



# Overview EU Cookies Rules

September 2021





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The rules governing cookies fall under the scope of two European laws: the General Data Protection Regulation ([GDPR](#)) of April 2016 and the [ePrivacy Directive](#) of July 2002. In May 2020, the European Data Protection Board (EDPB) adopted [guidelines](#) for GDPR compliance that clarify what constitutes valid consent for personal data processing in the EU.

Ecommerce Europe compiled a broad overview of the national regulations implementing the EU law, the circumstances under which consent is not necessary for the use of cookies, and the use of cookie walls and implicit consent (e.g., scroll down). The first table summarises the key regulatory findings to provide a comprehensive summary of the national rules. The second part of the document focuses on each country and provides a more detailed analysis of the cookie rules and the implementation of the EU law. Moreover, the countries' tables include information on the national Data Protection Authorities' (DPA) positions and on the court decisions (if available).

The summary points at the different use of cookie banners in the various countries and shows that some countries apply the EU law in a stricter way than others even after the publications of the EDPB guidelines. Furthermore, not all national DPAs published clear positions on cookies, causing in some cases uncertainty in the use of cookie banners.

We would like to thank the members for sharing their input and their knowledge on the cookie rules in each country. In case of missing or incomplete information, external sources have been used. For any questions or comments, please send an email to [maikejansen@ecommerce-europe.eu](mailto:maikejansen@ecommerce-europe.eu).

Country	Legal act	Under which circumstances is consent not needed for placement of cookies or reading information from terminal equipment?	Is it allowed to obtain consent via cookie walls? If so, under which conditions?	Is it allowed to consider scrolling (or other forms of navigating) as a form of consent or confirmative action?
<b>Austria</b>	Austrian Telecommunications Act, § 96 Abs 3 TKG 2003	Technically necessary cookies	Yes	(Probably) No
<b>Belgium</b>	Electronic Communications Act of 13 June 2005	Functional cookies	No	No



Country	Legal act	Under which circumstances is consent not needed for placement of cookies or reading information from terminal equipment?	Is it allowed to obtain consent via cookie walls? If so, under which conditions?	Is it allowed to consider scrolling (or other forms of navigating) as a form of consent or confirmative action?
<b>Bulgaria<sup>1</sup></b>	Bulgarian Electronic Commerce Act; Bulgarian Electronic Communications Act; Bulgarian Consumer Protection Act	Essential cookies	No	No
<b>Czech Republic<sup>2</sup></b>	The Czech Act No. 468/2011 Coll. On Electronic Communication	Necessary cookies	No	No
<b>Denmark</b>	The Danish Act on Electronic Communication and Services (consolidated act no. 128 of 7 February 2014)	Technically necessary cookies	(Probably) Yes	No
<b>Estonia</b>	The Electronic Communications Act	<ul style="list-style-type: none"> <li>• Necessary cookies</li> <li>• Cookies that provide services over communications network</li> </ul>	No	No
<b>Finland</b>	Information Society Code (917/2014)	Essential cookies	No	No

<sup>1</sup> The report from DLA PIPER on [European Law on Cookies](#) (27 November 2020) has been used to fill in the information

<sup>2</sup> The report from DLA PIPER on [European Law on Cookies](#) has been used to fill in the information. Please note that the Czech Parliament is expected to rule on the current cookies law

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<b>France</b>	French Data Protection Act (October 2020)	Strictly necessary cookies	Unclear (case-by-case decision)	No
<b>Germany</b>	TTDSG, §25	<ul style="list-style-type: none"> <li>• Cookies that transfer message in the telecommunication network</li> <li>• Essential cookies</li> <li>• If there is a legitimate interest pursuant to article 6(1) lit. Of GDPR and if the conflicting interests of the users in these cases do not outweigh the legitimate interest</li> </ul>	Yes (under specific circumstances)	No
<b>Greece<sup>3</sup></b>	Law 4624/2019	Technical cookies	No	No
<b>Ireland</b>	Statutory Instrument (S.I.) No. 336 of 2011	<ul style="list-style-type: none"> <li>• Communication cookies</li> <li>• Strictly necessary cookies</li> </ul>	No	No
<b>Italy<sup>4</sup></b>	Article 122 of the Italian Legislative Decree n. 196 of 30 June 2003	Technical cookies	No (but there are exceptions)	No
<b>Latvia<sup>5</sup></b>	Law On Information Society Services	<ul style="list-style-type: none"> <li>• Cookies that carry out the transmission of a communication over a network</li> </ul>	No	No

<sup>3</sup> Information has been retrieved from the [Hellenic DPA](#) and [IAPP report](#) on Cookie Guidance from Greece

<sup>4</sup> The [Netcomm Cookie Handbook](#) has been used to fill in the information

<sup>5</sup> The report from DLA PIPER on [European Law on Cookies](#) and the [article](#) from Data Guidance have been used to fill in the information



Country	Legal act	Under which circumstances is consent not needed for placement of cookies or reading information from terminal equipment?	Is it allowed to obtain consent via cookie walls? If so, under which conditions?	Is it allowed to consider scrolling (or other forms of navigating) as a form of consent or confirmative action?
		<ul style="list-style-type: none"> <li>• Cookies essential to provide an 'information society service'</li> </ul>		
<b>Netherlands</b>	Article 11.7a of the Dutch Telecommunications Act	<ul style="list-style-type: none"> <li>• Analytical cookies (with no privacy impact) or cookies that are necessary for the use of the website.</li> </ul>	No	No
<b>Norway</b>	<a href="#">Ekomloven</a> and <a href="#">Personopplysningsloven</a>	<ul style="list-style-type: none"> <li>• For non-Personally identifiable information (PII) it is sufficient that such information is linked to in a footer on the front page of the website.</li> </ul>	No	No (for PII) Yes (for non-PII)
<b>Poland</b>	Act of 16 July 2004 Telecommunications Law (Telecom Act) and Act of 18 July 2002 on Electronically Supplied Services	<ul style="list-style-type: none"> <li>• Cookies that transfer communication over a public telecommunication network</li> <li>• Cookies that provide a telecommunications service or services by electronic means, requested by the subscriber or an end user</li> </ul>	No	No
<b>Portugal</b>	Law 46/2012, of 29 August 2012	<ul style="list-style-type: none"> <li>• Technical cookies</li> <li>• Necessary cookies to provide an information society service</li> </ul>	No	No

Country	Legal act	Under which circumstances is consent not needed for placement of cookies or reading information from terminal equipment?	Is it allowed to obtain consent via cookie walls? If so, under which conditions?	Is it allowed to consider scrolling (or other forms of navigating) as a form of consent or confirmative action?
<b>Romania</b>	Law 506/2004 on the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector	Strictly necessary cookies	Unclear	Unclear
<b>Spain</b>	Article 22.2 of the Law 34/2002 of 11 July on Spanish Information Society Services and E-Commerce	<ul style="list-style-type: none"> <li>• Cookies that carry out the transmission of a communication over an electronic communication network</li> <li>• Strictly necessary cookies</li> </ul>	No	No
<b>Sweden</b>	LEK (Lagen om elektronisk Kommunikation)	<ul style="list-style-type: none"> <li>• Cookies to transmit electronic message via electronic communication network</li> <li>• Necessary cookies</li> </ul>	No	No
<b>Switzerland</b>	No local law implementing the ePrivacy Directive	<ul style="list-style-type: none"> <li>• Cookies for telecommunications services and charging purposes</li> <li>• if users are informed about the processing and its purpose and are informed that they may refuse to allow processing.</li> </ul>	Unclear	Yes



AUSTRIA	
<b>Legal status</b>	Austrian Telecommunications Act, § 96 Abs 3 TKG 2003
<b>Under which circumstances is consent not needed for placement of cookies or reading information from terminal equipment?</b>  <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	No official position of the national DPA or court decision yet but taking into account the ECJ decision (C 673/17) a consent is not necessary for technically necessary cookies.
<b>Is it allowed to obtain consent via cookie walls? If so, under which conditions?</b>  <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	The (informed) consent must be given voluntarily and the information has to be transparent (a clear and specific purpose has to be apparent, which ensures that the data subject has control over the processing of his or her data)  <ul style="list-style-type: none"> <li>• No official position of the national DPA or court decision yet.</li> <li>• Court decision available regarding the legality of Cookie-Paywalls of media websites (“voluntariness of consent”).</li> </ul>
<b>Is it allowed to consider scrolling (or other forms of navigating) as a form of consent or confirmative action?</b>  <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	There is no clear position yet but taking into account the ECJ decision (C-673/17) scrolling is probably not a confirmative action.  <ul style="list-style-type: none"> <li>• No official position of the national DPA</li> <li>• No court decision yet</li> </ul>
<b>Are there other deviations from the ePrivacy Directive?</b>	No
NB: A lot of decisions of the national DPA (and courts) are expected, because recently the organisation noyb from Schrems filed <a href="#">422 formal complaints</a> regarding Cookie-Banners.	



BELGIUM <sup>6</sup>	
<b>Legal status</b>	Electronic Communications Act of 13 June 2005 ( <a href="#">link</a> )
<p><b>Under which circumstances is consent not needed for placement of cookies or reading information from terminal equipment?</b></p> <ul style="list-style-type: none"> <li>National DPA position</li> <li>Court decisions</li> </ul>	<p>There is no consent needed for the use of functional cookies (first party cookies) – cookies that are necessary for the functioning of the website (e.g., language settings, cookies that carrying out the transmission of a communication over an electronic communications network, cookies providing a service expressly requested by the subscriber). Consent is needed for all other cookies: analytical and marking/ third party cookies.</p> <ul style="list-style-type: none"> <li>The Belgian DPA has clarified that there are only two types of situations in which consent is not required for the placement or reading of cookies: <ul style="list-style-type: none"> <li>When cookies are absolutely necessary to provide a service explicitly requested by you (such as, for example, cookies that allow you to save your shopping cart or cookies used to ensure the security of a banking application).</li> <li>When cookies are absolutely necessary to transmit a message via an electronic communication network (such as, for example, cookies for load balancing).</li> </ul> </li> <li>There is no additional national court decision. The disputes chamber of the Belgian DPA did confirm in its case against Jubel.be (with reference to the ECJ planet 49 case) that the placement of non-necessary cookies requires the free, specific and informed consent. This necessity must be interpreted in accordance with Article 129, 2° of the Electronic Communications Act. In other words, cookies that are essential or desirable for the interest of the website operator, but not strictly necessary for the operation of the website, are not necessary cookies and therefore require consent. In principle, statistical and analytical cookies are not necessary, but the GBA states that in exceptional cases statistical cookies could be necessary, for example to detect navigation problems in the interest of the data subjects. It was ruled that</li> </ul>

- <sup>6</sup> Belgium does not use a system of double opt-in for consent. difficult to distinguish and/or may be missed when a data subject is quickly scrolling through large amounts of text and such an action is not sufficiently unambiguous.



	<p>Jubel.be invoked the wrong legal basis and the consent obtained for its own cookies or for Google's cookies was found to be invalid.</p>
<p><b>Is it allowed to obtain consent via cookie walls? If so, under which conditions?</b></p> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>It is not allowed to obtain consent via cookie walls.</p> <ul style="list-style-type: none"> <li>• The Belgian DPA states that consent by using cookie walls is in violation with the GDPR. This practice prevents you from giving your free consent, as you are required to give your consent to the installation and/or reading of cookies in order to access the website or mobile application. The guidelines also specifically mention that it is not allowed to deny access to a service when the required consent is not given by the data subject. The Belgian DPA has clarified that you must be able to accept or refuse the placement of cookies for each application and each website, without any restriction, pressure or outside influence. With regards to cookie walls, this means that you may not be denied certain services or benefits on the grounds that you have not consented to the use of "non-functional" cookies ". (This was also confirmed by EDPB guidelines in May 2020)</li> </ul> <p>There is no additional national court decision</p>
<p><b>Is it allowed to consider scrolling (or other forms of navigating) as a form of consent or confirmative action?</b></p> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>Scrolling or using the website is not an action that can be seen as consent. Therefore it is not allowed in Belgium.</p> <ul style="list-style-type: none"> <li>• The Belgian DPA has clarified that the continuation of browsing cannot be considered as valid consent for the installation and reading of "non-functional" cookies. In order to be valid, the consent that is given for the installation (and viewing) of such cookies must comply with the general legality of consent as set out in the AVG. It follows that such consent is only valid if it is the result of an active step on your part, such as a click or activating a button by dragging. Thus, your consent is not valid if it is collected through scrolling or a standard checkbox that you must uncheck.</li> <li>• There is no additional national court decision</li> </ul>
<p><b>Are there other deviations from the ePrivacy Directive?</b></p>	<p>No</p>



BULGARIA	
<b>Legal status</b>	Bulgarian Electronic Commerce Act; Bulgarian Electronic Communications Act; Bulgarian Consumer Protection Act
<b>Under which circumstances is consent not needed for placement of cookies or reading information from terminal equipment?</b> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>Only essential cookies are allowed</p> <ul style="list-style-type: none"> <li>• There is no explicit guidance of the DPA referring to the use of cookies</li> <li>• There is no publicly available information on Bulgarian court cases addressing cookie compliance.</li> </ul>
<b>Is it allowed to obtain consent via cookie walls? If so, under which conditions?</b> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>Cookie walls are not allowed. This is because in order for a data subject to give a valid consent, the consent shall be given “freely” as per the General Data Protection Regulation (GDPR). Thus, use of a cookie wall on the “take it or leave it” principle shall be in breach with the consent requirements under the GDPR and shall not be admissible.</p> <ul style="list-style-type: none"> <li>• There is no explicit guidance of the DPA referring to the use of cookies</li> <li>• There is no publicly available information on Bulgarian court cases addressing cookie compliance.</li> </ul>
<b>Is it allowed to consider scrolling (or other forms of navigating) as a form of consent or confirmative action?</b> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>No. In accordance with the Planet49 regarding the use of cookies ruling of the CJEU, implicit consent shall not be allowed for cookies, which are not essential for the functioning of the respective website. All other cookies shall be turned off by default and shall be explicitly activated by the respective user.</p> <ul style="list-style-type: none"> <li>• There is no explicit guidance of the DPA referring to the use of cookies</li> <li>• There is no publicly available information on Bulgarian court cases addressing cookie compliance.</li> </ul>
<b>Are there other deviations from the ePrivacy Directive?</b>	



DENMARK	
<b>Legal status</b>	The Danish Act on Electronic Communication and Services (consolidated act no. 128 of 7 February 2014)
<b>Under which circumstances is consent not needed for placement of cookies or reading information from terminal equipment?</b>  <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>Only technically necessary cookies are allowed (cookies for statistical purposes does not fall under this category)</p> <ul style="list-style-type: none"> <li>• As mentioned above</li> <li>• No court decisions</li> </ul>
<b>Is it allowed to obtain consent via cookie walls? If so, under which conditions?</b>  <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<ul style="list-style-type: none"> <li>• We have no official statement from the DPA on this subject. We assume it is legal to establish a cookie wall, if it is possible to get access to e.g., an article under different conditions – e.g., by paying</li> <li>• No court decisions</li> </ul>
<b>Is it allowed to consider scrolling (or other forms of navigating) as a form of consent or confirmative action?</b>  <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>No, not in connection with cookie consent</p> <ul style="list-style-type: none"> <li>• DPA has a very strict interpretation of consent</li> <li>• No</li> </ul>
<b>Are there other deviations from the ePrivacy Directive?</b>	<p>It is important to mention that according to the Danish DPA a cookie consent is only freely given, if (in the cookie banner) it is just as easy to accept cookies as to decline cookies. You need to have a “decline all”, if you have a “accept all” cookies in the first layer of the cookie banner. It is not sufficient to have an accept button and a link to settings or read more. You also have to give a person the possibility to choose between the different purposes.</p>

ESTONIA

ESTONIA	
<b>Legal status</b>	Electronic Communications Act
<p><b>Under which circumstances is consent not needed for placement of cookies or reading information from terminal equipment?</b></p> <ul style="list-style-type: none"> <li>National DPA position</li> <li>Court decisions</li> </ul>	<p>Pursuant to Electronic Communications Act, a communications undertaking may process the information provided if the undertaking notifies the user, in a clear and unambiguous manner, of the purposes of processing the information and gives the user an opportunity to refuse the processing. Use of electronic contact details for direct marketing or processing of information for marketing purpose is allowed only with the person's prior consent.</p> <p>Consent is not needed to collect and process 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.</p> <p>In addition to the above, the communications undertaking can store or process information without the consent of a user 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 user, of information society services within the meaning of the Information Society Services Act.</p> <ul style="list-style-type: none"> <li>Not available</li> <li>No</li> </ul>
<p><b>Is it allowed to obtain consent via cookie walls? If so, under which conditions?</b></p> <ul style="list-style-type: none"> <li>National DPA position</li> <li>Court decisions</li> </ul>	<p>Due to the fact there is obligation to give the user an opportunity to refuse the processing, it can be said that it is not allowed. But there is no published national DPA position on this and also no case law.</p> <ul style="list-style-type: none"> <li>Not available</li> <li>No</li> </ul>
<p><b>Is it allowed to consider scrolling (or other forms of navigating) as a form of consent or confirmative action?</b></p>	<p>Due to the fact there is obligation to give the user an opportunity to refuse the processing, it can be said that it is not allowed. But there is no published national DPA position on this and also no case law.</p> <ul style="list-style-type: none"> <li>Not available</li> </ul>



<ul style="list-style-type: none"> <li>National DPA position</li> <li>Court decisions</li> </ul>	<ul style="list-style-type: none"> <li>Not available</li> </ul>
<b>Are there other deviations from the ePrivacy Directive?</b>	N/A

FINLAND	
<b>Legal status</b>	
<p><b>Under which circumstances is consent not needed for placement of cookies or reading information from terminal equipment?</b></p> <ul style="list-style-type: none"> <li>National DPA position</li> <li>Court decisions</li> </ul>	<p>Consent is not needed for essential cookies.</p> <p>The cookie rules are being updated by the Finnish Transport and Communications Agency. According to the draft:</p> <ul style="list-style-type: none"> <li>it should be equally easy and clear for the user to deny or allow cookies and simple to change them later; and</li> <li>legitimate interest does <i>not</i> permit the use of non-essential cookies without the user's consent.</li> </ul>
<p><b>Is it allowed to obtain consent via cookie walls? If so, under which conditions?</b></p> <ul style="list-style-type: none"> <li>National DPA position</li> <li>Court decisions</li> </ul>	<p>No.</p> <ul style="list-style-type: none"> <li>The national DPA's position is clear: cookie walls are prohibited, but in practice they are still widely used also by Finnish websites.</li> </ul> <p>A recent judgement by the Helsinki Administrative Court stated that browser-level cookie consent is insufficient, making cookie banners essentially the only viable option to get the user's consent.</p>
<p><b>Is it allowed to consider scrolling (or other forms of navigating) as a form of consent or confirmative action?</b></p> <ul style="list-style-type: none"> <li>National DPA position</li> <li>Court decisions</li> </ul>	<p>No</p> <ul style="list-style-type: none"> <li>The position of the national DPA is clear: the user must be offered cookie banners, where the tick-boxes shouldn't be pre-ticked.</li> </ul>



	The position is shared by the Finnish Transport and Communications Agency and will be included in the updated cookie rules.
<b>Are there other deviations from the ePrivacy Directive?</b>	No

FRANCE	
<b>Legal status</b>	Recommendation by the French DPA from October 2020 (soft law) applicable with immediate effects but with controls starting with a 6 month delay (from April 2021)
<p><b>Under which circumstances is consent not needed for placement of cookies or reading information from terminal equipment?</b></p> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>Some cookies are exempt from consent either because they are strictly necessary for the provision of an online communication service expressly requested by the user or because they are intended to allow or facilitate the transmission of communication by electronic means.</p> <p>Examples of cookies subject to consent:</p> <ul style="list-style-type: none"> <li>○ cookies to display advertising (personalized or not)</li> <li>○ cookies to measure the performance of the advertisement</li> <li>○ cookies to personalize editorial content</li> <li>○ cookies used to share data on social networks</li> <li>○ cookies for audience measurement in general and related uses (AB testing, etc.)</li> <li>○ Examples of strictly necessary cookies therefore not subject to consent: <ul style="list-style-type: none"> <li>○ cookies storing the value of consent</li> <li>○ cookies for authentication</li> <li>○ cookies to keep in memory the content of a shopping cart</li> <li>○ cookies to customize the interface user</li> <li>○ cookies allowing the balancing of the load of equipment contributing to a communication service</li> </ul> </li> <li>○ strictly necessary audience measurement cookies: These tracers must have the sole purpose of measuring the statistical audience on the site visited (in particular in excluding overall navigation monitoring).</li> </ul>



<p><b>Is it allowed to obtain consent via cookie walls? If so, under which conditions?</b></p> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<ul style="list-style-type: none"> <li>• Initially (in its guidelines from July 2019) the CNIL banned the cookie walls on the grounds of the GDPR provisions on freedom of consent. Following an appeal to the Conseil d'Etat (highest administrative jurisdiction) put together by Fevad and other professional organisations, the CNIL had to turn down its provisions on cookie walls and considered (in its recommendation from October 2020) that making access to a website conditional on consent to cookies may affect the freedom of consent only in certain cases. The CNIL must analyse on a case-by-case basis the alternatives offered to the user by the service provider, likely to meet (or not) the requirement of freedom of consent. Each alternative can constitute a counterpart in exchange of access to a service.</li> </ul>
<p><b>Is it allowed to consider scrolling (or other forms of navigating) as a form of consent or confirmative action?</b></p> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>No</p> <ul style="list-style-type: none"> <li>• The French DPA ruled in its recommendation from October 2020 that the click and scroll / pursuit of navigation on a site can no longer be considered as a valid expression of the user's consent.</li> </ul>
<p><b>Are there other deviations from the ePrivacy Directive?</b></p>	<p>While the methods of obtaining consent are up to the editor, the CNIL considers that it must be as easy to accept as to refuse cookies. The CNIL considers that the integration, at the stage of the first level user information of a "refuse all" button, at the same level and in the same forms as the "accept all" button, constitutes a clear and simple way to allow the user to express his choices.</p> <p>Otherwise, the user must be clearly informed of the means at his disposal to refuse cookies (e.g., the implications of closing the cookies banner: refusing consent and therefore not placing cookies).</p>

GERMANY	
<p><b>Legal status</b></p>	<p><a href="#">Latest law update published on 28 June 2021</a> (TTDSG, §25)</p>
<p><b>Under which circumstances is consent not needed for placement of cookies or reading information from terminal equipment?</b></p>	<p>Consent is not needed</p> <ul style="list-style-type: none"> <li>○ if the sole purpose of the cookie is the transfer of message in the telecommunication network</li> </ul>





<ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<ul style="list-style-type: none"> <li>○ if the cookie is essential to provide the service the consumer explicitly requested (if no third party is involved)</li> <li>○ if there is a legitimate interest pursuant to Article 6(1) lit. of GDPR and if the conflicting interests of the users in these cases do not outweigh the legitimate interest</li> </ul>
<p><b>Is it allowed to obtain consent via cookie walls? If so, under which conditions?</b></p> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<ul style="list-style-type: none"> <li>○ Consent has to be given on a voluntary basis</li> <li>○ Consent is only voluntary if the data subject has a genuine or free choice and can also refuse consent without suffering from any disadvantages</li> <li>○ Linking a contractual service to consent to data processing that is not necessary for the performance of the contract regularly leads to the consent not being voluntary and therefore invalid.</li> <li>○ However, cookie walls are exceptionally allowed, if a comparable service is also offered without any tracking e.g., as a paid service.</li> </ul>
<p><b>Is it allowed to consider scrolling (or other forms of navigating) as a form of consent or confirmative action?</b></p> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>Navigating on a website is not sufficient to get the users consent as:</p> <ul style="list-style-type: none"> <li>○ users must actively and voluntarily give their consent (opt-in); the consent box must not be pre-ticked</li> <li>○ Opt-out procedures or boxes already ticked in advance are not sufficient</li> <li>○ a cookie banner is needed that contains the following elements: no misleading headlines (it has to be clear that this decision is about giving data to third parties), links must be clear as well as the scope of the consent (which data?, will it be linked to other data?, who has access?, for what purpose?)</li> <li>○ the voluntary nature of the declaration of consent must be made clear and a reference to the right to withdraw the consent at any time must be included.</li> <li>○ There was a court decision by LG Köln that just stating in a cookie banner that continuing to use the website means giving consent the use of cookies is unlawful as consent was not given explicitly</li> <li>○ An another one by LG Rostock on nudging consumers to give their consent</li> <li>○ Consent has to be given on an informed and active basis -&gt; Planet 49 ECJ / BGH</li> <li>• A summary of all court decisions (in German) on the design of cookie banners can be found <a href="#">here</a></li> </ul>
<p><b>Are there other deviations from the ePrivacy Directive?</b></p>	<p>No</p>



GREECE	
<b>Legal status</b>	Law 4624/2019
<b>Under which circumstances is consent not needed for placement of cookies or reading information from terminal equipment?</b> <ul style="list-style-type: none"> <li>National DPA position</li> <li>Court decisions</li> </ul>	<ul style="list-style-type: none"> <li>Hellenic DPA published guidance on the use of cookies stating that 'Trackers exempted from the obligation to obtain consent are those deemed technically necessary for the connection to a website or for the provision of an internet service explicitly requested by the user'</li> <li>N/A</li> </ul>
<b>Is it allowed to obtain consent via cookie walls? If so, under which conditions?</b> <ul style="list-style-type: none"> <li>National DPA position</li> <li>Court decisions</li> </ul>	According to the DPA guidelines, failure to consent to the use of trackers should not result in the restriction of access to the website's content ("cookie wall" prohibition)
<b>Is it allowed to consider scrolling (or other forms of navigating) as a form of consent or confirmative action?</b> <ul style="list-style-type: none"> <li>National DPA position</li> <li>Court decisions</li> </ul>	According to the DPA guidelines, for consent to be valid, the use of cookies requires clear positive action. Therefore, pre-ticked boxes, the continuance of browsing or plain scrolling will be deemed as unlawful practices before the DPA, resulting in the invalidity of the relevant consent.
<b>Are there other deviations from the ePrivacy Directive?</b>	N/A

IRELAND	
<b>Legal status</b>	Statutory Instrument (S.I.) No. 336 of 2011  Irish law does not deviate from the EU ePrivacy Directive (2002/58/EC as amended by 2009/136/EC). The Irish ePrivacy Regulations, implemented by Statutory Instrument (S.I.) No. 336 of 2011 make no notable amendment to the regulations in this regard. The law in Ireland matches the EU Regulation.



<p><b>Under which circumstances is consent not needed for placement of cookies or reading information from terminal equipment?</b></p> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>Cookies essential to the basic functionality of a website or application can be set without consent. There are two exemptions allowing for this:</p> <ul style="list-style-type: none"> <li>○ <b>Communications cookies:</b> Cookies whose sole purpose is to carry out transmission of data over a network. i.e., numbering data packets, or detecting transmission errors</li> <li>○ <b>Strictly necessary cookies:</b> Cookies used solely in the provision of a service and are expected to expire within a short timeframe. These may ONLY be activated when a user requests that service. ie. tracking products placed into a user's online shopping cart in an ecommerce session. The cookie must only be set when the user adds an item to their cart for the first time.</li> </ul> <ul style="list-style-type: none"> <li>• <a href="#">Guidance</a> provided by the Irish DPC in April 2020 confirms that the two exemptions listed above are the only circumstances under which consent is not required before cookies can be set.</li> <li>• No relevant judgements listed on the Irish Data Protection Commission website. No relevant judgements listed on the Irish Courts Service website.</li> </ul>
<p><b>Is it allowed to obtain consent via cookie walls? If so, under which conditions?</b></p> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>Cookie wall consent is not valid. Consent must be freely given and with clear indication as to what consent is provided for. It is not permissible to deny access to content or services on condition that consent is given for marketing, or other non-essential tracking purposes. The use of a cookie wall is illegal, as defined in the May 2020 <a href="#">guidelines</a> published by the EDPB.</p> <ul style="list-style-type: none"> <li>• Although Cookie Walls are not explicitly mentioned in any document provided by the Irish DPC, alignment with the EU regulation should set the expectation that use of a cookie wall is not legal.</li> <li>• No relevant judgements listed on the Irish Data Protection Commission website. No relevant judgements listed on the Irish Courts Service website.</li> </ul>
<p><b>Is it allowed to consider scrolling (or other forms of navigating) as a form of consent or confirmative action?</b></p> <ul style="list-style-type: none"> <li>• National DPA position</li> </ul>	<p>Scrolling, navigating to a second page, or any other 'implicit' action whereby a site user does not provide explicit consent by affirmative action cannot be considered consent.</p> <ul style="list-style-type: none"> <li>• Explicit mention of 'implied consent' and its status as 'not permissible', is <a href="#">provided</a> by the Irish DPC.</li> </ul>



<ul style="list-style-type: none"> <li>Court decisions</li> </ul>	<ul style="list-style-type: none"> <li>No relevant judgements listed on the Irish Data Protection Commission website.</li> <li>No relevant judgements listed on the Irish Courts Service website.</li> </ul>
<b>Are there other deviations from the ePrivacy Directive?</b>	No

ITALY	
<b>Legal status</b>	Article 122 of the Italian Legislative Decree n. 196 of 30 June 2003
<p><b>Under which circumstances is consent not needed for placement of cookies or reading information from terminal equipment?</b></p> <ul style="list-style-type: none"> <li>National DPA position</li> <li>Court decisions</li> </ul>	<p>Technical cookies can be set without previous consensus. On non-technical cookies, consent must be free, specific, informed and unequivocal and revocable at any time.</p> <ul style="list-style-type: none"> <li>Yes – The national DPA published <a href="#">guidelines</a> on cookies</li> <li>No</li> </ul>
<p><b>Is it allowed to obtain consent via cookie walls? If so, under which conditions?</b></p> <ul style="list-style-type: none"> <li>National DPA position</li> <li>Court decisions</li> </ul>	<p>Cookie walls are not allowed</p> <ul style="list-style-type: none"> <li>The national DPA specified that the use of cookie walls is unlawful except where the website controller provides the data subject with the option of accessing equivalent content or services without giving his or her consent to the storage and use of cookies or other tracking tools. Nevertheless, personal data must be processed lawfully, fairly and in a transparent manner</li> <li>No court decision is available</li> </ul>
<p><b>Is it allowed to consider scrolling (or other forms of navigating) as a form of consent or confirmative action?</b></p> <ul style="list-style-type: none"> <li>National DPA position</li> <li>Court decisions</li> </ul>	<p>Consent is not validly acquired in the case of mere scrolling (simple continuation of browsing that is not part of a structured process that can prove that the action is a valid expression of the user's will)</p> <ul style="list-style-type: none"> <li>The DPA specified that the mere scrolling down of the page bar is in itself unsuitable for the controller to obtain genuine consent to the storage and use of profiling cookies or other tracking tools.</li> <li>No court decision is available</li> </ul>
<b>Are there other deviations from the ePrivacy Directive?</b>	N/A



National Association Guidelines	Netcomm Cookie Handbook available in <a href="#">Italian</a>
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LATVIA	
<b>Legal status</b>	Law On Information Society Services
<p><b>Under which circumstances is consent not needed for placement of cookies or reading information from terminal equipment?</b></p> <ul style="list-style-type: none"> <li>National DPA position</li> <li>Court decisions</li> </ul>	<p>'The consent is not necessary, if storage of the information in a terminal equipment or acquisition of access to the information stored in a terminal equipment is necessary for ensuring of circulation of the information in the electronic communications network or for intermediary service provider in order to provide a service requested by a subscriber or user.'</p> <ul style="list-style-type: none"> <li>No official guidance has been issued by the DPA regarding the collection of consent for the use of cookies.</li> </ul>
<p><b>Is it allowed to obtain consent via cookie walls? If so, under which conditions?</b></p> <ul style="list-style-type: none"> <li>National DPA position</li> <li>Court decisions</li> </ul>	<p>Cookie walls are not allowed</p> <ul style="list-style-type: none"> <li>No official guidance has been issued by DPA regarding the collection of consent for the use of cookies.</li> <li>No</li> </ul>
<p><b>Is it allowed to consider scrolling (or other forms of navigating) as a form of consent or confirmative action?</b></p> <ul style="list-style-type: none"> <li>National DPA position</li> <li>Court decisions</li> </ul>	<p>Consent must be given unambiguously, hence, scrolling is not allowed.</p> <ul style="list-style-type: none"> <li>No official guidance has been issued by the DPA regarding the collection of consent for the use of cookies.</li> <li>No</li> </ul>
<b>Are there other deviations from the ePrivacy Directive?</b>	N/A

## NETHERLANDS

NETHERLANDS	
<b>Legal status</b>	Article 11.7a of the Dutch Telecommunications Act
<p><b>Under which circumstances is consent not needed for placement of cookies or reading information from terminal equipment?</b></p> <ul style="list-style-type: none"> <li>National DPA position</li> <li>Court decisions</li> </ul>	<p>Consent cannot be deemed to be given freely, specific, informed and unambiguous. Consent is not needed if personal data is not stored, for example in the following cases:</p> <ul style="list-style-type: none"> <li>Functional cookies: used to make your website function properly, such as recording the contents of a shopping cart.</li> <li>Analytical cookies: used for collecting anonymous information about the use of your website. The information is used only to improve your website's quality and functionality. Note: You are still required to inform your visitors about these cookies.</li> <li>A/B testing cookies: used to determine which version of a given commercial or website is more appreciated by visitors.</li> <li>Affiliate cookies / performance cookies: used to determine which advertisement affects the consumer's purchase decision.</li> </ul> <ul style="list-style-type: none"> <li>Information provided by the Dutch DPA is available <a href="#">here</a> (general information)</li> <li>No court case yet</li> </ul>
<p><b>Is it allowed to obtain consent via cookie walls? If so, under which conditions?</b></p> <ul style="list-style-type: none"> <li>National DPA position</li> <li>Court decisions</li> </ul>	<p>No – the Dutch DPA has issued clear guidance that cookie walls are not allowed, as consent cannot be deemed to be freely given. Although the placement of cookies can be refused in case of a cookie wall, this cannot be done without detriment (as refusal means that the website cannot be visited at all). Hence, there is no “real” and free choice.</p> <ul style="list-style-type: none"> <li>Information provided by the Dutch DPA is available and <a href="#">here</a> (information about cookie walls)</li> <li>No court case yet</li> </ul>
<p><b>Is it allowed to consider scrolling (or other forms of navigating) as a form of consent or confirmative action?</b></p> <ul style="list-style-type: none"> <li>National DPA position</li> <li>Court decisions</li> </ul>	<p>No – implicit consent cannot be regarded as given unambiguously. Consent should be given by means of an affirmative action (i.e., by means of clicking a button or ticking a box). The mere continuation of browsing a website no longer constitutes valid consent.</p> <ul style="list-style-type: none"> <li>Information provided by the Dutch DPA is available <a href="#">here</a> (general information)</li> <li>No court case yet</li> </ul>



<b>Are there other deviations from the ePrivacy Directive?</b>	The interpretation is not as strict as for example the organisation of Max Schrems org.
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NORWAY	
<b>Legal status</b>	The e-privacy directive is implemented in <a href="#">Ekomloven</a> in Norway. GDPR is implemented with <a href="#">Personopplysningsloven</a>
<b>Under which circumstances is consent not needed for placement of cookies or reading information from terminal equipment?</b> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>GDPR consent is needed for the gathering and processing of PII through cookies and similar technologies. For other use of cookies, consent is required, but for non PII it is, according to relevant authority, sufficient that such information is linked to in a footer on the front page of the website.</p> <ul style="list-style-type: none"> <li>• The Norwegian Communications Authority (Nkom) issued guidance <a href="#">here</a> (Norwegian only).</li> <li>• No</li> </ul>
<b>Is it allowed to obtain consent via cookie walls? If so, under which conditions?</b> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>Cookie walls are not allowed for gathering or processing PII, as this will be regulated by the national rules implementing GDPR and follow the current recommendations from the EDPB.</p> <ul style="list-style-type: none"> <li>• The Norwegian Communications Authority (Nkom) issued guidance <a href="#">here</a> (Norwegian only).</li> <li>• No</li> </ul>
<b>Is it allowed to consider scrolling (or other forms of navigating) as a form of consent or confirmative action?</b> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>For Cookies gathering or processing PII this will not be seen as sufficient consent under the national rules implementing GDPR. For the use of other cookies not gathering or processing PII, this could however be sufficient as long as all the other requirements are met.</p> <ul style="list-style-type: none"> <li>• The Norwegian Communications Authority (Nkom) issued guidance <a href="#">here</a> (Norwegian only).</li> <li>• No</li> </ul>
<b>Are there other deviations from the ePrivacy Directive?</b>	N/A



POLAND	
<p><b>Legal status</b></p>	<p>Act of 16 July 2004 Telecommunications Law (Telecom Act) and Act of 18 July 2002 on Electronically Supplied Services.</p> <p>However, please note, that a draft of a new law implementing the Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code is under legislative process in Poland. The new regulation will combine all provisions related to electronic communications in one act and will substitute the current regulations.</p> <p>The official draft has been published, but it is not known when it will be adopted (it is currently at the consultation stage)</p>
<p><b>Under which circumstances is consent not needed for placement of cookies or reading information from terminal equipment?</b></p> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>Under Art. 173 sec. 1 of the Telecom Act, the storing of information or the gaining of access to information already stored in the telecommunications terminal equipment of a subscriber or a user is only allowed on condition that:</p> <ul style="list-style-type: none"> <li>○ the subscriber or the end user is directly informed in advance in an unambiguous, easy and understandable manner with regard to: the purpose of storing and the manner of gaining access to this information, and the possibility to define the conditions of the storing or the gaining of access to this information by using settings of the software installed on its telecommunications terminal equipment or service configuration;</li> <li>○ the subscriber or end user, having obtained information gives its consent.</li> <li>○ the stored information or the gaining of access to this information do not cause changes in the configuration of the subscriber's or end user's telecommunications terminal equipment and in the software installed on this equipment.</li> </ul> <p>However, this condition does not apply, if the storing of or the gaining of access to information is necessary to:</p>



	<ul style="list-style-type: none"> <li>○ transmit communication over a public telecommunication network;</li> <li>○ provide a telecommunications service or services by electronic means, requested by the subscriber or an end user.</li> </ul> <ul style="list-style-type: none"> <li>• There has not been any decision by the Polish DPA regarding cookie</li> <li>• There has not been any decision by the court regarding cookie</li> </ul>
<p><b>Is it allowed to obtain consent via cookie walls? If so, under which conditions?</b></p> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>Cookie walls are not allowed.</p> <ul style="list-style-type: none"> <li>• There has not been any decision by the Polish DPA regarding cookie walls. No specific official guidance on cookie walls has been published as of yet; however, under Art. 174 of the Telecom Act, the provisions on personal data protection apply to obtaining the consent of a subscriber or an end user, i.e. cookies consent. Therefore, the allowability of a cookie wall must be considered in light of the requirements for valid consent under the GDPR (e.g. voluntary character). In the absence of specific Polish regulations, the Polish DPA is likely to apply to European Data Protection Board's Guidelines 05/2020 on consent under Regulation 2016/679, where EDPB clearly states cookie walls are not allowed (prohibited) and not a valid way to obtain user consent of individuals within the EU.</li> <li>• There has not been any decision by the court regarding cookie walls</li> </ul>
<p><b>Is it allowed to consider scrolling (or other forms of navigating) as a form of consent or confirmative action?</b></p> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>Scrolling is not allowed.</p> <ul style="list-style-type: none"> <li>• There has not been any decision by the Polish DPA regarding scrolling (or other forms of navigating) as a form of consent or confirmative action. No specific official guidance on this issue has been published as of yet, however, under Art. 174 of the Telecom Act, the provisions on personal data protection apply to obtaining the consent of a subscriber or an end user, i.e., cookies consent. Therefore, the allowability of scrolling or other forms of navigating must be considered in light of the requirements for valid consent under the GDPR (e.g. voluntary character). Having regard the above, in the absence of specific Polish regulations, the Polish DPA is likely to apply to European Data Protection Board's Guidelines 05/2020 on consent under Regulation 2016/679, where EDPB states passive behaviours such as “scrolling” or “swiping” through a webpage will not, under any circumstances, satisfy the clear and affirmative action requirement for valid consent</li> <li>• There has not been any decision by the court regarding scrolling</li> </ul>



<p><b>Are there other deviations from the ePrivacy Directive?</b></p>	<p>Under Art. 173 sec. 2 of the Telecom Act, a subscriber or end user may give the consent to use of cookies by adjusting the settings of the software installed in the telecommunications terminal equipment used by that subscriber or end user, or by adjusting the configuration of the service.</p> <p>Although according to Art. 174 of the Telecom Act, cookie consent should be interpreted in line with the GDPR consent requirements, still some publishers obtain implied consent (e.g., provided by further use of the website) by reference to Art. 173 sec 2 of the Telecom Act. However, it is often pointed out that such consent may not be considered as explicit and as a result may not be valid. This provision is also most probably against the ePrivacy Directive; however, it has not been challenged yet by any court decision.</p>
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<p style="text-align: center;"><b>PORTUGAL</b></p>	
<p><b>Legal status</b></p>	<p>Law 46/2012, of 29 August 2012</p> <p>The Portuguese legal regime literally replicates the regime set forth in the ePrivacy Directive.</p>
<p><b>Under which circumstances is consent not needed for placement of cookies or reading information from terminal equipment?</b></p> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>Consent will not be required for technical storage or in case of access:</p> <ul style="list-style-type: none"> <li>○ for the sole purpose of carrying out the transmission of a communication over an electronic communications network;</li> <li>○ as strictly necessary in order for the provider of an information society service explicitly requested by the subscriber or user to provide the service.</li> </ul> <ul style="list-style-type: none"> <li>• There is no known position of CNPD (the national data protection authority) on this.</li> <li>• We are not aware of any court decisions on this issue.</li> </ul>



<p><b>Is it allowed to obtain consent via cookie walls? If so, under which conditions?</b></p> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>Not allowed.</p> <ul style="list-style-type: none"> <li>• There is no known position of CNPD (the national data protection authority) on this.</li> <li>• We are not aware of any court decisions on this issue.</li> </ul>
<p><b>Is it allowed to consider scrolling (or other forms of navigating) as a form of consent or confirmative action?</b></p> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>Not allowed.</p> <ul style="list-style-type: none"> <li>• There is no known position of CNPD (the national data protection authority) on this.</li> <li>• We are not aware of any court decisions on this issue.</li> </ul>
<p><b>Are there other deviations from the ePrivacy Directive?</b></p>	<p>No</p>

ROMANIA	
<p><b>Legal status</b></p>	<p>Law 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector</p>
<p><b>Under which circumstances is consent not needed for placement of cookies or reading information from terminal equipment?</b></p> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>The consent is not needed for cookies strictly necessary for the operation of the site</p> <ul style="list-style-type: none"> <li>• No public declaration regarding this</li> <li>• No court decisions</li> </ul>
<p><b>Is it allowed to obtain consent via cookie walls? If so, under which conditions?</b></p> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>There is no public declaration regarding cookie walls</p> <ul style="list-style-type: none"> <li>• No public declaration regarding this</li> <li>• No court decisions</li> </ul>



<p><b>Is it allowed to consider scrolling (or other forms of navigating) as a form of consent or confirmative action?</b></p> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>Scrolling is not allowed</p> <ul style="list-style-type: none"> <li>• No public declaration regarding this</li> <li>• No court decisions</li> </ul>
<p><b>Are there other deviations from the ePrivacy Directive?</b></p>	<p>Art. 13 from ePrivacy Directive (Art. 12 from Law 506/2004) was supplemented: “Article 12 Unsolicited communications (1) The undertaking of commercial communications by using automated calling systems without human intervention, fax, electronic mail, or any other method employing publicly available electronic communications services, is forbidden, except in cases where the subscriber concerned has previously given his/her express consent to receive such communications. (2) Notwithstanding paragraph (1), where a natural or legal person directly obtains from a customer his/her electronic mail address, in the context of the sale of a product or a service to that customer, in accordance with the provisions of the Law no. 677/2001, the natural or legal person concerned may use that electronic mail address for undertaking commercial communications referring to similar products or services marketed by that person, provided that customers are given clearly and distinctly the possibility to object, free of charge and in an easy manner, to such use when the electronic mail address is obtained and on the occasion of each message in case the customer has not initially objected. (3) In any event, the undertaking of commercial communications by electronic mail concealing the real identity of the sender on whose name and behalf the communication is made, or without specifying a valid address to which the recipient may send a request that such communications cease, shall be prohibited. (4) The provisions of paragraphs (1) and (3) shall correspondingly apply to the subscribers who are legal persons.</p>

SPAIN	
<p><b>Legal status</b></p>	<p>Article 22.2 of the Law 34/2002, de 11 de julio, de Servicios de la Sociedad de la información y de comercio electrónico.</p>

	<p>"2. Service providers may use data storage and retrieval devices on recipients' terminal equipment, provided that the recipients have given their consent after having been given clear and complete information on their use, in particular on the purposes of the data processing, in accordance with the provisions of Organic Law 15/1999 of 13 December 1999 on the protection of personal data. Where technically possible and effective, the consent of the recipient to accept the processing of the data may be provided through the use of appropriate browser settings or other applications. This shall not prevent the possible storage or access of a technical nature for the sole purpose of carrying out the transmission of a communication over an electronic communications network or, to the extent strictly necessary, for the provision of an information society service expressly requested by the recipient."</p>
<p><b>Under which circumstances is consent not needed for placement of cookies or reading information from terminal equipment?</b></p> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>Consent is not needed for "storage or access of technical nature for the only purpose of carrying out the transmission of a communication over an electronic communications network or, as far as strictly necessary, for the provision of the information society service expressly requested by the recipient."</p> <ul style="list-style-type: none"> <li>• There have been some sanctions of the DPA, you can find some examples on this links <a href="#">here</a> and <a href="#">here</a>.</li> <li>• There has been no court decision yet</li> </ul>
<p><b>Is it allowed to obtain consent via cookie walls? If so, under which conditions?</b></p> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>It is not allowed to obtain consent via cookie walls.</p> <ul style="list-style-type: none"> <li>• The DPA express is opposition to use cookie walls on its guidance (see <a href="#">here</a>).</li> <li>• There has been no court decision yet</li> </ul>
<p><b>Is it allowed to consider scrolling (or other forms of navigating) as a form of consent or confirmative action?</b></p> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>It is not allowed to consider scrolling (or other forms of navigating) as a form of consent or confirmative action.</p> <ul style="list-style-type: none"> <li>• The DPA express is opposition on its guidance (see <a href="#">here</a>).</li> <li>• There has been no court decision yet</li> </ul>
<p><b>Are there other deviations from the ePrivacy Directive?</b></p>	<p>No</p>



SWEDEN	
<b>Legal status</b>	Implemented in LEK (Lagen om elektronisk Kommunikation)
<b>Under which circumstances is consent not needed for placement of cookies or reading information from terminal equipment?</b> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>Exceptions to consent are when cookies are needed to transmit an electronic message via an electronic communications network or if they are necessary to provide a service that the subscriber or user has explicitly requested</p> <ul style="list-style-type: none"> <li>• The supervisory authority for LEK is not the same as for GDPR</li> <li>• Not to our knowledge</li> </ul>
<b>Is it allowed to obtain consent via cookie walls? If so, under which conditions?</b> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<ul style="list-style-type: none"> <li>• No</li> <li>• The DPA is not very active on this matter in Sweden</li> <li>• There has been no court decision</li> </ul>
<b>Is it allowed to consider scrolling (or other forms of navigating) as a form of consent or confirmative action?</b> <ul style="list-style-type: none"> <li>• National DPA position</li> <li>• Court decisions</li> </ul>	<p>No, when website owners collect consent by informing the user of “by scrolling down and/or using our services your consent to...” this is not allowed under Swedish legislation. However, we have noticed new forms of consent practices, e.g., by swiping to the right several times, which may be a form of navigating that potentially could constitute a valid consent provided that the consent otherwise is construed in GDPR compliant manner.</p> <ul style="list-style-type: none"> <li>• The DPA is not very active on this matter in Sweden</li> <li>• There has been no court decision</li> </ul>
<b>Are there other deviations from the ePrivacy Directive?</b>	<p>There is no active supervision on this area. However, please note that the Swedish legislation LEK has been implemented in a way that somewhat deviates from the ePrivacy Directive. In particular, the ePrivacy Directive states that the storing of or gaining access to information via e.g., cookies is only allowed if <b>“the subscriber or user concerned has given his or her consent, having been provided with clear and comprehensive information,</b> in accordance with Directive 95/46/EC, inter alia, about the purposes of the processing. In contrast, the Swedish LEK states that it is only allowed if <b>“the subscriber or user has been given access to information of the</b></p>





	<p><b>purposes of the processing and has consented to it.”</b> The Swedish wording is thus somewhat more ambiguous than the original wording in the Directive which may affect a data controller’s possibility to choose freely between the legal grounds available under the GDPR for the further processing of personal data.</p>
<b>National Association Guidelines</b>	<a href="#"><u>Guidance on personal data, cookies and other tracking technology</u></a>