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*****I**

REPORT

on the proposal for a European Parliament and Council regulation on the implementation of the Internet Top Level Domain ".EU"
(COM(2000) 827 – C5-0715/2000 – 2000/0328(COD))

Committee on Industry, External Trade, Research and Energy

Rapporteur: Colette Flesch

Draftsman (*):

Arlene McCarthy, Committee on Legal Affairs and the Internal Market

(*) Enhanced Hughes procedure

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 12 December 2000 the Commission submitted to Parliament, pursuant to Article 251(2) and Article 156 of the EC Treaty, the proposal for a European Parliament and Council regulation on the implementation of the Internet Top Level Domain ".EU" (COM(2000) 827 - 2000/0328 (COD)).

At the sitting of 18 January 2001 the President of Parliament announced that she had referred this proposal to the Committee on Industry, External Trade, Research and Energy as the committee responsible and the Committee on Legal Affairs and the Internal Market and the Committee on Budgets for their opinions (C5-0715/2000).

At the sitting of 15 February 2001 the President of Parliament announced that the Committee on Legal Affairs and the Internal Market, which had been asked for its opinion, would be involved in drawing up the report under the enhanced Hughes procedure.

The Committee on Industry, External Trade, Research and Energy had appointed Colette Flesch rapporteur at its meeting of 24 January 2001.

It considered the Commission proposal and draft report at its meetings of 26 February, 24 April and 20 June 2001.

At the last meeting it adopted the draft legislative resolution by 48 votes to 0, with 1 abstention.

The following were present for the vote: Carlos Westendorp y Cabeza, chairman; Renato Brunetta and Peter Michael Mombaur, vice-chairman; Colette Flesch, rapporteur; Konstantinos Alyssandrakis, Ward Beysen (for Astrid Thors), Guido Bodrato, Massimo Carraro, Gérard Caudron, Giles Bryan Chichester, Nicholas Clegg, Dorette Corbey (for Harlem Désir), Elisa Maria Damião (for François Zimeray), Willy C.E.H. De Clercq, Francesco Fiori (for Alejo Vidal-Quadras Roca), Christos Folias, Jacqueline Foster (for Concepció Ferrer), Neena Gill (for Glyn Ford), Norbert Glante, Lisbeth Grönfeldt Bergman (for Marjo Matikainen-Kallström), Michel Hansenne, Malcolm Harbour (for Roger Helmer), Hans Karlsson, Bashir Khanbhai (for Konrad K. Schwaiger), Helmut Kuhne (for Rolf Linkohr), Werner Langen, Caroline Lucas, Eryl Margaret McNally, Nelly Maes, Erika Mann, Elizabeth Montfort, Angelika Niebler, Giuseppe Nisticò (for Umberto Scapagnini), Reino Paasilinna, Yves Piétrasanta, Elly Plooi-j-van Gorsel, John Purvis, Godelieve Quisthoudt-Rowohl, Imelda Mary Read, Mechtilde Rothe, Christian Foldberg Røvsing, Paul Rübig, Ilka Schröder, Helle Thorning-Schmidt (for Myrsini Zorba), Claude Turmes (for Nuala Ahern), Jaime Valdivielso de Cué, Elena Valenciano Martínez-Orozco, W.G. van Velzen, Dominique Vlasto, Anders Wijkman and Olga Zrihen Zaari.

The opinion of the Committee on Legal Affairs and the Internal Market is attached; the Committee on Budgets decided on 27 February 2001 not to deliver an opinion.

The report was tabled on 21 June 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Proposal for a European Parliament and Council regulation on the implementation of the Internet Top Level Domain ".EU" (COM)2000) 827 – C5-0715/2000 – 2000/0328(COD))

The proposal is amended as follows:

Text proposed by the Commission ¹

Amendments by Parliament

Amendment 1 Recital 1a (new)

(1a) The establishment of the .EU cc TLD will contribute to the promotion of the European Union image on the global information networks, and bring an added value to the Internet naming system additionally to the national ccTLDs.

Justification:

Creating the TLD will give the European Union a presence in Internet management and correct the imbalance there has been to date in favour of the United States.

Amendment 2 Recital 6 a (new)

(6a) The Internet Corporation for Assigned Names and Numbers [ICANN] is presently responsible for the delegation of codes representing TLD to Registries without prejudice, however, of what may happen in the future; the Council Resolution of 5 October 2000 encourages the implementation of the principles applied to ccTLD Registries adopted by the Governmental Advisory Committee (GAC); the Registry shall enter into a contract with ICANN respecting the GAC

¹ OJ C 096, 27.3.2001, p. 333.

principles.

Justification:

ICANN is the body presently tasked with regulating the assigning of Internet addresses at global level. Account must be taken of the possibility that, in future, other bodies could be called on to perform this task.

Amendment 3
Recital 6 b (new)

6b. ‘Whois’-type databases which provide minimum information on a domain name holder are an essential tool in boosting user confidence.

Justification

The development of electronic trade will depend primarily on user confidence in on-line traders.

Amendment 4
Recital 7 a (new)

7a. In accordance with international practice, Internet management is based on the principles of non-interference, self-management and self-regulation; these principles should be adopted in Community practice.

Justification

It is important to refer to these principles, which have already been mentioned in Parliament’s resolution on the organisation and management of the Internet – international and European policy issues, so as to ensure that the Internet is as independent as possible from any kind of national interference and to facilitate the adoption of self-regulatory codes in cases where there is no need to adopt legislative measures.

Amendment 5

Recital 9 a (new)

(9a) This Regulation is without prejudice to Community law in the field of personal data protection, the implementation of this Regulation should be made in compliance with the principles relating to privacy and the protection of personal data.

Justification:

Recent experience has shown that running the Internet domain name system, in particular operation of the domain name registries, may raise problems under Community law, involving, in particular, competition, intellectual property and data protection, which are areas covered by Community legislation.

Amendment 6

Recital 10 a (new)

10a. Member States may prevent the registration of domain names containing established concepts whose nature is geographical or historical and which impact upon the territorial organisation of a Member State;

Justification

This amendment seeks to ensure that a Member State has the power to prevent the registration of certain names that may have direct and marked impact upon its territorial organisation.

Amendment 7

Recital 10 b (new)

(10b) The new .EU TLD registry will not be empowered to issue sub-domain registrations using Member State domain identities.

Justification

To clarify the .EU sphere of operation.

Amendment 8
Recital 11 a (new)

(11a) When reference is made to interested parties, provision must be made for consultation encompassing, in particular, undertakings, organisations, natural persons and public authorities.

Justification:

The aim of this amendment is to point up the importance of Commission consultation of interested sectors and to define them more clearly.

Amendment 9
Article 1

This Regulation charges the Commission with the implementation of the .EU Top Level Domain (TLD), sets out the conditions for such implementation, including the designation of a Registry, and establishes the **public** policy framework within which the Registry will function.

The objective of this Regulation is to implement .EU Top Level Domain (TLD) within the European Community. No more than six months after the entry into force of this Regulation, the Commission shall issue a public call for expressions of interest. The call for expressions of interest shall be published in the Official Journal of the European Communities. Furthermore, the Regulation charges the Commission with its implementation, sets out the conditions for such implementation, including the designation of a Registry, in the Official Journal of the European Communities, and establishes the **general** policy framework within which the Registry will function.

Justification

The aim of this amendment is to spell out the objective of the rules and to provide a better definition of their scope. The procedure for calling for expressions of interest should be made as transparent and publicly accessible as possible.

The expression "public policy" is also misleading, being the English rendering of the French "ordre public". Matters of public policy in the strict sense should not be determined without any scrutiny by democratically elected representatives.

Amendment 10 Article 1, first paragraph a (new)

This Regulation applies without prejudice to arrangements in Member States regarding national Top Level Domains.

Justification

This Regulation must be without prejudice to national top-level domains in EU Member States.

Amendment 11 Article 2, first paragraph

1. For the purposes of this Regulation, "Registry" means the entity entrusted with the organisation, administration and management of the .EU TLD including maintenance of the corresponding databases, registration of domain names, operation of the Registry TLD name-servers and dissemination of TLD zone files.

1. For the purposes of this Regulation, "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 dissemination of TLD zone files.

Justification

The aim of this amendment is to make reference to 'whois' databases providing minimum information on a domain name holder. Such databases, in respect of which the data protection Directives provides for a number of mechanisms, are an essential tool to boost consumer confidence.

Amendment 12

Article 2, paragraph 1 a (new)

1a. For the purposes of this Regulation, 'Registrar' means the person or entity under contract with the Registry to provide domain name registration services.

Justification

The definition of the 'Registrar' has been added with a view to avoiding potential misunderstandings, since the Registry cannot act as both registry and registration office.

Amendment 13

Article 2, paragraph 2

2. The Commission shall designate the Registry. The Commission and the Registry shall enter into a contract for a limited period of time, renewable. The contract shall specify the conditions according to which the Commission supervises the organisation, administration and management of the .EU TLD by the Registry.

2. The Commission shall designate the Registry ***after publishing a call for expressions of interest in the Official Journal of the European Communities and after the public tendering procedure has been completed.*** The Commission and the Registry shall enter into a contract for a limited period of time, renewable. The contract shall specify the conditions according to which the Commission supervises the organisation, administration and management of the .EU TLD by the Registry.

Justification:

It is considered that the fairest and most transparent method of setting up the Registry is to seek expressions of interest by placing a call for expressions of interest in the Official Journal. It is hoped that in this way the proposals will be put forward by groups with the best expertise, for example those running the top-level national domains.

Amendment 14
Article 2, paragraph 3

The Registry shall be a not-for profit entity formed in accordance with the law of a Member State and having its registered office, central administration and principal place of business within the Community. ***The Commission shall be entitled to make a management charge for all services it provides to support the registry activities.***

Justification

To ensure that the Registry operates at no net cost to the EU budget.

Amendment 15
Article 2, paragraph 3 a (new)

3a. The Registry shall enjoy independence from the persons or entities acting as Registrars and shall abide by the principles of transparency, neutrality and non-discrimination in its dealings with them.

Justification

Under their contract with the Registry, Registrars will be responsible for providing domain name registration services to applicants. Bearing in mind that the Registry will not be acting as Registrar, it must function independently of the Registrars, in the interests of transparency, neutrality and non-discrimination.

Amendment 16

Article 2, paragraph 4

4. *The Registry shall enter into a contract with the Internet Corporation for Assigned Names and Numbers (ICANN), having obtained the prior consent of the Commission. Such contract shall be consistent with the relevant principles recommended by the ICANN Governmental Advisory Committee (GAC).*

4. *Having obtained the prior consent of the Commission, the Registry shall enter into the appropriate contract providing for the delegation of the .EU TLD code. To this effect the relevant principles adopted by the ICANN Governmental Advisory Committee shall be taken into account.*

Justification:

Recent experience has shown that running the Internet domain name system, in particular operation of the domain name registries, may raise problems under Community law, involving, in particular, competition, intellectual property and data protection, which are areas covered by Community legislation.

Amendment 17
Article 2, paragraph 4 a (new)

4a. The Registry shall not act as Registrar.

Justification

In order to draw a distinction between the duties of the Registry and those of the Registrars, to whom free competition rules apply, conflicts of interest between the Registry and the Registrars should be prevented, thereby guarding against distortions in competition.

Amendment 18
Article 2, paragraph 4 b (new)

4 b. The Registry shall be advised, in particular with regard to the registration of second-level names, by a Policy Advisory Board, appointed on a geographically balanced basis, due regard being given to experience in the field. Members of the Board shall draw

representation from consumer/user groups, industry including small and medium-sized businesses, trade unions and professional associations, Internet service providers, intellectual property rightholders and public authorities, including the democratically elected representatives of the peoples of Europe.

Justification:

The idea behind having a Policy Advisory Board is that, in allocating second-level registrations (e.g. health.EU, internal market.EU, education.EU), the Registry needs to be advised by a cross-section of society.

Amendment 19
Article 3(1)

1. The Registry shall observe the rules, policies and procedures laid down in this Regulation and ***adopted by the Commission pursuant thereto.***

1. The Registry shall observe the rules, policies and procedures laid down in this Regulation and ***the contracts referred to in Article 2 of this Regulation. The Registry shall observe transparent and non-discriminatory procedures.***

Justification

The aim of this amendment is to make reference to the two contracts entered into by the Registry:

- the contract between the Commission and the Registry, under which the code .EU is assigned to it for a limited, renewable period;*
- the contract between the Registry and ICANN.*

In addition, a reference to transparent and non-discriminatory procedures should be included in the first paragraph of the article.

Amendment 20
Article 3, paragraph 2, introductory phrase

2. The Registry shall :

2. The Registry shall, ***in accordance with best-practice at national level*** :

Justification:

Account should be taken of best practice at national level.

Amendment 21
Article 3, paragraph 2, point a

a) organise, administer and manage the .EU TLD on the basis of principles of quality, efficiency, reliability and accessibility;

a) organise, administer and manage the .EU TLD ***in the general interest and*** on the basis of principles of quality, efficiency, reliability and accessibility.

Justification

This amendment stresses that the Registry must organise and manage the .EU TLD in the general interest.

Amendment 22
Article 3, paragraph 2, subparagraph b

b) observe applicable public procurement rules and, in any event, observe transparent and non-discriminatory procedures;

deleted

Justification

With regard to the first part, public procurement rules will be applicable in any case if the conditions are met. With regard to the second part, the deleted text appears in the amendment on Article 3 (1).

Amendment 23
Article 3, paragraph 2, point c

c) register domain names in the .EU TLD requested by any:

c) register, ***as a general rule on a first-come, first served basis***, domain names in

the .EU TLD requested by any:

Justification:

It is important to establish the principle that registrations should be done on a first come, first served basis.

Amendment 24

Article 3, paragraph 2, point c, subpoint (i)

i) undertaking having its registered office, central administration or principal place of business within the Community, or

i) undertaking having its registered office, central administration or principal place of business ***but which at least are legally established*** within the Community, or

Justification

This addition will help creating confidence for electronic market in Europe insofar as consumers and buyers will know that an entity registered under the dot EU has a legal existence and respects the E-Commerce EU directive.

Amendment 25

Article 3, paragraph 2, point d a (new)

d a) adopt procedures for, and carry out, accreditation of .EU Registrars, ensuring that a system of free competition applies.

Justification

Adopting procedures and accrediting registrars is one of the Registry's main purposes.

(Amendment 26)

Article 3, paragraph 2, point d b (new)

d b) ensure the integrity of the data base;

Justification:

The list of the Registry's tasks in Article 3 as originally worded is not sufficiently detailed: at least its basic tasks should be explicitly stated.

Amendment 27

Article 3, paragraph 2, point d c (new)

d c) provide information, in accordance with data protection rules, to parties having a legitimate interest, including where appropriate law enforcement authorities;

Justification:

The list of the Registry's tasks in Article 3 as originally worded is not sufficiently detailed: at least its basic tasks should be explicitly stated.

Amendment 28

Article 3, paragraph 2, point d d (new)

d d) effect suspensions, cancellations and transfers of registrations;

Justification:

The list of the Registry's tasks in Article 3 as originally worded is not sufficiently detailed: at least its basic tasks should be explicitly stated.

Amendment 29
Article 3, paragraph 2, point d e (new)

d e) provide an extrajudicial dispute resolution system (mediation and arbitration) if not free of charge, at least on a cost-recovery basis;

Justification:

The Registry should be simply a registry and not a supervisory body and every precaution should be taken to avoid its incurring legal liability as a result of the registration of names.

Amendment 30
Article 3, paragraph 2, point d f (new)

d f) adopt and apply suitable terms and conditions, including a code of conduct for the registration of domain names.

Justification:

If there is a dispute between a third party and a registrant, the Registry should simply hold the ring by providing a mediation and arbitration service either free of charge or on a cost-recovery basis. It should be left open to the Registry to decide whether making a charge for dispute resolution might deter cyber-squatters.

Amendment 31
Article 3, paragraph 3

3. Any aspects of the registration policy for the implementation of the .EU TLD other than those referred to in Article 4(1) shall be determined by the Registry in consultation with the Commission and other interested parties and in accordance with the contract between the Commission and the Registry referred to in Article 2(2).

3. The Registry shall, in consultation with the Commission and other interested parties, and in accordance with the contract between the Commission and the Registry referred to in Article 2(2), determine registration policy in areas where general policy rules have not been adopted.

Justification

It is proposed that a general reference be made to registration policy in areas not coming under general policy.

Amendment 32 Article 3 a (new)

The Registry shall be responsible merely for registering domain names, in principle on a first-come, first-served basis. However, registration of .EU domain names by the Registry may be implemented in a phased manner to ensure appropriate temporary opportunities for the holders of prior rights recognised in law and public policy to register their names. Registration per se shall, in principle, confer no legal rights on the registrant and the Registry shall incur no legal liability as a result of its having inadvertently registered a particular name in breach of the rights of a third party.

Justification:

The list of the Registry's tasks in Article 3 as originally worded is not sufficiently detailed: at least its basic tasks should be explicitly stated. In addition, it is important to establish the principle that registrations should be done on a first come, first served basis. The draftsman's view is that the Registry should be simply a registry and not a supervisory body and every precaution should be taken to avoid its incurring legal liability as a result of the registration of names. Consequently, if there is a dispute between a third party and a registrant, the Registry should simply hold the ring by providing a mediation and arbitration service either free of charge or on a cost-recovery basis. It should be left open to the Registry to decide whether making a charge for dispute resolution might deter cyber-squatters.

Amendment 33
Article 4, paragraph 1

1. The Commission shall adopt **public** policy rules concerning the implementation of the .EU TLD in accordance with the procedure referred to in Article 5 (2), having consulted the Registry.

1. The Commission shall adopt **general** policy rules concerning the implementation of the .EU TLD in accordance with the procedure referred to in Article 5 (2), having consulted the Registry.

Justification:

The expression "public policy" is misleading, being the English rendering of the French "ordre public". Matters of public policy in the strict sense should not be determined without any scrutiny by democratically elected representatives.

Amendment 34
Article 4, paragraph 2, point a

a) adopt a policy and procedure to **prevent** speculative and abusive registration of domain names, which shall conform to best practices, including the recommendations of the World Intellectual Property Organisation (WIPO);

a) adopt a policy and procedure to **revoke** speculative and abusive registration of domain names, which shall conform to best practices, including the recommendations of the World Intellectual Property Organisation (WIPO). ***This policy will be based on the principle that an entity wishing to register must have the related rights on the registered names;***

Justification

This addition will help preventing domain name conflicts.

Amendment 35
Article 4, paragraph 2, point b

b) adopt an extra-judicial settlement of conflicts policy and procedure ***to promptly*** resolve disputes between domain names and intellectual property rights, which shall conform to best practices, including the recommendations of the WIPO. This policy shall provide adequate procedural guaranties for the parties concerned and shall apply without prejudice to any court proceeding.

b) adopt an extra-judicial settlement of conflicts policy and procedure ***to*** resolve disputes between domain names and intellectual property rights ***promptly and free of charge or at least on a cost-recovery basis***, which shall conform to best practices, including the recommendations of the WIPO. This policy shall provide adequate procedural guaranties for the parties concerned and shall apply without prejudice to any court proceeding;

Justification:

Self-explanatory.

Amendment 36
Article 4, paragraph 2, point b a (new)

b a) adopt terms and conditions for the registration of domain names to be used by on-line traders which ultimately should incorporate a requirement to adhere to a duly-accredited code of conduct for on-line trading and to join a duly accredited on-line extrajudicial dispute-resolution scheme.

Justification:

It is important that .EU should have some added value as far as on-line traders are concerned. It is widely acknowledged that electronic commerce is suffering from lack of consumer confidence. One method of increasing consumer confidence is to provide quality seals, accredited codes of conduct and accredited on-line dispute resolution. Accordingly, this amendment seeks to initiate a process by that all on-line traders registered under .EU would in the future provide these facilities, thereby ensuring that .EU was a zone of consumer confidence.

Amendment 37
Article 4, paragraph 2 a (new)

2a. Member States may prevent the registration under the .EU domain of terms containing established geographical, geopolitical or historical concepts which impact upon the territorial organisation of a Member State.

Justification

See justification to amendment on Recital 10 a (new)

Amendment 38
Article 4 a (new)

Bona vacantia

The Registry in consultation with the Commission and with interested parties shall adopt a policy, based on national best-practice, for dealing in an open, transparent and non-discriminatory manner with domain names which have become bona vacantia

Justification:

It sometimes comes about that valuable domain names become bona vacantia owing to the lack of successors in title of the original registrant. It is important that the Registry, with the guidance of the Commission, should address this issue in an open, transparent and non-discriminatory manner, drawing on the experience of the national registries.

Amendment 39
Article 5, paragraph 1

1. The Commission shall be assisted by the committee established by [Draft] Directive XX/XX/EC on a common regulatory framework for electronic communications networks and services.

1. The Commission shall be assisted by the committee established by [Draft] Directive XX/XX/EC ***under art. 19, 2nd indent***, on a common regulatory framework for electronic communications networks and services. ***In the interim, the Commission shall be assisted by the committee established by art. 9 of Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision.***

Justification

The aim of this amendment is to provide more details on the provisions on the basis of which an advisory committee would be set up: Article 19(2) of the prospective directive on a common regulatory framework for electronic communications networks and services. It provides for an interim solution with reference to Article 9 of Directive 90/387.

Amendment 40
Article 6 a (new)

Article 6a

The Commission shall submit a report to the European Parliament and the Council on the implementation, effectiveness and functioning of the .EU TLD one year after the adoption of this Regulation and thereafter every two years.

Justification

An evaluation report should be submitted by the Commission to the Council and Parliament in order to evaluate the effectiveness of management of the TLD one year after its creation and subsequently every two years.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a European Parliament and Council regulation on the implementation of the Internet Top Level Domain ".EU" (COM(2000) 827 – C5-0715/2000 – 2000/0328(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2000) 827¹),
 - having regard to Article 251(2) and Article 156 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0715/2000),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, External Trade, Research and Energy and the opinion of the Committee on Legal Affairs and the Internal Market (A5-0226/2001),
1. Approves the Commission proposal as amended;
 2. Asks to be consulted again should the Commission intend to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 096, 27.3.2001, p. 333.

EXPLANATORY STATEMENT

The Lisbon European Council (23/24 March 2000) instructed the Commission to create, on behalf of the Community, a .EU top-level domain (TLD). The Stockholm European Council (23/24 March 2001) recently confirmed that 'the Council, will take the necessary measures together with the Commission to ensure that the .EU top-level domain is available to users as soon as possible' (point 36, fifth indent of Conclusions).

The legal area constituted by the European Union does not exist in cyberspace. Today, national territories are recognised on the Internet by means of domain names. Accordingly, each Member State of the Union has its own domain (.fr, .uk, .de, etc.), while the European Union has no profile of its own on the Internet.

As part of the Community initiative e-Europe, and at a time when the single currency will soon become a tangible reality, creating the .EU domain will be a crucial factor in speeding up the development of the e-economy and e-commerce in Europe.

However, creating a .EU European Internet domain name will not only assert European presence in cyberspace; above all, it will be an opportunity to transpose, there, the trusted environment which the EU has created via the internal market.

To date, the Internet has developed thanks to a large degree of user involvement. In this context, we should welcome the fact that the Commission very much involved users in the process of drafting these rules. We must make sure that that remains so when it is implemented.

The Regulation

The proposal for a regulation to set up the .EU registry was adopted by the Commission on 12 December 2000.

The Commission would like Parliament and the Council to give their views promptly and, in adopting the regulation, decide to instruct it to implement the .EU top-level domain as soon as possible.

The Commission expressly stresses (recital 10) that the regulation is confined to the minimum required to realise its objectives and thus seeks to regulate as lightly as possible (use of co-regulatory arrangements involving users in implementation).

The regulation is a general act which sets a framework, leaving a number of major decisions to be dealt with under implementing rules in what is an area in constant flux.

13 June 2001

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET (*)

for the Committee on Industry, External Trade, Research and Energy

on the Proposal for a regulation of the European Parliament and of the Council on the implementation of the Internet Top Level Domain ".EU"
(COM(2000) 827– C5-0715/2000 – 2000/0328 (COD))

Draftsman: Arlene McCarthy

(*)Enhanced "Hughes" Procedure

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Arlene McCarthy draftsman at its meeting of 24 January 2001.

It considered the draft opinion at its meetings of 10 April 2001, 24 April 2001 and 12 June 2001.

At the last meeting it adopted the following amendments unanimously.

The following were present for the vote: Ana Palacio Vallelersundi, chairman; Willi Rothley, Rainer Wieland and Ward Beysen, vice-chairmen; Arlene McCarthy, draftsman; Enrico Boselli, Charlotte Cederschiöld, Bert Doorn, Colette Flesch, Janelly Fourtou, Marie-Françoise Garaud, Malcolm Harbour, Heidi Anneli Hautala, The Lord Inglewood, Ioannis Koukiadis, Ole Krarup, Kurt Lechner, Klaus-Heiner Lehne, Neil McCormick, Toine Manders, Hans-Peter Mayer, Manuel Medina Ortega, Bill Miller, Felekna Uca, Diana Wallis, Stefano Zappalà and Jürgen Zimmerling, and Michiel van Hulten, (for Evelyne Gebhardt) and Rijk van Dam (for Véronique Mathieu) pursuant to Rule 153(2).

SHORT JUSTIFICATION

Background

Following an approach to ICANN (Internet Corporation for Assigned Names and Numbers), the latter has adopted a resolution according to which ISO two-letter codes, such as EU, are delegable as ccTLDs (country code Top Level Domains). In view of the favourable response which it has had to its consultations, the Commission is now proposing that a regulation be adopted under Article 156 of the EC Treaty giving it responsibility for implementing the .EU TLD as soon as possible.

Observations

Your draftsman has worked closed with the rapporteur of the Industry Committee and has concentrated her attention on those aspects which fall strictly within the remit of our committee, namely the legal basis, Internal Market aspects, the "public policy framework" and the comitology issue. She has also given her attention to certain legal aspects of the Registry, including in particular how it should be selected and how it should deal with names vacated as a result of the decease or winding up the natural or legal persons who registered the names where they do not pass to the persons' successors in title, trustee in bankruptcy, etc.

Legal basis

Your draftsman is satisfied that the proposed legal basis is appropriate. Indeed, Article 156, which requires the codecision procedure, prescribes the procedure for adopting acts referred to in Article 155 (Title XV, Trans-European Networks).

Article 155(1) provides, in particular, that "In order to achieve the objectives referred to in Article 154¹, the Community shall implement any measures that may prove necessary to ensure the interoperability of the networks".

Choice of legal act

Although Article 156 does not prescribe any particular instrument or instruments, referring only to "measures", a regulation would seem appropriate in so far as Article 6 (Reservation of rights) at least is of general application.

Internal Market

¹ Article 154

1. To help achieve the objectives referred to in Articles 14 and 158 and to enable citizens of the Union, economic operators and regional and local communities to derive full benefit from the setting-up of an area without internal frontiers, the Community shall contribute to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures.

2. Within the framework of a system of open and competitive markets, action by the Community shall aim at promoting the interconnection and interoperability of national networks as well as access to such networks. It shall take account in particular of the need to link island, landlocked and peripheral regions with the central regions of the Community.

Recital 6 of the preamble also refers to Article 14 on the progressive establishment of the Internal Market. It is undoubtedly true that if the .EU TLD is implemented well and the Registry functions in accordance with best practice, it may be of assistance in promoting electronic commerce in a European Union framework. It may be argued, however, that in order to make a real contribution to the successful growth of e-commerce in Europe as part of the e-Europe project, the .EU TLD could benefit from some added value. Your draftsman therefore considers that the terms and conditions for the registration of .com.EU subdomain names should include a requirement for the trader concerned to subscribe to a recognised code of conduct and to an approved on-line alternative-dispute resolution scheme. This would be commensurate with the Conclusions of the Lisbon European Council of March 2000: "... the Commission and the Council [are called on] to consider how to promote consumer confidence in electronic commerce, in particular through electronic dispute resolution systems" (point 11). She has amended the so-called "public policy framework" accordingly.

The Registry

Your draftsman approves of the formation of the Registry as a not-for-profit entity (company or trust) under the laws of a Member State. She takes the view, however, that the fairest, simplest and most appropriate method of designating the Registry would be by putting its operation and formation out to tender.

Your draftsman further considers that the Registry needs to be assisted by a Policy Advisory Board, consisting of a cross-section of representatives of society and the various institutions at European level, to deal with what can be registered at the top level (*e.g.* Parliament.eu). She suggests that this Board, to be appointed by the Commission, should be geographically balanced and include representation of consumer/user groups, the social partners, small and medium-sized businesses, Internet service providers, intellectual property rightholders and public authorities, including the directly elected representatives of the peoples of Europe.

The Registry further needs to adopt a policy to deal with cases in which registered names become *bona vacantia*.

Public policy framework

Your draftsman considers that the expression "public policy framework" is misleading and should be replaced by "general policy framework" on the ground that the Commission and a comitology committee have no business in determining matters of public policy (*ordre public*) without any scrutiny by democratically elected representatives of the peoples of Europe.

In addition, she proposes a number of changes designed to make the policy framework clearer and more precise.

AMENDMENTS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Industry, External Trade, Research and Energy, as the committee responsible, to incorporate the following amendments in its report:

(Amendment 1)

Article 1

This Regulation charges the Commission with the implementation of the .EU Top Level Domain (TLD), sets out the conditions for such implementation, including the designation of a Registry, and establishes the **public** policy framework within which the Registry will function.

This Regulation charges the Commission with the implementation of the .EU Top Level Domain (TLD), sets out the conditions for such implementation, including the designation of a Registry, and establishes the **general** policy framework within which the Registry will function.

Justification:

The expression "public policy" is misleading, being the English rendering of the French "ordre public". Matters of public policy in the strict sense should not be determined without any scrutiny by democratically elected representatives.

(Amendment 2)

Article 2, paragraph 2

2. The Commission shall designate the Registry. The Commission and the Registry shall enter into a contract for a limited period of time, renewable. The contract shall specify the conditions according to which the Commission supervises the organisation, administration and management of the .EU TLD by the Registry.

2. The Commission shall designate the Registry ***after publishing a notice of tender in the Official Journal of the European Communities***. The Commission and the Registry shall enter into a contract for a limited period of time, renewable. The contract shall specify the conditions according to which the Commission supervises the organisation, administration and management of the .EU TLD by the Registry.

Justification:

It is considered that the fairest and most transparent method of setting up the Registry is to seek proposals by placing a call for tenders in the Official Journal. It is hoped that in this way the proposals will be put forward by groups with the best expertise, for example those running the top-level national domains.

(Amendment 3)

Article 2, paragraph 5 (new)

The Registry shall be advised, in particular with regard to the registration of second-level names, by a Policy Advisory Board, appointed on a geographically balanced basis, due regard being given to experience in the field. Members of the Board shall draw representation from consumer/user groups, industry including small and medium-sized businesses, trade unions and professional associations, Internet service providers, intellectual property rightholders and public authorities, including the democratically elected representatives of the peoples of Europe.

Justification:

The idea behind having a Policy Advisory Board is that, in allocating second-level registrations (e.g. health.eu, internal market.eu, education.eu), the Registry needs to be advised by a cross-section of society.

(Amendment 4)

Article 3, paragraph 2

2. The Registry shall :

2. The Registry shall, ***in accordance with best-practice at national level*** :

a) organise, administer and manage the .EU TLD on the basis of principles of quality, efficiency, reliability and accessibility;

a) organise, administer and manage the .EU TLD on the basis of principles of quality, efficiency, reliability and accessibility;

b) observe applicable public procurement rules and, in any event, observe transparent and non-discriminatory procedures;

b) observe applicable public procurement rules and, in any event, observe transparent and non-discriminatory procedures;

c) register domain names in the .EU TLD requested by any:

c) register, ***as a general rule on a first-come, first served basis***, domain names in the .EU TLD requested by any:

(i) undertaking having its registered office, central administration or principal place of business within the Community, or

(i) undertaking having its registered office, central administration or principal place of business within the Community, or

(ii) organisation established within the Community, or

(ii) organisation established within the Community, or

iii) natural person resident within the Community;

d) impose affordable annual fees directly related to costs incurred.

(iii) natural person resident within the Community;

d) impose affordable annual fees directly related to costs incurred;

e) ensure the integrity of the data base;

f) provide information, in accordance with data protection rules, to parties having a legitimate interest, including where appropriate law enforcement authorities;

g) effect suspensions, cancellations and transfers of registrations;

h) provide an extrajudicial dispute resolution system (mediation and arbitration) if not free of charge, at least on a cost-recovery basis;

i) adopt and apply suitable terms and conditions, including a code of conduct for the registration of domain names.

Justification:

The list of the Registry's tasks in Article 3 as originally worded is not sufficiently detailed: at least its basic tasks should be explicitly stated. In addition, it is important to establish the principle that registrations should be done on a first come, first served basis. The draftsman's view is that the Registry should be simply a registry and not a supervisory body and every precaution should be taken to avoid its incurring legal liability as a result of the registration of names. Consequently, if there is a dispute between a third party and a registrant, the Registry should simply hold the ring by providing a mediation and arbitration service either free of charge or on a cost-recovery basis. It should be left open to the Registry to decide whether making a charge for dispute resolution might deter cyber-squatters.

The Registry shall be responsible merely for registering domain names, in principle on a first-come, first-served basis. However, registration of .EU domain names by the Registry may be implemented in a phased manner to ensure appropriate temporary opportunities for the holders of prior rights recognised in law and public policy to register their names. Registration per se shall, in principle, confer no legal rights on the registrant and the Registry shall incur no legal liability as a result of its having inadvertently registered a particular name in breach of the rights of a third party.

Justification:

See justification to Amendment 4.

Public policy framework

1. The Commission shall adopt **public** policy rules concerning the implementation of the .EU TLD in accordance with the procedure referred to in Article 5 (2), having consulted the Registry.

2. With a view to preventing and resolving conflicts between domain name registrations and intellectual property rights, and taking into account Community and national laws, the Commission, after consulting the Registry and in accordance with the procedure referred to in Article 5 (2), shall :

a) adopt a policy and procedure to **prevent** speculative and abusive registration of domain names, which shall conform to best practices, including the recommendations of the World Intellectual Property

General policy framework

1. The Commission shall adopt **general** policy rules concerning the implementation of the .EU TLD in accordance with the procedure referred to in Article 5 (2), having consulted the Registry.

2. With a view to preventing and resolving conflicts between domain name registrations and intellectual property rights, and taking into account Community and national laws, the Commission, after consulting the Registry and in accordance with the procedure referred to in Article 5 (2), shall :

a) adopt a policy and procedure **to deal with** speculative and abusive registration of domain names, which shall conform to best practices, including the recommendations of the World Intellectual Property

Organisation (WIPO);

b) adopt an extra-judicial settlement of conflicts policy and procedure **to promptly** resolve disputes between domain names and intellectual property rights, which shall conform to best practices, including the recommendations of the WIPO. This policy shall provide adequate procedural guaranties for the parties concerned and shall apply without prejudice to any court proceeding.

Organisation (WIPO);

b) adopt an extra-judicial settlement of conflicts policy and procedure **to** resolve disputes between domain names and intellectual property rights **promptly and free of charge or at least on a cost-recovery basis**, which shall conform to best practices, including the recommendations of the WIPO. This policy shall provide adequate procedural guaranties for the parties concerned and shall apply without prejudice to any court proceeding;
c) adopt terms and conditions for the registration of domain names to be used by on-line traders which ultimately should incorporate a requirement to adhere to a duly-accredited code of conduct for on-line trading and to join a duly accredited on-line extrajudicial dispute-resolution scheme.

Justification:

It is important that .EU should have some added value as far as on-line traders are concerned. It is widely acknowledged that electronic commerce is suffering from lack of consumer confidence. One method of increasing consumer confidence is to provide quality seals, accredited codes of conduct and accredited on-line dispute resolution. Accordingly, this amendment seeks to initiate a process by that all on-line traders registered under .EU would in the future provide these facilities, thereby ensuring that .EU was a zone of consumer confidence.

For the reasons for the switch from "public policy" to "general policy", see the justification to Amendment 1.

(Amendment 7)
Article 4a (new)

Bona vacantia

The Registry in consultation with the Commission and with interested parties shall adopt a policy, based on national best-practice, for dealing in an open, transparent and non-discriminatory manner with domain names which have become bona vacantia

Justification:

It sometimes comes about that valuable domain names become bona vacantia owing to the lack of successors in title of the original registrant. It is important that the Registry, with the guidance of the Commission, should address this issue in an open, transparent and non-discriminatory manner, drawing on the experience of the national registries.