like to involve not only SyRI users but also other parties and experts in this field. Together with these parties, I would like to study how new technology can be used to combat fraud effectively and efficiently, with adequate safeguards for privacy.

Striking a balance between society's interest in combating fraud and its citizens' interest in protecting privacy is a challenge that has my full attention. I am working with the minister to develop a vision document on data sharing and privacy in the social domain. In that document, which will be sent to parliament, I will go into greater depth on the exploratory study mentioned above, and the use of risk models within the social security system.