



**CloudBeer Stockholm, 29 March 2023**

**Arman Borghem**  
**Cloud Regulatory and Compliance Advisor**

**Where does Sweden's public sector stand?**

**On the ground?**

**Or soaring into the clouds?**

**Where is the government (+legislation) heading?**

# Sweden's public sector is governed in a decentralised way

- Government agencies can act relatively independently.
- The cabinet controls gov't agencies through letters of regulation.
- A cabinet member can't instruct a gov't agency on how to act in a specific case.

# eSamverkansprogrammet (eSam)

## **eSam is:**

- Voluntary cooperation between gov't agencies.
- On matters of digitalisation, e.g.:
  - Legal
  - Technical
  - Value creation
- 36 members today.

[esamverka.se](https://esamverka.se)

# A brief (and incomplete) timeline

- 2018: eSam statement on the legal conflict between **OSL** and a new American law.
- 2019: Kammarkollegiet report “Webbaserat kontorsstöd” explains **FISA 702** and EO 12333.
- 2020: CJEU judgment in **Schrems II**.
- 2021a: It-driftutredningen report and proposal.  
2021b: Tax + Enforcement Agency publish the **Teams-memo**.
- 2022: The situation sinks in. **Movement on the market**.
- 2023: OSL amendment proposed: **(in)appropriateness test**.

**When is it okay to place data  
with an external provider?**

**When is it legal?**

**When is it appropriate?**

**How do we maintain sovereignty?**

# Old proposal

- Weigh the need for secrecy against the economic and practical benefits of using a CSP.
- **Risky!** The Swedish Tax Agency and others advised against the proposal.
- The opposing view: **secret information must have sufficient protection** regardless of the economic benefit from using a CSP.



# The government's new proposal: (in)appropriateness test

Secrecy does not prevent placing information with a service provider for only technical processing or storage ***if considering the circumstances this isn't inappropriate.***

Simplified summary of [proposed new clause](#): 10 kap. 2 a § OSL.  
Proposed effective date is July 1<sup>st</sup>, 2023.

# What should be considered in an “(in)appropriateness test”?

- Is the envisaged processing and the service as a whole **compliant with applicable laws**?
- Is the data handling **predictable** and secure?
- What does **the provider’s business model** look like?

# What should be considered in an “(in)appropriateness test”?

- The contractual relationship between customer and provider, especially whether **any contract terms risk taking away the customer’s control of the data.**
- If the provider is bound by contractual or legal **confidentiality.**
- The **geographical location** of the data and whether **subcontractors** might have access.

# Conclusions

- Trend towards **enablement** surrounded by high data management requirements that go **beyond information security in the traditional sense**.
- In the new OSL proposal, the gov't emphasises aspects like **predictability, maintaining control, geographical location and subcontractor's access**.
- Even the provider's **business model** should be considered.
- This is well in line with **digital self-determination**.

**Thank you!**