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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Delegations will find attached document C(2020) 3075 final.

Encl.: C(2020) 3075 final



EUROPEAN
COMMISSION

Brussels, 14.5.2020
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COMMISSION DELEGATED REGULATION (EU) .../...

of 14.5.2020

Supplementing Regulation (EU) 2019/517 of the European Parliament and of the Council by establishing the eligibility and selection criteria and the procedure for the designation of the Registry of the .eu top-level domain name

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The .eu top-level domain gives Europe its own internet identity. It aims to boost the EU's visibility on the internet, increase users' choice of domain names and promote the development of e-commerce. Regulation (EU) 2019/517¹, amending and repealing Regulation (EC) No 733/2002² and repealing Commission Regulation (EC) No 874/2004³, entered into force on 18 April 2019 and sets out new rules for the implementation and functioning of the .eu top-level domain name. The new rules will apply from 13 October 2022 and provide the flexibility for the .eu domain to adapt to rapid market changes and modernise its governance structure.

Regulation (EU) 2019/517 empowers the Commission to adopt delegated and implementing acts that are instrumental in selecting the .eu top-level domain name Registry and to its operation. In particular, Article 8 of Regulation (EU) 2019/517 delegates the power to adopt acts in accordance with Article 290 TFEU to the Commission in respect of the eligibility and selection criteria and the procedure for designating the Registry. In accordance with Article 19(2) of Regulation (EU) 2019/517, the Commission shall, by 12 October 2021, take the necessary measures to designate the entity as the Registry for the management and administration of the .eu top-level domain and enter into a contract with it.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with Article 18(4) of Regulation 2019/517, the Commission conducted broad consultation with experts before the adoption of this Delegated Regulation. In particular, the Commission consulted with Member States on internet governance through the High Level Group on Internet Governance ('the Group'). The Group acts as a platform where the Commission and Member States exchange information and agree on a wide range of issues related to internet governance. Representatives of the Council of the European Union and of the European Parliament were also invited to take part in the Groups meetings where this Delegated Act was discussed. The consultation took place during three meetings of the Group (June, October and November 2019) and through an online consultation, where the Group's members were given the opportunity to submit written comments on the draft Delegated Act.

The consultations showed overall Member States support for the Commission's draft proposal. Different aspects of the draft proposal, such as the importance of ensuring transparency in the evaluation of the selection criteria, the importance of ensuring competition in the general selection process and the importance of having provisions in place in case of interrupted contractual negotiations were discussed. Concerning registrar function that the Registry might be asked by the Commission to perform in specific cases, some representatives of the Member States pointed out also to the importance of ensuring fair and equal treatment of third-party registrars. The Commission confirmed that it took into consideration Member States comments and included them in the Delegated Act and that some more general comments from the Member States will also be taken into consideration in other steps of the selection procedure, for example in the call for selection of the Registry.

¹ OJ L 91, 29.3.2019, p. 25-35.

² OJ L 113, 30.4.2002, p. 5.

³ OJ L 162, 30.4.2004, p. 40-50.

The Commission publishes the Delegated Regulation on its website for a four-week public consultation before adoption.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This Delegated Regulation includes three main parts.

The first part presents the objective and scope of the Act.

The second part covers the eligibility and selection criteria for the selection procedure. In particular, Article 3 requires that to be eligible for the selection procedure, an entity:

- Should be a non-profit organisation, either single organisation or consortium of entities. If one or more of the entities forming part of the consortium is a for-profit entity, the application should provide information about the measures it commits to taking in order to guarantee the legal and financial separation of any for-profit activities from the performance of the .eu Registry function.
- Should have its registered office, central administration and principal place of business within the Union (provision applicable to all the entities, in case the applicant is a consortium). The application should also explicitly state in which Member State the organisation is registered.
- Should carry out its tasks as a prime contractor, and neither as an agent nor subcontractor, except for specific circumstances such as when necessary for the performance of the work and after a written authorisation of the Commission.

All the applicants considered eligible will be ranked on the basis of the following selection criteria:

- Quality of service (weight: 40%): the applicants will have to demonstrate how they meet the requirements set out in Regulation (EU) 2019/517 that require the .eu top-level domain to be managed in a way that ensures a high level quality of services. They will also have to demonstrate that they will ensure a high level of security and trust in the .eu top-level domain by using state-of-the-art measures and best practices.
- Human and technical resources (weight: 30%): the applicants will have to provide information about their human and technical resources to organise, administer and manage the .eu top-level domain. They will have to provide accurate information on the type of organisation, administration and management that they intend to put in place to perform these functions. The applicants will also need to provide information about their resources, including human and technical capacity, to act as a registrar, if the Commission requires that they provide such a function to fulfil specific policy objectives linked to the objective set out in Regulation 2019/517 promoting accessibility and usage of .eu top-level domain name.
- Financial standing and compliance (weight: 30%): the applicants will have to provide detailed information demonstrating an adequate level of financial security and stability and the application of sound financial management principles.

The third part sets out the framework for the selection procedure. The Commission will carry out the procedure in an open and transparent way and it may seek the support of external experts. The procedure will take place in two phases:

- The first phase includes the verification of eligibility. During this phase, the Commission will carry out a first screening based on eligibility criteria and it will publish a list of eligible applicants.
- The second phase includes ranking and designation of the Registry. During this phase, the Commission will rank the eligible applicants on the basis of the selection criteria. The Commission will then adopt a decision designating the Registry, which will be the applicant with the highest ranking.

If either party terminates the contract negotiations, the Commission will designate as Registry the following eligible applicant listed in the ranking. If this is not possible, the Commission will launch another call for application to select the Registry.

COMMISSION DELEGATED REGULATION (EU) .../...

of 14.5.2020

Supplementing Regulation (EU) 2019/517 of the European Parliament and of the Council by establishing the eligibility and selection criteria and the procedure for the designation of the Registry of the .eu top-level domain name

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/517 of the European Parliament and of the Council of 19 March 2019 on the implementation and functioning of the .eu top-level domain name and amending and repealing Regulation (EC) No 733/2002 and repealing Commission Regulation (EC) No 874/2004⁴, and in particular Article 8(1) thereof,

Whereas:

- (1) The purpose of this Regulation is to establish the eligibility and selection criteria as well as the procedure for designating the Registry entrusted with organisation, administration and management of the .eu top-level domain.
- (2) The Registry should be selected on the basis of an open, transparent and non-discriminatory selection procedure allowing a fair and competitive selection process. To this end, and in order to reach the highest possible number of suitable candidates, the call for selection should be published in the *Official Journal of the European Union*.
- (3) The selection procedure should be organised by the Commission in two phases, in order to ensure the transparency of the process and an efficient use of the resources.
- (4) During the first phase of the procedure, the Commission should verify the eligibility of the applicants, in order to ensure that they comply with the minimum characteristics of the Registry as set in Regulation (EU) 2019/517.
- (5) During the second phase of the procedure, the Commission should establish the ranking of the eligible applicants based on criteria that ensure that the organisation, administration and management of the .eu top-level domain complies with the objectives of supporting the digital single market, building an online European identity and encouraging cross-border on line activities. In order to ensure that these objectives are met, the Commission should give appropriate weighting in the selection procedure

⁴ OJ L 91, 29.3.2019, p. 25.

to the quality of service, human and technical resources allocated and financial standing of the applicants.

- (6) In order to ensure appropriate and timely supervision of the core registry functions, the infrastructure needed to perform such functions should be located in the Union. This infrastructure should include, among others, the necessary software, hardware and other facilities that are necessary for the administration, functioning and management of the .eu top-level domain, such as the database for .eu TLD registration data, the database for .eu TLD accredited registrars, the primary authoritative server for the .eu TLD, the third party data escrow for the .eu TLD zone file and domain name registration information, the public query services system, and the website with up-to-date policy and registration information for the .eu TLD.
- (7) In order to ensure an adequate level of the management of the .eu top-level domain, the call for selection published by the Commission should establish a minimum threshold to be met by the applicants on the basis of the selection criteria, in order to be able to be designated as Registry.
- (8) In order to ensure the transparency of the procedure, the Commission should provide reasons for its decisions which should be communicated to the applicants.
- (9) The applicant with the highest ranking based on the evaluation score should be designated as the Registry. In case the contract with the designated Registry is not concluded, the Commission should be able to designate as Registry the next ranking applicant.
- (10) In order to allow a fair and competitive selection procedure for the Registry, which has to be concluded at the latest by 12 October 2021 with the signature of the contract, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*.

HAS ADOPTED THIS REGULATION:

Article 1
Subject matter

This Regulation establishes the eligibility and selection criteria as well as the procedure for the designation of the Registry of the .eu top-level domain, in accordance with the principles of openness, transparency and non-discrimination.

Article 2
Eligibility criteria

1. The Registry shall be a not-for-profit organisation, formed in accordance with the law of a Member State. It shall have its registered office, central administration and principal place of business within the territory of the Union.
2. The infrastructure needed to perform the core registry functions as provided in Article 5 (2) shall be located within the territory of the Union.

3. Where a consortium of firms or a group of contractors sets up the not-for-profit organisation, each entity forming part of such consortium or group shall have its registered office, central administration and principal place of business within the Union.
4. The Registry shall undertake to carry out its tasks as a prime contractor. Subcontracting may be allowed exclusively where necessary for the performance of the work and with a prior written agreement from the Commission.

Article 3 *Applications*

1. The application shall clearly identify the Member States in which the not-for-profit organisation is registered and provide complete information about the location of its registered office, central administration and principal place of business.
2. If the not-for-profit organisation is set up by a consortium of firms or a group of contractors, the application shall provide information about the different roles and the status of each member of the consortium or group, including all the information required under paragraph 1 of this Article.
3. Where one or more of the entities forming part of the consortium or group is a for-profit entity, the application shall provide information about the measures the consortium or group commits to taking to guarantee the financial and legal separation of any for-profit activities from the activities of the Registry function.
4. The application shall provide a description of the internal organisation of the not-for-profit organisation and be accompanied by all supporting documents as requested in the call for selection of the Registry.

Article 4 *Quality of service*

1. The Registry shall pursue operational excellence and ensure a high quality of service at competitive prices. The Commission shall evaluate the ability of eligible applicants to provide the required quality of service. This criterion shall be weighted as 40 % of total evaluation score.
2. Applicants shall provide information about their experience in areas related to the organisation, administration and management of domain names.
3. Applicants shall describe how they plan to manage the .eu top-level domain in a way that ensures a high level of quality of services provided, taking into account the minimum functional and performance specifications for country code top-level domains registry services laid down by Internet Corporation for Assigned Names and Numbers.
4. Applicants shall describe which measures they plan to put in place to ensure a high level of security and trust in the .eu top-level domain.

Article 5
Human and technical resources

1. The Commission shall evaluate the applicant's human and technical resources. This criterion shall be weighted as 30% of the total evaluation score.
2. Applicants shall provide information about their human and technical resources and describe how these resources are sufficient to perform the following functions:
 - (a) to organise, administer and manage the .eu top-level domain, including the maintenance of the corresponding databases and the associated public query services, registering domain names, running the registry of domain names, running the Registry top-level domain name servers and creating and managing the top-level domain zone files;
 - (b) to ensure high quality, transparency, security, stability, predictability, reliability, accessibility, efficiency, non-discrimination, fair conditions of competition and consumer protection in the provision of their services.
3. The applicants shall describe in their application the type of organisation, administration and management that they intend to put in place to fulfil the functions referred to in paragraph 2, including the following:
 - (a) human resources and the necessary systems;
 - (b) software and hardware;
 - (c) facilities necessary for the operation and management of the .eu top-level domain.
4. The applicants shall describe how their resources, including human and technical capacity, are sufficient to perform the registrar function, should the Commission request to activate such a function to fulfil specific policy objectives. The applicant shall also provide information about how the allocation of such resources to perform the registrar function complies with the requirements set in Article 7(2) of Regulation (EU) 2019/517.
5. Applicants shall provide information about how they plan to have in place the complete organisational and operational structure so that they are able to start functioning as Registry from 13 October 2022.

Article 6
Financial standing and compliance

1. The Commission shall evaluate the financial standing of eligible applicants. This criterion shall be weighted as 30% of the total evaluation score.
2. The applicants shall:
 - (a) demonstrate a level of financial security and stability that is adequate in order to fulfil the tasks of the Registry;

- (b) provide complete information about the anticipated costs and capital requirements to organise, administer and manage the .eu top-level domain, the availability of capital and insurance; a revenue model, including a pricing model, a relevant market analysis, a marketing plan, and registry failure provisions;
 - (c) describe how they will apply sound financial management principles;
 - (d) provide information on the fees that they intend to apply, and describe how the levels of the fees is determined on the basis of the costs incurred.
3. The applicants shall provide information on the external audits they will submit to demonstrate compliance with Regulation (EU) 2019/517.

Article 7 *Selection procedure*

1. The Commission shall organise an open, transparent and non-discriminatory selection procedure for the selection of the Registry. The call for selection shall be published in the *Official Journal of the European Union*. Applicants shall have at least 30 working days to submit their applications.
2. The Commission may seek advice and assistance from external experts to analyse and/or evaluate the applications. Such external experts shall be selected on the basis of their expertise and high level of independence and impartiality.

Article 8 *First phase of the selection – verification of eligibility*

1. Applicants shall submit their applications to the Commission in accordance with the instructions set out in the call for selection.
2. The Commission may request applicants to provide additional information regarding the fulfilment of eligibility criteria within a set timeframe. As part of the verification of eligibility, the Commission shall assess:
- (a) if the application was submitted on or before the deadline established in the call for selection;
 - (b) compliance with the requirements provided in Articles 2 and 3;
 - (c) if the application is complete and, where applicable, the applicant has provided the additional information requested by the Commission pursuant to paragraph 2.
3. Within 40 working days following the closing date for the application, the Commission shall decide on the eligibility of the applicants. The Commission shall give reasons where it decides that an applicant does not meet the eligibility criteria. It shall immediately communicate such decision to that applicant.

4. The Commission shall publish the list of eligible applicants.

Article 9

Second phase of the selection – ranking and designation of the Registry

1. Within 80 working days following the publication of the list of eligible applicants, the Commission shall rank the eligible applicants that have obtained the minimum threshold of the evaluation score identified in the call for selection, on the basis of the selection criteria.
2. The Commission shall inform the eligible applicants of the final ranking.
3. The Commission shall designate the applicant with the highest ranking as the Registry. It shall publish the decision designating the Registry in the *Official Journal of the European Union*.

Article 10

Designation of the Registry in case the contract is not concluded

Where the contract negotiations between the designated Registry and the Commission are terminated without the conclusion of a contract, the Commission shall designate the next ranking applicant as the Registry. If this is not possible, the Commission shall organise a new selection procedure for the selection of the Registry.

Article 11

Entry into force

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

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

Done at Brussels, 14.5.2020

For the Commission

The President

Ursula VON DER LEYEN