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INTERNATIONAL REPORT

PRIVACY LAWS & BUSINESS

DATA PROTECTION & PRIVACY INFORMATION WORLDWIDE

Sweden's new data protection regime supplements the GDPR

Maria Holmström Mellberg of Cirio Law firm gives an overview of how GDPR provisions have been transposed in Sweden

Sweden's new data protection regime consists of a GDPR-style Data Protection Act, and adjustments to many sectoral laws. The Data Protection Act of 2018 is the third act on data protection since the world's first national data protection law, Sweden's Data Act, came into force in 1973. The new Data

Protection Act makes adjustments to the Public Access to Information and Secrecy Act¹ and repeals the previous Data Protection Act², which in turn replaced the Data Act of 1973³.

By May 2018, some 20 commissions of inquiry⁴ had been preparing

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Germany: Facebook's data collection is market abuse

The *Bundeskartellamt's* decision may clash with the One Stop Shop and raises questions about the interaction of competition and DP law. By **Sophie Lawrance** and **Matthew Hunt** of Bristows LLP.

On 7 February 2019, the *Bundeskartellamt* (the federal competition regulatory authority in Germany) completed an investigation into Facebook that had taken almost three years.

Unusually for a competition inquiry, this investigation focused centrally on Facebook's data collection practices, and on the relationship between compliance with data

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INTERNATIONAL
report

ISSUE NO 158

APRIL 2019

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Published byPrivacy Laws & Business, 2nd Floor,
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Middlesex HA5 5NE, United Kingdom**Tel: +44 (0)20 8868 9200****Fax: +44 (0)20 8868 5215****Email: info@privacylaws.com****Website: www.privacylaws.com****Subscriptions:** The *Privacy Laws & Business* International Report is produced six times a year and is available on an annual subscription basis only. Subscription details are at the back of this report.

Whilst every care is taken to provide accurate information, the publishers cannot accept liability for errors or omissions or for any advice given.

Design by ProCreative +44 (0)845 3003753

Printed by Rapidity Communications Ltd +44 (0)20 7689 8686

ISSN 2046-844X

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“ comment ”

Busy times for EU DPAs

As we are approaching the first birthday of the EU GDPR, EU DPAs report a hugely increased workload. Nine months after the GDPR's full application, the members of the European Data Protection Board (EDPB) said that the GDPR cooperation and consistency mechanism is working quite well in practice.

The DPAs said that they make daily efforts to facilitate this cooperation, and meet monthly in plenary sessions, as well as in several subgroups. Six final One-Stop-Shop cases have been dealt with under the cooperation mechanism. The DPAs say that “there is still work to be done at the EDPB level to further streamline the procedure to make the system even more efficient”.

This close cooperation means an extra workload, and a strain on resources. Most DPAs have managed to recruit many more staff, for example Ireland's DPA, which has received several cross-border complaints (p.7). Join us in Dublin to learn at *PL&B's* conference on 8-9 May more about Ireland's law and how it is enforced (p.7).

But the EDPB is by no means the only DPA cooperation mechanism. In this issue, Professor Greenleaf reports on the DPA networks around the world (p.11).

This issue reports on many legislative developments: read about Sweden's GDPR-style new data protection law and the various changes to sectoral laws (p.1), Nigeria's new law (p.23), Bulgaria's GDPR implementation (p.10) and Serbia's new law (p.25). Also, in Poland, changes to sectoral laws have been adopted (p.18) and the DPA has imposed a large fine (p.19).

Our correspondents analyse Facebook's situation regarding its data collection, and its exposure to both data protection and competition law (p.1), and how to pre-plan for data breaches and respond with suitable action (p.14).

In the UK, Brexit uncertainty continues, but several friendly jurisdictions have announced that they will treat the UK as an adequate destination for data flows to the UK after it exits the EU (p.8).

Laura Linkomies, Editor

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Do you have a case study or opinion you wish us to publish? Contributions to this publication and books for review are always welcome. If you wish to offer reports or news items, please contact Laura Linkomies on Tel: +44 (0)20 8868 9200 or email laura.linkomies@privacylaws.com.

Sweden... from p.1

new or updated complementing legislation to form the basis of the Government bills presented to the Parliament during 2018, most of them to be enforceable on 25 May itself.

As mentioned, the main Act supplementing the GDPR is the Data Protection Act⁵ (the Act or the new Data Protection Act). The new Data Protection Act includes supplementary provisions to the GDPR. Alongside the Data Protection Act a fairly large number of adjustments to existing laws came into force on 25 May, or a later point during 2018, based on the work carried out by the commissions mentioned above.

During the preparatory work and consultations, some stakeholders stressed that a complete overview of all the supporting acts on public sector data registers (Register Ordinances) should be conducted, since the Register Ordinances are many and diverse and based on the conditions laid out by the Data Act of 1973. Others commented that the Government was not taking a clear stand on whether to expand or reduce the possibilities for processing of personal data beyond the clear requirements from the GDPR. The Government stated that the time available was too limited to allow for a more expansive overhaul of the legislative framework. The government noted that this does not exclude that such a review might be conducted in the future. From a practical perspective, it

THE NEW DATA PROTECTION ACT

The new Data Protection Act is the main Act supplementing the GDPR. It is a fairly short act containing provisions that complement the GDPR. This has been a priority for the Swedish government. Let us now have a look at some of the chapters to get a good overview of the structure and content of the new Data Protection Act.

Chapter 1: Initial provisions:

The first chapter regulates primarily matters in relation to the GDPR's applicability in general. For example, it is stated that the GDPR shall also apply to processing in connection with activities outside EU-law and also some exceptions in relation to defence and police-related matters. The territorial scope is clarified, for example, it is stated that the Act applies to all children residing in Sweden regardless of the location of the controller or processor. Provisions in the Act are subsidiary to provisions in other Swedish Acts, which opens the possibility of conflict with special purpose laws (mainly used for processing by public authorities). It is further clarified that the GDPR and the Act shall not be applied when they violate Swedish constitutional acts. Also, certain sections of the GDPR and the Act shall not apply for processing for journalistic purposes and for academic, artistic or literary creation. Finally, the Act imposes an obligation of confidentiality on Data

such as social media.

Chapter 3: Special categories of personal data: The 11 sections of Chapter 3 regulate matters related to processing of special categories of personal data in Article 9 of the GDPR. It clarifies the requirements in relation to employment laws, social security and social protection laws. The clarifications relate, for example, to collective agreements and processing for statistical purposes.

Regarding processing of data relating to criminal convictions (Article 10), the preparatory work for the Bill mentioned the potential loosening of the wording of the GDPR. The government pointed to the possibility of the relevant authority issuing ordinances instead of case-based permissions, for example regarding the processing of personal data in relation to international sanctions regimes. This might lead to a loosening of the current fairly strict view in Sweden regarding processing of personal data relating to criminal convictions and offences.

The processing of personal identification numbers without consent continues to be lawful in Sweden on condition that it is clearly justified in relation to the purpose of the processing, for example, secure identification. The government is authorized to issue further regulations.

Chapter 4: Limitations: This chapter contains limitations in relation to processing of personal data for archiving and statistical purposes.

Chapter 5: Limitations as to certain rights and obligations: This chapter contains some limitations and exceptions to the information rights of the data subjects.

Chapter 6: Supervisory authority handling and decisions: Chapter 6 concerns the mandate of the Swedish Data Protection Authority (*Datainspektionen*) and administrative fines. Administrative fines can be issued to both private sector companies and public authorities.

Chapter 7: Compensation and appeal: This chapter contains provisions in relation to compensation and procedural aspects in relation to appeal.

Entry into force: These provisions were enforceable as of 25 May 2018.

The Act applies to all children residing in Sweden regardless of the location of the controller or processor.

should be noted that this implies that we now have little insight into how the large number of Register Ordinances will be interpreted under the GDPR and the new Data Act.

The Swedish Data Protection Board (*Datainspektionen*) was, during 2018, given an additional task to facilitate industry's adaptation to the GDPR to ensure that Swedish companies do not lose momentum in their digitalisation efforts in parallel with maintaining a good level of data protection.⁶

Protection Officers in respect of information obtained during the performance their duties.

Chapter 2: Legal basis for processing of personal data: Chapter 2 clarifies important matters in relation to the legal bases for processing in Article 6 of the GDPR, specifically in relation to 6.1 c and e. Children must be at least 13 years old to be able to give consent to the processing of personal data in connection with their use of information society services,

OTHER SUPPLEMENTING LEGISLATION

Adjustments in the areas of enterprise, innovation and credit information: Adjustments have been made to real estate, company, transportation and intellectual property laws. The adjustments include exceptions from the GDPR to ensure that the important registers can be retained despite, for example, by imposing a limitation on the data subjects' right to limit processing.

Adjustments have been made to the Credit Information Act⁷ and the Debt Recovery Act⁸. The Credit Information Act is adapted to the GDPR in relation to the requirements on data processing and the information to the data subject. The processing of genetic data, biometric data to identify an individual and data about sexual preferences are prohibited when carrying out credit information activities. When credit information is disclosed, the data subject is entitled to information about, among other things, the source of the information, for how long it will be stored, and the possibility to lodge complaints with the Data Protection Authority. The actual right for a physical person to have access to the personal data about him or her is regulated by the GDPR (and not the Credit Information Act). As to the Debt Recovery Act, minor adjustments were made. The GDPR and the new Data Protection Act govern the processing of personal data in credit and debt activities.

Entry into force: The adjustments were enforceable as of 25 May 2018.

Laws for the financial sector: Most of the adjustments in financial-sector laws (i.e. among other Banking and Credit, Payments, Securities Markets, Insurance as well as Anti Money Laundering and Terrorist Financing laws) imply that references to the previous Data Protection Act are removed. Explicit references to the GDPR are few and in general no new explicit references to the GDPR or the new Data Protection Act are made.

Noteworthy requirements in this legal area are requirements related to storing personal data (the right to be forgotten), the obligations on regulated entities to have reporting

systems in place to enable whistleblowing, and in addition transaction monitoring to prevent financial crimes.

Entry into force: The adjustments were enforceable as of 25 May 2018.

NEW ACT ON CAMERA SURVEILLANCE

The Camera Surveillance Act from 2013 (*Kameraövervakningslagen*) was replaced by a new Swedish Act on Camera Surveillance (*Kamera-bevakningslagen*) 1 August 2018.⁹ The aim of the new law was to increase the possibilities to use camera surveillance as well as increase the protection of privacy and to adapt to the new data protection regime. Requirements for negotiations with the relevant union are found in the law on co-determination in working life. The same authority will grant permissions and supervise.

Entry into force: The adjustments were enforceable as of 1 August 2018.

DATA PROTECTION IN THE PUBLIC SECTOR

When it comes to the public sector, the GDPR allows member states to restrict the scope of the obligations and rights, when such a restriction respects the essence of the fundamental rights and freedoms and is a necessary and proportionate measure (e.g. Article 6.2, 6.3 with reference to 6.1 c and 6.1 e; Recital 10 in relation to sensitive data).

In brief, this allows for the sector specific laws found in the so-called Register Ordinances, which are laws targeting special sectors or even specific authorities. The Register Ordinances date back from the days of the very first Data Act of 1973. They have developed with time but are still important laws for the public sector to consider alongside the GDPR and the new Data Protection Act.

Most of the adjustments made apply to the very large number of laws in the social and healthcare sectors and include important Acts such as the Social Insurance Act, and the Patient Data Act.

Entry into force: The adjustments were enforceable as of 25 May and as of 1 August 2018.

BROTTSDATALAGEN – SWEDISH VERSION OF THE POLICE DIRECTIVE

On the same day as the GDPR was issued, 27 April 2016, the new EU Law Enforcement Directive¹⁰ was adopted. In Sweden it had been decided that the new EU Data Protection Directive would be implemented through a new framework act, the Criminal Data Act, alongside specific laws for the respective authorities.

Entry into force: Most of the adjustments were enforceable as of 1 August 2018, but the Authority-specific acts are not yet all in force.

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REFERENCES

- 1 *Offentlighets och sekretesslagen* (2009:400)
- 2 *Personuppgiftslagen* (1998:204), i.e. the Swedish implementation of the data protection directive 95/46/EG
- 3 *Datalagen* (1973:289)
- 4 Commissions of inquiry, which operate independently of the Government and prepare bills, may include experts, public officials and politicians.
- 5 *Lag (2018:218) med kompletterande bestämmelser till EU:s dataskyddsförordning*
- 6 N2016/07306/FÖF
- 7 *Kreditupplysningslagen* (1973:1173)
- 8 *Inkassolagen* (1974:182)
- 9 *Kameraövervakningslagen* 2013:460 and *Kamerabevakningslagen* 2018:1200)
- 10 (*Europaparlamentets och rådets direktiv (EU) 2016/680 av den 27 april 2016 om skydd för fysiska personer med avseende på behöriga myndigheters behandling av personuppgifter för att förebygga, förhindra, utreda, avslöja eller lagföra brott eller verkställa straffrättsliga påföljder, och det fria flödet av sådana uppgifter och om upphävande av rådets rambeslut 2008/977/RIF*)

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