Edmund Sautter is a partner at global law firm Mayer Brown LLP, resident in its London office, and is currently seconded to Merrill Lynch's London law department. Below he responds to Real eDiscovery's "Ask the Experts" question:

Are there any practical steps that I can take to mitigate the burden of compliance with European Data Privacy rules, when giving discovery in the U.S.?

The obligation to observe the European Data Protection Directive, as implemented by the EU member states, is an increasingly high profile issue for those providing disclosure in proceedings outside the EU, in particular in countries like the U.S. which have, on the one hand, broad discovery rules and, on the other, a somewhat limited approach to privacy issues. The Directive has strict rules (with relatively limited derogations) prohibiting the collation, and transfer out of the EU, of personal data. The following suggestions may assist in moderating the effect of these tensions.

First, note that the Directive has been implemented by domestic legislation in each EU member state. The mode of implementation (and the approach of the respective Data Protection commissioners) has not been entirely uniform between the member states, so you should take advice in relation to each state where the relevant data resides. A particular approach in one state may not be replicated in its entirety in another. However, the definition of personal data is broad, which leads to the next point.

In negotiations with the other party, seek to restrict so far as possible the extent of the data searches that are required. Overly broad search terms generate large amounts of data, some of which is relevant, but (often) much of which is not. (I have personal experience of a case where agreed search terms resulted in a body of collected data of which less than 5 percent was actually relevant.) The wholesale transfer of such irrelevant material out of the EU (to the extent that it contains personal data) is likely to breach the Directive. Therefore, reduce the burden of in-country review prior to transfer by negotiating, if possible, restricted search terms, date ranges, custodians, and so on. Further, although there is often reluctance to conduct the relevance review in-country, this may be a more practical solution, given the likely extent of personal data, than seeking first to identify personal data with a view to redacting it prior to transfer for the relevance review.

Consider also whether consent is an appropriate way forward but be aware of its significant limitations. For instance, the consent of the author or recipient of an email only extends to the personal data of that person, and not the personal data of the other party to the email. Also such consent must be freely given and capable, without sanction, of being withdrawn.

Based in London, Edmund Sautter advises and represents banks and other financial institutions in disputes, contentious regulatory matters, and associated risk management issues. He is a member of the Sedona Conference Working Group on international and electronic information, discovery and disclosure.

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