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## **5G: The canton of Bern (Switzerland) tricks residents on antennas**

<https://www.infosperber.ch/politik/schweiz/5g-kanton-bern-trickst-anwohner-von-antennen-aus/>

Pascal Sigg / 12.09.2023

The canton of Bern waved through more than 300 adaptive antennas[\*] without a building permit. Even though they are allowed to emit much stronger radiation for a short time.

*[\* Smart antennas (also known as adaptive array antennas, digital antenna arrays, multiple antennas and, recently, MIMO) are antenna arrays with smart signal processing algorithms used to identify spatial signal signatures such as the direction of arrival (DOA) of the signal, and use them to calculate beamforming vectors which are used to track and locate the antenna beam on the mobile/target.*

[https://en.wikipedia.org/wiki/Smart\\_antenna](https://en.wikipedia.org/wiki/Smart_antenna)

The next generation mobile network requires new antennas. So-called adaptive antennas emit radiation in a more targeted and concentrated manner than previous mobile communications systems, which permanently generate large-area networks. But this would mean that they would have to be allowed to emit more radiation than the precautionary limits provide.

In Switzerland, it is actually the municipalities that are responsible for approving these antennas. However, the cantons make recommendations and interpret the law.

## **The canton of Bern advises municipalities to use small-claims procedures**

The canton of Bern is particularly critical. There, the view prevails that no building permit processes are necessary for conversions of existing facilities to adaptive antennas - even though these may later emit stronger radiation.

This was communicated to the municipalities in April 2022 in an unambiguous letter by the Regierungsstatthalteramt [*Regional Governor's Office*] of the Directorate for Justice and the Interior. This means that affected residents of new types of antennas do not have to be informed about the changes. And thus cannot raise any objections.

## **Hundreds of installations may exceed installation limits - without a building permit**

However, it is unclear whether the canton is allowed to do so. In a ruling that is not yet final, the Bernese Administrative Court recently upheld a complaint from Büren an der Aare. Sunrise had replaced a conventional system with a new adaptive antenna without a building permit process and later increased the transmission power. The municipality and the canton had given the green light for the conversion. Sunrise can appeal the ruling. If the company refrains from doing so, the Bernese construction directorate will have to reassess its own approval practice.

This could have an impact on hundreds of installations. In response to an inquiry from Infosperber, the Office for Environment and Energy (AUE) writes: "At the end of August 2023, 955 systems (in some cases several at one location) with adaptive antennas are in operation in the canton of Bern. 416 of them would be operated with correction factor. Only

29 of them have been approved in a building permit procedure. Thus, for 387 systems, it is currently unclear whether their operation is legal.

### **Exceeding limits through the back door**

Daniel Laubscher complained about the procedure. He lives not far from the antenna in Büren an der Aare. He objected to the fact that its conversion was going ahead without him being informed. At the time, Laubscher was head of the spatial planning department of the Bern-Mittelland Regional Conference. Before that, he was employed as a city planner in Solothurn. He knows the complicated matter. "I have already had to approve mobile phone systems myself," he tells Infosperber.

What particularly irritated him: Sunrise activated the so-called correction factor during the ongoing procedure and thus potentially increased the transmission power and the emissions. He was not informed about this either. Because the municipality did not require a building permit for this either - on the recommendation of the canton. Laubscher only found this out because one day Sunrise was advertising mobile television in the village. "I knew that this could only be offered with higher transmission power." An inquiry to the administrative court and the responsible cantonal office confirmed his suspicions.

### **"Systematic preferential treatment of mobile phone companies".**

With the correction factor, [the Federal Council has allowed](#) mobile phone companies by decree since 1 January 2022 to require adaptive antennas to comply with the limit only on a six-minute average. This can lead to stronger radiation exposure for a short time even in nearby apartments. This can be more than three times the declared field strength and thus also exceed the precautionary installation limit. For this to happen, however, the antennas must have automatic power limitation.

Protection organizations argue that the Federal Council has used this correction factor to increase the installation limit values in a hidden way - and has thus moved forward contrary to the will of parliament. Parliament has rejected limit value increases three times in the past.

This is another reason why Laubscher thinks that the canton of Bern is pushing the restructuring of the Swiss mobile network behind the backs of the citizens with its licensing practice. "This is systematic preferential treatment of the mobile phone companies".

### **Other cantons are more cautious**

Martin Miescher from the legal office of the Construction and Transport Directorate of the Canton of Bern (BVD) rejects this accusation when asked by Infosperber. The BVD would rely exclusively on the legal requirements and the relevant rulings of the higher courts (administrative and federal court). However, he also writes: The Federal Court has not yet answered the question of whether the switching on of the correction factor is subject to approval.

Other cantons such as Zurich or St. Gallen are more cautious. They require a building permit procedure for every adaptive antenna. The canton of Zurich confirms, on Infosperber request, that adaptive antennas approved in the minor procedure must even go through a new building permit procedure, as soon as the correction factor is to be

switched on. The same is written by the building and environment department of the canton of St. Gallen. This is based on a ruling of the cantonal administrative court.

### **Canton of Bern: No performance increase with correction factor**

Why doesn't the canton of Bern do the same? Why does it continue to recommend that the municipalities apply the controversial small claims procedure? Martin Künzi, the Governor of the canton, writes in response to a question, that the canton would follow the guidelines of the Federal Council and the NIS ordinance. The assessment of the Cantonal Office for Environment and Energy (AUE) is decisive.

The latter was of the opinion that neither the type of antenna nor the operating mode was decisive for the assessment of whether a modification of a mobile radio system required a building permit. Only a possible change of the power or the radiation exposure counts. This argumentation does not take into account that the correction factor introduced by the federal government also allows an increase of the antenna power, even if only a temporary one.

Laubscher is currently a self-employed land use planner who advises communities on how to deal with planning applications for mobile phone antennas. He thinks those must now take responsibility. "They are urgently called upon to perform their task as building permit authorities." However, he also does not want to blame the Bernese municipalities and enforcement authorities. "They are also just doing what the federal government says."

### **Federal Council creates ambiguity**

In fact, the federal government is responsible for the legal wrangling over the 5G upgrade down to the municipal level throughout Switzerland. At the end of 2021, the Federal Council wrote that it was "creating clarity and increasing legal certainty." By this it meant the new [Ordinance on Protection against Non-ionizing Radiation](#) (NISV) with the correction factor. This should make it possible to treat the new antennas separately - because they work with new technology. But there is no clarity. [SonntagsBlick immediately criticized this](#) and ran the headline: "Residents and communities tricked".

Strictly speaking, the Federal Council followed the proposal of the industry association Asut from the report "[Mobilfunk und Strahlung](#)" [[Mobile communications and radiation](#)] of DETEC of 2019, whose option for action provided for [a mean value calculation](#). However, the report already warned at that time: due to the lack of transparency of the procedure, many inquiries from the population were to be expected. In addition, "a certain softening of precautionary measures would take place, **resulting in an increase in the exposure of people living near antennas.**" (Emphasis added.)

In the new Ordinance, the Federal Council also wrote at the end of 2021: The application of the correction factor is not subject to approval for an already existing adaptive antenna. But this is possibly in conflict with the higher-level spatial planning law. This is one of the reasons why the Conference of Cantonal Directors of Building, Planning and Environment (BPUK) wanted to know more before the new Ordinance came into force. It commissioned [a legal opinion](#) from the Institute for Swiss and International Building Law at the University of Fribourg.

### **The federal court must decide - once again**

According to the Fribourg authors, "Even the plan to install a single adaptive antenna can result in a building permit procedure if the antenna is associated with an increase in emissions." Nor would the exclusive activation of the correction factor entitle the authorities to apply a small claims procedure. The authors also made clear that residents could invoke federal law to demand a building permit.

Daniel Laubscher is not the only one who has done so. On the surface, the many quick small claims procedures relieve the cantonal licensing authorities and the municipalities. But some of the work now ends up in the judicial system - and thus not infrequently before the federal court. It is currently having to deal with the question of whether the application of the correction factor entails a building permit obligation in several cases.

### **Expansion of 5G network: the federal Council, industry and parliament against the will of the people**

As recently as June [2023], the [Council of States decided](#) that the rollout of the 5G network must proceed without raising the limit values. In doing so, it also listened to the federal government's own group of scientific experts, which currently [rejects this based on its assessment of the health risks](#). A majority of the population is also likely to be against it. In a survey conducted by the [ETH Environmental Panel](#) in cooperation with the Federal Office for the Environment (FOEN) in 2020, more than 50 percent of people were of the opinion that the limits for mobile radiation should not be relaxed. It would be sufficient if 5G were only available nationwide in Switzerland in twenty to thirty years.

Parliament nevertheless wants to accelerate network expansion, even though the Federal Council is already helping providers with the new Ordinance. Following the Council of States, the National Council is also expected to approve a motion from the FDP parliamentary group next week calling for the expansion to be accelerated. The National Council's preliminary advisory committee - with [10 members of the Chance 5G \[5G Opportunity\] lobby campaign](#) - [approved it with an overwhelming majority](#). However, it remains unclear how this acceleration is to take place without an increase in limit values and against the will of a majority of the electorate.

### **Further information**

[5G: Providers demand more radiation for faster business](#), Infosperber, June 11, 2023