

## QUESTIONS AND ANSWERS ON .EU DOMAIN NAME

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## **Introduction ➡**

The creation of the .eu domain was one of the objectives of the eEurope 2002 action plan. Therefore, the UE created the .eu top level domain (TLD) in order to promote and develop the electronic commerce and the Information Society in the European Union (EU) as well as strengthen the visibility of the EU among European citizens and undertakings in the Internet. The .eu TLD is governed by two European Regulations, Regulation No 733/2002<sup>1</sup> and Regulation No 874 /2004<sup>2</sup>.

## **1) What are the goals underlying the creation of the Top Level Domain (TLD) .eu ? ➡**

The European Regulation No 733/2002 was passed on 22 April 2002 by the European Parliament and The Council, in order to accelerate electronic commerce in the European Union.

In addition, the .eu TLD should promote the use of Internet networks and improve the interoperability of trans-European servers making available .eu domain name. Moreover the implementation of the .eu TLD follow to increase the visibility of the European internal market on the Internet and promote the image of the European Union on the global information networks.

## **2) Who can act as an .eu TLD Registry? ➡**

The Registry is the entity charged with the organization, management and administration of the .eu TLD including the accreditation of Registrars and the registration of domain names applied for by accredited Registrars. Furthermore the maintenance of the corresponding databases. Databases known as WHOIS<sup>3</sup> must comply with European law on data protection and privacy. The Registry shall be a non-profit organization having its registered office, central administration and principal place of business within the EU.

In addition the Registry shall act following the general interest and the principles of quality, efficiency, reliability and accessibility, observing non-discriminatory procedures and policies.

## **3) Has the Registry been designated yet? ➡**

Yes. In May 2003 the European Commission decided to designate EURID<sup>4</sup> ( European Registry for Internet Domains) as the Registry for the .eu TLD.

#### **4) Who can apply for the registry of the .eu TLD? ➡**

- An enterprise having its registered office <sup>5</sup>, central administration or principal place of business within the EU, or
- A natural person resident within the Community, or An organization established within the Community without prejudice to the application of national law.
- To sum up an organization or natural person established or resident in the Community can request the . eu TLD.

#### **5) If my company is based outside the EU but I have a community trademark, can I register a .eu domain name? ➡**

No, because you must fulfil all the requirements laid out .eu Regulation, especially Article 4 of Regulation 733/2002. (See Question 4).

#### **6) Does Regulation No 733/2002 enable an out-of-court settlement of conflicts? ➡**

Yes it does. Under article 4 (d) the Registry shall establish an extra-judicial settlement of conflicts policy based on recovery of costs and a procedure to promptly resolve disputes between domain name holders, intellectual property rights included, as well as disputes concerning the decisions taken by the Registry.

The recommendations of WIPO will be taken into account.

However, the parties shall be able to bring an action in the competent court .( This policy of extra-judicial settlement shall be applied without prejudice to any court proceeding).

#### **7) Are there any rights reserved by the European Community? ➡**

Under article 7 Regulation No733/2002, the Community will be the holder of all rights relating to an .eu TLD, especially Intellectual property rights and other rights to the Registry databases and the right to designate another Registry.

#### **8) It is possible to get an . eu domain name for your web now? ➡**

It is not possible to get an .eu domain name at the moment. EURID signed a contract with the European Commission in Brussels on 12 Oct 04 <sup>6</sup>.

EURID must now make an agreement with ICANN and put the .eu TLD into digital networks. EURID has also published a tentative timetable <sup>7</sup>.

Furthermore, at the moment you cannot pre-register an .eu domain name for you until EURID had accredited the .eu registrars. When the registrars are accredited they will be able accept the pre-registrations.

### **9) Can I protect my .eu domain name against abusive registration? ➡**

You can protect your domain name before the registration period starts. This is called "sunrise period".

During this period the Registry only will be opened for public bodies and holders of certain rights, like trademarks holders. They have the opportunity to apply for the registration of the corresponding .eu domain name.

Sunrise period will consist of two phases of 2 months. During phase 1 only these domain names will be protected, those which correspond with:

- The full name of a public body
- The acronym by which a public body is commonly know
- If applicable, the territory which is governed by a public body o registered community or national trademarks

But in these cases, these domain names have to be applied for by the public body or holder/licensee of the trademark.

During phase 2 domain names that correspond with :

- the names listed in phase 1
- other rights that are protected under the national law (these rights have to provide documentary evidence in order to prove these national rights, because in some countries do not exist) of the member state where they are held such as:
- company names
- business identifiers
- distinctive titles of protected literary and artistic work
- unregistered trademarks
- trade names

Once the "sunrise period" has been closed and the live registrations start, domains will be attributed on a "first come, first served" basis. And then if someone get a .eu registry of your domain name , you will have to bring an ADR.

### **10) Can EURID act as a registrar? ➡**

No it cannot. Article 3 (4) of EU Regulation, says that the .eu TLD Registry shall not act itself as a Registrar. In a few months a list of recognized registrars will be publish on the EURID web site.

### **11) Who then can act as a Registrar ? ➡**

Registrar under Article 2 (b) of .eu Regulation, is defined as a person or entity that via contract with the Registry (EURID), provides domain name services to registrants.

Before becoming an .eu registrar these ISP (Internet Service Provider) will have to deposit a pre-payment sum of 10.000€.

These entities will have to sign an agreement with EURID to become recognize registrars, instead of having an ICANN accreditation.

The agreement model will be put at the EURID web site. EURID requires applicants to download the agreements and return two signed copies.

### **12) May The Registrar and the registrant designate as applicable law or jurisdiction of an non- Member State? ➡**

No. Under Article 5 of Regulation No 874/2004, the registrar and registrant cannot designate as applicable law a law other than the law of one of the Member States. The same is applicable if they designate a dispute resolution panel (unless selected by the Registry under Article 23). See question 24.

They cannot designate a court or arbitration panel located outside the Community.

### **13) What kind of domain name can be registered? ➡**

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A domain name must be unique and after having been checked in the WHOIS if it is still available must fulfil the following requirements under Regulation No 874/2004:

- Minimum 2 characters among the letters a to z, the number 0 to 9 and the hyphen "-".
- Maximum of 63 characters.
- The domain name must not begin with a hyphen.
- Must not contain a hyphen on the 3rd and 4th position.

**14) In which languages can I apply for the register of a domain name?**



Under Article 6 of 874/2004 Regulation all official languages of the European Community are enabled.

**15) What happens with the Spanish letter “Ñ” ? ➡**

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This letter shall be reproduced with one “n” instead of ñ. In the future this letter will be available.

**16) Can defamatory or racist domain names be registered ? ➡**

No. Article 18 says that, if a Court of a Member State considers a domain name as defamatory, racist or contrary to public order, the Registry shall block it upon notification of the Court decision and shall be revoked it upon a final court decision. Furthermore, EURID shall block these kind of names from future registration.

**17) What happens if during the registration period the domain name holder dies? ➡**

In this case, his or her legal heirs or executor of the estate may request transfer of the name to the heirs along with submission of the appropriate documentation. Upon the expiration of the registration period, if no transfer has been initiated, the domain name shall be suspended for a period of 40 days and shall be published on the Registry's website. During this period they have to submit all the documentation required. If they do not do that in 40 days, the domain name shall be available for general registration again.

**18) What happens if an undertaking a natural person becomes insolvent or a company closes down during the registration term of the domain name? ➡**

If the domain name is an undertaking or a legal or natural person or organization and that occurs, the legally administrator of the domain name holder may request the transfer to the purchaser of the domain name assets. If the registration period ends and no transfer has been initiated, the domain name shall be suspended for a period of forty calendar days and shall be published on the registry's website (like in question 15) . If the administrator has not registered the name during that 40-day period, the domain name shall be available for general registration again. That is applicable e.g. in cases like winding up, cessation of trading, insolvency or any similar proceeding provided by national law.

**19) Can the Registry revoke a domain name at its own initiative “ex**

### **officio"? ➡**

EURID can revoke a domain name at its own initiative and without submitting the dispute to any out-of-court settlement, specifically on the following grounds:

- Outstanding unpaid debts owed to the Registry.
- If the holder is not an organization, undertaking, natural or legal person established or resident in the Community. In these case the holder has not fulfilled the legal criteria established under Article 4 (2)(b) Regulation 733/2002.
- The holder does not fulfil Article 3 of 874/2004 Regulation requirements.

The Registry only can revoke domain names on its own initiative only on those grounds. The procedure shall include a notice to the domain name holder in order to give him a chance to take necessary measures.

### **20) What happens in case of speculative and abusive registrations? ➡**

If that occurs, the registered domain name shall be subject to revocation using a judicial or alternative dispute resolution ADR method.

In these cases EURID shall not act on its own initiative or "ex officio".

### **21) On what grounds can a registered domain name be revoked? ➡**

- The domain name has been registered by a holder without rights to do so or a legitimate interest in such name, or
- The domain name has been registered or is being used in bad faith.

In the case of a procedure against a domain name holder, the ADR panel shall decide that the domain name shall be revoked, if it finds that the registration is speculative or abusive as defined in Article 21. If the procedure is against the Registry, the ADR panel shall decide whether a decision taken by the Registry conflicts with Regulation No 874/2004 or with Regulation (EC) No 733/2002. In both cases the domain name only shall be transferred or the decision of the registry annulled if the complainant is an organisation, a company or a natural person domiciled or resident in the European Community (Article 4(2) (b) Regulation No 733/2002.

### **22) How can one demonstrate the existence of a legitimate interest under Article 21 (1) (a)? ➡**

- Prior to any notice of an alternative dispute resolution (ADR) procedure, the holder of

a domain name has used the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparation to do so;

- The holder of a domain name, being an company, organisation or natural person, has been commonly known by the domain name, even in the absence of a right recognised or established by national and/or Community law;
- The holder of a domain name is making a legitimate and non-commercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name on which a right is recognised or established by national and/or Community law.

### **23) How can bad faith be demonstrated ? ➡**

- If the domain name was registered or acquired for the purpose of selling, renting or transferring such domain name to the true rights holder having a right recognised or established by Law. (A typical cybersquatting case).
- The domain name has been registered in order to prevent the real holder (e.g. of a trade mark) from reflecting this name in the domain name. ( Due to the Internet principle "first come first served"). But in this case the applicant (plaintiff) must comply with 3 other requirements:
  - This conduct (of the registrant) has to be demonstrated; or
  - The domain name has not been used (in a relevant way) for at least two years from the date of registration.
  - If the holder, at the time the ADR procedure was initiated, expressed his intention to use the domain name but he does not do so in six months since the ADR procedure began.
- the domain name was registered primarily for the purpose of disrupting the professional activities of a competitor; or
- the domain name was intentionally used to attract Internet users, for commercial gain, to the holder of a domain name website or other on-line location, by creating a likelihood of confusion with a name registered as a trade mark.
- the domain name registered is a personal name but the holder cannot demonstrate the existence of links between the domain name holder and the domain name registered.

The provisions of Article 21 (1), (2), (3) [Regulation 874/2004] may not invoked in order to obstruct claims under national law.

### **24) In case of conflict may any party initiate an alternative dispute**



### **resolution (ADR)? ➡**

Any of the parties may initiate an ADR if the registration is speculative or abusive , under Article 21, or a decision taken by the Registry conflicts with the .eu Regulations either of them( No 874/2004 or 733/2002).

Participation in this ADR procedure shall be compulsory for the holder of a domain name and the Registry. The complainant shall paid a fee.

### **25) What languages can be used in the ADR procedure? ➡**

The language of the administrative proceeding shall be the language of the registration agreement, between the registrar and the domain name holder unless otherwise had agreed by the parties in that contract. But the Panel may determine otherwise having regard to the circumstances of the case.

### **26) How does the ADR procedure work? ➡**

Firstly, the complainant must chose an ADR provider from the list mentioned under Article 23 and submit it to the complaints ( the responses to those complaints also shall have to be submitted). Secondly, after filing the request for ADR and paying the fee, the ADR provider shall inform the Registry of the identity of the complainant and the domain name involved. The domain name cannot be transferred or cancelled until the dispute resolution or legal proceedings have finished .

The decision must be notified to the Registry.

Afterwards, the ADR provider shall examine the complaint for compliance with its rules of procedure (.eu Regulations) and shall forward the complaint to the respondent within five working days following receipt of the fees to be paid by the complainant. Within 30 working days of the date of receipt of the complaint the respondent shall submit a response to the provider. Moreover, all the communications have to be made in the means chosen by the complainant. If he has not chosen any mean, the communications will be via the Internet (whenever this communication may be recorded).

Finally, the decision of the panel shall be taken by simple majority and shall be published. The decision shall stated its reasoning. The alternative dispute panel shall render its decision within one month from the date of receipt of the response by the ADR provider.

The provider, within 3 working days, shall notify the decision (the full text) to each party, to the Registry and the registrar. This procedure shall take into account the international best practices in this area and the recommendations of WIPO.

### **27) What happens if any of the parties in the ADR procedure fails to respond or appear to a panel hearing? ➡**

Article 22 of Regulation no 874/2004 lays down a “ficta confessio effect” that means that

failure of any of the parties involved in an ADR procedure to respond within the given deadlines or appear to a panel hearing may be considered as grounds to accept the claims of the counter party.

### **28) Is the decision of ADR binding? ➡**

The results of ADR shall be binding on the parties and the Registry.

### **29) Is this decision final or can the parties bring an action? ➡**

The decision is binding but the parties can go to court. They must do so within 30 calendar days of notification of the result of the ADR procedure.

### **30) Who are the panellists? ➡**

The Registry shall select ADR providers having an appropriate expertise on the basis on objective, transparent and non-discriminatory criteria. This list shall be published on the Registry's website.

The disputes shall be examined by a panel of one or three members. The panelists shall be selected in accordance to the internal procedures of the selected ADR providers. A panelist shall be impartial and independent. If not, the provider shall substitute him or her.

### **Sources ➡**

All the information has been obtained from the Internet, especially from the two .eu Regulations and these web sites:

[http://www.europa.eu.int/pol/infso/index\\_en.htm](http://www.europa.eu.int/pol/infso/index_en.htm)

<http://www.eurid.org/en/home.php>

<http://www.uaipit.com>

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1:

Available at document section of <http://www.uaipit.com>

➡

2:

Available at document section of <http://www.uaipit.com>

➡

3:

According to Article 16 of Regulation N° 874/2004, the WHOIS provides accurate and up to date information about

the holder of a domain name.



4:

<http://www.eurid.org/en/home.php>



5:

Article 4 (2) of the Regulation No 733/2002.



6:

For more information see : <http://www.eurid.org/en/home.php?n=400.0006>



7:

Available at: <http://www.eurid.org/en/home.php?n=107>



8:

There are some domain names reserved by EURID for its operational functions (like eurid.eu , registry.eu, etc) . See Article 17. If the domain name contains special characters, spaces or punctuations, these shall be eliminated, replaced by hyphens or rewritten. Regulation No 874/2004 says that special character and punctuations are the following: ~ @ # \$ % ^ & \* ( ) + = < > { } [...] | \ / : ; ' , . ?



9:

The same is occurs with the letters “é”, or “ ä” .These letters cannot be reproduced in ASCII code and shall be replaced by “a” or “e” or by accepted spellings.

