



# Exclusion System Summary Sweden

## I. Government-Wide Legal and Institutional Framework:

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### Government-Wide Exclusion Framework? Yes.

- Exclusion decisions are made on a contract-by-contract basis as governed by national legislation or centralized regulations and apply only to the procurement at issue. Swedish courts may also prohibit an individual from engaging in general business activities (a “trading prohibition”) because of criminal or other misconduct.

### Governing Policy – Contract-by-Contract Exclusion:

- [Ch. 13 of Lagen](#) (2016:1145) om offentlig upphandling (the Act [2016:1145] on Public Procurement). The provisions in Ch. 13 transpose Art. 57 of Directive 2014/24/EU of the European Parliament.

### Governing Policy – Trading Prohibitions:

- [Lag \(2014:836\) om näringsförbud](#) (Act [2014:836] on Trading Prohibitions).
- [Förordning \(2014:936\) om näringsförbud](#) (Ordinance [2014:936] on Trading Prohibitions).

### Primary Legal Foundation:

- Criminal and Administrative/Regulatory Law.

### Related Law and Regulation:

- [Förvaltningslagen \(2017:900\)](#) (Administrative Law [2017:900]).
- [Kommunallagen \(2017:725\)](#) (Municipal Act [2017:725]).

**Decision-Maker:** Judicial Authority and Individual Contracting Officers; Not Functionally Independent from Senior Procurement Officials.

- Judicial courts may impose a trading prohibition on an individual found to have engaged in criminal or other activities listed in the Act on Trading Prohibitions (government-wide exclusion).
- Individual contracting authorities evaluate exclusion grounds listed in the Act on Public Procurement as part of each procurement procedure (contract-by-contract exclusion).

### Qualification:

- None stated in the legal framework.

*Independence:*

- Contract-by-contract exclusions are not functionally independent from senior procurement officials. Nevertheless, all contracting authorities must respect fundamental principles in public procurement, such as equal treatment and transparency.

## II. Functioning and Enforcement of the Government-Wide Exclusion System:

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### General Provisions:

*Type of Procedures:* Criminal and Administrative.

- A Swedish criminal court can impose a trading prohibition on a natural person, meaning that the excluded individual is not allowed to manage, control, or own a company.
- Decisions to exclude a supplier from a procurement (e.g., supplier is connected to a person subject to a trading prohibition) are made as during the procurement process.

*Decision Deadline:* No stated deadline for decision-maker to make a final determination.

*Provisional Exclusions:* Yes, only for trading prohibitions. A court may impose a temporary restriction on the defendant at an earlier stage if the proceedings are likely to result in a trading prohibition. (Secs. 21-22 of Act on Trading Prohibitions)

**Initial Procurement Decision (Contract-by-Contract Exclusion):** Grounds for exclusion are reviewed by the contracting authority as part of the procurement decision on a contract-by-contract basis. (Ch. 13 of the Act on Public Procurement)

- Contracting authorities can make an exclusion decision without a prior referral.
- Non-governmental parties can submit complaints and/or evidence to the decision-maker.

**Commencement of Proceedings (Trading Prohibitions):** Referral Required.

- The court cannot initiate an exclusion proceeding without a prior referral. Proceedings must be initiated by a prosecutor or the Swedish Competition Authority.
- Non-governmental parties cannot submit complaints and/or evidence to the decision-maker.

**Notice Requirements & Opportunity to be Heard:** Yes & Yes.

*Contract-by-Contract Exclusions:*

- Suppliers receive notice when:
  - The contracting authority decides that grounds exist.
  - The exclusion becomes effective.
- Notice must contain exclusion grounds and give the supplier an opportunity to comment.
- The contracting authority must make reasoning available to the supplier (not to the public).

*Trading Prohibitions – Notice of Proceedings:*

- Suppliers receive notice of proceedings when an investigation is commenced.
- Notice of proceedings must contain the grounds for exclusion.
- The court must make reasoning available to the supplier and the public.

#### *Trading Prohibitions – Opportunity to be Heard:*

- Suppliers are entitled to present a defense to the court and may:
  - Obtain the evidentiary record.
  - Make a written submission.
  - Request an in-person hearing.
  - Call witnesses to an in-person hearing to testify on the supplier's behalf.

#### **Appellate Review of Exclusion Decisions:** Yes.

*Nature and Forum of Review:* Judicial.

- Contract-by-contract exclusions are reviewed by the relevant administrative court.
- Trading prohibitions are reviewed by the relevant Court of Appeal.

*Means Available to the Supplier:* As part of appellate review, suppliers may:

- Obtain the evidentiary record.
- Make a written submission to the appellate body (proceedings in the administrative courts and Courts of Appeal are usually written).

*Duration of Appeal Process:* Typically between one to six months.

#### **Legal Representation:**

- A supplier **may** be represented by counsel. In trading prohibition proceedings, the court may appoint a public defender (offentlig försvarare), but only when there are "special reasons" to do so. (Sec. 19 of Act on Trading Prohibitions)

#### **Subsequent Modification of Exclusion Decision:** Yes.

Contract-by-Contract Exclusions:

- Except through an appeal, a supplier is **not** entitled to seek a modification of any decision to exclude it from a procurement process after it goes into effect.
- A supplier **may**, however, include evidence of sufficient measures to demonstrate its reliability (*i.e.*, "self-cleaning") with any subsequent bids submitted to a contracting authority. (Sec. 5 of Ch. 13 of Act on Public Procurement)

Trading Prohibitions:

- An individual subject to a trading prohibition can request the court to reconsider the decision. (Secs. 31-32 of Act on Trading Prohibitions)

### III. Substantive Grounds for Government-Wide Exclusion:

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**Automatic Exclusion:** Yes (Contract-by-Contract Exclusion Only).

Based on a supplier's criminal conviction for the following (Sec. 1 of Ch. 13 of Act on Public Procurement):

- Corruption;
- Fraud;
- Money laundering;
- Terrorist offenses or offenses linked to terrorism;
- Social harms (human trafficking);
- Organized crime offenses.

Based on a supplier's civil judgment for the following (Sec. 2 of Ch. 13 of Act on Public Procurement):

- Tax-related offenses (failure to pay taxes or social security contributions).

**Discretionary Exclusion:** Yes.

*Contract-by-Contract Exclusion:*

Based on an administrative (*i.e.* non-judicial) decision or finding against the supplier for the following (Secs. 2-3 of Ch. 13 of Act on Public Procurement):

- Tax-related offenses (failure to pay taxes or social security contributions);
- Labor-related offenses;
- Social harms (human trafficking, environmental offenses);
- Collusion and/or infringing competition;
- Poor performance, non-performance, and/or failure to perform on public contracts;
- Other:
  - Gross professional misconduct;
  - Conflict of interest;
  - Misleading the contracting authority that the supplier satisfies the selection criteria or is not subject to any exclusion grounds;
  - Unduly influencing or attempting to influence the contracting authority's decision-making process.

*Trading Prohibitions:*

Based on a supplier's criminal or civil judgement for the following (Secs. 4-7 of Act on Trading Prohibitions):

- Criminal conviction;
- Grossly improper actions related to bankruptcy;
- Gross failure to pay taxes;
- Collusion and/or competition-related offenses.

#### *Considerations for Trading Prohibitions:*

- Typically, a court will impose a trading prohibition on an individual who has been sentenced for serious economic crime. In deciding whether to impose a trading prohibition on an individual, the court considers factors such as the pervasiveness of the misconduct, whether the misconduct was aimed at achieving considerable economic gain, and whether the misconduct caused, or would have caused, serious harm. (Secs. 8-9 of Act on Trading Prohibitions)

#### **Self-Cleaning:** *Contract-by-Contract Exclusion*

- A supplier may avoid exclusion by demonstrating "self-cleaning" in almost every case (*e.g.*, compensating for damages caused, actively cooperating with authorities, implementing remedial measures to prevent future misconduct). (Sec. 5 of Ch. 13 of Act on Public Procurement)

#### **Exclusion based on Bankruptcy and Cross-Debarment:** Discretionary & Discretionary.

- Bankruptcy is a discretionary ground for both contract-by-contract exclusions and trading prohibitions. (Sec. 2(2) of Ch. 13 of Act on Public Procurement; Sec. 5 of Act on Trading Prohibitions)
- An exclusion by another jurisdiction could indicate a need to evaluate the supplier, but there must still be an independent basis to exclude the supplier under Swedish law.

## **IV. Scope and Effect of Government-Wide Exclusion:**

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#### **Types of Excluded Suppliers:**

- Contract-by-Contract Exclusions: Individuals and Corporations.
- Trading Prohibitions: Limited to Individuals.

#### **Scope of Exclusion:**

##### *Extension to Other Agencies and Organizations:*

- Contract-by-contract exclusions do **not** prohibit the supplier from contracting with other government agencies. However, the same facts could constitute an exclusion ground in every subsequent tender process.
- Trading prohibitions prohibit an affected individual from conducting any business activities, including contracting with any government agency.
- Contract-by-contract exclusions do **not** extend to subnational governments.
- No known countries or international organizations that automatically recognize and apply exclusions from Sweden.

##### *Effect on Ongoing Contracts:*

- Contract-by-contract exclusions do **not** affect ongoing contracts.
- A trading prohibition requires the individual to cease his or her economic activities, including any ongoing contracts.

*Effect on Subcontracting:* Excluded suppliers **cannot** serve as subcontractors.

*Effect on Excluded Individuals:*

- Individuals subject to a trading prohibition **cannot** be a board member, work as an executive officer, or own more than 50 percent of a company. (Sec. 11 of Act on Trading Prohibitions)
- Contracting authorities shall exclude a supplier from a procurement process if (i) a member of its administrative, management, or control body; or (ii) a person authorized to represent, decide on, or control the supplier was convicted of an offense listed in Section 1 of Ch. 13 of the Act on Public Procurement.

**Effect on Affiliates:** Not addressed.

**Duration of Exclusions:**

*Duration Specified in Legal Framework:*

- Trading prohibitions can last from three to ten years. (Sec. 10 of Act on Trading Prohibitions)

*Duration Depends on Applicable Exclusion Ground? Yes.*

- The seriousness of the infringement and the protection of general interests are factors affecting the length of the trading prohibition.

*Discretion to Deviate?*

- No. The court does not have discretion to deviate outside the three-year minimum or ten-year maximum specified in the Act on Trading Prohibitions.

**Exceptions/Waivers to Exclusions:**

- Contract-by-Contract Exclusions: Yes. A contracting authority may refrain from excluding a supplier from a procurement process if justified by compelling reasons of public interest. (Sec. 6 of Ch. 13 of Act on Public Procurement)
- Trading Prohibitions: Yes. An individual subject to a trading prohibition may be granted an exemption if justified by the specific circumstances and the exemption would not be contrary to the prohibition's purpose. (Secs. 35-36 of Act on Trading Prohibitions)

**Other Sanctions:**

- None.

## V. Government-Wide Transparency and Exclusion List:

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**Official List of Excluded Suppliers? Yes.**

- There is a register of trading prohibitions maintained by the [Swedish Companies Registration Office](#). While the register is not publicly accessible, the Registration Office handles inquiries regarding individuals and will issue a certificate stating whether the queried individual is under a trading prohibition. The certificate also provides information on the underlying court decision.

**Procurement Checks:**

- No. Procuring entities are not required to check a list of excluded suppliers before awarding a contract.

**Reporting on Exclusions:**

*Number of Exclusions:* Figures unknown.

*Regular Reporting:* No requirement for regular reporting on exclusions.

*Other Transparency Mechanisms:* None.

**VI. Limited Scope Exclusion Systems:**

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**Entity-Wide (e.g., Single-Agency) Exclusion?** No.

**Contract-By-Contract (e.g., Single-Tender) Exclusion?** Yes. See above.

**Subnational Exclusions:** None.