



HOW THE EU HAS IMPLEMENTED THE NEW LAW ON COOKIES

Updated 1 March 2012



EVERYTHING MATTERS



SUMMARY OF EU IMPLEMENTATION OF ART 5(3) E-PRIVACY DIRECTIVE



EU Member State	Implemented into local law?	Prior Opt-In consent Required?
Austria	Yes	Yes
Belgium	No	<i>TBC</i>
Bulgaria	Yes	Yes
Cyprus	No	<i>TBC</i>
Czech Republic	Yes	No
Denmark	Yes	Yes
Estonia	Yes	Pending
Finland	Yes	No
France	Yes	No
Germany	No	<i>TBC</i>
Greece	No	<i>TBC</i>
Hungary	Yes	No
Ireland	Yes	No
Italy	No	<i>TBC</i>
Latvia	Yes	Yes

EU Member State	Implemented into local law?	Prior Opt-In consent Required?
Lithuania	Yes	Yes
Luxembourg	Yes	Yes
Malta	No	<i>TBC</i>
Netherlands	No	<i>TBC</i>
Norway ¹	No	<i>TBC</i>
Poland	No	<i>TBC</i>
Portugal	Yes	No
Romania	No	<i>TBC</i>
Slovak Republic	Yes	No
Slovenia	No	<i>TBC</i>
Spain	No	<i>TBC</i>
Sweden	Yes	Yes
United Kingdom	Yes	Yes

¹ Norway is not an EU Member but as a consequence of its membership in the EEA (European Economic Area (Nw: EØS)), Norway is under an obligation to adopt EU Directives.

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EU Member State	Implemented into local law?	Current Position	Prior Opt-In consent Required?	a) Applicable Legislation/Regulation b) Authority Responsible for Implementation
AUSTRIA DLA Piper Contact: Wolfgang Freund T +43 1 531 78 1401 wolfgang.freund@dlapiper.com	Yes	<p>The E-Privacy Directive was implemented in Austria by amendment of the relevant provisions of the Austrian Telecommunications Act (Telekommunikationsgesetz 2003, “TKG”). The changes to the TKG have come into effect on 22 November 2011.</p> <p>The relevant section of the TKG now states that a user must give informed consent for the storage of personal data. It is required that the user is aware of the fact that consent for the storage of personal data is given, and obtaining consent via some form of pop-up or click-through agreement seems advisable. Consent by way of browser settings is not sufficient in this respect. Furthermore in case of the consent by way of browser settings the required information will not be made available to the user as is required by the TKG.</p>	Yes	a) Telekommunikationsgesetz 2003 as amended by BGBl I Nr. 102/2011. b) Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR)/Austrian Data Protection Authority (DSK).
BELGIUM DLA Piper Contact: Patrick Van Eecke T +32 (0)2 500 1630 patrick.van.eecke@dlapiper.com	No	<p>A consultation paper in 2010 from the Belgian Telecommunications Regulator proposed “prior written consent”. Draft legislation was expected to be debated in the Belgian Parliament in October 2011, however at the time of writing, no such legislative proposal has been introduced.</p>	TBC	
BULGARIA Firm: Wolf Theiss Website: www.wolftheiss.com Contact: Anna Rizova T +359 2 861 3703 anna.rizova@wolftheiss.com	Yes	<p>On 29 December 2011, Art. 5(3) of E-Privacy Directive was been implemented into Bulgarian legislation.</p> <p>It now provides that the “storing of information, or gaining access to information already stored, in the terminal equipment of a subscriber or user is only allowed under condition that the subscriber or user concerned have been provided with clear and comprehensive information, in accordance with Personal Data Protection Act, inter alia, about the purposes of the processing and they have been given the opportunity to refuse storing or accessing such information”.</p>	Yes	a) Electronic Commerce Act. b) Consumers Protection Commission is responsible for implementation of Electronic Commerce Act.

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CYPRUS Firm: Pamboridis & Associates Website: www.pamboridis.com Contact: Yiota Kythreotou-Theodorou T +357 22 753 100 kythreotou@pamboridis.com	No	Directive 2009/136/EC has not been implemented into Law in Cyprus yet. The proposed legislation amending the Regulation of Electronic Communications and Postal Services Law of 2004 (Law no. 112(I)/2004) is still in draft form being processed by the Law Office of the Republic of Cyprus. There is no indication as to when the proposed draft of the law will be submitted to Parliament. Currently the draft proposal follows the wording of the Directive 2009/136/EC closely (i.e. requiring prior opt-in consent) and leaves the detailed compliance requirements to be clarified by the Cyprus Office of the Commissioner for Personal Data Protection. Until implementation of the amended e-Privacy Directive, the current position is that the individual be able to opt-out.	TBC	a) The Electronic Communications and Postal Services Law of 2004 (112(I)/2004). b) Office of the Commissioner of Electronic Communications and Postal Regulation.
CZECH REPUBLIC DLA Piper Contact: Peter Valert T +420 222 817 250 peter.valert@dlapiper.com Eva Spurkova T +420 222 817 802 eva.spurkova@dlapiper.com	Yes	On 1 January 2011, the Czech Republic implemented E-Privacy Directive. The E-Privacy Directive was implemented into Czech law by Act No. 468/2011 Coll., which amended Act No. 127/2005 Coll., on Electronic Communications, as amended. The amendment went into effect on January 1, 2011 and introduces the opt-out principle. The E-Privacy Directive was reflected into Section 89 par. 3 of the Act on Electronic Communications which states: “Anyone who intends to use or uses electronic communications networks to store data or to gain access to data already stored in the terminal equipment of the participants or users, is required to inform such participants or users in advance and provably about the scope and purpose of the processing of data and is obliged to offer them <u>to refuse</u> the possibility of the processing.	No	a) The Act No. 127/2005 Coll., on Electronic Communications as applicable law; and b) Office for Personal Data Protection (“ OPDP ”).

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<p>DENMARK</p> <p>Firm: Horten Law Firm Website: www.horten.dk</p> <p>Contact:</p> <p>Anders Valentiner-Branth T +45 7730 4148 avb@horten.dk</p> <p>Egil Husum T +45 3334 4224 ehu@horten.dk</p>	Yes	<p>Directive 2009/136/EC was implemented in the new Danish Act on Electronic Communications Services and Networks which came into force on 25 May 2011 in accordance with the implementation deadline in the Directive. However, the Act did not implement the specific provisions concerning the use of cookies, but instead provided an authorisation to the Danish Minister of Business and Growth to execute an executive order on this matter.</p> <p>The “Executive Order on Information and Consent Required in Case of Storing and Accessing Information in End-user Terminal Equipment” came into force on 14 December 2011.</p> <p>Pursuant to the Order the use of cookies requires consent. The consent must be freely given and specific. However, this does not imply that consent must be obtained each time a cookie is used but an user must be given an option. Furthermore, the consent must be informed which implies that an user must receive information about the consequences of consenting. Finally, the consent must be an informed indication of the user’s wishes.</p> <p>Normally, consent is obtained through tick-the-box but also the use of a homepage after having received the relevant information concerning cookies can be constitute consent. Yet, consent by use of a homepage must be used with caution.</p> <p>In addition to this the information to the user must fulfil the below mentioned requirements: (i) The information must be clear and easy to understand; (ii) the purpose of the use of cookies must appear; (iii) the identity of the person or entity which is responsible for the use of cookies must appear; (iv) the possibility of withdrawal of consent must be easily accessible and be described in the information; and (v) this information must be easily accessible for the user at all times.</p>	Yes	<p>a) (i) Act No 169 of 3 March 2011 on Electronic Communications Services and Networks and (ii) Executive Order No 1148 of 9 December 2011 on Information and Consent Required in Case of Storing and Accessing Information in End-user Terminal Equipment</p> <p>b) Ministry of Business and Growth</p>

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<p>ESTONIA</p> <p>Firm: LAWIN Website: www.lawin.com</p> <p>Contact:</p> <p>Pirkko-Liis Harkmaa T +372 6306460 pirkko.liis.harkmaa@lawin.ee</p>	Yes	<p>The Ministry has concluded that the new law is already satisfied by Art 102 of the Estonian Electronics Communications Act and as a result no further implementation measures are necessary.</p>	Pending	<p>Ministry of Economic Affairs and Communications</p>
<p>FINLAND</p> <p>Firm: Hannes Snellman Attorneys Ltd Website: www.HannesSnellman.fi</p> <p>Contact:</p> <p>Kaisa Fahllund T +358 9 2288 4209 kaisa.fahllund@hannessnellman.com</p>	Yes	<p>Legislation has been adopted by the Finnish Parliament adopting the new law, which entered into force on 25 May 2011. The new Finnish law recognises the possibility of obtaining consent via browser/other application settings. However, the user needs to be given the comprehensible and complete information on the purposes of saving or using such data. The legal requirement written in law is “consent” that is however interpreted in the preliminary works of the new law so that the user may give the consent via browser or other application settings. The saving and use of data is allowed only to the extent required for the service, and it may not limit the protection or privacy any more than is necessary.</p> <p>Further, under the new law the provisions regarding consent do not apply to any saving or use of data which is intended solely for the purpose of enabling the transmission of messages in communications networks or which is necessary for the service provider for the purpose of providing a service that the subscriber or user has specifically requested. According to the preliminary works of the new law, in practice cookies are used in several information society services in order to guarantee that the service is safe, efficient and user-friendly. Such cookies are essential for the service and thereby it is not required to request consent or inform the users about such cookies – however informing would be recommended.</p> <p>In conclusion, at present, “opt-out” consent would be sufficient in Finland. As Finland was one of the first countries that implemented the Article 5(3) of the E-Privacy Directive it is to be seen whether the interpretation will remain the same if “opt-in” becomes prevailing practice elsewhere in the EEA.</p>	No	<p>a) The Act on the Protection of Privacy in Electronic Communications (516/2004, in Finnish: <i>Sähköisen viestinnän tietosuojalaki</i>).</p> <p>b) the Finnish Communications Regulatory Authority (FICORA), the Data Protection Ombudsman.</p>

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<p>FRANCE</p> <p>DLA Piper Contact: Carol Umhoefer T +33 1 40 15 24 34 carol.umhoefer@dlapiper.com</p>	Yes	<p>France has implemented the EU Cookies Directive by Order N° 2011-1012, dated August, 24, 2011. The French Order states that any subscriber or user of electronic communications services must be fully and clearly informed by the data controller or its representative of (i) the purpose of any cookie (i.e., any means of accessing or storing information on the subscriber’s/user’s computer), and (ii) the means of refusing cookies, unless the subscriber/user has already been so informed. Cookies are lawfully deployed only if the subscriber/user has expressed consent after having received such information.</p> <p>The Order also provides that consent can result from the subscriber’s/user’s connection settings (e.g., browser settings) or any other means under the subscriber’s/user’s control.</p> <p>However, the foregoing provisions do not apply (i) to cookies the sole purpose of which is to allow or facilitate electronic communication by a user, or (ii) if the cookie is strictly necessary to provide on-line communication services specifically requested by the user.</p> <p>In November 2011, the French Data Protection Authority (the CNIL) issued guidelines for cookies.</p> <p>Regarding consent, the CNIL has specified that consent must be (i) freely given (i.e., in circumstances where the user has a choice to refuse consent), (ii) specific (i.e., relate to a specific cookie associated with a clearly defined purpose), and (iii) informed (i.e., the user must be given information beforehand, specifying the cookie’s purpose as well as the possibility to revoke consent). Valid consent can be expressed via browser settings if the user can choose the cookies he/she accepts and for which purpose. However, according to the CNIL, commonly used browsers do not offer compliant settings.</p> <p>The CNIL regards the following consent collection mechanisms as compliant:</p> <ul style="list-style-type: none"> ■ A banner at the top of a webpage; ■ A consent request zone overprinting on the site’s homepage; ■ Boxes to tick when registering for an online service. 	No	<p>Commission nationale de L’informatique of des libertés (“CNIL”)</p>

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<p>GERMANY</p> <p>DLA Piper Contact: Dr Thomas Jansen T +49 89 232 372 110 thomas.jansen@dlapiper.com</p>	No	<p>A Bill to amend the Telemedia Act was published in March 2011.</p> <p>The draft amendment provides that storage of data on the equipment of the user will only be permissible where the user has been informed and consent is given by them. The original exception to the consent requirement remains where the cookies is used for enabling an information or communication the user has explicitly requested.</p> <p>The Bill has been discussed in Parliament and referred to several committees for further discussion. Therefore the process of implementing the Act is delayed and changes to the draft bill are possible.</p> <p>It remains to be seen, whether it would also be sufficient to link the information about processing of personal data and technical measures to the browser settings.</p>	TBC	
<p>GREECE</p> <p>Firm: Kyriakides Georgopoulos & Daniolos Issaias Website: www.kgdi.gr</p> <p>Contact: Konstantinos Issaias T +30 210 817 1500 k.issaias@kgdi.gr</p>	No	<p>Greece has not yet issued a national law implementing the Cookies Directive, as the implementation process is still in a preliminary stage.</p> <p>In particular, a Preambulatory Law Committee for the implementation of the Directive was constituted by Minister's Act no. 7940, (issued on the 8 February 2011), in order to prepare the relevant Bill and conduct an Introductory Report. According to the aforementioned Minister's Act, the Committee's deadline for the conduction of the Preamble and the Bill was 15 April 2011. However, an extension has been granted and a new taskforce has been constituted.</p>	TBC	

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<p>HUNGARY</p> <p>DLA Piper Contact:</p> <p>Monika Harvath T +36 1 510 1110 monika.harvath@dlapiper.com</p> <p>Zoltán Kozma T +36 1 510 1100 zoltan.kozma@dlapiper.com</p>	Yes	<p>Before implementing Article 5 (3) of the E-Privacy Directive into Hungarian law, section 155 (4) of the Hungarian Act C of 2003 on Electronic Communications (“Act C of 2003”) already provided that “<i>the storing of information, or the gaining of access to information on the electronic terminal equipment of a subscriber or user obtained via electronic communications networks is only allowed on the condition that the subscriber or the user concerned has given his or her consent, after having been provided with clear and comprehensive information</i>”. Accordingly, the previous law already contained provisions that subscribers and users must give their prior consent for storing information in the terminal equipment of the subscriber or the user, which meant that Article 5 (3) of the E-Privacy Directive did not result in a significant change in Hungarian law.</p> <p>Irrespective of the foregoing, the Hungarian Parliament issued a draft bill to the Parliament which implements the E-Privacy Directive into Hungarian law. This entered into force in August 2011. This Act modifies Act C of 2003, and almost provides the same wording as referred above: “<i>the storing of information, or the gaining of access to information on the electronic terminal equipment of a subscriber or user is only allowed on the condition that the subscriber or the user concerned has given his or her consent, after having been provided with clear and comprehensive information, which information inter alia includes the purpose of processing</i>”.</p> <p>The competent Hungarian Authorities have not issued any guidance in respect of the interpretation of “consent” and the manner how this consent should be obtained in practice. General practice is that consent can be obtained via browser settings, however, as mentioned so far this has not been confirmed by the opinion or the guidance of the Authorities yet.</p>	No	

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IRELAND Firm: Mason, Hayes and Curran Website: www.mhc.ie Contact: Philip Nolan T +353 1 614 5000 pnolan@mhc.ie	Yes	Implemented into Irish law with effect from 1 July 2011. Users must be provided with “clear and comprehensive” information, including as to the purpose of the cookie. Such information must be “prominently displayed and easily accessible” and be as “user friendly as possible”. The Regulations do not specify how consent should be given beyond stating that the methods of giving consent should be as “user friendly as possible”. Where it is technically possible and effective consent may be given by browser settings. The Regulations do not apply to cookies which are “strictly necessary in order to provide an information society service explicitly requested” by the user. There is no formal “lead in period” of the sort adopted in the UK. Businesses must be immediately compliant with the new rules.	No	a) European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (SI 336 of 2011). b) Data Protection Commissioner.
ITALY DLA Piper Contact: Giangiaco mo Olivi T +39 02 80 618 515 giangiaco mo.olivi@dlapiper.com	No	E-Privacy Directive has not been implemented in Italy yet. The Italian Parliament is currently discussing a bill which will authorise the government to issue a legislative decree implementing E-Privacy Directive. At this stage there are no concrete elements to confirm whether an opt-in or opt-out regime will be preferred.	TBC	
LATVIA Firm: LAWIN Website: www.lawin.com Contact: Sarmis Spilbergs T +371 67814848 sarmis.spilbergs@lawin.lv	Yes	Latvia has implemented the new law through amends to the Law on Information Society Services. The implementation of the Directive does not expressly address the use of browser settings to obtain consent. Consent must be obtained in accordance with Personal Data Protection Law. No official guidance has been issued by Data State Inspectorate to current date regarding collection of consent for use of cookies.	Yes	a) Law on Information Society Services, art. 7 ¹ . b) Data State Inspectorate http://www.dvi.gov.lv/eng/

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LITHUANIA Firm: Lideika, Petrauskas, Valiunas ir partneriai LAWIN Website: www.LAWIN.com/en Contact: Jaunius Gumbis T +370 52681830 jaunius.gumbis@lawin.lt	Yes	Lithuania has implemented the new EU law through amendments to the Law on Electronic Communications which came into effect on 1 August 2011. The said amendments mirror the text of the new EU law and require that consent to the use of cookies must be “opt-in”. In December 2011 Lithuanian State Data Protection Inspectorate published recommendations about the method of consent to the use for cookies. The guidance confirmed that consent can be obtained through pop-ups, banners or website registration while relevant settings contained within current browsers are not likely to form a valid consent.	Yes	a) The Law on Electronic Communications of the Republic of Lithuania No IX-2135 (in Lithuanian – <i>Lietuvos Respublikos elektroninių ryšių įstatymas</i>). b) State Data Protection Inspectorate (in Lithuanian – <i>Valstybinė duomenų apsaugos inspekcija</i>).
LUXEMBOURG	Yes	Luxembourg implemented the new EU law which came into effect on 1 September 2011. Prior informed consent of a subscriber/user is required. Other requirements include: the method of providing information and right to refuse should be as user friendly as possible and where it is technically possible and effective, the users consent may be expressed by appropriate browser/application settings.	Yes	
MALTA	No	Malta has published a regulation which will implement the law on cookies into its national law. However, the regulation is not yet in force. The Malta data protection regulator expects for this to be in force by the end of 2011 (or early 2012) with the potential for a 12 month transitional period to enable companies to implement. A commencement date for the bringing into force of such legal notice needs to be established.	TBC	a) Processing of Personal Data (Electronic Communications Sector) Amendment) Regulations, published in the Government Gazette on 24 June 2011.

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<p>NETHERLANDS</p> <p>DLA Piper Contact:</p> <p>Richard Van Schaik T +31 20 541 9828 richard.vanschaik@dlapiper.com</p> <p>Marèl Van 't Rood T +31 20 541 9367 marvel.vantrood@dlapiper.com</p>	No	<p>On 22 June 2011, the Dutch Lower House voted on a motion regarding the requirement to obtain consent in the event of cookies being placed on the computers of website visitors. By a large majority the Lower House voted (despite fierce resistance by publishers) in favour of informed and unambiguous consent required for third party cookies and decided that consent given by browser setting does not qualify as informed and unambiguous consent.</p> <p>It is not clear yet whether the consumer needs to give consent for every website or for every cookie. Sector organisations are introducing a cookie icon which will be placed on every website and will inform website visitors about third party cookies being placed on their computers.</p> <p>All online advertising based on web-surfing behaviour needs to satisfy the requirements of informed and unambiguous consent by June 2012. It is recommended that businesses provide for some form of click-through consent. Consent by way of browser settings is not sufficient in this respect.</p> <p>However, it is not clear whether the Upper House will agree with the legislative proposal in this form. There have been asked very critical questions by parties in government about the bill that was voted in favour of by the Lower House.</p> <p>On 17 February 2012, the Minister of Economic Affairs, Agriculture and Innovation circulated a further memorandum of reply, in which the Minister answered the questions that were asked by parties in government. In this memorandum, the Minister states that Dutch law is not stricter than the law of other countries. In addition, the Minister proposes that the regulatory body will supervise reticently as long as no consensus is reached within the EU with regard to the interpretation of article 5(3) of the E-Privacy Directive. As soon as consensus is achieved, the regulatory body may set policy rules.</p> <p>The regulatory body has announced that at the moment the legislative bill will be enacted, it will tighten up control.</p> <p>According to expectations, the transportation of the directive into national law will be effected by the end of June 2012.</p>	TBC	

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NORWAY² DLA Piper Contact: Nils Arne Gronlie T +47 2413 1542 nils.arne.gronlie@dlapiper.com	No	The amended E-Privacy Directive requiring opt-in for cookies has not been implemented into Norwegian law yet. The Ministry of Transport and Communications (the Ministry) has commenced a public consulting procedure on the changes. The public consulting procedure commenced 23 June 2010 and the hearing deadline was 23 September 2010. The Ministry reports that there has been a delay in the matter and that they are currently working on a proposition to be put before the Norwegian Parliament (St.prp.) The proposed amendment to Norwegian law seems to be in line with the amended E-Privacy Directive regarding the use of cookies, i.e. requiring opt-in.	No – the current requirement status is opt-out.	a) Ekomforskriften § 7-3. b) The Ministry of Transport and Communications (Nw: Samferdselsdepartementet).
POLAND DLA Piper Contacts: Krystyna Szczepanowska-Kozłowska T +48 22 540 74 02 Krystyna.Szczepanowska@dlapiper.com Dagmara Jaskulak T +48 22 540 74 57 dagmara.jaskulak@dlapiper.com	No	E-Privacy Directive has not been yet implemented in Poland. The Polish Ministry of Infrastructure prepared the amendment to Telecommunication Act to reflect the amended Directives and in particular article 5(3) of the E-Privacy Directive. The amendment is subject to consultations between the Ministry of Infrastructure and the Ministry of Foreign Affairs and then it will be forwarded to the Parliament for further development.	No	

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<p>PORTUGAL</p> <p>Firm: ABBC & Associados Website: www.abbc.pt</p> <p>Contact:</p> <p>João Costa Quinta T +351 213 583 620 j.quinta@abbc.pt</p>	Yes	<p>The Directive 2009/136/EC was transposed by Law no. 51/2011 of 13 September 2011, which amended the Electronic Communications Law.</p> <p>However, this law does not address “cookies”, and the said art.º 5 (3) of the Directive has not yet been transposed into National law. Hence previous existing rules apply.</p> <p>In what regards E- communications, the E Commerce Law (L 7/2004) only determines the “opt in” rule for non requested communications by E means (emails) with marketing purposes (Spam). Consequently, if “cookies” are to be considered as Spam (which we do not think to be the case), then the “opt in” rule would already be applicable. Otherwise, consent remains not required under national law.</p> <p>In what regards “cookies”, however, Law no. L 41/2004, on Protection and processing of personal data in e-communications determines that the use of electronic communications networks to store information or to gain access to information stored in the terminal equipment of a subscriber or of any user shall only be allowed where the following conditions have been met: (a) The subscriber or user concerned has been provided with clear and comprehensive information, namely about the purposes of the processing, in accordance with the provisions laid down in the Law on the Protection of Personal Data; (b) The right to refuse such processing has been offered to the subscriber or user “opt out”.</p> <p>There is no information from the regulatory Authority on the possible implementation of the “opt in” rule.</p>	No	<p>a) L 41/2004, of 18 of August</p> <p>b) CPND (local DPA)/ ANACOM</p>
<p>ROMANIA</p> <p>DLA Piper Contact:</p> <p>Marian Dinu T +40 372 155 881 marian.dinu@dlapiper.com</p> <p>Cosmina Simion T +40 372 155 816 cosmina.simion@dlapiper.com</p>	No	<p>The E-Privacy Directive has not been implemented yet in Romania. There was a legislative procedure which was however inexplicably abandoned.</p> <p>The legislative procedure had been initiated in March 2011 aiming to implement the E-Privacy Directive in order to observe the transposition deadline.</p> <p>The procedure was stopped in October 2011 before being passed by the Deputy’s Chamber further to its withdrawal by the initiator.</p>	TBC	

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SLOVAK REPUBLIC DLA Piper Contact: Michaela Stessl T +421 2 59202 142 michaela.stessl@dlapiper.com	Yes	Slovakia's new Act on Electronic Communications implementing the new EU law became effective on 1st November 2011. The Act recognises the possibility of obtaining consent via browser settings/other application settings.	No	a) Act. No. 351/2011 Coll. on electronic communications.
SLOVENIA Firm: DLA Piper (contact Austrian (Vienna) office) Contact: Wolfgang Freund T +43 1 531 78 1401 wolfgang.freund@dlapiper.com	No	Earlier this year Slovenia offered the European Commission partial notification for the implementation of the new law.	TBC	
SPAIN DLA Piper Contact: Diego Ramos T +34 91 790 1658 diego.ramos@dlapiper.com Jason Flint T +34 91 788 7311 jason.flint@dlapiper.com	No	<p>A draft telecommunications bill, which amongst other things should have introduced into Spanish law the changes required by Directive 2009/136/EC, could not be enacted in October 2011 before the call of general elections. Under Spanish legal drafting procedures, draft legislation cannot be inherited by the next Parliament but rather has to be entirely re-drafted. This makes unlikely that the Directive is implemented into Spanish Law before mid-2012.</p> <p>Existing legislation provides that the use of cookies will only be allowed (i) if the user is provided with clear and comprehensive information about the purposes of the processing of such data, and (ii) is given the right to refuse such processing by simple means and without charge. The Second Additional Provision of the new bill would oblige web site service providers to obtain the informed consent of users to the deployment of cookies and similar devices on web sites. The information about the use of cookies must be “<i>clear and complete</i>”, specifying the reasons why data is being collected via such devices, and must comply with existing information requirements under Spanish data protection law. Hopefully, the draft bill would allow such consent to be obtained via adequate browser or application settings, provided that the user is required to configure these settings, either during the installation or software update process, by way of an “<i>express action</i>”.</p>	TBC	

EU Member State	Implemented into local law?	Current Position	Prior Opt-In consent Required?	a) Applicable Legislation/Regulation b) Authority Responsible for Implementation
<p>SWEDEN</p> <p>DLA Piper Contact:</p> <p>Caroline Olstedt Carlström T +46 (0)8701 7887 caroline.olstedt.carlstrom@dianordic.se</p>	<p>Yes</p>	<p>Sweden has implemented the new EU law through amendments to the Electronic Communications Act (2003:389) which came into effect on 1 July 2011.</p> <p>In relation to legitimate techniques, the Swedish Government has concluded that for practical reasons, the amendments shall not be regarded as a change in substance.</p> <p>The Swedish government has also indicated that the rules on consent should not be seen as a change from the old regime and therefore web browser settings would probably be regarded to indicate consent.</p> <p>In addition, the Swedish Data Inspection Board seems to be of the opinion that it should be distinguished between different types of cookies. When using cookies for purposes other than to adjust settings on a site for the user's previous requests and similar, informed consent would be required. According to the Data Inspection Board's view, it is what a cookie will be used for that determines whether consent is required or not.</p> <p>On the other hand, the Swedish Post and Telecom Agency ("the Agency") (<i>the regulatory body in relation to cookies</i>) does not seem to agree. The Agency cannot see that the required consent can be waived without the possibility of exemption <i>expressly</i> stated in the provision.</p> <p>This is a somewhat different approach than the one taken by the Article 29 Working Party. The Swedish Government has concluded that, as the amendment is based upon the amended provision in the E-Privacy Directive, it is not possible to have a decided opinion on the interpretation thereof and how the new prerequisites will be applied. Instead, these questions have been referred to law enforcement which will determine how the new requirement will be enforced in practice.</p> <p>The Swedish part of the European Trade Association of the Digital and Interactive Marketing Industry ("IAB Sweden") has created a self-regulating committee in response to the introduction of the new consent for cookies. The self-regulating committee has assembled a group with representatives from the industry and other organizations. The committee was set up with a view to producing best practice guidance for the use of cookies and a first recommendation has been published.</p>	<p>Yes</p>	<p>a) Electronic Communications Act (Sw. lag 2003:389 om elektronisk kommunikation).</p> <p>b) Swedish Post and Telecom Agency.</p>

EU Member State	Implemented into local law?	Current Position	Prior Opt-In consent Required?	a) Applicable Legislation/Regulation b) Authority Responsible for Implementation
<p>UNITED KINGDOM</p> <p>DLA Piper Contact:</p> <p>Cameron Craig T +44 20 7796 6574 cameron.craig@dlapiper.com</p> <p>Paul McCormack T +44 20 7796 6140 paul.mccormack@dlapiper.com</p>	Yes	<ul style="list-style-type: none"> ■ Implemented into UK law with effect from 26 May 2011. ■ Amendments follows the wording of the E-Privacy Directive closely and leaves the detailed compliance requirements to be clarified by the ICO. ■ It had been widely anticipated that the ICO would indicate in its guidance that browser settings could be used to obtain the necessary consent. The ICO has made it clear that businesses should not rely on users’ browsers settings as a way of obtaining consent to comply with the new law – or at least not yet. ■ Website operators were given a 12 month “<i>lead in period</i>” to develop the ways in which they use cookies to comply with the new rules (therefore commencing on 26 May 2011 and expiring on 25 May 2012). ■ The 12 month grace period does not mean that businesses can take no action until the expiry of the 12 month period. ■ On 13 December 2011, the ICO has issued further guidance to clarify the obligations imposed by the new rules and also recommended methods of complying. A copy of the guidance can be found at http://www.ico.gov.uk/for_organisations/privacy_and_electronic_communications/the_guide/cookies.aspx. 	Yes	<p>a) The Privacy and Electronic Communications (EC Directive) Regulations 2003, as amended by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011.</p> <p>b) Information Commissioner’s Office (“ICO”)</p>

COOKIE AUDITS

STEP 1 – COOKIES AUDIT

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

STEP 2 – MAP OUT COMPLIANCE OPTIONS

Once the company understands the cookies which its website(s) use, they must then consider the options available to them in order to comply. These might include the options set out in the ICO’s Preliminary Guidance, for example: Pop ups; Terms and conditions; Settings-led consent; Feature-led consent; and Browser Settings. The “**strictly necessary**” exemption available under the rules should also be considered.

STEP 3 – IMPLEMENTATION

In order to ensure that enforcement action is not taken against you by the applicable EU privacy regulator, you need to check when your compliance method must be in place. For example, in the UK implementation must be in place no later than 25 May 2012. Failure in the UK to implement changes by 25 May 2012 could lead to the ICO imposing fines upon organisations up to £500,000.

STEP 4 – ADDITIONAL CONSIDERATIONS AND STEPS

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

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



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