

IMPLEMENTATION OF THE E-PRIVACY DIRECTIVE ACROSS EUROPE (AS OF JULY 2014)

Bird & Bird

Country Green = Complete Orange = Disputed	Implementation	Consent mechanisms	National authority tasked with enforcement	Enforcement to date
Belgium	Article 129 of the Electronic Communications Act of 13 June 2005	<ul style="list-style-type: none"> No requirement for 'explicit' consent. According to draft guidelines issued by the Belgian Data Protection Authority, both forms of consent (i.e. 'explicit' and 'implicit') would be accepted. Individuals and organizations are invited to provide comments before July 31, 2014. 	Commission for the Protection of Privacy (CPP): http://www.privacycommission.be/	No enforcement action to date
France	Article 32-II of the French Data Protection Act of 6 January 1978	<ul style="list-style-type: none"> The French Data Protection Authority endorses 'implicit' consent (see revised CNIL guidelines issued in December in 2013) Consent is only valid for 13 months Few cookies including certain analytic cookies are not subject to consent requirements 	CNIL: http://www.cnil.fr/english/	No enforcement action to date
Germany	<ul style="list-style-type: none"> Unclear (in practice) The Federal German Government takes the view that the current legal framework (i.e. the Telemedia Act) already satisfies the requirements of the Directive, so no implementation would be required. The Commission seems to have accepted this view. However, the Federal Commissioner for Data Protection and Freedom of Information and other 	<ul style="list-style-type: none"> Unclear (in practice) Obligations under the Cookie Directive need to be fulfilled if one takes the view that the Directive has direct effect. Similarly, if one takes the opinion that the law is already implemented, the Telemedia Act must be interpreted in light of the Directive (to what extent is unclear). Currently, there is no guidance from German DPAs 	<ul style="list-style-type: none"> Unclear (in practice) If one takes the Government's view the DPAs would be competent (which DPA is dependant on circumstances - general rule: DPA of the Federal State where the data controller is situated) List of local DPAs can be accessed at: http://www.bfdi.bund.de/EN/Home/homepage_no_de.html 	<ul style="list-style-type: none"> Unclear (in practice) DPAs do not seem to enforce Directive (since legal situation still unclear). Approach may change in future but we expect that DPAs would first make a public announcement before taking enforcement action / issuing fines.

IMPLEMENTATION OF THE E-PRIVACY DIRECTIVE ACROSS EUROPE (AS OF JULY 2014)
Bird & Bird

Country Green = Complete Orange = Disputed	Implementation	Consent mechanisms	National authority tasked with enforcement	Enforcement to date
	German DPAs believe that the Directive still needs to be implemented. Some DPAs take the view that the provisions of the Directive concerning cookies have direct effect.		<ul style="list-style-type: none"> If one takes the view that the Directive has direct effect, competent body would not be clear since Directive also concerns non-personal data for which German DPAs are not competent. 	
Italy	122 of the decree no 196 of 30 June 2003 on Protection of Personal Data	<ul style="list-style-type: none"> Consent may be given by using the appropriate application or device settings, provided that they are easy to use for the contracting party or user. The Garante has issued in December 2012 FAQs on COOKIES (document in English). Garante's official opinion re-iterates opt in solution. The Garante launched a public consultation which closed on March 19, 2013. Revision to the Garante's cookie documentation awaited. 	The Garante: http://www.garanteprivacy.it	No enforcement action to date

IMPLEMENTATION OF THE E-PRIVACY DIRECTIVE ACROSS EUROPE (AS OF JULY 2014)
Bird & Bird

Country Green = Complete Orange = Disputed	Implementation	Consent mechanisms	National authority tasked with enforcement	Enforcement to date
Netherlands	<p>Article 11.7a Telecommunications Acts</p> <p>NB:</p> <p>In March 2014, the Dutch government sent to parliament a proposed amendment of the regime for cookies: Cookies which collect information in order to improve quality/effectiveness of services (analytical cookies, affiliate cookies, etc.), but have limited/no impact on individual's private life, are exempted from informed consent.</p>	<ul style="list-style-type: none"> • Consent can be expressed through browser settings or applications but it is thought that current browsers do not meet the requirements of the legislation. • No implied consent. • Website operators must provide users with information and obtain their express prior consent before storing or accessing cookies. • An exemption applies for cookies which are: a) necessary to perform the network communication; or b) strictly necessary to perform a user-requested service. • Cookies used to collect information for analytical or targeted advertising purposes always require prior consent. • Note – all cookies that do not fall under the exemption require consent and information. 	<p>Authority for Consumers & Markets (ACM):</p> <p>http://www.acm.nl</p> <p>The Dutch Data Protection Authority ("DPA"):</p> <p>http://cbpweb.nl</p>	<p>No enforcement action to date</p>

IMPLEMENTATION OF THE E-PRIVACY DIRECTIVE ACROSS EUROPE (AS OF JULY 2014)
Bird & Bird

Country Green = Complete Orange = Disputed	Implementation	Consent mechanisms	National authority tasked with enforcement	Enforcement to date
Poland	Article 173 of the Telecommunication Law	<ul style="list-style-type: none"> • Cookie provisions have been implemented in legislation specifically designed for public electronic communications service providers (e.g. ISP, telecom providers). However, Polish authorities (e.g. NRA, GIODO, the Ministry of Administration) follow the cookie rules on their website. Thus, it seems that they take the view that the provisions apply to all website publishers. • Consent can be obtained through software/service settings, including browser settings. • Storing or accessing cookies must not change the configuration of the end-user's/subscriber's device or software. • Ministry states that default browser settings allowing cookies, plus appropriate information, may suffice. 	<p>The Office for Electronic Communication (NRA for telecommunications): http://www.uke.gov.pl</p> <p>And(to the extent that general data protection rules and rules on electronic services apply to cookies) The Inspector General for Personal Data Protection - "GIODO": http://www.giodo.gov.pl</p>	No enforcement action to date
Spain	<p>Article 22 of Law 34/2004 of 11 July on Information Society Services and E-commerce, as amended by Royal Decree law 13/2012 of March 30th</p> <p>The AEPD has also issued Guidelines on Cookies.</p>	<ul style="list-style-type: none"> • Consent may be express or implied. Implied consent can be expressed through browser settings as long as this requires a positive action from the user. • Consent is only valid if the user has been fully and duly informed. The AEPD recommends using the Two Layer Information System¹ to ensure valid consent. 	<p>Agencia Española de Protección de Datos (AEPD): http://www.agpd.es</p>	<p>The first AEPD resolution on this issue was number 02990/2013, dated 14th of January, 2014. Two website operators were fined €3,000 and €500 respectively.</p> <p>In July 2014, the AEPD issued a fine of €25,000 to Google Inc for installing cookies through 'blogspot.com' and 'blogger.com' (free blog services) without</p>

IMPLEMENTATION OF THE E-PRIVACY DIRECTIVE ACROSS EUROPE (AS OF JULY 2014)
Bird & Bird

Country Green = Complete Orange = Disputed	Implementation	Consent mechanisms	National authority tasked with enforcement	Enforcement to date
				obtaining consent from users or providing users with sufficient clear information on the use of cookies.
Sweden	Amendments to the Electronic Communications Act (Swe: Lag (2003:389) om elektronisk kommunikation)	<ul style="list-style-type: none"> In accordance with the Personal Data Act (1998:204) implied consent may be sufficient (except for sensitive data) if the user is informed in advance that cookies will be used and thereafter takes some action which indicates their acceptance. According to Q&A guidance issued by the Post and Telecom Authority (the "PTA") the information should at least comprise the names of the different cookies used, the names of the domains to which they belong, what data is stored in the cookies, for how long the cookies are stored in the web browser and whether the data will be disclosed to any third parties. Such information shall be given clearly in Swedish prior to the user giving consent. 	The Post and Telecom Authority: http://www.pts.se	No enforcement to date However, during 2014 the PTA will examine how the rules regarding cookies are fulfilled currently, with a view to developing practice and guidance.

1 Two Layer Information Systems:

Layer 1: The first layer of information must be provided to users on their first access to the provider's site through a header, footer or pop-up window available in the Home-page1. This first layer must contain the following minimum information:

- Note on use of non-excepted cookies.
- Identifying purposes of all own and third party cookies that are installed.
- Warning that performing a certain action implies accepting the use of cookies.
- A link to layer 2, which contains more detailed information.

IMPLEMENTATION OF THE E-PRIVACY DIRECTIVE ACROSS EUROPE (AS OF JULY 2014)
Bird & Bird

Layer 2: Cookies Policy. The second layer must contain, at least, the following information:

- Definition and purposes of cookies.
 - Types of cookies used on the website and their purpose.
-