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From:	Presidency
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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the implementation and functioning of the .eu Top Level Domain name and repealing Regulation (EC) No 733/2002 and Commission Regulation (EC) No 874/2004 - Preparation for the informal trilogue

I. INTRODUCTION

1. The Commission issued the proposal on 26 April 2018 as part of the most recent package of legislative initiatives in order to complete the framework for the Digital Single Market strategy (DSM) and as part of the regulatory fitness and performance (REFIT) program. The March 2018 European Council has set the deadline to deliver the DSM until the end of the current legislative cycle.
2. After the presentation of the Impact Assessment by the Commission on 18 June, the Telecommunication Working Party examined the proposal of the Commission at its meetings on 5 July, 6 and 13 September, 16 October 2018.

3. The most important changes in the text enclosed in the Annex of this document as compared to the April 2018 proposal of the Commission relate to the following areas:
 - a) the Member States prefer that only a non-profit entity could act as the Registry;
 - b) the Member States required a better definition of the advisory role of the .eu Multistakeholder Group and the representation of the Member States in it;
 - c) the provisions on the WHOIS database are better aligned with the GDPR in order to enhance the protection of the personal data;
 - d) the delegations wished to define the extent of the implementing powers of the Commission to establish the criteria and the selection procedure of the Registry.
5. Delegations will note that the text in the Annex is not changed as compared to doc. 12904/18 which was discussed at the Working Party on Telecommunications and Information Society on 16 October.
6. The Permanent Representatives Committee is invited to endorse the attached document as a mandate for the Presidency to start negotiations with the Parliament once it is ready for the discussions.

2018/0110 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on the implementation and functioning of the .eu Top Level Domain name and repealing
Regulation (EC) No 733/2002 and Commission Regulation (EC) No 874/2004**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 172 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C , , p. .

² OJ C , , p. .

- (1) The .eu Country Code Top Level Domain (ccTLD) was established by Regulation (EC) No 733/2002 of the European Parliament and of the Council¹ and by Commission Regulation (EC) No 874/2004². Since the adoption of Regulation (EC) No 733/2002 and Regulation (EC) No 874/2004, the political and legislative context in the Union, the online environment and the market have changed considerably.
- (2) TLDs are an essential component in the hierarchical structure of the Domain Name System (DNS) which ensure an interoperable system of unique identifiers, available throughout the world, on any application and any network.
- (3) The .eu TLD should promote the use of, and access to, the Internet networks in accordance with Articles 170 and 171 of the TFEU, by providing a complementary registration to existing country code Top Level Domains (ccTLDs) or global registration in the generic Top Level domains.
- (4) The .eu TLD should provide a clearly identified link with the Union and the European market place. It should enable undertakings, organisations and natural persons within the Union to register a domain name under the .eu TLD. Union citizens should be allowed to register a .eu domain name, regardless of their place of residence.
- (5) Domain names in the .eu TLD should be allocated to the eligible parties subject to availability.
- (6) To ensure better protection of rights of the parties to contract with, respectively, the Registry and Registrars, the disputes on registrations of domain names in the .eu TLD should be solved by bodies located in the Union applying the respective laws of Member States, without prejudice to rights and obligations recognised by the Member States or by the Union arising from international instruments.

¹ Regulation (EC) No 733/2002 of the European Parliament and of the Council of 22 April 2002 on the implementation of the .eu Top Level Domain (OJ L 113, 30.4.2002, p. 1).

² Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and the principles governing registration (OJ L 162, 30.4.2004, p. 40).

- (7) The principles and procedures on the functioning of the .eu TLD should be annexed to the contract between the Commission and the appointed Registry.
- (8) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred to the Commission to adopt the lists of reserved and blocked domain names by Member States, to establish the criteria and the procedure for the designation of the Registry and to designate the Registry on duly justified **imperative** grounds of urgency, **in particular to ensure the continuity of the service**. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers. Such lists should be compiled subject to the domain names' availability taking into account domain names at second level already reserved or registered by the Member States.
- (9) The Commission should, on the basis of an open, transparent and non-discriminatory selection procedure, designate a Registry for the .eu TLD. The Commission should enter into a contract with the selected Registry which should include the detailed principles and procedures applying to the Registry for the organisation, administration and management of the .eu TLD. The contract should be limited in time and renewable **once**.
- (10) This Regulation is without prejudice to the application of the rules on competition provided in Articles 101 and 102 TFEU.
- (11) The Registry should comply with the principles of non-discrimination and transparency and should implement measures to safeguard fair competition, to be authorised in advance by the Commission, in particular when it provides services to undertakings with whom it competes on downstream markets.

- (12) The Internet Corporation for Assigned Names and Numbers (ICANN) is at present responsible for coordinating the delegation of codes representing ccTLD to Registries. The Registry should enter into appropriate contract with ICANN providing for the delegation of the .eu ccTLD code taking account of the relevant principles adopted by the Governmental Advisory Committee (GAC).
- (13) The Registry should enter into an appropriate escrow agreement to ensure continuity of service, and in particular to ensure that in the event of re-delegation or other unforeseen circumstances it is possible to continue to provide services to the local Internet community with minimum disruption. The Registry should submit to the escrow agent on a daily basis an electronic copy of the current content of the .eu database.
- (14) Alternative Dispute Resolution (ADR) procedures should **comply with Directive 2013/11/EU** and take into account the international best practices in this area and in particular the relevant World Intellectual Property Organization (WIPO) recommendations, to ensure that speculative and abusive registrations are avoided as far as possible. ADR should respect a minimum of uniform procedural rules, in line with the ones set out in the Uniform Dispute Resolution Policy adopted by ICANN.
- (15) The policy on abusive registration of .eu domain names should provide for verification by the Registry of data it receives, specifically concerning the identity of registrants, as well as revocation and blocking from future registration of domain names considered by a final decision of a Member State court to be defamatory, racist or otherwise contrary to the law of the Member State. The Registry should undertake utmost care to ensure the correctness of the data it receives and holds.
- (16) The Registry should support law enforcement agencies in the fight against crime by implementing technical and organisational measures aimed at enabling competent authorities to have access to the data in the Registry for purposes of prevention, detection, investigation and prosecution of crimes, as provided by Union or national law.

- (17) This Regulation should be implemented in compliance with the principles relating to privacy and the protection of personal data. The Registry should comply with relevant Union data protection rules, principles and guidelines, in particular, with relevant security requirements, the principles of necessity, proportionality, purpose limitation and proportionate data retention period. Also, personal data protection by design and data protection by default should be embedded in all data processing systems and databases developed and/or maintained.
- (18) In order to ensure effective periodic supervision, the Registry should be audited at its own expense at least every two years by an independent body with the purpose of confirming that the Registry complies with the requirements laid down in this Regulation. The Registry should submit the resulting conformity assessment report to the Commission in accordance with the procedure laid down in the contract with the Registry.
- (19) The contract concluded with the Registry should provide for procedures to improve the organisation, administration and management of the .eu TLD by the Registry in line with the instructions of the Commission resulting from the supervisory activities provided by this Regulation.
- (20) The Council Conclusions on Internet Governance of 27 November 2014 reaffirmed the European Union's commitment to promote multistakeholder governance structures that are based on a coherent set of global Internet governance principles. An inclusive Internet governance refers to the development and applications by governments, the private sector, civil society, international organisations and the technical community, in their respective roles, of shared principles, norms, rules, decision-making procedures and programmes that shape the evolution and use of Internet.

- (21) A .eu Multistakeholder ~~Council~~ **Group** should be set up with an advisory role to the Commission in order to strengthen and widen input into the good governance of the Registry ~~and the matters covered by the principles and procedures on the functioning of the .eu TLD and increase the transparency of the Registry's commercial and operational practices~~. The members of the group should reflect Internet Governance multistakeholder model and be appointed by the Commission on the basis of an open, **non-discriminatory** and transparent procedure. **In order to ensure continuity, the representative drawn from the Member States should be a member of the group of the three Member States holding the rotating Presidency of the Council during the corresponding 18 months period.**
- (22) The Commission should carry out an evaluation on the effectiveness and functioning of the .eu TLD. The evaluation should have regard to the designated Registry working practices and the relevance of its tasks.
- (23) Since the objective of this Regulation, namely the implementation of a pan-European TLD in addition to the national ccTLDs, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (24) In order to limit any risks of disruption of services of the .eu TLD in the shifting between the old and new regulatory framework, transitional provisions are foreseen by this Regulation.
- (25) Regulation (EC) No 733/2002 of the European Parliament and of the Council and Commission Regulation (EC) No 874/2004 should therefore be repealed.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

General Provisions

Article 1

Subject-matter and objectives

1. This Regulation implements the .eu country code Top Level Domain ('ccTLD') and **its available variants in other scripts and** lays down the conditions for its implementation, including the designation and characteristics of the Registry. This Regulation also establishes the legal and general policy framework within which the designated Registry will function.
2. This Regulation shall apply without prejudice to arrangements in Member States regarding their national ccTLDs.

Article 2

Definitions

For the purposes of this Regulation:

(a) "Registry" means the entity entrusted with the organisation, administration and management of the .eu TLD including maintenance of the corresponding databases and the associated public query services, registration of domain names, operation of the Registry of domain names, operation of the Registry TLD name servers and **the distribution of the TLD zone files across name servers** ~~dissemination of TLD zone files~~;

(b) "Registrar" means a natural or legal person that, on the basis of a contract with the Registry, provides domain name registration services to registrants;

(c) "Internationalised Domain Names (IDNs) protocols" mean standards and protocols that support the use of domain names in characters that are not American Standard Code for Information Interchange (ASCII) characters;

(d) "WHOIS database" means a collection of data containing information on the technical and administrative aspects of the .eu Top Level Domain registrations;

(e) "principles and procedures on the functioning of the .eu TLD" means detailed rules concerning the functioning and management of the .eu TLD;

(f) "registration" means a series of acts and procedural steps, from initiation to completion, taken by Registrars and/or the Registry upon the request of a natural or legal person aimed at implementing the registration of a domain name for a specified duration.

CHAPTER II

Implementation of the .eu TLD

Section 1

GENERAL PRINCIPLES

Article 3

Eligibility criteria

Registration of one or more domain names under the .eu TLD can be requested by any of the following:

- (i) a Union citizen, independently of their place of residence; or
- (ii) a natural person who is not a Union citizen and who is resident of a Member State; or
- (iii) an undertaking established within the Union; or
- (iv) an organisation established within the Union without prejudice to the application of national law.

Article 4

Registration and revocation of domain names

1. A domain name shall be allocated to the eligible party whose request has been received first by the Registry in the technically correct manner as laid down by the procedures for registration requests on the basis of point (b) of Article 11.
2. A registered domain name shall be unavailable for further registration until the registration expires without renewal, or until the domain name is revoked.
3. The Registry may revoke a domain name at its own initiative and without submitting the dispute to any **prior alternative dispute resolution ('ADR') or extra-judicial procedure settlement of conflicts**, on the following grounds:
 - (a) outstanding unpaid debts owed to the Registry;
 - (b) non-fulfilment by the domain name holder of the eligibility criteria pursuant to Article 3;
 - (c) breach by the domain name holder of the requirements for registration requests laid down on the basis of points (b) **and (c)** of Article 11.
4. A domain name may also be revoked, and where necessary subsequently transferred to another party, ~~subject to~~ **following** an alternative dispute resolution ('ADR') or judicial procedure, where that name is identical or confusingly similar to a name in respect of which a right is established by national or Union law, and where it:
 - (a) has been registered by its holder without rights or legitimate interest in the name; or
 - (b) has been registered or is being used in bad faith.
5. Where a domain name is considered by a court of a Member State to be defamatory, racist or contrary to public policy, it shall be blocked by the Registry upon notification of a court decision and shall be revoked upon notification of a final court decision. The Registry shall block from future registration those names which have been subject to such a court order as long as such order remains valid.

Article 5

Languages, applicable law and jurisdiction

1. The registration of domain names shall be performed in all ~~the alphabetic~~ characters of the official languages of the Union in accordance with the available international standards as allowed by the relevant Internationalised Domain Names (IDNs) protocols.
2. Without prejudice to Regulation (EU) No 1215/2012 and rights and obligations recognised by the Member States or by the Union arising from international instruments, contracts between the Registry and Registrars as well as contracts between Registrars and registrants of domain names shall not designate, as applicable law, a law other than the law of one of the Member States, nor shall they designate as dispute-resolution body, a court, an arbitration court or another body located outside the Union.

Article 6

Reservation of domain names

1. The Registry may reserve **or register** a number of domain names considered necessary for its operational functions in accordance with the contract referred to in Article 8 (3).
2. The Commission may instruct the Registry to ~~introduce~~ **reserve or to register** domain names directly under the .eu TLD for use by the Union institutions and bodies.
3. Member States, without prejudice to domain names already reserved or registered, may notify to the Commission a list of domain names which:
 - (a) may not be registered, based on national law; or
 - (b) may be registered or reserved only ~~under~~ **at a the** second level ~~domain~~ by the Member States. These domain names must be limited to broadly-recognised geographical and/or geopolitical terms which affect the Member States' political or territorial organisation.

4. The Commission shall adopt the lists notified by the Member States by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

Article 7

Registrars

1. The Registry shall accredit registrars in accordance with reasonable, transparent and non-discriminatory accreditation procedures, which have been approved in advance by the Commission. The Registry shall make the accreditation procedures publicly available in readily accessible form.
2. The Registry shall apply equivalent conditions in equivalent circumstances in relation to the accredited .eu registrars providing equivalent services, and provide them with services and information under the same conditions and of the same quality as provided for its own equivalent services.

Section 2

REGISTRY

Article 8

Designation of the Registry

1. The Commission shall establish the **eligibility and selection** criteria and the procedure for the designation of the Registry, **including the rules for a call for expression of interests, and a draft contract** by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

2. The Commission shall designate the Registry following the completion of the procedure referred to in paragraph 1.
3. The Commission shall enter into a contract with the designated Registry. The contract shall specify the rules, policies and procedures for the provision of services by the Registry and the conditions according to which the Commission supervises the organisation, administration and management of the.eu TLD by the Registry. The contract shall be limited in time and renewable **once** and shall include the principles and procedures on the functioning of the .eu TLD laid down on the basis of Article 11.
4. By way of derogation from the procedures referred to in paragraphs 1 and 2, on imperative grounds of urgency, the Commission may designate the Registry by means of immediately applicable implementing acts in accordance with the procedure referred to in Article 17(3).

Article 9

Characteristics of the Registry

1. The Registry shall **be a non-profit organisation** ~~having~~ its registered office, central administration and principal place of business within the territory of the Union.
2. The Registry may impose fees ~~directly related to costs incurred, in so far as authorised by the contract concluded pursuant to Article 8 (3).~~ **Those fees shall be directly related to the costs incurred.**

Article 10

Obligations of the Registry

The Registry shall:

- (a) observe the rules, policies and procedures laid down in this Regulation and the contract referred to in Article 8 (3);
- (b) organise, administer and manage the .eu TLD in the general interest and on the basis of principles of quality, efficiency, reliability, **security, stability**, transparency, accessibility and non-discrimination and by ensuring fair conditions of competition;
- (c) enter into an appropriate contract providing for the delegation of the .eu TLD code, subject to prior consent of the Commission;
- (d) perform the registration of domain names in the .eu TLD where requested by any eligible party referred to in Article 3;
- (e) ensure, without prejudice to any court proceedings and subject to adequate procedural guarantees for the parties concerned, the possibility for Registrars and registrants to bring any contractual dispute with the Registry to an Alternative Dispute Resolution (ADR) body;
- (f) ensure the availability and **integrity** ~~authenticity~~ of the databases of domain names;
- (g) enter into an agreement, at its own expenses and with the consent of the Commission, with a reputable trustee or other escrow agent established within the territory of the Union designating the Commission as the beneficiary of the escrow agreement and submit to the respective trustee or escrow agent, on a daily basis, an **up-to-date** electronic copy of the content of the .eu TLD database;

- (h) implement the lists referred to in Article 6 (3);
- (i) promote the objectives of the Union in the field of internet governance;
- (j) publish the principles and procedures on the functioning of the .eu TLD laid down on the basis of Article 11 in all official languages of the Union;
- (k) undertake an audit by an independent body at its own expense and at least every two years to certify compliance with the present Regulation and send the outcome to the Commission;
- (l) participate, at the request of the Commission, in the work of the .eu Multistakeholder Council **Group** and cooperate with the Commission for improving the functioning and management of the .eu TLD.

Article 11

Principles and procedures on the functioning of the .eu TLD

The contract, concluded between the Commission and the designated Registry in accordance with Article 8 (3), shall contain the principles and procedures concerning the functioning of the .eu TLD, in compliance with this Regulation, including the following:

- (a) an ADR policy;
- (b) requirements and procedures for registration requests, policy on verification of registrants data and speculative registration of domain names;
- (c) policy on abusive registration of domain names;
- (d) policy on revocation of domain names;
- (e) treatment of intellectual property rights;

(f) measures aimed at enabling competent authorities to have access to the data in the Registry for the purposes of prevention, detection, investigation and prosecution of crime, as provided by Union or national law;

(g) detailed procedures to amend the contract.

Article 12

WHOIS database

1. The Registry shall set up and manage a WHOIS database facility for the purpose of **ensuring transparency by** providing accurate and up to date registration information about the domain names under the .eu TLD.
2. The WHOIS database shall contain relevant information, which is not excessive in relation to the purpose of the database, about the points of contact administering the domain names under the .eu TLD and the holders of the domain names. Where ~~the domain name holder is a natural person~~ **such information relates to an identified or identifiable natural person**, the information that is to be made publicly available shall be subject to the ~~domain name holder's~~ **data subject's** consent within the meaning of Regulation 2016/679.

Section 3

OVERSIGHT OF THE REGISTRY

Article 13

Supervision

1. The Commission shall monitor and supervise the organisation, administration and management of the .eu TLD by the Registry.
2. The Commission shall ascertain the soundness of financial management, the compliance with the Regulation and with the principles and procedures on the functioning of the .eu TLD referred to in Article 11 by the Registry and may request information for that purpose.
3. In accordance with its supervisory activities, the Commission may convey specific instructions to the Registry for correcting and/or improving the organisation, administration and management of the .eu TLD.
4. The Commission may, as appropriate, consult **the relevant** stakeholders and seek expert advice on the results of the supervisory activities provided in this Article and on ways to improve the organisation, administration and management of the .eu TLD by the Registry.

Article 14

.eu Multistakeholder Council Group

1. **The Commission shall establish a .eu Multistakeholder Council Group** ~~shall be established to advise the Commission on the implementation of the present Regulation.~~
which shall have the following tasks:

- (a) ~~assist and~~ advise the Commission in the implementation of the present Regulation;
- (b) issue opinions **to the Commission on strategic** matters of management, organisation and administration of the .eu TLD;
- (c) advise the Commission on matters of monitoring and supervision of the Registry.

2. The .eu Multistakeholder ~~Council~~ **Group** shall be composed of representatives **from stakeholders established in the European Union** drawn from the private sector, the technical community, **the** Member States and international organisations, civil society and academia and appointed by the Commission on the basis of an open, **non-discriminatory** and transparent procedure.

The .eu Multistakeholder Group may invite stakeholders established outside the Union to its meetings, on a case-by-case basis.

~~3. The .eu Multistakeholder Council shall have the following tasks:~~

- ~~(a) assist and advise the Commission in the implementation of the present Regulation;~~
- ~~(b) issue opinions on matters of management, organisation and administration of the .eu TLD;~~
- ~~(c) advise the Commission on matters of monitoring and supervision of the Registry.~~

4. **The .eu Multistakeholder Group shall be chaired by a representative of the Commission or by a person appointed by the Commission. The Commission shall provide secretarial services to the .eu Multistakeholder Group.**

CHAPTER III

Final provisions

Article 15

Reservation of rights

The Union retains all rights relating to the .eu TLD including, in particular, intellectual property rights and other rights to the Registry databases required to ensure the implementation of this Regulation and the right to re-designate the Registry.

Article 16

Evaluation and review

1. No later than five years after the date of application of this Regulation, and each three years thereafter, the Commission shall assess the implementation, effectiveness and functioning of the .eu TLD.
2. The Commission shall submit a report to the European Parliament and the Council on the findings of the assessment referred to in paragraph 1.

Article 17

Committee procedure

1. The Commission shall be assisted by ~~at~~ **the Communications committee (COCOM) established by [../..]**. That committee ~~shall be~~ **is** a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

Article 18

Transitional provisions

1. Domain name holders that have domain names registered pursuant to point (b) of Article 4 (2) of Regulation (EC) No 733/2002 shall retain the rights on the existing registered domain names under the .eu TLD.
2. By *[date – no later than two years after the entry into force]* the Commission shall take the necessary measures to designate and to enter into a contract with the Registry pursuant the present Regulation. The contract shall produce effects as from *[date – of the application of present regulation: no later than three years after the entry into force]*.
3. The contract concluded between the Commission and the Registry pursuant to point (c) of Article 3 (1) of Regulation (EC) No 733/2002 shall continue to produce effects until *[date – minus 1 day of the date of application of present regulation: no later than three years after the entry into force]*.

Article 19

Repeal

Regulation (EC) No 733/2002 and Commission Regulation (EC) No 874/2004 are repealed with effect from *[date – of the application of present regulation: no later than three years after the entry into force]*.

Article 20

Entry into force

This Regulation shall enter into force on the *twentieth* day following that of its publication in the *Official Journal of the European Union*.

It shall apply from *[date – no later than three years after the entry into force]*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President