

# Operation of 5G Networks in France is Subject to New Ad Hoc Prior Approval Regime

October 2019

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On 1 August 2019, few months after enacting the PACTE Law that strengthened the foreign investments control mechanism, France passed a new law (n° 2019-810) aimed at preserving the interests of French defense and national security within the context of the launch of the 5G mobile radio networks operation. The French Government aims to have a full 5G network by 2030. Operators will be required to obtain prior approval from the French Prime Minister in order to operate 5G technology in French territory. French authorities are still working on the implementing legal provisions: a Decree and a Ministerial Order. It is anticipated that these will be adopted by the end of 2019.

## Scope of the New Regime

The prior approval requirement applies to all operators which plan to operate, in French territory, certain devices which, by virtue of their functions, present a risk to the continuity, integrity, security or availability of the network, or to the confidentiality of communications. These include any hardware or software devices enabling end-users' terminals to be connected to the 5G mobile radio network.

While the new regime was initially intended to apply to non-EU operators only, the final version of the law covers all operators whatever their nationality.

The law explicitly excludes 4G and previous mobile standard technologies generations. As such, the new regime only applies to 5G and future generations' networks.

The law expressly excludes devices installed at end-users' premises or those dedicated exclusively to an independent network, passive or non-configurable electronic devices and non-specialized computer hardware features incorporated in the devices. A comprehensive list of devices subject to the prior approval requirement will be set out in the Ministerial Order.

This law applies retrospectively to operators that have been operating a 5G network since 1 February 2019. The law specifies that operators already engaged in the development of 5G networks in France should file an application with the French Prime Minister by 30 November 2019.

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## The French Prime Minister Review

The French Prime Minister will determine the degree of risk presented by the operation of a particular 5G network. In assessing this risk, the Prime Minister will take into account the level of safety of the equipment, the methods of deployment and operation envisaged by the operator and whether the operator or its service providers, including subcontractors, are under the control or subject to acts of interference by a non-EU Member State.

The operator must file a request with the French Prime Minister specifying the models and versions of the devices for which authorization is sought. The draft Decree further specifies that the request must include information about the identity of the operator, the device, the proposed intensity of use within the network, the methods of deployment and operation. The Decree also contains a reference to the authorization of the operation of devices that may enable a breach to the confidentiality of electronic correspondence, and providers that operators must commit accepting audits.

The French Prime Minister must make its decision whether to approve, approve with conditions or reject the application within two months upon receipt. The authorization is granted for a maximum period of eight years, renewable at the operator's request.

## Enforcement

If an operator operates the 5G network without authorization or does not comply with any conditions attached to the French Prime Minister's approval, it may be required to submit an application for authorization or renewal or to restore the previous situation at its own expense.

In the event of any breach of the prior approval or regularization requirements, any commitment, agreement or contractual clause relating to the operation of the equipment in concern will be treated as null and void.

The infringing party may be subject to severe criminal sanctions, namely up to five years' imprisonment, and may have to pay a fine of up to 300 000 euros.

Foreign investors are already subject to a review process run by the French Ministry of Economy if their investment involves sensitive activities relating to the operation of electronic communications networks. They also have to take into account the new ad hoc prior approval regime if their potential investment would involve 5G technology.

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