



## PRESS RELEASE

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### 5G: The Conseil d'État validates the prior authorisation regime for the operation of 5G operators' relay antennas

**Bouygues Télécom and SFR have asked the Conseil d'État to annul the prior authorisation regime that telephone operators are subject to for the operation of their 5G relay antennas. The Conseil d'État ruled that the operators could not expect the rules to remain unchanged despite technological advances and security issues, and that this prior authorisation serves a general interest purpose, namely to protect against the risks of espionage, piracy and sabotage. It also specifies that an operator who is refused authorisation and is forced, for example, to renew its equipment, thereby incurring an excessive financial burden, may be compensated by the State. For these reasons, the Conseil d'État rejects the request made by the telephone operators Bouygues and SFR.**

The French Act of 1 August 2019 requires authorisation from the Prime Minister for the operation by telephone operators of equipment used for the technical implementation of 5G (e.g. relay antennas). Authorisation is refused if there is a risk of undermining the interests of defence and national security.

In practice, due to the technical constraints linked to the lack of interoperability of devices from different equipment manufacturers, a refused authorisation obliges the telecommunication operator not only to give up installing the 5G device it had intended to use, but also to replace the 2G, 3G and 4G devices from the same equipment manufacturer that it had already installed.

On 5 February 2021, the Constitutional Council ruled that this act complies with the rights and freedoms guaranteed by the Constitution.

In appeals against the decrees issued for the application of this act, Bouygues Télécom and SFR challenged before the Conseil d'État the compliance of this authorisation regime with European Union law and the European Convention on Human Rights (ECHR).

The companies argued that this regime did not respect their legitimate expectation that they would be able to continue to use the frequency authorisations for the 2G to 4G networks with the corresponding equipment and for the periods initially planned.

However, the Conseil d'État ruled that the operators could not expect the rules governing the equipment using these frequencies to remain unchanged when the frequencies required for the rollout of 5G were awarded, despite technological developments and security issues. Bouygues Télécom and SFR also claimed that the right to respect for their property had been infringed. The Conseil d'État first found that the authorisation regime pursued a general interest objective, as it made it possible to protect mobile radio networks from the risks of espionage, piracy and sabotage that may result from the new capabilities offered by 5G. He then observed that only an authorisation regime such as that provided for by the French Act of 1 August 2019 could guarantee the achievement of this objective. Lastly, it

stated that an operator who is refused authorisation and suffers serious and special damage as a result (excessive financial cost of renewing its equipment, for example) could be compensated (principle of no-fault liability).

On these grounds, the Conseil d'État rejected the appeals lodged by the mobile telephone operators Bouygues Télécom and SFR.

Read decision No. 442120

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