

Swedish Code of Statutes

Act containing supplementary provisions to the EU General Data Protection Regulation

SFS 2018:218

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In accordance with a decision¹ by the Riksdag (the Swedish Parliament), the following is enacted.

Chapter 1

Introductory provisions

Section 1

This Act supplements Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, hereinafter referred to as the EU General Data Protection Regulation.

Terms and expressions in this Act have the same meaning as in the EU General Data Protection Regulation.

Expanded application of the provisions in the EU General Data Protection Regulation

Section 2

The provisions in the EU General Data Protection Regulation, in the original wording, and this Act also apply to the processing of personal data as part of activities not covered by Union law and activities covered by Title V, Chapter 2 of the Treaty on European Union.

Section 3

The provisions in Section 2 do not apply to activities covered by:

1. the Act on Processing of Personal data in the Foreign Intelligence Operations and Military Security Service of the Swedish Armed Forces (2007:258);
2. the Act on Processing of Personal Data in the Foreign Intelligence and Development Operations of the National Defence Radio Establishment (2007:259); or
3. the Act on the Swedish Security Service's Processing of Personal Data (2019:1182). *Act (2019:1186)*.

Section 4

Articles 33 and 34 of the EU General Data Protection Regulation do not apply with regard to personal data incidents that are to be reported in accordance with the Protective Security Act (2018:585) or provisions issued in connection with that Act. *Act (2018:1248)*.

The Act's territorial scope of application

¹ Govt Bill 2017/18:105, Committee Report 2017/18:KU23, written communication from the Riksdag to the Government 2017/18:224

Section 5

This Act applies to the processing of personal data carried out in the context of an establishment in Sweden of a controller or processor. The Act also applies to the processing of personal data carried out by a controller not established in Sweden but in a place where Swedish law applies under international law.

The Act also applies to the processing of personal data carried out by controllers or processors only established in a third country, if the processing refers to data subjects who are located in Sweden and have a connection to:

1. the offering of goods or services to such data subjects; or
2. the monitoring of their behaviour in Sweden.

The provision in Chapter 2, Section 4 applies to the processing of personal data regarding children living in Sweden, regardless of where the controllers or processors are established.

Divergent provisions in other statutes

Section 6

If another act or regulation contains any provision that deviates from this Act, that provision applies.

Relationship to freedom of the press and freedom of expression

Section 7

The EU General Data Protection Regulation and this Act do not apply where this would contravene the Freedom of the Press Act or the Fundamental Law on the Freedom of Expression.

Articles 5–30 and 35–50 of the EU General Data Protection Regulation, and Chapters 2–5 of this Act do not apply to the processing of personal data carried out for journalistic purposes or for academic, artistic or literary creation.

Duty of confidentiality for data protection officers

Section 8

A person who fulfils the task of data protection officer under Article 37 of the EU General Data Protection Regulation may not improperly divulge anything they become aware of in the exercise of their task.

In public authority activities, the Public Access to Information and Secrecy Act (2009:400) applies instead of the first paragraph.

Chapter 2

Legal basis for the processing of personal data

Legal obligation

Section 1

Personal data may be processed pursuant to Article 6.1(c) of the EU General Data Protection Regulation if the processing is necessary for the controller to be able to comply with a legal obligation that follows from an act or other statute, from collective agreements or from decisions issued pursuant to an act or other statute.

Task in the public interest and exercise of public authority

Section 2

Personal data may be processed pursuant to Article 6.1(e) of the EU General Data Protection Regulation if the processing is necessary:

1. for the performance of a task carried out in the public interest that follows from an act or other statute, from collective agreements or from decisions issued pursuant to an act or other statute; or
2. as part of a controller's exercise of public authority under an act or other statute.

Individual archives

Section 3

The Government or the authority designated by the Government may issue provisions stating that controllers not covered by provisions on archives may process personal data for archiving purposes in the public interest.

The authority designated by the Government may, in individual cases, decide that these controllers may process personal data for archival purposes in the public interest. A decision may be subject to conditions.

Children's consent

Section 4

When offering information society services directly to a child living in Sweden, processing of personal data is permitted pursuant to the child's consent, if the child is at least 13 years of age. If the child is under 13, the processing of such data is only permitted if consent is given or approved by the person who has parental responsibility for the child.

Chapter 3

Processing of certain categories of personal data

Sensitive personal data

Section 1

In this Act, sensitive personal data refers to the kind of data referred to in Article 9.1 of the EU General Data Protection Regulation.

Labour law, social security and social protection

Section 2

Sensitive personal data may be processed pursuant to Article 9.2(b) of the EU General Data Protection Regulation if the processing is necessary for the controller or the data subject to be able to fulfil their obligations and exercise their special rights within labour law and in the areas of social security and social protection.

Personal data that is processed pursuant to the first paragraph may be disclosed to a third party only if there is an obligation within labour law or in the areas of social security and social protection for the controller to do so, or if the data subject has expressly given their consent to the disclosure.

Important public interest

Section 3

Sensitive personal data may be processed by an authority pursuant to Article 9.2(g) of the EU General Data Protection Regulation:

1. if the data was provided to the authority and the processing is required by law;
2. if the processing is necessary for the processing of a case; or
3. in other cases, if the processing is necessary for reasons of substantial public interest and does not involve any improper violation of the data subject's privacy.

In processing conducted pursuant only to the first paragraph, it is forbidden to conduct searches aimed at obtaining a selection of individuals based on sensitive personal data.

When applying the first paragraph, point 1, actors other than authorities are to be equated to authorities to the extent that the provisions on official documents and secrecy in the Freedom of the Press Act and the Public Access to Information and Secrecy Act (2009:400) apply to their activities.

Section 4

The Government may issue additional provisions on any processing of sensitive personal data that is necessary for reasons of substantial public interest.

Health and medical care and social care

Section 5

Sensitive personal data may be processed pursuant to Article 9.2(h) of the EU General Data Protection Regulation if the processing is necessary for:

1. preventive health and medical care and occupational medicine;
2. assessing the working capacity of an employee;
3. medical diagnoses;
4. providing health and medical care or treatment;
5. social care; or
6. managing health and medical or social care systems and services.

Processing under the first paragraph may be conducted under the condition that the requirement for confidentiality in Article 9.3 of the EU General Data Protection Regulation is met.

Archives

Section 6

Sensitive personal data may be processed for archiving purposes in the public interest pursuant to Article 9.2(j) of the EU General Data Protection Regulation if the processing is necessary for the controller to be able to follow provisions on archives.

The Government or the authority designated by the Government may issue provisions stating that controllers not covered by provisions on archives may process sensitive personal data for archiving purposes in the public interest.

The authority designated by the Government may, in individual cases, decide that these controllers may process sensitive personal data for archiving purposes in the public interest. A decision may be subject to conditions.

Statistics

Section 7

Sensitive personal data may be processed pursuant to Article 9.2(j) of the EU General Data Protection Regulation if the processing is necessary for statistical purposes and the societal interest of the statistical project of which the processing is a part clearly outweighs the risk of improper violation of an individual's personal privacy that may be the result of the processing.

Personal data concerning violations of the law

Section 8

Personal data as referred to in Article 10 of the EU General Data Protection Regulation may be processed by public authorities.

Actors other than public authorities may also process this kind of personal data if the processing is necessary for the controller to be able to follow the provisions on archives.

Section 9

The Government or the authority designated by the Government may issue additional provisions on when actors other than public authorities may process the kind of personal data referred to in Article 10 of the EU General Data Protection Regulation.

The authority designated by the Government may, in individual cases, decide that actors other than public authorities may process such data. A decision may be subject to conditions.

Personal identity numbers and coordination numbers

Section 10

Personal identity numbers and coordination numbers may only be processed without consent if this is clearly justified in view of the purpose of the processing, the importance of secure identification or any other significant reason.

Section 11

The Government may issue additional provisions on when the processing of personal identity numbers and coordination numbers is permitted.

Chapter 4

Limitations in use

Archives

Section 1

Personal data that is processed solely for archiving purposes in the public interest may be used to take measures in matters concerning the data subject only if there are exceptional grounds for doing so in view of the data subject's vital interests.

The first paragraph does not prevent public authorities from using personal data contained in official documents.

When applying the second paragraph, actors other than public authorities are to be equated to public authorities to the extent that the provisions on official documents and secrecy in the Freedom of the Press Act and the Public Access to Information and Secrecy Act (2009:400) apply to their activities.

Statistics

Section 2

Personal data that is processed solely for statistical purposes may be used to take measures in matters concerning the data subject only if there are exceptional grounds for doing so in view of the data subject's vital interests.

Research

Section 3

Personal data that is processed solely for research purposes may be used to take measures in matters concerning the data subject only if there are exceptional grounds for doing so in view of the data subject's vital interests. *Act (2018:2002)*.

Chapter 5

Limitations of certain rights and obligations

Information and access to personal data

Section 1

Articles 13–15 of the EU General Data Protection Regulation concerning information and the right to access personal data do not apply to data that the controller is not permitted to disclose to the data subject under an act or other statute, or under a decision issued pursuant to a statute.

If the controller is not a public authority, the exception in the first paragraph also applies to data that would have been subject to secrecy at a public authority under the Public Access to Information and Secrecy Act (2009:400).

Section 2

Article 15 of the EU General Data Protection Regulation does not apply to personal data in running text that has not taken on its final form when the request is made or that is a note or similar.

The exception in the first paragraph does not apply if the personal data:

1. has been disclosed to a third party;
2. is being processed only for archiving purposes in the public interest or statistical purposes; or
3. has been processed over a period of more than one year in running text that has not taken on its final form.

Authorisation

Section 3

The Government may issue additional provisions on restrictions under Articles 23, 89.2 and 89.3 of the EU General Data Protection Regulation.

Chapter 6

Supervisory authorities' processing and decisions

Powers

Section 1

The powers that the supervisory authority has under Article 58.1, 58.2 and 58.3 of the EU General Data Protection Regulation apply to supervision of compliance with the provisions in this Act and other provisions that supplement the EU General Data Protection Regulation.

The first paragraph does not mean that the supervisory authority may impose fines for violations other than those referred to in Article 83 of the EU General Data Protection Regulation.

Fines

Section 2

The supervisory authority may impose a fine on a public authority for violations as referred to in Article 83.4, 83.5 and 83.6 of the EU General Data Protection Regulation in the original wording. In such cases, Article 83.1, 83.2 and 83.3 of the Regulation applies.

The fine is set at a maximum of SEK 5 000 000 for violations as referred to in Article 83.4 of the EU General Data Protection Regulation and a maximum of SEK 10 000 000 for violations as referred to in Article 83.5 and 83.6 of the Regulation.

Section 3

The supervisory authority may impose a fine for violations of Article 10 of the EU General Data Protection Regulation in the original wording. In such cases, Article 83.1, 83.2 and 83.3 of the Regulation applies. The size of the fine is set pursuant to Article 83.5 of the Regulation.

Section 4

A fine may not be imposed if the actor upon whom the fine is to be imposed has not had the opportunity to give their opinion within five years of the day on which the violation took place.

A decision to impose a fine must be served.

Section 5

Fines accrue to the state.

Section 6

Fines shall be paid to the public authority designated by the Government within 30 days of the decision to impose the fine becoming final and non-appealable, or within a longer period specified in the decision.

If the fine is not paid within the time specified in the first paragraph, the authority is to refer the unpaid fine for collection. Provisions on collection are contained in the Act on the Collection of Debts to the State (1993:891). Collection is enforced under the Debt Enforcement Code.

Section 7

The Government may issue additional provisions on fines under the EU General Data Protection Regulation and this Act.

Chapter 7

Damages and appeals

Damages

Section 1

The right to compensation from the controller or the processor under Article 82 of the EU General Data Protection Regulation applies to violations of provisions in this Act and other provisions that supplement the EU General Data Protection Regulation.

Appeals of decisions by authorities with personal data controller responsibility

Section 2

Decisions pursuant to Articles 12.5 and 15–21 of the EU General Data Protection Regulation that have been issued by a public authority in the capacity of controller may be appealed to an administrative court.

Leave to appeal is required for an appeal to the administrative court of appeal.

The first paragraph does not apply to decisions by the Government, the Supreme Court, the Supreme Administrative Court or the Parliamentary Ombudsmen.

Appeals of decisions by the supervisory authority

Section 3

Decisions by the supervisory authority pursuant to the EU General Data Protection Regulation and Chapter 6, Sections 2 and 3 of this Act may be appealed to an administrative court. When a decision is appealed, the supervisory authority is the opposite party in court.

Leave to appeal is required for an appeal to the administrative court of appeal.

Appeals of certain other decisions

Section 4

Decisions pursuant to Chapter 2, Section 3, second paragraph, Chapter 3, Section 6, third paragraph and Chapter 3, Section 9, second paragraph of this Act may be appealed to an administrative court.

Leave to appeal is required for an appeal to the administrative court of appeal.

Prohibition against appeals

Section 5

Decisions pursuant to the EU General Data Protection Regulation or this Act other than those referred to in Sections 2–4 may not be appealed.

1. This Act enters into force on 25 May 2018.
2. This Act repeals the Personal Data Act (1998:204).
3. Instead of what is stated in Chapter 1, Section 2, the repealed Act continues to apply to activities at the Swedish Armed Forces and the National Defence Radio Establishment that are not covered by Union law. *Act (2020:152)*.
4. Has been repealed by *Act 2018:1248*.
5. The repealed Act still applies to the extent that other acts or provisions contain provisions referring to that Act.
6. The repealed Act still applies to appeals of decisions issued pursuant to that Act.
7. The provision in Section 49 of the repealed Act still applies to violations that occurred before entry into force.
8. Decisions issued pursuant to Section 21, fourth paragraph of the repealed Act still apply.

On behalf of the Government
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