Dear Customer,

on the following pages you will find a summary overview of the current requirements for the use of cookies and comparable technologies as well as recommendations for their use.

In addition, you will receive information on when you, as a company, should obtain consent under data protection law for the use of cookies and comparable technologies and which requirements you must observe.

Notice:

We have taken great care in preparing this recommended course of action, but cannot accept any liability that it is suitable and sufficient for the area of application you have in mind. In case of doubt, please contact your data protection officer or another data protection expert.

If you have any questions, please contact your Data Protection Officer or other privacy professional.

Please feel free to send comments and feedback on the contents of this document, including the document name, to support@proliance360.com.

Your PROLIANCE GmbH team

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1. GENERAL INFORMATION

With the entry into force of the new Telecommunications Telemedia Data Protection Act (TTDSG) on December 1, 2021, the legal requirements for the use of cookies and comparable technologies have increased further. However, it has not yet been possible to form a consolidated case law on this new law, which is why the legal requirements have not yet been clearly clarified in parts. Where relevant, we have taken the requirements of the TTDSG into account in this recommendation.

The German Data Protection Conference ("DSK"), the body of independent German federal and state data protection supervisory authorities, has issued recommendations on the implementation of the TTDSG in its "Orientierungshilfe der Aufsichtsbehörden für Anbieter:innen von Telemedien ab dem 1. Dezember 2021 (Version 1.1.)" (only available in German).

The requirements of the General Data Protection Regulation (GDPR) are also relevant in this context with regard to the further processing of data obtained through the use of cookies and similar technologies.

> **NOTE**
>
> Even if the setting of cookies or the use of similar technologies and the further use of the data obtained usually appears as a uniform process, two steps must be legally distinguished:
>
> 1. The storage of information on the user's terminal equipment or access to such information is governed by the provisions of the **TTDSG**.
>
> 2. The further processing of personal data collected in this way is governed by the GDPR.
>
> Users should be informed in the cookie banner that the consent given relates to both steps.
>
> The requirements of the TTDSG also apply if **non-personal data** is stored on the terminal equipment or if non-personal data is accessed.

Wherever this Recommendation refers to "cookies", it also refers in principle to other comparable elements that are stored on the user's terminal equipment, as well as to the mere retrieval of user data, for example in the context of the so-called fingerprinting procedure for identifying individual users without the use of Cookies.

In this context, a distinction must be made between different types of cookies. Below you will find a rough overview of their use and legal implementation.

a) **Necessary cookies** are those without which the basic functions on a website cannot be used. In the context of the use of such cookies, processing of personal data takes place at most to the extent that this is indispensable for the secure functioning of the website. The duration of such a cookie must be limited on the server side to the necessary extent (generally the current session). The **user's consent does not** have to be **obtained for** the use of these necessary, functional cookies. The following cookies are generally considered necessary:

Examples of necessary, functional cookies:

– Logging in to a user account
– Language selection in case of a page addressed to international customers
– Shopping cart function as soon as the function is actually used[1]
– Cookies for storing cookie consents

b) **Preference cookies** are those cookies by means of which information about the preferences of a user of the website is stored.

Examples of preference cookies:

– Saving the language version
– Storage of the login data

With regard to the necessity of a declaration of consent for the use of preference cookies, there is - as yet - no uniform opinion. If they are only used for the duration of a session (**temporary cookie**) and serve to operate the website, **no consent** should be required. If it is a **permanent cookie**, the need for consent is reduced, so **consent should be obtained.**

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[1] In the case of the shopping cart cookie, a distinction must also be made as to whether the cookie is a "session" cookie, a "temporary, time-limited" cookie or a "permanent" cookie. The session cookie is absolutely necessary, for example, to keep the articles in the shopping cart for the time of the order. In this case, the data is also not passed on to third parties. Any use beyond this, on the other hand, is not permitted and therefore requires the consent of the website visitor. In this case, it is debatable whether the shopping cart function must be maintained even after a session has expired. This may not be necessary, so that consent may have to be obtained.

c) **Statistics cookies** are used to collect information about website usage. In doing so, the statistics cookies are helpful in optimizing the web offer.

<u>Examples of statistics cookies</u>:

– Google Analytics
– Information about current use of the online offer, e.g. referrer (page from which the visitor reached your site)

A declaration of consent must be obtained for the use of statistical cookies.

> **NOTE**
> It may be possible to make things easier if the statistical analysis is only carried out using the data (http call) that must technically be transferred to the server anyway when a page is called up. It is recommended to consult your Data Protection Officer for such an individual solution.

d) **Marketing cookies** often allow tracking of the user across multiple websites or devices. As a result, ads that are relevant and engaging to the user can be served.

<u>Examples of marketing cookies:</u>

– Facebook Pixel
– Google AdWords
– Google DoubleClick

A declaration of consent must be obtained for the use of marketing cookies.

Consent must also be **obtained for the** use of **social plugins if the** user's data is collected by the social plugin and passed on to the provider of the social plugin. This was clarified by the European Court of Justice (CJEU) in its "Fashion ID" ruling. In addition, the user must be informed about the processing and, in particular, the forwarding of his data. Obtaining the declaration of consent and informing the user can also be done by means of cookie banners.

2. HOW DO I OBTAIN EFFECTIVE CONSENT?

Consent to the use of cookies is usually obtained by means of a cookie banner. A cookie banner is usually an overlay modal window (also called a "popup") that appears when the user first visits the website. This window informs about the use of cookies and refers to cookie settings and the privacy notice. The following requirements for effective cookie consent must be observed.

a) **No occlusion**: Typically, the cookie banner appears at the top or bottom of the screen or as a pop-up in the center of the screen. The privacy notice and the imprint must not be obscured.

b) **Time**: The cookies may only be set after the user has given his consent to this. The consent should be obtained immediately before the respective cookie is used. Especially for large websites with many subpages and integrated services, it is not advisable to obtain all consents in advance and "in advance" at the beginning of the page visit.

c) **Voluntary**: The user must have a genuine and free choice and must also be able to refuse consent without incurring any disadvantages. Refusing consent should not be more onerous than giving it. It must also be possible to use the website without giving consent. The extent to which the website operator can give the user the choice of agreeing to optional cookies or using the offer against payment is disputed. This is problematic in any case if the user lacks alternative (web) offers.

> **NOTE**
>
> Supervisory authorities represent that cookie consent is freely given only if **consent and rejection** are **possible with equal effort.** In the view of supervisory authorities, this means that consent can only be freely given if the first level of the cookie banner contains an "reject all" button. In our opinion, case law is likely to follow this - controversial - view.
>
> Even according to this view, however, a "reject all" button can be dispensed with if the user can visit the website in question unhindered without having to interact with the cookie banner. A narrow banner that moves along with the scrolling can fulfill this requirement, but a central window in the middle of the page cannot.

d) **(Simple) Revocable:** The user's decision must be revocable at any time. In addition, the **withdrawal** must be **just as simple as granting the consent** itself. To this end, the user must be able to return to the cookie settings.

> **NOTE**
> Ideally, the implementation is done by means of a **button that is** accessible from every subpage and leads to a revocation option ("cookie settings"). However, it is also sufficient if it is possible to return to the cookie settings via a **hyperlink**.

e) **Informed:** In the display text, the user should be informed about the use of cookies and the further use of the data collected in this way, as well as the revocability of their consent (see above). **Users must be informed about who accesses or reads the information** (this includes in particular the providers of cookie-based services such as Google), **in what form and for what purposes, how** long cookies function and whether third parties can gain access.
    If user data is transferred to a country outside the European Economic Area or to a provider based in such a country, users should be **informed about this on the first level of the banner**. We recommend that you also state the legal basis for the transfer (in most cases, this will be Article 46 (2) (c) of the GDPR).
    Providers receiving user data should not be grouped together in the form of mere categories, but should be explicitly designated in each case.
    The purposes should be presented in such concrete terms that users can form an essentially accurate picture of the actual use of their data. With regard to the further use of user information, the information obligations listed in Art. 13, 14 GDPR must be fulfilled.

> **NOTE**
> The extensive information that must be provided to users can be displayed on **several levels of the banner.** In addition, the detailed information on the further processing of data according to Art. 13, 14 GDPR should be listed in the **website privacy notice** and linked to it in the cookie banner.

f) **Unambiguous action by the user:** Consent is only deemed to have been effectively given if it is expressed by an active and unambiguous action on the part of the user ("opt-in"). This can be done, for example, by clicking a button (e.g. "Accept cookies") or by placing a check mark.

> **NOTE**
> Effective consent does **not exist,** however, if, for example, a **pre-ticked box is** used or simply **continuing to surf the** website is interpreted as cookie consent ("opt-out"). In these cases, there is no active action by the user from which consent can be inferred.

g) **Specific:** The user's consent must relate to **concretely presented purposes of** the cookie use (often the individual purposes can be differentiated according to the providers used). If different purposes are pursued, the supervisory authorities believe that users should be able to **consent to** each purpose **separately.** This can be implemented, for example, by means of several checkboxes.

> **NOTE**
> In the supervisory authority's view, phrases such as "*improving the user's experience*", "*advertising purposes*", "*IT security purposes*" or "*future research*" are not specific enough and do not adequately describe the purpose of the cookie use.

h) **Documentation:** The effective collection of cookie consents must be technically traceable so that, if necessary, it can be proven that the consents were properly obtained.

There are currently a large number of providers on the market that offer consent management platforms (CMP). With these platforms, cookie banners can be individually designed. If you need support for the technical implementation, please contact the team of datenschutzexperte.de.

3. EXAMPLE COOKIE BANNER (FIRST LEVEL)

We use cookies and similar technologies on our website. In this way, information on your device regarding your use of our website is accessed or corresponding information is stored on your device. We use the data collected in this way to evaluate your use of our website and thus to adapt functionalities and content on our website to user behavior and to make them more attractive (measurement of user behavior). We also use the data collected to measure the success of marketing measures and to improve our marketing measures on this basis (marketing).

Click "Accept all" to give your consent or click "Manage cookie settings" below to change settings in detail as well as to get more information about the types of cookies we use, providers used and the processing of your personal data. You can also find more information in our privacy notice. You can withdraw your consent at any time via the "Manage cookie settings" link on our website.

☐ Measurement of usage behavior   ☐ Marketing

| Aaccept all |
| Reject all |
| Manage cookie settings |

4. NEGATIVE EXAMPLES COOKIE BANNER

The State Commissioner for Data Protection and Freedom of Information Baden-Württemberg has published negative examples of cookie banners in its FAQ on cookies and tracking (only available in German). These negative examples can be used to avoid typical mistakes in the design of cookie banners. Frequent deficiencies in the design are a non-transparent presentation (e.g.: Information overload, misleading or deliberately trivializing formulations) and so-called inadmissible "nudging". **Nudging" is primarily used when an attempt is made to influence the will of the user through the visual or functional presentation of the cookie banner.** Typical examples are different colors, size or position of the buttons for general consent, rejection or detailed consent options. "Nudging" is not inadmissible in every case; for example, buttons of different colors will generally not be critical.

However, the limit of permissible design is generally exceeded where the refusal means additional effort for the user (clicking through several levels, button to be searched for in continuous text, etc.) or the user gets the impression that refusing consent could cause technical errors.