



# Check-list cookies<sup>1</sup>

The list of obligations in this checklist is **not exhaustive**. This document is **simply** a **tool** with which the Data Protection Authority wishes to encourage the correct use of cookies. The items listed cannot therefore be considered as new obligations.



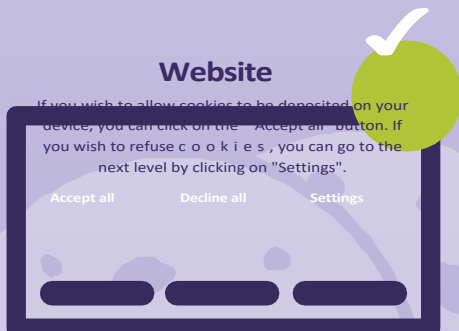
## Prior consent

- I do not set (or provide access to) any cookies that are not strictly necessary before obtaining valid consent to do so;



## Free consent

- I don't use cookie walls ;<sup>2</sup>
- I do not provide an "accept all cookies" (or similar) button without providing at the same "level" a "refuse all non-essential cookies" (or similar) button<sup>3</sup> ;
- I do not use techniques that could be described as "*deceptive design*"<sup>4</sup> (e.g. encouraging the use of colour)<sup>5</sup> ;





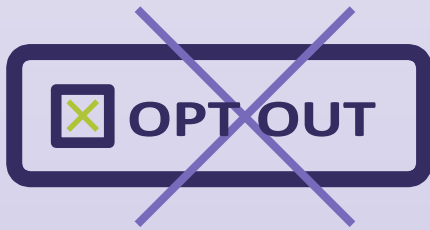
## Specific consent

- I foresee, at the latest in a second "level", the possibility of granting (or not) consent separately for each specific purpose ;
- I use categories of cookies delimited as clearly and precisely as possible, based on the specific purposes for which they are used;
  - I also bear in mind that use for my own advertising/profiling purposes and use for third-party advertising/profiling purposes must be considered as separate purposes<sup>6</sup> ;
  - I also bear in mind in this respect that the use of cookies to share, like or follow a page on social networks and the use of cookies to personalise advertising serve different purposes;
  - I avoid using the same cookie for several purposes<sup>7</sup> ;
- I give the possibility, if necessary in a lower "level", to accept (or not) the use of cookies by "partner" (joint controller) ;



## Informed consent

- In the first "level", I indicate very clearly and concisely the various purposes for which consent is requested (e.g. by using bold highlighting, bullets, etc.);
- I also provide in the first "level", in a clear and concise manner, at least information on:
  - the identity of the entity (or entities) responsible for depositing or reading cookies (where applicable with an indication of the number of partners and a hyperlink to the complete list broken down by category);
  - how cookies can be accepted or rejected ;
  - the consequences of refusing or accepting cookies ;
  - the existence of the right to withdraw consent and how this can be done;
- I also provide, in a "lower level", the complete list of cookies used, classified by category, including their purpose, duration and the recipients of these cookies<sup>8</sup> ;



## Unambiguous and active consent

- I do not infer consent from continuing to browse the website or from closing a banner, or from any other form of inactivity ;
- I do not use a pre-ticked box to obtain consent, whether in the first "level" or in a lower "level";
- I do not link the request for consent to the acceptance of terms and conditions, nor to the "acceptance" (or confirmation of awareness) of a privacy policy ;
- I do not infer consent from a "visitor's" browser settings ;



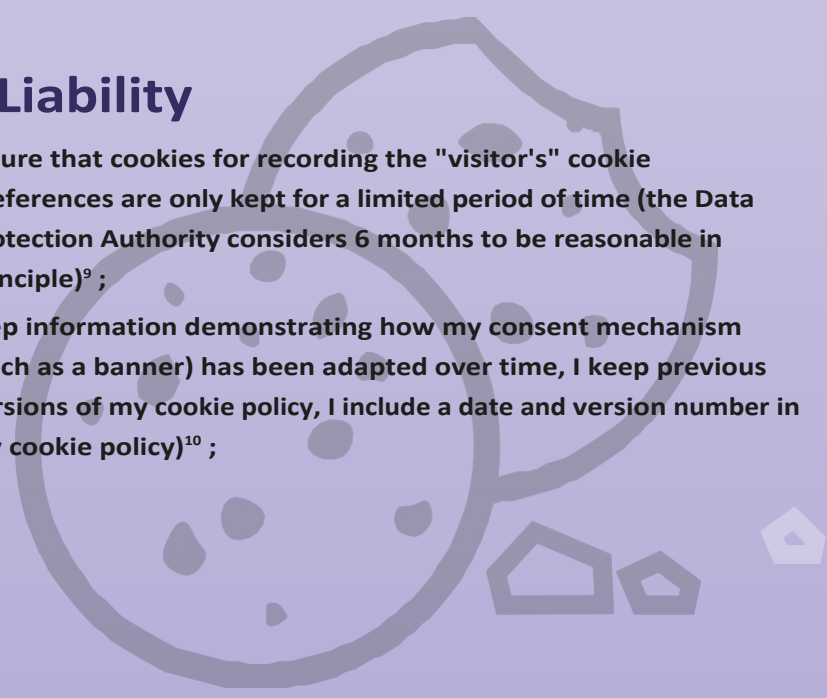
## Withdrawal of consent

- I foresee a mechanism whereby it is as easy to withdraw consent as it is to give it, such as by placing a clearly visible link or button allowing you to manage your cookie settings and withdraw consent with a single click ;
- I make sure that this withdrawal of consent does indeed have the desired effect and that it does not have the sole consequence that this cookie will no longer be set in the future ;



## Liability

- I ensure that cookies for recording the "visitor's" cookie preferences are only kept for a limited period of time (the Data Protection Authority considers 6 months to be reasonable in principle)<sup>9</sup> ;
- I keep information demonstrating how my consent mechanism (such as a banner) has been adapted over time, I keep previous versions of my cookie policy, I include a date and version number in my cookie policy)<sup>10</sup> ;





## When is no consent?

- I checked the categorisation of "essential technical cookies"<sup>11</sup> (such as those for load balancing) ;
- I have checked the categorisation of "strictly necessary functional cookies" (such as cookies for temporary storage of language choice, preferences for cookies or the contents of the shopping basket). This only includes cookies that are strictly necessary to provide a<sup>12</sup> service explicitly requested by the "visitor";
- I have ensured that no cookies other than those listed above are placed without first obtaining the valid consent of the "visitor".

### Footnotes

- 1 Although this checklist uses the term "cookies", it also covers other tracking mechanisms that fall under the broad definition given in Article 10/2 of the Act of 30 July 2018 *on the protection of individuals with regard to the processing of personal data* ("Framework Act"). These include tracking in smartphone applications, but also other techniques such as the use of pixels, *device fingerprinting, local storage*, etc.
- 2 EDPB, Guidelines 5/2020 on consent, point 39: "In order for consent to be freely given, access to services and functionalities should not be conditional on a user's consent to the storage of information, or access to information already stored, on a user's terminal equipment ("cookie walls")", which can be consulted via the following link: [https://edpb.europa.eu/sites/default/files/files/file1/edpb\\_guidelines\\_202005\\_consent\\_fr.pdf](https://edpb.europa.eu/sites/default/files/files/file1/edpb_guidelines_202005_consent_fr.pdf).
- 3 A "Settings" button next to an "Accept all" button is therefore not enough; see also the press release previously published by the Data Protection Authority, which can be accessed via the following link: <https://www.autoriteprotectiondonnees.be/citoyen/actualites/2023/02/10/bannieres-cookies-ledpb-publie-des-exemples-de-pratiques-non-conformes>.
- 4 See also our press release, available at the following link: <https://www.autoriteprotectiondonnees.be/citoyen/actualites/2023/02/24/deceptive-design-patterns-how-to-recognise-and-evite-them-on-social-networks>.
- 5 Good example: the "Reject all" and "Accept all" buttons are displayed in the same way.
- 6 See also p. 63, example 25 in the DPA's recommendation on direct marketing 1/2020, which can be consulted at the following link: <https://www.autoriteprotectiondonnees.be/publications/recommendation-n-01-2020.pdf>.
- 7 See also point 48 of the guidelines drawn up by the CNIL, which can be consulted at the following link: [https://www.cnil.fr/sites/cnil/files/atoms/files/lignes\\_directrices\\_de\\_la\\_cnil\\_on\\_cookies\\_and\\_other\\_trackers.pdf](https://www.cnil.fr/sites/cnil/files/atoms/files/lignes_directrices_de_la_cnil_on_cookies_and_other_trackers.pdf)
- 8 See also the "Planet49 judgment" of the CJEU (C-673/17), which can be consulted at the following link: [https://curia.europa.eu/juris/document/document.jsf?pageIndex=0&do\\_cid=218462&doclang=EN&text=&cid=234384](https://curia.europa.eu/juris/document/document.jsf?pageIndex=0&do_cid=218462&doclang=EN&text=&cid=234384)
- 9 See also point 39 of the recommendation drawn up by the CNIL, which can be consulted at the following link: <https://www.cnil.fr/sites/cnil/files/atoms/files/recommandation-cookies-and-other-trackers.pdf>.
- 10 For further advice/recommendations, see page 13, point 48 of the recommendation drawn up by the CNIL, which can be consulted at the following link: <https://www.cnil.fr/sites/cnil/files/atoms/files/recommendation-cookies-and-other-trackers.pdf>
- 11 Article 10/2, § 2 of the Act of 30 July 2018 *on the protection of individuals with regard to the processing of personal data* ("Framework Act"): "the technical recording of information or access to information stored in the terminal equipment of a subscriber or end user with the sole purpose of carrying out the sending of a communication via an electronic communications network" (own emphasis).
- 12 In principle, this does not therefore include counting visitors, see in this respect also page 10 of Opinion 04/2012 of the Article 29 Data Protection Working Party: [https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2012/wp194\\_en.pdf](https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2012/wp194_en.pdf) : "While they are often considered as a "strictly necessary" tool for website operators, they are not strictly necessary to provide a functionality explicitly requested by the user (or subscriber). In fact, the user can access all the functionalities provided by the website when such cookies are disabled."

A few controllers (in other Member States) take the position that the placing of, or obtaining access to, such cookies - under certain strict conditions - is exempt from the consent requirement. This is sometimes the consequence of an adaptation of national legislation (in which case this ground for exception has been added explicitly), and sometimes of national case law.