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Welcome

Regulatory Trends in Product Compliance 2021
Presented by Louise Forrest
15.12.2021

Webinar Outline

Regulatory Overview of 2021:

Recap of the regulatory highlights of 2021 and their impact on product manufacturers, particularly those in the electronics sector.

What Lies Ahead:

A look at upcoming and emerging regulatory developments and what to watch out for in 2022.

Agenda

- **Sustainability**: sustainable products initiative, circular electronics initiative, ecodesign and energy labelling plan, other sustainability initiatives, right to repair in USA and Australia.
- **Digitalisation**: RED, Cyber Resilience Act, GPSD, USA IOT Cybersecurity Improvement Act, California Connected Devices Privacy & Consumer Protection, UK Product Security Bill.
- **Chemicals in Products**: PIP 3:1; PFAS; MCCP, RoHS developments.

Sustainability

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Sustainable Products Initiative

From March to June 2021 the EU Commission opened a public consultation on its sustainable products initiative (SPI) the aim of which is to make products placed on the EU market more **sustainable** - part of the **New Circular Economy Action Plan 2020.**

One of the initiatives to help the EU reach its **Green Deal** objectives of a climate neutral & resource efficient economy.

Sustainable Products Initiative

Proposes to revise the **Ecodesign Directive 2009/125/EC** and, along with addressing the issue of harmful chemicals in products, its main aim is for products being manufactured to be more **durable, reusable, repairable, recyclable and energy efficient**.

A public consultation on the measures closed in June 2021 and a legislative proposal is expected to be adopted in **Q1 of 2022**.

Sustainable Products Initiative

- Encompassing **more products**
  - A wider range of ErP
    - specific focus on **electronics & ICT equipment**
  - **non ErP**, such as textiles, furniture, steel, cement and chemicals.
- New rules for manufacturers provide **more circular products**:
  - providing repair services
  - providing spare parts
  - incentivising product-as-a-service (PaaS) models.

Why buy when you can borrow?

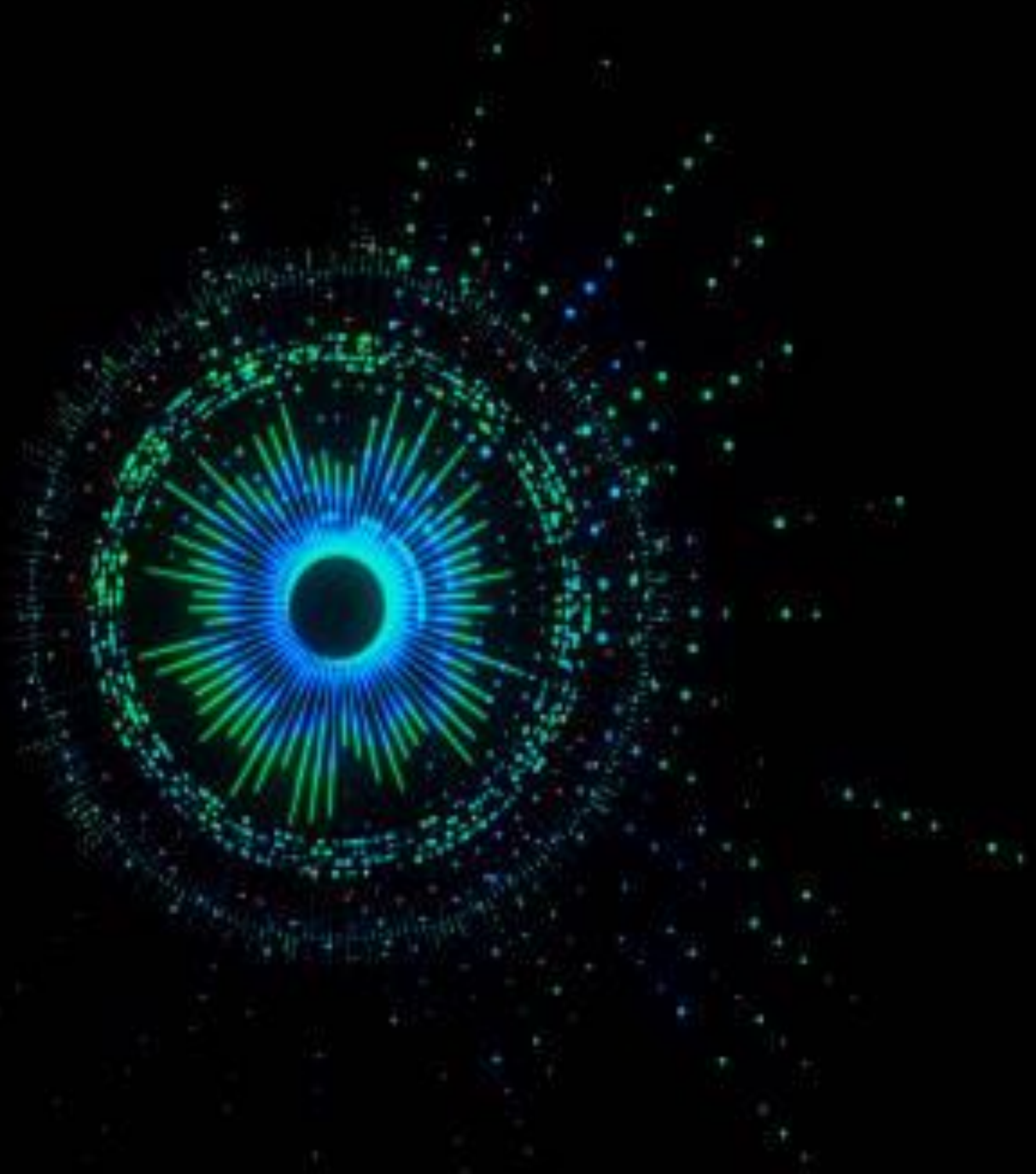
Borrow useful Things for your home, projects and adventures.
Affordable. Convenient. Kinder to the planet.

Start Borrowing

Sustainable Products Initiative

- **Mandatory sustainability labelling** and/or introduction of **digital product passports**
- Setting **mandatory minimum sustainability requirements** on **public procurement of products.**
- Introducing measures for **production processes** to facilitate the use of recycled content and remanufacturing, as well as tracking the use of hazardous substances
- Requirements to address **social aspects** throughout the product life cycle

CIRCULAR ELECTRONICS INITIATIVE



Circular Electronics Initiative

Industry specific initiative - **Circular Electronics Initiative**

CEI aims to promote longer product lifetimes :

- Making the electronic & ICT sector a priority sector for right to repair, including right to update obsolete software
- Regulatory measures under the Ecodesign Directive for electronics & ICT such as mobile phones, laptops & tablets (Consultation **on designing sustainable phones & tablets** closed in August, legislative measures likely in **Q4 2022.**)
- Introducing a common charger for electronic devices

Circular Electronics Initiative - common charger

Proposed this through a revised **Radio Equipment Directive** - products such as mobile phones, tablets, digital cameras, headphones, headsets, handheld video game consoles, and portable speakers as they share similar charging characteristics and are most used by a large group of consumers. The proposal puts forward the following measures:

- Harmonise the charging port for electronic devices - USB-C will become the common port for all devices
- Unbundle the sale of chargers from the sale of electronic devices
- Harmonise fast charging technology - to “help prevent different producers unjustifiably limit the charging speed and will help to ensure that charging speed is the same when using any compatible charger for a device”.
- Inform consumers about the charging characteristics of electronic devices.

Ecodesign & Energy Labelling Working Plan 2020-2024

Ecodesign & Energy Labelling Working Plan - reviews existing measures and sets out products of interest for new regulations. Products listed under the 2020-2024 Plan include:

- professional laundry appliances,
- professional dishwashers,
- professional cooking appliances,
- swimming pool heaters,
- small network equipment for home and office use and enterprise network equipment,
- universal external power supplies,
- uninterruptible power supplies and
- industrial smart sensors.

Plan is still under development and likely to be subject to two-year delay.

Other Sustainability Initiatives

Other legislative proposals on the EU Commission's sustainability agenda likely to be published soon are:

Consumer policy - strengthening the role of consumers in the green transition. This aims to ensure consumers receive reliable information on products, prevent greenwashing & set minimum requirements for sustainability labels and logos.

Environmental performance of products and businesses - substantiating claims. This requires companies to substantiate claims they make about the environmental footprint of their products/services and aims to standardize the methods companies use to substantiate claims they make, thereby making the claims verifiable and comparable.

Other Sustainability Initiatives

EU Strategy for Sustainable Textiles The EU Commission is working on a strategy for sustainable textiles which will aim to incentivise business and private consumers to choose sustainable textiles, boost the re-use and recycling of textiles and achieve high levels of collection of textile waste. A public consultation ran from May to August this year. A Commission communication on the strategy is planned for adoption in the first quarter of 2022.

Sustainable consumption of goods - promoting repair and reuse Its aim is to encourage consumers to make more sustainable choices by providing incentives/tools to use goods for longer. Commission adoption of Directive planned for Q4 2022.

Right to Repair

Right to repair - USA

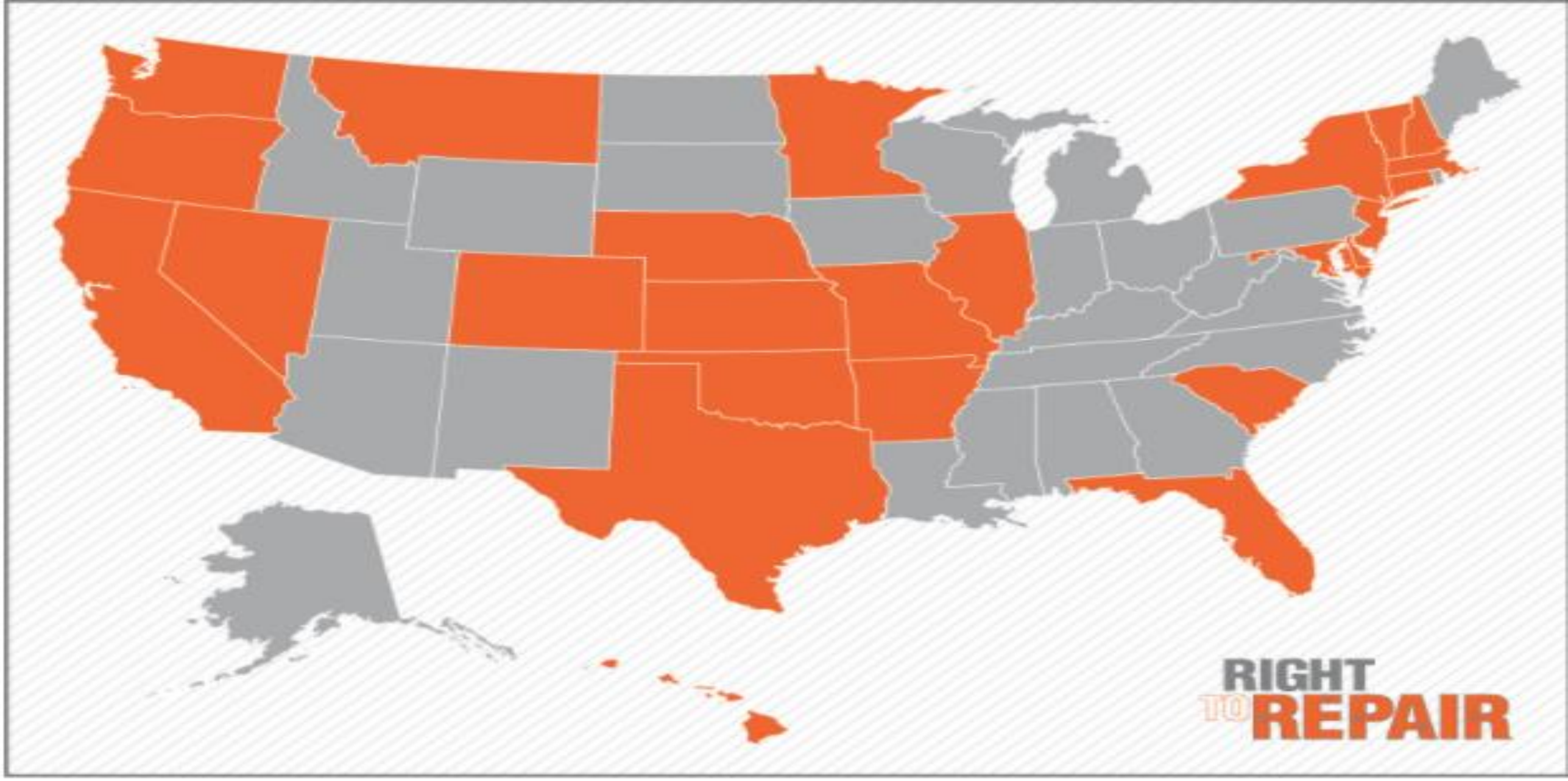
Earlier this year the FTC released "Nixing the Fix" report following a 2 year market study on repair restrictions in mobile devices & the automotive market commissioned by Congress which found "scant evidence to support manufacturers' justifications for repair restrictions."

The Biden administration indicated that the right to repair would be a policy priority and, in July, President Biden signed an Executive Order calling on the FTC to exercise it's statutory rulemaking authority to combat "*unfair anticompetitive restrictions on third-party repair or self-repair of items, such as the restrictions imposed by powerful manufacturers that prevent farmers from repairing their own equipment*"

Right to repair - USA

Many US States have advanced some form of right to repair bill, but the proliferation of many of these bills has met with little success.

This year we saw a proposal at Federal level with a ‘**Fair Repair Act**’ proposed in **June**. The bill was introduced in the House of Representatives and has a focus on consumer tech, requiring original equipment manufacturers of digital electronic equipment to make available certain documentation, diagnostic and repair information to independent repair providers.


RIGHT
TO REPAIR

Right to repair - Australia

Why the inquiry? | Issues paper | Draft report | Final report

Final report to Government and release

The final inquiry report was handed to the Australian Government on 29 October 2021 and publicly released on 1 December 2021.

The report sets out the Commission's findings and recommendations on the issue of a right to repair in Australia. The focus has been on whether there are barriers to repair that may require a government policy response, either through existing or new laws.

Read the inquiry report

Read submissions (243) | Read comments (243)

Inquiry timeline

2020

- 29 OCT — Terms of reference
- 7 DEC — Issues paper

2021

- 1 FEB — Initial submissions due
- 11 JUN — Draft report
- 19 JUL — Public hearings started
- 23 JUL — Draft report submissions due
- 29 OCT — Final report to Government
- 1 DEC — Final report released

Digitalisation

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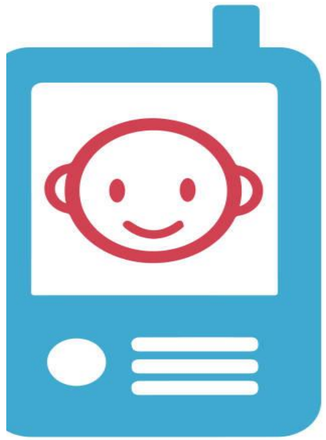
“If everything is connected, everything can be hacked”

Radio Equipment Directive

In **October 2021** European Commission adopted a delegated Act to RED increasing the level of cybersecurity, personal data protection and privacy for categories of radio equipment that pose cybersecurity risks.



Radio Equipment Directive

Creates new **legal** requirements for safeguarding cybersecurity of electronic devices which manufacturers will have to take into account in the design and production of concerned products.

- Protect privacy and personal data
- Prevent risk of monetary fraud
- Protect communication networks

The delegated act will come into force following a two-month scrutiny period, if the Council and Parliament not raise any objections. There will be a 30 month transition period for manufacturers to start complying with the new legal requirements - expected to apply by **mid-2024**.

EU Cyber Resilience Act

In September, EC President Ursula von der Leyen announced a **Cyber Resilience Act** - a cybersecurity law for connected devices. Its aim will be to set **common cybersecurity standards for connected devices.**

Dutch MEP, Bart Groothuis, lawmaker leading NIS2 noted that while it addresses security of critical supply chains, **connected devices are a blind spot** in the EU cybersecurity arsenal.

"*The internet of things will bring about a great deal of unsecured products, because security is often not on top of the mind of the producers of such machines. And there is no European standard yet to be upheld. It's nice to have a pulled pork machine in your kitchen, or a smart coffee machine, but it is also a way hackers can enter your home IT systems.*"

EU Cyber Resilience Act

Hackable Home Project - report released in **September 2021**. Tested security and reliability of connected devices across 4 EU countries.

"*The security and confidentiality of 16 smart devices have been tested ... A total of 54 vulnerabilities were detected among the devices, with 10 of the 16 tested devices affected by a vulnerability labeled to be 'of* ***high severity*** *' or '****critical****'."*

EU Cyber Resilience Act

Digital Europe also released a report in September flagging the lack of baseline cybersecurity requirements and calling for new horizontal legislation.

The **EU Cybersecurity Act,** applicable since **June 2021**, introduced an EU-wide cybersecurity certification framework for ICT products, enabling the creation of EU certification schemes.

General Product Safety Directive (GPSD)

GPSD is a cornerstone piece of EU product safety and consumer protection legislation, ensuring only safe products are sold on EU Market.

In **June** of this year, marking its twenty year anniversary, a draft regulation was proposed to revise the Directive, overhauling and updating the regime as whole. Within this were particular aspects relevant to data protection and cybersecurity:

General Product Safety Directive (GPSD)

- Updated **definition of “product”** covering items that are “ interconnected or not to other items”;
- Taking into account a **product’s cybersecurity features** when assessing the **safety** of a product;
- **Free software updates** as a right of remedy for a consumer where a product is recalled by a manufacturer

USA Cybersecurity

No overarching legislation on cybersecurity in USA.

IoT Cybersecurity Improvement Act 2020: concerned with IOT devices used by the federal government, aiming to limit vulnerabilities in such devices - requires NIST to develop and publish guidelines for IOT devices used by federal government agencies. Purchasing of products not in line with these guidelines will not be permitted.

USA Cybersecurity

California Connected Devices Privacy and Consumer Protection SB 327 came into effect in January 2020. Defines security requirements for IOT devices - fitted with "**reasonable security features**" protecting both the connected device and the information it contains. Significant step but still quite vague for manufacturers to implement.

Oregon HB-2395 is similar to California's law and also went into effect January 2020.

UK Product Security and Telecommunications Infrastructure Bill

Bill proposed on **24 November 2021** and applies to “connectable products” such as smartphones, smart TVs, games consoles, security cameras and alarm systems, smart toys and baby monitors, smart home hubs and voice-activated assistants and smart home appliances such as washing machines and fridges, as well as those that can connect to multiple other devices but not directly to the internet e.g., smart light bulbs, smart thermostats and wearable fitness trackers.

UK Product Security and Telecommunications Infrastructure Bill

It will prevent the sale of these consumer connectable products in the UK that fail to meet baseline cybersecurity requirements. Bill gives Ministers new powers to bring in **tougher security standards** for device makers such as **ban on easy to guess default password** reloaded on device, requirement for manufacturers to inform buyers at the POS about the minimum amount of time a product will receive **vital security updates** and to provide a **public point of contact** to report flaws and bugs.

Fines up to **£10 million or up to 4% of global revenue** for firms failing to comply

Chemicals in Products

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Phenol, isopropylated phosphate (3:1) - PIP 3:1

In January 2021 the US Environmental Protection Agency (EPA) published a final rule under Toxic Substances Control Act (TSCA) prohibiting the processing and distributing in commerce of PIP 3:1, including PIP 3:1 containing articles after **8 March 2021**, as well as imposing record keeping requirements and prohibiting releases to water from that date.

Why target PIP 3:1?

PIP 3:1 is a persistent, bioaccumulative and toxic (PBT) chemical and remains in the environment for long periods of time and can build up in humans. It is toxic to aquatic plants, aquatic invertebrates, sediment invertebrates, and fish. Data indicate the potential for reproductive and developmental effects, neurological effects, and effects on systemic organs, specifically adrenals, liver, ovaries, heart, and lungs.

Phenol, isopropylated phosphate (3:1) - PIP 3:1

Prohibition had a significant impact on industry, catching them largely off-guard. It is widely used used as a plasticizer, a flame retardant, an anti-wear additive, or an anti-compressibility additive in hydraulic fluid, lubricating oils, lubricants and greases, various industrial coatings, adhesives, sealants, and plastic articles. With limited replacement options it impacts a wide range of consumer and commercial goods - mobile phones, computers, laptops, semiconductors and other electronic devices and industrial and commercial equipment used in various sectors such as transportation, life sciences & semiconductors.

Phenol, isopropylated phosphate (3:1) - PIP 3:1

Due to concerns raised by Industry across many sectors (citing more time was needed to determine whether and where PIP 3:1 is present, find alternatives and product new articles that are PIP free.) EPA issued a 180 day “no action assurance” indicating discretion would be used when it came to enforcement. On 17 September EPA provided short term extensions for PIP 3:1 to **March 2022** in respect of the prohibition and record-keeping requirements and this has been followed by a proposed rule to extend the compliance date to **October 31, 2024**. Open for comments until **27 December 2021**.

Per- and polyfluoroalkyl substances (PFAS)

Per- and polyfluoroalkyl substances (PFAS) are a group of man-made chemicals and are known as “**forever chemicals**” due to their persistent and bioaccumulative characteristics. They are used in many industries from **electronics to textiles to automotive**. In recent times they have been the focus of increased regulatory attention underpinned with the concern to greater protect human health and the environment from these chemicals.

Per- and polyfluoroalkyl substances (PFAS)

In the US, the EPA has proposed a new rule under TSCA requiring manufacturers and importers to report information on PFAS, including *articles* containing PFAS. The final rule must be published not later than 1 **January 2023**.

This trend to regulate PFAS is reflected at the State level with a proliferation of bills across many states. In the last 2-3 years there has been a raft of bills on PFAS on reporting, testing, banning and restricting PFAS.

Per- and polyfluoroalkyl substances (PFAS)

Maine is leading the way, recently passing a law banning the sale of new products containing intentionally added PFAS unless the substance's use is unavoidable. From **1 January 2023** it will be prohibited to sell rugs, carpets or fabrics treatments containing PFAS, extending to all products by **2030**.

Most of the ban on uses refer to one or two specific uses e.g. in food packaging or fire fighting foams. California has directed its attention to some children's products and cosmetics and Washington State is seeking input on a draft report identifying regulatory action on toxic chemicals in consumer products which includes restrictions on PFAS in carpets, upholstery and furniture. Comment period open until **January 14, 2022**.

Per- and polyfluoroalkyl substances (PFAS)

In Europe, **Denmark, Germany, the Netherlands, Norway, and Sweden** announced to ECHA their intent to prepare a restriction proposal under EU REACH for the manufacture, placing on the market, and use of PFAS.

This restriction proposal is expected by J**uly 15, 2022**, and if passed would enter into force in **2025**.

Medium Chain Chlorinated Paraffins (MCCP)

MCCP - used as plasticisers and flame retardants in PVC cable insulation & sheathing, as well as in leather goods, metalworking fluids and carbonless copy papers. Been detected in mammals, fish, house dust, breast milk and domestic ovens !

In **July 2021** the candidate list of substances of very high concern (**SVHC**) was expanded to include eight new substances including MCCP due to their persistent, bioaccumulative and toxic (PBT), and very persistent and very bioaccumulative properties.

Medium Chain Chlorinated Paraffins (MCCP)

MCCPs are also likely to be added to the **ROHS Directive** per Pack 15 Project Final Report published earlier this year. And, as has been the case with SCCPs, they are likely to be added to the **Stockholm Convention of Persistent Organic Pollutants** and the associated national or regional implementing legislation, **POP Regulation** (EU No. 2019/1021)

In the US, the EPA currently require pre-manufacture notices to be submitted under the **Toxic Substances Control Act (TSCA)** Section 5 for various MCCPs and LCCPs.


RoHS

RoHS - EU

Per Article 24 of EU RoHS Directive 2011/65/EU the Commission was obliged to carry out a general review of the Directive and present a report accompanied by a legislative proposal, if appropriate, to the European Parliament and Council by **22 July 2021**. On foot of this, a review was done & report published in **April 2021** which recognised that EU RoHS has been impactful in reducing restricted substances in products & compliance is high, but there exists challenges with areas such as the exemption process, coherence with other regulations restricting substances and the FAQs.

A Roadmap is expected to be published and a public consultation opened by the **end of 2021** with a legislative proposal on the recast expected in **Q4 2022**.

Saudi RoHS Technical Regulation

Saudi Arabia finally published the long awaited Technical Regulation on RoHS modelled on the EU Directive in its original form, restricting 4 heavy metals and 2 brominated flame retardants in large and small household appliances; information and communication technology equipment; lighting equipment; electrical and electronic tools and equipment; games, entertainment equipment and devices, and sports equipment; and monitoring and control tools. Regulation will enter into force on **5 January 2022**.

HS codes are to be used to determine which products are in scope and subject to conformity assessment procedures in Article 5

Non-compliant products can be circulated in the market for up to a year from the publication date i.e. until **9 July 2022**

Omani Draft RoHS Decree

On 12 October 2021 WTO published a notice on a Draft RoHS Decree, a revision of the draft decree published in July, applicable to telecommunications only.

Interestingly, previously following a notification from the Telecommunications Regulatory Authority (TRA) in 2020 all new telecommunications and/or terminal equipment placed on the Omani market and already subject to the type approval process by TRA is expected to comply with the substance restriction requirements of the RoHS Directive, as amended by Directive (EU) 2017/2102. But, beyond this the Sultanate did not release any official legal measure to notify the new rules.

The comment period was extended until **11 November 2021**

EAEU RoHS

In October EAEU issued a draft decision to amend EAEU RoHS Technical Regulation No. 113. Proposed changes include:

- adding DEHP BBP DBP DIBP to the list of substances in Annex 2

- expanding the scope to a new “open scope” category of products

- new exempted products

- amendment to Annex 3 on exemptions.

The proposed date of entry into force of this draft amendment is 180 days after its official publication.

The deadline for comments is **20 January 2022.**

Bangladesh WEEE & RoHS

On **10 June 2021,** the Electrical and Electronic Waste (E-waste) Management Rules were published. They are applicable to the following categories of electrical and electronic products :

- Household appliances
- Monitoring and Control equipment
- Medical Equipment
- Automatic Machines
- IT and telecommunication equipment

Ten substances in EEE are prohibited in accordance with the chemical limits in Schedule 3 from **10 June 2026.**

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Thank You