

Complying with the RoHS Directive

SMTA Workshop
October 27, 2005

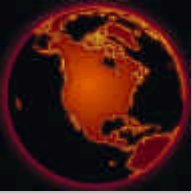
Kenneth S. Rivlin

Jean-Philippe Brisson

ken.rivlin@allenoverly.com

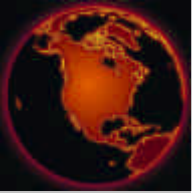
jp.brisson@allenoverly.com

www.allenoverly.com



Notice

This Presentation is for General Guidance
Only and Does Not Contain Definitive Advice
Consult Your In-House Legal Team or Retain
Outside Legal Counsel



Outline

Section One

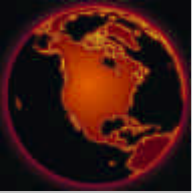
EU Approaches to Compliance

Section Two

Complying with the RoHS
Directive

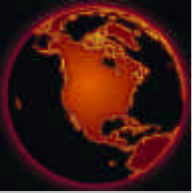
Section Three

Concluding Thoughts



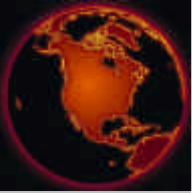
Section One

EU Approaches to Compliance



Global Approach/New Approach

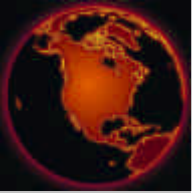
- ◆ Examples
 - ◆ Voltage Directive
 - ◆ EMC Directive (exemption fixed industrial tool)
- ◆ How do you demonstrate compliance?
 - ◆ Run tests
 - ◆ Put CE mark



EU Substance Bans

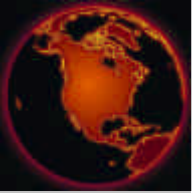
- ◆ Directive 67/548
 - ◆ Annex regulating use of dangerous substances
 - ◆ Implemented throughout EU
 - ◆ Cadmium regulations

- ◆ How do you demonstrate compliance?
 - ◆ You do not demonstrate anything – you just comply!



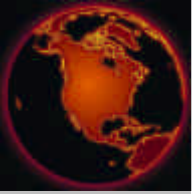
Where Does RoHS Fall?

- ◆ Early suggestion in preparation and negotiation of WEEE and RoHS
 - ◆ Global approach – CE mark
 - ◆ Rejected by industry
- ◆ So RoHS is similar to 67/548

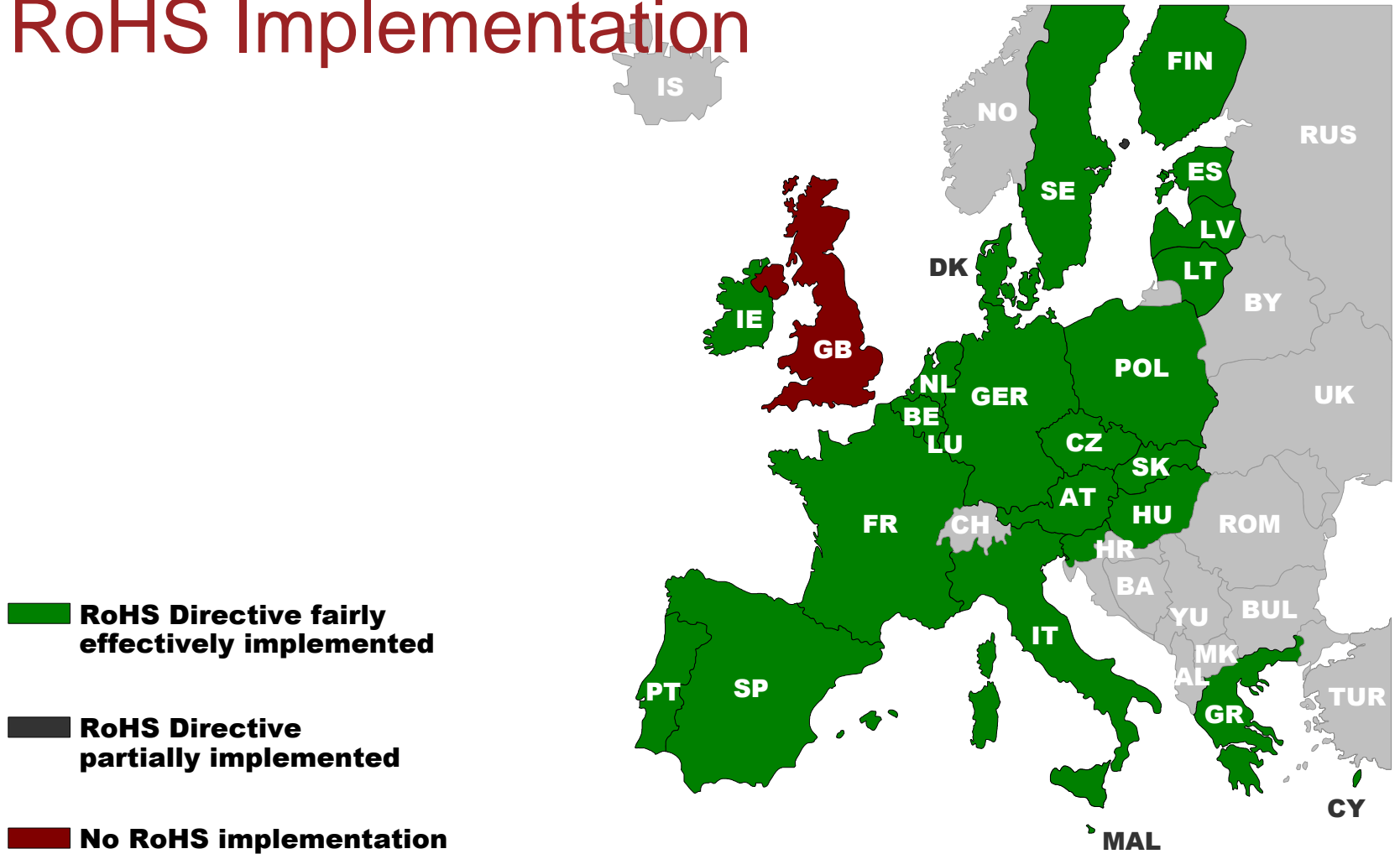


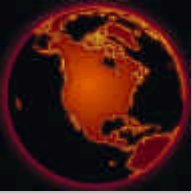
Section Two

Complying with the RoHS Directive



RoHS Implementation



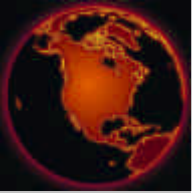


RoHS Directive Standard

- ◆ Strict liability
 - ◆ Exceed MCV w/out exemption = violation and prohibition on sale

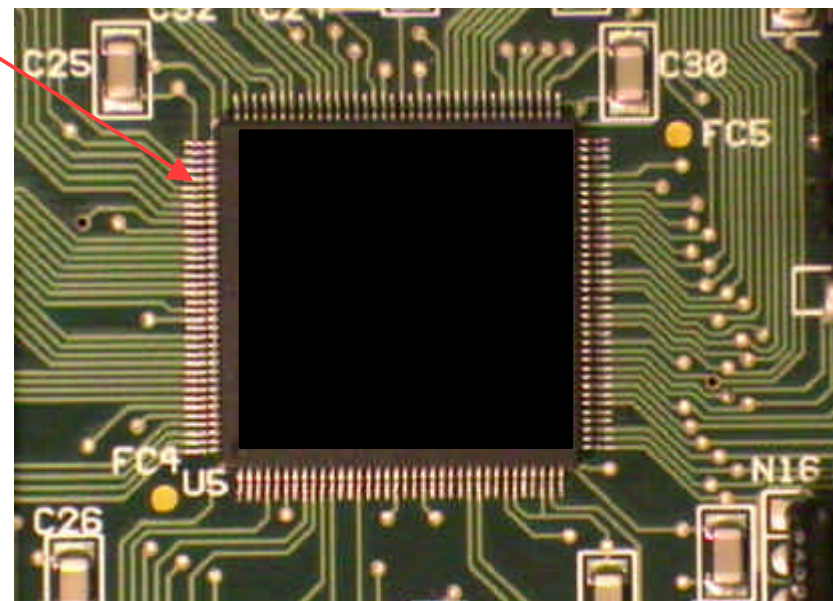
- ◆ Strict liability
 - ◆ Likely to be implemented by several EU jurisdictions
 - ◆ Default approach

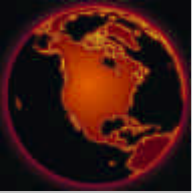
- ◆ Under this approach
 - ◆ Up to each company to assess compliance risk and mitigate risk accordingly
 - ◆ Do nothing – high risk, no cost
 - ◆ Test everything – no risk, high costs



Example by ERA Technology

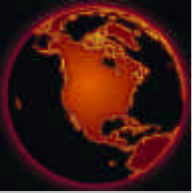
- ◆ Quad-flat-pack IC
 - ◆ Lead is 0.09% by weight of component
 - ◆ Tin/lead alloy (a material) with 15% lead is used as coating on lead-frame





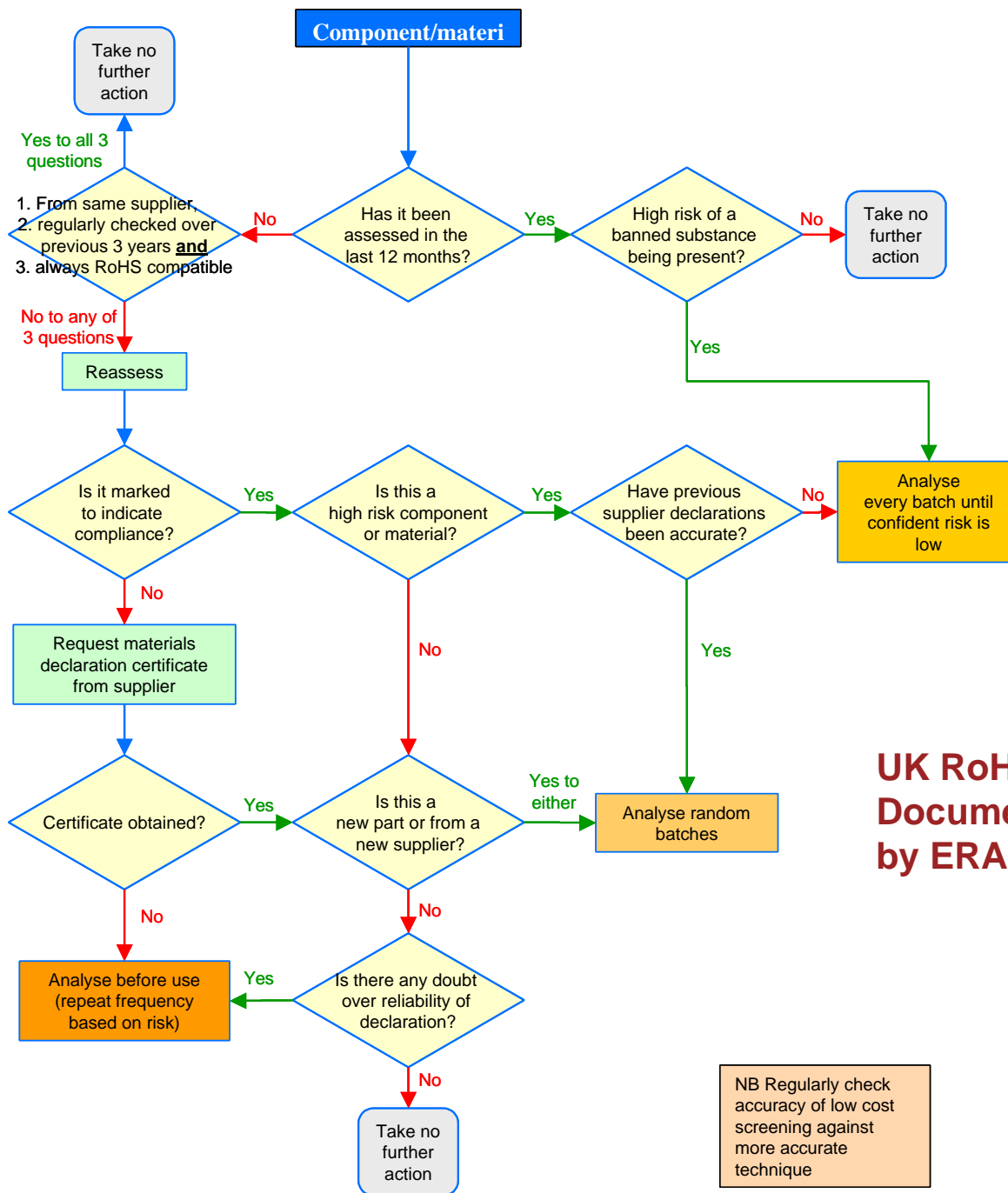
Who is responsible?

- ◆ Persons importing into the EU
- ◆ Persons making a sale in the EU
- ◆ Supply chain
 - ◆ Impacted contractually



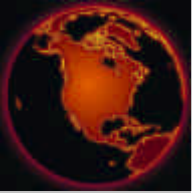
UK Approach

- ◆ Transitioning from strict liability to negligence?
- ◆ Due diligence defense
 - ◆ Producer may avoid liability by showing it “took all reasonable steps and exercised all due diligence to avoid” placing on the market a non-compliant EEE
- ◆ How?
 - ◆ Obtain certificates of compliance (and keep them for 4 years)
 - ◆ Implement due diligence system
 - ◆ Identify the person (down the supply chain) who is responsible for the erroneous information



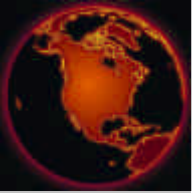
**UK RoHS Guidance
Document modified
by ERA Technology**

NB Regularly check accuracy of low cost screening against more accurate technique

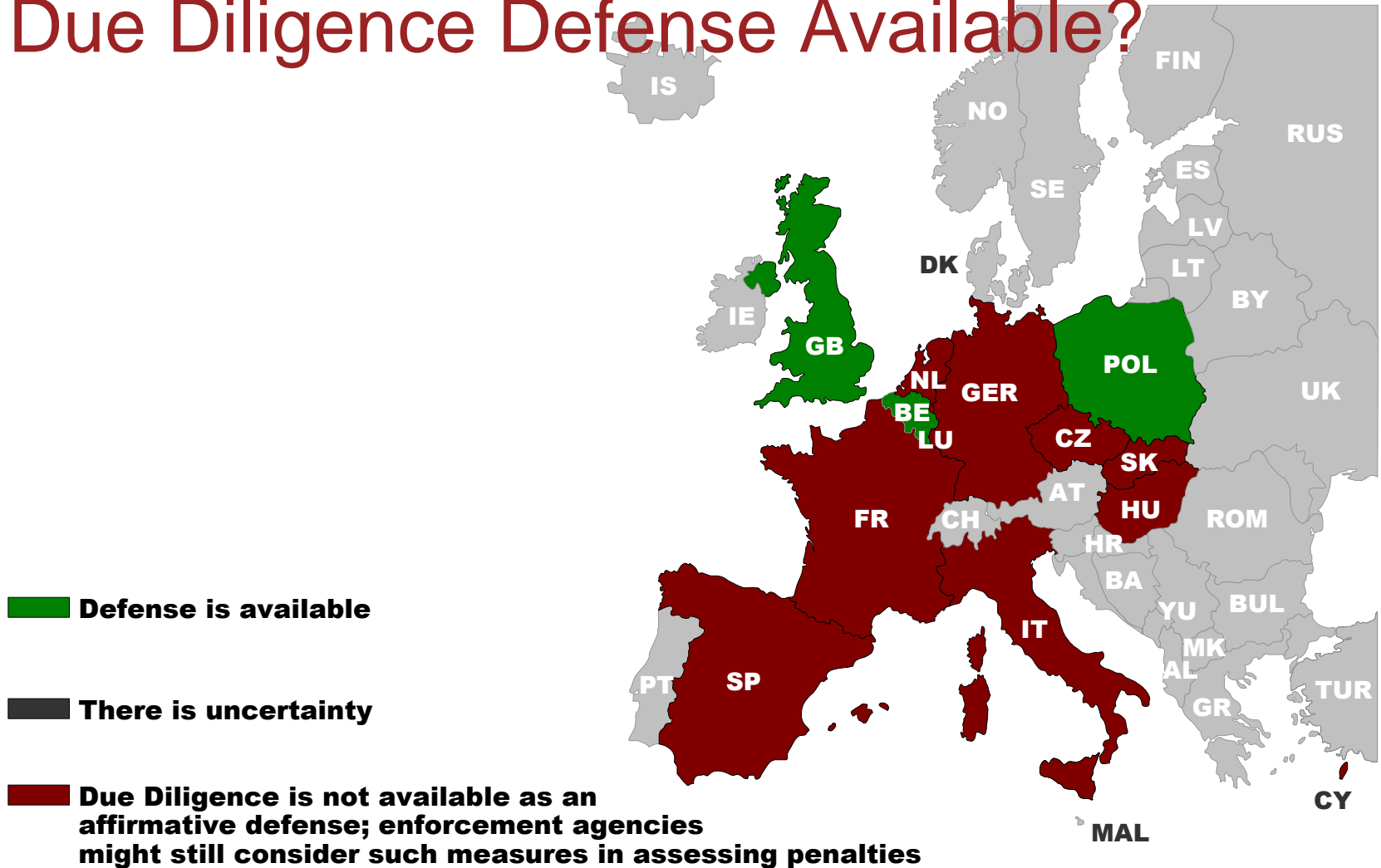


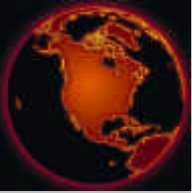
UK Requirements

- ◆ Get materials declaration at least annually
- ◆ Request that the product be marked
- ◆ Analysis (testing)
 - ◆ No analysis
 - ◆ First batch
 - ◆ Random batches
 - ◆ Every batch
- ◆ Technical dossier



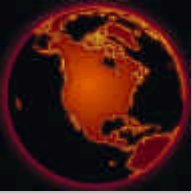
Due Diligence Defense Available?





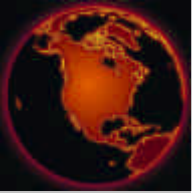
What Should You Do?

- ◆ At minimum, qualify for the UK defense
- ◆ Anything more?
 - ◆ Other countries
 - ◆ Internal requirements
- ◆ Possible options
 - ◆ Third-party testing
 - ◆ Obtain and track concentration values for all homogeneous materials
 - ◆ **Yes/No certificate of compliance**
 - ◆ Rely on “compliance with laws” contract term



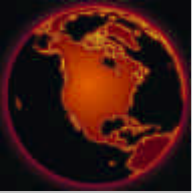
“Over-Compliance” and Minimal Value?

- ◆ Which substances?
 - ◆ Full disclosure or....
 - ◆ 6 RoHS substances + WEEE substances and components
- ◆ Level of information?
 - ◆ Report concentration values at homogeneous material level?
 - ◆ Report the concentration values at the part level?
- ◆ Intentional/non-intentional addition of substances



Section Three

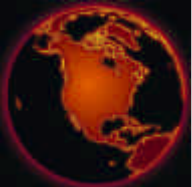
Concluding Thoughts



Next Steps

- ◆ 4 requirements
 - ◆ UK
 - ◆ Other Member States
 - ◆ Primary customers
 - ◆ Internal

- ◆ Implement Compliance Strategy
 - ◆ Revise all contracts
 - ◆ Survey primary customers
 - ◆ Notify suppliers
 - ◆ Request data
 - ◆ Audit
 - ◆ Analyze



EU Environmental Law Compliance

In association with **ALLEN & OVERY** and **AeA**

Modify Shared Page ▾

WEEE and RoHS Background Information:

- [What is the European Union?](#)
- [How does the EU adopt a law? What is the co-decision procedure?](#)
- [What is the difference between a directive and a decision?](#)
- [Glossary](#)

Search the site by Jurisdictions:



Search the site by Topics:

WEEE Directive Topics	RoHS Directive Topics
1. WEEE Directive Implemented?	1. RoHS Directive Implemented?
2. Definition of EEE Consistent with WEEE Directive?	2. Definition of EEE Same as Directive?
3. Definition of WEEE Consistent with WEEE Directive?	3. Product Exemptions Consistent with Directive?
4. Product Exemptions Consistent with WEEE Directive?	4. Application of Substance Ban Exemptions Included?
5. Definition of "Producer" Consistent with Directive?	5. Definition of "Producer" Consistent with Directive?
	6. Definition of "Put on the Market" Consistent with Blue Guide?



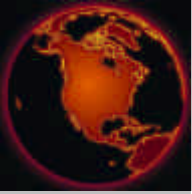
For general queries please contact:

- [Ken Rivin](#)
- [Jean-Philippe Brisson](#)
- [Felice Cooper](#)
- [Sara Woldn](#)

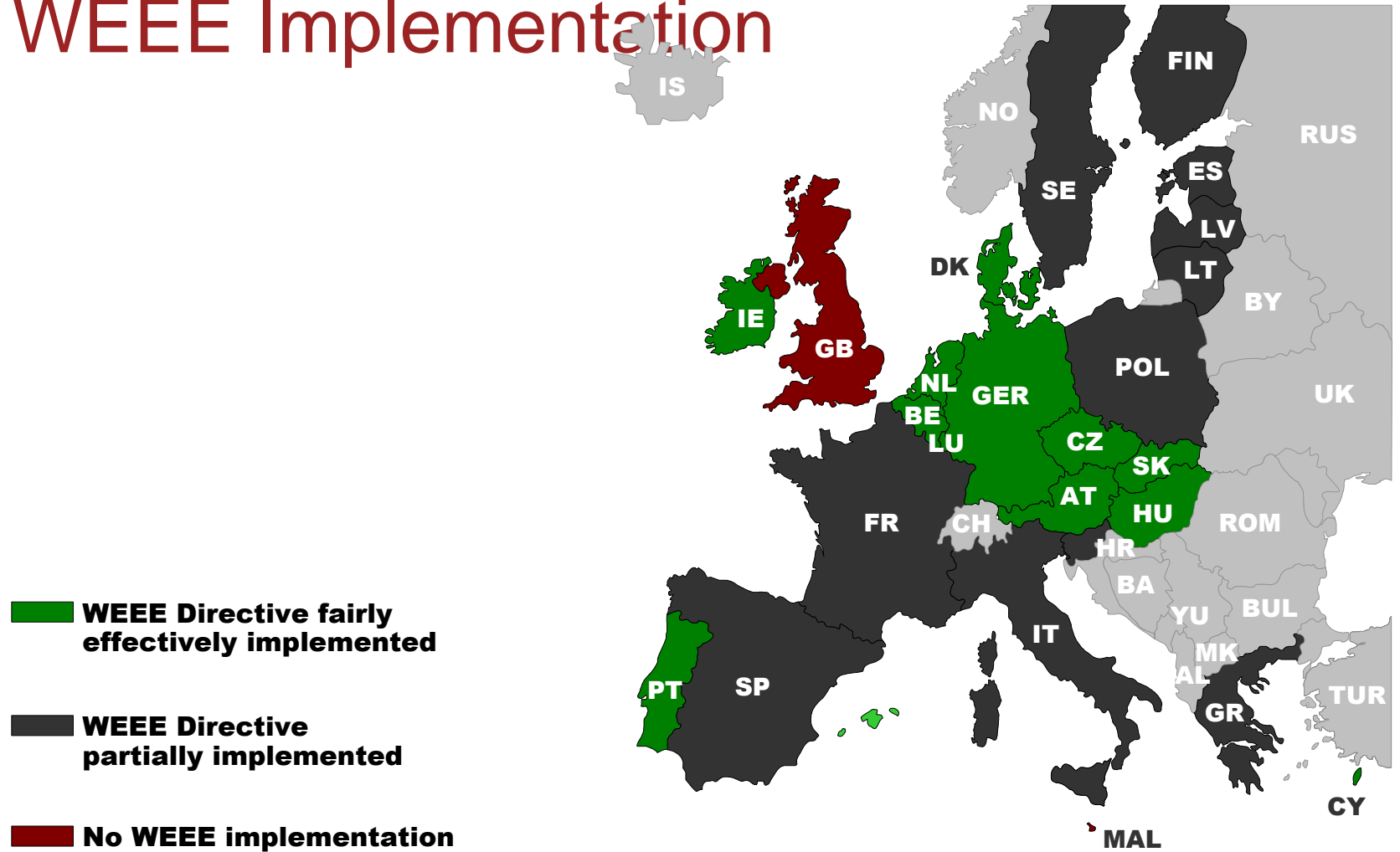
or alternative [send us an email](#).

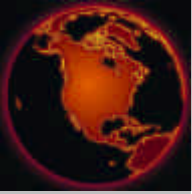
For local counsel contacts [click here](#).

Recent Developments ▾	
Title	Modified
France adopts WEEE implementing legislation	10/6/2005 12:15 PM
Italy adopts WEEE and RoHS implementing legislation	9/26/2005 7:40 PM



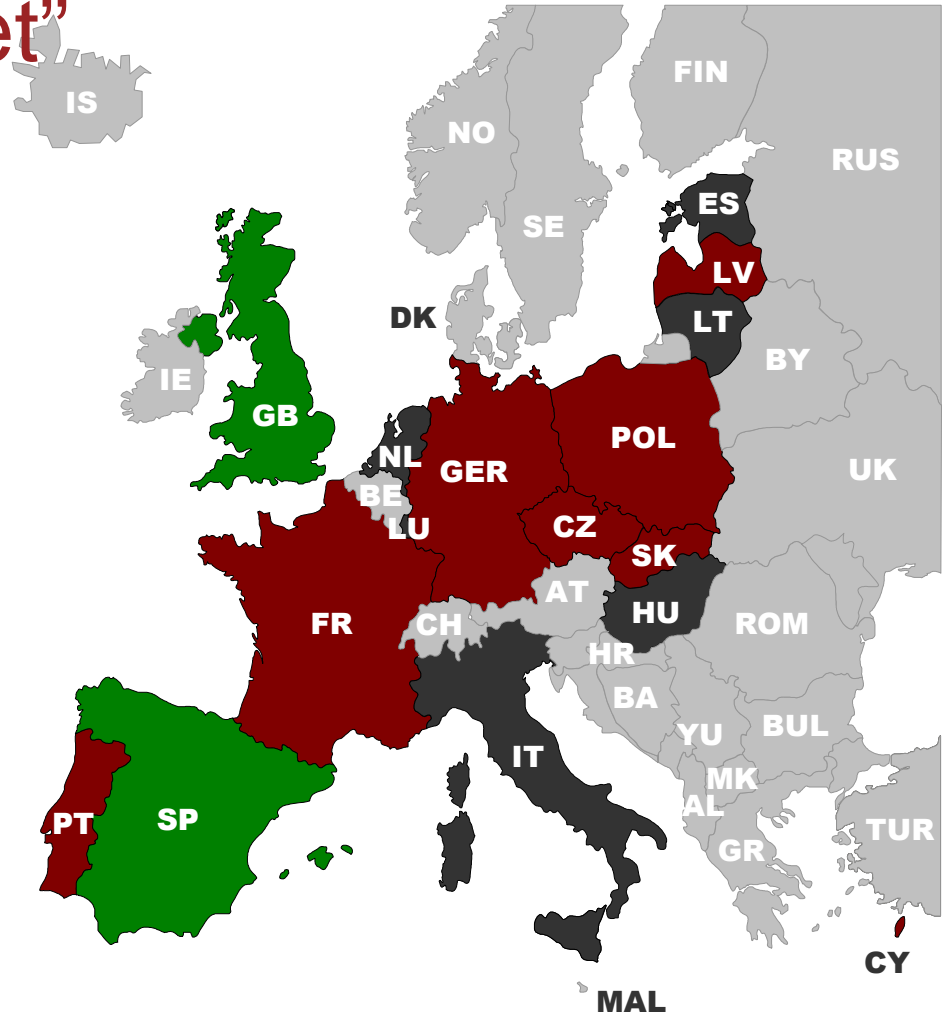
WEEE Implementation

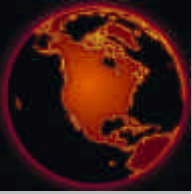




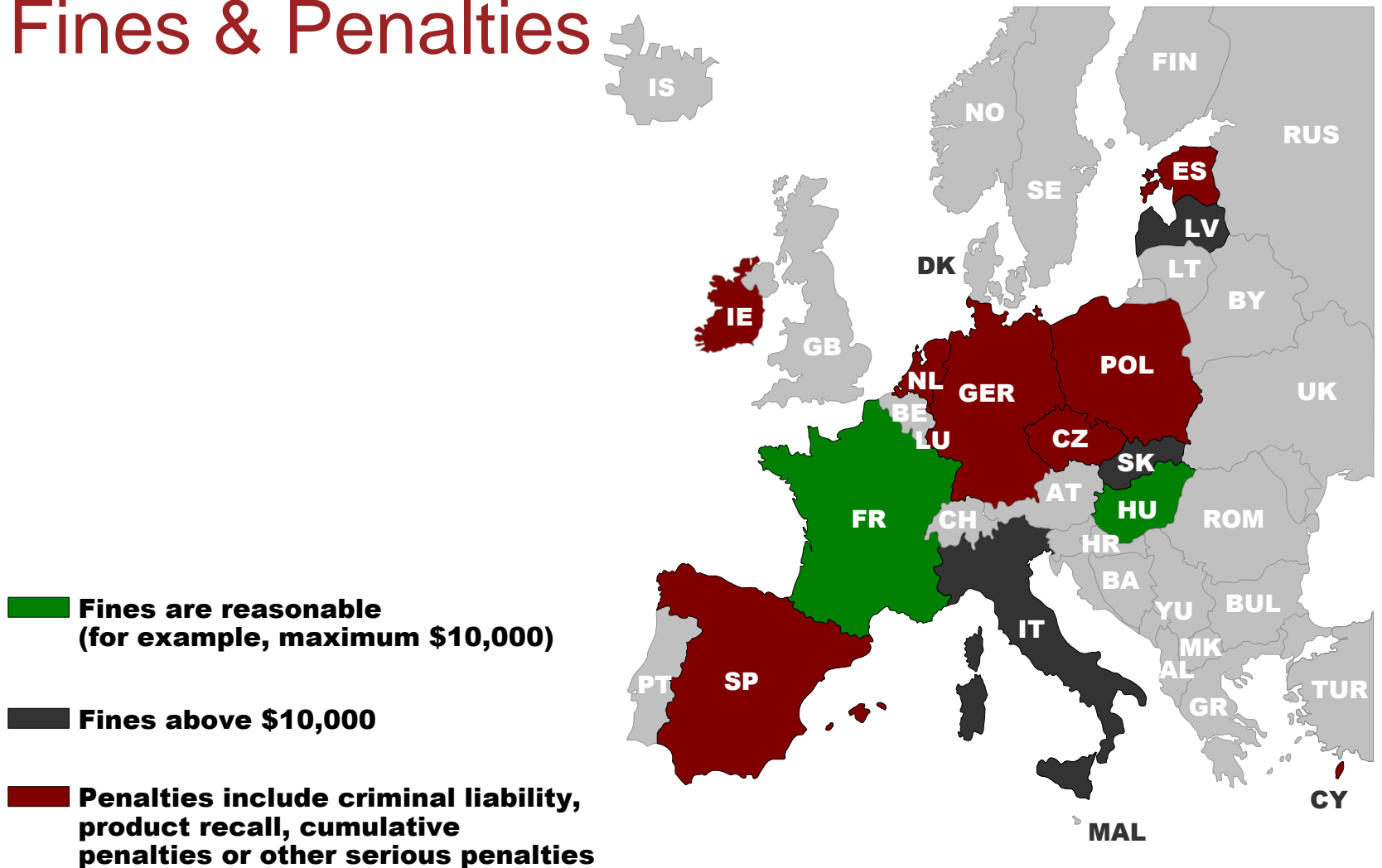
“Put on the Market”

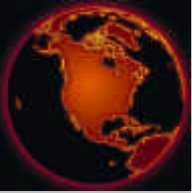
-  “Put on the Market” interpreted as EU market; consistent with Blue Guide
-  Interpretation of “Put on the Market” uncertain
-  “Put on the Market” interpreted as domestic market





Fines & Penalties





Definition of “Producer”

