



## Government Offices of Sweden

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Ministry for Foreign Affairs  
Sweden

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SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

### Action plan

**Case of *Centrum för Rättvisa. v. Sweden* (Application 35252/08), Judgment of 25 May 2021, final on 25 May 2021**

**The Government submitted an action plan on 25 November 2021. The Government hereby submits another action plan, with updated information regarding the general measures.**

### Case summary

The case concerns the proportionality and safeguards of the Swedish legislation regulating signals intelligence, and the Court found that there had been a violation of Article 8 of the Convention.

The Court found in particular that although the main features of the Swedish signals intelligence regime met the Convention requirements on quality of law, the regime nevertheless suffered from three shortcomings: the absence of a clear rule on destroying intercepted material which did not contain personal data; the absence of a requirement in the Signals Intelligence Act or other relevant legislation that, when deciding to transmit intelligence material to foreign partners, consideration was given to the privacy interests of individuals; and the absence of an effective *ex post facto* review. With regard to the latter, the Court also highlighted the structural nature of the problem (§§ 359–360).

### Individual measures

The just satisfaction awarded (EUR 52 625) has been paid. Proof of payment has been submitted. In view of this, and as also noted by the Department for the Execution of Judgments of the ECHR, there are no further issues of individual measures in this case.

### General measures

As stated in the previous action plan, an inquiry will be tasked with reviewing the 2008 Signals Intelligence Act. This is a priority issue and the terms of reference for the inquiry are currently being processed in the Swedish Government Offices. The inquiry is due to begin its work later this year. The inquiry will cover the whole Act. Since the shortcomings identified by the Court are related to the Act, they need to be analysed in the broad context that is offered by an inquiry. The estimated time period for an inquiry, followed by consultation on the inquiry's proposals with various Swedish authorities and organisations, a government bill to the Riksdag (Swedish Parliament) and a decision on amended legislation by the Riksdag and the Government is approximately two years in total.

The Government confirms that the Act on Personal Data Processing at the National Defence Radio Establishment (*lag om behandling av personuppgifter vid Försvarets radioanstalt, 2021:1172*) entered into force on 1 January 2022. The National Defence Radio Establishment has thus been applying the new legislation since that date. The Government has provided the Committee of Ministers with a translation of Section 20 of Chapter 2 of the Act, which concerns the transfer of personal data to a recipient abroad. The Act does not contain any other sections that specifically concern the shortcomings identified by the Court, but in order to give the Committee of Ministers a comprehensive understanding of the entire legislation, translations of the new Act and of the Ordinance on Personal Data Processing at the National Defence Radio Establishment (*Förordning om behandling av personuppgifter vid Försvarets radioanstalt, 2021:1208*), are also enclosed.

Regarding the first shortcoming identified by the Court, the Government would like to inform the Committee of Ministers of the fact that as of 1 July 2021, the National Defence Radio Establishment applies an agency decision under which material that does not contain personal data and that has been collected in accordance with the Signals Intelligence Act is to be destroyed immediately if the content has been assessed as irrelevant to the signals intelligence activities referred to in Section 1 of the Act. The decision was taken by the Director General of the National Defence Radio Establishment as a direct response to the Court's judgment. This issue will still be part of the inquiry in accordance with the Court's wish for an express legal requirement (§ 342). However, as the decision is to be applied throughout the National Defence Radio Establishment's signals intelligence activities, it clearly further limits the risk of causing adverse consequences for Article 8 rights (§ 370). The application of the decision is subject to controls by the Foreign Intelligence Inspectorate.

As outlined above, the second shortcoming has been partly remedied by a new legal provision (Section 20 of Chapter 2). When it comes to legal entities, the Government notes that such entities do not enjoy special protection in accordance with national legislation. The national protective legal provisions focus on personal data and stem from Council of Europe Convention No. 108. The legislation for the National Defence Radio Establishment also draws inspiration from the European Union's General Data Protection Regulation. This does not mean that legal entities do not enjoy protection, since most correspondence contains personal data. This is also the case when it comes to IP addresses, for example. These facts limit the scope of negative consequences for legal entities regarding their correspondence. It should be clarified that this issue will also be a part of the inquiry.

The Foreign Intelligence Inspectorate's function as *ex post facto* control mechanism is regulated in the Signals Intelligence Act (Section 10a). Public authorities in Sweden are independent. In accordance with the Constitution of Sweden, the Government may not determine how an administrative authority is to decide in a particular case relating to the exercise of public authority vis-à-vis an individual or a local authority, or how to apply the law. This means that it is up to the Foreign Intelligence Inspectorate to apply the current law. It should be added that the third shortcoming identified by the Court will also be part of the inquiry.

### **Publication and dissemination**

As stated in the previous action plan, the Government has distributed a report containing a summary of the judgment in Swedish, with a copy of the judgment attached, to the relevant authorities and courts. Furthermore, the judgment in English and a summary in Swedish have been published.

### **The Government's conclusions**

The Government considers that it is now clear that all necessary individual measures have been taken in view of the Court's judgment in the present case. As regards the general measures, the Government will keep the Committee of Ministers informed and will inform the Committee of Ministers when a decision on the terms of reference for the inquiry has been taken. The Government will submit updated information in its next Action Plan to the Committee of Ministers, i.e. by 25 November 2022.

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### **Appendices:**

1. Translation into English of the Act on Personal Data Processing at the National Defence Radio Establishment (2021:1172)
2. Translation into English of the Ordinance on Personal Data Processing at the National Defence Radio Establishment (2021:1208)