

Q&A: cloud computing law in Sweden

Advokatfirman Delphi

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Directly compare laws and regulations between jurisdictions here

Legislation and regulation

Recognition of concept

Is cloud computing specifically recognised and provided for in your legal system? If so, how?

There is no specific recognition of cloud services in Swedish legislation.

Governing legislation

Does legislation or regulation directly and specifically prohibit, restrict or otherwise govern cloud computing, in or outside your jurisdiction?

As a general rule, Sweden lacks direct and specific regulation regarding cloud computing. Swedish legislation and regulations are generally technology-neutral, which implicates that Swedish legislations lack specific targeting. However, the legal concerns are regulated indirectly in several pieces of legislation and regulations. The most relevant regulations are MSBFS 2020:6 and MSBFS 2020:8 that regulate the public authorities' internal information security policies and work, as well as the requirement to report IT incidents to the Swedish Civil Contingencies Agency. Cloud services are regulated by explicit requirements for internal policies and routines regarding incident management, which requires that organisations must be able to handle threats and risks through developing models and routines for managing incidents and continuity.

Sweden has implemented the Network and Information Systems (NIS) Directive (EU) 2016/1148 through the Act on Information security for vital societal functions and digital services (SFS 2018:1174), thereby extending the requirements on security and to report IT incidents to cloud service providers.

What legislation or regulation may indirectly prohibit, restrict or otherwise govern cloud computing, in or outside your jurisdiction?

Regarding indirect regulations and legislation, there are several to take into account. When using cloud services to store data from telecoms or e-commerce business, it is important to observe the Electronic Communications Act (SFS 2003:389), which aims to provide individuals and authorities with secure and effective electronic communications, and the Electronic Commerce Act (SFS 2002:562), which states an obligation to provide certain information to customers.

However, the main legislation to take into account regarding cloud services are provisions on privacy and information security. On 25 May 2018, the General Data Protection Regulation (GDPR) entered into force in Sweden and provides significantly stricter standards on, for example, impact assessments and information security.

Information security is regulated throughout different provisions, such as regulations from the Swedish Civil Contingencies Agency, the GDPR and sector-specific regulations, such as within the healthcare sector. Swedish public authorities are subject to the principle of public access to public documents, which means that all documents submitted to or drawn up by the authority are, in principle, public documents and must be made available for anyone to read. Exemptions from this rule are documents that are subject to statutory secrecy under the Public Access to Information and Secrecy Act (SFS 2009:400) (the Secrecy Act), which means that they may not be disclosed to any third party. In cases where such classified information will be processed in the cloud, additional restrictions regarding the data apply and must be taken into consideration when assessing the risks and which security measures must be implemented.

In addition, if information subject to secrecy under the Secrecy Act may be available to the provider as a result of an agreement between the parties, it must be evaluated whether the data becomes ‘disclosed’ within the meaning of the Secrecy Act. Thus, one opinion is that the Secrecy Act generally prevents authorities from using cloud services. Another opinion is, however, that it is possible for authorities to use cloud services if the relevant authority has made a thorough assessment of the risks based on the character of the information, but further clarification on how these rules are to be interpreted is needed.

Furthermore, public authorities must also comply with numerous other pieces of legislation, such as the Archives Act (SFS 1990:782), the Administrative Court Procedure Act (SFS 1971:291), the Public Procurement Act (SFS 2016:1145) and the Security Protection Act (SFS 2018:585). Also, many public authorities and agencies have sector-specific provisions regarding data processing and information security requirements, such as the Patient Data Act (SFS 2008:355).

The Accounting Act (SFS 1999:1078) stipulates that accounting information, as a general rule, must be stored in Sweden, which may prohibit the use of cloud services provided from outside Sweden for the purpose of handling accounting information.

Breach of laws

What are the consequences for breach of the laws directly or indirectly prohibiting, restricting or otherwise governing cloud computing?

The failure to report an IT incident under the Act on Information security for vital societal functions and digital services is subject to administrative fines. Further, the rules indirectly regulating cloud computing in Sweden are connected to several sanctions and consequences for breaches thereof. The sanctions for lack of compliance with the GDPR include prohibitory injunctions, and the payment of damages and administrative fines. Lack of compliance with the Electronic Communications Act (SFS 2003:389) and the Electronic Commerce Act (SFS 2002:562) may also cause sanctions, such as prohibitions and orders combined with penalties as well as damages and criminal proceedings. Breaches of the Secrecy Act (SFS 2009:400) may lead to disciplinary or criminal proceedings. There are also various sanctions of similar character for the sector-specific regulation as well as supervision from relevant public agencies.

Consumer protection measures

What consumer protection measures apply to cloud computing in your jurisdiction?

There is no cloud service-specific regulation protecting the rights of consumers in Swedish law, but the Swedish consumer protection legislation includes legislation with a focus on e-commerce and digital transactions, including Distance and Off-Premises Contracts Act (SFS 2005:59), Consumer Contracts Act (SFS 1994:1512) and the Electronic Commerce Act (SFS 2002:562). The standard Swedish consumer protections for buying goods and services, the Consumer Sales Act (SFS 1990:932) and the Consumer Services Act (SFS 1985:716), are not directly applicable on purchases of digital content, but are still considered to have an impact when courts are evaluating consumer contracts. The consumer protection legislation ensures the consumers’ rights in regards to

quality and performance from the commercial actor, including the right to withdraw from distance and off-premises contracts within 14 days, bestows a responsibility for commercial actors to provide consumers with information, and provides that courts can prohibit contract terms that are unfair towards consumers from further use and may interpret vague contract terms in favour of consumers. The Swedish consumer protection for digital services is also continuously affected by the European Union's digital single market reforms, and now includes the right to settle disputes online through the Alternative Dispute Resolution for Consumer Disputes Act (SFS 2015:671), and principles about net neutrality and open internet access through Regulation (EU) 2015/2120, as well as a new proposed directive regarding contracts for the supply of digital content.

Sector-specific legislation

Describe any sector-specific legislation or regulation that applies to cloud computing transactions in your jurisdiction.

There is a wide variety of sector-specific legislation in Sweden that concern both private and public actors. There is no legislation that covers cloud computing in particular, but these services often fall within the scope of other legislation, depending on the sector of operation. Some significant legislation concerns matters of national security in the Security Protection Act (SFS 2018:585), with specific requirements of, for instance, information security and access to information. The Security Protection Act entered into force on 1 April 2019 and is more stringent than its predecessor from 1996.

Cloud companies competing in providing services for public institutions are covered by the Swedish legislation on public procurement, including the Public Procurement Act (SFS 2016:1145). Public agencies are encouraged by the Swedish Civil Contingencies Agency to use private or partner clouds to be able to provide the necessary security. In January 2021, the Swedish government published a report that analyses governmental agencies' need of secure and cost-efficient IT operations. Another report will be published no later than 15 October 2021, which will include a proposal on how a governmental public cloud could be set up.

There is specific regulation for the processing of personal data in, among others, the health and finance sectors, of relevance for transactions in these sectors. In the healthcare sector, personal data is governed by the GDPR supplemented by the Patient Data Act (SFS 2008:355). The legislation in the finance sector, most significantly the Banking and Finance Business Act (SFS 2004:297), is complemented by regulations from the Financial Supervisory Authority, including rules regarding outsourcing and information security as well as the European Banking Association's guidelines on outsourcing. For the insurance sector, the European Insurance and Occupational Pensions Authority's guidelines on outsourcing to cloud service providers correspondingly details specific requirements on cloud computing contracts.

Other sector-specific legislation that is worth noting include that applicable to the energy and telecommunications sectors. For private actors, there are no sector-specific requirements regarding cloud service infrastructure besides the above-mentioned requirements in the Act on Information security for vital societal functions and digital services and careful assessments regarding privacy and IT security.

Insolvency laws

Outline the insolvency laws that apply generally or specifically in relation to cloud computing.

There is no specific insolvency legislation that applies to cloud computing in Sweden, but the standard legal framework for insolvency apply, notably the Bankruptcy Act (SFS 1987:672), the Enforcement Code (SFS 1981:774) and general Swedish principles of property law. For movable property, the right to property is, in general, decided by who is in possession of the property. For intellectual property, the right to the property is instead decided from what is stipulated by contract.

