

ECJ ruling on amendments to internet contracts

Customers have an extraordinary right of termination

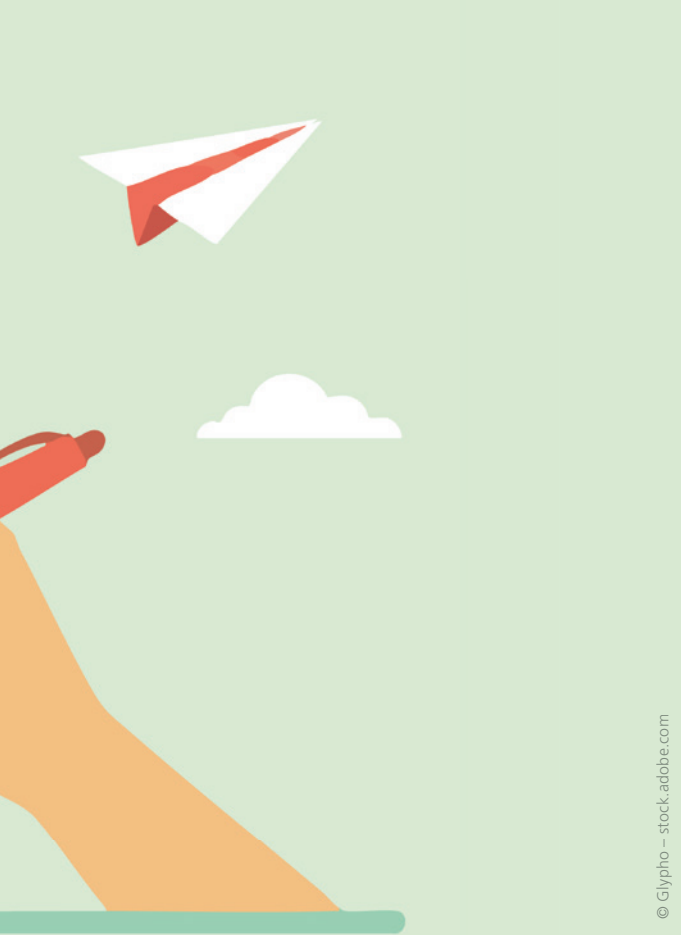
If internet contracts need to be amended due to the ban on zero-rating options (free of charge), customers are entitled to an extraordinary right of termination at no cost. This right to terminate without notice also applies where the provider is merely obliged to implement current case law. This has been clarified by the European Court of Justice.

A subscriber may terminate their contract for internet access services at no cost if a contractual amendment is made to comply with a decision of the Court of Justice. As such an amendment is not directly required by EU law, the exception to the right to terminate without charge does not apply.

Free of charge contracts

In judgements from 2021 and 2022, the Court of Justice interpreted EU law as precluding so-called "free of charge" options in contracts for internet access services. Following these judgements, the Hungarian Media and Communications Authority required providers of electronic communications services to amend subscriber contracts containing "free of charge" clauses. Under EU law, end-users have the right to terminate their contract at no additional cost if the provider proposes changes to the contract, except in certain cases, such as where the changes are directly required by EU or national law.

Magyar Telekom, a Hungarian company operating in the information and communication technologies sector, challenged the national authority's decision concerning it before the Hungarian courts. It takes the view that the exception to the right to terminate the contract free of charge applies not only where such changes are directly required by provisions of Union or Member State law, but also where they are required by Union or national law in a broader sense.


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Hungarian court refers case to the ECJ

The Hungarian Supreme Court, which is hearing the case, asks the Court of Justice whether an end-user may terminate their contract free of charge if the provider proposes changes to bring the contract into line

- with the Court of Justice's interpretation of a provision of EU law,
- with the resulting guidelines of the Body of European Regulators for Electronic Communications (BEREC), or
- with a decision by a national authority implementing that judgement and those guidelines.

ECJ affirms the Hungarian court's questions: customer has a extraordinary right of termination

The exception to the right to terminate a contract free of charge must be interpreted narrowly and in accordance with the general objective of ensuring a high common level of protection for end-users. It applies only where the changes to the contractual terms are directly and unconditionally required by the entry into force or amendment of a legislative or administrative provision of EU law or national law.

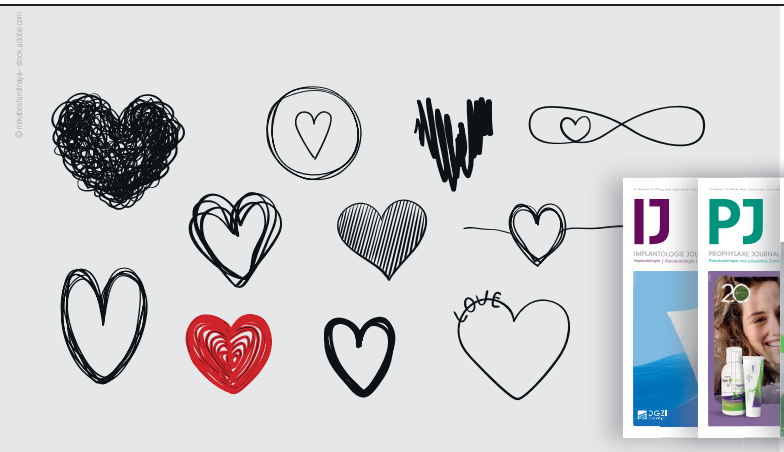
The Court's interpretation in a preliminary ruling explains and clarifies the meaning and scope in which that provision is, or would have been, to be understood and applied from the date of its entry into force.

In other words, a preliminary ruling is not of a constitutive nature but is purely declaratory and therefore, in principle, has retroactive effect from the date of entry into force of the provision interpreted. It cannot therefore be regarded as an amendment to a legal or administrative provision of Union law.

BEREC ensures the uniform implementation of the regulatory framework in the field of electronic communications. However, its acts are not legally binding and do not fall within the legislative procedure of the Union. Consequently, it cannot be assumed that its guidelines directly require a provider of electronic communications services to amend its contractual terms.

Nor does a decision by a national authority have a normative character, since, in issuing it, the authority merely interprets the Union's regulations in the field of electronic communications and applies them to a specific case.

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