Status of implementation of the amendment to
Article 5.3 of Directive 2002/58/EC (the “EU Cookie Law”)

1. **Overview**

   Article 5.3 of Directive 2002/58/EC, which regulates the use of cookies and similar, was amended in 2009. The amended legislation now requires consent to be given by users before most cookies can be stored on a user’s computer. The change was due to be implemented in the national law of Member States by May 2011.

   This document sets out the status of implementation around the 28 Member States of the European Union in Summer 2013. From the responses, it can be seen that 25 countries have implemented the change, 1 has pending legislation that will implement the change; and 2 have not implemented the change and have no concrete plans yet to do so.

2. **Status Map**

   Figure 1 below shows the status of implementation around the EU ‘at a glance’. Countries shown in: (i) red have implemented the change to the EU Cookie Law; (ii) orange have not yet implemented the change but have prepared draft legislation; and (iii) green have not implemented the change and there are no plans at present to do so.

![Figure 1: Status of implementation of the change to the EU Cookie Law in the European Union.](image-url)
3. **Country-by-Country Summary of Advice**

[Note that Ctrl+Left clicking country name in the left column will take you to the full advice for that country set out in later sections below.]

<table>
<thead>
<tr>
<th>Country</th>
<th>Advice provided by</th>
<th>Last updated</th>
<th>Summary of implementation of the EU cookie law amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Austria</strong></td>
<td>Schönherr Rechtsanwälte</td>
<td>May 2013</td>
<td><strong>Amendment implemented</strong></td>
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<tr>
<td><strong>Belgium</strong></td>
<td>Lorenz</td>
<td>May 2013</td>
<td><strong>Amendment implemented</strong></td>
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</tbody>
</table>

**Browser settings:** Legislative explanatory remarks explain that consent can be expressed via browser settings if “technically feasible”, although no further requirements are given.

**Guidance:** No regulator guidance available.

**Transition:** No transitional period, however, there is to date no known enforcement.

**Compliance:** Primarily by updating privacy policies.

**Browser settings:** Neither the implementing act nor the explanatory remarks of the act specify whether consent can be given by a user’s browser settings. However, the Belgian Privacy Commission indicated in its formal advice, in which it commented on the draft of the implementing act, that consent cannot be obtained validly through browser settings, unless they are configured in a way that they reject and delete third party cookies by default.

**Guidance:** No practical regulator guidance available. However, in the course of the implementation process the Belgian Privacy Commission issued a formal advice in which it commented on the draft of the implementing act (available in Dutch and French). More practical guidance of the Privacy Commission is expected in the coming months.

**Transition:** No transitional period.

**Compliance:** The general the compliance level is low. The majority of Belgian websites have not implemented an explicit opt-in consent mechanism (such as a banner on the home page with a tick box). The most common practice is that a specific cookie policy or a specific section regarding cookies is included in the privacy policy on the website to inform users about the use of cookies and their ability to refuse cookies by changing browser settings.
<table>
<thead>
<tr>
<th>Country</th>
<th>Firm</th>
<th>Amendment status</th>
<th>Browser settings</th>
<th>Guidance</th>
<th>Transition</th>
<th>Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>Dimitrov, Petrov &amp; Co.</td>
<td>Amendment</td>
<td>Not specified</td>
<td>No express reference in the legislation.</td>
<td>No express reference in the legislation.</td>
<td>Few of these, if any, obtain separate consent for cookies.</td>
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<tr>
<td>Croatia</td>
<td>Vukmir &amp; Associates</td>
<td>Amendment</td>
<td>Not specified</td>
<td>No express reference in the legislation.</td>
<td>A general transitional period for the implementation of amendments to the electronic communications law expired on 10 November 2011.</td>
<td>Very low. The majority of Croatian websites have not adopted any specific mechanisms for informing users about cookies.</td>
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<tr>
<td>Cyprus</td>
<td>Lellos P. Demetriades Law Office</td>
<td>Amendment</td>
<td>Not applicable</td>
<td>No express reference in the legislation.</td>
<td>No transitional period.</td>
<td>Compliance exists to some extent. According to our experience, most major websites have a privacy policy statement with a detailed section on cookies. An increasing number of websites have started implementing practical mechanisms for obtaining users' consent.</td>
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<tr>
<td>Czech Republic</td>
<td>Vobornik &amp; Nigrini</td>
<td>Amendment not</td>
<td>Not specified</td>
<td>No express reference in the legislation.</td>
<td>Future change will depend on further discussions on interpretation at an EU level.</td>
<td>Implementing practical mechanisms for obtaining users' consent.</td>
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<tr>
<td>Country</td>
<td>Law Firm</td>
<td>Date</td>
<td>Amendment Status</td>
<td>Browser Settings:</td>
<td>Guidance:</td>
<td>Transition:</td>
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<td>Denmark</td>
<td>Bech-Bruun</td>
<td>May 2013</td>
<td>Amendment implemented</td>
<td>Consent via browser settings will not suffice.</td>
<td>Regulator guidance is available (in Danish): <a href="http://www.erhvervsstyrelsen.dk/file/364840/cookievejledning.pdf">http://www.erhvervsstyrelsen.dk/file/364840/cookievejledning.pdf</a></td>
<td>The regulator has informed the public that based on the recently updated guidelines, it will now start enforcing the cookie legislation and that any ‘informal’ transition period is definitely over. Compliance: More and more websites have implemented not only privacy and cookie policies but have also begun using bars at the top of or elsewhere on the website to inform and collect consent on cookies. The bar seems to be a preferred solution for ensuring compliance.</td>
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<tr>
<td>Estonia</td>
<td>MAQS Law Firm – Estonia</td>
<td>May 2013</td>
<td>Amendment not implemented</td>
<td>It is opinion of the regulator that the existing law is sufficient and the amendment has been implemented. However, legal experts suggest that the existing law follows the old opt-out regime and that prior consent is not currently enforced.</td>
<td>Organisations are updating their privacy policies or creating cookie policies but there are no known examples of implementing practical mechanisms for obtaining consent.</td>
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<tr>
<td>Finland</td>
<td>Backström &amp; Co</td>
<td>June 2013</td>
<td>Amendment implemented</td>
<td>Consent can be given via browser settings – the law is flexible in this respect.</td>
<td>Regulator guidance is available (in Finnish).</td>
<td>There is no transitional period. Compliance: Information about cookies and the data collected is provided in privacy policies but there are no known plans for the introduction of mechanisms to obtain specific consent for cookies.</td>
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<tr>
<td>France</td>
<td>ALP-Avocat</td>
<td>May 2013</td>
<td>Amendment implemented</td>
<td>Consent cannot be given via browser settings.</td>
<td>Regulator guidance is available at: <a href="http://www.cnil.fr/english/news-and-events/news/article/what-the-telecoms-package-changes-for-cookies/#">http://www.cnil.fr/english/news-and-events/news/article/what-the-telecoms-package-changes-for-cookies/#</a></td>
<td>The CNIL has also recently provided some clarifications and examples of information notice to be given to the users prior to the implementation of cookies. Transition: There is no transitional period but CNIL will take into account efforts made by the data controller to achieve compliance. Compliance: Organisations are beginning to work on compliance but there have been no large scale changes.</td>
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<td>Country</td>
<td>Firm</td>
<td>Date</td>
<td>Status</td>
<td>Draft prepared but not implemented</td>
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<td>Germany</td>
<td>Oppenhoff &amp; Partner</td>
<td>June 2013</td>
<td>Amendment implemented</td>
<td>Draft: A draft was proposed in January 2012. This may be decided in February 2012 and, if so, could be in force within a few months. There is dispute as to whether the existing law is sufficient. Guidance: No guidance available yet. At present, it is likely that guidance from the Art 29 Working Party, foreign regulators or individual German state regulator guidance will be referred to. Transition: No transitional period is expected. Compliance: Level of implementation is rather low at present, even considering that some consider the existing law already provides severe restrictions on cookies.</td>
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<td>Greece</td>
<td>Zannos-Papapanagitou -Sarafiano S Law Firm</td>
<td>June 2013</td>
<td>Amendment implemented</td>
<td>Browser settings: Possible, but the predetermined acceptance for the storage of all cookies through the browser’s settings is not deemed to be consent by the authority. Guidance: Instructions by the Greek Data Protection Authority are available. Transition: There is no transitional period. Compliance: The majority of websites refer to cookies in their terms of use.</td>
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<td>Hungary</td>
<td>Ban, S. Szabo &amp; Partners</td>
<td>May 2013</td>
<td>Amendment implemented</td>
<td>Browser settings: Consent given via browser settings is unlikely to be considered valid consent. Guidance: No regulator guidance is available. Transition: There is no transitional period. Compliance: Not aware of any practical mechanisms that have been implemented to obtain consent from visitors.</td>
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<td>Ireland</td>
<td>Matheson Ormsby Prentice</td>
<td>June 2013</td>
<td>Amendment implemented</td>
<td>Browser settings: Consent may in theory be given by browser settings, but not via the settings currently available. Guidance: Regulator guidance is available at: Guidance Note on Data Protection in the Electronic Communication Sector (PDF) Transition: There is no transitional period. Compliance: Several companies have updated their policies and many are using methods to obtain “implied” consent to the use of cookies.</td>
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<td>Country</td>
<td>Law</td>
<td>Implementation Date</td>
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<td>Italy</td>
<td>Callegari</td>
<td>May 2013</td>
<td><strong>Amendment implemented</strong></td>
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<td>Martini</td>
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<td><em>Browser settings:</em> Consent may be given by browser settings, as long as the process is easy to understand for the data subject.</td>
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<td>Manna</td>
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<td><em>Guidance:</em> The Regulator has published an <a href="#">FAQ document</a>.</td>
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<td><em>Transition:</em> No transition necessary, as former regime was stricter.</td>
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<td><em>Compliance:</em> Many websites over the last year have upgraded their privacy policy to make it compliant. In relation to consent, most refer to browser settings.</td>
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<td>Latvia</td>
<td>Baltic Law</td>
<td>June 2013</td>
<td><strong>Amendment implemented</strong></td>
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<td><em>Browser settings:</em> No express reference to browser settings in the relevant legislation.</td>
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<td><em>Guidance:</em> No regulator guidance available.</td>
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<td><em>Transition:</em> There is no transitional period.</td>
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<td><em>Compliance:</em> Not aware of any organisations that have implemented a practical mechanism to obtain consent for cookies.</td>
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<td>Lithuania</td>
<td>IPnovus law</td>
<td>June 2013</td>
<td><strong>Amendment implemented</strong></td>
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<td><em>Browser settings:</em> Current browser settings cannot be relied on to obtain consent.</td>
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<td><em>Guidance:</em> Regulator guidance is available:</td>
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<td>Recommendations re cookies usage: tips for electronic communications services users, 2011 (orientated to users, in Lithuanian only) [Rekomendacijų dėl slapukų naudojimo: patarimai elektroninių ryšių paslaugų naudotojams (2011 m.)];</td>
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<td>Recommendations re cookies and similar means (orientated to service providers, in Lithuanian only) [Rekomendacijų dėl slapukų ir panašių priemonių naudojimo (2011 m.)];</td>
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<td><em>Transition:</em> There is no transitional period.</td>
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<td><em>Compliance:</em> A large number of organisations have implemented practical mechanisms to comply.</td>
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<td>Luxembourg</td>
<td>Noble &amp; Scheidecker (“MNKS”)</td>
<td>May 2013</td>
<td><strong>Amendment implemented</strong></td>
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<td><em>Browser settings:</em> Consent can be given via browser settings where technically possible and effective.</td>
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<td><em>Guidance:</em> No regulator guidance available.</td>
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<td><em>Transition:</em> There is no transitional period.</td>
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<td><em>Compliance:</em> Companies are integrating a notice about cookies into their privacy policies.</td>
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<td>Country</td>
<td>Firm</td>
<td>Date</td>
<td>Amendment implemented</td>
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<td><strong>Malta</strong></td>
<td>GVTH Advocates</td>
<td>July 2013</td>
<td><em>Browser settings:</em> Might be used to provide consent as this is not excluded by law, however only the mechanism meets the requirements for valid consent.</td>
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<td><em>Guidance:</em> No regulator guidance available.</td>
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<td></td>
<td><em>Transition:</em> There is no transitional period.</td>
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<td><em>Compliance:</em> Many businesses (and the developers they rely on) are unaware of the requirements of the law and so adoption of measures to obtain consent has been slow.</td>
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<td><strong>Netherlands</strong></td>
<td>De Brauw</td>
<td>May 2013</td>
<td><em>Amendment implemented</em></td>
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<td><em>Browser settings:</em> Currently no. However, the legislature has not ruled out that consent may be facilitated via browser settings in the future.</td>
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<td><em>Guidance:</em> ACM issued an updated Q&amp;A (Veelgestelde vragen over de nieuwe cookieregels) on this topic in February 2013.</td>
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<td><em>Transition:</em> There is no transitional period. However, in February 2013 the Minister announced an amendment to the Dutch Telecommunications Act that will add analytic cookies to the exemption to the information and consent requirements. It is uncertain when the amendment will enter into force.</td>
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<td><em>Compliance:</em> Many websites currently merely comply with the information requirement or use an opt-out mechanism. ACM is understood to be developing automated software to detect non-compliance.</td>
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<td><strong>Poland</strong></td>
<td>Soltysinski Kawecki &amp; Szlezak</td>
<td>May 2013</td>
<td><em>Amendment implemented</em></td>
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<td><em>Browser settings:</em> The wording of the law, as well as the official justification to the law (that accompanied the draft legislation), seem to allow consent to be given via browser settings.</td>
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<td><em>Guidance:</em> There is no guidance available at the moment. One can rely on the text of the official justification that accompanied the draft legislation (available only in Polish: <a href="http://mac.gov.pl/wp-content/uploads/2012/02/Uzasadnienie_12-02-2012.doc">http://mac.gov.pl/wp-content/uploads/2012/02/Uzasadnienie_12-02-2012.doc</a>).</td>
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<td><em>Transition:</em> There was a 90 days transitional period (it expired on 22 March 2013).</td>
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<td><em>Compliance:</em> There is a common awareness of the new regulations, which implemented more stringent requirements for the use of cookies. Most website owners merely comply with the information requirement (by using various banners or bars). The banners (bars) seem to be a preferred solution for ensuring compliance.</td>
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<tr>
<td>Country</td>
<td>Author</td>
<td>Amendment Implemented</td>
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<td>Portugal</td>
<td>PLMJ</td>
<td><strong>Amendment Implemented</strong></td>
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<td><em>Browser Settings:</em> Nothing is provided regarding the specifics of the consent’s form.</td>
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<td>Prior consent is required and must be based on clear and complete information</td>
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<td>according to the Data Protection Law, in particular concerning the objectives</td>
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<td>pursued with the processing. Prior consent shall not be necessary only in situations</td>
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<td>of technical storage or access that: a) has as its sole purpose the</td>
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<td>transmission of a communication over an electronic communications network; and b)</td>
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<td>is strictly necessary for the vendor to provide an information society service</td>
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<td>explicitly requested by the subscriber or user.</td>
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<td><em>Guidance:</em> No regulator guidance is available.</td>
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<td><em>Transition:</em> There is no transitional period with regard to cookies-related matters.</td>
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<td><em>Compliance:</em> Organisations have begun to work on achieving compliance, but some</td>
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<td>organisations have expressed concerns about the extent of the changes that they are</td>
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<td>obliged to make to their systems (because of the new paradigm of prior consent)</td>
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<td>within a short timeframe (as there is no transitional period).</td>
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<td>Romania</td>
<td>Popescu Magdalena-Daniela Law Office</td>
<td><strong>Amendment implemented</strong></td>
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<td><em>Browser Settings:</em> The amended law provides that user consent can be</td>
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<td>given by using browsers settings.</td>
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<td><em>Guidance:</em> No regulator guidance is available.</td>
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<td></td>
<td></td>
<td><em>Transition:</em> There is no transitional period.</td>
<td></td>
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<td></td>
<td></td>
<td><em>Compliance:</em> Romanian websites generally obtain consent to the use of cookies in a</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>privacy or cookie policy.</td>
<td></td>
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<tr>
<td>Slovakia</td>
<td>Bianchi Malach Tomanova</td>
<td><strong>Amendment implemented</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td><em>Browser Settings:</em> Browsers settings are regarded as user consent.</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td><em>Guidance:</em> No regulator guidance is available.</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td><em>Transition:</em> There is no transitional period.</td>
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<tr>
<td></td>
<td></td>
<td><em>Compliance:</em> Not aware of any mechanisms designed to obtain consent from visitors.</td>
<td></td>
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</tr>
<tr>
<td>Country</td>
<td>Law Firm</td>
<td>Year</td>
<td>Amendment implemented</td>
<td>Browser Settings:</td>
<td>Guidance:</td>
<td>Transition:</td>
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</tr>
<tr>
<td>Slovenia</td>
<td>Law Offices Rok Koren</td>
<td>May 2013</td>
<td><strong>Amendment implemented</strong></td>
<td>Consent may be given via browser settings.</td>
<td>Regulator guidance is available at <a href="https://www.ip-rs.si/novice/detajl/informacijski-pooblasencet-izdahl-smernice-glede-uporabepiskotkov/?cHash=5842ad1118a2ae1915f350cc1aa98c22">https://www.ip-rs.si/novice/detajl/informacijski-pooblasencet-izdahl-smernice-glede-uporabepiskotkov/?cHash=5842ad1118a2ae1915f350cc1aa98c22</a> and <a href="https://www.ip-rs.si/fileadmin/user_upload/Pdf/smernice/Smernice_o_uporabi_piskotkov.pdf">https://www.ip-rs.si/fileadmin/user_upload/Pdf/smernice/Smernice_o_uporabi_piskotkov.pdf</a></td>
<td>Yes – until 15 June 2013.</td>
</tr>
<tr>
<td>Spain</td>
<td>Uria Menendez</td>
<td>May 2013</td>
<td><strong>Amendment implemented</strong></td>
<td>Browser settings could theoretically be used as a legitimate means of obtaining consent “where technically feasible” and provided that the user actively sets the browser “through an action expressly determined for this purpose.”</td>
<td>Regulator guidance is available at: <a href="http://www.agpd.es/portalwebAGPD/canaldocumentacion/publicaciones/common/Guias/Guia_Cookies.pdf">http://www.agpd.es/portalwebAGPD/canaldocumentacion/publicaciones/common/Guias/Guia_Cookies.pdf</a>.</td>
<td>There is no transitional period.</td>
</tr>
<tr>
<td>Sweden</td>
<td>Nord &amp; Co Advokatbyrå KB</td>
<td>June 2013</td>
<td><strong>Amendment implemented</strong></td>
<td>Consent may be given via browser settings depending on the particular settings and circumstances in each case.</td>
<td>Regulator guidance is available at [<a href="http://www.pts.se/en-gb/Regulations/Legislation/Electronic-Communications-Act/FAQ">www.pts.se/en-gb/Regulations/Legislation/Electronic-Communications-Act/FAQ</a> about cookies/QA-about-cookies-for-website-owners/](<a href="http://www.pts.se/en-gb/Regulations/Legislation/Electronic-Communications-Act/FAQ">http://www.pts.se/en-gb/Regulations/Legislation/Electronic-Communications-Act/FAQ</a> about cookies/QA-about-cookies-for-website-owners/)</td>
<td>There is no transitional period but the regulator has stated that it understands that it may take some time for businesses to achieve compliance.</td>
</tr>
</tbody>
</table>
4. Full Responses (Country By Country)

4.1 Austria

Günther Leissler
Schönherr Rechtsanwälte

4.1.1 Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.

Sec 96 of the Austrian Telecommunications Act 2003 (the “TKG”).

4.1.2 Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?

Yes.

4.1.3 If so, please enter the name of the law which implements the change.

Revision of the TKG through BGBI I Nr 102/2011, which entered into force on 22.11.2011 and amended Sec 96 TKG accordingly. Through this revision it was also clarified that not only providers of public communications networks but also providers of information society services are obliged to obtain prior user consent.

4.1.4 If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?

Not applicable.
Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?

Joint competencies: RTR - Rundfunk und Telekom Regulierungs GmbH (the telecom regulator; www.rtr.at) and the Data Protection Commission (the data protection regulator; www.dsk.gv.at). Administrative fines for being in breach with the privacy regulations of the TKG will, however, be imposed by local administrative authorities.

Has the regulator produced any guidance in relation to the amendment?

No specific guidelines so far.

If not, please state when, if known, guidance will be published.

We are not aware of any respective guidelines being published in the near future.

If so, please list and provide links if possible.

Not applicable.

Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?

Not applicable.

In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?

Despite the competent regulators so far having refrained from issuing any respective guidance it is, however, explicitly stated in the legislator’s explanatory remarks that the user has to give his prior consent and that such consent of the user can be expressed through the browser settings or similar features if that is “technically feasible”.

Can consent be given by a user’s browser settings under the law and the regulator’s guidance in your jurisdiction?

Like the recitals to Directive 2009/136/EC, the legislator principally states in his explanatory remarks that browser settings may signify user consent. However, the respective explanatory notes do not provide for any further details such as how the browser settings should be designed.

Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?

No. We are, however, not aware of any business in Austria so far being subject to investigations or prosecution for not being compliant with its setting of cookies in the light of Sec 96 TKG.
4.1.13 Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?

The revised Sec 96 TKG now asks for an explicit consent of the users but in general the accompanying legal framework in by and large remained unchanged. As before, the law asks the user to be provided with all-embracing information about which of his data is to be processed, on which legal grounds, what purposes for and for how long his data will be stored (according to the legislator explanatory remarks such information also can be provided in the impressum of the provider’s website). With this, for those providers already having been compliant under the former regulatory framework there is not much need for any substantial adaptations.

Basically, we have seen companies updating their privacy policies. We are, however, not aware of a significant number of organisations in Austria that have implemented practical mechanisms for obtaining consent from visitors to their websites.

4.1.14 Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.

As above, in Austria there are almost no examples of companies that have introduced an explicit mechanism to obtain express consent. Usually, companies deal with their setting of cookies by providing the user with respective information. An example can be found on the website of Chevrolet Austria:

http://www.chevrolet.at/datenschutz-und-cookies.html

4.2 Belgium

Jan Dhont and David Dumont

4.2.1 Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.


4.2.2 Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?

Yes.

4.2.3 If so, please enter the name of the law which implements the change.

4.2.4 If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?

Not applicable.

4.2.5 Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?

Privacy Commission (http://www.privacycommission.be/en/); and


4.2.6 Has the regulator produced any guidance in relation to the amendment?

The regulator has not yet published any guidance in relation to the practical steps which businesses will have to take to comply with the new legal framework.

However, during the implementation process the Privacy Commission published formal advice in which it stipulated recommendations for the legislator concerning the draft of the implementing act. In its commentary on the draft, the Privacy Commission is of the opinion that only very limited types of cookies can fall within the scope of the exemption on the opt-in requirement (i.e. mainly first party cookies). Cookies that (i) are stored without any explicit request of the user; (ii) remain on the terminal equipment of the user after they have been erased; and (iii) are used for several or undetermined purposes, cannot be exempted from the opt-in requirement. Furthermore, the Privacy Commission states that opt-in consent cannot be obtained through browser settings, unless they are configured in a way that they reject and delete third party cookies by default.

4.2.7 If not, please state when, if known, guidance will be published.

The Privacy Commission is currently working on a recommendation concerning the new requirements for the use of cookies. It is not clear when this recommendation will be finalised and published. However, we expect that this will happen in the coming months.

4.2.8 If so, please list and provide links if possible.

The formal advice from the Privacy Commission concerning the draft of the implementing act (Advice nr. 10/2012 of March 21, 2012 of the Privacy Commission)
Commission regarding the draft act containing various provisions regarding electronic communication) is available in Dutch and French.

4.2.9  Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?

Not applicable.

4.2.10  In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?

Not applicable.

4.2.11  Can consent be given by a user’s browser settings under the law and the regulator’s guidance in your jurisdiction?

The implementing act does not determine whether opt-in consent can be given by a user’s browser settings. However, the Privacy Commission indicated in its formal advice that opt-in consent cannot be obtained validly through browser settings, unless they reject and delete third party cookies by default. It is yet to be seen whether the Privacy Commission will confirm this position in the recommendation concerning the new requirements for the use of cookies, which it will most likely issue in the coming months.

4.2.12  Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?

The regulator has not determined any transitional periods for businesses to achieve compliance with the new requirements for the installation and use of cookies. Therefore, businesses are required to comply with the new requirements from the moment the implementing act enters into force (i.e. August 4, 2012).

4.2.13  Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?

The general level of compliance is low. We are only aware of a limited number of Belgian websites which have implemented a mechanism to obtain opt-in consent for the use of cookies on their websites. Currently, most websites have implemented a cookie policy or provide a specific section on cookies in their privacy policy, in which they explain the use of cookies and the possibility to refuse cookies by changing browser settings.

4.2.14  Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.

As mentioned above, there is currently only a minority of websites which have implemented a mechanism to obtain the express consent of their users for the use of cookies.
Examples:

- [http://www.zapup.be/](http://www.zapup.be/);
- [http://www.aberdeen-asset.be](http://www.aberdeen-asset.be); and
- [http://www.opel.be](http://www.opel.be).

Other websites have implemented a mechanism to obtain implicit consent of users by displaying a notice concerning the use of cookies in a banner on the top or bottom of the web page. This notice usually (i) informs users that cookies will be used when visiting the website, and (ii) contains a link to a more detailed cookie policy. In addition, the notice itself or the detailed cookie policy mentions that users are considered to consent to the use of cookies when they continue their visit to the website without changing their browser settings.

Examples:

- [http://www.aspriaclub.be/en](http://www.aspriaclub.be/en);
- [https://www.europabank.be/welkomand](https://www.europabank.be/welkomand); and
- [http://telenet.be](http://telenet.be).

4.3 **Bulgaria**

*Desislava Krusteva*

*Dimitrov, Petrov & Co.*

4.3.1 Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.

Electronic Commerce Act.

4.3.2 Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?

Yes.

4.3.3 If so, please enter the name of the law which implements the change.

Electronic Commerce Act (ECA).

4.3.4 If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?

Not applicable.
4.3.5 **Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?**


4.3.6 **Has the regulator produced any guidance in relation to the amendment?**

No.

4.3.7 **If not, please state when, if known, guidance will be published.**

Currently there are no indications as to whether and when such guidance would be published.

4.3.8 **If so, please list and provide links if possible.**

Not applicable.

4.3.9 **Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?**

Not applicable.

4.3.10 **In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?**

Not applicable.

4.3.11 **Can consent be given by a user’s browser settings under the law and the regulator’s guidance in your jurisdiction?**

The law does not provide indications on whether browser settings could be used as a means to provide user consent. Considering the wording of Art. 4a of the ECA, it seems unlikely that browser settings will be considered a valid means of providing the required consent.

No guidance to this regard by the regulator has been found.

4.3.12 **Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?**

Neither the regulator, nor the law, has provided for a transitional period. The new rules were promulgated in State Gazette on 29 December 2011 and became applicable at the same time - 29 December 2011. Such immediate entry into force is an exception under Bulgarian law: all legal rules become applicable three days after their promulgation, unless otherwise explicitly provided by law.
4.3.13 **Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?**

As far as we are aware, the level of compliance is very low, if existing at all. A few of the largest Bulgarian websites do inform the users of the use of cookies by including this information within their Terms and Conditions. However, such Terms and Conditions have existed for some time and are not done as a part of implementation of the new rules. Even in these cases users are generally not given the opportunity to refuse the storing or accessing of information gathered through cookies while continuing to use the service. The users are able to control the cookies only through their browser settings.

4.3.14 **Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.**

Few Bulgarian websites explicitly mention the use of cookies in their Terms and Conditions. However, where cookies are mentioned, the consent is yet given for the whole document at once. Such consent is given as a part of the registration process and is not specifically addressed to the use of cookies. Some examples to this regard are the following websites (in Bulgarian language):

http://vbox7.com/show:toc
http://passport.netinfo.bg/terms/

While the Terms and Conditions of some websites state that unregistered users are bound with the Terms and Conditions as of the moment of accessing the respective website, this action could hardly be considered as any kind of consent by unregistered users, and it could certainly not be considered as explicit consent of such users for cookies.
4.4 Croatia

Olena Manuilenko
Vukmir & Associates

4.4.1 Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.

Article 5.3 of Directive 2002/58/EC, as amended by Article 2(5) of Directive 2009/136/EC, was implemented by the ECA Amendment published in the Official Gazette No. 90 from the year 2011. The respective national statutory provision is contained in Article 100 Paragraph 4 of the ECY and fully corresponds to the provision of Article 5.3 of the Directive.

4.4.2 Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?

Yes.

4.4.3 If so, please enter the name of the law which implements the change.

The Act Amending the Electronic Communications Act (the Official Gazette No. 90/11).

4.4.4 If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?

Not applicable.

4.4.5 Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?


4.4.6 Has the regulator produced any guidance in relation to the amendment?

No.

4.4.7 If not, please state when, if known, guidance will be published.

Not known.

4.4.8 If so, please list and provide links if possible.

Not applicable.
4.4.9 Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?

Not applicable.

4.4.10 In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?

Not applicable.

4.4.11 Can consent be given by a user’s browser settings under the law and the regulator’s guidance in your jurisdiction?

Not specified.

4.4.12 Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?

The general transitional period, including for the provisions of Article 100, Paragraph 4, expired on 10 November 2011.

4.4.13 Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?

The majority of Croatian websites have not adopted any specific mechanisms for informing users about cookies, much less for obtaining user consent for the use of cookies. Moreover, many of websites do not regulate cookies in their general terms of use or privacy policies. Finally, it is not rare that websites have inadequate privacy provisions or no privacy policy at all.

4.4.14 Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.

Although it does not contain any specific mechanism for obtaining express consent for cookies, the local American Express website at least contains relatively detailed information about cookies, which appears to be more than what the majority of local websites provide to their visitors. The Cookies Information is available in the Croatian language at http://www.americanexpress.hr/zastita-privatnosti/pravila-o-koristenju-web-stranica/o-cookie/.
4.5 Cyprus

Haris Satsias
Lellos P. Demetriades Law Office

4.5.1 Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.

Section 99(5), The Regulation of Electronic Communications and Postal Services Law, Law No. 112(I)/2004 as amended (‘Law’)

4.5.2 Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?

Yes, the Law was amended by the Amendment of the Regulation of Electronic Communications and Postal Services Law, Law No. 51(I)/2012 on the 18/05/2012.

4.5.3 If so, please enter the name of the law which implements the change.

Section 99 (5), The Regulation of Electronic Communications and Postal Services Law, Law 112(I)/2004 as amended (‘Law’).

4.5.4 If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?

Not applicable.

4.5.5 Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?

There are two, namely:

a) The Commissioner for the Regulation of Electronic Communications and Postal Services was responsible for amending the Law (http://www.oecpr.org.cy); and

b) The Commissioner for the Protection of Personal Data is responsible for the application of Section 99 according to Section 107 the Law (http://www.dataprotection.gov.cy).

4.5.6 Has the regulator produced any guidance in relation to the amendment?

No. Specific guidance has not been published in relation to the amendment of the Law. However, cookies are mentioned in existing Guidelines issued by the Commissioner on the use of the Internet (‘Internet Guidelines’). The Internet Guidelines state that there are legitimate reasons for the use of cookies, maintaining that cookies may be used for monitoring, the formation of a profile in relation to preferences and/or consumer habits,
with the ultimate goal being the provision of more informed promotion or advertising of certain products. It is further stated that users have to be informed of the use of their information by a website and have to be provided with the option to refuse.

Furthermore, in the Data Commissioner’s annual report for the year 2011 (published in February 2012) it is stated that websites that make use of cookies have to obtain users’ prior consent and are required to inform the users about the manner in which cookies will be used.

4.5.7 *If not, please state when, if known, guidance will be published.*

It is understood that a specific Guidance (Guidelines) will be published in the future by the Office of the Commissioner for the Protection of Personal Data.

4.5.8 *If so, please list and provide links if possible.*

N/A.

4.5.9 *Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?*

N/A.

4.5.10 *In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?*

Unofficially, the Data Commissioner has said that the pop-up/header-footer bar method is considered good practice.

4.5.11 *Can consent be given by a user’s browser settings under the law and the regulator’s guidance in your jurisdiction?*

N/A.

4.5.12 *Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?*

No. Initially, the Office of the Data Commissioner unofficially stated that it did not intend actively to enforce the Law until consensus was reached in the EU about the means of obtaining users’ consent. At present, the Data Commissioner expects businesses to comply with the Law.

4.5.13 *Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?*

Compliance exists to some extent. According to our experience, most major websites have a privacy policy statement with a detailed section on cookies.
An increasing number of websites have started implementing practical mechanisms for obtaining users’ consent.

4.5.14 Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.

http://cy.playstation.com/
http://www.pamenafame.com/
http://www.soldoncyprus.com/
http://www.godivecyprus.co.uk/

4.6 Czech Republic

Martin Vobornik
Vobornik & Nigrini

4.6.1 Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.


4.6.2 Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?

No. The valid wording of the respective law still contains the wording reflecting the Directive 2002/58/EC before the amendment made by the Directive 2002/136/EC (the duty of the provider to offer the right to refuse the data processing). We are of the opinion that the opt-in system required by the respective Directive has not been introduced into the Czech legal system yet.

4.6.3 If so, please enter the name of the law which implements the change.

Not applicable.

4.6.4 If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?

We are not aware of any pending legislation which would deal with this issue. There is an amendment to the Act on Electronic Communications currently being discussed, but the proposed changes do not cover the issue in question.

It needs to be also mentioned that the Ministry of Trade responsible for electronic legislation is in line with the respective EU legislation. The Office for Personal Data Protection issued a standpoint sharing our view that the respective changes have not been implemented yet, but then based
on some further communication they reached the conclusion that the
evaluation of the existing Czech legislation will depend on the further
discussions on the EU level regarding interpretation of certain aspects of
the new EU legislation. They have not issued any final standpoint till now.

4.6.5 Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?

The regulator responsible for the area of electronic communications in the
Czech Telecommunication Office. In the particular areas where personal
data might be involved the Office for Protection of Personal Data should be
involved.

4.6.6 Has the regulator produced any guidance in relation to the amendment?

No.

4.6.7 If not, please state when, if known, guidance will be published.

Not applicable.

4.6.8 If so, please list and provide links if possible.

Not applicable.

4.6.9 Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?

Not applicable.

4.6.10 In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?

Not applicable.

4.6.11 Can consent be given by a user’s browser settings under the law and the regulator’s guidance in your jurisdiction?

Not applicable.

4.6.12 Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?

Not applicable.

4.6.13 Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?

Not applicable.
4.6.14 Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.

Not applicable.

4.7 Denmark

Arly Carlquist and Marie Albaek Jacobsen
Bech-Bruun

4.7.1 Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.

Act No. 169/2011 on electronic communications networks and services.

4.7.2 Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?

Yes.

4.7.3 If so, please enter the name of the law which implements the change.

Executive Order No. 1148/2011 on the requirements for information and consent, when storing or gaining access to information in the end user’s terminal equipment.

4.7.4 If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?

N/A.

4.7.5 Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?

The Danish Business Authority: (http://www.erst.dk/).

4.7.6 Has the regulator produced any guidance in relation to the amendment?

Yes.

4.7.7 If not, please state when, if known, guidance will be published.

N/A.

4.7.8 If so, please list and provide links if possible.

Yes, the Danish Business Authority has published the following guidance (in Danish):

http://www.erhvervsstyrelsen.dk/file/364840/cookievejledning.pdf
4.7.9 **Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?**

The guidance recommends the following steps:

1. Check if your service is storing or gaining access to information in users’ terminal equipment.
2. Check if the information, stored or gained access to, is even necessary.
3. Check if your service’s storing or gaining access to information in users’ terminal equipment is exempted for the requirements for information and consent.
4. Decide how to provide users with comprehensive information and collect consent.

4.7.10 **In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?**

The guidance does not provide an explicit statutory method for obtaining consent but does state that it may obtained e.g. by:

i) ticking a box, clicking a button or completing a form in connection with provision of the necessary information, or

ii) active use of a service where it must be expected that the user will be informed that storage of or access to information will take place (if not already denied).

The guidance makes room for the individual services to develop new, innovative fitting solutions that heightens user control.

4.7.11 **Can consent be given by a user’s browser settings under the law and the regulator’s guidance in your jurisdiction?**

The law defines consent as being a voluntarily, specific, and informed declaration of will. Consent by means of a user’s browser settings is not currently accepted in Denmark as it is the general opinion of the regulator that the current browser solutions do not fully ensure compliance with the user’s non-acceptance of cookies.

4.7.12 **Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?**

No – a statutory transitional period will not apply. The regulator has informed the public that based on the recently amended guidelines it will now start enforcing the cookie legislation and that any ‘informal’ transition period is definitely over.
4.7.13 Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?

More and more websites have implemented not only privacy and cookie policies but have also begun using bars at the top of or elsewhere on the website to inform and collect consent on cookies. The bar seems to be a preferred solution for ensuring compliance.

4.7.14 Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.

One explicit example is found at the homepage for the Danish Ministry of Business and Growth: http://www.evm.dk/english. However, as above, the bar seems to be a preferred solution for ensuring compliance.

4.8 Estonia

Timo Kullerkupp and Kaido Künnapass
MAQS Law Firm – Estonia

4.8.1 Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.

Relevant law is Electronic Communications Act (in Estonian: Elektroonilise side seadus).

4.8.2 Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?

It is the opinion of the relevant authorities that the rules set forth in Section 102 sub-clauses 3 and 4 (include also the rules prescribed in Article 2 (5) of Directive 2009/136/EC) and it has notified the European Commissioner accordingly. However, it is our view that these rules still only require the provision of an opportunity to opt-out rather than obtaining consent.

The rules states as follows:

- A communications undertaking is required to maintain the confidentiality of all information which becomes known thereto in the process of provision of communications services and which concerns subscribers as well as other persons who have not entered into a contract for the provision of communications services but who use communications services with the consent of a subscriber; above all, it must maintain the confidentiality of:

1) information concerning specific details related to the use of communications services;
2) the content and format of messages transmitted over the communications network;

3) information concerning the time and manner of transmission of messages.

A communications undertaking may process the (i) information concerning specific details related to the use of communications services, (ii) the content and format of messages transmitted over the communications network, and (iii) information concerning the time and manner of transmission of messages if the undertaking notifies the subscriber, in a clear and unambiguous manner, of the purposes of processing the information and gives the subscriber an opportunity to refuse the processing. Additionally, it is stated that the above obligation does not restrict the right of the undertaking to collect and process, without the consent of a subscriber, information which processing is necessary for the purposes of recording the transactions made in the course of business and for other business-related exchange of information. In addition to the above, the restriction provided does not limit the right of a communications undertaking to store or process information without the consent of a subscriber if the sole purpose thereof is the provision of services over the communications network, or if it is necessary for the provision, upon a direct request of the subscriber, of information society services within the meaning of the Information Society Services Act.

4.8.3 If so, please enter the name of the law which implements the change.

Not applicable.

4.8.4 If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?

According to our knowledge there is no implementation legislation pending on the matter.

4.8.5 Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?

Data Protection Inspectorate (www.aki.ee).

4.8.6 Has the regulator produced any guidance in relation to the amendment?

No.

4.8.7 If not, please state when, if known, guidance will be published.

We are not aware of any such activities.

4.8.8 If so, please list and provide links if possible.

Not applicable.
4.8.9 Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?

Not applicable.

4.8.10 In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?

Not applicable.

4.8.11 Can consent be given by a user’s browser settings under the law and the regulator’s guidance in your jurisdiction?

Not applicable.

4.8.12 Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?

Not applicable.

4.8.13 Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?

We have seen that large organisations are in the process of updating their privacy policy with a more detailed notice about cookies (or have created a separate cookie policy).

For example: https://www.elfa.se/elfa3~ee_en/elfa/mime?file=help/cookies.html

We are not aware of any organisation that has implemented a practical mechanism for obtaining consent from visitors to its websites. The regulator has not undertaken any enforcement action in relation to cookies and has suggested that it has no plans to do so at present.

4.8.14 Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.

We have not found any examples of companies that have introduced a mechanism to obtain express consent in Estonia.

4.9 Finland

Marko Rajaniemi and Petri Eskola
Backström & Co.

4.9.1 Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.

4.9.2 *Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?*

Yes.

4.9.3 *If so, please enter the name of the law which implements the change.*


4.9.4 *If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?*

Not applicable.

4.9.5 *Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?*

Finnish Communications Regulatory Authority ([www.ficora.fi](http://www.ficora.fi)).

4.9.6 *Has the regulator produced any guidance in relation to the amendment?*

Yes.

4.9.7 *If not, please state when, if known, guidance will be published.*

Not applicable.

4.9.8 *If so, please list and provide links if possible.*

The link to the regulator’s webpage containing information on cookies is: [https://www.viestintavirasto.fi/tietoturva/palveluidenturvallinenkaytto/evasteeet.html](https://www.viestintavirasto.fi/tietoturva/palveluidenturvallinenkaytto/evasteeet.html) (in Finnish only)

4.9.9 *Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?*

The Guidance requires that users are provided with clear and comprehensive information on storage of cookies and the reason why cookies are stored. The methods of providing information and offering the right to refuse cookies must be as user-friendly as possible.

The Guidance makes a reference to the Act on the Protection of Privacy in Electronic Communications and clarifies that the user’s consent can be obtained by browser settings or settings of other applications in use.
4.9.10 **In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?**

Please see the answer above.

4.9.11 **Can consent be given by a user’s browser settings under the law and the regulator’s guidance in your jurisdiction?**

Yes; this has been stipulated in the preparatory work of the Act on the Protection of Privacy in Electronic Communications. No specific consent mechanisms are required. The law is flexible in this respect.

4.9.12 **Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?**

No transitional period is granted.

4.9.13 **Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?**

Generally speaking, websites include information on cookies and information collected. The users are informed that they can reject cookies by changing browser settings. We are not aware of any websites that would include any specific consent mechanisms for cookies.

4.9.14 **Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.**

We are not aware of any examples that could be given.
4.10  France

Anne Perrin
ALP Avocat

4.10.1  Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.

Legislative Order n° 2011-1012 dated August 24, 2011 relating to the Electronic Communications (the so-called “Telecom Package Ordinance”).

4.10.2  Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?

Yes.

4.10.3  If so, please enter the name of the law which implements the change.

Article 32 II of the French Act n° 78-17 dated January 6, 1978 on Data Processing, Data Files and Individual Freedoms (French Data Protection Act 78).

4.10.4  If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?

Not applicable.

4.10.5  Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?


4.10.6  Has the regulator produced any guidance in relation to the amendment?

Yes.

4.10.7  If not, please state when, if known, guidance will be published.

Not applicable.

4.10.8  If so, please list and provide links if possible.

Yes, the CNIL has published the following guidance:

The CNIL has also recently provided some clarifications and examples of the information notice to be provided to the users prior to the implementation of cookies (including as to the existence of “refusal cookie”, which purpose is to register the user’s objection to receive any further cookies).

4.10.9 Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?

The CNIL recommends the following steps:

1. Audit cookie use on each website.

2. Categorise cookies by purpose and ‘intrusiveness’ (e.g. the following purpose would not make the related cookie fall within the opt-in regulations: “shopping basket cookie”, “user session cookie/ID session”, security of the service requested by the user, recording of the user’s spoken language or other preference necessary to provide the requested services, “flash cookies” strictly necessary to make a media player work (audio or video) for a content requested by the user).

3. Choose an appropriate means of obtaining consent based the categorisation.

4.10.10 In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?

The CNIL suggests the following means might be used to obtain consent.

- Banner at the top of a webpage
- Consent request zone constructed as an html overlay on the web page
- Set of tick boxes presented during subscription to online services

The CNIL considers the following means as inappropriate:

- Pop ups windows, since often blocked by browsers.
- Changes to the Terms of Use/Terms of Services, since a user might be willing to accept those terms, but to specifically refuse the clause stating that he/she accepts cookies for behavioural advertising.

4.10.11 Can consent be given by a user’s browser settings under the law and the regulator’s guidance in your jurisdiction?

Like the recitals to Directive 2009/136/EC, Art. 32 II of the French Data Protection Act expressly states that the user consent may result from appropriate settings of his/her connection device or any other device under his/her control. However, the CNIL considers companies cannot rely on browser settings at present.

4.10.12 Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?
No. However, the CNIL is aware that effective compliance will take longer to implement for some websites than others. In case of complaints or control, the CNIL will take into account the efforts put in place by the data controller to achieve compliance.

4.10.13 Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?

CNIL’s guidelines were only published on December 20, 2011, meaning that no enough time has passed for the businesses to assess what appropriate technical measures to implement to achieve compliance. From what we have seen in France, it would appear that companies are starting working on the compliance process, but at this stage no changes have been noticed either large organizations’ privacy policies or particular settings of their websites.

4.10.14 Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.

No example at this stage, except the CNIL’s website that implemented a banner at the top of their home page (www.cnil.fr).

4.11 Germany

Dr. Jürgen Hartung
Openhoff & Partner

4.11.1 Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.

In relation to cookies, Sections 13 and 15 (and potentially Section 12) of the German Telemedia Act apply (Telemediengesetz; German version available under http://www.gesetze-im-internet.de/tmg/index.html).

4.11.2 Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?

There has been no explicit implementation in Germany yet. However, there has been some dispute if the current law already covers this amendment. According to Sec. 13 Telemedia Act, users need to be informed about cookies and based on Sec. 15 Telemedia Act, a provider may use traffic data (usually collected by cookies) only (i) for the delivery of services or, (ii) otherwise (for purposes like advertising) only without personal data (e.g. by use of an alias) and subject to an opt-out right of data subjects, or (iii) with consent as required for other purposes based on Sec. 12 Telemedia Act. Certainly, the current law does not cover issues like applicability to information other than personal data.
4.11.3 If so, please enter the name of the law which implements the change.
Not responded.

4.11.4 If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?

On June 17, 2011, the chamber of German parliament representing the federal states (Bundesrat) suggested to implement in the Telemedia Act a wording almost identical to the wording of the amended Art. 5 (3) Directive 2002/58/EC. The German government (Bundesregierung) rejected this proposal on the basis that it wanted to cover the issue within the planned implementation of changes to the German Telecommunications Act (Telekommunikationsgesetz). However that law, passed on February 9, 2012, did not include the necessary amendments. Consequently, a another draft bill was presented to the competent chamber of German parliament (Bundestag) on January 24, 2012, again proposing the wording suggested by the Bundesrat. This bill was referred to the competent committees that will discuss it and then make recommendations for the remaining parliamentary hearings. It is hard to predict whether and when this exact proposal will be accepted, but the leading committee wants to decide on it still in February 2012 and then the law may be in force in a few months time.

4.11.5 Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?

For the application of the Telemedia Act, there is no central regulatory responsibility established in Germany. Accordingly, the federal data protection officer (Bundesbeauftragter für Datenschutz und Informationsfreiheit, www.bfdi.bund.de) is only responsible for telecommunications and postal companies. Apart from that, the respective state regulators of the 16 German states are responsible (overview1).

4.11.6 Has the regulator produced any guidance in relation to the amendment?
No.

4.11.7 If not, please state when, if known, guidance will be published.

It has not been announced when any official guidance will be available. Due to the fact that 17 regulators need to agree on guidelines, this usually will take a considerable time until uniform guidance is available. Until then, it is expected that German regulators will apply guidance available from the Art. 29 Working Party, from foreign regulators or single German regulators that may issue guidance.

1 http://www.bfdi.bund.de/DE/AnschriftenUndLinks/AnschriftenUndLinks_node.html.
4.11.8 If so, please list and provide links if possible.

Not applicable.

4.11.9 Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?

Not applicable.

4.11.10 In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?

Not applicable.

4.11.11 Can consent be given by a user’s browser settings under the law and the regulator’s guidance in your jurisdiction?

Not applicable.

4.11.12 Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?

Not applicable as no guidance was issued yet. At least the draft bill discussed currently in German parliament does not provide for a transitional period. Thus, it is expected that the new law will become applicable immediately.

4.11.13 Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?

Assuming that in Germany, while there is no law explicitly implementing the amendment, it has been argued that the current law already provides severe restrictions on cookies (please refer above), we consider the level of implementation of the current law as rather low.

Although it is obvious that the law will be changing in the near future (as the implementation of the amendment is overdue), it seems that only few organisations prepare themselves in a structured and organised way for the upcoming changes. It is to be expected that the same practical problems will appear like in other countries, in particular implementing practical mechanisms for obtaining consent from visitors to websites and control of cookies at the ‘back end’.

4.11.14 Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.

As above, we are not aware of any such examples.
4.12 **Greece**

*Sevy Stefanidi*

**Zannos-Papapanagiotou-Sarafiano S Law Firm**

4.12.1 Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.

Law 3471/2006 (art. 4 par. 5).

Title: Protection of Private Data and Privacy in the Electronic Communications sector and amendment of Law 2472/1997 about Protection of Private Data.

4.12.2 Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?

Yes.

4.12.3 If so, please enter the name of the law which implements the change.

Law 4070/2012 implemented the amendment of Art. 5.3 of Directive 2002/58/EC and reformed the respective article of Law 3471/2006 (art.4 par. 5).

4.12.4 If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?

Not applicable.

4.12.5 Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?

The Greek Data Protection Authority is the competent authority for supervising compliance with the regulations in the sector of Private Data Protection and for issuing opinions and guidelines about specific individual matters relating to the use of personal data ([http://www.dpa.gr](http://www.dpa.gr)).

4.12.6 Has the regulator produced any guidance in relation to the amendment?

The Greek DPA, adopting the opinions 2/2010, 16/2011 and 4/2012 of the Article 29 Data Protection Working Party (which refer to the following matters in regard to the storage of cookies), has published certain instructions on its website:

1) The storage of cookies under certain requirements and the amendment of Law 3471/2006

[http://www.dpa.gr/portal/page?_pageid=33,146950&_dad=portal&_schema=PORTAL](http://www.dpa.gr/portal/page?_pageid=33,146950&_dad=portal&_schema=PORTAL)
2) Ways of informing the user or the subscriber about the storage of cookies
http://www.dpa.gr/portal/page?_pageid=33,147142&_dad=portal&_schema=PORTAL

3) Ways of lawfully receiving the consent of a subscriber or user for the storage of cookies.
http://www.dpa.gr/portal/page?_pageid=33,147164&_dad=portal&_schema=PORTAL

4) The exemptions of certain cookies categories from the obligation of receiving informed consent of a subscriber or user.
http://www.dpa.gr/portal/page?_pageid=33,147186&_dad=portal&_schema=PORTAL

5) Cookies which are not included in the above exemption: Advertising cookies.
http://www.dpa.gr/portal/page?_pageid=33,147230&_dad=portal&_schema=PORTAL

6) Cookies which are not included in the above exemption: Web Analytics cookies
http://www.dpa.gr/portal/page?_pageid=33,147274&_dad=portal&_schema=PORTAL

7) Suggested practices for controlling the use of cookies which are installed in a user’s or subscriber’s computer.
http://www.dpa.gr/portal/page?_pageid=33,147318&_dad=portal&_schema=PORTAL

4.12.7 If not, please state when, if known, guidance will be published.
Not applicable.

4.12.8 If so, please list and provide links if possible.
Not applicable.

4.12.9 Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?
Please see answer to 4.11.6.

4.12.10 In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?

**Extensive and Clear Information**

Article 4 paragraph 5 of Law 3471/2006 anticipates that the consent of the user or the subscriber must be given after extensive and clear information
in accordance with art. 11 par 1 of Law 2472/1997 – ‘Protection of Private Data’.

Furthermore, the Greek DPA, in its opinion 7/2011 (par.10), which was issued before the amendment of the Directive 2009/136/EC in the Greek Law but acknowledged the above Directive’s immediate effect in Greece, said that the Controller can install cookies only in the event that he/she has obtained the user’s consent, providing the user with extensive and clear information about:

1. The use of cookies
2. Purpose of use
3. The access right of the Controller
4. The recipients of users’ private data (if any)

Moreover, instructions that the Greek DPA uploaded on its website state that a note included in the general terms of use or the policy terms of a website is not considered to be sufficient according to law 3471/2006.

Therefore the Greek DPA suggests that this note should be placed in a discrete area of a website page and to be specific for each case of cookies storage.

**Prior Consent**

In relation to the mechanisms that should be used in order lawfully to obtain the consent of a user or subscriber, the Greek DPA:

(a) suggests the use of pop-up windows. Such consent can be required only once for all type of cookies that get stored by the same service provider.

(b) refers to art. 4 par. 5 of Law 3471/2006, which anticipates that the consent could be given through appropriate browser settings. However, the DPA clarifies that the implementation of the above provision has a special requirement: the consent must be requested and given for each cookie stored. Therefore the predetermined acceptance for the storage of all cookies through browser settings is not deemed to be consent.

(c) indicates that the user or subscriber must also have the right to revoke his consent by the same means that this consent was given to the service provider.

4.12.11 Can consent be given by a user’s browser settings under the law and the regulator’s guidance in your jurisdiction?

Please see answer to 4.11.10 above.

4.12.12 Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?

No.
4.12.13 Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?

The majority of websites in Greece have not implemented the opt-in system in accordance with certain requirements indicated by the Greek DPA. They only include the statement in their “terms of use” field that they use cookies and inform users about the purpose of such usage and that they may remove cookies by the browser’s settings.

4.12.14 Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.

http://www.aroma-elladas.gr/index.php/component/k2/item/156-cookielaw

http://www.nutri-book.gr

4.13 Hungary

Dr Péter Szemán
Bán, S. Szabó & Partners

4.13.1 Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.

Act C of 2003 on the electronic communications (the “Electronic Communications Act”).

4.13.2 Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?

Yes.

4.13.3 If so, please enter the name of the law which implements the change.

Act CVII of 2011 on the amendment of certain electronic communication laws.

4.13.4 If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?

Not applicable.

4.13.5 Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?

National Data Protection and Information Liberty Authority (www.naih.hu) (the “Data Protection Authority”).
National Media and Infocommunications Authority (www.nmhh.hu) (the “Infocommunications Authority”).

4.13.6 Has the regulator produced any guidance in relation to the amendment?

Not yet. Only the Infocommunications Authority issued an announcement about the decisions made by the European Parliament on May 6, 2009 affecting the electronic media communications regulations. The announcement does not contain any details about the local implementation of the new laws.

4.13.7 If not, please state when, if known, guidance will be published.

It is unknown when the regulator will issue guidance.

4.13.8 If so, please list and provide links if possible.

Not applicable.

4.13.9 Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?

Since no guideline is applicable, only the relevant provision of the Electronic Communications Act gives any guidance which requires the consent of the user or subscriber that is given following information received about the details of the data processing.

4.13.10 In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?

Since no guideline is applicable, the consent should be interpreted in compliance with the 95/46/EC directive.

4.13.11 Can consent be given by a user’s browser settings under the law and the regulator’s guidance in your jurisdiction?

The Electronic Communications Act does not give any clear answer whether the user’s browser settings can be accepted as consent. According to the previous guidelines of the data protection commissioner, the consent should be clear and definite, after receiving proper information about the data processing, so we do not believe that user’s browser settings can be interpreted as valid consent.

4.13.12 Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?

Since no guideline is applicable, the new regulations must be applied following the effective date of the new provisions that is 3 August 2011.

4.13.13 Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?
The general level of compliance is quite low. However, some companies have started to comply with these requirements.

4.13.14 *Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.*

On the following websites consents are requested for cookies:

http://www.budapestbank.hu/info/doc_cookie.php


http://www8.hp.com/hu/hu/privacy/cookie-list.html

4.14 **Ireland**

_John O'Connor_  
_Matheson Ormsby Prentice_

4.14.1 *Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.*

Regulation 5 of the European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003.

4.14.2 *Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?*

Yes.

4.14.3 *If so, please enter the name of the law which implements the change.*

Regulation 5 of the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011.

4.14.4 *If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?*

Not applicable.

4.14.5 *Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?*

The Data Protection Commissioner (“DPC”).  
(http:// dataprotection.ie/docs/Home/4.htm).
4.14.6 Has the regulator produced any guidance in relation to the amendment?

Yes.

4.14.7 If not, please state when, if known, guidance will be published.

Not applicable.

4.14.8 If so, please list and provide links if possible.

Yes, the DPC has published the following guidance:

Guidance Note on Data Protection in the Electronic Communication Sector (PDF).

4.14.9 Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?

The DPC recommends the following steps:

1. Where consent is to be given by way of browser settings, such settings would require, as a minimum, clear communication to the user as to what s/he was being asked to consent to and a means of giving or refusing consent to any information being stored or retrieved. The settings currently available on the main browsers do not appear to the DPC to be sufficient in themselves to meet this obligation.

2. Like Article 5.3 of Directive 2002/58/EC as amended, Regulation 5 provides an exception to the requirement to obtain consent where the storage of, or access to, information is strictly necessary to provide an information society service requested by the user. The DPC states that information on such use should be made readily available to the user in order for this exception to apply.

4.14.10 In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?

The DPC suggests that Browser settings might be used to obtain consent. In the annual report for 2011, the DPC stated that the scale of the consent, in his view, is relatable to the intrusiveness of the cookie. For instance there is a need to capture a specific consent in relation to so called behavioural advertising cookies which collect information on websites visited by a user to allow for the provision of more targeted advertising as they surf the web. In other cases the provision of information on the home page of a site may go a long way to meeting the requirements.

4.14.11 Can consent be given by a user’s browser settings under the law and the regulator’s guidance in your jurisdiction?

Like the recitals to Directive 2009/136/EC, Regulation 5 of the 2011 Regulations expressly states that browser settings may signify user consent. However, the DPC has said that settings currently available on the main
browsers do not appear to be sufficient in themselves to meet the requirement to provide adequate information and obtain consent.

4.14.12 **Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?**

No. The DPC in the 2011 annual report stated that “as this is now a well established law we are at the stage where we expect to see significant efforts made by websites to achieve compliance. We are mindful of industry initiatives to improve user knowledge and choice in relation to behavioural advertising but any website dropping or permitting cookies to be dropped or read will need to take some form of action now to meet its responsibilities.”

4.14.13 **Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?**

In Ireland, from what we have seen, it would appear that some large organisations have updated their privacy policy with a more detailed notice about cookies (or have created a separate cookie policy). For example:


In December 2012, the DPC wrote to some 80 websites seeking information on the steps that they have taken to meet the cookie obligations placed upon them under the Regulations (see press release [here](#)). The DPC stated at that time that it was disappointed with the response of websites. It stated that “as a first step websites need to provide prominent and clear information to users as to what data they are collecting or allowing to be collected via cookies on their site. At a minimum this will begin to educate users as to the scale and type of data collection taking place and then better position users to take informed choices as to what cookies they wish to allow or block.” The DPC further emphasised that enforcement action would be taken if websites failed to meet their obligations. However, the DPC expects that it would not be necessary as compliance is straightforward for most websites.

4.14.14 **Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.**

As above, there are very few examples of companies that have introduced a mechanism to obtain express consent in Ireland. However, from our experience to date, it appears that many companies are using pop-ups or banner ads to inform users of the use of cookies and the websites are relying on “implied” consent (i.e. continuing to use the website) in relation to such cookies. For example:

- [http://www.rte.ie/](http://www.rte.ie/)
4.15 Italy

Luigi Manna
Callegari Martini Manna

4.15.1 Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.

Data Protection Code (Legislative Decree no. 196/2003), Article 122.

4.15.2 Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?

Yes. However, the earlier version of the relevant Article of the Data Protection Code (Article 122) already required consent; actually, it provided a stricter regime on cookies than the amended one. As a result, the implementation of Directive 2009/136EC has actually made it easier for ISPs to use cookies under Italian laws.

4.15.3 If so, please enter the name of the law which implements the change.

Legislative Decree no. 69 of May 28, 2012.

4.15.4 If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?

Not applicable.

4.15.5 Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?

Garante per la protezione dei dati personali (http://www.garanteprivacy.it).

4.15.6 Has the regulator produced any guidance in relation to the amendment?

Not exactly – it has provided a FAQ document in Italian and English.

4.15.7 If not, please state when, if known, guidance will be published.

Not applicable.

4.15.8 If so, please list and provide links if possible.

FAQs on Cookies

4.15.9 Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?
Businesses should provide a clearly worded and simple information notice (a public consultation has been launched for businesses and consumers to suggest simplified mechanisms to provide the information notice); and they should make sure that specific information is provided and consent obtained for third party cookies.

4.15.10 *In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?*

The FAQs document points to the possibility of using browser settings and plug-ins.

4.15.11 *Can consent be given by a user's browser settings under the law and the regulator’s guidance in your jurisdiction?*

Yes, as long as the process is user-friendly.

4.15.12 *Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?*

No. But it would not be necessary, since the former regime was stricter.

4.15.13 *Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?*

Medium.

4.15.14 *Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.*

Www.mazda.it

4.16 **Latvia**

**Juris Eglītis**  
**Baltic Law**

4.16.1 *Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.*

Law On Information Society Services  

4.16.2 *Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?*

Yes.
4.16.3 If so, please enter the name of the law which implements the change.


4.16.4 If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?

Not applicable.

4.16.5 Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?


4.16.6 Has the regulator produced any guidance in relation to the amendment?

No.

4.16.7 If not, please state when, if known, guidance will be published.

Unknown.

4.16.8 If so, please list and provide links if possible.

Not applicable.

4.16.9 Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?

Not applicable.

4.16.10 In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?

Not applicable.

4.16.11 Can consent be given by a user’s browser settings under the law and the regulator’s guidance in your jurisdiction?

Not applicable.

4.16.12 Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?

No.

4.16.13 Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?
As far as we are aware, organisations do not take any actions to implement a practical mechanism for obtaining consent from visitors to their websites.

4.16.14 Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.

As far as we are aware, there are no examples of organisations that have introduced a mechanism to obtain express consent in Latvia.

4.17 Lithuania

Jolanta Kaminskaite and Ruta Andriuleviciute
IPnovus law

4.17.1 Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.

Law on Electronic Communications of the Republic of Lithuania.

4.17.2 Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?

Yes.

4.17.3 If so, please enter the name of the law which implements the change.

Law on Electronic Communications of the Republic of Lithuania No. IX-2135 (the amendments came into force on August 1st, 2011).

4.17.4 If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?

Not applicable.

4.17.5 Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?

THE STATE DATA PROTECTION INSPECTORATE (hereinafter – DPI), www.ada.lt.

4.17.6 Has the regulator produced any guidance in relation to the amendment?

Yes, DPI produced Recommendations.

4.17.7 If not, please state when, if known, guidance will be published.

Not applicable.

4.17.8 If so, please list and provide links if possible.
Yes, DPI has published the following Recommendations:

i) Recommendations re cookies usage: tips for electronic communications services users, 2011 (orientated to users, in Lithuanian only - Rekomendacija dėl slapukų naudojimo: patarimai elektroninių ryšių paslaugų naudotojams (2011 m.));

ii) Recommendations re cookies and similar means (orientated to service providers, in Lithuanian only - Rekomendacija dėl slapukų ir panašių priemonių naudojimo (2011 m.)).

4.17.9 Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?

The DPI recommends provide users with clear, comprehensive, understandable information related with usage of cookies.

4.17.10 In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?

The DPI stated that the following means might be used to obtain consent:

- Browser settings;
- Pop ups;
- Information line in website;
- In registration terms and conditions.

4.17.11 Can consent be given by a user’s browser settings under the law and the regulator’s guidance in your jurisdiction?

As stated above, the DPI includes browser settings as optional means that might be used to obtain consent. However, the DPI has noted, that in its view, companies cannot rely on browser settings at present and recommends use other means for that purposes.

4.17.12 Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?

No.

4.17.13 Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?

As far as we are aware, a large number of organisations have implemented practical mechanisms for obtaining consent from users of their websites.

4.17.14 Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.

Examples of websites obtaining express consent for cookies in Lithuania:
Website of PDI:  [http://www.ada.lt/go.php/lit/English](http://www.ada.lt/go.php/lit/English) (on the top of homepage);


Website of The Communications Regulatory Authority of the Republic of Lithuania: [http://www.rrt.lt/en/home.html](http://www.rrt.lt/en/home.html) (on the bottom of homepage, left corner); for more information users are referred to privacy policy [http://www.rrt.lt/lt/privatumo-politika.html](http://www.rrt.lt/lt/privatumo-politika.html) (in Lithuanian only);

It should be noted that most organizations state information on cookies in their registration terms and conditions, where they list precisely what kind of cookies are used and for what purposes, as well as provide instructions how to remove cookies or simply offer assistance for removing cookies.

Examples:

Website of Vilnius city municipality: [http://www.vilnius.lt/index.php?578456842](http://www.vilnius.lt/index.php?578456842) (in Lithuanian only);

Website of LLC “Bite Lietuva” (telecommunication company): [http://www.bite.lt/lt/apie/mus/privatumo-politika](http://www.bite.lt/lt/apie/mus/privatumo-politika) (in Lithuanian only);

Website of LLC “TC prekyba” (goods distribution services): [http://www.topocentras.lt/Pirkimo-informacija/Privatumo-politika.html](http://www.topocentras.lt/Pirkimo-informacija/Privatumo-politika.html) (in Lithuanian only).

### 4.18 Luxembourg

**Gary Cywie**  
**Noble & Scheidecker (“MNKS”)**

#### 4.18.1 Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.

Act of 30 May 2005 on protection of persons in relation to processing of personal data in the sector of electronic communications, as amended.

#### 4.18.2 Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?

Yes.

#### 4.18.3 If so, please enter the name of the law which implements the change.

4.18.4 If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?

Not applicable.

4.18.5 Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?


4.18.6 Has the regulator produced any guidance in relation to the amendment?

No.

4.18.7 If not, please state when, if known, guidance will be published.

Not known.

4.18.8 If so, please list and provide links if possible.

Not applicable.

4.18.9 Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?

Not applicable.

4.18.10 In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?

Not applicable.

4.18.11 Can consent be given by a user’s browser settings under the law and the regulator’s guidance in your jurisdiction?

Yes, the Act on protection of persons in relation to processing of personal data in the sector of electronic communications provides that where it is technically possible and effective, the user’s consent to processing may be expressed by appropriate settings of a browser or other application.

4.18.12 Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?

No.
4.18.13 Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?

In Luxembourg, from what we have seen, it would appear that many companies are integrating the notice about cookies in their privacy policies and deem that the consent would be expressed by accepting the privacy policy itself. We are not aware of any case where the CNPD would challenge such consent or would confirm that it is sufficient.

4.18.14 Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.

We are not aware of any websites in Luxembourg that would provide the possibility of giving the express consent for cookies (other than indirectly through the acceptance in the privacy policy).

4.19 Malta

Michael Zammit Maempel
GVTH Advocates

4.19.1 Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.

The relevant law is the Data Protection Act (“Act”) (Chapter 440 of the Laws of Malta) and the Regulations issued under it, in particular, Regulation 5 of the Processing of Personal Data (Electronic Communications Sector) Regulations (hereinafter referred to as the ‘Principal Regulations’). The Regulations were originally promulgated by Legal Notice 16 of 2003 and were last amended by Legal Notice 239 of 2011. This last Legal Notice introduced/updated the provisions of Directive 2002/58/EC and 2009/136/EC.

4.19.2 Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?

Yes.

4.19.3 If so, please enter the name of the law which implements the change.

Article 5 of the Principal Regulations (as last amended by the Legal Notice 239 of 2011).

4.19.4 If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?

Not applicable.
4.19.5 Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?

Information & Data Protection Commissioner

Level 2 – Airways House

High Street,

Sliema   SLM 1549

MALTA

www.idpc.gov.mt

Tel: (+356) 2328 7100

Fax: (+356) 23287198

Email: idpc.info@gov.mt

4.19.6 Has the regulator produced any guidance in relation to the amendment?

No.

4.19.7 If not, please state when, if known, guidance will be published.

We have no indication of any such date.

4.19.8 If so, please list and provide links if possible.

Not applicable in this instance but guidelines and other publications by the office of the Commissioner are typically uploaded on the Commissioner’s site www.idpc.gov.mt

4.19.9 Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?

Not applicable.

4.19.10 In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?

Not applicable.

4.19.11 Can consent be given by a user’s browser settings under the law and the regulator’s guidance in your jurisdiction?

The principal regulations offer no specific details on this particular point; the matter is therefore not excluded in terms of the regulations, and is therefore not contrary to law, provided it fulfils the requirement of consent.
Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?

We are not aware of any decision on this matter.

Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?

Our impression is that businesses have been slow to adopt these changes, and in our experience many are completely unaware of the requirements of the law – given that they rely almost blindly on their site developers, and who in turn are also very unaware of these requirements.

Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.

We are not aware of any examples of companies that have introduced a mechanism to obtain express consent in Malta.

Netherlands

Alex van der Wolk
De Brauw

Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.

Dutch Telecommunications Act (Telecommunicatiewet).

Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?

Yes, the updated Telecommunications Act (implementing the amendment) has entered into force on 5 June 2012.

If so, please enter the name of the law which implements the change.

Modification of the Dutch Telecommunications Act (new Article 11.7a). A new Article 11.7a has been added to the Telecommunications Act. This Article applies to the placing and reading of data on terminal equipment of a user by means of an electronic communications networks. Thus, the law applies to cookies, but (as also indicated by the legislature) also to other means such as device fingerprinting and potentially digital television. The new clause requires the informed and prior opt-in consent for the above, unless an exemption applies. Information about the use of cookies should comply with the Dutch Data Protection Act, i.e. clear and unambiguous information about the purpose of the cookies place.
Exemptions to the information and consent requirements are: where the technical storage or access is strictly necessary (i) to carry out the communication on an electronic network or (ii) to provide the requested service to the subscriber or user and the storage or access of data is strictly necessary for that purpose.

4.20.4 If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?

In addition, the Dutch legislature introduced a legal presumption (which entered into force on 1 January 2013) that cookies that are used to collect, combine or analyse information of a user across multiple websites are considered to be processing personal data. As a result, not only will the regime of the Dutch Data Protection Act (Wet bescherming persoonsgegevens) be presumed to be applicable to such cookies (which in practice are also called tracking cookies), but also the burden of proof that such cookies may in fact not process personal data shifts to the party placing such cookies.

On 28 February 2013 the Minister announced an amendment to the Dutch Telecommunications Act that will add analytic cookies to the exemption to the information and consent requirements. The exemption will apply to first party analytics cookies, and to the extent that they only process aggregated information. All other analytics cookies will not fall under the exemption and will require informed consent. Please note that the amendment has not yet been submitted to Parliament and that the Minister on 13 April stated that the Dutch Telecommunications Act "will be amended soon". It is therefore uncertain when the amendment will enter into force.

4.20.5 Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?

Autoriteit Consument & Markt (ACM) (Authority for Consumers & Markets). Due to a name change effective 1 April 2013, regulator OPTA is now called ACM.

4.20.6 Has the regulator produced any guidance in relation to the amendment?

Yes. ACM issued an updated Q&A (Veelgestelde vragen over de nieuwe cookieregels) on this topic in February 2013. In this Q&A, ACM cites the new Article 11.7a in the form as it applies since 1 January 2013 and emphasises the aforementioned legal presumption. ACM also states that the sole fact that a user fails to provide consent multiple times cannot be construed as providing implicit consent. Furthermore, the Q&A state that although a website is legally permitted to condition access to the website upon the acceptance of cookies (i.e. effectuating a 'cookie wall'), the use of such cookie wall is contradictory to the purpose of the amendment, and is generally discouraged.

4.20.7 If not, please state when, if known, guidance will be published.
Not applicable.

4.20.8 If so, please list and provide links if possible.

Q&A on ACM website (available only in Dutch).
https://www.acm.nl/nl/download/publicatie/?id=11130

4.20.9 Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?

ACM recommends organisations to inform and request consent where the new Article 11.7a Telecommunications Act applies, unless an exemption is applicable. If a user does not provide consent for the placing of cookies, a website may not work properly. According to ACM, a website is not required to provide access to a user and may make access dependent upon receiving consent.

In the Q&A ACM also indicates that a (vague) reference to the general terms, privacy policies or permission statements is not sufficient. The information provided must make clear to the user why and for what he/she grants permission as well as the extent of the permission.

4.20.10 In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?

The Q&A leaves the way in which consent is requested open, but provides examples of request through a pop-up, floating box, info bar or overlay. ACM indicates that consent does not need to be provided upon each visit. The consent will be valid for the duration of the cookie, unless a user deletes the cookie. In addition, consent will no longer be valid when the nature of the consent changes, e.g. through a change in the cookie or privacy policy.

4.20.11 Can consent be given by a user’s browser settings under the law and the regulator’s guidance in your jurisdiction?

No. According to ACM, browser settings are currently not sufficient to provide the required consent as the current Do Not Track systems are not considered adequate. However, the legislature has not ruled out that in the future consent may be facilitated via browser settings. The Dutch legislature will thereby also look to and consider efforts that are made on a European level. ACM emphasises that it is not allowed to postpone the implementation of cookie rules pending the developments in this field.

The legislature has recently indicated in parliament debates on this topic that it will explore whether consent could also be facilitated through other means, such as limited instances of implicit consent. However, there has been no further guidance or information on such developments since, and it should be noted that ACM explicitly does not recognise implicit consent.
4.20.12  Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?

No. Although the Minister indicated that, as long as the exact interpretation of Directive 2009/136 is unclear, ACM will restrictively apply enforcement regarding the obtaining of consent, ACM itself has not confirmed it will exercise a restrictive approach.

4.20.13  Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?

In September 2012 ACM sent a letter to 121 government or government-related websites informing them about the pending enforcement of the amendment. At that time, ACM found that 96 of these websites were not compliant with the cookie legislation by placing cookies without informing and/or obtaining consent.

Since the adoption of Article 11.7a, the topic of the new cookie requirements has been given priority by many companies, which have started internal discussions on compliance programs. Companies are advised to update their information policies regarding the use of cookies and to internally review and discuss options to facilitate the consent requirement.

4.20.14  Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.

The website www.werkenbijdebrauw.nl is a good example of a website that obtains express consent for cookies. The user is informed through a pop-up. The user has the option to ignore the pop-up, to configure the cookie settings, or to give his consent. If the user ignores the pop-up, only functional (exempted) cookies will be placed. If the user chooses to configure the cookie settings he can choose between the standard setting (functional cookies only), the web analytics setting and the social media setting. If the user gives his consent, the social media setting will be used. Please note that such system is only compliant to the extent that the default setting is that no cookies (other than exempted cookies) are placed. Only then can it be considered to be opt-in consent.

Many websites currently merely comply with the information requirement or use an opt-out mechanism. Some (media) websites have started using advertising platforms to facilitate consent for online advertising through the use of cookies (such as http://www.youronlinechoices.eu/nl/). However, such initiatives or websites often do not provide for an opt-in consent (prior to placing cookies). Such mechanisms, in our opinion, should be construed as opt-out and are therefore not compliant with the applicable law.

Furthermore, we note that ACM has indicated that it is developing software to screen websites on conformity with the new Article 11.7a.
Telecommunications Act. ACM has indicated that websites which place cookies without prior obtained consent and whose cookies can only be removed inconveniently by a user, will be fined immediately.

4.21 **Poland**

*Mikołaj Sowinski, Soltyński Kawecki & Szlezak*

4.21.1 Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.

Art. 173 of Polish Telecommunication Law (PTL).

4.21.2 Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?

Yes.

4.21.3 If so, please enter the name of the law which implements the change.


4.21.4 If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?

Not applicable.

4.21.5 Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?

The Office of Electronic Communication (Urząd Komunikacji Elektronicznej, “UKE”) is a regulatory authority dealing with the telecommunication sector. In addition, the General Inspector for Personal Data Protection has been granted the authority to receive notifications of suppliers of publicly available telecommunications services about the violation of personal data.

4.21.6 Has the regulator produced any guidance in relation to the amendment?

No. However, the Amendment is accompanied by its formal justification that includes comments on all amendments to PTL. In addition, certain additional information is available on the website of the Ministry of Administration and Digitalization.

4.21.7 If not, please state when, if known, guidance will be published.
We do not expect any separate guidelines at this stage. However, as mentioned above, the authorities prepared the justification which accompanies the bill.

4.21.8 *If so, please list and provide links if possible.*


4.21.9 *Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?*

As mentioned above, at the moment there is no official guidance on compliance. Thus, when implementing the provisions of the PTL undertakings can rely only on the wording of the law (i.e. the Amendment and its justification).

The Amendment and its justification increase the scope of information obligations and give users the right to oppose storage of and access to cookies by changing the web browser’s settings.

Pursuant to the Amendment, the storage or accessing of information already stored on the user's computer is allowed, under the following conditions:

a) the website owner provides the user with a clear and comprehensive information about:

   (i) the purpose of the storage or access to that information; and

   (ii) the possibility to determine conditions for storing or accessing the information by software settings installed on the computer used by the user or through a configuration of the service;

b) the user, after receiving the information above, grants its consent (see, however, comments at 4.20.10 below); and

c) the stored information or accessing the information shall not result in a change of settings of the user's computer or the software installed on this device.

The Amendment does not indicate how detailed the information about cookies should be. Nevertheless, it seems that the information about cookies should be clear so that the user could understand what cookies are installed on his/her computer, and at the same time, it should be specific enough to enable the user to make a proper configuration of his browser.

4.21.10 *In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?*
The Amendment does not stipulate any specific means for obtaining the consent. It allows the user to grant a default consent through browser settings.

The Amendment requires that the user should be clearly informed how to oppose storage of and access to **cookies** by using settings of the web browser (see comments above).

4.21.11 Can consent be given by a user’s browser settings under the law and the regulator’s guidance in your jurisdiction?

Yes. The PTL allows the granting of consent by a user’s browser settings. However, it is a common understanding that the website owner may rely on such “implied” consent of the user only where it has previously properly informed the user about the use of cookies on its website.

In particular, simple use of the website by a user may be considered insufficient to show that the user granted default consent for the installation of cookies. Although the website owner is not required to apply for a separate consent from the user in respect of the installation of cookies on his computer, the website owner is required to provide the user with complete and unambiguous information about the cookies which are used on its website and mechanisms for their installation (or blocking such installation), so that the user can grant his consent through browser settings or configuration of the service. Only a user who has received complete information about the cookies used on the website and the mechanism for blocking their installation, is in a position to decide whether he agrees to the use of the cookies, and to implement, on his own, proper browser settings.

4.21.12 Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?

According to the Amendment, the transitional period lasted 90 days and expired on 22 March 2013.

4.21.13 Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?

Level of compliance – medium/low.

In practice, in order to fulfill the information requirement relating to cookies, many website owners have decided to use various banners, pop-ups or bars informing that a given website is using cookies and transferring the user to a separate document dealing with cookies in more detail.

It is also common practice that the cookie policy includes a description of the types of cookies used and specific information about mechanisms for blocking the installation of cookies.
4.21.14  Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.

We have found one website where the website owner applies for an express consent of the user: http://stooq.pl/cookie/.

The general market practice is that companies do not apply for an express consent of the user, but rather prefer to rely on the user’s “implied” consent (which is granted through the settings of the user’s browser) and include respective provisions in their website policies, as displayed, for example, here: http://ofirmie.onet.pl/cookies (available in Polish only).

4.22  Portugal

Manuel Lopes Rocha and Carolina Leão D'Oliveira
PLMJ

4.22.1  Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.

Law 41/2004, of 18 August.

4.22.2  Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?

Yes.

4.22.3  If so, please enter the name of the law which implements the change.

Law no. 46/2012, of 29 August.

4.22.4  If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?

Not applicable.

4.22.5  Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?

As far as we are concerned, there is no single regulator responsible for this area in our jurisdiction.

However, the Law no. 46/2012 had its origin in a Proposal drawn up by ICP - ANACOM (Portuguese National Communications Authority). In addition, CNPD (Portuguese Data Protection Commission), CNC (the National Consumer Council) and AOT (Association of Telecommunication Operators) were consulted in the process of approving the new Law.
4.22.6 Has the regulator produced any guidance in relation to the amendment?

There is no guidance directed at organisations. However, opinions were given by ICP – ANACOM, CNPD, CNC and AOT when they were consulted in the process of approving the new Law.

4.22.7 If not, please state when, if known, guidance will be published.

Not known, but the public discussion has intensified, with some companies directing proposals to CNPD, which is presently analysing them and will probably issue some kind of guidance soon.

4.22.8 If so, please list and provide links if possible.

Not applicable.

4.22.9 Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?

Not applicable.

4.22.10 In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?

No specific means/mechanisms for obtaining prior consent have been specified either in guidance or in the new Law no. 46/2012. As mentioned above, Article 5 of this Law states that prior consent is required and must be based on clear and complete information according to the Data Protection Law, in particular concerning the objectives pursued with the processing. Prior consent shall not be necessary only in situations of technical storage or access that:

- a) has as its sole purpose the transmission of a communication over an electronic communications network and;
- b) is strictly necessary for the vendor to provide an information society service explicitly requested by the subscriber or user.

4.22.11 Can consent be given by a user’s browser settings under the law and the regulator’s guidance in your jurisdiction?

As above, according to the new Law no. 46/2012, consent cannot be given by user’s browser settings, but only “on condition that the subscriber or user concerned has given his or her consent, having been provided with clear and comprehensive information on the purposes of such processing”.

4.22.12 Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?

No, there is no transitional period with the objective of allowing companies to achieve compliance.

4.22.13 Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?

Not applicable.
No public information on this matter available. We are nevertheless aware that some organisations have expressed concerns regarding the extent of changes that they are obliged to make to their systems (because of the new paradigm of prior consent) within a short timeframe (as there is no transitional period).

4.22.14  Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.

We are not aware of any examples of companies that have introduced a mechanism to obtain express consent regarding cookies’ processing. Nevertheless, and even though this probably cannot be taken as true express consent, companies are generally using one of the following two models to obtain the user’s consent: (1) a pop-up window that shows up automatically when the webpage is opened containing a message that only allows the user to proceed if he or she accepts the website’s cookies (e.g. www.expresso.pt). Once the user accepts the cookies, the message will not show up anymore in the following visits to that webpage; (2) a message that asks the user to allow the cookies, but does not prevent him/her from browsing the webpage even if no consent has been given (e.g. www.tap.pt).

4.23  Romania

Magda Popescu
Popescu Magdalena-Daniela Law Office

4.23.1  Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.


4.23.2  Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?

Yes, in the following wording:

“Art. 4, para 5 - The storing of information or obtaining the access to the information stored in the terminal equipment of a subscriber or of a user is allowed only if all of the following conditions are met:

a) the subscriber or user concerned has given his/her consent

b) the subscriber or user was provided, in advance to expressing the consent, in accordance with art. 12 of Law no. 677 of 2001 (n.n. –
implementing Directive 95/46/EC), with clear and comprehensive information that:

(i) are expressed in an easy-to-understand and easy-to-be-accessed manner to the subscriber or user;

(ii) include notes about the purposes of the processing of the information stored by the subscriber or user or of the information the latter has access to.

In case the provider allows to third parties the storing or access to information stored in the terminal equipment of the subscriber or user, the informing according to (i) and (ii) above includes the general purpose of processing this information by the third parties and the manner in which the subscriber or the user can use the settings of the application of Internet browsing or similar technologies for removing stored information or for refusing the access to such information to third parties.

Art. 4, para 5.1 - The consent provided for at art. 5 (a) above can also be given by using the settings of the application of Internet browsing or of similar technologies whereby it may be considered that the subscriber or user has expressed his/her consent.

Art. 4, para 6 – The provisions of art. 5 do not prevent the possibility of technical storage or access to the stored information in the following cases:

a) for the sole purpose of carrying out the transmission of a communication over an electronic communications network,

b) as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.”

4.23.3 If so, please enter the name of the law which implements the change.


4.23.4 If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?

Not applicable.

4.23.5 Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?

The National Supervisory Authority For Personal Data Processing (“ANSPDCP”) (www.dataprotection.ro).
4.23.6 Has the regulator produced any guidance in relation to the amendment?

No.

4.23.7 If not, please state when, if known, guidance will be published.

Not available.

4.23.8 If so, please list and provide links if possible.

Not applicable.

4.23.9 Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?

Not applicable.

4.23.10 In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?

Not applicable.

4.23.11 Can consent be given by a user’s browser settings under the law and the regulator’s guidance in your jurisdiction?

Yes, please see Art. 4, para 51 in section 4.22.2 above.

4.23.12 Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?

Not applicable.

4.23.13 Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?

In Romania, generally, a cookie policy is posted on the website.

4.23.14 Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.

http://www.alli.ro/privacyandcookiespolicy/

4.24 Slovakia

Marcel Baker
Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.

Act No. 351/2011 Coll. on Electronic Communications.

Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?

Yes. Actually, the whole Act No. 351/2011 Coll. on Electronic Communications was adopted in September 2011 only, so it already reflects the provisions of the amended Directive.

If so, please enter the name of the law which implements the change.

See above.

If not, can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?

Not applicable.

Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?


Has the regulator produced any guidance in relation to the amendment?

No.

If not, please state when, if known, guidance will be published.

The Slovak Telecommunications Regulatory Authority has no intention to publish any guidance.

If so, please list and provide links if possible.

Not applicable.

Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?

Not applicable.

In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?
Not applicable.

4.24.11 Can consent be given by a user’s browser settings under the law and the regulator’s guidance in your jurisdiction?

Under Slovak law, browser settings are regarded as consent of the user.

4.24.12 Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?

No.

4.24.13 Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?

We do not have any information about the general level of compliance.

4.24.14 Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.

We do not know of any such examples.

4.25 Slovenia

Rok Koren and Mirela Murtič
Law Offices Rok Koren

4.25.1 Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.

Electronic Communications Act.

4.25.2 Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?

Yes.

4.25.3 If so, please enter the name of the law which implements the change.

New Electronic Communications Act; ZEKom-1, Article 157 named ‘cookies’.

4.25.4 If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?

Not applicable.
4.25.5 **Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?**

Information Commissioner.

4.25.6 **Has the regulator produced any guidance in relation to the amendment?**

Yes.

4.25.7 **If not, please state when, if known, guidance will be published.**

Not applicable.

4.25.8 **If so, please list and provide links if possible.**

[https://www.ip-rs.si/novice/detail/informacijski-pooblasene-izdal-smernice-glede-uporabe-piskotkov/?cHash=5842ad1118a2ae1915f350cc1aa98e22](https://www.ip-rs.si/novice/detail/informacijski-pooblasene-izdal-smernice-glede-uporabe-piskotkov/?cHash=5842ad1118a2ae1915f350cc1aa98e22)

[https://www.ip-rs.si/fileadmin/user_upload/Pdf/smernice/Smernice_o_uporabi_piskotkov.pdf](https://www.ip-rs.si/fileadmin/user_upload/Pdf/smernice/Smernice_o_uporabi_piskotkov.pdf)

4.25.9 **Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?**

Companies should:

- carefully check what kind of cookies they use, for what purpose, how invasive they are etc, and pay special attention to the use of cookies by third parties and their conditions.

- check which cookies can be regarded as exceptions that do not require consent and which cookies do require consent.

- consider which mechanism they should use to obtain the most reliable and valid consent.

- carefully design a visible, clear and understandable notice of the use of cookies and insert the information about the use of cookies in the declaration on the protection of personal data.

4.25.10 **In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?**

Pop-ups, banners and other similar techniques (for example ‘splash screen’).

4.25.11 **Can consent be given by a user’s browser settings under the law and the regulator’s guidance in your jurisdiction?**

Yes.
4.25.12 Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?

Yes: until 15 June 2013.

4.25.13 Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?

Not answered.

4.25.14 Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.

Not answered.

4.26 Spain

Cecilia Álvarez Rigaudías
Uria Menendez

4.26.1 Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.


4.26.2 Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?

Yes.

4.26.3 If so, please enter the name of the law which implements the change.

Royal Decree 13/2012 which entered into force on April 1 and reproduces similar language to that in Article 5(3) of the Directive 2009/136/EC.

4.26.4 If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?

Not applicable.

4.26.5 Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?

Agencia Española de Protección de Datos (“AEPD”) (www.agpd.es).

4.26.6 Has the regulator produced any guidance in relation to the amendment?
Yes: Guidance has been issued in April 2013 by the AEPD regarding the amendment of Article 5.3 of Directive 2002/58/EC.

4.26.7 If not, please state when, if known, guidance will be published.

Not applicable.

4.26.8 If so, please list and provide links if possible.


4.26.9 Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?

Clear, accessible, permanent and prominent information by layers (and preferably not included in the privacy policy or in the terms and conditions) on (i) the existence of cookies and their purpose and (ii) the procedure to deactivate them and the consequences of doing so.

Consent by any user’s explicit action. Consent inferred from the user’s inactivity shall not be considered valid.

4.26.10 In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?

The Guidance mentions the following possibilities:

(i) through the explicit acceptance of the website terms and conditions or privacy policy upon user registration;

(ii) during the configuration of the website or app settings (settings-led consent);

(iii) upon the application for a new feature offered in the website or app (feature-led consent);

(iv) before a service or app that is offered in the web is downloaded by the user;

(v) through the information by layers format, provided that an active and conscious action of the user is carried out signifying consent; and

(vi) through the browser settings (see 4.26.11 below).

4.26.11 Can consent be given by a user's browser settings under the law and the regulator’s guidance in your jurisdiction?

Browser settings could theoretically be used as a legitimate means of obtaining consent “where technically feasible” and provided that the user actively sets the browser “through an action expressly determined for this purpose.”
The AEPD guidance mentions this possibility by reference to the Opinion 2/2010 of the Working Party on behavioural advertisement (http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2010/wp171_en.pdf), which states that providing information and enabling the user to reject cookies through browser settings (by explaining how this can be done) cannot generally be deemed as informed consent ex Article 5.3 of the Directive 2002/58/EC and Article 2.h of Directive 95/46/EC.

4.26.12 Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?

No.

4.26.13 Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?

Some organisations are in the process of, or have completed, auditing and categorising their website cookies/web beacons in order to comply with the current information duties and to be better prepared for the future legislation requiring consent.

In any event, consent is obtained if specific provisions on cookies are included in general terms and conditions (e.g., website’s terms of use and/or privacy polices) that are expressly accepted by users (for example, during the registration process). In addition, some entities have included opt-out mechanisms but only regarding third parties’ cookies.

The opt-in mechanism implemented by the ICO in its own website has been analysed by some organisations established in Spain with great interest but not adopted by any of them.

It is more than likely that organisations will implement new information and consent mechanisms following the examples included in the AEPD guidance.

4.26.14 Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.

There are no examples of companies established in Spain that have introduced a mechanism to obtain express consent regarding cookies’ processing by means of an “acceptance” button or similar devices, except through users’ online acceptance of general terms and conditions, which include provisions on cookies (website terms of use and/or privacy policies).

The AEPD guidance contains a series of examples of valid consent, which are expected to be generally followed in Spain (in particular, the information by layers format mentioned in 4.26.10 above).
4.27 Sweden

Charlotta Poehler
Nord & Co Advokatbyrå KB

4.27.1 Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.


4.27.2 Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?

Yes.

4.27.3 If so, please enter the name of the law which implements the change.


4.27.4 If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?

Not applicable.

4.27.5 Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?

The Swedish Post and Telecom Authority (“PTS”) pts@pts.se.

4.27.6 Has the regulator produced any guidance in relation to the amendment?

Yes, PTS has a FAQ on their website. PTS also encourages businesses and business organisations to find their own solutions in order to comply with the rules.

4.27.7 If not, please state when, if known, guidance will be published.

Not applicable.

4.27.8 If so, please list and provide links if possible.

The FAQ at PTS’s website:


4.27.9 Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?
The PTS states that it is not yet possible to indicate in detail how the rule shall be applied to a particular website. PTS wants to provide website owners the time and space to produce a solution that works for both websites and users.

The PTS recommends the following steps:

- Inform visitors to the website of the fact that the website contains cookies and the purpose for which cookies are used.
- Ensure that the visitor consents to the use of cookies.

The PTS also advises concerning which information the business should provide regarding the cookies.

4.27.10 In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?

The PTS says that the exact appearance and function of the technical design to enable businesses to obtain consent is not something that PTS can specify in advance. PTS considers that website owners are best equipped to produce functioning and secure solutions for how consent should be provided. PTS would like to give those responsible for websites the time and space to produce such solutions.

4.27.11 Can consent be given by a user’s browser settings under the law and the regulator’s guidance in your jurisdiction?

The PTS has not issued any statement concerning this issue so there is no general answer. Whether consent can be considered to have been obtained will therefore depend on the web browser settings and the circumstances in each case.

4.27.12 Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?

No, the PTS are able to take action after the amendment was enacted on 1 July 2011. However PTS has stated that they understand that it may take some time for the business to achieve compliance.

4.27.13 Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?

The PTS had, during 2012, an assignment from the Swedish government to investigate this matter. The result of the investigation is presented in a report dated 19 December 2012 (Report No. PTS-ER-2012:28, “Effekter om reglerna om kakor”). The PTS found that a large number of webmasters are aware of the amendments to the regulatory provisions, but that the use of cookies has largely remained the same. The attention that the new regulations attracted has resulted in an enhanced awareness of the problems associated with cookie usage. Many of the webmasters consider that the provisions are difficult to interpret and consequently difficult to implement.
in practice. The amended regulations have however resulted in an improvement in the information provided about cookies. The PST also found that only a small proportion of Swedish websites have introduced new functions or dealt with the new requirement for consent in some other way. This may be due to uncertainty concerning how the requirement should be interpreted. Please find a link to the report below.


The IAB (Interactive Advertising Bureau) Sweden has, together with several other organisations and businesses, initiated a self regulation regarding the use of cookies called Recommendation on the use of cookies and comparable technology, see link below:


(Please note that this recommendation is not approved by PTS).

4.27.14 Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.

An example of a website that are obtaining express consent is the Swedish government: http://www.sweden.gov.se/.

4.28 United Kingdom

James Brunger
Bristows

4.28.1 Please enter the name of law which implements Article 5.3 of Directive 2002/58/EC.


4.28.2 Implementation of Article 2(5) of Directive 2009/136/EC which has amended Article 5.3 of Directive 2002/58/EC (primarily to require consent to be given) - Has your country implemented this amendment into national law?

Yes.

4.28.3 If so, please enter the name of the law which implements the change.

4.28.4 If not, please can you provide details of any pending implementing legislation that you are aware of, and the likely dates that legislation will be in force?

Not applicable.

4.28.5 Information about the Regulator’s response to the amendment - Q6: What is the name of the regulator responsible for this area in your jurisdiction?

Information Commissioner’s Office (“ICO”) (www.ico.gov.uk).

4.28.6 Has the regulator produced any guidance in relation to the amendment?

Yes.

4.28.7 If not, please state when, if known, guidance will be published.

Not applicable.

4.28.8 If so, please list and provide links if possible.


4.28.9 Guidance on compliance - In brief, what steps does the guidance recommend that businesses take to comply?

The ICO recommends the following steps:

1. Audit cookie use on each website
2. Categorise cookies by purpose and ‘intrusiveness’
3. Choose an appropriate means of obtaining consent based the categorisation.

4.28.10 In brief, what means/mechanisms does the guidance suggest can be used to obtain consent?

The ICO suggests the following means might be used to obtain consent (as appropriate):

- Pop ups, header/footer bars/banners and similar techniques
- As part of the process of changing website preference settings or requesting new functionality
- In registration terms and conditions

In its most recent guidance, the ICO has also confirmed that implied consent is a valid form of consent provided: (a) there is some action taken by the consenting individual from which their consent can be inferred and (b) the individual has a reasonable understanding that by taking that action they are agreeing to cookies being set.
4.28.11 Can consent be given by a user’s browser settings under the law and the regulator’s guidance in your jurisdiction?

Like the recitals to Directive 2009/136/EC, Regulation 6 (2003) as amended expressly states that browser settings may signify user consent. However, the ICO has said, in its view, companies cannot rely on browser settings at present.

4.28.12 Transitional periods - Has the regulator in your jurisdiction granted any transitional periods for businesses to achieve compliance?

The transitional period expired on 25 May 2012.

4.28.13 Compliance - If your country has implemented the amendment, as far as you are aware, what is the general level of compliance in your country to date?

A significant proportion of UK websites, particularly those of large organisations, now have a mechanism for obtaining user consent for the use of cookies and similar. The majority use a combination of a pop up header/footer banner with a short consent statement about the website’s use of cookies, together with a link to more detailed information in a dedicated cookie mini-site, policy or section of a privacy policy.

Although many UK companies have completed audits of the cookies used by their websites, most cookie policies (particularly those for the websites of larger organisations) have chosen not to provide a detailed list of cookies used on the site and instead indicate the categories of cookies used. However, there are some exceptions, such as www.vodafone.co.uk.

Some websites have a dedicated means for users to exercise choice about whether the website uses different categories of cookies. These are either contained in the consent banner or linked to from the cookie policy. Websites displaying targeted advertising often link to industry opt-out mechanisms (such as www.youronlinechoices.eu operated by the IAB). Several websites continue to rely on browser settings as the means by which users can exercise choice.

Regarding enforcement, the ICO has steadily backed away from the hard line it promoted at the end of the transitional period in May 2012. It has accepted implied consent as a means of compliance and has recently switched to using implied consent on its own website (having previously sought to obtain express consent). It recently stated that it considers cookies to represent a consumer threat level of ‘low’ due to the low levels of complaints it receives. The number of complaints it receives have decreased significantly since the end of the transitional period (see www.ico.org.uk/enforcement/action/cookies). This is the case even though approx 27% of the most popular UK websites that the ICO has inspected have only taken limited steps to obtain consent which the ICO considers are “not likely to be fully compliant”. However, the ICO continues to write to UK websites it receives complaints about, focusing on those with high
levels of UK traffic and those that are doing **nothing** to raise awareness of cookies or get their users’ consent.

No fines have been issued by the ICO to date in relation to the setting of cookies.

4.28.14 *Examples - Please provide links to any examples in your jurisdiction where websites are obtaining express consent for cookies. In particular, for unregistered visitors to a website.*

Examples of mechanisms used to obtain consent can be seen across the UK’s most popular websites, such as: [www.bbc.co.uk](http://www.bbc.co.uk), [www.guardian.co.uk](http://www.guardian.co.uk) and [www.tesco.com](http://www.tesco.com).

5. **Disclaimer**

The responses contained in this document have been provided by the participating law firms on an ‘information only’ basis and do not constitute legal advice.
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7. **Contributors by Country**

**Austria**

Günther Leissler
Schoenherr
Schönerr rechtsanwälte gmbh
tuchlauben 17
A-1010 vienna
Austria

Tel:  (+43) 1 534 37 227  
Fax:  (+43) 1 534 37 6100  
Email:  g.leissler@schoenherr.eu  
Website:  www.schoenherr.eu

**Belgium**

Jan Dhont
David Dumont
Lorenz
Brussels Office
Regentlaan 37-40 Boulevard du Régent
1000 Brussels
Belgium

Tel:  (+32) 2 239 2000  
Fax:  (+32) 2 239 2002  
Email:  j.dhont@lorenz-law.com  
Website:  www.lorenz-law.com

**Bulgaria**

Desislava Krusteva
Dimitrov, Petrov & Co.
28 Todor Alexandrov Blvd., fl.7
1303 Sofia,
Bulgaria

Tel:  (+359) 2 421 42 01  
Fax:  (+359) 2 421 42 02  
Email:  desislava.krusteva@dpc.bg  
Website:  www.dpc.bg

**Croatia**

Olena Manuilenko
Vukmir & Associates
Gramača 2L,
10000 Zagreb,
Croatia / Hrvatska

Tel:  (+385) 1 376 0511  
Fax:  (+385) 1 376 0555  
Email:  olena.manuilenko@vukmir.net  
Website:  www.vukmir.net

**Cyprus**

Haris Satsias
Lellos P. Demetriades Law Office LLC
The Chanteclair House,
2 Sophoulis Street, 9th Floor,
CY1096 Nicosia,
Cyprus

Tel:  (+357) 22676060  
Fax:  (+357) 22676061  
Email:  haris@ldlaw.com.cy  
Web:  www.ldlaw.com.cy

**Czech Republic**

Martin Voborník
Voborník, Nigrini, Kipiel
Kladská 1489/5
120 00 Praha 2
Česká republika

Tel:  (+420) 224 811 737-8  
Fax:  (+420) 224 819 429  
E-mail:  vobornik@v-n.cz  
Website:  www.v-n.cz

**Denmark**

Arly Carlquist
Marie Albæk Jacobsen
Bech-Bruun
Langelinie Allé 35
2100 Copenhagen
Denmark
Tel: (+45) 72270000
Fax: (+45) 72270027
Email: ac@bechbruun.com
Website: www.bechbruun.com

Estonia
Timo Kullerkupp
Kaido Künnapas
MAQS Law Firm
Rotermanni 8,
10111 Tallinn,
Estonia
Tel: (+372) 66 76 440
Fax: (+372) 66 76 450
Email: Timo.Kullerkupp@ee.maqs.com
Kaido.Kunnapas@ee.maqs.com
Website: www.maqs.com

Finland
Marko Rajaniemi
Petri Eskola
Backström & Co Ltd.
Kasarmikatu 44,
FI-00130 Helsinki,
Finland
Tel: (+358) 9 6689 940
Fax: (+358) 9 6689 9410
Email: marko.rajaniemi@backstrom.fi
Website: www.backstrom.fi

France
Anne Perrin
ALP Avocat
5, rue de la Rochefoucauld
75009 Paris
France
Tel: (+33) 6 73 88 88 58
Fax: (+33) 1 40 50 84 16
Email: aperrin@alp-avocat.com

Germany
Dr. Jürgen Hartung
Oppenhoff & Partner
Konrad-Adenauer-Ufer 23
50668 Köln
Germany
Tel.: (+49) 221 2091-633
Fax: (+49) 221 2091-333
Email: juergen.hartung@oppenhoff.eu
Website: www.oppenhoff.eu

Greece
Sevy Stefanidi
Zannos & Associates Law Firm
64, Skoufa Str.
Athens 106 80
Greece
Tel: (+30) 210 3633662
Fax: (+30) 210 3642895
Email: stefanidi@zpslaw.gr

Hungary
Dr Péter Szemán
Bán, S. Szabó & Partners
H-1051 Budapest, József Nádor Tér 5-6.
Hungary
Tel.: (+361) 266-3522
Fax: (+361) 266-3523
Email: pszeman@bansszabo.hu
Website: www.bansszabo.hu

Ireland
John O'Connor
Matheson
70 Sir John Rogerson's Quay
Dublin 2
Ireland
Tel: +353 1 232 2000
Fax: +353 1 232 3333
Email: John.O'Connor@matheson.com
Website: www.matheson.com

Italy
Luigi Manna
Callegari Martini Manna
Via Savona n. 123
Milano 20144
Italy
Tel: (+39) 02 45074727
Fax: (+39) 02 45070327
Email: luigi.manna@cmmlaw.com
**Latvia**

Juris Eglītīs  
Baltic Law  
Strelnieku Str. 9-8  
Riga, LV-1010  
Latvia  
Tel: (+371) 67212940  
Fax: (+371) 67224494  
Email: juris.eglitis@balticlaw.com  
Website: www.balticlaw.com

**Lithuania**

Jolanta Kaminskaite  
Ruta Andriuleviciute  
IPnovus Law  
Gedimino Ave. 32-5  
Vilnius 01104  
Lithuania  
Tel: (+370) 52609176  
Email: jolanta.kaminskaite@ipnovus.com  
Website: www.ipnovus.com

**Luxembourg**

Gary Cywie  
MNKS  
Vertigo Polaris Building  
2-4 rue Eugène Ruppert (2nd floor)  
L-2453  
Luxembourg  
Tel: (+352) 26 48 42 1  
F: (+352) 26 48 42 35 00  
Email: cywie@mnks.com  
Website: www.mnks.com

**Malta**

Michael Zammit Maempel  
GVTH Advocates  
192, Old Bakery Street,  
Valletta, VLT 1455,  
Malta  
Tel: (+356) 2122 8888  
Fax: (+356) 2122 8808  
Email: michael.zammitmaempel@gvthlaw.com  
Website: www.gvthlaw.com

**Netherlands**

Alex van der Wolk  
De Brauw Blackstone Westbroek N.V.  
P.O. Box 75084  
Claude Debussylaan 80  
1070 AB Amsterdam  
Tel: (+31) 20 577 1745  
Fax: (+31) 20 577 1775  
Email: alex.vanderwolk@debrauw.com  
Website: www.debrauw.com

**Poland**

Mikołaj Sowinski  
Soltsysiński Kawecki & Szlęzak  
ul. Wawelska 15 B  
02-034 Warszawa  
Poland  
Tel: (+48) 22 608-7000  
Fax: (+48) 22 608-7070  
Email: Mikolaj.Sowinski@skslegal.pl  
Website: www.skslegal.pl

**Portugal**

Manuel Lopes Rocha  
Carolina Leão D'Oliveira  
PLMJ  
Lisboa Av. da Liberdade, 224  
Edificio Eurolex  
1250-148 Lisboa  
Portugal  
Tel.: (+351) 21 319 73 00  
Fax: (+351) 21 319 74 00  
Email: manuel.lopesrocha@plmj.pt  
Website: www.plmj.com

**Romania**

Magda Popescu  
Legal 2M / M. Gavenea & M. Popescu Law Firm  
10 Splaiul Unirii Street,  
Bl. B5, Entr. 1, Ap. 10,  
4th District,  
040033 Bucharest,  
Romania  
Tel: (+40) 21 311-1628  
Fax: (+40) 21 315-4462  
E-mail: magda.popescu@legal2m.com
Slovakia

Marcel Baker

Law Office Bianchi • Malach • Tomanová
Jakubovo námestie No. 13,
811 09 Bratislava 1
Slovakia

Tel:  (+421) 2 5292 4062 (4)
Fax:  (+421) 2 5296 4078
Email:  baker@bmt.sk

Slovenia

Rok Koren
Mirela Murtič

Law offices Koren
Komeskega 12
1000 Ljubljana
Slovenia

Tel:  (+386) 1 475 0 999
Email:  rok.koren@koren.si

Spain

Cecilia Álvarez Rigaudias

Uría Menéndez
Príncipe de Vergara, 187
Plaza de Rodrigo Uría
28002 Madrid
Spain

Tel.:  (+34) 91 586 0131
Fax:  (+34) 91 586 0080
Email:  cecilia.alvarez@uria.com
Website:  www.uria.com

Sweden

Charlotta Poehler

Nord & Co. Advokatbyrå KB
Engelbrektsgatan 3
P. O. Box 1435
SE-111 84 Stockholm
Sweden

Tel:  (+46) 8 407 37 00
Fax:  (+46) 8 678 12 20
E-mail:  charlotta.poehler@nordcompany.se
Website:  www.nordcompany.se

United Kingdom

James Brunger