

eco comments on the
“Notice to Stakeholders on the Withdrawal of the United Kingdom and EU Rules on .EU Domain Names”
(Brussels, 28.03.2018)

and on the
“Proposal for a Regulation of the European Parliament and of the Council on the implementation and functioning of the .eu Top Level Domain name and repealing Regulation (EC) No 733/2002 and Commission Regulation (EC) No 874/2004”
(COM(2018)231 final, Brussels, 27.04.2018)

1. Introduction

eco – Association of the Internet Industry hereby submits the following comments on the **“Notice to Stakeholders on the Withdrawal of the United Kingdom and EU Rules on .EU Domain Names”** (Brussels, 28.03.2018) and on the **“Proposal for a Regulation of the European Parliament and of the Council on the implementation and functioning of the .eu Top Level Domain name and repealing Regulation (EC) No 733/2002 and Commission Regulation (EC) No 874/2004”** (COM(2018)231 final, Brussels, 27.04.2018).

The eco Names & Numbers Forum working group hosted an inaugural remote meeting on 27 July 2016 to set up a BREXIT sub-working group and address the policy and administrative questions that a BREXIT scenario poses. With this sub-working group, eco wants to make sure that no one is caught by surprise when BREXIT comes into full effect.

Given that EURid VZW is an eco member, the association has been following the BREXIT discussion very closely from the very beginning. In collaboration with its members, the eco Names & Numbers Forum working group published a discussion paper on the potential implications of BREXIT on the domain industry (**“BREXIT – Challenges for the Domain Industry?”**, April 2016), and now wishes to raise several issues which may have an impact on eco members if this proposal is adopted by the European Commission.

2. Comments by eco members

2.1 Comments on Notice to Stakeholders

With reference to the “**Registration and Renewal of Domain Names**”, the “**Notice to Stakeholders on the Withdrawal of the United Kingdom and EU Rules on .EU Domain Names**” (Brussels, 28.03.2018) states that

“In accordance with Article 4(2)(b) of Regulation (EC) No 733/2002, the following persons are eligible to register .eu domain names: (i) undertakings having their registered office, central administration or principal place of business within the EU; (ii) organisations established within the EU (without prejudice to the application of national law); and (iii) natural persons resident within the EU.

As of the withdrawal date, undertakings and organisations that are established in the United Kingdom but not in the EU and natural persons who reside in the United Kingdom will no longer be eligible to register .eu domain names or, if they are .eu registrants, to renew .eu domain names registered before the withdrawal date.

Accredited .eu Registrars will not be entitled to process any request for the registration of or for renewing registrations of .eu domain names by those undertakings, organisations and persons.”

According to registration data from EURid’s Q1 2018 Progress Report, the revocation and non-renewal of undertakings and organisations that are established in the United Kingdom but not in the EU and natural persons who reside in the United Kingdom would affect approx. 323,166 domain name registrations. The United Kingdom represents the 4th largest market for .eu domain names. With a total number of 3,812,142 registered .eu domain names in Q1 2018, this would affect 8.5% of the .eu name space, with serious commercial implications not only for EURid VZW but for the whole domain industry, especially registrars and their resellers.

eco members would like to draw the European Commission’s attention to the following aspects:

a) Grandfathering

A highly preferred scenario that has been shared among eco members is the concept of a grandfathering clause. This would involve the European Commission granting the option of continuing to apply pre-BREXIT rules and regulations to domain names in the hands of UK

residents, while a new after-BREXIT rule would apply to all future registrations. Additionally, such an exemption may be limited or it may extend for a set time.

b) Revocation & potential implications for contractual terms

In addition to the Notice to Stakeholders about the “Revocation of Registered Domain Names”

“Where, as of the withdrawal date and as a result of the withdrawal of the United Kingdom, a holder of a domain name does no longer fulfil the general eligibility criteria pursuant to Article 4(2)(b) of Regulation (EC) 733/2002, the Registry for .eu will be entitled to revoke such domain name on its own initiative and without submitting the dispute to any extrajudicial settlement of conflicts in accordance with point (b) of Article 20, first subparagraph, of Commission Regulation (EC) No 874/2004.”

on 10 April 2018 EURid, the .eu registry manager, received a communication from the European Commission stating the following:

“The revocation of existing holders’ rights and the prohibition for registrars from processing any more requests for registrations or renewals for .eu domain names whose holders are no longer eligible must be prepared so that the necessary measures are effective as from 1 January 2021 or, in case that there were no withdrawal agreement in force before 30 March 2019, as from 30 March 2019.”

In the process of revocation and preventing renewals of domain name registrations from 1 January 2021 at the latest, it is unclear how EURid VZW and its registrars should handle ongoing contracts that go beyond that time, especially those with affected parties that may no longer fall under EU jurisdiction. As described in the Paper **“BREXIT – Challenges for the Domain Industry?”** by the eco Names & Numbers Forum (July 2016), revocations should be avoided in general. eco members welcome further discussion regarding the terms and conditions of *“Registration and revocation of domain names”* (CHAPTER II, Implementation of the .eu TLD, Section 1, GENERAL PRINCIPLES, Article 4, Point 3):

“The Registry may revoke a domain name at its own initiative and without submitting the dispute to any extrajudicial settlement of conflicts, on the following grounds: (a) outstanding unpaid debts owed to the Registry; (b) non-fulfilment by the domain name holder of the eligibility criteria

pursuant to Article 3; EN14 EN (c) breach by the domain name holder of the requirements for registration requests laid down on the basis of point (b) of Article 11.”

As a matter of fact, the scenario of revocation still leaves a number of matters unclear:

- What is the earliest date on which the European Commission will be able to inform EURid VZW and its registrars about the final decision?
- What domain names are affected by the decision of the European Commission? For example, will there be any difference of approach where the registrant is from Great Britain, Northern Ireland, Gibraltar or other British overseas territories, or even an EU citizen residing in UK?
- How will the UK reserved names as listed in the Annex of EC Regulation 874/2004 be treated?

Domain names that would be revoked and deleted at the latest on 1 January 2021 are likely to be “grabbed”, or acquired, immediately by third, eligible parties, which implies high risks of potential abuse like phishing, copyright and brand infringements, etc.

c) UK stays in the EEA

There is one potential scenario under discussion, namely that BREXIT could mean the United Kingdom leaving the European Union, but remaining in the European Economic Area (EEA) or having otherwise negotiated a relationship with the EU not unlike Norway’s. A treaty may be negotiated that would allow further access to the European Single Market; something that would limit the impact on ccTLDs and registrar policies.

The UK government previously expressed concerns about restrictions on domain name registrations within the EU when the Commission was consulting on what should be included in the current digital single market. One part of the submission by the UK was that there should not be residency requirements for any top-level domain within the single market.

2.2 Comments on Proposal for a Regulation

With reference to the **Proposal for a Regulation of the European Parliament and of the Council on the implementation and functioning of the .eu Top Level Domain name and repealing Regulation (EC) No 733/2002 and Commission Regulation (EC) No 874/2004**, after consulting with its members, eco would like to make the following comments on the Regulation:

- a) eco welcomes the proposal on page 2 of the document to

“...relax the current eligibility criteria for registration of .eu domains to allow Union citizens to register a .eu domain name, independently of their place of residence.”

and agrees with the assessment made on page 4 that

“...an over-rigid regulatory framework places the .eu Registry at a competitive disadvantage amid toughening market conditions; the .eu TLD legal framework does not reflect current Union priorities such as the Digital Single Market; and .eu Regulations do not reflect international best practices in multi-stakeholder governance.”

- b) eco welcomes the updated eligibility criteria on page 14 (*CHAPTER II, Implementation of the .eu TLD, Section 1, GENERAL PRINCIPLES, Article 3*):

“Registration of one or more domain names under the .eu TLD can be requested by any of the following: (i) a Union citizen, independently of their place of residence; or (ii) a natural person who is not a Union citizen and who is resident of a Member State; or (iii) an undertaking established within the Union; or (iv) an organisation established within the Union without prejudice to the application of national law.”

3. Conclusion

The members of eco and the eco Names & Numbers Forum welcome the relaxing of the eligibility criteria with the **“Proposal for a Regulation of the European Parliament and of the Council on the implementation and functioning of the .eu Top Level Domain name and repealing Regulation (EC) No 733/2002 and Commission Regulation (EC) No 874/2004”** (COM(2018)231 final, Brussels, 27.04.2018). However, they have numerous concerns relating to the **“Notice to Stakeholders on the Withdrawal of the United Kingdom and EU Rules on .EU Domain Names”** (Brussels, 28.03.2018), the high risk of abuse of revoked domain names being one of the most urgent issues to be addressed by the parties involved. This would most likely have a

negative impact on consumer trust in the .eu name space and undermine the mission of the .eu top-level domain:

The .eu top-level domain is the domain name of the European Union and its citizens. The existence of a specific domain name for the European Union under a very clear and identifiable common label is an important and valuable building block for the European online identity. In line with the objectives of the Digital Single Market Strategy³, the .eu TLD enables European businesses and citizens to participate in e-commerce and increases their participation in the online single market.

Therefore, the eco Names & Numbers Forum working group asks the European Commission to consider various solutions that could help existing UK registrants and the overall .eu brand.

4. Support

The following companies and organisations have asked to be listed as supporters of these comments:

1&1 Internet SE	1API GmbH
Accelerated IT Services GmbH	Ascio Technologies, Inc.
Blacknight Internet Solutions Ltd	CORE Association
Cronon AG	First Colo GmbH
Global Village GmbH	GoDaddy Inc.
http.net Internet GmbH	hosting.de GmbH
ingenit GmbH & Co. KG/123domain.eu	InterNetX GmbH
Key-Systems GmbH	Larsen Data ApS
name.com	NetEarth One, inc.
One.com	regiodot GmbH & Co. KG (.RUHR)
SafeBrands	Sedo GmbH
Smart-NIC GmbH	STRATO AG
Thomsen Trampedach GmbH	united-domains AG

WE ARE SHAPING THE INTERNET.
YESTERDAY. TODAY. BEYOND TOMORROW.



About eco

eco (international.eco.de), with more than 1,000 member organizations, is the largest Internet industry association in Europe. Together with and for its members, eco has been shaping the development of the Internet since 1995, promoting new technologies, infrastructures and markets, forming framework conditions and representing the interests of its members vis-à-vis politics and in international bodies.

The eco Names & Numbers Forum working group represents more than 140 companies from the domain industry, including country-code and generic domain name registries, registry backend and secondary market operators, registrars, resellers, and consultants.

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