

**Cookie ‘consent’ rule: EEA implementation**

The table below sets out EEA Member States’ implementation of Directive 2009/136/EC (the “**Directive**”). The Directive amends Article 5(3) of Directive 2002/58/EC (“**e-Privacy Directive**”) to introduce new rules for online service providers that require them to obtain visitors’ “consent” before serving cookies and similar tracking devices to users’ computers. In particular, the table identifies whether strict ‘opt-in’ consent requirements apply in each Member State (i.e. prior, express, informed consent) or whether consent can be inferred, for example, through appropriate browser / application settings or other means.

**At the date of this table, cookie consent requirements have been adopted in 27 out of 31 EEA Member States.**

Country	Has Article 5(3) been implemented?	Implementation status	Strict ‘opt-in’ consent required (or expected)? <sup>1</sup>	Legal requirement
<b>Austria</b> 	Yes	<ul style="list-style-type: none"> <li>An amendment of the Austrian Telecommunications act implementing Article 5(3) came into effect on 22 November 2011.</li> </ul>	Unclear	<ul style="list-style-type: none"> <li><u>Information Requirement</u>: Inform the user on the types of data processed (including cookies), the legal basis for and the purpose of processing the data, and the duration of storage. This</li> </ul>

<sup>1</sup> In instances where Article 5(3) has not yet been implemented, local counsel have provided their assessment as to the likelihood that a strict ‘opt-in’ regime will apply. This assessment has been based on currently available information and the historic approaches of the local legislator and regulator.

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				<p>information can be provided in General Terms and Conditions or a Privacy Policy.</p> <ul style="list-style-type: none"> <li>• <u>Opt-In</u>: Opt-in consent for processing the data (including cookies) required, except where for technical storage or access for the sole purpose of carrying out the transmission of a communication over an electronic communications network, or as strictly necessary in order for the provider of an information society service requested by the subscriber or user to provide the service.</li> <li>• <u>Implied Consent</u>: Legislative notes to the amendments to the Telecommunications Act suggest that consent may also be inferred from browser or other application settings.</li> </ul>
<b>Belgium</b>	Yes	<ul style="list-style-type: none"> <li>• The Belgian Chamber of Representatives adopted an amendment to the Belgian</li> </ul>	No	<ul style="list-style-type: none"> <li>• Cookies may be served if the user gives consent, having been provided with clear and comprehensive information about why their</li> </ul>

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		<p>Electronic Communications Act 2005 implementing Article 5(3).</p> <ul style="list-style-type: none"> <li>An earlier 2010 consultation paper published by the Belgian Telecommunications regulator initially proposed "<i>prior and written consent</i>". However, this proposal for prior, written consent has not been implemented into law.</li> <li>On 4 February 2015, the Belgian Privacy Commission issued a <a href="#">recommendation</a> on the use of cookies.</li> <li>The recommendation confirms that whilst implied consent may be an acceptable mechanism to confirm the use of cookies, it must</li> </ul>		<p>personal data will be collected and processed.</p> <ul style="list-style-type: none"> <li>In the absence of further guidance, website operators may rely on "implied" consent, provided it is "freely given, unambiguous, specific and informed".</li> </ul>

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		<p>be unambiguous and it would be difficult to qualify the inactivity of the user as a method of confirming implied consent.</p>		
<p><b>Bulgaria</b></p> 	<p>Yes</p>	<ul style="list-style-type: none"> <li>• An amendment to the Bulgarian Electronic Messages Act implementing the amended Article 5(3) came into effect on 29 December 2011.</li> <li>• Online service providers must provide "<i>clear and comprehensive information</i>" about the use of cookies and give individuals "<i>the opportunity to refuse</i>" those cookies. In all cases, the use of an online service cannot be made dependent on the user's consent to cookies.</li> </ul>	<p>No</p>	<ul style="list-style-type: none"> <li>• Online services providers must give users a mechanism for refusing consent.</li> <li>• Collected data must be destroyed after expiration of the term specified.</li> </ul>

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<b>Croatia</b> 	Yes	<ul style="list-style-type: none"> <li>An amendment to the Electronic Communications Act, implementing Article 5(3) of Directive 2002/58/EC as amended, came into effect on 10 August 2011.</li> </ul>	Yes	<ul style="list-style-type: none"> <li>Storing information or gaining access to information already stored in the terminal equipment of a subscriber or user is only allowed if the subscriber or user has given his or her consent, having been provided with clear and comprehensive information.</li> </ul>
<b>Cyprus</b> 	Yes	<ul style="list-style-type: none"> <li>An amendment to the Regulation of Electronic Communication and Postal Services Law, implementing Article 5(3) of Directive 2002/58/EC as amended, came into effect on 18<sup>th</sup> May 2012.</li> </ul>	Yes	<ul style="list-style-type: none"> <li>Storing information or accessing information already stored in the terminal equipment of a user is only allowed if the user has given his or her consent, having been provided with clear and comprehensive information.</li> </ul>
<b>Czech Republic</b> 	Yes	<ul style="list-style-type: none"> <li>The current legal standard to use cookies in the Czech Republic is notice and opt-out (even though some government authorities</li> </ul>	No	<ul style="list-style-type: none"> <li>To the extent that notice and opt-out is recognised as the current legal standard, this remains the case.</li> </ul>

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		<p>maintain an unofficial position that opt-in is the actual standard required for "non-necessary" cookies).</p> <ul style="list-style-type: none"> <li>Legislation implementing the Directive and the revised Article 5(3) did not alter the previous cookie requirements (i.e. notice and opt-out). This implementing legislation came into force on 1 January 2012</li> </ul>		
<p><b>Denmark</b></p> 	Yes	<ul style="list-style-type: none"> <li>The Danish implementation of the revised Article 5(3) came into effect on 14 December 2011.</li> <li>The Danish regulator issued updated guidelines in April 2013 regarding the Danish rules</li> </ul>	No	<ul style="list-style-type: none"> <li>The Danish implementation is an almost verbatim reproduction of Article 5(3).</li> <li>However, according to the updated guidelines, notice must be given to the visitor the first time the visitor visits the website. This must include information on the use of cookies, including</li> </ul>

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		concerning cookies.		<p data-bbox="1436 477 1787 500">potential use of third party cookies.</p> <ul data-bbox="1390 532 1923 1208" style="list-style-type: none"> <li data-bbox="1390 532 1923 748">• The notice can include an express mechanism to accept or decline the use of cookies or can state that further use of the website constitutes consent. This means that implied consent can be obtained through the 'informed actions' of the visitor.</li> <li data-bbox="1390 781 1923 1036">• To achieve this, the notice should include a broadly-worded "consent" message, and link to a more detailed cookie policy providing a description on how to reject the website's uses of cookies. A cookie-consent tool is recommended to adjust cookie settings, as browser settings are unlikely to suffice.</li> <li data-bbox="1390 1068 1923 1208">• The website's detailed cookie policy must always be available when visiting the website, i.e. in the top or bottom of the website page, next to the "Terms of Use" and the "Privacy</li> </ul>

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				Policy" as seen on most websites.
<b>Estonia</b> 	N/A	<ul style="list-style-type: none"> <li>In Estonia, the Ministry of Economic Affairs and Communications is responsible for implementing Article 5(3) into national law.</li> <li>The Ministry has taken the position that Article 5(3) is already covered by the Article 102 of the Estonian Electronic Communications Act, and therefore that no further implementation measures are necessary</li> </ul>	No	<ul style="list-style-type: none"> <li>No further implementation needed. The local Data Protection Authority indicates that a 'consent' requirement applies for serving of cookies in Estonia.</li> <li>However, commentators believe that Estonian law will continue to allow consent to be obtained using a notice and opt-out approach.</li> </ul>
<b>Finland</b> 	Yes	<ul style="list-style-type: none"> <li>New legislation (amending the Act on the Protection of Privacy in Electronic Communications) has</li> </ul>	No	<ul style="list-style-type: none"> <li>Finish law includes the wording of the revised Article 5(3) plus some elements of recital 66, which recognise the possibility of obtaining</li> </ul>

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		implemented article 5(3) and entered into force on 25 May 2011.		<p>consent via browser or other application settings.</p> <ul style="list-style-type: none"> <li>The legal requirement is therefore 'consent' qualified by an express reference to the ability to rely on browser or other application settings.</li> </ul>
<p><b>France</b></p> 	Yes	<ul style="list-style-type: none"> <li>Legislation implementing the revised Article 5(3) came into effect on 27 August 2011 (available online <a href="#">here</a>).</li> <li>CNIL issued updated cookie guidance (published 15 December 2013).</li> <li>In March 2014 a new consumer rights law came into force which amends the Data Protection Act and grants the CNIL new powers to conduct <u>online inspections</u> (in</li> </ul>	No	<ul style="list-style-type: none"> <li>The legal requirement is 'consent' qualified by an express reference to the ability to rely on browser or other application settings.</li> <li>Based on the CNIL's updated cookie guidance, implied consent is now accepted and companies must implement a two-step approach for obtaining consent.</li> </ul> <p><b>Step 1: Cookie banner</b></p> <p>The website must contain a cookie banner informing the web user about:</p> <ul style="list-style-type: none"> <li>- the purposes of the cookies;</li> </ul>

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		<p>addition to the existing on-site inspections).</p> <ul style="list-style-type: none"> <li>This provision gives the CNIL the right, via an electronic communication service to the public, "to consult any data that are freely accessible, or rendered accessible, including by imprudence, negligence or by a third party's action, if required, by accessing and by remaining within automatic data protection systems for as long as necessary to conduct its observations."</li> <li>This new provision gives the CNIL stronger powers to inspect the online activities of companies, including on their approach to the use of cookies.</li> </ul>		<ul style="list-style-type: none"> <li>the possibility to object to the use of cookies and to modify settings by clicking on a link (made available in the cookie banner);</li> <li>the fact that if the user continues to navigate the website, this constitutes valid consent to the storage of cookies on their device.</li> </ul> <p>The cookie banner must not disappear from the web page unless the user continues to navigate the website (e.g., by clicking on a web link, an image or a button).</p> <p><b>Step 2: Cookie notice</b></p> <p>The user must have access to a dedicated cookie notice page (e.g., by clicking on a link available on the cookie banner), which informs the user, amongst other things, of:</p>

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				<ul style="list-style-type: none"> <li>- the use of cookies and their purpose;</li> <li>- the possibility to reject cookies;</li> <li>- the means to object to the use of cookies.</li> </ul> <p>Use of cookies is prohibited where:</p> <ul style="list-style-type: none"> <li>- the user chooses not to continue navigating the website (e.g., the user closes the page) or in the absence of any material action; and</li> <li>- the user clicks on the link in the banner enabling them to change the cookie settings/options and chooses to refuse all cookies.</li> </ul> <ul style="list-style-type: none"> <li>• The CNIL indicates the (non-exhaustive) mechanisms that it considers compliant are: <ul style="list-style-type: none"> <li>- consent banner on the top of a webpage;</li> <li>- consent request overlaid on the page;</li> </ul> </li> </ul>

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				<ul style="list-style-type: none"> <li>- tick boxes while subscribing to a service online.</li> <li>• The CNIL has provided two examples of consent wording on its website.</li> </ul>
<p><b>Germany</b></p> 	Yes	<ul style="list-style-type: none"> <li>• Both the EU Commission and the German Federal Ministry of Economics and Technology (the 'Ministry') are of the opinion that the Directive has been implemented in Germany.</li> </ul>	Yes	<ul style="list-style-type: none"> <li>• The Ministry highlights that personal data 'necessary' for providing the service may be collected and used under section 15 (1) (1) of the Telemedia Act ('TMG'). As section 12 TMG requires statutory justification or consent for collecting and processing personal data, the Ministry concludes that information that is not "<i>for technical reasons necessary to deliver the service</i>" may only be used after obtaining the user's consent.</li> <li>• Under section 13 TMG, a user must be informed about the collection and use of their personal data the first time they use the service. If</li> </ul>

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				<p>consent is obtained electronically, the provider must ensure that:</p> <ul style="list-style-type: none"> <li>- consent was consciously and unambiguously given;</li> <li>- a record of the consent is kept;</li> <li>- the user can access their consent status at any time; and</li> <li>- the user can revoke their consent at any time (the user must be informed of this right before declaring his/her consent).</li> </ul> <ul style="list-style-type: none"> <li>• Section 15 (3) TMG permits the use of pseudonymous profiles without user consent. The user must be provided with the opportunity to opt-out and must be informed of this right the first time they use the service. The profiles must not be combined with information about the person behind the pseudonym.</li> </ul>

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<b>Greece</b> 	Yes	<ul style="list-style-type: none"> <li>Article 5(3) was implemented into Greek Law by Article 4, paragraph 5 of Law 3471/2006 as amended by Article 170 of Law 4070/2012.</li> <li>The regulatory position is that cookies can be served only where the user has given his or her consent, having been provided with clear and comprehensive information about cookie use.</li> </ul>	No	<ul style="list-style-type: none"> <li>The regulatory requirement is "consent" qualified by the ability to rely on browser or other application settings.</li> <li>Exceptions to the general obligation to obtain consent and inform the user about the use of cookies are the installation of cookies for the sole purpose of carrying out the transmission of a communication over an electronic communications network, or as strictly necessary in order for the provider of an information society service requested by the subscriber or user to provide the service.</li> </ul>
<b>Hungary</b> 	Yes	<ul style="list-style-type: none"> <li>The Amendment to the Hungarian Act on Communications (the Act CVII of 2011 implementing Article 5(3) of the e-Privacy Directive) entered into force on 3 August 2011.</li> </ul>	No	<ul style="list-style-type: none"> <li>The Directive has been implemented and the requirement to obtain consent may be met through appropriate browser or other application settings.</li> <li>Local commentators believe that consent may</li> </ul>

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		<ul style="list-style-type: none"> <li>The original bill submitted to the Parliament required 'prior' consent to access and storage of cookies. However, during its debate in the Hungarian Parliament, the bill was amended to remove the requirement for consent to be 'prior'.</li> </ul>		<p>be given <u>after</u> cookies have been served, due to the removal of the 'prior' wording.</p> <ul style="list-style-type: none"> <li>The new Section 155 (4) of the Act on Electronic Communications provides that "<i>Data may be stored or accessed on the terminal equipment of the subject end-user or subscriber after the provision of clear and comprehensive information – including the purpose of data processing – if consent of the end-user or subscriber has been granted hereto.</i>"</li> <li>Hungarian law has <u>not</u> implemented the exemptions to Article 5(3) that allow cookies (or similar technologies) to be served without consent where strictly necessary to provide a user-requested service.</li> </ul>
<b>Iceland</b>	No	<ul style="list-style-type: none"> <li>The Icelandic Government put forward a bill in Parliament in 2012 which envisaged</li> </ul>	No	<ul style="list-style-type: none"> <li>The proposed implementation prescribes that clear and comprehensive information should be</li> </ul>

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		<p>implementation of the revised Article 5(3).</p> <ul style="list-style-type: none"> <li>• However since Directive 2009/136/EC has not been formally adopted into the EEA-agreement, the Government has currently postponed implementation of Article 5(3).</li> </ul>		<p>given to the user.</p> <ul style="list-style-type: none"> <li>• The proposals also recognise the possibility of obtaining consent via browser or other application settings.</li> </ul>
<p><b>Ireland</b></p> 	Yes	<ul style="list-style-type: none"> <li>• Ireland has implemented the revised Article 5(3) through the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 which came into force on 1st July 2011.</li> <li>• The Data Protection Commissioner has published a</li> </ul>	No	<ul style="list-style-type: none"> <li>• The Regulations do not prescribe how information is to be provided or consent is to be given.</li> <li>• They state that the methods of providing information and giving consent should be as “user-friendly as possible” but that “where it is technically possible and effective...the user’s consent to the storing of information or to gaining access to information already stored may be given by the use of appropriate browser</li> </ul>

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		<p>Guidance Note on the new Regulations but it makes no reference to a lead in period.</p> <ul style="list-style-type: none"> <li>In December 2012, the Data Protection Commissioner identified approximately 80 websites and wrote to the operators seeking confirmation of their intended compliance approach, indicating that enforcement action may be taken.</li> </ul>		<p>settings or other technological application by means of which the user can be considered to have given his or her consent".</p> <ul style="list-style-type: none"> <li>According to the Guidance Note, the Data Protection Office considers that the settings currently available on website browsers are not sufficient to obtain consent.</li> </ul>
<p><b>Italy</b></p> 	<p>Yes</p>	<ul style="list-style-type: none"> <li>The cookie consent requirements – set forth under Directive 2009/140 CE - were fully implemented in Italy by Legislative Decree no 69 of May 28th 2012. A further regulation,</li> </ul>	<p>No</p>	<ul style="list-style-type: none"> <li>The storing of information in the terminal equipment of a user is allowed on the condition that the user has given his or her consent, having been provided with clear and comprehensive information.</li> </ul>

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		<p>issued by the Italian Data Protection Authority (DPA), on June 4<sup>th</sup> 2014, completed such provisions by giving the guidance referred to by such piece of Law. The relevant requirements will become effective on June 3<sup>rd</sup> 2015.</p>		<ul style="list-style-type: none"> <li>• Consent is not needed for technical cookies, such as session cookies, analytics cookies or functional cookies; as defined by the DPA.</li> <li>• According to the general decision issued by the DPA on June 4<sup>th</sup>, 2014, as soon as the user accesses the homepage or another web page, a banner shall immediately appear, containing a “short information notice” on cookies, including (i) a link to the full text notice providing information on the use of different categories of cookies, as well as the possibility to choose which specific cookies to authorise, (ii) whether the site also uses third-party cookies and (iii) a statement informing the user that by continuing to use the website, the user consents to the use of cookies.</li> <li>• The user shall be able to remove the banner only by performing an action, however the</li> </ul>

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				<p>selection of an item contained on the web page shall be deemed sufficient for this purpose. Also alternative solutions are allowed by the DPA: based on the requirement that consent must be expressed freely and specifically.</p> <ul style="list-style-type: none"> <li>Use of profiling technologies that enable the analysis of the purchase behaviour or choices of users or to help identify their personality traits shall be subject to a notification to the Italian Data Protection Authority.</li> </ul>
<p><b>Latvia</b></p> 	<p>Yes</p>	<ul style="list-style-type: none"> <li>Latvia has implemented Article 5(3) through amendments to the Law on Information Society Services.</li> </ul>	<p>Yes</p>	<ul style="list-style-type: none"> <li>The implementation of the Directive into Latvian law does not expressly address the use of browser settings to obtain consent, indicating that a strict 'opt-in' consent requirement may apply.</li> </ul>

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		<ul style="list-style-type: none"> <li>The amendments became effective from 8 June 2011.</li> </ul>		
<b>Liechtenstein</b> 	No	<ul style="list-style-type: none"> <li>Implementation of the revised Article 5(3) is currently in progress but details have not yet been made available.</li> </ul>	Unknown	N/A
<b>Lithuania</b> 	Yes	<ul style="list-style-type: none"> <li>Amendments to the Law on Electronic Communications, implementing the revised Article 5(3) of the e-Privacy Directive, came into effect on 1 August 2011.</li> <li>The Lithuanian State Data Protection Inspectorate issued recommendations regarding use of cookies and other similar</li> </ul>	Yes	<ul style="list-style-type: none"> <li>Cookies can be served only where the individual has consented in advance of receiving them, having first been provided with clear and comprehensive information about their use.</li> <li>Consent is not required for technical storage or access for the sole purpose of carrying out the transmission of a communication over an electronic communications network, or as strictly necessary for the provision of an information society service explicitly requested by the</li> </ul>

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		means in December 2011.		<p>subscriber or user.</p> <ul style="list-style-type: none"> <li>Any website operator intending to use cookies must disclose what cookies will be used and for what purpose(s) in order to assess for which cookies prior consent must be obtained.</li> <li>The State Data Protection Inspectorate indicates the following possible ways to obtain consent: (a) informative line in the web page (e.g., on the top of page); (b) pop-ups; (c) registration in the web page (but note that where users have already consented to data protection terms as part of a previous registration, it is not sufficient simply to amend these terms to obtain cookie consent – a 'fresh' cookie consent must be obtained).</li> </ul>
<b>Luxembourg</b>	Yes	<ul style="list-style-type: none"> <li>Luxembourg implemented the revised Article 5(3) of the e-Privacy Directive plus some</li> </ul>	No	<ul style="list-style-type: none"> <li>Prior informed consent of subscriber or user is required</li> </ul>

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		<p>elements of recital 66 on 28 July 2011. These came into effect on 1 September 2011.</p>		<ul style="list-style-type: none"> <li>The act provides that (i) the methods of providing information and offering the right to refuse should be as user-friendly as possible and (ii) where it is technically possible and effective, the user's consent to processing may be expressed by appropriate browser or other application settings.</li> </ul>
<p><b>Malta</b></p> 	No	<ul style="list-style-type: none"> <li>New regulations (Legal Notice 239 of 2011 entitled Processing of Personal Data (Electronic Communications Sector) (Amendment) Regulations 2011 have been adopted that, by and large, copy the wording of the revised Article 5(3).</li> <li>They came into force on 1<sup>st</sup></li> </ul>	No	<ul style="list-style-type: none"> <li>The new regulations do not mandate the form or type of consent required.</li> <li>However, while the new regulations do not prohibit obtaining consent through browser settings, there have been suggestions that the local DPA will recommend against relying on browser settings to establish consent.</li> </ul>

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		January 2013.		
<b>Netherlands</b> 	Yes	<ul style="list-style-type: none"> <li>The revised Article 5(3) (set out in article 11.7a Telecommunications Act) came into effect on 5 June 2012.</li> <li>A new law was adopted on 3 February 2015, which amends Article 11.7a of the Telecommunications Act.</li> <li>The most significant change under this new law is the introduction of a lighter regime for cookies that are (i) used to gather information on the quality and effectiveness of a requested service; and (ii) have little or no</li> </ul>	No <ul style="list-style-type: none"> <li>Without explicitly referring to the term "implied consent", the amended article 11.7a, allows the possibility of implied consent of the user as a lawful form of consent according to the Explanatory Memorandum to the amendment.</li> </ul>	<ul style="list-style-type: none"> <li>Website operators must provide users with clear and complete information and obtain their prior consent before storing or accessing information on their device.</li> <li>An exemption applies for cookies which:               <ol style="list-style-type: none"> <li>are used for the sole purpose of performing the network communication; or</li> <li>are strictly necessary to provide the service requested by the subscriber or user; or</li> <li>have no or little effect on the privacy of the individual concerned and which obtain information about the quality or effectiveness of the online service provided .</li> </ol> </li> </ul>

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		<p>effect on the privacy of the user of the service. For these cookies, the standard requirements for cookies (i.e. obtaining prior consent) are no longer required.</p> <ul style="list-style-type: none"> <li>This new law came into force on 11<sup>th</sup> March 2015.</li> </ul>		<ul style="list-style-type: none"> <li>The exemption for cookies having "no or little effect" on individual's privacy is meant to cover, for example, analytical cookies under certain conditions, affiliate cookies and A/B testing cookies.</li> <li>However, cookies served for profiling or targeted advertising purposes) are presumed to qualify as "personal data processing" and therefore are subject to two consent requirements: "unambiguous" consent under the Personal Data Protection Act for processing personal data and the specific prior consent for cookies under article 11.7.a of the Telecommunications Act. In practise, however, both requirements are likely to be fulfilled together through the user's implied consent provided this is obtained before the cookies are served.</li> <li>In May 2014, the Dutch Data Protection Authority (DPA) issued a report of its findings in an</li> </ul>

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				<p>enforcement case against an advertising agency. The DPA conducted an investigation into the compliance of the advertising agency 'YD Display Advertising Benelux' (YD) with (a) the Telecommunication Act and (b) the Dutch Data Protection Act. The DPA found that:</p> <ul style="list-style-type: none"> <li>a) YD violated the Telecommunication Act, infringing both the notice and consent requirements. The violations would still exist even if proposed amendments to the Telecommunication Act were applied.</li> <li>b) The DPA concluded that YD placed tracking cookies through websites of advertisers/publishers working together with YD, enabling YD (and its network of advertisers) to track the behaviour of visitors through multiple websites, The use of such cookies and the subsequent processing of data was presumed to be processing of</li> </ul>

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				<p>personal data within the meaning of the Dutch Data Protection Act.</p> <p>c) YD did not request the users' unambiguous consent for the processing of their personal data, therefore YD has no ground for processing such data and therefore acted in breach of the Dutch Data Protection Act.</p> <ul style="list-style-type: none"> <li>• In the summer of 2014 the Dutch Public Broadcasting Service ('<b>NPO</b>') was the subject of a jointly-led enforcement action by the DPA and ACM which led to the following findings: <ul style="list-style-type: none"> <li>a) Prior consent must be obtained before cookies are placed on a user's device.</li> <li>b) Clicking on a link to obtain 'further information' about cookies does not amount to consent.</li> <li>c) The identities of third party ad networks must be disclosed.</li> <li>d) Cookie policies must be specific to the site in question. A "one size fits all" policy across different sites using different cookies does</li> </ul> </li> </ul>

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				not work.
<b>Norway</b> 	Yes	The Norwegian Ecom Act was amended with effect from 12 July 2013 and requires consent to use of cookies.	No	<ul style="list-style-type: none"> <li>According to the new provisions in the Ecom Act, a predefined setting in the user's browser will constitute a sufficient consent as long as there is clear information available on the website on what kinds of cookies and similar technologies are being used, what information is being processed, the purpose of the processing and who is processing the information.</li> </ul>
<b>Poland</b> 	Yes	<ul style="list-style-type: none"> <li>Changes to the Telecommunications Law governing cookies took effect on 22 March 2013. The amendment introduces a general informed consent requirement for cookies.</li> </ul>	No	<ul style="list-style-type: none"> <li>From 22 March 2013, individuals' informed consent is required for cookies unless: (i) the cookie is for the sole purpose of carrying out a transmission and/or (ii) the cookie is necessary to provide a service requested by the user.</li> <li>However, under the amendment, consent can be given via appropriate software settings,</li> </ul>

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				<p>including browser settings. Further, the two main regulator's websites in Poland have both adopted an implied cookie consent banner approach and even the Polish Ministry of Administration and Digitization (Ministerstwo Administracji i Cyfryzacji) has indicated it supports consent obtained through browser settings.</p> <ul style="list-style-type: none"> <li>On this basis, implied consent seems to suffice for Poland at present. More information available on the Fieldfisher Privacy Law blog at <a href="http://privacylawblog.fieldfisher.com/2013/poland-and-cookies-whats-the-story">http://privacylawblog.fieldfisher.com/2013/poland-and-cookies-whats-the-story</a></li> </ul>
<p><b>Portugal</b></p> 	Yes	<ul style="list-style-type: none"> <li>Portugal has implemented the revised Article 5(3) through Law n.º 46/2012, of 29 August amending Law n.º 41/2004. The amendments came into force on</li> </ul>	Yes	<ul style="list-style-type: none"> <li>Prior consent of the user is required, unless the cookies are necessary to perform a user-requested service. In addition, prior, clear and comprehensive information must be given to the user.</li> </ul>

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		<p>30 August 2012.</p> <ul style="list-style-type: none"> <li>The Portuguese Data Protection Authority has announced that guidelines will be issued in 2013 and that there will be a "grace period" (without having stated the period of time) before taking any enforcement action for non-compliance. At the time of publication, these guidelines have still to be issued.</li> </ul>		<ul style="list-style-type: none"> <li>The new law is silent about the use of browser settings to obtain consent. Guidance is therefore needed from the Portuguese Data Protection Authority as to whether website operators can rely on browser or other application settings.</li> </ul>
<p><b>Romania</b></p> 	<p>Yes</p>	<ul style="list-style-type: none"> <li>The provisions of the amended Article 5(3) of the e-Privacy Directive became effective on April 26, 2012, the publication date in the Official Gazette of Romania of Government Emergency Ordinance No.</li> </ul>	<p>No</p>	<ul style="list-style-type: none"> <li>Storage of cookies is generally allowed subject to the following conditions: <ul style="list-style-type: none"> <li>(i) the user has been given clear and comprehensive information (including transparency information complying with Romanian data protection rules when</li> </ul> </li> </ul>

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		<p>13/2012 ("G.E.O. No. 13/2012") amending and completing Law No. 506/2004 on processing of personal data and the protection of private life in the field of electronic communications.</p> <ul style="list-style-type: none"> <li>Currently, the Romanian Data Protection Authority (the "RDPA") has not published any guidelines or opinions in respect of how the new rules should be implemented</li> </ul>		<p>processing individuals' personal data), and</p> <p>(ii) the user has given his or her consent.</p> <ul style="list-style-type: none"> <li>Consent may be given: <ul style="list-style-type: none"> <li>expressly</li> <li>implicitly, by the use of internet browser settings or similar technologies</li> </ul> </li> </ul> <p>However, when assessing the validity of the express or implicit consent, the RDPA will seek to determine whether the data subjects were fully informed and aware that they were agreeing to cookies being set.</p>
<p><b>Slovakia</b></p> 	Yes	<ul style="list-style-type: none"> <li>Slovakia's amendments to the Act on Electronic Communications implementing the amended Article 5(3) were approved by Parliament on 1 June 2011.</li> <li>The Act became effective on 1</li> </ul>	No	<ul style="list-style-type: none"> <li>The amended Act includes the wording of the revised Article 5(3) plus some elements of recital 66, which recognise the possibility of obtaining consent via browser or other application settings.</li> <li>The legal requirement is "<i>consent given on the</i></li> </ul>

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		October 2011.		<i>basis of clear and complete information; as the user's consent is also deemed the using of the appropriate settings of a browser or other application".</i>
<b>Slovenia</b> 	Yes	<ul style="list-style-type: none"> <li>Slovenia has implemented the Directive through the new Electronic Communications Act (ZEKom-1), which came into force on 15 January 2013.</li> <li>The relevant cookie consent provisions will become effective on 15 June 2013.</li> </ul>	No	<ul style="list-style-type: none"> <li>Cookies may be served as long as individuals have provided their consent, having been given clear and comprehensive information about the data controller and the purposes for which their personal data will be processed.</li> <li>The legal requirement is qualified by an explicit reference to the ability to rely on browser settings or other applications.</li> <li>No consent is required if the cookie is served for the sole purpose of carrying out the transmission of a communication or which is strictly necessary to provide a user-requested service.</li> </ul>

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<b>Spain</b> 	Yes	<ul style="list-style-type: none"> <li>The law on the Information Society and Electronic Commerce (34/2002), the so called LSSI, was originally amended by Royal Decree 13/2012 in order to incorporate the cookie rule. The amendment came into force on 2 April 2012.</li> <li>The Spanish regulator has also issued guidelines in April 2013 regarding the Spanish rules concerning cookies.</li> <li>Law 9/2014 further amends the regulation of the use of cookies in the LSSI. w. These amendments became law on 11 May 2014. and the main changes are described below.</li> </ul>	No	<ul style="list-style-type: none"> <li>Cookies may be served as long as individuals have provided their consent, having been given clear and comprehensive information, in particular about the purposes for which their personal data will be processed. Express consent is <u>not</u> required, although the guidelines indicate a preference for express consent.</li> <li>A <u>conscious and positive action</u> from the user is required. The user must be informed what action amounts to consent. While a 'click to accept' is the preferred mechanism, obtaining implied consent via the user's behaviour is accepted.</li> <li>Clear and comprehensive information must be given about the use of cookies and in particular about their purposes. This must include a description of how to revoke consent and remove cookies.</li> <li>The guidelines recommend that information</li> </ul>

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		<p>a) Advertising networks shall also now be liable, together with the internet service provider, for their failure to comply with the cookie rules.</p> <p>b) The regulation of the way in which consent may be obtained via the configuration of web-browsers has also been tweaked.</p> <p>c) It is an infringement to serve cookies without the individual's consent. Due to a legislative error this was previously not the case and the Spanish regulator could not undertake enforcement actions on this issue.</p>		<p>about cookies is provided <u>separately</u> from the terms of use and privacy policy.</p> <ul style="list-style-type: none"> <li>Finally, the guidelines encourage session cookies wherever possible over permanent cookies. If permanent cookies are used, their expiry should be kept to the minimum necessary.</li> <li>In January 2014 the Spanish DPA issued its <a href="#">first fines</a> for infringement of the cookie rules. The two companies involved were fined €3,000 and €500 respectively for an infringement of the obligation to provide information on the use of cookies (as described above). The fines levied could have been much higher however the low level of fines should not be taken as an indication that the Spanish DPA will take a soft approach on enforcement of the rules.</li> <li>There are reports of another 11 cases under investigation.</li> </ul>

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		<p>d) Infringements of the cookie rules may be classified as 'low' or 'serious'. The latter category shall apply if the organisation infringes the cookie rules more than once within a three-year period.</p> <p>e) The enforcement powers of the Spanish regulator have become more flexible. The Spanish regulator is now also able to issue warnings for a failure to comply with the cookie rules, or decide that it shall apply the lowest category of fines for serious infringements of the rules. These measures may only be taken if certain mitigating</p>		

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		circumstances apply.		
<p><b>Sweden</b></p> 	Yes	<ul style="list-style-type: none"> <li>• Changes to the Telecommunications Act came into effect from 1 July 2011 to implement the revised Article 5(3).</li> <li>• In its initial implementation work, the Government indicated that the cookie "consent" rule should not be interpreted as a change from the old regime per se, and therefore that users' web browser settings will as far as possible be considered to indicate consent.</li> <li>• However, the Government has also indicated that since the</li> </ul>	No	<ul style="list-style-type: none"> <li>• The Directive has been implemented and requires users' consent to cookies.</li> <li>• For the time being, this is understood to mean that consent can be achieved relying on browser settings.</li> <li>• However, this should be kept under review in light of future regulatory decisions.</li> <li>• Some authorities have chosen to actually collect consent instead of relying to the governments statement, but that seem to be a more "to be on the safe side" approach.</li> </ul>

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		<p>consent rule comes from a European Directive, it cannot be too deterministic about how the cookie consent rule will apply. Instead, it intends to leave regulation of the application to the relevant regulatory authorities.</p>		
<p><b>United Kingdom</b></p> 	<p>Yes</p>	<ul style="list-style-type: none"> <li>The UK has implemented the Directive through the <a href="#">Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011</a>, which came into force on 26 May 2011.</li> <li>The Information Commissioner's Office (ICO) published initial guidance on how UK businesses can comply with the new Regulations, together with details</li> </ul>	<p>No</p>	<ul style="list-style-type: none"> <li>The legal requirement is qualified by an explicit reference to the ability to rely on browser settings.</li> <li>Advice from the ICO indicates that current browser settings are not sufficient to obtain users' consent.</li> <li>The ICO expects organisations to audit their website cookie use, assess the intrusiveness of the cookies they serve, and then determine appropriate cookie consent strategies.</li> </ul>

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		<p>of <a href="#">how it proposes to enforce the new Regulations</a>.</p> <ul style="list-style-type: none"> <li>The latter indicated that ICO would afford businesses a period of 12 months (to 25 May 2012) to adapt to the new consent regime before it would take any enforcement action for non-compliance.</li> <li>That 12 month grace period has now come to an end and ICO has published <a href="#">further guidance on the new cookie rules</a>. These confirm the validity of implied consent.</li> <li>In December 2012, the ICO published a report describing the concerns of consumers with regard to the use of cookies by</li> </ul>		<ul style="list-style-type: none"> <li>Guidance published by the ICO acknowledges the validity of implied consent solutions.</li> <li>However, for implied consent to be valid, users must be made fully aware that their actions will result in cookies being set. Privacy policy disclosures on their own are not sufficient.</li> <li>In limited circumstances, the ICO advises explicit consent may be more appropriate, such as where sensitive personal information is collected.</li> </ul>

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		<p>website operators and the possible enforcement actions the ICO may pursue in instances of non-compliance. More information available <a href="#">here</a>.</p> <ul style="list-style-type: none"> <li>In April 2013, the ICO said it will continue to focus on those websites i) that are doing nothing to raise awareness of cookies; ii) are failing to obtain user's consent; or iii) which are most-visited by users; or where they continue to receive the most complaints by users.</li> </ul>		

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