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December 2014

## The Swedish Data Protection Act in light of the new Data Protection Regulation

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*We are nearing the end of the year and it is a fitting time to reflect over and summarize the past year. My conclusion as an IT lawyer is that it has been a very interesting year with the growing number of exciting instructions matching progress in the internet and technology. We can look forward to even more interesting events in the coming year and as the heading suggests, I would like to highlight the Swedish Data Protection Act and the particularly important change to be expected in the field of personal data protection.*

Almost three years ago, the Commission presented a proposal for a new regulation for the protection of personal data ("Data Protection Regulation") which when finally adopted, will replace the current Data Protection Directive and therefore also the Swedish Personal Data Act ("PDA"). Since the proposal was published, it has been discussed and processed extensively by EU legislators and many have expressed views on its content and have presented proposals for changes. This year, we were particularly looking forward to finding out if the Council and the European Parliament would manage to agree on the wording of the proposal for a data protection regulation so that it could be adopted before the end of 2014. With just a few days left of this year, the unfortunate conclusion is that we are not yet there.

Many are sure to feel that the process is very protracted, complicated and hard to understand. If you have yet to visit Delphi's blog, it provides good tips for those wanting to read more and keep up to date with on-going work on the Data Protection Regulation. You will find the **Delphi Data Protection Blog** at <http://blogg.delphi.se>. Below is a brief introduction to the coming Data Protection Regulation and a brief update on when the Regulation is expected to come into force.

### Brief introduction

The proposal for a data protection regulation was based mainly on the structure and regulations of the current Data Protection Directive. The proposed regulation also contains a range of new provisions and generally stricter rules and obligations for the processing of personal data, which in turn means enhanced protection and rights for the individual. In many ways, the stricter rules mean an increase in the administrative burden for the companies, authorities and organisations that process personal data and considerably more severe sanctions for breaches of the rules in the Regulation.

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According to the Commission, the Data Protection Regulation will have benefits, for both companies and individuals. The Commission has stated that the proposal for a regulation, if adopted in its current form, would lead to savings for companies within the EU of circa EUR 2.3 billion per year. This is because the Regulation would obviate the current fragmented regulation within the EU and thus the considerable attendant administrative costs. The Commission is also of the opinion that the Data Protection Regulation can lead to an increase in consumer confidence in online services, which in turn could increase growth and employment in Europe. However, the new provisions on personal data representatives contained in the new proposal will entail a slight increase in costs for larger companies and authorities.

**Data Protection Regulation v. Data Protection Directive**

Other than the purely content changes contained in the Data Protection Regulation, the greatest difference is that this is a regulation and not a directive. The Regulation is intended to replace the Data Protection Directive, which forms the current basis for data protection legislation in the EU. The difference between a regulation and a directive is that a regulation has direct effect and applies as law in all EU member states. However, a directive is implemented in the national legislation of the Member States. This means that a directive can be implemented in different ways by respective Member States, which may lead to variations in application and effect between different Member States.

The Data Protection Regulation has direct effect when adopted and applies as law in all EU Member States. In Sweden, this will mean that the regulation replaces the PDA and more or less all other national regulations on personal data. The Data Protection Directive came into force in 1995 and was implemented in Sweden through the PDA in 1998. Understandably, current legislation is based to a large extent on a very different technological environment than the one we have today. As technology has developed with new products and services such as smart phones, cloud computing and social media, new challenges in protecting personal data have arisen and it has become increasingly difficult to apply personal data rules. The current provisions in the Data Protection Directive are vague and open to interpretation, which means that implementation of the rules differs between the EU Member States. It is, therefore, welcome that attempts are being made at the EU level, through the on-going work on the Data Protection Regulation, to achieve more uniform rules on personal data protection. However, the internet is global, so surely an even more extensive process awaits; namely reaching agreement on a greater number of solutions with a larger ambit and broader perspective. However, getting there will most likely take a very long time, in particular given the extensive and time-consuming EU process on the Data Protection Regulation thus far and for the time taken for the Council and the European Parliament to agree on a joint proposal.

**What is the current status and when can we expect the Data Protection Regulation to come into force?**

How is the new Data Protection Regulation progressing? The short answer is that the ball is still with the Council which must arrive at a joint opinion before three-party negotiations (often called the Trialogue) can be held between the Council, the Commission and the European Parliament on a final solution.

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During the past year, many have expressed the hope that the Regulation would be completed before the end of 2014. After a meeting of the Council in July, Françoise Le Bai, Director General of the Directorate-General of Justice, stated that it appeared that the Council would be able to reach a joint opinion within the Council before the end of this year. In conjunction with the transfer of the presidency of the council from Greece to Italy on 1 July this year, the Italian side expressed a similar ambition. However, new information emerged in conjunction with an event hosted by the German Federal Data Protection Commission and the EU's Data Protection Supervisor on 5 November. According to a participant at the event, John Bowman, who previously represented the UK in negotiations on the Data Protection Regulation at DAPIX, the current estimate is that the Council will probably only be able to reach a joint opinion at the earliest at the EU summit on 19 March 2015. It will then be possible to reach a final agreement on the proposal for a data protection regulation between the Council, the European Parliament and the Commission by the end of 2015 according to the plan. Given the planned two-year transitional period (transition from Data Protection Directive to Data Protection Regulation), this would then mean that the Data Protection Regulation should enter into force towards the end of 2017.

However, whether the proposal for a regulation will be adopted next year remains to be seen. To summarise, it seems that negotiations, unlike Christmas, will last until Easter. Here at Delphi, we are following developments and look forward to data protection year 2015 with special excitement. In the meantime - please visit [Delphi Data Protection Blog](#).



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