

General Data Protection Regulation (GDPR) Building the Model for Compliance

By: **S. George Alfonso,**
Of Counsel
Braumiller Law Group, PLLC



What is GDPR?

➤ GDPR is new, but the concept of Complex Compliance from a Legal Standpoint is NOT New

A. The Good News: The compliance “Wheel” has largely been constructed

1. The US Act analogous to the GDPR: Foreign Corrupt Practices Act [“FCPA”]

a. Purpose of the FCPA

- To prevent corruption by US companies in international arena

b. Controls the actions of company individuals regarding corruption

- Bribery/illicit acts

➤ *Any act prohibited in the US is prohibited overseas*

c. Liability can extend to BOTH company and individuals

GDPR vs. FCPA

◀ Similarities between the FCPA and the GDPR:

A. Purposes of the FCPA and GDPR

1. GDPR created to protect the privacy of people
2. FCPA created to protect US businesses
 - Attempt to protect US businesses in international arena
 - To level the international playing field



B. Like GDPR: FCPA claims extra-territorial jurisdiction for enforcement

1. Extremely minimal US Contacts required for FCPA liability

C. Like GDPR: Minimal-zero US-presence required for liability

D. Like GDPR: Complex unforgiving [potential] personal liability

GDPR vs. FCPA *(cont'd)*

- E. Like GDPR: Aggressive enforcement of FCPA by authorities
- F. Like GDPR: Potentially massive fines/penalties
- G. Like GDPR: FCPA requires ongoing update/review for compliance
 - 1. Business practices/areas change over time
 - Semi-annual review for compliance should be the rule
- H. Do NOT want to start a fight with either US Government or EU

➡ How to modify and apply the “FCPA Compliance Wheel” to the GDPR

- There are differences between FCPA and GDPR as discussed herein



Becoming GDPR Compliant

- Compliance Review for GDPR and its rapidly approaching requirements [No Grace Period]
 - A. The TEAM: Identify/assemble the SPECIALISTS required to fully satisfy compliance
 1. Will be a larger “Compliance Team” than required for FCPA compliance
 - a. “Compliance Team Members” may include outside individuals
 - “Outside Compliance Team Members” may include Europeans
 - Either/Both US/European IT and/or Legal Counsel
 - b. Designate “Compliance Team Liaison Rep(s)” for each subject matter
 2. Designate identified subject matter(s) for each “Compliance Team Member”



Becoming GDPR Compliant *(cont'd)*

3. Acknowledge the necessity of flexibility to expand/modify Compliance Team
 - a. Both in the initial creation process and post-creation/implantation
 - Including the ongoing review semi-annual review process
- B. Create and Establish a functional and flexible virtual “Communication Platform”
 1. Must keep all Team Members [or at least Liaison Members] in the loop
 - a. Must include a virtual functionality for the Communication Platform
 - Team Members may be in Europe/multiple US locations
 2. Communication Platform must include written protocol for communications
 - a. Written e-mail/memo process to insure a written history
 - To allow current/new Team Members to review entire history

Becoming GDPR Compliant *(cont'd)*

C. Create your company's codified GDPR specific and unique "Compliance Protocol"

1. Start with GDPR Compliant check list

- a. Review internal specific/unique business for further specifications
- b. Assign each "To Do Element" to Compliance Team Member(s)
 - Confirm Co. each specific "Compliance Assignment"
 - Identify and fully answer all issues/questions for each step



2. Set realistic target dates for completion of "Company Protocol"

- a. "Internal Target Date": Sufficiently prior to May 25, 2018 in order to provide:
 - "Internal Global Review" of Company Protocol
 - Corrections/additional work
- b. "Actual Target Date": Sufficiently prior to May 25, 2018
 - Should be sufficient time between the two Target Dates

Becoming GDPR Compliant *(cont'd)*

3. Once Company Protocol is Completed: Do NOT let it collect dust on the shelf
 - a. Company Protocol is NOT the end of the process – only the beginning
 - b. Create written “Internal Compliance Training Program” [“ICTP””]
 - Schedule as required participation in the ICTP
 - This is in addition to the semi-annual Protocol Review



Liabilities Under the GDPR

➤ Potential Liability Under the GDPR

A. Simply Put: MASSIVE

1. Up to €20M **or** 4% of “Turnover” per incident
 - a. 4% Fine could be potentially far greater than €20M
 - If Parent Co. value from “Targeted Turnover” is > \$500,000.00

B. How to avoid and if necessary defend GDPR claim(s) of liability

1. Same Steps for both: Create a functionable Global Compliance Protocol
 - a. Fully and timely implement the functional Global Compliance Protocol
 - b. Maintain training and updated compliance reviews as discussed herein
2. Following the above steps will at the very least provide a basis for mitigation
 - a. IF not dismissal in the event of any alleged GDPR violation(s)
 - My practice includes complex international dispute resolution



Questions?

S. George Alfonso, Of Counsel

Twenty Plus Years of International and Regional Litigation/Arbitration and Contract Law Practice

Areas of Representation:

- Negotiating/Drafting Complex [US and International] Commercial Contracts
- Legal Liaison for Clients Working with International Counsel
- Expert Witness on U.S. Law in International Litigation

First Chair in Complex Commercial Litigation/Arbitration & Circuit Court Appeals

- Complex Commercial Litigation Representation [U.S. - Multi-Jurisdictional]
- International Arbitration of Complex Commercial Claims
- Collective Bargaining Arbitration: NFL/NFLPA
- First Chair Appellate Counsel to 8th Circuit
- Steering Committee Counsel for 5th Circuit Appeal
- Creditor Bankruptcy Representation

Mr. Alfonso is a highly-esteemed speaker throughout the United States and Internationally.



Braumiller Law Group, PLLC

5220 Spring Valley Road, Suite 200

Dallas, TX 75254

Ph: (214) 878-2390

sgeorge@BraumillerLaw.com

www.BraumillerLaw.com

