

EU

European Data Protection Supervisor Issues Opinion on European Travel Information and Authorisation System

On 6 March 2017, the European Data Protection Supervisor (EDPS) [issued an opinion](#) on the proposed European Travel Information and Authorisation System (ETIAS). The EDPS praised the content of the proposals, which would require visa-exempt travellers to undergo a risk assessment with respect to security, irregular migration and public health before entering the EU. However, the EDPS expressed concerns about the use of data gathered through these processes for the purpose of profiling individuals, noting that border management and security are two distinct objectives. The EDPS called for legislators to clearly set out their evidence for the necessity of such powers and to ensure that securing the EU's borders does not come at the expense of individuals' fundamental rights.

UK

Information Commissioner: UK Should Seek to Obtain Adequacy Decision After Brexit

On 8 March 2017, the Information Commissioner, Elizabeth Denham, [gave evidence](#) to the House of Lords EU Home Affairs Sub-Committee expressing her opinion that the UK should seek to obtain an adequacy finding from the European Union when the UK formally exits the EU. Ms Denham stated her belief that this would be the best arrangement from a commercial perspective, but cautioned that it may be challenging to achieve an adequacy decision immediately after the UK exits the EU. The Information Commissioner noted that the UK would have to undergo a statutory process, which would involve the Article 29 Working Party providing an opinion, in order to obtain such a decision. Whilst acknowledging other methods by which data could be lawfully transferred, such as obtaining the consent of data subjects, Ms Denham highlighted the risk of a "cliff-edge" should the UK government fail to agree a transitional arrangement with the EU.

Government Unveils Digital Economy Strategy

On 1 March 2017, the UK government set out its new [digital economy strategy](#). The government expressed its commitment to implementing the General Data Protection Regulation (GDPR) noting that it will "ensure a shared and higher standard of protection for consumers and their data". The government reiterated that it will seek to ensure data flows with European Union member states remain uninterrupted after the UK exits the EU, although the strategy does not provide any detail on how the government will try to achieve this aim. Cybersecurity is also a key focus of the new strategy. The government plans to explore the use of the GDPR and other regulatory tools to "drive improvements in cyber risk management across the economy". The recently established National Cyber Security Centre will provide a centre of expertise on cybersecurity, issuing advisory guidance for public and private sector organisations, as well as managing national cybersecurity incidents. The government has emphasised that the strategy is a framework and that they encourage businesses and other stakeholders to submit proposals to central government with ideas for how to grow and develop the UK's digital economy.

Court of Appeal Rules on Discretion, Proportionality and Motive in relation to Subject Access Requests

In [Deer v University of Oxford](#), the Court of Appeal refused an application to order compliance with two subject access requests (SARs) made by Dr Deer, and in the process, clarified a number of issues under the Data Protection Act 1998 (DPA). This appeal follows the recent ruling of *Dawson-Damer v Taylor Wessing LLP* [2017]. Dr Deer made two SARs against her former employer, the University of Oxford, in the context of an ongoing dispute regarding sex discrimination against and victimisation of Dr Deer. The University searched over 500,000 documents and disclosed 63 documents to Dr Deer. Dr Deer submitted that the University had not complied with its obligations under the DPA. The High Court held that the University was not required to take any further steps in compliance with the SAR as it would serve no useful purpose.

Dr Deer appealed this decision, but the Court of Appeal confirmed that the High Court had exercised its discretion within the permissible range when reaching this conclusion. The Court also confirmed that the obligation to search is limited to a reasonable and proportionate search. The Court held that this approach is consistent with EU law, albeit inconsistent with the views of the Information Commissioner's Office.

Although Dr Deer's appeal failed, it was noted by the Court that the motive behind Dr Deer's SAR was not relevant. The right to a SAR is not subject to any express purpose or motive test.

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