



Proposed Change to Regulation 51 of the Electronic Communications Networks and Services (General) Regulations (ECNSR) (SL. 399.28 of the Laws of Malta)

Consultation Document

Document reference	MCA/C/19-3716
Date of publication	5 th December 2019

Malta Communications Authority
Valletta Waterfront, Pinto Wharf, Floriana FRN 1913
Tel: (356) 21 336 840. Fax: (356) 21 336 846
Website: www.mca.org.mt
E-mail: info@mca.org.mt

Table of Contents

1. Purpose	2
2. MCA Recommendations.....	3
3. Proposed Amendment.....	4
4. Comments.....	5

1. Purpose

In an increasingly joined-up, high speed digital environment where take-up of Cloud-based services, among others, is ramping up steeply, reliance on always-on, electronic communications networks can no longer be dependent on best-effort provision. Thus, networks increasingly require a reasonable level of ongoing redundancy. It is therefore necessary to place additional emphasis on the provision of adequate fail-safe back-up when connectivity problems arise.

Within the context outlined above, this consultation document proposes an amendment to regulation 51 of the ECNSR. The intention of the proposed amendment is to clarify further the provisions of the mentioned regulation 51.

This clarification is being proposed in relation to geographical areas of the Maltese Territory where inadequate redundancy in electronic communications networks might raise problems with regard to ongoing connectivity and therefore service provision. This is in line with the requirement in regulation 51(1) on undertakings providing publicly available electronic communications services over public communications networks, to **“take all necessary measures to ensure the fullest possible availability of such service in the event of catastrophic network breakdown or in cases of force majeure”**.

2. MCA Recommendations

The existing regulation, in providing for the taking of all necessary measures to ensure the fullest possible availability of such service in the event of catastrophic network breakdown or in cases of force majeure (reg 51(1) of the ECNSR), already provides adequate leeway for necessary action to be taken in particular circumstances.

The MCA is nonetheless proposing the inclusion of relevant wording in regulation 51(3) of the ECNSR that places further clarity on the Authority's powers to specify obligations to be complied with by (electronic communications) undertakings where particular redundancy measures are warranted as per regulation 51(1).

Any such intervention on the part of the Authority would need to, at the same time, respect the spirit of the electronic communications regulatory framework by upholding technology neutrality, as well as proportionality, reasonableness and non-discrimination in application. The regulation applies to all cases where extraordinary circumstances may emerge.

The proposed amendment to regulation 51(3) is meant to provide further clarity to the Authority's powers 'to specify obligations to be complied with by undertakings for the purpose of ensuring compliance with this regulation'.

At the same time it allows the necessary lee-way for the MCA to intervene as necessary and to apply proportionate measures on a case-by-case basis.

3. Proposed Amendment

The text of the amendment entails changes to regulation 51(3) of the ECNSR. The table below shows the current and proposed versions of regulation 51(3), whilst showing also regulation 51(1) and (2), which will remain unchanged, for a better interpretation of the changes involved.

<p>51. (1) An undertaking providing publicly available electronic communications services over public communications networks, shall take all necessary measures to ensure the fullest possible availability of such service in the event of catastrophic network breakdown or in cases of force majeure.</p> <p>(2) An undertaking providing a publicly available telephone service shall take all necessary measures to ensure uninterrupted access to emergency services.</p>	
Current 51(3)	Proposed 51(3)
<p>The Authority may specify obligations to be complied with by undertakings for the purpose of ensuring compliance with this regulation.</p>	<p>The Authority shall have the power to specify obligations to be complied with by undertakings for the purpose of ensuring compliance with this regulation:</p> <p style="padding-left: 40px;">Provided that in doing so the Authority shall also factor any particular characteristics, such as insularity, where the consequences of catastrophic events or of force majeure are likely to cause severe and, or prolonged service deterioration or disruption:</p> <p style="padding-left: 40px;">Provided further that the Authority shall, after considering the nature and extent of the services provided and any attendant relevant circumstances, require undertakings, in line with the principles of reasonableness and proportionality, to adopt such resilient and secure solutions as it shall consider appropriate, in such a manner that connectivity as specified in sub-regulation (1) is best ensured.</p>

4. Comments

The MCA welcomes written comments and representations to this report during the national consultation period, which shall run from the 5th December 2019 to the 9th January, 2020.

All responses must be submitted to the MCA by no later than close of business of the 9th January 2020.

Extensions to the consultation deadline will only be permitted upon written request to the Authority. The MCA reserves the right to grant or refuse any such request at its discretion. Requests for extensions are to be made in writing within the first ten (10) working days of the consultation period.

The MCA will thereafter analyse any responses received and convey the resultant report on consultation to Government, together with the necessary recommendations as to the way forward. The MCA will meanwhile publish a report on the responses received.

A final decision as to the way forward rests with the relevant Ministry.

All submissions should be made in writing and sent by email to patrick.b.vella@mca.org.mt.

If required, hard copies may also be posted or faxed to the address below.

Chief, Policy and Planning
Malta Communications Authority
Valletta Waterfront, Pinto Wharf, Floriana, FRN 1913
Malta
Tel: +356 21 336840
Fax: +356 21 336846