

Data protection

Websites and cookies: compliance with the new legislation within June 2015

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Cookies are small text files – with the user’s navigation information – that visited websites send to the user’s browser, where they are stored and then re-transmitted to the same websites, throughout the same browsing session or during subsequent visits. Cookies may be used for several reasons: IT authentication, the monitoring of browsing sessions and, most of all, the storage of information on specific user configurations (i.e., user profiling).

Over the last few years, the laws on the use of cookies by website managers and on their installation has undergone several amendments, both at EU and national level.

Today, the Privacy Code (as last amended by Legislative Decree 69/2012) provides that: (i) the installation of cookies strictly necessary to provide the requested service (so-called technical cookies) on the user’s termi-

nal equipment (personal computer, notebook, tablet, smartphone, etc.) does not require the latter’s prior consent, notwithstanding however the obligation to provide an information notice on privacy (containing, among other things, information on the purposes of data processing and on the entities to whom the personal data may be sent); (ii) instead, the installation of cookies for purposes other than those of a merely technical nature (so-called “profiling” cookies) requires that users grant their prior consent after being informed.

In 2014 (with measure dated 3 June) the Data Protection Authority set forth simplified arrangements for the compliance with the relevant obligations on part of the entities involved (website managers and third parties which install cookies on the user’s terminal through such managers).

Such measure provided for a transitional period—which shall end on 2 June 2015—to allow for compliance with the new measures.

In order to raise user awareness when making choices during the navigation experience, with the above-mentioned measures, the Authority has laid down that, when accessing a website that uses profiling cookies (also of third parties) for the first time, the webpage must immediately display a banner containing an information notice, which must indicate that:

- the website uses profiling cookies to send targeted advertising messages;
- the website allows third parties to send cookies, where applicable;
- it is possible to refuse to consent to the installation of any cookie;

Highlights

- by continuing to browse the website, the user agrees to the use of cookies.

Apart from being big enough to accommodate the information notice, the banner at hand must give rise to a discontinuity, albeit a minimal one, in the browsing experience. The banner will only cease to be displayed on screen if the user takes action (by selecting an item contained on the page underneath the banner).

To avoid having to display the same information notice upon the user's second visit to a website, the manager may use technical cookies which keep track of the user's prior consent.

The second extended information notice, which can be accessed directly by clicking a link on the short information notice, must be exhaustive and contain a detailed description of the features and purposes of the cookies installed on the website, and allow users to deny the installation of single cookies.

The extended information notice must include an updated

link to the information notices and consent forms of the third parties which the website manager has authorized to install cookies via his own website. In this regard, the Authority deems it necessary for website managers to acquire the aforementioned links from such third parties upon entering into the relevant agreements.

It must also be noted that the use of profiling cookies falls under the types of data processing that must be notified to the Authority.

The monetary administrative sanctions provided in case of failure to comply with the above-mentioned obligations are rather severe:

- (a) from six thousand to thirty-six thousand Euro in case of failure to provide information or in case of inadequate information;
- (b) from ten thousand to one hundred and twenty thousand Euro in case cookies are installed on the terminal equipment of users without the latter's prior consent;
- (c) from twenty thousand to one hundred and twenty

thousand Euro in case of failure to notify processing operations to the Authority or in the case of incomplete notification.

In light of the upcoming deadline of 2 June, it is therefore extremely important to comply with the measures in time, so as to avoid being found to have committed an infringement by the Authority and having to face the relevant sanctions.

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