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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

Report on the implementation, functioning and effectiveness of the “.eu” TLD

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(Text with EEA relevance)

1. BACKGROUND – THE NEED FOR “.EU”

The Internet domain name system (DNS) consists of a series of directories, organized hierarchically, providing information on the names and addresses of the various Internet resources (web-sites, mail servers, name servers etc) that are publicly available via the Internet. A domain name provides a user-friendly label that the Domain System can then resolve into an Internet address (a numerical identifier) in order to facilitate communication with the associated resource. A Top Level Domain (hereinafter TLD) is that part of a domain name which identifies the organisation (known as the registry) which manages a particular family of domain names. In the Internet, TLDs are of two sorts: either a two-letter ISO 3166 Country Code for a country-code TLD (ccTLD) such as ".uk", ".fr" or ".jp", or a generic abbreviation or name such as "com", "net", or "museum".

The “.eu” TLD is a recently introduced ccTLD for the European Union that is intended to give citizens public and private organisations and undertakings in Europe a specific EU cyber-identity and a trustworthy environment that highlights their European identity in the internet and facilitate their involvement in the economic activities of this rapidly-developing virtual market place. To achieve a trustworthy environment, the EU has decided that “.eu” domain names are to be subject to common public policy rules that ensure appropriate use, equitable access and fair treatment of registrants. As a pan-European TLD, “.eu” also provides an additional and complementary domain name option to the national ccTLDs of the Member States and the generic TLDs (gTLDs), most of whom operate either totally or partially outside EU legal jurisdiction.

The “.eu” TLD therefore offers a unique and valuable option for domain name registrants in the EU by offering Internet users and the market for electronic commerce in particular, an additional dimension to the existing options in the DNS. It aspires to satisfy the needs of EU citizens for a cyberspace in which their rights as consumers and individuals are protected by European rules, standards and judicial protection by extending the advantages of the Internal Market to the Internet dimension.

The present Communication takes stock of the preparations that were needed for the creation of the “.eu” TLD and informs the European Parliament and the Council on the implementation, effectiveness and functioning of the “.eu” TLD as foreseen in

Article 8 of Regulation (EC) No 733/2002 of the European Parliament and of the Council of 22 April 2002 on the implementation of the “.eu” TLD¹.

2. IMPLEMENTATION

2.1. The “.eu” model

The “.eu” TLD model is based on the independency of the Registry in the day-to-day management of its activities, the marketing of domain names through accredited commercial agencies ("registrars") and the right of the end user to protect his/her domain names against potential abuses from third parties.

The first element in this equation is the Registry. In its working paper of 2000² the Commission proposed several possibilities for the selection of the “.eu” Registry, namely: a dedicated non-profit private association to be incorporated within the EU, an entirely private commercial entity, an existing public or private organization at a national or European level and, finally, the assignment of the Registry’s functions to a competent department of an existing public administration.

During the discussions on the appropriate model for the “.eu” TLD it became clear that it was not appropriate for Community institutions, to go beyond a general policy role. There was general agreement that a specialized separate entity would be best placed to implement and manage the TLD system directly as well as to handle day-to-day contacts with users. The Council and the Parliament therefore decided to entrust a non-profit independent Registry with the management of the “.eu” TLD.

This decision replicates the approach taken for several successful ccTLDs around the world, not least in Europe. The Registry signs a contract with the Commission which allows the later a general supervisory role. However, the Commission is not competent to take any decisions concerning particular domain names or for the daily operations of the Registry nor it is the appeal body for decisions taken by the Registry. This clear separation of duties³ enables the Registry to take autonomous decisions concerning the registration of domain names and comply with the principles of non-interference, self-management and self-regulation in accordance with Regulation 733/2002⁴.

The separation of competences does not end with the independence of the Registry from the Commission. To ensure the neutrality of the Registry vis-à-vis the domain names that it deals with, the “.eu” model forbids the Registry to act itself as registrar⁵. This approach fosters competitiveness in the domain name market where registrars will tend to diversify their offer to cover the different needs of the end users while ensuring competitive prices.

¹ OJ L 113 of 30.4.2002, p.1

² Section 6 of the Commission Working Paper of 2.2.2000 on the creation of the “.eu” Internet TLD Name.

³ Article 2.a of Regulation (EC) No 733/2002

⁴ See Recital 9 of Regulation 733/2002

⁵ Article 3.4 of Regulation (EC) No 733/2002

The last element that completes the “.eu” model is the registrant. The final user is responsible for checking the offer by the Registrar community and for choosing the one which fits best with his needs. Furthermore, during the initial phased registration period the final user was also responsible for submitting a full and accurate application to ensure its success and, where necessary, for defending its validity. It is to be noted in this respect that the “.eu” model relies on the conscientiousness of final users to defend their rights and to trigger the mechanisms for protection when an abuse is committed.

2.2. The legal framework

The legal framework set up by the Community legislator for the establishment and the implementation of the “.eu” TLD is based on two legal instruments, Regulation (EC) No 733/2002 of the European Parliament and of the Council of 22 April 2002 on the implementation of the “.eu” TLD, hereinafter the *Framework Regulation*, and Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the “.eu” TLD and the principles governing registration⁶, hereinafter the *Public Policy Rules or PPR*. These two instruments are completed by a number of Commission decisions concerning the selection and the designation of the Registry. A list with all the legal texts that constitute the basis for the creation of the “.eu” TLD can be found in the web site of the European Commission⁷. Finally, the Registry has created a number of administrative rules that regulate its daily operations in the registration of domain names.

Further information on the different instruments that form part of the legal framework and on the procedure for their adoption is available on: http://ec.europa.eu/information_society/policy/doteu/index_en.htm.

3. FUNCTIONING

3.1. The Registry

Pursuant to the mandate from the European Parliament and the Council in the Framework Regulation⁸, the Commission published a Call for expressions of interest inviting applications from organisations wishing to be selected as the Registry⁹. Following a comparative evaluation of the applications, the European Registry for Internet Domains (EURID) was designated by the Commission as the “.eu” TLD Registry.¹⁰ As foreseen in the Framework Regulation, the Commission signed a service concession contract with EURID¹¹ on 12 October 2004.

⁶ OJ L 162 of 30.4.2004, p. 40

⁷ http://europa.eu.int/information_society/policy/doteu/background/index_en.htm

⁸ Article 3(1)(b) of Regulation (EC) No 733/2002

⁹ Call for expressions of interest for the selection of the .eu TLD Registry (2002/C 208/08), OJ C 208 of 3.9.2002, p. 6.

¹⁰ Commission Decision on the designation of the “.eu” TLD Registry, OJ L 128 of 24.5.2003, p. 29.

¹¹ For further information about EURid see <http://www.eurid.eu/content/view/12/26/lang.en/>

EURid is a non-profit organization founded in April 2003 by the organisations operating the national top level domains for Belgium, Italy and Sweden. Later, the organisations operating the top level domains for the Czech Republic and Slovenia also joined EURid as members. EURid is based in Diegem (Belgium).

Upon the signature of the contract between the Commission and EURid for the management of the “.eu” TLD, the Commission authorized EURid to negotiate with ICANN an agreement for the delegation of the “.eu” TLD¹². ICANN thereby recognized EURid as the body appointed by the European Union to run the “.eu” TLD until at least 2009. Following to the signature of this agreement “.eu” was put in the root zone of the Internet Domain Name System (DNS) in March 2005 which means that, technically speaking; it has been in existence since then.

3.2. Measures for the protection of end users

The DNS business as a whole is characterised by a great deal of litigation, dispute and "sharp" commercial practices. The number of registrants worldwide and the value of the domain name market have resulted in vigorous competitive behaviour among registrars and re-sellers in particular. It is no surprise therefore that some registrants act in an abusive way to profit from this appetizing market.

The key issue is to ensure that such abuses of registrations and associated registrar practices are identified efficiently and dealt with appropriately. The legal framework for “.eu” was drafted with this intention.

To minimize the risk of cybersquatting¹³ within the “.eu” the European legislator developed tools that allow end users to preserve their rights. Three tools were created with this objective: the reservation of names, the phased registration period and the Alternative Dispute Resolution (ADR) procedure.

3.2.1. Names reserved or excluded from registration

The most elemental rule for protecting a name against cybersquatting is evidently to exclude it from being registered as a domain name or to reserve it for its registration by his legitimate holder. The framework Regulation provided for a procedure for establishing, upon the request from Member States, a list of names that may either not be registered (Article 5.2a), or be registered only under a second level domain (Article 5.2b). Article 5 of the Framework Regulation also constitutes the basis for the Commission to provide for the reservation of domain names for their use by Member States or the Community institutions and bodies (Articles 8 and 9 PPR).

Further information concerning the procedure for the exclusion or reservation of these names can be found in the Commission's web site on the “.eu” TLD http://ec.europa.eu/information_society/policy/doteu/index_en.htm. The complete list

¹² Recital 15 of Regulation (EC) No 733/2002

¹³ Cybersquatting is a term generally used to describe the practice of registering Internet domain names which are, arguably, not for the taking. The cybersquatter then offers the domain to the rightful owner at an inflated price.

of names excluded or reserved under the “.eu” TLD is accessible in the web site of the “.eu” Registry¹⁴

3.2.2. *Sunrise*

According to the mandate from the European Parliament and the Council in the framework Regulation, the PPR should provide that holders of prior rights recognised or established by national and/or Community law and public bodies benefit from a specific period of time ("sunrise period") during which the registration of their domain names is exclusively reserved to such holders of prior rights recognised or established by national and/or Community law and public bodies¹⁵.

This mandate is implemented in Chapter IV (Articles 10 to 14) of the PPR establishing some basic guidelines on how to deal with the initial phased registration period. These rules have been further developed by the Registry through the "sunrise rules". Considerable efforts were made by the Registry to simplify as much as possible the sunrise procedures taking into account that the sunrise period concerns prior rights established under the laws of the Member States. Special consideration had to be given to the different legal systems and to the different means that were required to prove the existence and validity of those rights. This necessarily had an impact on the complexity of the application procedure. While producing the documentary evidence required to prove the existence of a registered trademark may be easy, proving the existence of a non-registered right or, under certain administrations, a company name may be much more complicated. In these cases, the choice of a competent Registrar which facilitates the preparation of the application is often fundamental for the application's success.

The sunrise period consisted of two phases each lasting two months. During phase I only domain names of public bodies; the names of territories governed by public bodies and registered community or national trademarks could be applied for by the public body or holder/licensee of the trademark. During phase II, in addition, domain names based on other rights that are protected under the national law, such as company names, business identifiers, distinctive titles of protected literary and artistic work, unregistered trademarks or trade names could be applied for.

To prevent abuse during the sunrise phase, all claims for prior rights had to be verifiable by documentary evidence demonstrating the right under the law by virtue of which it exists¹⁶. The validation of the rights has been performed by a validation agent appointed by the Registry (i.e. PriceWaterhouseCoopers). It is to be noted that the legal framework established for the “.eu” TLD does not derogate from existing law and, thus, the validation agent had to accept as valid any application based on a valid trademark, or any other kind of prior right, granted by a Member State.

Applications for the same name were assessed on a first-come-first-served basis. In cases of disputed decisions by the Registry concerning the registration of a domain

¹⁴ <http://www.eurid.eu/content/view/21/38/lang,en/>
¹⁵ Recital 16 of Regulation (EC) No 733/2002
¹⁶ Article 14 of PPR

name, applicants were able to have recourse to either ordinary courts or to the extra-judicial settlement of conflicts system called ADR (see below).

The validation procedure, which had to be carried out by qualified professionals, required that the fee for the registration of a domain name during the Sunrise period be higher than during the normal operations of the Registry. Depending on the complexity for validating the prior right on which the application was based, the price ranged from €35, for applications filed by public bodies, to €45 applications based on registered trademarks and €85 for applications based on other rights. Registrars added their profit margin to this fee. The price paid by end user generally reflected the level and quality of the service offered by the registrar.

3.2.3. *Extra-judicial settlement of conflicts policy*

The legal framework for the “.eu” TLD foresees an Alternative Dispute Resolution procedure (ADR) to solve disputes concerning domain names under the “.eu” TLD. This system, provides procedural guarantees for the parties concerned and applies without prejudice to any court proceeding that any interested party may initiate against the holder of the domain name or a decision of the Registry.

Following a selection procedure¹⁷, on 12 April 2005 the Registry appointed the Prague-based Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic (the "Czech Arbitration Court") to provide ADR for “.eu” domain name disputes.

In August 2005, the Czech Arbitration Court, assisted by a preparatory team of IP and IT specialist from around Europe, launched a public consultation on a set of practical rules that refine the guidelines established by the PPR for the ADR system. In November 2005, the Czech Arbitration Court published the final set of rules establishing the administrative procedures for filing and managing ADR complaints on its website¹⁸.

Disputes within the ADR system for “.eu” may be initiated against bad faith or abusive registrations from third parties or against decisions taken by the Registry¹⁹. The level of the fees for ADR proceedings is based on the cost recovery principle. The ADR fees (starting at €1,850) compare favourably with those charged by similar arbitration bodies. In view of the good results during the first year of operations, the Czech Arbitration Court lowered its fees by 7% as of 1 January 2007. There is a further 10% discount on the ADR fees applicable to the parties who use advanced e-signature during ADR Proceedings.

4. EFFECTIVENESS

The effectiveness of the “.eu” TLD system can be gauged on the basis of two indicators: the number of domain names applied for and the efficiency of the Registry in dealing with the daily functioning of the registration system.

¹⁷ Article 23 of Commission Regulation (EC) No 874/2004

¹⁸ http://www.adr.eu/adr/adr_rules/index.php

¹⁹ Article 21 of Commission Regulation (EC) No 874/2004

4.1. Number of applied/registered domain names

A year after launch, some 2,4 million “.eu” names have been registered under the “.eu” TLD, making “.eu” Europe's third most popular country code top level domain name, and the seventh most popular TLD worldwide to date. Within the European Union, “.eu” is only surpassed by the national Top level domains (ccTLDs) for Germany and the United Kingdom while globally, only .com, .net, .org and .info can claim more registrations. Moreover, now that the initial wave of registrations has passed, there is an increasing trend towards using .eu domains once they have been registered, as opposed to simply registering them as a precautionary measure.

The latest figures with a breakdown per country are available at: <http://status.eurid.eu/>

346,218 applications were filed during sunrise for 245,221 domain names. The difference between the number of applications and the number of domain names applied for is explained by the fact that some domain names were applied for by more than one applicant.

The average monthly growth rate for the registration of domain names between May and December 2006 was 4.7 % which is among the highest in the industry. Also the actual everyday use of “.eu” is increasing. The number of DNS queries, i.e. how often someone looks up a “.eu” website or sends an email to a “.eu” email address; to the Registry has increased fivefold in half a year between the end of June and end of December 2006.

Furthermore, in January 2007 more than 78% of all “.eu” domain names lead to a functioning website or email server. Out of the functioning websites, only one fifth had a click through step meaning that they automatically redirected the visitor to a different site or URL; these figures show that “.eu” domain names are being actively used. Furthermore, a recent survey carried out by the Registry showed that 79 % of Internet users in Europe are familiar with the concept of TLDs and domain names and that 63 % know about the existence of “.eu”. 45 % Internet users know that they as EU residents can register a “.eu” and 11% are considering the possibility to register a domain name within this TLD.

Thanks to the huge interest in “.eu” and the high number of registrations, the Registry has managed to lower the fees associated with owning a “.eu” domain name. As of 1 January 2007, the price for registering a domain name and the annual renewal fee was reduced from 10 to 5 €. Taking into account the non-profit character of the “.eu” Registry further reductions may be envisaged in the future. Note that this fee is charged to accredited “.eu” registrars that, in turn, set the prices for their customers. Many registrars bundle their services to include web hosting and email packages, for instance. Nowadays, the price for a domain name under “.eu” starts at around 15€, thus matching the prices usually charged for other domain names under .com, .net, .co.uk, .de, etc...

All in all, it can be concluded that the launch of the “.eu” TLD has been a successful and effective exercise, which meets real demand among the European citizens, industry and other organisations.

4.2. Performance of the registration system

To assess the performance of the registration system the PPR²⁰ foresees that at the end of the phased registration an independent audit shall be performed and that the auditor shall report its findings to the Commission. The purpose of the audit is to confirm the fair, appropriate and sound operational and technical administration of the phased registration period by the Registry.

The methodology of the audit included a thorough investigation of the Registry's processes during the Sunrise. The auditor sought to obtain relevant statistical data and third party opinions (including that of Intellectual Property experts). An investigation was also carried out on the processes put in place by the Registry for handling abusive behaviours. These processes were compared with similar approaches used by comparable registries. Finally, the auditor performed a sampled registrar satisfaction survey and consulted sampled out domain portfolio owners.

The findings of the audit report can be summarised as follows:

- i) As concerns the validation of rights during the Sunrise, the auditor established that the selection of the validation agent and the drawn up of the applicable rules for the Sunrise was done according to the specifications of the PPR and within the confines of an acceptable economic (cost) and operational (throughput) model for the execution of the process. These rules were designed in order to provide a process as uniform as possible, within a non-uniform set of laws across the various Member States of the European Union. In view of statistical data, the auditors concluded that no discrimination could be found against citizens of any particular Member State.
- ii) Regarding abusive registrations, the Registry consistently implemented and maintained the first come – first served principle. As regards to "warehousing practices" by some registrars, the Registry performed investigations based on sampling and complaints and terminated the contract with those registrars whose practices were proven inadmissible.
- iii) As concerns registration by non-eligible registrants, the Registry performed post-factum investigations and revoked, where appropriate, domain names which consequently became available again to the public.
- iv) The several hundreds of registrars accredited to the Registry with the sole purpose of massively obtaining domain names for certain registrants (the so-called "phantom registrars") was the subject of legal proceedings brought by the Registry before the relevant Courts.
- v) Regarding operational and technical questions, the findings of the audit report confirm the robustness of the system implemented by EURid which has proven appropriate in view of the load and volume of applications during the Sunrise period and afterwards.
- vi) In relation to the massive registrations taking place after 7 April 2006, i.e. at the moment when applications were open to the wider public ("landrush") and

²⁰ Article 12(5) of Commission Regulation (EC) No 874/2004

subsequent releases ("mini-landrush"), this is to be a phenomenon that many other registries have also experienced. This practice seems to be the result of technical craftsmanship and performance on the side of the registrars. After careful and extensive sampling of the EURid registry logs, no evidence was found by the auditors that parties would have been unduly advantaged, nor that the first-come first-served principle was infringed, nor that unallowed manipulations were performed upon the database by any party, nor that the logging system was tampered with, nor that the protective firewalls installed by EURid were broken.

vii) As concerns the assistance to end users, the Registry put in place a support team to handle telephone calls, e-mails, faxes and postal mail from the opening of the "Sunrise" phase (7 Dec 2005). However, the support team appears not have kept track of its exchanges with third parties with a proper ticketing system until July 2006.

5. CONCLUSIONS

The above findings taken from the audit report show that the Registry has overall performed very efficiently during the start up phase of the ".eu" TLD and in full conformity with the legal framework. There is no indication that the level of disputes or problems within ".eu" was any higher than for any comparable TLD. Being a successful TLD that attracts high numbers of registrants inevitably involves having to deal with complaints about disputed domain names. Given the history of disputes in other TLDs over the years, a certain level of complaints was to be expected. To the surprise of some observers, the launch of ".eu" attracted a lot more registrations than expected. Some of the registrations were speculative and/or defensive, but most were in good faith. Some, inevitably, will have been made by people trying to "exploit" the system for financial gain. Such behaviour was to a large extent anticipated. Indeed, a large part of the discussions on ".eu" when the legislation was being adopted by the European Parliament and the Council was on how to minimise abuse. The evidence suggests that that legal framework and the implementation of defensive measures by EURid has been largely effective in this respect.

As the start-up phase finished some time ago, the objectives for the ".eu" Registry have evolved. The challenges now are to further improve the service given to customers by, for instance, the adoption of a code of conduct for registrars. Moreover, the promotion of further registrations as well as that of the actual use of the ".eu" TLD by citizens, institutions and companies should be ensured.