



## Government Offices of Sweden

Stockholm, 25 November 2024

Ministry for Foreign Affairs

### Action Report

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

**The Government has to date submitted six Action Plans, most recently on 24 May 2024. On 27 September 2024, the Department for the Execution of Judgements of the European Court of Human Rights asked for some additional information in order to enable the Committee of Ministers to carry out a comprehensive assessment. In response, the Government hereby submits an Action Report, with updated information regarding the general measures, asking the Committee of Ministers to close its examination of the case.**

#### **Case summary**

The case concerns the proportionality and safeguards of the Swedish legislation regulating signals intelligence, and the European Court of Human Rights ('the Court') found that there had been a violation of Article 8 of the European Convention on Human Rights ('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 (*lag 2008:717 om signalspaning i försvarsunderrättelseverksamhet*) or other relevant legislation that, when deciding to transmit intelligence material to foreign partners, consideration has been 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 and proof of payment has been submitted (see the Government's Action Plans dated 25 November 2021 and 25 May 2022). In view of this, and as also noted by the Department for the Execution of Judgments of the European Court of Human Rights, there are no further individual measures to be taken in this case.

#### **General measures**

As described in previous Action Plans, the Government appointed an Inquiry tasked with reviewing the Signals Intelligence Act following the Court's judgment in *Centrum för rättvisa v. Sweden*. On 1 September 2023, the Inquiry submitted an interim report, in which it considered what measures should be taken to address the findings of the Court.

The Inquiry was also tasked to review other parts of the legislation and submitted its final report to the Government on 2 September 2024. In response to the Rule 9 submission on 4 September 2024, the Government wishes to clarify that the proposals in the Inquiry's final report are not put forth in order to fulfil the Court's judgment, nor do they affect the measures taken in that regard.

After processing the interim report, the Government decided on the bill "Signals intelligence in foreign intelligence operations – measures following the judgment of the European Court of Human Rights" (Government Bill 2023/24:136) on 18 April 2024. Based on the Inquiry's proposals, the bill included proposed amendments in the Signals Intelligence Act and the Act on Personal Data Processing at the National Defence Radio Establishment.

Regarding the destruction of intercepted material not containing personal data, the Government has previously informed the Committee of Ministers of an agency decision applied by the National Defence Radio Establishment. According to the decision, 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 lacks significance for the activities referred to in Section 1 of the Act (see the

Government's Action Plan of 25 May 2022). In the Bill, the Government proposed a statutory regulation of this internal procedure already at place at the National Defence Radio Establishment.

Regarding the conditions for transfer of personal data to foreign recipients, the Government has previously informed the Committee of the new Act on Personal Data Processing at the National Defence Radio Establishment, which entered into force on 1 January 2022 (see the Government's Action Plan of 25 May 2022). The Act contains a provision requiring the National Defence Radio Establishment, before deciding to transmit intelligence material to foreign partners, to analyse and assess whether a foreign data recipient provides sufficient protection for that data. In the Bill, the Government proposed that an additional condition for transfers of personal data to foreign recipients is introduced, requiring that the data subject's personal integrity be considered.

Furthermore, the Act on Personal Data Processing at the National Defence Radio Establishment applies to the processing of personal data. The amendment regarding this law is therefore applicable concerning individuals as well as legal entities, e.g. organisations, provided that the correspondence of such a legal entity contains personal data that relates to a natural person. The Swedish Act in this way corresponds with the European Data Protection Regulation. The legislative amendments in question are therefore sufficient to ensure that due consideration is given to privacy interests of individuals concerned when making a decision about intelligence sharing with foreign partners (cf. §§ 330 and 369 in the Judgement of the Court).

As to the review at the initiative of individuals, the Bill proposed the establishment of a new specific decision-making body – the Delegation for review at the initiative of individuals – within the Foreign Intelligence Inspectorate. The decision-making body will, at the initiative of an individual, review whether the individual's communications have been intercepted through signals intelligence and, if so, whether the data collection and processing of collected data was compatible with the law. The individual will receive a reasoned notification from the decision-making body following the review.

The new decision-making body will be established within the Foreign Intelligence Inspectorate. The decision-making body will be independent from the Inspectorate's board, and will make its own decisions. The board of the Foreign Intelligence Inspectorate and the decision-making body will receive assistance with administrative and management tasks from the same secretariat. It should be emphasized that the personnel of the secretariat are neither tasked with, nor authorised to, take decisions on matters falling under the responsibility of the decision-making body or the board. Given the task of the secretariat and the separation of tasks of the Inspectorate and the decision-making body there is no risk that the employees of the secretariat could influence the independent, and Government-appointed, members of the new decision-making body (Government Bill 2023/24:136 p. 38). As emphasized in the Bill, the work conducted within the secretariat should be organized in such manner that potential conflicts of interests are avoided (Government Bill 2023/24:136 p. 38).

The Government has also decided on an amendment to the Foreign Intelligence Inspectorate Instructions Ordinance that clarifies that the new decision-making body is responsible for its own decisions.

Furthermore, the new decision-making body consists of a president, a vice-president and four other members, all appointed by the Government for a certain period. The president and the vice-president must be or have been permanent judges or have similar legal merits. The four other members are appointed after being proposed by the party groups in the Parliament. Note that in Sweden, judges and other high-ranking officials are typically appointed by the Government. In this connection, it should also be emphasized that constitutionally no public authority in Sweden, including the Government and Parliament, may determine how an administrative authority shall decide in a particular case relating to the exercise of public authority vis-à-vis an individual, or relating to the application of law (The Instrument of Government 1974:152 Ch. 12 Section 2).

The decisions by the new decision-making body will be legally binding (Government Bill 2023/24:136 p. 38). As the new decision-making body will be established within the Foreign Intelligence Inspectorate, it will have the same right to access relevant documents as the Inspectorate, when performing its investigation following a request of an individual. The legislative amendments do not contain any rules regarding the possibilities to hold hearings, or for individuals concerned to participate at proceedings.

It is in the mandate of the new decision-making body to safeguard the individual's interest by making an objective and independent assessment of the circumstances in each individual case. As mentioned before, this examination shall be conducted by members appointed by the Government after becoming proposed by the party groups in the Parliament. According to the Government, such a composition of the body, therefore, ensures transparency for the members of the public (Government Bill 2023/24:136 p. 43).

The legislative amendments states that the notifications to the individuals concerned shall be reasoned. It is for the new decision-making body to determine how this requirement shall be met in practice, and which information that may or may not be disclosed due to secrecy.

The establishment of a new decision-making body within the Foreign Intelligence Inspectorate has been considered as an appropriate measure to address the third finding by the Court. No other existing body has been deemed suitable to be entrusted with the task of review and it is not appropriate to set up a completely new authority. Regarding the latter, it is noted that the Foreign Intelligence Inspectorate receives only a small number of requests for review, around 10 to 15, each year. This number has, with some exception, not changed over time and there is no indication that it will change in the future. Moreover, a small organisation would be sensible to staff turnover, which could entail a risk of losing knowledge within the intelligence area. This would eventually risk leading to negative consequences for individuals, for example through materially incorrect reviews or unnecessary delay.

On 29 May 2024, the Bill was adopted by the Parliament ('riksdagen'). The legislative amendments accounted for above have thereby been adopted by Parliament. The amendments regarding the destruction of intercepted material not containing personal data and the conditions for transfers of personal data to foreign recipients entered into force on 1 July 2024, whereas the amendments pertaining to the establishment of the new decision-making body within the Foreign Intelligence Inspectorate will enter into force on 1 January 2025. The Government has also decided on amendments in the Signals Intelligence Ordinance and the Foreign Intelligence Inspectorate Instructions Ordinance, which contains implementation orders. These amendments will enter into force on 1 January 2025. A translation of the legislative amendments and ordinances is enclosed with the present Action Report.

### **Publication and dissemination**

The judgment in English and a summary in Swedish have been published on the Government's website: [Målet Centrum för rättvisa mot Sverige i Europadomstolen - Regeringen.se](https://www.malcentrum.se/malet-centrum-for-rattvisa-mot-sverige-i-europadomstolen-regeringen.se). The Government has distributed a report containing a summary of the judgment in Swedish, with a copy of the judgment attached, to relevant authorities such as, *inter alia*, the National Defence Radio Establishment, the Foreign Intelligence Inspectorate, the Foreign Intelligence Court, the Parliamentary Ombudsmen, the Chancellor of Justice and the Swedish Bar Association.

The steps needed in order to make the Court's judgment publicly known and disseminated to national stakeholders have therefore been taken.

### **The Government's conclusion**

To sum up, the Government considers that all necessary *individual measures* in view of the Court's judgment in the present case have been taken.

As regards the *general measures*, it is the Government's view that Sweden, since the proposed legislative amendments in the Signals Intelligence Act and the Act on Personal Data Processing at the National Defence Radio Establishment now have been adopted by the Parliament, and as they and the ordinance amendments will all have entered into force shortly, has fulfilled its obligations under Article 46 of the Convention to abide by the judgment in this case. Given the outcome of the legislative processes in Sweden, the Government holds that Swedish law, from 1 January 2025 onwards, contains a regulatory framework that ensures the right to respect for private life also into the area of signals intelligence.

The Government therefore respectfully asks the Committee of Ministers to close its examination of the case, but will of course remain at the disposal of the Committee, should it have any further questions.



# Swedish Code of Statutes

## Act

### amending the Signals Intelligence Act (2008:717)

SFS 2024:425

Published

11 June 2024

Promulgated on 5 June 2024

In accordance with a decision of the Riksdag<sup>1</sup>, it is prescribed that Sections 7 and 10a of the Signals Intelligence Act (2008:717) will have the following wording.

#### Section 7<sup>2</sup>

Recordings or notes of data collected under this Act or received by the signals intelligence authority from a third country or an international organisation within the framework of international cooperation must be destroyed immediately if the content:

1. has been assessed as lacking significance for a mission referred to in Section 1;
2. refers to data that is subject to confidentiality under Chapter 3, Article 3 of the Freedom of the Press Act, or Chapter 2, Article 3 of the Fundamental Law on Freedom of Expression, or that is covered by the prohibition on inquiries in Chapter 3, Article 5 of the Freedom of the Press Act or Chapter 2, Article 5 of the Fundamental Law on Freedom of Expression;
3. includes data in messages between a person who is suspected of an offence and their defence counsel that are protected under Chapter 27, Section 22, first paragraph of the Swedish Code of Judicial Procedure; or
4. refers to data given during confession or private pastoral care, unless there are exceptional grounds to process the data for the purposes stated in Section 1, second paragraph.

#### Section 10a<sup>3</sup>

A specific decision-making body within the control authority is obliged, upon request by an individual, to control whether their messages have been collected in connection with signals intelligence under this Act and, if so, whether the collection and processing of the data collected was in accordance with the law. The decision-making body must notify the individual that the control has been carried out. The notification must include reasons.

The decision-making body may decide that collection concerning the individual who has requested the control must be terminated or that recordings or notes of collected data must be destroyed if, during a control,

<sup>1</sup> Government Bill 2023/24:136, Committee report 2023/24:FöU11, Parliamentary Communication 2023/24:206.

<sup>2</sup> Latest wording 2021:1173.

<sup>3</sup> Latest wording 2009:967

it emerges that the collection is incompatible with a permit issued under this Act.

**SFS 2024:425**

The members of the decision-making body are appointed by the Government for a fixed period. The chair and deputy chair must be, or have been, a permanent judge or have other equivalent legal experience. The other members are appointed from among the persons proposed by the party groups in the Riksdag.

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1. Section 10a of this Act enters into force on 1 January 2025 and the remainder of the Act on 1 July 2024.

2. Following entry into force, the specific decision-making body will process cases under Section 10a that are ongoing at the control authority.

On behalf of the Government

CARL-OSKAR BOHLIN

Klara Lidman Kittel  
(Ministry of Defence)



# Swedish Code of Statutes

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## Act amending the Act on Personal Data Processing at the National Defence Radio Establishment (2021:1172)

**SFS 2024:426**

Published  
11 June 2024

Promulgated on 5 June 2024

In accordance with a decision of the Riksdag<sup>1</sup>, it is prescribed that Chapter 2, Section 20 of the Act on Personal Data Processing at the National Defence Radio Establishment (2021:1172) will have the following wording.

### Chapter 2

#### Section 20

Personal data processed pursuant to this Act may only be transferred to another country or to an international organisation if this is necessary in order for the National Defence Radio Establishment to perform its duties within the framework of international foreign intelligence and security cooperation and:

1. the transfer is directed to a foreign intelligence or security organisation or to an intelligence or security body of an international organisation;
2. secrecy does not prevent a transfer;
3. the recipient guarantees sufficient protection for the personal data; and
4. the transfer does not entail a disproportionate breach of the data subject's personal privacy.

The Government may, pursuant to Chapter 8, Article 7 of the Instrument of Government, issue regulations whereby transfers may also take place in cases other than those specified in the first paragraph, point 1.

The Government may also decide on such transfer in an individual case.

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This Act enters into force on 1 July 2024.

On behalf of the Government

CARL-OSKAR BOHLIN

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# Swedish Code of Statutes

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## **Ordinance amending the Signals Intelligence Ordinance (2008:923) in foreign intelligence operations**

**SFS 2024:427**

Published  
11 June 2024

Promulgated on 5 June 2024

The Government prescribes that Section 5 of the Signals Intelligence Ordinance (2008:923) will have the following wording.

### **Section 5**

The destruction of recordings or notes under Sections 7, 10 and 10a of the Signals Intelligence Act (2008:717) must take place in a way that ensures that the data cannot be recreated.

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This Ordinance enters into force on 1 January 2025.

On behalf of the Government

CARL-OSKAR BOHLIN

Klara Lidman Kittel  
(Ministry of Defence)



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DES ARRETS DE LA CEDH

# Swedish Code of Statutes

## Ordinance amending the Ordinance containing instructions for the Swedish Foreign Intelligence Inspectorate (2009:969)

**SFS 2024:428**

Published  
11 June 2024

Promulgated on 5 June 2024

Concerning the Ordinance containing Instructions for the Swedish Foreign Intelligence Inspectorate (2009:969), the Government prescribes:

*firstly*, that Sections 10 and 15 will have the wording below; and  
*secondly*, that five new Sections, Sections 10a and 15a–15d, will be added to the Ordinance and that new headings with the following wording will be added immediately before Sections 10 and 15.

### Specific decision-making body

#### Section 10

The authority's specific decision-making body (called the Delegation for Controls at the Request of Individuals) is tasked with conducting controls in accordance with Section 10a of the Signals Intelligence Act (2008:717).

The Delegation will consist of a chair, a deputy chair and four other members. The third paragraph of Section 10a of the Signals Intelligence Act contains additional provisions on the composition of the Delegation.

#### Section 10a

The Delegation specified in Section 10 is responsible for its own decisions.

#### Section 15<sup>1</sup>

If, in the course of its activities, the board observes a circumstance that may constitute an offence, the board must report it to the Swedish Prosecution Authority or another competent authority.

If the board observes irregularities that may entail liability for the State with respect to a natural or legal person, the board must report it to the Office of the Chancellor of Justice.

If the board discovers circumstances that the Swedish Authority for Privacy Protection should be made aware of, the board must report it to the Authority.

The board consults with the authority concerned before a report referred to in the first to third paragraphs is submitted. The board must attach its investigation to the report. After a report has been submitted, the board must assist the authority as necessary.

### Processing of cases in the Delegation for Control at the request of individuals

#### Section 15a

Delegation meetings are convened by the chair.

### **Section 15b**

There is a quorum of the Delegation when the chair or deputy chair and two other members are present.

The chair or deputy chair may take simple decisions on their own. Such decisions must be reported to the Delegation at its next meeting.

### **Section 15c**

If, in the course of its activities, the Delegation observes a circumstance that may constitute an offence, the Delegation must report it to the Swedish Prosecution Authority or another competent authority.

If the Delegation observes irregularities that may entail liability for the State with respect to a natural or legal person, the Delegation must report it to the Office of the Chancellor of Justice.

If the Delegation discovers circumstances that the Swedish Authority for Privacy Protection should be made aware of, the Delegation must report it to the Authority.

If the Delegation discovers circumstances that the board leading the Swedish Foreign Intelligence Inspectorate should be made aware of, the Delegation must notify the board.

### **Section 15d**

The Delegation consults with the authority concerned before a report referred to in Section 15c is submitted. The board must attach its investigation to the report. After a report has been submitted, the Delegation must assist the authority as necessary.

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This Ordinance enters into force on 1 January 2025.

On behalf of the Government

CARL-OSKAR BOHLIN

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