



EU LAW ON COOKIES

Updated September 2014



SUMMARY

EU Member State	Implemented into local law?	Regulator guidance published?	Does local regulator interpret the law as requiring prior opt-in?	Can website operators rely upon implied consent?
Austria	Yes	No	Yes	No
Belgium	Yes	Yes (in draft version for public consultation)	Not clear	Only in specific situations. Not for third party cookies
Bulgaria	Yes	No	Yes	Unknown
Cyprus	Yes	No	Yes	No
Czech Republic	Yes	No	No	N/A, opt out principle applies
Denmark	Yes	Yes	No	Yes
Estonia	Yes	No	No	N/A, opt-out principle applies
Finland	Yes	No	No	Not clear
France	Yes	Yes	Yes	Yes, under certain conditions
Germany	No	No	Unknown	Currently no; a formal statement of the Federal Government is awaited
Greece	Yes	No	Yes	No
Hungary	Yes	No	No	Yes
Ireland	Yes	Yes	No	N/A, opt-out principle applies

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Italy	Yes	Yes	Yes	No, but from the latest guidance on cookie notices some form of implied consent may be inferred
Latvia	Yes	No	Yes	No
Lithuania	Yes	Yes	Yes	Unknown
Luxembourg	Yes	No	Yes	No
Malta	Yes	No	Unknown	Not clear
Netherlands	Yes	Yes	Yes	No
Norway ²	Yes	Yes	Yes	Yes
Poland	Yes	No	Yes	Yes
Portugal	Yes	No	Yes	No
Romania	Yes	No	Yes	Yes
Slovak Republic	Yes	No	Yes	No
Slovenia	Yes	Yes	Yes	No
Spain	Yes	Yes	Yes	No
Sweden	Yes	No	Yes	Not clear
United Kingdom	Yes	Yes	Yes	Yes

¹ Some regulators have deemed implied consent as a method to obtain consent. Such consent may be considered valid where the user is given specific and comprehensive information about the use of cookies, and the user gives an indication of his/her wishes to consent (eg continues to browse and doesn't disable cookies).

² Norway is not an EU Member but as a consequence of its membership in the EEA (European Economic Area (Nw: EØS)), Norway is under an obligation to adopt EU Directives.

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EU Member State	E-Privacy Directive Implemented into local law?	Regulatory Guidance Issued?	Current Position (Legal, enforcement and regulatory position)	Meaning of Consent	Does local regulator interpret the law as requiring prior opt-in?	a) Applicable Legislation b) Regulatory Guidance c) Authority Responsible for implementation
<p>AUSTRIA</p> <p>DLA Piper Contacts: Sabine Fehring T +43 531 78 1453 sabine.fehring@dlapiper.com</p> <p>Stefan Panic T +43 531 78 1034 stefan.panic@dlapiper.com</p>	Yes	No	<p>The E-Privacy Directive was implemented in Austria by amendment of the relevant provisions of the Austrian Telecommunications Act (in Austrian: “<i>Telekommunikationsgesetz 2003</i>” (“TKG”)). The changes to the TKG came into effect on 22 November 2011.</p> <p>The relevant section of the TKG states that a user must give informed consent for the storage of personal data.</p>	<ul style="list-style-type: none"> ■ Under Austrian law “informed consent” is required prior to the processing of personal data. The user has to be aware of the fact that consent for the storage or processing of personal data is given, as well as the details of the data to be stored or processed, and has to agree actively. Therefore, it appears advisable that consent is obtained via some form of pop up or click-through agreement. ■ Consent by way of browser settings or a pre-selected check-box, etc, is not sufficient. In cases where consent is purported to be obtained by way of browser settings, the TKG requires that the information regarding the storage of personal data must be made available to the user. ■ There are no specific guidelines and case law in Austria. The most recent developments in the commentary refer to the principles summarised in Article 29 Working Party guidelines document WP 208 (see Working Document 02/2013 providing guidance on obtaining consent for cookies, adopted on 2 October 2013, 1676/13/EN, WP 208). 	Yes	<p>a) In Austrian: “<i>Telekommunikationsgesetz 2003</i>” as amended by BGBl I Nr. 102/2011</p> <p>b) N/A</p> <p>c) Austrian Regulatory Authority for Broadcasting and Telecommunications (TRT) and Austrian Data Protection Authority (DSB)</p>

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BELGIUM DLA Piper Contact: Patrick Van Eecke T +32 (0)2 500 1630 patrick.van.eecke@dlapiper.com	Yes	The Belgian Privacy Commission issued a draft recommendation in April 2014, and launched a public consultation at the same time. A final recommendation is expected in 2015.	<ul style="list-style-type: none"> ■ Article 5(3) of the E-Privacy Directive was implemented into Belgian Law by means of amendment of article 129 of the Belgian Electronic Communication Act. The amendment follows the wording of the E-Privacy Directive closely. As a result, the amended article 129 of the Belgian Electronic Communication Act requires prior informed consent. ■ The amended article 129 of the Belgian Electronic Communication Act does not allow for the website visitor's consent to be expressed by usage of the appropriate browser settings or other applications, as suggested by the European legislator in recital 66 of the E-Privacy Directive. 	<ul style="list-style-type: none"> ■ Consent must be (i) freely given (i.e. in circumstances where the website visitor has a choice to refuse consent); (ii) specific (i.e. relate to a specific cookie associated with a clearly defined purpose); (iii) informed (i.e. the visitor must be given information beforehand, specifying the cookie's purpose as well as the possibility to revoke consent) and (iv) unambiguously given. ■ Consent can be obtained in various ways including using a banner, a pop-up bar or an alternative start page providing information about the cookies to be set where visitors can tick a box granting permission for cookies being set. 	<p>The law does not foresee stricter wording than that of article 5(3) of the E-Privacy Directive.</p> <p>The Belgian Privacy Commission is of the opinion that a prior opt-in is required to set cookies (except for strictly necessary cookies, which do not require the website visitor's consent).</p>	<ul style="list-style-type: none"> a) Article 129 of the Electronic Commerce Act b) Draft recommendation has been issued; final recommendation expected in 2015 c) The Belgian Privacy Commission and the Belgian Institute for Postal Services and Telecommunications

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BULGARIA Firm: Wolf Theiss Website: www.wolftheiss.com Contact: Anna Rizova T +359 2 861 3703 anna.rizova@wolftheiss.com	Yes	No	<ul style="list-style-type: none"> Art. 5(3) of E Privacy Directive was implemented into Bulgarian legislation on 29 December 2011. It now states that users should be provided with clear and comprehensive information about the purposes of data processing and they must be given the opportunity to refuse storing or accessing such information. 	<ul style="list-style-type: none"> Consent means any freely given, explicit and informed statement of the data subject by which the data subject unambiguously gives their consent to their personal data being processed. 	Yes	a) Electronic Commerce Act b) N/A c) Consumers Protection Commission
CYPRUS Firm: Pamboridis LLC Website: www.pamboridis.com Contact: Christy Spyrou T +357 22752 525 spyrou@pamboridis.com	Yes	No	<ul style="list-style-type: none"> The E Privacy Directive was implemented in Cyprus on 18 May 2012, through Law No. 51(I)/2012 amending the Regulation of Electronic Communications and Postal Services Law. The amendments follow the wording of the E Privacy Directive closely, and leave the detailed compliance requirements to be clarified by the Cyprus Office of the Commissioner for Personal Data Protection. Prior informed consent is required in accordance with the provisions of the Processing of Data (Protection of the Individual) Law of 2001 and its amendment Law No. 37(I)/2003. 	<ul style="list-style-type: none"> Consent means any freely given, express and specific indication by the data subject of their wishes which is clearly expressed and informed (the data subject must have been previously informed that they consent to the processing of personal data concerning them). 	Yes, required by law	a) The Electronic Communications and Postal Services Law of 2004 as amended b) N/A c) Office of the Commissioner of Electronic Communications and Postal Regulation and the Office of the Commissioner for Personal Data Protection

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<p>CZECH REPUBLIC</p> <p>DLA Piper Contact: Jitka Stránská T +420 222 817 804 jitka.stranska@dlapiper.com</p>	Yes	No	<ul style="list-style-type: none"> ■ On 1 January 2011, the Czech Republic implemented the E-Privacy Directive. The E-Privacy Directive was implemented into Czech law by Act No. 468/2011 Coll., which amended Act No. 127/2005 Coll., on Electronic Communications, as amended. The amendment went into effect on January 1, 2011, and introduces the opt-out principle. ■ The E-Privacy Directive was reflected into Section 89 par. 3 of the Act on Electronic Communications which states: <i>“Anyone who intends to use or uses electronic communications networks to store data or to gain access to data already stored in the terminal equipment of the participants or users, is required to inform such participants or users in advance and provably about the scope and purpose of the processing of data and is obliged to offer them to refuse the possibility of the processing.”</i> 	<ul style="list-style-type: none"> ■ The Czech legislator derived the meaning of consent from the purpose of the E-Privacy Directive, which is not to overload a user with a confirmation of his/her consent at every website visit, but to provide him/her with an easy opportunity to refuse storing of personal data. 	No	<ul style="list-style-type: none"> a) The Act No. 127/2005 Coll., on Electronic Communications b) Guidance of the Office for Personal Data Protection (OPDP) dated 15 June 2012 c) Ministry of Industry and Trade of the Czech Republic

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<p>DENMARK</p> <p>Firm: Horten</p> <p>Website: www.horten.dk</p> <p>Contacts: Heidi Steen Jensen T +45 3334 4116 HSJ@horten.dk</p> <p>Egil Husum T +45 334 4224 EHU@horten.dk</p>	Yes	Yes	<ul style="list-style-type: none"> ■ The E-Privacy Directive was implemented in the new Danish Act on Electronic Communications Services and Networks which came into force on 25 May 2011, in accordance with the implementation deadline in the E-Privacy Directive. However, the Act did not implement the specific provisions concerning the use of cookies, but instead provided an authorisation to the Danish Minister of Business and Growth to execute an executive order on this matter. ■ The “Executive Order on Information and Consent Required in Case of Storing and Accessing Information in End user Terminal Equipment” came into force on 14 December 2011. ■ Pursuant to the Order the use of cookies requires consent. The consent must be freely given and specific. 	<ul style="list-style-type: none"> ■ The consent must be freely given and specific and the user must be given an option. ■ However, this does not imply that consent must be obtained each time a cookie is used but a user must be given an option. Furthermore, the consent must be informed which implies that a user must receive information about the consequences of consenting. Finally, the consent must be an informed indication of the user’s wishes. Normally, consent is obtained through tick-the-box but also the use of a homepage after having received the relevant information concerning cookies can constitute consent. Yet, consent by use of a homepage must be used with caution. 	Not in practice. Consent can be obtained by use of a homepage after having received the relevant information concerning cookies but this should be used with caution.	<p>a) (i) Act No 169 of 3 March 2011 on Electronic Communications Services and Networks; and (ii) Executive Order No 1148 of 9 December 2011 on Information and Consent Required in Case of Storing and Accessing Information in End-user Terminal Equipment</p> <p>b) Second Guidance of April 2013 to Executive Order on Information and Consent Required in Case of Storing and Accessing Information in End-user Terminal Equipment</p> <p>c) The Danish Business Authority</p>

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			<ul style="list-style-type: none"> In addition to this, the information to the user must fulfil the following requirements: (i) the information must be clear and easy to understand; (ii) the purpose of the use of cookies must be clear; (iii) the identity of the person or entity which is responsible for the use of cookies must be clear; (iv) the possibility of withdrawal of consent must be easily accessible and be described in the information; and (v) this information must be easily accessible for the user at all times. 			
<p>ESTONIA</p> <p>Firm: SORAINEN</p> <p>Website: www.sorainen.com</p> <p>Contacts: Kaupo Lepasepp T +372 6 400 939 kaupo.lepasepp@sorainen.com</p> <p>Mihkel Miidla T +372 6 400 959 mihkel.miidla@sorainen.com</p>	Yes	No	<ul style="list-style-type: none"> The Electronic Communications Amendment Act that implemented the E Privacy Directive took effect on 25 May 2011. However, the earlier drafts of subsections 102(3) and 102(4) of the Electronic Communications Act, which have been marked by the Estonian legislator as implementing Article 5(3) of the E Privacy Directive, were not changed as a result of the said Amendment Act. Currently no amendments to these provisions are planned. Accordingly, the abovementioned provisions are currently applicable to “communications undertakings” only, i.e., electronic communications service providers or operators. 	Due to opt-out system consent to cookies is not needed.	No. However, the Estonian Data Protection Inspectorate has expressed that the website operator must provide clear information on the types of cookies used and the purpose of their use.	<p>a) Electronic Communications Act (if the draft law is adopted then also the Information Society Services Act)</p> <p>b) N/A</p> <p>c) Estonian Data Protection Inspectorate and Estonian Technical Surveillance Authority</p>

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			<ul style="list-style-type: none"> <li data-bbox="786 288 1193 655">■ Electronic communications service providers or operators were (and still are) required to notify the subscriber of the purposes of processing personal data and give the subscriber an opportunity to refuse the processing. The law does not require the subscriber's consent to store information or for them to have access to information already stored. An opportunity to refuse cookies is sufficient. <li data-bbox="786 671 1193 1038">■ In addition to the exception in article 5(3) of the E-Privacy Directive, an electronic communications service provider or operator may collect and process information, irrespective of the subscriber's consent or refusal, if the processing is necessary for the purposes of recording the transactions made in the course of business and for other business-related exchanges of information. <li data-bbox="786 1054 1193 1270">■ A draft law has been initiated, under which an opt-in system for cookies will be applicable to providers of information society services under the Information Society Services Act. If adopted, it is planned to enter into force on 1 June 2015. 			

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<p>FINLAND</p> <p>Firm: Hannes Snellman Attorneys</p> <p>Website: www.hannessnellman.com</p> <p>Contacts: Erkko Korhonen T +358 9 2288 4308 erkko.korhonen@hannessnellman.com</p> <p>Kaisa Fahllund T +358 9 2288 4209 kaisa.fahllund@hannessnellman.com</p>	Yes	No	<ul style="list-style-type: none"> ■ Legislation was adopted by the Finnish Parliament adopting the new law, which entered into force on 25 May 2011. The Finnish law recognises the possibility of obtaining consent via browser or other application settings. However, the user needs to be given comprehensible and complete information on the purposes of storing or using such data. The legal requirement written in law is “consent”, but this is interpreted in the Government Bill No. 238/2010 so that the user may give consent via browser or other application settings. The storing and use of data is allowed only to the extent required for the service, and may not limit the protection or privacy any more than is necessary. ■ Further, the provisions regarding consent do not apply to any storing or use of data which is intended solely for the purpose of enabling the transmission of messages in communications networks or which is necessary for the service provider to provide a service that the subscriber or user has specifically requested. 	<ul style="list-style-type: none"> ■ At present, “opt-out” consent would be sufficient in Finland. The Finnish Act governing cookies provides two conditions on setting cookies on users’ computers: (i) the user has given consent, and (ii) comprehensible and complete information on the purposes of storing or using such data are given to the user. These two conditions are separate in a way that they both need to be fulfilled. Giving the required information to the user will not satisfy the requirement to obtain consent. ■ As Finland was one of the first countries to implement article 5(3) of the E-Privacy Directive, it is to be seen whether the interpretation will remain the same if “opt-in” becomes prevailing practice elsewhere in the EEA. 	No	<p>a) The Act on the Protection of Privacy in Electronic Communications (516/2004, in Finnish: Sähköisen viestinnän tietosuojalaki)</p> <p>b) N/A</p> <p>c) The Finnish Communications Regulatory Authority (FICORA), the Data Protection Ombudsman</p>

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<p>FRANCE</p> <p>DLA Piper Contact: Carol Umhoefer T +33 1 40 15 24 34 carol.umhoefer@dlapiper.com</p>	Yes	Yes	<ul style="list-style-type: none"> ■ France implemented the E-Privacy Directive in the Law No 78-17 of 6 January 1978. The law states that any subscriber or user of electronic communication services must be fully and clearly informed by the data controller or its representative of: (i) the purpose of any cookie (i.e. any means of accessing or storing information on the subscriber's/user's computer); and (ii) the means of refusing cookies, unless the subscriber/user has already been so informed. <p>Cookies are lawfully deployed only if the subscriber/user has expressed consent after having received such information.</p> <ul style="list-style-type: none"> ■ However, these provisions do not apply to cookies: (i) the sole purpose of which is to allow or facilitate electronic communication by a user; or (ii) that are strictly necessary to provide online communication services specifically requested by the user. ■ In November 2011, again in April 2012, then again in December 2013, the French Data Protection Authority (“CNIL”) issued guidance for cookies. 	<ul style="list-style-type: none"> ■ Consent must be (i) freely given (i.e. in circumstances where the user has a choice to refuse consent); (ii) specific (i.e. relate to a specific cookie associated with a clearly defined purpose); and (iii) informed (i.e. the user must be given information beforehand, specifying the cookie's purpose as well as the possibility to revoke consent). ■ The law also provides that consent can result from the subscriber's/user's connection settings (e.g. browser settings) or any other means under the subscriber's/user's control. ■ However, according to the CNIL, commonly used browsers do not offer compliant settings. 	Yes. The law copies the text of the E-Privacy Directive almost word for word, but December 2013 guidance embraces an <i>implied</i> opt-in approach.	<ul style="list-style-type: none"> a) The Law No 78-17 of 6 January 1978 on information technology, data files and civil liberties, as amended b) http://www.cnil.fr/documentation/deliberations/deliberation/delib/300/ c) Data Protection Authority (in French: <i>Commission nationale de l'informatique et des libertés</i> (CNIL))

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			<ul style="list-style-type: none"> ■ The CNIL considers that certain cookies are not covered by the law (e.g. cookies used to constitute a “basket” on an e-commerce platform, session ID cookies). The December 2013 guidance further specified what type of cookies are not covered by the law. ■ The CNIL considers that the website owner is liable for allowing a third party to install a cookie on the user’s computer. ■ The April 2012 guidance reaffirmed that these rules apply to all cookies, whether containing personal data or not. ■ The April 2012 guidance also reminded operators that non-compliance with French law can trigger financial penalties of up to €150,000 for a first violation and up to €300,000 for subsequent violations within 5 years. ■ The December 2013 guidance introduced an implied opt-in principle which applies, provided that consent is obtained in accordance with the CNIL’s specific requirements. ■ In July 2014 the CNIL announced EU regulators would conduct a “cookies sweep day” in September 2014 and would start enforcement audits in October 2014. 	<ul style="list-style-type: none"> ■ The CNIL regards the following consent collection mechanisms as compliant: <ul style="list-style-type: none"> – Step 1: inform users by implementing a banner on the home page specifying (i) purposes of the cookies used; (ii) the possibility to object by changing parameters via a link provided in the banner; and (iii) that continuing browsing means consent to the use of cookies. – Step 2: on a separate page (e.g. in a privacy policy) accessible through the banner, inform users about solutions implemented to accept/refuse cookies, for each technology used and for each purpose. 		

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<p>GERMANY</p> <p>DLA Piper Contact: Dr Thomas Jansen T +49 89 232 372 110 thomas.jansen@dlapiper.com</p>	<p>No Implementation has not been confirmed yet. The Federal Government has only made an informal and non-binding statement on the implementation of the E-Privacy Directive.</p>	<p>No No official guidance has been published. Only a non-binding completed questionnaire (based on the statement on the implementation of the Article 5 (3) of the E-Privacy Directive”, European Commission Document No. COCOM11-20, dated 4 October 2011) has been made publicly available.</p>	<ul style="list-style-type: none"> The process of implementing a specific act transposing the E-Privacy Directive has been delayed as the German Parliament did not pass several draft bills. The Federal Government completed a non-binding questionnaire from the EU Commission (“<i>Questionnaire on the implementation of the Article 5 (3) of the E-Privacy Directive</i>”, European Commission Document No. COCOM11-20, dated 4 October 2011), according to which the Federal Government takes the view that the E-Privacy Directive has already been transposed into the Telemedia Act. Formal and explicit confirmation of this view remains to be obtained. 	<ul style="list-style-type: none"> Unknown. There is no requirement to obtain consent where the cookies are used for enabling information or communication the user has explicitly requested. It remains to be seen whether it would also be sufficient to link the information about processing of personal data and technical measures to the browser settings or whether an active opt-in (e.g. by clicking on a pop-up screen) will be required. 	<ul style="list-style-type: none"> The Federal Government informally stated in the questionnaire of the EU Commission (“<i>Questionnaire on the implementation of the Article 5 (3) of the E-Privacy Directive</i>”, European Commission Document No. COCOM11-20, dated 4 October 2011) that the user’s prior consent is required, unless the use of cookies is technically required for the use of a service. However, it is still unclear in which way the consent is to be obtained. Given the ambiguity of the current legal situation, implementation of active opt-in is recommended. 	<p>a) TBC by explicit implementation of the E-Privacy Directive and/or clarification about the current ambiguities of the legal situation, in particular with regard to the requirements to obtain consent to the use of cookies.</p> <p>b) N/A</p> <p>c) N/A</p>

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<p>GREECE</p> <p>Firm: Kyriakides Georgopoulos Law Firm</p> <p>Website: www.kglawfirm.gr</p> <p>Contact: Michailidou Ersi T +30 210 817 1500 michailidou@kglawfirm.gr</p>	Yes	No	<ul style="list-style-type: none"> ■ The E-Privacy Directive was implemented into Greek law by Law 4070/2012, which was approved by the Greek Parliament on 6 April 2012. ■ This amends Law 3471/2006 on Protection of personal data and privacy in the electronic telecommunications sector. ■ According to article 4 par. 5 of Law 3471/2006 as amended by Law 4070/2012, the storage of information or the access to information already stored to the terminal equipment of a subscriber or user is permitted only if this specific subscriber or user has provided his/her consent following an updating. 	<ul style="list-style-type: none"> ■ Law 4070/2012 has authorised the Hellenic Data Protection Authority (DPA) to specify the mechanisms for providing information and obtaining the user's consent. Although the DPA has not yet issued any official act or directive, guidelines and advice on its official site state that consent must be given only after, appropriate, clear and extensive information given to the user. ■ Consent can be obtained by appropriate browser mechanisms or other applications. Examples include pop-up banners. Internet browsers which reject cookies and require the active selection by the user in order to accept same, are considered as valid consent. Preselected browser settings which accept all cookies and which the user must specifically reject, are not satisfying the requirements of a valid consent. 	Yes	<ul style="list-style-type: none"> a) Law 3471/2006, as amended and in force today b) No c) Hellenic Data Protection Authority (DPA)

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<p>HUNGARY</p> <p>DLA Piper Contacts: Monika Horvath T +36 1 510 1110 monika.horvath@dlapiper.com</p> <p>Zoltán Kozma T +36 1 510 1100 zoltan.kozma@dlapiper.com</p>	Yes	No	<ul style="list-style-type: none"> Article 5(3) of the E-Privacy Directive was implemented into Hungarian law by section 155(4) of the Hungarian Act C of 2003 on Electronic Communications (“Act C of 2003”). The relevant provision provides that <i>“the storing of information, or the gaining of access to information on the electronic terminal equipment of a subscriber or user obtained via electronic communications networks is only allowed on the condition that the subscriber or the user concerned has given his or her consent, after having been provided with clear and comprehensive information which also includes the purpose of the data processing”</i>. 	<ul style="list-style-type: none"> There is no specific guidance or regulation in relation to the meaning of consent. However, from the wording of the relevant Act, it is clear that it must be prior consent, after the subscriber has been provided with clear and comprehensive information (including the purpose of processing). Service providers shall be authorised to obtain and store communications transmitted on their network only to the extent strictly necessary for the provision of services for technical reasons. General practice is that consent can be obtained via browser settings; however, to date this has not been confirmed by the opinion or the guidance of the Authorities. 	No	<p>a) Section 155(4) of the Hungarian Act (2003 on Electronic Communications)</p> <p>b) No</p> <p>c) National Media and Infocommunications Authority</p>

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<p>IRELAND</p> <p>Firm: Mason, Hayes and Curran</p> <p>Website: www.mhc.ie</p> <p>Contact: Philip Nolan T +353 1 614 5000 pnolan@mhc.ie</p>	Yes	Yes	<ul style="list-style-type: none"> ■ Implemented into Irish law by Statutory Instrument No. 336/2011, the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011, with effect from 1 July 2011. ■ Users must be provided with “clear and comprehensive” information, including as to the purpose of the cookie. Such information must be “prominently displayed and easily accessible” and be as “user friendly as possible”. ■ The Regulations do not apply to cookies which are “strictly necessary in order to provide an information society service explicitly requested” by the user. 	<ul style="list-style-type: none"> ■ The Regulations do not specify how consent should be given beyond stating that the methods of giving consent should be as “user friendly as possible”. ■ The user’s consent may be given by the use of appropriate browser settings where it is technically possible and effective. Such settings would require, as a minimum, clear communication to the user as to what he or she was being asked to consent to and a means of giving or refusing consent to any information being stored or retrieved. ■ Consent can be obtained by other technological applications by means of which the user can be considered to have given his or her consent. 	<p>No. Implied consent could be relied upon in certain circumstances.</p> <p>Guidance from the regulator indicates that website operators can obtain consent by implication. This can be done by a prominent notification (usually a pop-up), which should contain a link to a Cookie Statement. This link would outline in greater detail how the site makes use of cookies.</p>	<p>a) European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (SI 336 of 2011)</p> <p>b) Guidance Note on Data Protection in the Electronic Communications Sector</p> <p>c) Data Protection Commissioner</p>

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ITALY DLA Piper Contacts: Giangiaco Olivi T +39 02 80 618 515 giangiaco.olivi@dlapiper.com Giulio Coraggio T +39 02 80 618 619 giulio.coraggio@dlapiper.com Stefania Baldazzi T +39 02 80 618 616 stefania.baldazzi@dlapiper.com Gianluigi Marino T +39 02 80 618 654 gianluigi.marino@dlapiper.com	Yes	Yes	<ul style="list-style-type: none"> Implemented into Italian law with effect from June 2012. The new provisions are a very close reflection of the wording of Recital 66 of the E-Privacy Directive and section 5(3) of Directive 2002/58/EC (as amended by the E-Privacy Directive). As such, they pose exactly the same interpretation problems as these provisions of EU law, especially with regard to the nature of consent required for compliance. However the guidelines issued 3 June 2014 by the Italian Data Protection Authority clarified the situation and the position of the Authority on this issue. 	<ul style="list-style-type: none"> The Data Protection Authority's guidance (Decision of 8 May 2014 entitled "Simplified Arrangements to Provide Information and Obtain Consent Regarding Cookies", an English version of which is available at: http://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/3167654) provides for two layers of information notice: a short information notice to be placed in the homepage, which in turn links to a more detailed notice. 	Yes, albeit from the latest guidance on cookie notices some forms of simplified consent are provided.	a) Legislative Decree n. 69 of 28 May 2012, amending the Italian Privacy Code (Legislative Decree n. 196 of 30 June 2003) b) Decision of the Italian Data Protection Authority on <i>Simplified Arrangements to Provide Information and Obtain Consent Regarding Cookies</i> of 3 June 2014 c) the Data Protection Authority (in Italian: "Garante per la protezione dei dati personali")

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				<ul style="list-style-type: none"> <li data-bbox="1211 292 1554 1118">■ The short information on the homepage can be in a banner and shall mention/provide: a) that the website uses profiling cookies to send advertising messages in line with the user’s online navigation preferences (where applicable); b) that the website also allows setting third-party cookies (where applicable); c) a clickable link to the extended information notice, where information on technical and analytics cookies, if any, must be provided, along with tools to select the cookies to be enabled; d) that on the page with the extended information notice, the user may refuse to consent to the installation of the relevant cookies; and e) that if the user continues browsing by accessing any other section or selecting any item on the website (e.g. by clicking a picture or a link), he or she consents to the use of cookies. <li data-bbox="1211 1139 1554 1407">■ The banner in question must be an integral part of the action through which the user provides his/her consent. In other words, the consent must cause a “discontinuity”, albeit a minimal one, in the browsing experience: for instance, the banner will only cease being displayed on 		

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				<p>screen if the user takes action – by selecting any active item on the page underneath the banner.</p> <ul style="list-style-type: none"> ■ The extended information notice must include all the items provided for under the Privacy Code: describe the detailed features and purposes of the cookies set through the website and allow users to select/deselect the individual cookies. It must be linkable from the short notice as well as from a hyperlink in the bottom section of each website page. The notice must also contain an updated link to the information notices and consent forms of the third parties that set cookies through the operator’s website. If the operator is not directly contracting with such third parties, it will have to include the links to the websites of the intermediaries or brokers that are in turn liaising with such third parties. The extended information notice must also refer to the possibility for users to express their consent to the use of cookies through browser settings. 		

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<p>LATVIA</p> <p>Firm: LAWIN</p> <p>Website: www.lawin.com</p> <p>Contact: Sarmis Spilbergs T +371 67814848 sarmis.spilbergs@lawin.lv</p>	Yes	No	<ul style="list-style-type: none"> ■ Latvia has implemented the E-Privacy Directive through amendments to the Law on Information Society Services. The implementation of the E-Privacy Directive does not expressly address the use of browser settings to obtain consent. It provides that cookies may be stored only after the user has consented, which shall occur only after information regarding the intended purpose of data processing is provided, in accordance with Personal Data Protection Law. ■ No official guidance has been issued by the Data State Inspectorate regarding the collection of consent for the use of cookies. There are no signs of relaxation of general rules with respect to consent for cookies. 	<ul style="list-style-type: none"> ■ Since the Personal Data Protection Law implements Directive 95/46/EC, the consent for cookies must be “unambiguously given”. 	Yes	<ul style="list-style-type: none"> a) Law on Information Society Services, article 7 b) N/A c) Data State Inspectorate

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LITHUANIA Firm: LAWIN Website: www.lawin.com Contacts: Jaunius Gumbis T +370 52681830 jaunius.gumbis@lawin.lt Julius Zaleskis T +370 52191934 julius.zaleskis@lawin.lt	Yes	Yes	<ul style="list-style-type: none"> Lithuania implemented the E-Privacy Directive through amendments to the Law on Electronic Communications which came into effect on 1 August 2011. The amendments mirror the text of the E-Privacy Directive and require that consent to the use of cookies must be “opt-in”. The Lithuanian State Data Protection Inspectorate has published recommendations about the method of consent to the use of cookies. The guidance confirmed that consent can be obtained through pop-ups, banners or website registration while relevant settings contained within current browsers are not likely to form a valid consent. 	<ul style="list-style-type: none"> “Prior” explicit consent is required. Users must be given a genuine opportunity not to consent. There is no clear guidance on the possibility to obtain an implied consent. 	Yes, required by law and regulatory guidance.	a) The Law on Electronic Communications of the Republic of Lithuania No IX 2135 (in Lithuanian: “ <i>Lietuvos Respublikos elektroninių ryšių įstatymas</i> ”) b) http://www.ada.lt/images/cms/File/naujienu/slapuk_DV.pdf c) State Data Protection Inspectorate (in Lithuanian: “ <i>Valstybinė duomenų apsaugos inspekcija</i> ”)
LUXEMBOURG Firm: Bonn & Schmitt Website: www.bonnschmitt.net Contacts: Guy Arendt T +352 27 855 garendt@bonnschmitt.net Alain Grosjean T +352 27 855 agrosjean@bonnschmitt.net Julia Senior T +352 27 855 jsenior@bonnschmitt.net	Yes	No	<ul style="list-style-type: none"> Luxembourg implemented Directive 2009/136/EC by a law of 28 July 2011 which modified the law of 30 May 2005 and came into effect on 1 September 2011. Prior informed consent of a subscriber/user is required. Other requirements include: the method of providing information and right to refuse should be as user friendly as possible and where it is technically possible and effective, the users consent may be expressed by appropriate browser/application settings. 	<ul style="list-style-type: none"> “Consent” means any freely given specific and informed indication of his wishes by which the person concerned or his legal, judicial or statutory representative signifies his agreement to personal data relating to him being processed (Art 2(b) law of 30 May 2005 as modified). 	Yes, required by law.	a) Law of 30 May 2005 as modified laying down specific provisions for the protection of persons with regard to the processing of personal data in the electronic communications sector b) No c) Data Protection Authority (in French: “ <i>Commission Nationale pour la protection des données</i> ”).

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MALTA Firm: Mamo TCV Advocates Website: www.mamotcv.com Contacts: Antoine Camilleri T (+356) 21231345 antoine.camilleri@mamotcv.com Claude Micallef-Grimaud T (+356) 21231345 claude.micallefgrimaud@mamotcv.com	Yes	No	<ul style="list-style-type: none"> Legal Notice 239 of 2011, entitled “Processing of Personal Data (Electronic Communications Sector) (Amendment) Regulations 2011” was brought into force with effect from 1 January 2013. This Legal Notice amended prior regulations by implementing into Maltese Law the amendments under Article 2(5) of the E-Privacy Directive. The Maltese Office of the Information and Data Protection Commissioner (IDPC) is still in the process of drafting local guidance on the way in which the so called ‘cookie clause’ is to be interpreted. No indication has been given as to when such guidance will be published. It is worth noting that the IDPC’s website presently makes reference to the Article 29 Data Protection Working Party Document 02/2013 providing guidance on obtaining consent for cookies (adopted on 2 October 2013). 	<ul style="list-style-type: none"> The amended law makes it clear that cookies, – although not explicitly mentioned in the law, are only permissible with the consent of the subscriber or user. There is no specific regulation that defines “consent” in the context of cookies. Therefore, the general rules on data protection must be complied with, meaning that consent must be prior, free, specific and informed. In the context of cookies, for consent to be deemed valid, the amended law states that controllers must provide to subscribers or users “... clear and comprehensive information...”. However, there is no local guidance that explains this in any further detail. 	The situation is unclear in Malta and will remain so until the regulator publishes local guidelines on this matter. No indication has been given as to when such guidelines will be published.	a) Processing of Personal Data (Electronic Communications Sector) Regulations, Legal Notice 16 of 2003 as amended (in particular, the amended regulation 5 thereof) b) N/A c) Office of the Information and Data Protection Commissioner (IDPC)

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<p>NETHERLANDS</p> <p>DLA Piper Contacts: Richard Van Schaik T +31 20 541 9828 richard.vanschaik@dlapiper.com</p> <p>Robin de Wit T +31 20 541 9674 robin.dewit@dlapiper.com</p>	Yes	Yes, the regulator has provided a Q&A	<ul style="list-style-type: none"> ■ The Dutch Telecommunications Act (“Act”) was amended with effect from 5 June 2012. Among other things, that amendment introduced stricter rules for placing and accessing cookies. ■ With effect from 5 June 2012 cookies may only be placed and accessed after website visitors have been clearly and unambiguously informed about these cookies (purpose, type of cookies, etc) and have granted their prior and explicit permission to that effect (opt in). ■ The Dutch legislature does not provide instructions or guidelines on how the opt in consent should be obtained. However, information and consent may no longer be provided or obtained through default browser settings. 	<ul style="list-style-type: none"> ■ Consent must be freely given, specific and informed: it should refer clearly and precisely to the scope and the consequences of the cookie processing. ■ Where personal data will be processed, consent must be unambiguously given: there can be no doubt that the data subject has given consent to the processing of their personal data. ■ Providing information and obtaining consent can be done in various ways. Examples include using a header bar, a pop-up or an alternative start page which provides information about the cookies to be placed and accessed where website visitors can tick a box granting permission for the relevant acts. The Act requires that users are given clear and complete information. This information must explain who will place the cookies and for what purpose they will be used. Permission to use cookies must be granted before they are used. 	<p>Prior explicit consent is required.</p> <p>Please note that granting consent can be a condition for using a website.</p> <p>If a user does not give consent, either access to the website must be denied, or cookies cannot be placed.</p> <p>These rules are subject to upcoming legislation, under which the required opt-in consent may be changed to implied consent.</p>	<p>a) Article 11.7a Dutch Telecommunications Act</p> <p>b) A Q&A provided by the regulatory body can be found at www.acm.nl</p> <p>c) The Authority for Consumers & Markets (ACM) is responsible for monitoring and enforcement of the Telecommunications Act (www.acm.nl). The Dutch Data Protection Authority (DPA) is responsible for monitoring and enforcement of the Dutch Data Protection Act (presumed applicable to tracking cookies) (www.dutchdpa.nl)</p>

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			<ul style="list-style-type: none"> ■ The new rules in the Act also prescribe that from 1 January 2013, cookies or similar data files placed or accessed, are considered to be personal data, unless the party placing such cookies or information can prove otherwise. This goes only for tracking cookies. ■ Rules regarding the required prior consent do not apply to “necessary cookies”; those which are necessary to carry traffic data over an electronic communication network or for a service that is requested by the user (e.g. cookies that facilitate online shopping baskets). ■ The aforementioned rules on cookie consent are subject to amendments: <ul style="list-style-type: none"> a) The use of cookies that have little or no impact on the internet user’s privacy (e.g. analytic cookies) will be allowed without consent, on the condition that: (i) the data collected by such cookies are not used for, among other things, creating profiles by the website owner and/ or the third party with whom the data are shared; and (ii) the website owner sharing the data with a third party shall take additional measures in order to limit any possible privacy impact. 	<ul style="list-style-type: none"> ■ When the proposed legislative amendments on cookie consent have become formal law, cookies that have no or low consequences to the user’s privacy may be exempted from the consent requirement. Furthermore, the required opt-in consent may also be given implicitly, as long as the user is clearly informed upon entering the website that the continued use of the website constitutes consent to setting cookies. This can be done through the use of a banner on top of the website. 		

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			<p>b) New regulations are considered that would make it possible to obtain users' "implied consent". The duty to inform users about the use of cookies still applies.</p> <p>The effective date of such new legislation is unknown.</p> <p>No sanctions have been imposed yet by the Authority for Consumers & Markets (ACM) or the Dutch Data Protection Authority (DPA), though general warning letters have been circulated.</p>			

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<p>NORWAY</p> <p>DLA Piper Contact: Håvard Kjørstad T +47 2413 1640 havard.kjarstad@dlapiper.com</p>	Yes	Yes	<ul style="list-style-type: none"> ■ The E Privacy Directive was implemented in the Electronic Communications Act (ECA) section 2 7b (effective from 1 July 2013). ■ Storing of information in the user’s communication equipment, or gaining access to such equipment, is not permitted unless the user: (i) is provided with information on the data processed, the purpose of the processing and the identity of the entity that will process the data; and (ii) consents to this. ■ The information and consent requirement does not apply for technical storage or access to information (i) exclusively for the purpose of transferring communication in an electronic communications network; or (ii) which is necessary to supply a service in accordance with the user’s explicit request. ■ Willful or negligent failure to comply with the ECA section 2 7b may result in (i) infringement fines; or (ii) fines or imprisonment for up to six months. 	<p>Provided that the information regarding cookies is visible when the user accesses the website (e.g. a link to the information in the header, use of textbox or “pop-up”), it will be sufficient that the user has consented to the use of cookies in the browser settings (even if consent is the default status in browser settings) or by other means within the user’s control.</p>	Yes	<p>a) The ECA section 2-7b</p> <p>b) Guidelines posted on npt.no 26 June 2013 and datatilsynet.no 26 June 2013</p> <p>c) The Norwegian Post and Telecommunications Authority (in Norwegian: “<i>Post- og teletilsynet</i>”) and the Ministry of Transport and Communications (in Norwegian: “<i>Samferdselsdepartementet</i>”)</p>

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<p>POLAND</p> <p>DLA Piper Contacts: Krystyna Szczepanowska-Kozłowska T +48 22 540 74 02 krystyna.szczepanowska@dlapiper.com</p> <p>Dagmara Jaskulak T +48 22 540 74 57 dagmara.jaskulak@dlapiper.com</p>	Yes	No	<ul style="list-style-type: none"> The E-Privacy Directive, in particular article 5(3), was implemented into Polish law by an Act of 16 November 2012. This Act amended, among others, Article 173 of the Telecommunications Law, which governs cookies. This change took effect on 22 March 2013. 	<ul style="list-style-type: none"> Prior explicit consent is required. However, according to Article 173(2) of the Telecommunications Law, a subscriber or user may give his/her consent using settings of the software installed on its telecommunications terminal equipment or service configuration. This means that consent can be inferred by a user's actions (e.g. the user is given clear and relevant information about the cookies that are used, and on that basis decides to click through and continue to use the website). The Ministry of Administration and Digitization of Poland has stated clearly that unless a subscriber's or user's browser is set to disallow "cookies", his/her consent to the use of cookies should be implied. 	Yes. Explicit prior opt-in consent is required by law, but implied consent under Article 173(2) of the Telecommunications Law can be relied upon.	<ul style="list-style-type: none"> a) The Telecommunication law b) No c) The Ministry of Administration and Digitization.

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<p>PORTUGAL</p> <p>Firm: ABBC & Associados</p> <p>Website: www.abbc.pt</p> <p>Contact: João Costa Quinta T +351 213 583 620 j.quinta@abbc.pt</p>	Yes	No	<ul style="list-style-type: none"> ■ Article 5(3) of the E-Privacy Directive addressing cookies was transposed by Law no. 46/2012, of 29 August 2012, amending Law no. 41/2004, of 18 of August 2004 on the protection and processing of personal data in e-communications. ■ Article 5 of the Law (“storage and access to information”) determines that the storing of information and the possibility to access information stored in a subscriber’s/user’s terminal is only allowed on the condition the subscriber/user has provided his or her prior consent, which must be based on clear and comprehensive information about the purposes of the processing, in accordance with the provisions laid down in the Law on the Protection of Personal Data. This does not prevent technical storage or access for the sole purpose of carrying out the transmission of a communication over an e-communication network or if strictly necessary for the provider of an information society service to provide a service expressly requested by the subscriber/user. Non-compliance with the “opt-in” rule constitutes an administrative offence, punishable by fines ranging from EUR 5,000 to 5,000,000 for companies. ■ The local Data Protection Authority (CNPD) has not yet issued any guidelines. 	N/A	Yes. The Law does not require “express” consent. However, because consent must be prior and based on full information, considering existing rules and guidelines, it does not appear that implied consent shall suffice.	<p>a) Law no. 41/2004, of 18 of August</p> <p>b) N/A</p> <p>c) Data Protection Authority (CPND) and National Communications Authority (ANACOM)</p>

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<p>ROMANIA</p> <p>DLA Piper Contacts: Cosmina Simion T +40 372 155 816 cosmina.simion@dlapiper.com</p> <p>Laura Leanca T +40372 155 814 laura.leanca@dlapiper.com</p>	Yes	No	<ul style="list-style-type: none"> ■ The national implementation of the E-Privacy Directive (through Law No. 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector, as subsequently amended) follows the wording of the Directive closely. The setting of cookies on user's terminals is allowed provided users have: <ul style="list-style-type: none"> – provided their consent; and – been informed in an easily accessible manner and user-friendly language about the data processing operations and of their purpose in accordance with Data Protection Law No. 677/2001. ■ User consent is not required where the setting of cookies is necessary solely for the purpose of ensuring transmission through an electronic communications network or such operations are strictly necessary to provide an information society service expressly requested by the user. ■ Failure to comply with the legal requirements is qualified as a minor offence, with fines ranging from approximately EUR 1,128 to 22,573. For companies whose annual turnover exceeds approximately EUR 1,128,000 the administrative fines can be up to 2% of turnover. 	<ul style="list-style-type: none"> ■ Express consent is required. However, implied consent may be envisaged where the user has adjusted the settings of his or her internet browser to accept cookies. 	Yes, although not expressly stated in an official document.	<p>a) Law No. 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector, published in the Official Gazette no. 1101/25 November 2004, as subsequently amended (latest amendments as of 21 June 2012)</p> <p>b) N/A</p> <p>c) The National Supervisory Authority for Personal Data Processing (ANSPDCP)</p>

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SLOVAK REPUBLIC DLA Piper Contact: Michaela Stessl T +421 2 59202 142 michaela.stessl@dlapiper.com	Yes	No	<ul style="list-style-type: none"> Formal “informed consent” is required prior to the storage of data or the acquisition of access to data already stored in the terminal equipment of the participants or users. 	<ul style="list-style-type: none"> It has to be proven that the user was provided with exact and precise information regarding the purpose of such processing of data. The consent of the user must be given actively, so obtaining consent through pop-up agreements or similar means will be sufficient. 	Yes, required by law	a) Act No. 351/2011 Coll. on electronic communications b) N/A c) Ministry of Transport, Construction and Regional Development of the Slovak Republic
SLOVENIA Firm: DLA Piper (Vienna office) DLA Piper Contact: Dr. Jasna Zwitter-Tehovnik T +43 1 531 78 1042 jasna.zwitter-tehovnik@dlapiper.com	Yes	Yes	<ul style="list-style-type: none"> The E-Privacy Directive was implemented in Slovenia by an amendment to the Act on Electronic Communications (In Slovenian: <i>Zakon o elektronskih komunikacijah; ZEKom-1</i>). 	<ul style="list-style-type: none"> Consent is defined as a free declaration of will by an individual, provided that such individual has beforehand been given certain information. The information to be provided to the individual should include: name of the data controller, types of cookies, and purpose of cookie use. Furthermore, a link to a site with a more detailed description and explanation is advisable. Consent can be given by clicking a button or a link, checking a box, or by sending an email. Implied consent or consent by way of browser settings will (usually) not be sufficient. 	Yes	a) Act on Electronic Communications (in Slovenian: “ <i>Zakon o elektronskih komunikacijah; ZEKom-1</i> ”) b) Guidelines by the Information Commissioner (in Slovenian: “ <i>Smernice Informacijskega pooblaščenca Republike Slovenije o uporabi piškotkov - Kdaj lahko uporabimo piškotke?</i> ”) c) Information Commissioner (in Slovenian: “ <i>Informacijski pooblaščenec</i> ”)

EU Member State	E-Privacy Directive Implemented into local law?	Regulatory Guidance Issued?	Current Position (Legal, enforcement and regulatory position)	Meaning of Consent	Does local regulator interpret the law as requiring prior opt-in?	a) Applicable Legislation b) Regulatory Guidance c) Authority Responsible for implementation
<p>SPAIN</p> <p>DLA Piper Contact: Diego Ramos T +34 91 790 1658 diego.ramos@dlapiper.com</p>	Yes	Yes	<ul style="list-style-type: none"> ■ The Spanish Information Society Services and Electronic Commerce Law was amended in to implement the changes required by the E-Privacy Directive. ■ Cookies or similar technologies can be lawfully set only if the subscriber/user has expressed consent after having been duly informed. The information about the use of cookies must be “<i>clear and complete</i>”, specifying the reasons why data is being collected via such devices, and must comply with existing information requirements under Spanish data protection law. The provisions allow such consent to be obtained via adequate browser or application settings. ■ Fines of £3,000 and £500 have been issued for failures to comply. 	<ul style="list-style-type: none"> ■ Guidance provides that consent must be made expressly or be clearly inferred from the users’ actions after being given proper information about the use of cookies. ■ Layered consent is permissible, if sufficiently clear and detailed. 	Yes, by law, but this may be general by way of browser settings.	<ul style="list-style-type: none"> a) The Spanish Information Society Services and Electronic Commerce Law 34/2002 b) Use of Cookies April 2013 (issued by the Spanish Data Protection Agency) and Report 0196/2014 c) The Spanish Telecommunications and Online Services Authority and, for privacy features, the Data Protection Agency

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<p>SWEDEN</p> <p>DLA Piper Contact: Johan Sundberg T +46 (0)8701 7824 johan.sundberg@dlanordic.se</p>	Yes	No	<ul style="list-style-type: none"> ■ Sweden has implemented the E-Privacy Directive through amendments to the Electronic Communications Act (2003:389) which came into effect on 1 July 2011. ■ In relation to “legitimate techniques” (i.e., non-intrusive cookies such as user input cookies or authentication cookies), the Swedish Government has concluded that for practical reasons, the amendments shall not be regarded as a change in substance, i.e. the opt-out requirement shall still apply. ■ In addition, the Swedish Data Inspection Board is of the opinion that different types of cookies should be distinguished. When using cookies for purposes other than to adjust settings on a site for the user’s previous requests and similar, informed consent would be required. According to the Data Inspection Board”, whether consent is required depends on the purpose of the cookie. ■ On the other hand, the Swedish Post and Telecom Agency (“Agency”) (the regulatory body in relation to cookies) does not seem to agree and is of the opinion that the requirement for consent can be waived without this possibility being expressly provided for by the Electronic Communications Act (2003:389). 	<ul style="list-style-type: none"> ■ Consent is defined as any <i>voluntary, specific and unambiguous expression of will</i>. There may not be any doubts that the user provides his/her consent to the processing. Hypothetical or silent consent is thus <i>not</i> sufficient as in such circumstances the user might not be required to actively take measures to avoid the processing of the personal data. ■ However, <i>implicit behaviour</i> may be valid consent (as long as there is no sensitive personal data involved). Implicit behaviour means in this context that the user provides data after having received clear information about the intended processing of the data, the fact that it is optional to provide the data, and also that submitting the data would be considered as providing consent to the processing. ■ The Swedish government has also indicated that the rules on consent should not be seen as a change from the old regime and, therefore, web browser settings would probably be regarded as indicating consent. 	Yes	<ul style="list-style-type: none"> a) Electronic Communications Act (in Swedish: “<i>lag 2003:389 om elektronisk kommunikation</i>”) b) N/A c) Swedish Post and Telecom Agency

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			<ul style="list-style-type: none"> The Swedish part of the European Trade Association of the Digital and Interactive Marketing Industry (IAB Sweden) has created a self-regulating committee in response to the introduction of the consent requirements for cookies. The committee has assembled a group with representatives from industry and other organisations. The committee was set up with a view to producing best practice guidance for the use of cookies and its first recommendation was published in November 2011 (“Recommendation on the use of cookies and comparable technology”, November 2011, http://www.minacookies.se/wp-content/uploads/2011/11/Rekommendation_-cookies_nov18_2011_English_version.pdf.) 			

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<p>UNITED KINGDOM</p> <p>DLA Piper Contacts: Andrew Dyson T +44 0113 369 2403 andrew.dyson@dlapiper.com</p> <p>John Townsend T +44 114 283 3213 john.townsend@dlapiper.com</p>	Yes	Yes (in May 2011, December 2011 and May 2012)	<p>Implemented into UK law with effect from 26 May 2011.</p> <ul style="list-style-type: none"> ■ Amendments follow the wording of the E Privacy Directive closely and leave the detailed compliance requirements to be clarified by the Information Commissioner’s Office (“ICO”). ■ On 25 May 2012, the ICO issued revised guidance to clarify and reaffirm that implied consent can be relied upon as a valid form of consent (rather than explicit opt in consent). ■ The enforcement approach adopted by the ICO to date has been to write to companies who they consider to be in breach and ask them to remedy the website and provide a more apparent method to obtain consent/provide notification to website users of cookie usage and storage. 	<ul style="list-style-type: none"> ■ Strictly speaking, “prior” explicit consent is required. ■ However, implied consent will also be a valid form of consent under certain circumstances. ■ Implied consent means consent which “specific and informed” and an “indication of wishes”. This means that consent can be inferred by a user’s actions (e.g. the user is given clear and relevant information about the cookies that are used, and on that basis decides to click through and continue to use the site). ■ General market practice (endorsed by the ICO) in the UK has been for “cookie banner/pop ups” to be placed on the landing page of a website notifying a user that cookies are being used and including a link to a more detailed cookie policy. These banners do not normally require the user to tick an acceptance box but normally obscure some of the pages’ text until closed by the user. 	<p>Yes, but it is possible to rely upon implied consent which means it is not necessary to obtain an explicit acknowledgment.</p> <p>It is possible to rely on continued use of the website as an indication of implicit consent, subject always to the requirement to provide relevant, clear and comprehensive information. There is no need to include a tick box or click acceptance.</p>	<p>a) The Privacy and Electronic Communications (EC Directive) Regulations 2003, as amended by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011</p> <p>b) http://www.ico.gov.uk/news/blog/2012/~media/documents/library/Privacy_and_electronic/Practical_application/cookies_guidance_v3.ashx</p> <p>c) Information Commissioner’s Office</p>

COOKIE AUDITS

STEP 1 – COOKIES AUDIT

Businesses should begin identifying the cookies (and similar technology) which are used by their website. A “cookie audit” should be undertaken with the assistance of your IT department/specialist legal advisors. Cookie audits should include a review of the types of cookies used by the website; the life span of such cookies; and how intrusive the cookies are.

STEP 2 – MAP OUT COMPLIANCE OPTIONS

Once the company understands the cookies which its website(s) use, they must then consider the options available to them in order to comply. The “strictly necessary” exemption should also be considered, and companies should look to local regulator guidance and also the WP29 Opinion (as referred to above) when applying this exemption.

STEP 3 – IMPLEMENTATION

The deadline for compliance has expired in many European jurisdictions, therefore companies must act now to avoid any possible enforcement action.

STEP 4 – ADDITIONAL CONSIDERATIONS AND STEPS

When conducting a cookie audit, you should also consider and undertake the following:

- **Due Diligence:** conduct due diligence of ad network/metrics partners and vendors before contracting.
- **Click wrap agreements:** make sure your business never signs click wrap agreements without legal review.
- **Effective contracts:** bind your partner to: a) comply with applicable laws; b) clear and conspicuous disclosure; c) opt in/opt out; d) flow through terms to vendors; and e) audit rights.
- **Post contract monitoring:** is your partner fulfilling its contractual promises?
- **Test/Evaluation Agreements:** always check/test agreements against legal requirements and your Privacy Policy. Reviews become long term arrangements.



This publication is intended as a general overview and discussion of the subjects dealt with. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper accepts no responsibility for any actions taken or not taken on the basis of this publication. If you would like further advice, please speak to your DLA Piper contact.

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