

Legislative history:

Government Bill 2012/13:192

(p. 43–44).

The term "binding EU act" refers to acts, which are applicable as a result of Sweden's membership in the EU, i.e. accession treaties and regulations, directives and decisions adopted by the Institutions of the European Union. It should be noted that not only legislative acts, but also delegated acts and implementing regulations can have a binding effect. The wording "an [...] agreement entered by the EU" refers to such international agreements that the EU can enter, with a binding force for the Member States, with the support of its exclusive authority.

The term "impaired" must not be construed as a lower threshold for denial of disclosure, compared to if the term "damaged" had been used in the provision instead. On the contrary, the term "impaired" indicates that there is a certain type of damage that can be assumed to occur in order for the damage requirement to be fulfilled.

In this context, the term "possibility to participate" refers primarily to the possibility of accessing information in accordance with an EU-act or agreement, i.e. to benefit from the collaboration. The provision means that the government agency is obliged in each individual case to make an independent assessment of the consequences a disclosure can be assumed to have for continued collaboration. The agency must then consider whether and, if so, how the issue of confidentiality is regulated in the act or agreement. In this context it can be noted that so-called usage restrictions, i.e. provisions that seem to exhaustively regulate the purposes for which certain information may be used by the receiving authority should not be interpreted as such a requirement of confidentiality as would entail application of the new confidentiality provision. If, on the other hand, an agreement, for example, prescribes absolute confidentiality of information that an agency has been given in accordance with the agreement, it can typically be assumed that a disclosure of the information would impair the possibility to participate in the collaboration. The same is true if a contract contains a confidentiality provision stipulating the right of veto for the original proprietor and they do not consent to certain information being disclosed. If an agreement stipulates

that the confidentiality in Sweden may not be weaker than that in the country of origin, consideration must be given to which level of secrecy or equivalent protection the information has with the foreign body that provided the information. There is nothing preventing the Swedish government agency from promptly contacting the disclosing body in order to investigate the circumstances in these respects in each individual case. If the information is kept confidential by the foreign body, the point of departure is that disclosure can typically be considered to mean that the damage requirement is fulfilled and that an impediment to disclosure by the Swedish government agency exists. However, in situations where the agreement or EU act contains no clear confidentiality provision, this provision will not normally be applicable, even if it is not excluded by the wording of the provision. In such cases, it ought to be primarily the nature of the information and its connection to international collaboration that entails fulfilment of the damage requirement, which means that it would be more appropriate to apply the confidentiality provision set out in Chapter 15, Section 1 of OSL.