

# Cookie Guideline by the Danish Business Authority issued 10 December 2019 (Unofficial translation)

Link to the original Danish text: <https://erhvervsstyrelsen.dk/vejledning-bekendtgørelse-om-krav-til-information-og-samtykke-ved-lagring-af-eller-adgang-til>

## **Chapter 1: Worth knowing about cookies**

A cookie is a small data file that collects digital footprints about users as they navigate online.

Cookies are stored in the user's computer, tablet or smartphone when they visit your website. Cookies can then collect information about which pages the user visits, which articles the user reads and what the user buys. There are similar technologies that collect equivalent information about users.

Websites may use cookies and similar technologies for many different purposes. For example, it can be to ensure that websites function technically, to optimize the design and quality of a website, to provide targeted and relevant content on a website or to target advertisements for commercial purposes.

Therefore, if you have a website, use the technologies carefully and - not least - comply with the cookie rules.

## **Chapter 2: Cookie rules for website owners**

The cookie rules require that you obtain informed consent from those visiting the website before you and others use cookies and similar technologies e.g. for statistics or marketing purposes.

If, on the other hand, you only use or allow the use of cookies for technical purposes on your website, you do not need to inform users or obtain their consent. Failure to comply with the cookie rules may result in a fine.

## **Chapter 3: Your obligations when using cookies**

You must notify users of what you and any third parties use cookies for on your website and obtain the users' consent, unless cookies are used solely for purely technically necessary purposes. Basically, users are required to know that information about them will be collected for various purposes. Therefore, they must be able to accept or reject the collection or storage of information on their computer, tablet or smartphone.

### **3.1. Cookies for statistics and marketing require the consent of the user**

If you and any third party use cookies or other similar technologies for purposes other than the necessary technical features of the website, it requires the informed consent of the user. This is the case, for example, if you and any third parties use cookies or similar technologies to collect information about the user for statistical or marketing purposes.

Examples of third parties using cookies on your website may be social plugins (e.g., "like" and "share" buttons) on the website linking to Facebook and Twitter etc. or various advertisers / agencies who are allowed to use a cookie to follow the user across websites and create targeted advertising. This may also be the case if your website uses tools provided by third parties to measure traffic and generate statistics such as Google Analytics.

### 3.2. Cookies for technical features do not require user consent

You are not required to obtain an informed consent from the user when you use cookies for the necessary technical features of the website, such as a login function on the website or the electronic shopping cart on your webshop where cookies ensure that the electronic shopping cart store selected products while the users shop or look at the website.

## **Chapter 4: Know your cookies**

Here you will find an overview of frequently used cookie types, what they do, what to tell the users of your website, and when to secure the user's consent before using cookies.

### Technical cookie

- Ensures that websites work and users stay logged in e.g. to store information about what a user has placed in their shopping cart in a webshop.
- Does not collect information about what users are searching for on the web.
- You must not inform users of technical cookies or obtain their consent.

### Statistics cookie

- Used to optimize the design, usability, and effectiveness of a website. For example, by collecting visitor statistics.
- Does not collect information about what users are searching for on the web.
- You must inform users of statistics cookies and obtain their consent.

### Personalized cookie (tracking cookie)

- Gathers our digital footprints and information about what the user is interested in. Uses the information to personalize the content of the website.
- Gathers information about what users are searching for on the web to display content that may be of interest to the user. Not for marketing.
- You must inform users about personalized cookies and obtain their consent.

### Marketing cookie (tracking cookie)

- Gathers our digital footprints and information about what the user is interested in. Uses the information to show personalized ads to the user as they navigate online.

- Gathers information about what users are searching for on the web for marketing content that may be of interest to the user.
- You need to inform users about marketing cookies and obtain their consent.

[Read more about the cookie types](#) →

## **Chapter 5: How do I get valid consent from my users?**

If cookies are used for purposes other than purely technically necessary purposes, your users must consent to the use of cookies on your device, such as a smartphone, tablet or computer. It requires that you inform them clearly in advance of what purposes you and possibly other third parties use cookies for. Users need to be aware of what happens when they give their consent.

On 1 October 2019, the European Court of Justice delivered a preliminary ruling on the requirement for consent to the use of cookies (Case C-673/17). The judgment may have an impact on the design of the cookie banner on your website.

### Consent requires an active action on the part of the user

In the judgment it was established that a pre-ticked field cannot constitute a valid consent because the use of cookies on internet sites requires an active action on the part of the user.

In the judgment it can be read that the requirement for the user's active action derives from an interpretation of the concept of consent, which is defined as a "voluntary, specific and informed expression of will" - and that processing of personal data can only take place if "there is no doubt that the data subject has given his consent" (Directive 95/46 / EC, Article 2 (f) and Article 7 (a)).

The expression of the will to be "specific" means that it must relate to the precise processing of information in question.

### The Danish Business Authority's assessment:

Since 2013, it has been the practice of the Danish Business Authority that the user's intention to express, among other things, can be done by actively using a service - for example by clicking on the website. Many websites today use a wording similar to this one: "By clicking OK or moving on, you accept our cookies."

In the opinion of the Danish Business Authority, the judgment and its interpretation of "active action" means that "moving forward" can be equated with a pre-ticked field and cannot be regarded as an expression of the user's active, specific consent to use cookies.

On this basis, the Danish Business Authority has decided to change its practice in this area so that the user's consent can no longer be obtained in the manner described.

### Requirements for information on cookie duration

The judgment also stipulated that the user must have information about the cookies' duration (expiry date) – i.e. how long cookies collect information on the user's [terminal] equipment.

The Danish Business Authority continues to assess the overall scope of the judgment in relation to the Danish cookie rules, including the current practice and the need to change the rules. The Board will update this cookie guideline based on its findings.

#### 5.1. To fulfill the information requirement, you must:

- Give the information in a clear, accurate, and easily understandable language or equivalent in easy to understand imagery, e.g. pictograms
- State the purposes of using cookies
- Inform users about who is behind the cookies used - it may be the website owner or a third party
- State how the user consents to or refuses the use of cookies
- State how the user can withdraw his or hers consent
- State the duration of the cookies (expiry date).

#### 5.2. Requirements for consent:

- The user must be able to consent or refuse to consent to the use of cookies.
- The user must be able to revoke a previously given consent.
- The user should easily be able to find further information about the use of cookies on the website.
- The consent must be linked to the purpose of the collected data.

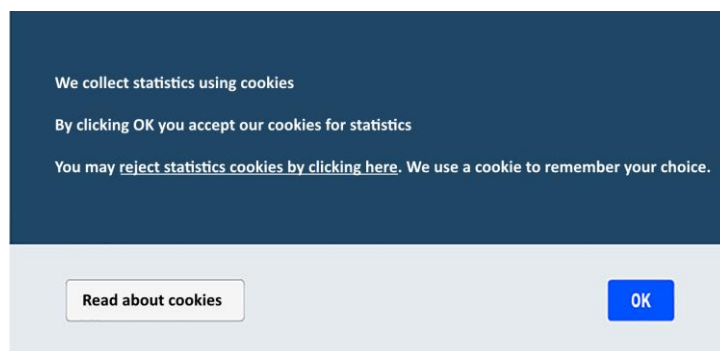
If you do not comply with the information and consent requirements, users' consent to the use of cookies will not be valid.

## **Chapter 6: Cookie banner explains about cookies on the website**

One way to get the user to accept or reject the use of cookies on your website is by implementing a so-called cookie banner. Here the user is presented with the most important information about the website's use of cookies and can accept or reject cookies, e.g. by using buttons or by filling out a form in the context of the relevant information. The most important information will be the purposes of the use of cookies and who uses cookies.

In the cookie banner, you can insert a direct link to additional cookie information about how the user can effectively withdraw his or hers consent etc.

An example of a cookie banner could be:



The Danish Business Authority enforce the cookie rules. [Read more about the Danish Business Authority's enforcement.](#)

In addition, together with the Agency for Digitisation, the Danish Business Authority has published some non-binding guidelines for public authorities on the responsible use of cookies on digital solutions.

Although the guidelines are aimed at public authorities, you can also use them and be inspired by them.

[See 'Guidelines for the use of cookies' by the Danish Business Authority \(pdf\)](#) →

## **Chapter 7: Background**

The Danish implementation of the Cookie Directive requires that websites that use technologies to store or access information on a user's computer or other electronic devices obtain consent from the user of the website before using the technology.

Danish cookie rules derive from Article 5 (1) of the ePrivacy Directive. 3, which has been implemented in Danish law with the cookie order issued pursuant to sections 9 and 81 (1). 2 of Act No. 169 of 3 March 2011 on Electronic Communications Networks and Services (Telecommunications Act). Article 5 (2) 3 of the ePrivacy Directive contains a reference to the now repealed personal data protection directive, which has been replaced by the Data Protection Regulation (GDPR) and must therefore be read in conjunction with the rules of the data protection regulation.

**About the ePrivacy Directive:** Directive 2002/58 / EC of the European Parliament and of the Council of 12 July 2002 on the processing of personal data and the protection of privacy in the electronic communications sector (Directive on data protection in electronic communications) as amended by Directive 2009/136 / EC.

**About the General Data Protection Regulation (GDPR):** Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free exchange of such information and on the repeal of Directive 95/46 / EC (General Data Protection Regulation).

[See legislation and directives](#) →

## **Chapter 8: Also make sure you comply with the General Data Protection Regulation (GDPR)**

You should also be aware that the cookie rules only govern the actual collection of any type of information from the user's terminal equipment, e.g. computer, tablet, or smartphone. In the event of any further processing of the collected information, ensure that this is done in accordance with the General Data Protection Regulation (GDPR) in the case of personal data. You can contact the Danish DPA if you have questions about the data protection rules.

[Read more about data protection \(GDPR\)](#) →