

## **Attachment No. 1 – Examples of gold plating in the Polish electronic communication law**

Despite a highly competitive market in Poland, stricter regulatory solutions than those applied in other EU states or required by the EECC are adopted (a list of examples of gold-plating you will find below). Additionally, Polish electronic communication law was passed 4 years after the EU deadline, meaning our market operated under a different regulatory regime than in other EU states for a very long time. Poland was the country where the pioneering 5G bands (700 MHz and 3.6 GHz) were unavailable to operators for the longest time. The 700 MHz licenses were only issued in June 2025. As a result, the development of 5G, especially 5G SA technology, which is crucial for Industry 4.0, faced a major obstacle.

### **1. Third party billing service (Articles 340-350 of the Polish electronic communication law)**

The EECC in Annex VI, Part A, point h), obliges service providers only to provide the facility for end-users to deactivate the ability for third party service providers to use the bill of a provider to charge for their products or services. This means that subscribers have the freedom to use that payment method unless they decide that their telco service provider should disable this option.

Meanwhile, the Polish electronic communication law additionally requires, without any indication in the EECC and despite the maximum level of harmonization:

- Obtaining the subscriber's consent to provide this service. This obligation applies to both new and existing subscribers who even before the law's entry into force used this payment method regularly, by cyclically adding charges for selected services to their telecom bill.
- Recording the obtained consent on a durable medium.
- Applying a default limit of only 70 PLN (approximately 16 EUR), which in many cases was very unfavorable for consumers who regularly added charges for online purchases to their bill.
- Authorization of each transaction using at least one authentication factor (e.g., requiring the subscriber to provide a PIN code received via SMS during the online activation process).

### **2. Prepaid funds refund (Article 331 of the Polish electronic communication law)**

According to Article 106(6) of the EECC, providers refund any remaining balance upon request for consumers using prepaid services.

However, Article 331 of the Polish electronic communication law goes far beyond these requirements, effectively introducing a completely new, unclear regulation, which provides that:

- Refunds should also be issued upon the expiration of the account validity, in addition to when transferring the number.
- Funds that the subscriber does not request within the designated period are to be transferred to the NRA (UKE) and then to the (public) Broadband Fund, becoming the property of the Fund.
- The subscriber has the option to provide a bank account number, to which the refund will be automatically transferred after the account expires or the number is transferred. This means that providing a bank account number is equivalent to submitting a refund request.

### **3. Prohibition of D2D sales (Article 284(4) of the Polish electronic communication law)**

The EECC does not contain a regulation prohibiting the sale of telecom services to consumers during unannounced visits to their residence. However, such a regulation was added in connection with the amendment of the Polish consumer rights law and then placed in the electronic communication law, even though the rationale for this regulation was primarily aimed at door-to-door trade and the solicitation of household goods (to increase consumer protection).

This regulation has the opposite effect to what was intended, effectively preventing the sale of services in low-density areas, such as regions where networks are built with public funds, thus limiting thousands of consumers' access to publicly available telecom services.

### **4. Zero-rating of selected websites and mobile applications (Article 317(5) of the Polish electronic communication law)**

The EECC does not impose an obligation on electronic communication service providers to exclude data transmission costs related to access to specific websites or mobile apps from data limits.

Meanwhile, Article 317(5) of the Polish electronic communication law introduces provisions regarding a list of websites and mobile applications, the use of which does not impact the data transmission limit. The regulations requiring internet providers to provide access to the listed websites in such a way that it does not affect the subscriber's data limit (the so-called statutory zero-rating) were introduced by *the law on special support instruments in connection with the spread of SARS-CoV-2*.

The introduction of this solution was justified by the need to ensure children's access to online educational content during times when face-to-face education was difficult or impossible due to the COVID-19 pandemic.

### **5. Communication with subscribers in writing (Article 306(6), Article 307(3), Article 307(4) and Article 308 (3) of the Polish electronic communication law)**

The EECC provides that subscribers should be notified of changes in contract terms and conditions on a durable medium.

Polish electronic communication law envisages that the provider is obliged to notify subscribers on a durable medium in a form corresponding to the form in which the contract was concluded, unless the subscriber has requested to receive notifications in another form.

The specification of the form of a durable medium is in clear contradiction with the full harmonization rule of the EECC.

### **6. Unilateral change of the subscribers contract (Article 306 and 307 of the Polish electronic communication law)**

Article 105 of the EECC does not introduce any restrictions related to the unilateral change of a subscription contract by the provider other than the obligation to notify of the change at least one month in advance and the right to terminate the contract without incurring any further costs.<sup>1</sup>

Meanwhile, under the article 308 of the Polish electronic communication law change of subscriber's contract concluded for an indefinite period is possible if such contract specifies possibility of and

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<sup>1</sup> Which is consistent with a sample story presented at the official website of the European Union:  
<https://europa.eu/youreurope/citizens/consumers/internet-telecoms/telecommunication-services/>

prerequisites for such change. The sky-high and at the same time vague requirements for the formulation of these prerequisites imposed on entrepreneurs by the Polish consumer protection authority (President of the Office for Competition and Consumer Protection) make it almost impossible to unilaterally amend a contract concluded with a Polish consumer.

At the same time, Article 307 of the Polish electronic communication law provides that an amendment to a contract concluded for a definite period of time is possible only if it is necessary due to objective circumstances other than those indicated in Article 306(1), which are beyond the control of the provider of electronic communication services and which could not have been foreseen.

#### **7. Termination of the contract with a new provider in case of failure of number porting (Article 326(2)(2) of the Polish electronic communication law)**

The EECC comprehensively regulates the process of number portability, including the effects on contracts concluded by subscribers. The provisions of the EECC provide, among m.in, for the obligation to reactivate the number by the current service provider in the event of an unsuccessful number porting or the automatic termination of end-user contracts with the current provider after the completion of the process of switching the provider.

Polish electronic communication law additionally provides that if the porting of the assigned number has not taken place within 30 days, the contract with the new service provider is null and void. The only exception is the cancellation of porting by the subscriber, whereas the majority of cases of non-portability are due to a mismatch between the subscriber's data with the provider and the recipient, which are not corrected by the subscriber.