

# Bird & Bird

## Cookies in 2022

### *Amendment to the Electronic Communications Act*

On 18 October 2021, the Amendment to the Electronic Communications Act (“ECA”) was promulgated in the Collection of Laws. The approved amendment to the ECA affects, *i.a.*, the legal regulation of the use of cookies (and other similar technologies used to distinguish terminal devices of users) **by introducing the need for active user consent for the use of most types of cookies**. Anyone who places cookies on a user’s terminal device when operating a website or mobile application should therefore take care to check their settings for the use of cookies.

#### What changes will be made to the regulation on use of cookies?

The existing legal regulation on the use of cookies, contained in particular in Section 89(3) of the ECA, has established the so-called opt-out regime. Cookies can thus be used until the user of the website refuses such use.

As of the new year, Czech legislation will be, after many years, harmonised with the requirements of the ePrivacy Directive and thus the so-called opt-in regime will be established. The basic rule for all operators of websites (or mobile applications) will be the need to obtain prior consent from users to use cookies.

There will be two exceptions to the need to obtain consent, namely for strictly necessary cookies that are needed to: (1) carry out the transmission of communications over the network, or (2) provide a service that the user has explicitly requested. Collectively, such cookies are referred to as technical or functionality cookies, and include, *e.g.*, authentication cookies used to identify a user after logging into their profile.

#### What should users’ consent to the use of cookies look like?

Consent to the use of cookies must meet the requirements set out in the GDPR.

Thus, the consent must be:

##### a Free

Consent must be given voluntarily and must not be coerced in any way (*e.g.*, by conditioning access to the site on consent). Nor should the user be induced to give consent, *e.g.*, by making the possibility of giving consent significantly more visible than the possibility of rejecting cookies, or by making the non-consent significantly more difficult than giving the consent (as illustrated in the example below).

##### b Active

Consent must be given by an unambiguous active act of the user. A pre-checked consent box or the mere continuation of the user’s browsing of the site cannot be considered valid consent. On the other hand, active consent can be checking a box or moving a slider from “no” to “yes”.

**c Informed**

In particular, the user should be clearly informed about which cookies are used, what each cookie is used for, which entities (website operator, third parties) use them, and for how long the cookies are stored. As a rule, it is necessary to provide all information pursuant to Articles 13 and 14 of the GDPR.

Information can be provided within the cookie banner and in a separate cookie policy. A link to this policy should be placed directly in the banner and also in the footer of the website, where it can be accessed at any time.

**d Specific**

Consent must be given separately for each individual purpose of processing (e.g., for analytical or marketing purposes). This means that the user must always be able to give consent only for some purposes, for no purposes or, as the case may be, for all purposes.

**e Prior**

Cookies cannot be used until the user has given their consent.

The request for consent should not be unduly inconvenient for the user. It may therefore be desirable to scale the possible settings and information provided into multiple layers. In the first stage, the user can be offered a basic choice of cookies and a link to more detailed settings. The more detailed settings will then offer the user the full range of possible choices of settings together with more detailed information, including the identification of third parties that use cookies, including a link to their cookie policy.

## Request for consent in the form of a cookie banner



*This is **NOT** the right way*

**Cookies**

This website uses cookies.

Detailed settings **ACCEPT**



*This is the **RIGHT** way*

**Cookies**

This website uses technical cookies to ensure the functionality of the website, analytical cookies to analyse the movement of users on the website and marketing cookies to target advertising.

**Only technical cookies**      **I accept all cookies**      **Detailed settings**

[More information on cookies](#)

<b>Detailed settings</b>	
<b>Technical cookies</b>	NO <b>YES</b>


These cookies ensure the proper functioning of the website. If you deactivate these cookies, the website may not function properly.	
<b>Analytical cookies</b>	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES
These cookies allow us to analyse the movement of users on the website.	
<b>Marketing cookies</b>	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES
These cookies allow us to offer users advertising based on their interests and preferences.	
<b>I accept all cookies</b>	<b>Save settings</b>

Failure to comply with the above rules on the use of cookies is subject to penalties under the GDPR, potentially up to EUR 20,000,000 or 4% of the company's total worldwide annual turnover (whichever is higher). Although the Czech Data Protection Authority has not yet resorted to such high penalties, the assessment of the use of cookies regularly appears among the published inspections and thus cannot be taken lightly.

## We are here for you

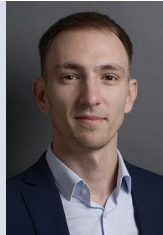
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