TradeTracker.com®

White paper – EU Cookie Directive Compliance

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Introduction

On a European level, policy makers have long been concerned with the unregulated application of behavioural tracking technology and the potential for harm to the online individual. New European and country specific legislation has been passed in a attempt to ensure that there is an appropriate balance between regulatory and self-regulatory controls.

This new law has become known as the ‘Cookie Law’ and is a serious challenge for some of the business models prevalent in the online world.

This document tries to answer as much questions as possible regarding the implementation of the EU Cookie Directive within your territory.

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Background[1]

In short: what changed on a legal level?

The European Directive 2002/58/EC set out how Member States, as part of a wider telecommunications framework, ensured certain safeguards with respect to the privacy of electronic communications were to be met.

In an effort to bring *increased regulation* to certain aspects of privacy and electronic communications, Directive 2002/58/EC has been amended and the amendments have been incorporated into all local EU country laws (often referred to as the so-called 'Cookie Law').

The 'Cookie Law' is infamous for introducing the legal requirement for website owners to **obtain the consent of users** prior to 'dropping or reading cookies' on their devices.

It's important to clarify that, though it has become known as the 'EU Cookie Law', the Directive is about information stored on devices of visitors, which includes but covers more than just cookies, e.g. Flash Cookies, Local Stored/Shared Objects, HTML5 storage etcetera.

In detail: what does the directive state?

At a European level, Article 5(1) of Directive 2002/58/EC3 protects the confidentiality of communications in general. The protection of the confidentiality of communications in the case of the use of cookies and similar devices is primarily laid down in Article 5(3). The text below highlights how Article 5(3) was transformed from an opt-out position to an opt-in requirement. The words 'crossed out' are from the previous (repealed) version of the Directive.

> *"Member States shall ensure that the ~~use of electronic communications networks~~ to storing of information, ~~or to gain~~ or the gaining of access to information already stored, in the terminal equipment of a subscriber or user is only allowed on condition that the subscriber or user concerned has given his or her consent, having been is provided with clear and comprehensive information, in accordance with Directive 95/46/EC, inter alia about the purposes of the processing and ~~is offered the right to refuse such processing by the data controller~~. This shall not prevent any technical storage or access for the sole purpose of carrying out ~~or facilitating~~ the transmission of a communication over an electronic communications network, or as strictly necessary in order for the provider of ~~to provide~~ an information society service explicitly requested by the subscriber or user to provide the service."*

The changes to Article (5)3 now appear in UK law as the Privacy and Electronic Communications(EC Directive) (Amendment) Regulations 2011. Here's an extract of the text relevant to online business;

> *6 (1) Subject to paragraph (4), a person shall not store or gain access to information stored, in the terminal equipment of a subscriber or user unless the requirements of paragraph (2) are met.*
> *(2) The requirements are that the subscriber or user of that terminal equipment--*
>
> *(a) is provided with clear and comprehensive information about the purposes of the storage of, or access to, that information; and*
> *(b) has given his or her consent.*
>
> *(3) Where an electronic communications network is used by the same person to store or access information in the terminal equipment of a subscriber or user on more than one occasion, it is sufficient for the purposes of this regulation that the requirements of paragraph (2) are met in respect of the initial use.*
> *(3A) For the purposes of paragraph (2), consent may be signified by a subscriber who amends or sets controls on the internet browser which the subscriber uses or by using another application or programme to signify consent.*
> *(4) Paragraph (1) shall not apply to the technical storage of, or access to, information--*
> *(a) for the sole purpose of carrying out the transmission of a communication over an electronic communications network; or*
> *(b) where such storage or access is strictly necessary for the provision of an information society service requested by the subscriber or user.*

1) Snippets from E-consultancy's *The EU Cookie Law: A guide to compliance* (Apr. 2012), p 8-9

How does the cookie law affect you?

Start informing your visitors

As a website owner, one of the key factors is for you to inform your visitors that your site uses cookies to function. Supplying information could go as far as which specific cookies your websites uses, what is stored in them and what its life span is. There are some third party tools available which enable you to exactly find out which cookies your website will set or initiate. For some browsers there are Cookie Manager add-ons available.

An example

The BBC uses an informational panel at the top of their page to inform visitors about the new cookie law:

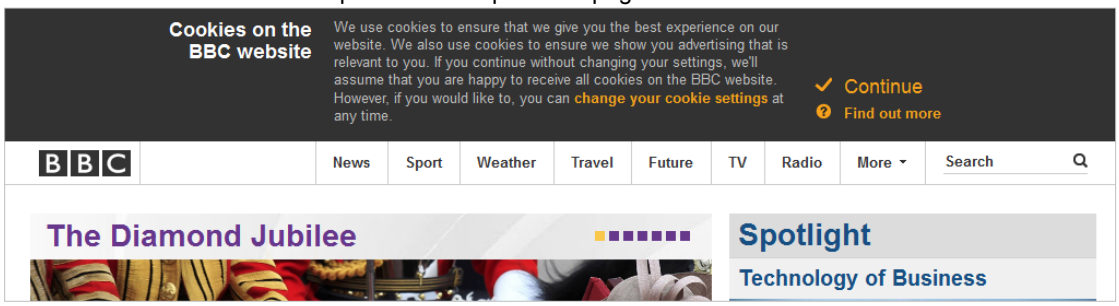
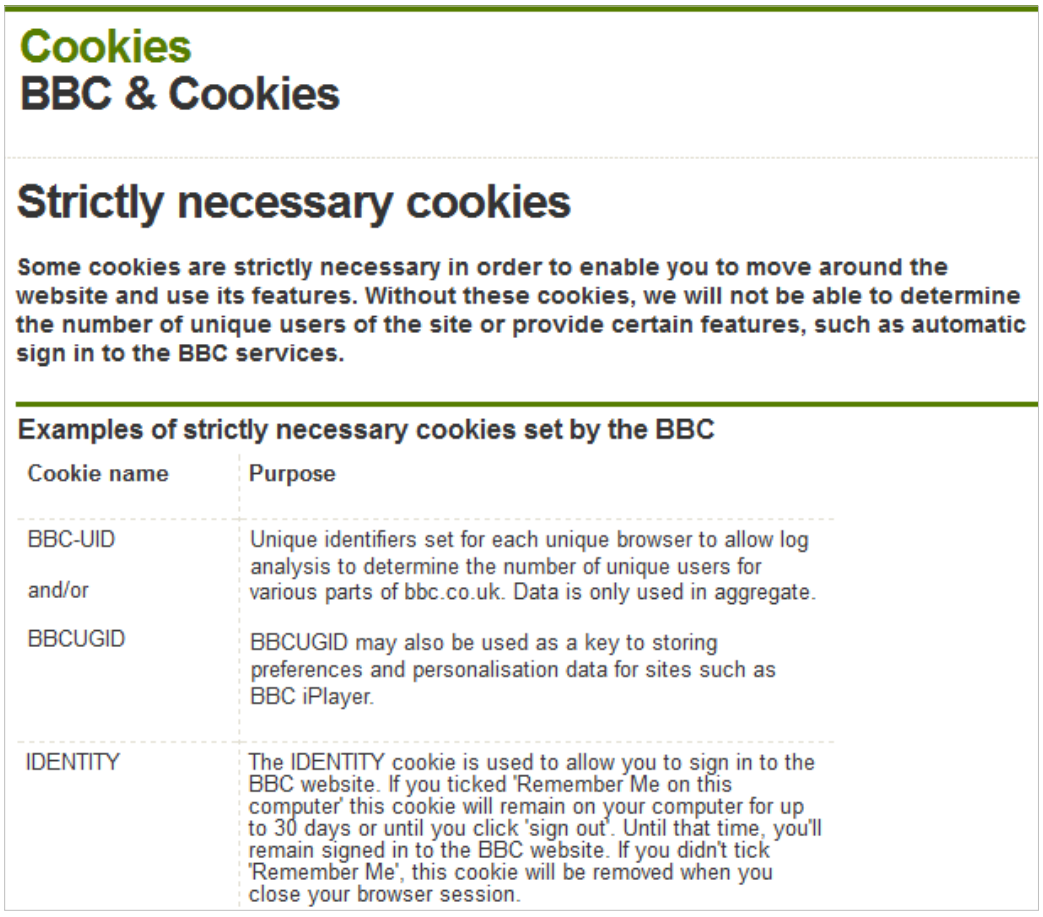


Image 1: The cookie announcement on the BBC.co.uk website

From this panel they'll point (by means of "Find out more") to their privacy section which now contains an addition in the form of an "informational cookie table":



Cookies

BBC & Cookies

Strictly necessary cookies

Some cookies are strictly necessary in order to enable you to move around the website and use its features. Without these cookies, we will not be able to determine the number of unique users of the site or provide certain features, such as automatic sign in to the BBC services.

Examples of strictly necessary cookies set by the BBC

Cookie name	Purpose
BBC-UID and/or BBCUGID	Unique identifiers set for each unique browser to allow log analysis to determine the number of unique users for various parts of bbc.co.uk. Data is only used in aggregate. BBCUGID may also be used as a key to storing preferences and personalisation data for sites such as BBC iPlayer.
IDENTITY	The IDENTITY cookie is used to allow you to sign in to the BBC website. If you ticked 'Remember Me on this computer' this cookie will remain on your computer for up to 30 days or until you click 'sign out'. Until that time, you'll remain signed in to the BBC website. If you didn't tick 'Remember Me', this cookie will be removed when you close your browser session.

Image 2: The addition to the privacy policy on the BBC.co.uk website

Tips for merchants

The aforementioned example could serve as a basis for an addition to your privacy page. You can link to it from a (fixed) area within your homepage. It's important to understand that the directive is aimed more at the storage of "non functional" cookies such as (behavioural) targeting cookies and tracking cookies, so it's probably a good idea to put emphasis on the latter first, but it's not obligatory. In case you're using DirectLinking as a merchant with TradeTracker, this is an example for adding the DirectLinking cookie information to your informational "cookie table" (replace *campaignID* with the campaignID you received from TradeTracker within your "Welcome" email or ask your account manager for details):

Cookie name	Functional/non-functional	1st/3rd party	Data collected	Expires
TT2_*campaignID*	Non-functional	1st party	Used for anonymously tracking visitors for our affiliate campaign. We do not store your personal information in this cookie and we do not use it to track your visits to other websites or share it with third parties.	Between 30 and 356 days, depending on the campaign.
__utma	Non-functional	1st party	Google Analytics cookie used to anonymously identify the visitor. No personal information is stored in this cookie.	Two years
__utmz	Non-functional	1st party	Google Analytics cookie used to anonymously store how a visitor reached this website. No personal information is stored in this cookie.	180 days
Twitter Badge	Non-functional	3rd party	Anonymous (ad clicks, browser type, mobile carrier, page views, referring URLs, time/date), Pseudonymous (IP address, search queries, "tweets"), PII (device and application IDs)	18 months

Table 1: Informational cookie table example

Tips for affiliates

From an affiliate's perspective, it's also important to inform visitors just like the BBC does. BBC's example could also serve as an example for the privacy page on the affiliate's website, including the informational panel on the main page.

TradeTracker's automated page tool solution for affiliates

In order to help out affiliates, TradeTracker has developed a Page Tool which will automatically create an informational panel or dialogue window for visitors and save their preference regarding cookie use.

To grab the Page Tool code, navigate to the Page Tools section ("Creatives & Tools -> Page Tools"). If you haven't installed the Page Tools code on your website, do so first. This code will only need to be placed once within the footer of your website after which you can enable or disable each Page Tools feature whenever you want from your affiliate panel. After having placed this so called "Supertag", you can setup and enable the "EU cookie directive compliance" Page Tool:

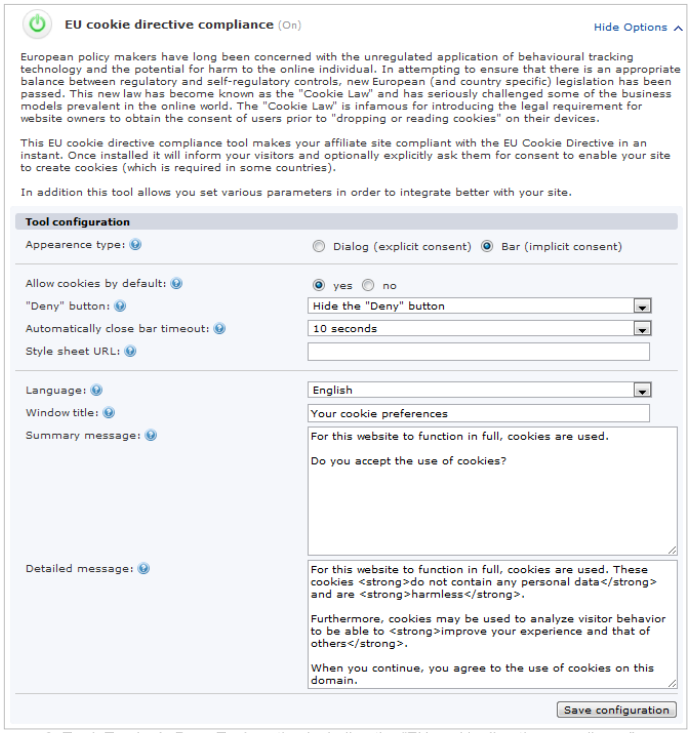


Image 3: TradeTracker's Page Tool section including the "EU cookie directive compliance"

The dialogue variant will look similar to this:

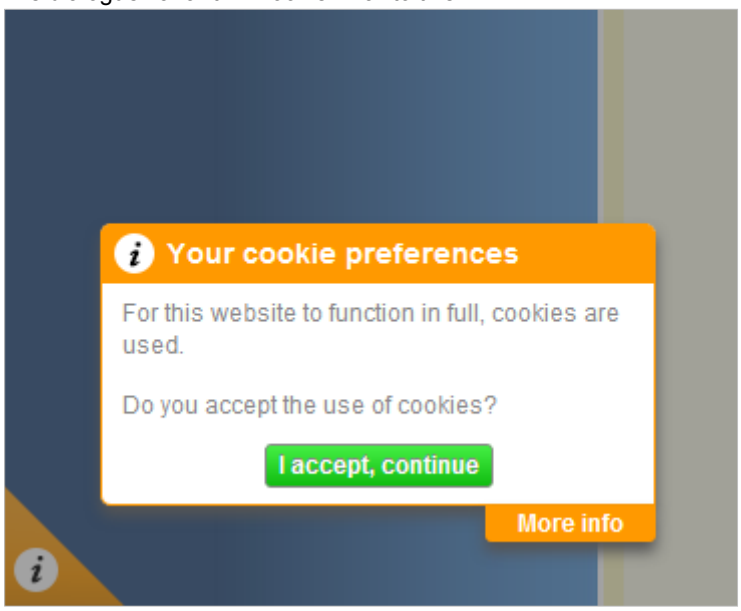


Image 4: Dialogue variant

There is also a “bar” version, which will output an informational panel at the top of your page:

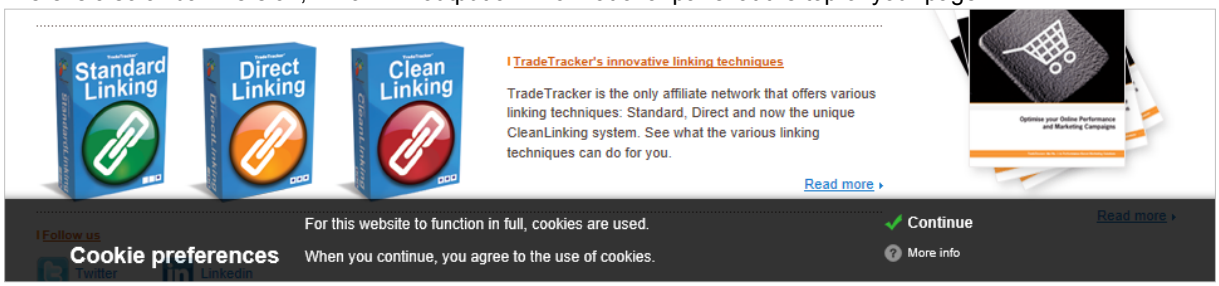


Image 5: Bar variant

Keep in mind that the aforementioned solution is a good starting point, but you will still need to update your website’s privacy policy. Remember that informing your visitors will be key.

Implicit or explicit consent: what to implement?

For the majority of the countries, implementing the implicit consent version is enough. In short, this means that implementing the “bar” version will meet the need of your local law. When your country has decided to allow only explicit consent before setting cookies (e.g. The Netherlands), you will need to implement the dialogue variant including the “Accept” and “Deny” buttons.

Implementing the implicit consent version

When implicit consent is implemented within your country’s law, informing your visitors that your site uses cookies and handing them a possibility to opt-out of cookies is sufficient enough. To get this version up and running on your website, login as affiliate and navigate to “Creatives & Tools -> PageTools” and enable the “EU cookie directive compliance” page tool (be sure to install the Supertag first before enabling this). After that, click the “Show options” link for the aforementioned page tool and enter the following settings:

1. **Appearance type**: Bar (implicit consent);
2. **Allow cookies by default**: Yes;
3. **“Deny” button**: “Deny” button opts user out from tracking cookies.

You can leave the other settings like they are. You are able to customise the appropriate texts used within that informational bar.

Implementing the explicit consent version

If your country requires you to implement an explicit consent version of the “cookie law” (like in The Netherlands for example), set the following options:

1. **Appearance type**: Dialogue (explicit consent);
2. **Allow cookies by default**: No;
3. **Show on first visit**: Yes;
4. **“Deny” button**: “Deny” button redirects user to specified URL;
5. **“Deny” button redirect URL**: *Enter a URL from one of your pages where you would explain the visitor in detail what would happen if they do not accept to the use of cookies*;
6. **Google Analytics Identifier**: *If you use Google Analytics on your website, you can enter your Google Analytics Identifier here. Doing so will automatically disable Google Analytics for a visitor who has disabled cookies, either by default or by opting out. Format: UA-65432-1*.

All the other settings you can leave like they are. You can customise the appropriate texts used within that dialogue window.