

BIIA

Business Information Industry Association

Regulatory Monthly Newsletter



Welcome to the 62st monthly newsletter designed to keep BIIA members informed of the significant developments on the policy dossiers being worked on in geographical territories that members operate in.



BIIA would like to thank its fellow industry association, ACCIS, for allowing us to re-use certain information that they have published on regulatory developments within Europe.

SUMMARY

We apologize for the delay in posting this newsletter. An unexpected surge in registrations for the BIIA 2022 Biennial Conference kept us busy.

In this month's newsletter we report on a number of developments in the areas of **data privacy, cybersecurity, information security, digital economy, artificial intelligence (AI) and Environmental, Social and Governance (ESG)**.

All of these topics were discussed at the **BIIA 2022 Biennial Conference** which was held in Singapore May 23rd to 25th. Our theme of **'The Customer Relationship in a Data-driven Digital World'** and the conference programme has attracted a lot of interest with 170 delegates attending.



Readers will be aware that in the last two newsletters we have reported on the special **Regulatory Roundtable on Alternative Data** which was held on **May 23rd** in conjunction with the conference. We are pleased to report that we have seen a strong interest in the event with over 25 regulators attending.

As with previous Roundtables attendance at the event will be by invitation only. If you are a Regulator in the region and would like more information on the Roundtable and how you can attend please contact either Peter Sheerin (sheerinp@biia.com) or Neil Munroe (munroen@biia.com).

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We are keen to ensure that we cover as many relevant regulatory developments as we can in this newsletter so if you have any items you feel would be worth incorporating please do get in contact with Neil Munroe, Deputy Managing Director and Editor of the Regulatory Newsletter by email @ munroen@biia.com.

Privacy

APEC - Cross-Border Privacy Rules Go Global

On April 21, 2022, the United States, Canada, Japan, Singapore, the Philippines, the Republic of Korea and Chinese Taipei published a [declaration](#) (the “Declaration”) establishing the Global Cross-Border Privacy Rules Forum (the “Global CBPR Forum”).



The Global CBPR Forum will establish an international certification system based on the existing APEC Cross-Border Privacy Rules (“CBPR”) and Privacy Recognition for Processors (“PRP”) Systems, enabling participation beyond APEC member economies. The Global CBPR and PRP Systems, as they will be known, are designed to support the free flow of data and effective data protection, and enable interoperability with other privacy frameworks.

Functionally, the Global CBPR and PRP Systems will be independent and separate from the existing APEC CBPR and PRP Systems, and the founding members of the Global CBPR Forum will begin working on transitioning operations of the APEC CBPR and PRP Systems in their jurisdictions to the Global CBPR and PRP. APEC CBPR and PRP-certified companies in the founding jurisdictions automatically will be recognized under the Global CBPR and PRP.

Participation in the Global CBPR and PRP is intended to be open to all countries that accept the objectives and principles of the Global CBPR Forum as outlined in the [Declaration](#).

In a [supporting statement](#) to the Declaration, U.S. Secretary of Commerce Gina M. Raimondo noted that “[t]he establishment of the Global CBPR Forum reflects the beginning of a new era of multilateral cooperation in promoting trusted global data flows that are critically important to our modern economy.” **Click on the highlighted text to access the various documents mentoined in this article.**

EU - European Data Protection Board (EDPB) Adopts Statement on the Enhanced EU-U.S. Privacy Shield

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On April 7, 2022, the European Data Protection Board (the “EDPB”) released a statement on the announcement of a new Trans-Atlantic Data Privacy Framework (the “Statement”).

A new framework for transfers of personal data between the EU and the U.S. has been needed since the previous EU-U.S. Privacy Shield framework was annulled by the Court of Justice of the European Union (“CJEU”) in the [Schrems II](#) judgment in July 2020. Discussions on a potential enhanced EU-U.S. Privacy Shield framework had recently intensified.



In the Statement, the EDPB welcomes the announcement of a political agreement in principle between the European Commission and the U.S. and indicates that it sees U.S. authorities’ commitment to implement measures to protect EU individuals’ privacy and personal data as a positive first step in the right direction.

The EDPB reminds, however, that the joint announcement of the European Commission and the U.S. does not yet constitute a legal framework that can be relied on to legitimize transfers between the EU and the U.S. For the time being, companies must continue taking the necessary measures to comply with the transfer requirements of the EU General Data Protection Regulation and the *Schrems II* judgment.

Once available, the EDPB will examine the European Commission’s draft adequacy decision for the U.S. in light of EU law, CJEU case law and its prior recommendations on this topic. In particular, the EDPB will verify how U.S. authorities’ suggested reforms ensure that the collection of personal data for national security purposes is limited to what is strictly necessary and proportionate, and that an independent redress mechanism is made available to provide EU individuals with an effective remedy and fair trial. To read the EDPB [Statement](#) and the [Press Release](#) click on the highlighted text.

Artificial Intelligence

China - Authorities enforce new rule on recommendation algorithms



Chinese authority plans to initiate an enforcement campaign against abuse of recommendation algorithms, following the promulgation of the country’s new algorithm rule since 1 March 2022, targeting at “information cocoons” and discriminative treatment of consumers based on algorithms.

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The Cyberspace Administration of China (CAC) revealed the enforcement plan during a press conference held in mid-March 2022, stating that the campaign will be kicked off soon and last until the end of this year.

This campaign, according to the CAC spokesperson, aims to urge relevant service providers to implement the requirements set out in the Administrative Provisions on Algorithmic Recommendations for Internet Information Services (the **Algorithm Rule**), which applies to online services deploying recommendation algorithms (**Algorithm-recommended Services**) provided within China.

Key requirements under the Algorithm Rule include the following.

- Transparent disclosure – service providers are required to inform users in a conspicuous way if algorithms are being used to push content to them, and to disclose the basic principles, purposes and mechanics of their Algorithm-recommended Services. Such obligations reflect the call for transparency and explainability of artificial intelligence (AI) technology, which is becoming an increasing focus for companies and regulators worldwide. Further, service providers are required to provide users with convenient opt-out channels or services that are not based on personalised recommendation.
- Ethical use of recommendation algorithms – service providers are not allowed to use Algorithm-recommended Services to induce overconsumption, facilitate monopoly or unfair competition, push inappropriate or unhealthy content to children, etc. The Algorithm Rule also specifically requires service providers to cater to the rights and interests of elderly people and workers (for example ride-hailing or delivery workers).
- Strict oversight on services with “public opinion and social mobilisation capacities” – the Algorithm Rule introduces a multi-level security management system, taking into account the Algorithm-recommended Services’ public opinion and social mobilisation capacities, types of content, user scale, degree of data importance and intervention in user behaviour, etc. Services with “public opinion and social mobilisation capacities” are under the strictest oversight, including social media, online forums, short video and webcasting platforms, etc. They are required to file with the regulator within ten working days of the date of providing services via an online filing platform and conduct security assessments.



The Algorithm Rule is not an isolated move but marks China’s further attempt in AI regulation. At state level, multiple AI-related policy plans, regulatory documents and national standards have been published in the recent years. In September 2021, nine ministry-level regulators jointly publish the Guiding Opinion on Enhancing Comprehensive Governance of Algorithms of Internet Information Service. It proposed to establish the governance framework of algorithms in three years, including

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promulgating relevant regulations and constructing systems of risk monitoring, security assessment, ethical review and filing management.

Also in the same month, a commission under the Ministry of Science and Technology published a set of AI ethical guidelines, putting forward basic ethical requirements for AI and specifying that humans should maintain “full autonomous decision-making power” and that AI is forbidden to “harm public interests”.

Regional regulators are also active in this aspect. In July 2021, Shenzhen issued a draft rule on promoting the AI industry. The draft rule proposed hierarchical, classified and differentiated AI supervision, factoring the risk levels, scenarios, spheres of influence and other specific conditions of different AI applications, which has also shared some spirits of the European Union’s draft AI Regulation (2021).

EU - Artificial Intelligence Act



European Parliament’s leading Committees on the AI Act, IMCO and LIBE, have published their draft [report](#) on the proposal. In terms of content, the draft keeps the definition of AI broad without relevant changes and the list of high-risk applications was extended to cover AI systems designed to interact with children, medical triage, life insurance and algorithms with potential impact on democratic processes.

Systems meant to assess the creditworthiness of people have not been removed from the high-risk category. The text does not include relevant modifications referred to Recital 6, Article 3.1 and Point 5(b) of Annex III.

On 11 May, IMCO and LIBE will hold a session on the consideration of the draft report. 18 May still features as the deadline for amendments to the draft report. In parallel, today the Plenary of the Parliament will vote on the Axel Voss’ non-legislative report about artificial intelligence in the digital age.

In the Council, on 5 May, the Working Party on Telecommunications and Information Society will reconvene to discuss Articles 70 to 85 of the proposal. **Click on the highlighted text to access the report.**

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Digital

Australia - Digital economy regulation settings



On 18 March 2022, the Australian government announced that it had opened a consultation on digital economy regulation settings in Australia. In the consultation the government is seeking feedback on regulatory frameworks, particularly in relation to automated decision making ('ADM') and artificial intelligence ('AI').

The main issues the Australian government is seeking feedback on include:

- **uncertainty and complexity** – there is regulatory uncertainty for both industry and government, as they are subject to multiple regulatory frameworks. Complexity in the regulatory environment deters innovation within government and industry. However, siloed and regime specific regulatory approaches have intensified problems of overlapping regulating and created barriers to the development and effective use of AI and ADM;
- **rapidly evolving international developments** – Australia faces strong global competition when seeking to be a lead in digital economy regulation. Regulation of AI and ADM in Australia needs to keep pace with these developments, whilst taking into account development in Australia's key trading partners to ensure consistency;
- **public trust and confidence** – public trust and confidence in AI and ADM is a potential barrier to achieving the enormous benefits that they can offer. There needs to be a responsibility for improving public understanding of these technologies, and greater guidance provided to users of these technologies;
- **potential for bias or discrimination** – it is recognized that while automation has the potential to reduce bias and discrimination, algorithms may reflect the bias of their programmers. The potential for bias or discrimination is a significant issue for the designers of systems implementing AI or ADM;
- **transparency and ability to explain decision or outcomes** – there may be issues posed with ensuring transparency with systems that use ADM or AI. This is mainly due to the algorithms and technological language used by machines being largely inaccessible and unable to be understood by the public. Conversely, it is unclear the extent of transparency that should be required, as users of AI or ADM are unwilling to share the details of how their relevant systems work;



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- **exercise of discretion** – discretion is often required to ensure fair outcomes when rigid application of a rule could lead to an unintended outcome. However, regulation by simple rules without discretion is easier to automate. Therefore, a balance needs to be struck between efficiency and fairness; and
- **privacy** – personal information is regularly used in AI and ADM systems across a range of sectors. The role and scope of privacy laws in relation to ADM and AI is therefore important, and may need to be expanded.

Further information about the issue paper can be found [here](#).

EU - Launch of the EU Digital Platform



The EU Digital Finance Platform will be launched on 8 April. The [EU Digital Finance Platform](#) is a new website designed to build dialogue between innovative financial firms and supervisors. Its main objectives are to overcome fragmentation and support the scaling up of digital financial services across the Single Market.

The EU Digital Finance Platform will initially consist of two main building blocks: an Observatory offering interactive features such as a Fintech Map, events and a section where users will be able to share relevant research material, and a Gateway which will act as a single access point to supervisors, with information about national innovation hubs, regulatory sandboxes and licensing requirements.

This part of the Platform will also host functionalities linked to cross-border testing – a novelty enabling firms to involve multiple national authorities in the testing of new products or applications. In a second phase, to be launched in 2023, new features are set to be added to the EU Digital Finance Platform, building on user feedback.

Click on the highlighted text to access the platform.

Cybersecurity

EU - European Commission adopts two proposals for cybersecurity and information security regulations

On 22 March 2022, the European Commission (“EC”) adopted two new proposals for a Cybersecurity Regulation and an Information Security Regulation (available [here](#) and [here](#)). These regulations aim to set common priorities and frameworks in order to further strengthen inter-institutional co-operation, minimise risk exposure and further strengthen the EU security culture.

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Cybersecurity Regulation

Under the Cybersecurity Regulation, all EU institutions, bodies and agencies will have to adopt a framework for ensuring common cybersecurity rules and measures. The proposal builds on both the EU Security Union Strategy and the EU's Cybersecurity Strategy for the Digital Decade.



EU institutions will be required to implement a baseline of measures, undertake regular maturity assessments, implement plans for improving their cybersecurity, and share any incident-related information with the “Cybersecurity Centre”.

This being the renamed Computer Emergency Response Team (or “CERT-EU”), updated to bring the name in-line with the terminology used within member states and globally. The CERT-EU acronym will continue to be used to avoid confusion.

The Cybersecurity Regulation also creates a new inter-institutional Cybersecurity Board to drive and monitor the implementation of the regulation and also to help steer the CERT-EU.

Information Security Regulation

Similarly to the Cybersecurity Regulation, the proposed Information Security Regulation also builds on the EU Security Union Strategy and will create a minimum set of information security rules and standards for all EU institutions, bodies, offices and agencies.

The regulation aims to ensure enhanced and consistent protection against the evolving threats faced by EU institutions and bodies to their information.

Key elements of this proposed regulation include establishing a common approach to information categorisation based on levels of confidentiality, information security policy modernisation and streamlining current practices.



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ESG

EU - Environmental, Social and Governance (ESG) ratings

The European Commission has announced its [intentions](#) to potentially regulate 1) the operations of Environmental, Social and Governance (ESG) ratings providers; and 2) how credit rating agencies (CRAs) incorporate ESG risks in their creditworthiness assessment.



The specific objectives of a future legislative initiative would be:

For ESG ratings:

- Define ESG ratings,
- Improve transparency on the operations and methodologies of ESG rating providers,
- Improve the comparability of ESG ratings,
- Avoid potential conflicts of interests of ESG rating providers,
- Limit the risks of greenwashing and social washing,
- Introduce proportionate oversight over the operations of ESG rating providers

For credit ratings:

- Improve transparency on the impact of ESG risks on individual credit ratings,
- Improve transparency of how CRAs methodologies incorporate sustainability risks,
- Ensure that CRAs methodologies adequately incorporate all relevant sustainability risks,

Possible legislative or non-legislative measures are planned by Q1 2023. **Click on the highlighted text to access more information about this initiative.**

More information on the latest regulatory developments from across the globe is available on the BIIA website in the [Regulatory section](#)