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 (Text with EEA relevance)

COMMISSION REGULATION (EC) No 874/2004

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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[(1)], and in particular Article 5(1) thereof,

Having consulted the Registry in accordance with Article 5(1) of Regulation (EC) No 733/2002,

Whereas:

(1) The initial implementation stages of the .eu Top Level Domain (TLD), to be created pursuant to Regulation (EC) No 733/2002, have been completed by designating a legal entity, established within the Community to administer and manage the .eu TLD Registry function. The Registry, designated by Commission Decision 2003/375/EC[(2)], is required to be a non-profit organisation that should operate and provide services on a cost covering basis and at an affordable price.

(2) Requesting a domain name should be possible through electronic means in a simple, speedy and efficient procedure, in all official languages of the Community, through accredited registrars.

(3) Accreditation of registrars should be carried out by the Registry following a procedure that ensures fair and open competition between Registrars. The accreditation process should be objective, transparent and non-discriminatory. Only parties who meet certain basic technical requirements to be determined by the Registry should be eligible for accreditation.

(4) Registrars should only accept applications for the registration of domain names filed after their accreditation and should forward them in the chronological order in which they were received.

(5) To ensure better protection of consumers' rights, and without prejudice to any Community rules concerning jurisdiction and applicable law, the applicable law in disputes between registrars and registrants on matters concerning Community titles should be the law of one of the Member States.

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(6) Registrars should require accurate contact information from their clients, such as full name, address of domicile, telephone number and electronic mail, as well as information concerning a natural or legal person responsible for the technical operation of the domain name.

(7) The Registry policy should promote the use of all the official languages of the Community.

(8) Pursuant to Regulation (EC) No 733/2002, Member States may request that their official name and the name under which they are commonly known should not be registered directly under .eu TLD otherwise than by their national government. Countries that are expected to join the European Union later than May 2004 should be enabled to block their official names and the names under which they are commonly known, so that they can be registered at a later date.

(9) A Member State should be authorised to designate an operator that will register as a domain name its official name and the name under which it is commonly known. Similarly, the Commission should be authorised to select domain names for use by the institutions of the Community, and to designate the operator of those domain names. The Registry should be empowered to reserve a number of specified domain names for its operational functions.

(10) In accordance with Article 5(2) of Regulation (EC) No 733/2002, a number of Member States have notified to the Commission and to other Member States a limited list of broadly-recognised names with regard to geographical and/or geopolitical concepts which affect their political or territorial organisation. Such lists include names that could either not be registered or which could be registered only under the second level domain in accordance with the public policy rules. The names included in these lists are not subject to the first-come first-served principle.

(11) The principle of first-come-first-served should be the basic principle for resolving a dispute between holders of prior rights during the phased registration. After the termination of the phased registration the principle of first come first served should apply in the allocation of domain names.

(12) In order to safeguard prior rights recognised by Community or national law, a procedure for phased registration should be put in place. Phased registration should take place in two phases, with the aim of ensuring that holders of prior rights have appropriate opportunities to register the names on which they hold prior rights. The Registry should ensure that validation of the rights is performed by appointed validation agents. On the basis of evidence provided by the applicants, validation agents should assess the right which is claimed for a particular name. Allocation of that name should then take place on a first-come, first-served basis if there are two or more applicants for a domain name, each having a prior right.

(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 also comply with

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the relevant data protection rules, principles, guidelines and best practices, notably concerning the amount and type of data displayed in the WHOIS database. Domain names considered by a Member State court to be defamatory, racist or contrary to public policy should be blocked and eventually revoked once the court decision becomes final. Such domain names should be blocked from future registrations.

(14) In the event of the death or insolvency of a domain name holder, if no transfer has been initiated at the expiry of the registration period, the domain name should be suspended for 40 calendar days. If the heirs or administrators concerned have not registered the name during that period it should become available for general registration.

(15) Domain names should be open to revocation by the Registry on a limited number of specified grounds, after giving the domain name holder concerned an opportunity to take appropriate measures. Domain names should also be capable of revocation through an alternative dispute resolution (ADR) procedure.

(16) The Registry should provide for an ADR procedure which takes 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.

(17) The Registry should select service providers that have appropriate expertise on the basis of objective, transparent and non-discriminatory criteria. ADR should respect a minimum of uniform procedural rules, similar to the ones set out in the Uniform Dispute Resolution Policy adopted by the Internet Corporation of Assigned Names and Numbers (ICANN).

(18) In view of the impending enlargement of the Union it is imperative that the system of public policy rules set up by this Regulation enter into force without delay.

(19) The measures provided for in this Regulation are in accordance with the opinion of the Communications Committee established by Article 22(1) of Directive 2002/21/EC of the European Parliament and of the Council[(3)],

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER

Article 1

Subject matter

This Regulation sets out the public policy rules concerning the implementation and functions of the .eu Top Level Domain (TLD) and the public policy principles on registration referred to in Article 5(1) of Regulation (EC) No 733/2002.

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CHAPTER II

PRINCIPLES ON REGISTRATION

Article 2

Eligibility and general principles for registration

An eligible party, as listed in Article 4(2)(b) of Regulation (EC) No 733/2002, may register one or more domain names under .eu TLD.

Without prejudice to Chapter IV, a specific domain name shall be allocated for use to the eligible party whose request has been received first by the Registry in the technically correct manner and in accordance with this Regulation. For the purposes of this Regulation, this criterion of first receipt shall be referred to as the 'first-come-first-served' principle.

Once a domain name is registered it shall become unavailable for further registration until the registration expires without renewal, or until the domain name is revoked.

Unless otherwise specified in this Regulation, domain names shall be registered directly under the .eu TLD.

Domain name registration shall be valid only after the appropriate fee has been paid by the requesting party.

Domain names registered under the .eu TLD shall only be transferable to parties that are eligible for registration of .eu domain names.

Article 3

Requests for domain name registration

The request for domain name registration shall include all of the following:

(a) the name and address of the requesting party;

(b) a confirmation by electronic means from the requesting party that it satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) No 733/2002;

(c) an affirmation by electronic means from the requesting party that to its knowledge the request for domain name registration is made in good faith and does not infringe any rights of a third party;

(d) an undertaking by electronic means from the requesting party that it shall abide by all the terms and conditions for registration, including the policy on the extra-judicial settlement of conflicts set out in Chapter VI.

Any material inaccuracy in the elements set out in points (a) to (d) shall constitute a breach of the terms of registration.

[[F1]Any verification by the Registry of the validity of registration applications shall take place prior to the registration at the initiative of the Registry or subsequently to the registration at the initiative of the Registry or pursuant to a dispute for the registration of the domain name in question.**]**

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Textual Amendments

F1 Substituted by Commission Regulation (EU) 2015/516 of 26 March 2015 amending Regulation (EC) No 874/2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and the principles governing Registration (Text with EEA relevance).

Article 4

Accreditation of registrars

Only registrars accredited by the Registry shall be permitted to offer registration services for names under the .eu TLD.

The procedure for the accreditation of registrars shall be determined by the Registry and shall be reasonable, transparent and non-discriminatory, and shall ensure effective and fair conditions of competition.

Registrars are required to access and use the Registry's automated registration systems. The Registry may set further basic technical requirements for the accreditation of registrars.

The Registry may ask registrars for advance payment of registration fees, to be set annually by the Registry based on a reasonable market estimate.

The procedure, terms of accreditation of registrars and the list of accredited registrars shall be made publicly available by the Registry in readily accessible form.

Each registrar shall be bound by contract with the Registry to observe the terms of accreditation and in particular to comply with the public policy principles set out in this Regulation.

Article 5

Provisions for registrars

Without prejudice to any rule governing jurisdiction and applicable law, agreements between the Registrar and the registrant of a domain name cannot designate, as applicable law, a law other than the law of one of the Member States, nor can they designate a dispute-resolution body, unless selected by the Registry pursuant to Article 23, nor an arbitration court or a court located outside the Community.

A registrar who receives more than one registration request for the same name shall forward those requests to the Registry in the chronological order in which they were received.

Only applications received after the date of accreditation shall be forwarded to the Registry.

Registrars shall require all applicants to submit accurate and reliable contact details of at least one natural or legal person responsible for the technical operation of the domain name that is requested.

Registrars may develop label, authentication and trustmark schemes in order to promote consumer confidence in the reliability of information that is available under a domain