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(Announcements)

ADMINISTRATIVE PROCEDURES

EUROPEAN COMMISSION

CALL FOR EXPRESSIONS OF INTEREST FOR THE SELECTION OF THE .eu TLD REGISTRY

(2013/C 134/06)

1. Background

Regulation (EC) No 733/2002 of the European Parliament and of the Council on the implementation of the .eu top level domain was adopted on 22 April 2002. It was published and entered into force on 30 April 2002 ⁽¹⁾. This Regulation provides for the designation by the European Commission of a top level domain (TLD) Registry which will be entrusted with the organisation, administration and management of the 'eu' TLD. In Article 2 of the Regulation, the Registry is defined as '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'.

Moreover, 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 was adopted on 28 April 2004. It was published and entered into force on 30 April 2004 ⁽²⁾. This Regulation has been amended by Regulation (EC) No 560/2009. According to the recital 1 of the Regulation, 'Registry, (...), is required to be a non-profit organisation that should operate and provide services on a cost covering basis and at an affordable price'.

Following a call for expressions of interest published in the *Official Journal of the European Communities* on 3 September 2002 (C 208/08), Commission Decision of 21 May 2003 on the designation of the .eu top level domain Registry (2003/375/EC) ⁽³⁾ designated the European Registry for Internet Domains (EURID) as the entity entrusted with the organisation, management and administration of the .eu top level domain. The initial contract between Commission and the selected dot.eu Registry operator (EURid) was signed on 12 October 2004 for a term of 5 five years and then renewed in 2009 for another five years. The current contract will therefore expire on 12 October 2014.

The purpose of this call for expressions of interest is to invite applications from organisations wishing to be considered as candidates for the Registry selection procedure related to the future operation of the dot.eu top level domain. The selection procedure is based on an open call, and on principles of objectivity, non-discrimination and transparency.

The characteristics and tasks of the Registry are specified in Articles 3, 4 and 5 of the Regulation. The Commission wishes to point out in particular:

'Article 3

2. The Registry shall be a non-profit organisation, 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.

3. Having obtained the prior consent of the Commission, the Registry shall enter into the appropriate contract providing for the delegation of the .eu ccTLD code.

4. The .eu TLD Registry shall not act itself as Registrar.

Article 4

1. The Registry shall observe the rules, policies and procedures laid down in this Regulation and the contracts referred to in Article 3. The Registry shall observe transparent and non-discriminatory procedures.

2. The Registry shall:

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

(b) register domain names in the .eu TLD through any accredited .eu Registrar requested by any:

⁽¹⁾ OJ L 113, 30.4.2002, p. 1.

⁽²⁾ OJ L 162, 30.4.2004, p. 40.

⁽³⁾ OJ L 128, 24.5.2003, p. 29.

- (i) undertaking having its registered office, central administration or principal place of business within the Community;
 - or
 - (ii) organisation established within the Community without prejudice to the application of national law;
 - or
 - (iii) natural person resident within the Community;
- (c) impose fees directly related to costs incurred;
 - (d) implement the extra-judicial settlement of conflicts policy based on recovery of costs and a procedure to resolve promptly disputes between domain name holders regarding rights relating to names including intellectual property rights as well as disputes in relation to individual decisions by the Registry. This policy shall be adopted in accordance with Article 5(1) and take into consideration the recommendations of the World Intellectual Property Organisation. The policy shall provide adequate procedural guarantees for the parties concerned, and shall apply without prejudice to any court proceeding;
 - (e) adopt procedures for, and carry out, accreditation of .eu Registrars and ensure effective and fair conditions of competition among .eu Registrars;
 - (f) ensure the integrity of the databases of domain names.

Article 5

Policy framework

1. After consulting the Registry, the Commission shall adopt public policy rules concerning the implementation and function of the .eu TLD and public policy principles on registration. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 6(3).

Public policy shall include:

- (a) an extra-judicial settlement of conflicts policy;
- (b) public policy on speculative and abusive registration of domain names, including the possibility of registration of domain names in a phased manner to ensure appropriate temporary opportunities for the holders of prior rights recognised or established by national and/or Community law and public bodies to register their names;
- (c) policy on possible revocation of domain names, including the question of *bona vacantia*;
- (d) issues of language and geographical concepts;
- (e) treatment of intellectual property and other rights.

2. Within three months of the entry into force of this Regulation, Member States may notify to the Commission and to the 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 that may either:

- (a) not be registered; or
- (b) be registered only under a second level domain according to the public policy rules.

The Commission shall notify to the Registry without delay the list of notified names to which such criteria apply. The Commission shall publish the list at the same time as it notifies the Registry.

Where a Member State or the Commission within 30 days of publication raises an objection to an item included in a notified list, the Commission shall take measures, in accordance with the procedure referred to in Article 6(3), to remedy the situation.

3. Before starting registration operations, the Registry shall adopt the initial registration policy for the .eu TLD in consultation with the Commission and other interested parties. The Registry shall implement in the registration policy the public policy rules adopted pursuant to paragraph 1 taking into account the exception lists referred to in paragraph 2.

4. The Commission shall periodically inform the Committee referred to in Article 6 on the activities referred to in paragraph 3 of this Article.'

The evaluation and selection of the Registry will take place on the basis of the selection criteria adopted according to the Regulation and included in this call for expressions of interest. The Commission may decide to use external experts to assist in this evaluation. The choice of experts will be made on their competence, independence and their specific knowledge of the market.

2. Invitation to submit applications

In accordance with Regulation (EC) No 733/2002 on the implementation of the .eu top level domain, the European Commission is hereby inviting submissions for the selection of a Registry which will be entrusted with the organisation, administration and management of the .eu top level domain.

In order to assist applicants and to standardise the type of information submitted, an indication of the type of information requested by the Commission is provided in the annexes to this call. All applicants should present their application in accordance with the information requested in the annexes. The application must be signed by an authorised representative of the organisation. Additional relevant information may be submitted at the discretion of the applicant, but any submissions not providing all of the information requested in

the annexes will not be considered as eligible. An electronic copy of the expressions of interest should also be included with the submission.

Applications are invited to be submitted in one step. The selection of the Registry shall be made as a result of this call for expressions of interest. No additional call is intended to take place for the selection of the Registry.

Submission of applications which have not met the deadlines set out below will not be considered for evaluation under this call notice.

Expressions of interest in response to this notice should be submitted by registered mail posted no later than 20 June 2013 (date of postmark), or by delivery (in person or by an authorised representative or a private courier service) to the address mentioned below no later than 20 June 2013 (17.00). A receipt must be obtained as proof of submission, signed and dated by an official in the department mentioned below.

Applications must be submitted in four copies (three copies bound, one unbound) in one of the official languages of the European Union. The four copies must be placed inside two sealed envelopes. The outer envelope must bear the address mentioned below, the inner envelope must bear the address mentioned below and be marked '**Applications to expressions of interest for the selection of the .eu top level domain Registry, submitted by (name of applicant) — not to be opened by the internal mail department**'. Self-adhesive envelopes must not be used.

The deadline for the submission of the expressions of interest is 20 June 2013. The address to which expressions of interest should be sent or delivered is:

European Commission
Directorate-General for Communications Networks, Content and Technology
Mr Eddy HARTOG
Unit D1 — International
BU 25 04/075
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

The Commission undertakes to send a confirmation of receipt to the applicant within five days of receiving the application.

It is the responsibility of the applicants to ensure that applications are addressed to the address given above and are dispatched in time to arrive by the deadline. The Commission cannot be held responsible for packages wrongly addressed nor for proposals that are split between packages with no adequate identification to allow the different parts to be reassembled.

Information:

Information about Regulation (EC) No 733/2002 can be found on the following website:

http://ec.europa.eu/information_society/policy/doteu/index_en.htm

3. Eligibility criteria

The following criteria will be checked for all applications:

- date of reception of the application on or before the deadline for reception,
- signature of the representative of the legal entity submitting the application,
- completeness of the application,
- status of the applicant,
- filled in and signed 'Declaration of honour with respect to the exclusion criteria and absence of conflict of interest' (Annex 1a).

The Registry must be a non-profit organisation, formed in accordance with the law of a Member State and having its registered office, central administration and principal place of business within the European Union.

The application shall identify clearly the Member State in which the non-profit organisation is formed and provide complete information about the location of its registered office, central administration and its principal place of business.

In order to confirm that the status of the applicant conforms to these requirements, the application must include the information set out in Annex 1.

In addition, if the non-profit organisation is set up by a consortium of firms or groups of contractors, the application should include information about the role and status of each member or group. A description of the internal organisation of the non-profit organisation should also be provided unless this is provided in the articles of association or similar type of statutes.

If the non-profit organisation is not yet established at the time of the application, applicants should submit as much tentative information as available regarding each of the above requirements and in addition a clear and precise indication about the timetable and procedure for such establishment.

The Registry must carry out the necessary tasks as a prime contractor, neither as an agent nor subcontractor. Subcontracts may be allowed where necessary for the performance of the work, and with prior and written authorisation of the Commission. In such cases, the contractor shall ensure that the Commission enjoys the same rights and guarantees in relation to third parties as in relation to the contractor himself. In the cases where applicants propose to subcontract any part of the Registry functions, applications shall include the related information as set out in Annex 1(10).

Applicants must provide a declaration on their honour (Annex 1a), duly signed and dated, stating that they are not in one of the situations referred to in Articles 93 and 94 of the Financial Regulation. This same declaration may also be requested from subcontractors. Candidates who are in the situations referred to in Articles 93 and 94 of the Financial Regulation are excluded from participating in this procedure.

Applications which do not fulfil the eligibility criteria will not be evaluated.

The decision to exclude a proposal for failing eligibility criteria will be taken by the Commission. The applicant of an ineligible proposal will be informed immediately after the Commission decision.

4. Selection criteria

The selection of the .eu Registry will be based on Regulation (EC) No 733/2002 and on the criteria outlined in this section. The applications must include the information on the selection criteria as set out in Annex 2.

A. Quality of service

The Registry is 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 creation and management of the TLD zone files.

Applicants must demonstrate their ability to organise, administer and manage the .eu TLD in the general interest and on the basis of principles of quality, efficiency, reliability and accessibility. Applications shall describe the type of organisation, administration and management intended to be put in place and shall provide information on expertise available in the organisation to achieve these functions. Regard may be had to the extent the applicant itself will be able to fulfil the functions as a Registry as opposed to the use of subcontractors.

Applications shall also include a description of the proposed registrar accreditation procedure and conditions, including technical considerations, and the related method to ensure effective and fair conditions of competition among registrars. If available a draft accreditation agreement may be included. The Registry shall not act itself as registrar.

The .eu TLD Registry will also need to take sufficient measures to ensure that the .eu TLD is promoted effectively within the EU, that it generates consumer/user confidence, is conducive to innovation and that it can adapt to the future requirements of potential registrants. Particular attention needs to be given to the linguistic diversity of the European Union, and the need to promote the .eu TLD in the official languages of the EU, including the promotion of variants using internationalised domain names (IDNs). Applications will describe how the applicants intend to achieve these objectives.

This selection criterion will be marked with a maximum of 30. A threshold of 20 will be required for applicants to be considered for selection.

B. Human and technical resources

Applicants must demonstrate an adequate level of human and technical resources to put in place and ensure the operation of a registration management system which provides a high level of reliability (including contingency provisions in the event of failure), accuracy and efficiency. Geographic diversity in the applicants' proposed management structure and staff will also be considered a positive attribute for the purposes of evaluation.

Applicants also need to demonstrate that the .eu TLD will be managed in a way which is at the very least consistent with the minimum ICANN required functional and performance specifications for ccTLDs registry services.

This selection criterion will be marked with a maximum of 20. A threshold of 14 will be required for applicants to be considered for selection.

The application must include the information as set out in Annex 3.

C. Financial standing

Applicants must demonstrate a level of financial security and stability which is consistent with the tasks involved. Consideration therefore will be given to the quality of the business plan provided for the proposed registry operation.

The application will include adequate information about the anticipated costs and capital requirements, availability of capital and insurance, a revenue model (including a pricing model), relevant market analysis, a marketing plan and registry failure provisions.

The cost/quality of service relationship is a significant element in the evaluation of the financial standing.

In addition, applicants should provide information on the annual external audits they will submit themselves to.

This selection criterion will be marked with a maximum of 20. A threshold of 14 will be required for applicants to be considered for selection.

No Union financial contribution is available in relation to the implementation of the Regulation. The Registry will collect fees from third parties for the performance of its functions. The investments and expenditure by the Registry are to be undertaken against the expectation of revenue from registrations. After the first year of activities, if a surplus is recorded that may not be invested for enhanced quality of service purposes directly related to the Registry's organisation, administration and management of the .eu TLD, such surplus will be transferred each year to the Union budget. Consideration shall be given to the need to ensure an appropriate operating reserve.

D. Consultation mechanisms

Applicants should indicate how they intend to consult and take account of the views of other interested parties, in particular with public authorities, undertakings, organisations and natural persons representing different elements of the European Internet community and stakeholders.

In particular, applicants should indicate what consultative mechanism they intend to use for the initial definition of a registration policy and for its subsequent modification.

This selection criterion will be marked with a maximum of 30. A threshold of 20 will be required for applicants to be considered for selection.

E. Representation

Applicants should indicate how they intend to establish and maintain communication with, and if appropriate participate in, relevant regional or international Internet-related organisations (including notably CENTR (Council of the European National Top Level Domain Registries), RIPE (Réseaux IP Européens), ICANN).

This selection criterion will be marked with a maximum of 10. A threshold of 5 will be required for applicants to be considered for selection.

F. Impact on the domain name marketplace

The Regulation states that 'the .eu TLD should promote the use of, and access to, the Internet networks and the virtual marketplace based on the Internet, in accordance with Article 154(2) of the Treaty, by providing a complementary registration domain to existing country-code top level domains (ccTLDs) or global registration in the generic top level domains, and should in consequence increase choice and competition.' Consideration will therefore be given to the likely impact that the applicant's proposal would have on the competitive situation in the domain name marketplace.

Applications should include relevant data relating to share of sales of the non-profit organisation members or stakeholders in TLD registration activities at regional and global level. Shares should be separately provided for: 1. 'all gTLDs'; 2. 'all ccTLDs'; 3. each of the gTLDs in which the respective member or stakeholder is active; 4. each of the respective ccTLDs in which the respective member or stakeholder is active.

This selection criterion will be marked with a maximum of 20. A threshold of 14 will be required for applicants to be considered for selection.

G. Implementation mechanisms for public policy provisions

Article 5(1) of the Regulation requires the Commission, after consultation with the Registry, to adopt the public policy rules

concerning the implementation and functions of the .eu TLD, and public policy principles relating to the registration of domain names ⁽⁴⁾.

Applicants are therefore invited to identify options for mechanisms to implement the provisions of Article 5(1), outline the financial, logistical and resource implications of such options and to indicate the preferred option of the applicant (and the reasons for preferment).

The applicant should also indicate which options have been used to formulate the revenue-cost model included in the section entitled 'Financial standing'. Such information will be used by the Commission to help define the public policy rules to be adopted. It should be clear to applicants that the policy to be applicable may differ from the proposal of the selected Registry.

This criterion will not be marked on the basis of the quality of the policy option concerned, since policy will be later decided by the Commission assisted by the Committee mentioned in Article 6 of the Regulation. It will be marked on the basis of the quality of the relationship between the revenue-cost model and alternative policy options.

The maximum mark may be 10. A threshold of 5 will be required for applicants to be considered for selection.

H. EEA countries and EU enlargement

Applicants should demonstrate how they intend to take into consideration the expected extension of the Regulation to EEA countries and the potential extension to the candidate countries.

This selection criterion will be marked with a maximum of 10. A threshold of 5 will be required for applicants to be considered for selection.

5. Post-selection procedure

Further to the evaluation of the expressions of interest received within the deadline given in Section 2 above, the Commission will consult with the Member States in the manner provided for in the Regulation, and will proceed to the selection of an appropriate organisation to operate the .eu Registry.

The successful applicant will be invited to conclude a contract with the Commission, which will stipulate the tasks and responsibilities of the Registry as set out in the Regulation, including the public policy principles foreseen in Article 5(1), as well as the conditions according to which the Commission shall supervise the organisation, administration and management of the .eu TLD by the Registry and the conditions on the basis of which the Registry was selected. The contract will be limited in time and renewable. The initial contract shall be for a period of five years and could be renewed for two additional periods of five years.

⁽⁴⁾ See footnote 1.

If, at any point before the signature of the contract, contract negotiations are terminated because either the applicant themselves withdraw, or because in the opinion of the Commission the conclusion of an appropriate contract is not possible, the reasons to terminate the contract negotiations will be duly and promptly notified to the other party. If at any stage in the selection process and before the signature of the contract such an eventuality does occur, the Commission reserves the right to open negotiations with another applicant which has submitted an eligible expression of interest and has fulfilled the selection criteria.

Following signature of the contract by the Registry and the Commission, the Commission will communicate its decision on the selection of an .eu ccTLD Registry operator to the

Internet Corporation for Assigned Names and Numbers (ICANN) and request, as appropriate, ICANN to ensure the delegation of the .eu ccTLD to the designated organisation subject to the appropriate procedure for ccTLD delegation.

The Regulation also provides that the Registry will be subject to public policy rules concerning the operation of the .eu TLD, which were adopted by the Commission after having consulted the Member States and the Registry. These rules address the need to prevent speculative and abusive registration of domain names, provide for a policy on the possible revocation of domain names (including the question of *bona vacantia*), issues of language and geographical concepts, a policy for the treatment of intellectual property and other rights, and provide a policy on the extra-judicial settlement of conflicts policy.

ANNEX I

Eligibility criteria

Information to be provided in compliance with the eligibility criteria related to the status of the applicant:

1. the full legal name, principal address, telephone and fax numbers, website(s) and e-mail address of the applicant corresponding to the non-profit organisation;
 2. the complete location (address, telephone, fax, website(s) and e-mail address) of the registered office, central administration and principal place of business;
 3. the address and contact details of all other business locations of the applicant;
 4. the status of the organisation;
 5. the law under which the organisation is established;
 6. a certified copy of the articles of association or similar type of statutes of the organisation;
 7. if the organisation is set up by a consortium of firms or groups of contractors, the complete address and contact details of each member or group, as well as their role and status;
 8. unless it is provided in the articles of association or similar type of statutes of the organisation, a description of the internal organisation of the non-profit organisation;
 9. if the non-profit organisation is not yet established at the time of the application, the complete tentative information available regarding each of the above requirements and in addition clear and precise indication about the timetable and procedure for such establishment;
 10. if the applicant proposes to subcontract any part of the Registry function, they should provide relevant details, including the function to be subcontracted, the scope and terms of the proposed subcontract, the proposed subcontractor (if known), and a description of the proposed subcontractors' technical, financial and management capabilities and expertise (if known). Any sub-delegation shall be subject to prior and written authorisation of the Commission;
 11. (optional) full names and positions of: (i) all directors; (ii) all Members; and (iii) all managers. Information on previous positions and experience as well as other current positions should, if relevant, be provided also;
 12. filled in and signed 'declaration of honour with respect to the exclusion criteria and absence of conflict of interest' (Annex 1a).
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ANNEX 1a

Declaration of honour with respect to the exclusion criteria and absence of conflict of interest

The undersigned (*name of the signatory to this form, to be completed*):

- in his/her own name (*if the economic operator is a natural person or in case of own declaration of a director or person with powers of representation, decision making or control over the economic operator ⁽¹⁾*)

or

- representing (*if the economic operator is a legal person*)

official name in full (*only for legal person*):

official legal form (*only for legal person*):

official address in full:

VAT registration number:

declares that the company or organisation that he/she represents/he/she:

- (a) is not bankrupt or being wound up, is not having its affairs administered by the courts, has not entered into an arrangement with creditors, has not suspended business activities, is not the subject of proceedings concerning those matters, and is not in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) has not been convicted of an offence concerning professional conduct by a judgment which has the force of *res judicata*;
- (c) has not been guilty of grave professional misconduct proven by any means which the contracting authorities can justify;
- (d) has fulfilled all its obligations relating to the payment of social security contributions and the payment of taxes in accordance with the legal provisions of the country in which it is established, with those of the country of the contracting authority and those of the country where the contract is to be carried out;
- (e) has not been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
- (f) is not a subject of the administrative penalty for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or failing to supply an information, or being declared to be in serious breach of his obligation under contract covered by the budget.

In addition, the undersigned declares on their honour:

- (g) they have no conflict of interest in connection with the contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinities, family or emotional ties or any other relevant connection or shared interest;
- (h) they will inform the contracting authority, without delay, of any situation considered a conflict of interest or which could give rise to a conflict of interest;
- (i) they have not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract;
- (j) they have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, and have not accepted and will not accept any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to award of the contract;
- (k) that the information provided to the Commission within the context of this call for expressions of interest is accurate, sincere and complete;

⁽¹⁾ To be used depending on the national legislation of the country in which the applicant is established and where considered necessary by the contracting authority (see Article 134(4) of the Implementing Rules).

- (l) that in case of award of contract, they shall provide upon request the evidence that they are not in any of the situations described in points (a), (b), (d) or (e) above.

For situations described in (a), (b) and (e), production of a recent extract from the judicial record is required or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. Where the successful applicant is a legal person and the national legislation of the country in which the successful applicant is established does not allow the provision of such documents for legal persons, the documents should be provided for natural persons, such as the company directors or any person with powers of representation, decision making or control in relation to the successful applicant.

For the situation described in point (d) above, recent certificates or letters issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the successful applicant is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions.

For any of the situations (a), (b), (d) or (e), where any document described in two paragraphs above is not issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

By signing this form, the undersigned acknowledges that they have been acquainted with the administrative and financial penalties described under Articles 133 and 134b of the Implementing Rules (Commission Regulation (EC, Euratom) No 2342/2002), which may be applied if any of the declarations or information provided prove to be false.

Full name

Date

Signature

ANNEX 2

Submission of the application

The application form must be signed and dated by a party acting on behalf and with the authority of the proposed registry operator/applicant organisation, certifying that all the information provided in the applicant's proposal is true and accurate to the best of his/her knowledge. By so doing, the signatory and the applicant organisation accept that any material misstatement or misrepresentation may result in rejection of the application or cancellation of any subsequent contract based on such an application.

The applicants must fulfil the eligibility criteria. In addition, applicants should provide information under the headings outlined in this Annex. Criteria A to H shall be evaluated according to the following scores:

- 1 insufficient,
- 2 poor,
- 3 average,
- 4 good,
- 5 excellent.

A. Quality of services

A.1. Description of the applicant ability to organise, administer and manage the .eu TLD in the general interest and on the basis of principles of quality, efficiency, reliability and accessibility including general capabilities, expertise, previous relevant experience and, if applicable, current business operations. If the organisation is set up by a consortium of firms or groups of contractors, a description of the general capabilities, expertise, previous relevant experience and, if applicable, current business operations for each firm or group.

A.2. Information on the management expertise of the proposed directors and managers, including personal experience and qualifications.

A.3. Description of the proposed approach to apply the existing registrar accreditation procedure and conditions, including technical considerations, and the applicant's proposed method to ensure effective and fair conditions of competition among registrars.

A.4. Description of the measures intended to be taken by the applicant to ensure the promotion of the .eu TLD within the EU, to generate consumer/user confidence, be conducive to innovation and adapt to the future requirements of potential registrants, and promote linguistic diversity.

B. Human and technical resources

B.1. Demonstration of an adequate level of human and technical resources to put in place and ensure the operation of a registration management system which provides a high level of reliability (including contingency provisions in the event of failure), accuracy and efficiency. Demonstration of the geographical diversity of the management structure and the staff.

B.2. Detailed description of the applicant's technical capability to carry out the tasks outlined in the Annex 3. This should include information on the number, experience and qualifications of key technical personnel and access to system maintenance and development tools and resources.

B.3. Description of the technical plan for the proposed registry operations. This should include a general description of the proposed facilities and systems, the registry-registrar model, database capabilities, procedures for zone-file management, billing and collection systems, third-party data escrow and backup (with data held solely in the European Union), associated public query services, system security, capability for handling peak capacities, system reliability and system recovery procedures (as outlined in Annex 3).

C. Financial standing

C.1. Description of the business plan for the proposed registry operation, including the services to be provided, the anticipated cost and capital requirements, availability of capital, the revenue model (including a pricing model), a market analysis/forecast, a marketing plan, a cost analysis, a resource requirement projection, an expansion plan for the five-year period of the contract, a risk analysis and a indication of registry failure provisions. The applicant can submit any additional information felt to be appropriate.

C.2. Evidence of financial and economic standing to be provided by one of the following: statements from bankers or investors, balance sheets or extracts from balance sheets or a statement of overall turnover.

C.3. Confirmation and details of general liability insurance provision, including the name and address of the insurance policy provider, and the amount of insurance cover.

C.4. Information on the annual external audit.

D. Consultation mechanisms

D.1. Description of the consultation of interested parties process and methodology.

E. Representation

E.1. Description of the intended representation to regional and international Internet-related organisations.

F. Impact on competition

F.1. Relevant data relating to share of sales of members or stakeholders in similar registration activities regionally or globally.

G. Implementation mechanisms for public policy provisions

G.1. Description of the options to implement the provisions of Article 5(1) of the Regulation outlining financial, logistical and resource implications.

G.2. Information about the options used by the applicant to formulate the revenue/cost model included in C1.

H. EEA countries and EU enlargement

H.1. Demonstration of how the applicant intends to take into consideration the expected extension of the regulation to EEA countries and the potential extension to the candidate countries.

ANNEX 3

The Registry will need to provide, as a minimum, the necessary systems, software, hardware, facilities, infrastructure for the following services:

1. operation and maintenance of the primary authoritative server for the .eu TLD;
 2. operation and/or administration of the network of secondary servers for the .eu TLD;
 3. creation and management of the .eu TLD zone file(s);
 4. implementation of appropriate security measures to guarantee a high level of data confidentiality, integrity and availability; In particular, the contractor must ensure that .eu TLD is available at all times, that information is only made publicly available with the consent of the registrant and that information is only altered at the request of the registrant and/or their registrar; in addition, Denial of Service (DoS) and Distributed Denial of Service (DDoS) prevention systems must be described in the application;
 5. security due diligence to guarantee a constant and continued vigilance against emerging threats;
 6. maintenance of an accurate and up-to-date registration database for all .eu TLD registrations;
 7. maintenance of an accurate and up-to-date database of .eu TLD accredited registrars;
 8. establishment of a third-party data escrow (with data held solely in the European Union) for .eu TLD zone file and domain name registration information;
 9. compliance with relevant international standards (including IETF standards and future standards and procedures such as those being developed for internationalised domain names) and best practice procedures for the functions outlined above and in order to ensure the interoperability of the .eu TLD with the rest of the domain name system; provisions for taking account of migration to IPv6 as and when appropriate;
 10. promotion of awareness and registration in the .eu TLD by maintaining a website with up-to-date policy and registration information for the .eu TLD, and through other promotion and awareness means;
 11. the operation and maintenance of associated public query services.
-

ANNEX 4

Draft service concession contract

The European Union (hereinafter referred to as 'the Union'), represented by the European Commission (hereinafter referred to as 'the Commission'), which is represented for the purposes of the signature of this contract by (*forename, surname, function, department*) or his/her duly authorised representative,

of the one part,

and

(*Company name and legal form*)

(*Statutory registration number*)

(*Registered/main office/place of operation*)

(*Address in full*)

(*VAT registration number*)

(*Registration number under a specific social security system*)

represented by its/their/legal/statutory representative(s), (*name*) (*function*)

(*the contractor*),

of the other part,

Hereinafter referred to collectively as the 'contracting parties'

HAVE AGREED:

the Special Conditions and the General Conditions below and the following Annexes:

Annex I — Technical Annex

Annex II — Operational Summary

Annex III — Contractor's bid (No (*complete*) of (*insert date*))

which form an integral part of this contract (hereinafter referred to as 'the Contract').

The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract. The terms set out in the General Conditions shall take precedence over those in the Annexes. The terms set out in the Technical Annex (Annex I) shall take precedence over those in the Operational Summary (Annex II).

Subject to the above, the several instruments forming part of the Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by the Commission, subject to the rights of the Contractor under Article I.7 should he dispute any such instruction.

I — SPECIAL CONDITIONS*Article I.1***Subject**

I.1.1. The subject of the Contract is to entrust the organisation, administration and management of the .eu Top Level Domain (TLD) to the Contractor in accordance with the provisions of 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 (OJ L 113, 30.4.2002, p. 1) and 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 (OJ L 162, 30.4.2004, p. 40).

I.1.2. The Contractor shall provide the services assigned to him in accordance with the technical obligations described in the Technical Annex (Annex I) and with the specifications of the Operational Summary annexed to the Contract (Annex II).

*Article I.2***Duration**

I.2.1. The Contract shall enter into force on the date on which it is signed by the last contracting party.

I.2.2. Without prejudice to the execution of necessary preparatory work execution of the tasks may under no circumstances begin before the date on which the Contract enters into force.

I.2.3. This contract is concluded for an initial period of 5 years from the date on which it is signed by the contracting parties. This period and all other periods specified in the Contract are calculated in calendar days.

I.2.4. This contract may be extended two times each time for additional periods of maximum 5 years, by both contracting parties in the form of a supplementary contract. The request for extension shall be notified by either party between the 15th and 12th months before the end of the current contract. Tacit extension shall not be valid.

Article I.3

General administrative provisions

Any communication relating to the Contract shall be made in writing and shall bear the Contract number. Ordinary mail shall be deemed to have been received by the Commission on the date on which it is registered by the department responsible indicated below. Communications shall be sent to the following addresses:

Commission:

European Commission
DG Communications Networks, Content and Technology
Unit D1
1049 Bruxelles/Brussel
BELGIQUE/BELGIË
E-mail: cnect-d1@ec.europa.eu

Contractor:

...

Article I.4

Applicable law and settlement of disputes

I.4.1. The Contract shall be governed by the national substantive law of the Kingdom of Belgium.

I.4.2. The General Court and, in the case of an appeal, the European Court of Justice shall have sole jurisdiction to hear any disputes between the Union and the Contractor, as regards the validity, the application or any interpretation of this contract.

Article I.5

Termination by either contracting party

I.5.1. The Contractor may terminate this contract at any time, in the case where he is not able to perform his contractual obligations, by giving 9 months written notice to the Commission. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments.

I.5.2. When the contract is terminated for any reason whatsoever, the Commission, with the cooperation of the Contractor, shall take all necessary steps to transfer the administrative and operational responsibility for the .eu TLD and, in respect with the applicable law, any reserve funds to such party as the Commission may designate. In such case, the Contractor shall make all efforts to ensure that the continuity of the service will not be hampered in any way whatsoever. The contractor shall, in particular, continue to update the information subject to third-party data escrow until the time of completion of the transfer of the .eu TLD. The contractor shall also ensure that the data is transferred to such party as the Commission may designate in a universally readable format at the time of the termination of the contract. The Contractor shall also provide the Commission or the new registry with the appropriate means needed to process, transform, adapt and, more generally, use the data according to the needs of the Commission/new registry.

I.5.3. In case of termination of the contract, the Commission may ask the Contractor to provide consulting services at market prices to assist the transfer of responsibilities to the new registry as the Commission may designate.

I.5.4. In the cases hereinafter considered, the Commission shall notify the Contractor by registered letter with acknowledgement of receipt that he has one month to rectify the situation. At the expiration of this month, if the Contractor has not rectified the situation, the Commission may terminate this contract immediately, without indemnification, by registered letter with acknowledgement of receipt:

- (a) where the Contractor is not in a position to deliver the resources (in terms of finance, personnel, etc.) necessary to fulfil the obligations included in Regulation (EC) No 874/2004;
- (b) where the Contractor has not implemented Regulation (EC) No 874/2004 in its initial registration policy for the .eu TLD, or applies such policy arbitrarily;
- (c) where the Commission can reasonably assume that the Contractor is unable to continue to manage, operate and control the .eu TLD in accordance with the Regulation and the related public policies;
- (d) where the Contractor has not fully performed his contractual obligations.

I.5.5. The Commission may immediately terminate this contract, without indemnification, where the Contractor concludes a contract with ICANN regarding the delegation of the .eu TLD, without prior consent of the Commission.

*Article I.6***Financial management and control**

I.6.1. For the purpose of this contract, the cost-based principle should be interpreted as imposing a price which is not only based on costs but which results from reasonable costs.

I.6.2. The contractor undertakes to:

- (a) perform the contract and manage the Registry in accordance with the principles of sound financial management;
- (b) ensure that in the performance of the contract no breach of EU law occurs (e.g. competition, consumer protection etc.); and
- (c) ensure that in the performance of the contract no breach of any applicable national law of Member States occurs, notably Belgium law related to not-for-profit organisations.

I.6.3. The Contractor shall perform the Contract in accordance with the principles of sound financial management.

I.6.4. The Contractor may not charge the European Union for performance of the requirements of this contract.

I.6.5. However, the Contractor may establish and collect fees from third parties for performance of the requirements of this contract, provided that the fees are directly related to costs incurred. With respect to the first year of activities, the amount of fees to be imposed by the Registry shall be calculated in taking into account the anticipated costs included in its business plan submitted to the Commission.

I.6.6. The investments and expenditure by the Contractor are to be undertaken by the Contractor against the expectation of revenue from registrations. After the first accounting year, if a surplus is recorded which is not invested for enhanced quality of service purposes, such surplus will be transferred to the Union budget in any year such surplus occurs. Consideration shall be given to the need to ensure appropriate operating reserve.

I.6.7. In order to allow the Commission to check whether there is a surplus to be transferred, the Contractor undertakes to submit within 60 days after the end of each accounting year an accounting balance of its activities. When the Commission comes to a decision on the value of the surplus to be transferred, a Recovery Order shall be issued and sent to the Contractor who shall act accordingly by proceeding to the corresponding transfer of funds, within 60 days upon the reception of the Order.

I.6.8. The Contractor undertakes to initiate annually a financial audit by an independent auditor and to submit it to the Commission. The cost shall be borne by the Contractor.

I.6.9. On the basis of the conclusions of the financial audit, the Commission shall take all appropriate measures which it considers necessary.

I.6.10. The Contractor shall provide all the detailed data requested by the Commission with a view to checking that both the Contract is being properly performed and that, inter alia, the Registry is being managed, in accordance with the principles of sound financial management.

I.6.11. The Contractor shall, if so requested, attend a reasonable number of meetings organised by the Commission or by any other body acting on its behalf with a view to monitoring, supervising and assessing performance of the Contract. He shall facilitate the monitoring, supervision and assessment of such performance.

I.6.12. The Contractor shall keep at the Commission's disposal the original or, in exceptional cases, duly substantiated, authenticated copies, of all documents relating to the Contract for up to 5 years from the end of the Contract indicated in Article I.2.

I.6.13. The contractor shall keep the files relating to applications for at least 5 years from the end of the year in which the application is filed. It is understood that those files will not be kept in original or authenticated copies but will be systematically recorded, after scanning those originals or authenticated copies, on a durable and inalterable electronic medium or support.

I.6.14. The Commission may, at any time within the time limits set out in paragraph I.6.15, arrange for an audit to be carried out, either by an outside body of its choice, or by the Commission departments themselves. The object of such an audit shall be to verify the Contractor's compliance with the contract. The cost shall be borne by the Commission.

I.6.15. Commission audits, whether carried out by its own departments or by an outside body, may take place during the Contract or a period of 5 years following the end of the Contract.

I.6.16. In order to carry out these audits, the Commission's departments and the outside bodies concerned shall have total on-the-spot access, notably to the Contractor's offices, during business hours and to all the information needed for control purposes. Where such information involves personal data, its use, distribution and publication shall be in accordance with Regulation (EC) No 45/2001 of the European Parliament and the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

*Article 1.7***Reporting requirements and deliverables**

The Contractor undertakes to submit to the Commission and make available to the public, normally via its Internet site, the following reports in English in order to facilitate transparency:

1. Progress Report

For the first 2 years of the contract, the Contractor undertakes to submit quarterly progress reports to the Commission detailing the Contractor's progress towards meeting the contract requirements. Thereafter, such reports shall be provided to the Commission every 6 months.

These reports shall indicate the status of all major events, as well as major work performed during the period, including registration policy and amendments to it, technical status, accomplishments, and complications experienced in fulfilling the contract requirements. Such reports shall also provide performance data related to operation of the .eu TLD including, but not limited to, the following: the total number of registry transactions; the number of new, transferred, deleted or revoked registrations in the .eu TLD (including cumulative registrations over time); the number of registrars accredited to register names in the .eu TLD space, including the operational status of those registrars; and the number of complaints and number of disputed names.

The Commission shall have 30 days from the receipt of such a report to:

- (a) approve the report, with or without comments, reservation or requests for additional information; or
- (b) request a new report.

If the Commission does not react within the 30 days period, the report shall be deemed to have been approved.

*Article 1.8***Data protection**

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data shall be processed solely for the purposes of the performance, management and monitoring of the Contract by the Head of Unit in charge of this contract acting as data controller without prejudice to possible transmission to the bodies charged with monitoring or inspection task in application of Union law.

II — GENERAL CONDITIONS*Article II.1***Performance of the contract**

II.1.1. The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.

II.1.2. The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed. Nonetheless, the Registry shall only enter into the appropriate contract providing for the delegation of the .eu ccTLD code after having obtained the prior consent of the Commission.

II.1.3. Without prejudice to Article II.3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.

II.1.4. The Contractor must ensure that any staff performing the Contract have the professional qualifications and experience required for the execution of the tasks assigned to him.

II.1.5. The Contractor shall neither represent the Commission nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.

II.1.6. The Contractor shall have sole responsibility for the staff who execute the tasks assigned to him. The Contractor shall make provision for the following employment or service relationships with his staff:

- (a) staff executing the tasks assigned to the Contractor may not be given orders direct by the Commission;
- (b) the Commission may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Commission any right arising from the contractual relationship between the Commission and the Contractor.

II.1.7. Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the Commission. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event, the Contractor shall give priority to solving the problem rather than determining liability.

II.1.8. The Contractor shall regularly update and back up any database, necessary for the performance of the tasks and functions of the Registry including .eu TLD zone file and domain registration information.

II.1.9. The Contractor shall notify the Commission immediately, in writing, of any change in his legal or financial circumstances, relating in particular to the legal form at the signing of the contract and the resources used to perform the contract.

Article II.2

Liability

II.2.1. The Commission shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the Commission.

II.2.2. The Contractor shall be liable for any loss or damage sustained by the Commission in performance of the Contract, including in the event of subcontracting under Article II.10 but only up to three times the total amount of the Contract. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or by its employees, the Contractor shall remain liable without any limitation as to the amount of the damage or loss.

II.2.3. The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Commission by a third party as a result of damage caused by the Contractor in performance of the Contract.

II.2.4. In the event of any action brought by a third party against the Commission in connection with performance of the Contract, the Contractor shall assist the Commission. Expenditure incurred by the Contractor to this end may be borne by the Commission.

II.2.5. The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the Commission should it so request.

Article II.3

Conflict of interests

II.3.1. The Contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which could arise during performance of the Contract must be notified to the Commission in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it.

The Commission reserves the right to verify that such measures are adequate and may require additional measures to be taken, if necessary, within a time limit which it shall set. The Contractor shall ensure that his staff, board and directors are not placed in a situation which could give rise to conflict of interests. Without prejudice to Article II.1 the Contractor shall replace, immediately and without compensation from the Commission, any member of his staff exposed to such a situation.

II.3.2. The Contractor shall abstain from any contact likely to compromise his independence.

II.3.3. The Contractor declares:

- that he has not made and will not make any offer of any type whatsoever from which an advantage, which is illegal or contrary to the provisions of this Contract, can be derived under the Contract,
- that he has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to performance of the Contract.

II.3.4. The Contractor shall pass on all the relevant obligations in writing to his staff, board, and directors as well as to third parties involved in performance of the Contract. A copy of the instructions given and the undertakings made in this respect shall be sent to the Commission should it so request.

Article II.4

Ownership of the results — Intellectual and industrial property

II.4.1. Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be owned solely by the Union, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where industrial or intellectual property rights exist prior to the Contract being entered into. In particular, the Union shall retain all rights relating to the .eu TLD including, notably, any right whatsoever on the Registry databases.

II.4.2. The above provision will not apply to any license or right granted to, or obtained by, the Contractor before the conclusion of the Contract.

Article II.5

Confidentiality

II.5.1. The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract. The Contractor shall continue to be bound by this undertaking after completion of the tasks.

II.5.2. The Contractor shall obtain from each member of his staff, board and directors a written undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly, even after completion of the tasks. A copy of the undertaking shall be sent to the Commission.

The foregoing obligations shall not apply to any information:

- (a) which shall at the time of disclosure or thereafter become part of the public domain otherwise than by breach of this Contract but only after such information becomes part of the public domain;
- (b) which the Contractor can establish by competent proof was in its possession prior to disclosure and was not directly or indirectly obtained in the performance of the Contract;
- (c) which the Contractor can establish by competent proof was received after disclosure hereunder from a third party who did not directly or indirectly acquire in connection with the performance of the Contract.

Article II.6

Data protection

II.6.1. The Contractor shall have the right of access to his/her personal data and the right to rectify any such data. Should the Contractor have any queries concerning the processing of his/her personal data, s/he shall address them to the entity acting as data controller provided for in Article I.8.

II.6.2. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

II.6.3. Where the Contract requires the processing of personal data by the Contractor, the Contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise his/her rights.

II.6.4. The Contractor shall limit access to the data to the staff strictly necessary for the performance, management and monitoring of the Contract.

II.6.5. The Contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:

- (a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:
 - (aa) unauthorised reading, copying, alteration or removal of storage media;
 - (ab) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - (ac) unauthorised use of data-processing systems by means of data transmission facilities;
- (b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- (c) record which personal data have been communicated, when and to whom;
- (d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;
- (e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- (f) design its organisational structure in such a way that it meets data protection requirements.

Article II.7

Use, distribution and publication of information

II.7.1. The Contractor shall authorise the Commission to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of

the Contractor, the subject matter, the duration and the reports. Where personal data is concerned, Articles I.8 and II.6 shall apply. Notwithstanding the Commission obligations concerning public access to documents and public procurement rules, the above mentioned provision will not apply to the Operational Summary in Annex II and to the Contractor's bid in Annex III.

II.7.2. Unless otherwise provided by the Special Conditions, the Commission shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the Commission.

II.7.3. Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the Commission. It shall state that the opinions expressed are those of the Contractor only and do not represent the Commission's official position.

II.7.4. The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Commission has specifically given prior written authorisation to the contrary.

Article II.8

Taxation

The Contractor shall have sole responsibility for compliance with the tax laws which apply to him.

Article II.9

Force majeure

II.9.1. *Force majeure* shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as *force majeure* unless they stem directly from a relevant case of *force majeure*.

II.9.2. Without prejudice to the provisions of Article II.1.7, if either contracting party is faced with *force majeure*, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.

II.9.3. Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by *force majeure*. Where the Contractor is unable to perform his contractual obligations owing to *force majeure*, he shall only charge for tasks actually executed.

II.9.4. The contracting parties shall take the necessary measures to reduce damage to a minimum.

Article II.10

Subcontracting

II.10.1. The Contractor shall not subcontract to any third party including its founder members without prior written authorisation from the Commission nor cause the Contract to be performed in fact by third parties.

II.10.2. In case of emergency incidents that have as effect to jeopardise the continuity of the service such as emergency repairs and invasive actions, the contractor shall take immediately the necessary measures to ensure the continuity of the service without waiting for the authorisation from the Commission.

II.10.3. Even where the Commission authorises the Contractor to subcontract to third parties, he shall nonetheless remain bound by his obligations to the Commission under the Contract and shall bear exclusive liability for proper performance of the Contract. The Commission shall only authorise the Contractor to subcontract to third parties tasks which prove necessary for the performance of the obligations assigned to the Contractor by the contract.

II.10.4. The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the Commission is entitled by virtue of the Contract, notably Article II.13.

Article II.11

Assignment

II.11.1. The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the Commission.

II.11.2. In the absence of the authorisation referred to in 1 above, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the Commission.

*Article II.12***Termination by the commission**

II.12.1. The Commission may terminate the Contract in the following circumstances:

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) where the Contractor has been convicted of an offence concerning his professional conduct by a judgment which has the force of *res judicata*;
- (c) where the Contractor has been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (d) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (e) where the Commission seriously suspects the Contractor of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
- (f) where the Contractor is in breach of his obligations under Article II.3;
- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Commission as a condition of participation in the Contract procedure or failed to supply this information;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Commission's opinion, have a significant effect on the performance of the Contract;
- (i) where execution of the tasks has not actually commenced within 3 months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Commission;
- (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

II.12.2. Prior to termination under points (e), (h) or (k), the Contractor shall be given the opportunity to submit his observations. Termination shall take effect on the date on which a registered letter with acknowledgment of receipt terminating the Contract is received by the Contractor, or on any other date indicated in the letter of termination.

II.12.3. Consequences of termination:

In the event of the Commission terminating the Contract in accordance with this Article and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required for the subsequent execution of the tasks executed up to the date on which termination takes effect, within a period not exceeding 60 days from that date.

In the event of the Commission terminating the Contract in accordance with this Article, the Commission may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract. On termination, the Commission may engage any other contractor to complete the services. The Commission shall be entitled to claim from the Contractor all extra costs incurred in making good and completing the services, without prejudice to any other rights or guarantees it has under the Contract.

*Article II.13***Financial management, check and audit control**

II.13.1. The European Court of Auditors is empowered to conduct audits on the basis of documents and on-the-spot visits over all contractors and subcontractors.

II.13.2. The Commission, including the European Anti-Fraud Office, or an outside body of its choice shall have the same rights as the European Court of Auditors under the previous paragraph.

II.13.3. In addition, the European Anti-Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Regulation (EC) No 1073/1999 of the European Parliament and of the Council from signature of the Contract up to 5 years after payment of the balance.

*Article II.14***Amendments**

Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties. An oral agreement shall not be binding on the contracting parties.

Signatures:

For ...,

...

Signature:

For the Commission,

Director-General

Directorate-General for Communications Networks, Content and Technology

Signature:

Done at Brussels, *(date)*.

In duplicate in English.

TECHNICAL ANNEX

A. Introduction

The contractor must furnish the necessary personnel, material, equipment, services and facilities (except as otherwise specified) to perform the functions identified below.

The .eu TLD is the top level domain ('TLD') of the Internet domain name system ('DNS') that corresponds to the European Union.

The contractor will not be permitted to act as a registrar in the .eu TLD space. Furthermore, the contractor will be required to perform a core set of .eu TLD registry functions, as described in the 'Contractor requirements' section below.

B. Contractor requirements**B.1. Statement of purpose**

The purpose of this contract is to ensure centralised management and coordination of registry, database, and information services for the .eu TLD. In broadest terms, the .eu TLD was created to provide a locus for registration of domain names to serve the Internet community of the European Union, and is intended to be available to a wide range of registrants as specified in the Regulation. Given the foregoing, the following objectives have to be achieved:

ensure that procedures and a framework of accountability for the delegation and the administration of .eu TLD evolve into a robust, certain and reliable system;

promote increased use of the .eu TLD by the Internet community of the European Union (including small businesses, consumers, Internet users, not-for-profit organisations, with residence, registered office, central administration or principal place of business in the European Union) and public authorities (i.e. Member State, city, and county, among others), through introduction of enhanced services, dissemination of information through advertising and/or other appropriate mechanisms, promotion of the .eu TLD in the official languages of the EU and simplification of registration services;

create an efficiently managed structure that ensures both registrant and consumer confidence and infrastructure stability;

create a stable, flexible and balanced environment within the .eu TLD that is conducive to innovation and that will meet the future demands of potential registrants;

ensure continued stability of the domain name system as a whole and the .eu TLD;

promote robust competition within the .eu TLD and in particular registration services that will lead to greater choice, new and better services for users.

B.2. Core registry functions

The contractor undertakes to provide any services necessary for the proper and efficient functioning of the .eu TLD. In particular, the contractor undertakes to provide the necessary systems, software, hardware, facilities, infrastructure and security for the following services:

operation and maintenance of the primary authoritative server for the .eu TLD;

operation and/or administration of the network of secondary servers for the .eu TLD;

creation and management of the .eu TLD zone file(s);

implementation of appropriate security measures to guarantee a high level of data confidentiality, integrity and availability. In particular, the contractor must ensure that .eu TLD is available at all times, that information is only made publicly available with the consent of the registrant and that information is only altered at the request of the registrant and/or their registrar. In addition, denial of service (Dos) and distributed denial of service (DDoS) prevention systems must be put in place;

security due diligence to guarantee a constant and continued vigilance against emerging threats;

maintenance of an accurate and up-to-date registration database for all .eu TLD registrations;

maintenance of an accurate and up-to-date database of .eu TLD accredited registrars;

establishment of a third party data escrow (with data held solely in the European Union) for .eu TLD zone file and domain name registration information;

compliance with relevant international standards (including IETF (Internet Engineering Task Force) standards and future standards and procedures such as those being developed for internationalised domain names) and best practice procedures for the functions outlined above and in order to ensure the interoperability of the .eu TLD with the rest of the domain name system;

provisions for taking account of migration to IPv6 as appropriate;

promotion of awareness and registration in the .eu TLD by maintaining a website with up-to-date policy and registration information for the .eu TLD, and through other promotion and awareness means; and

operation and maintenance of associated public query services.

B.3. Core policy requirements

1. The contractor undertakes to:

observe the rules, policies and procedures laid down in the Regulation and adopted for its implementation, and the contracts referred to in Article 3 of the Regulation;

act accordingly with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Directive 2002/58/EC of the European Parliament and of the Council on the processing of personal data and the protection of privacy in the electronic communications sector and Commission Decision 2002/16/EC of 27 December 2001 on standard contractual clauses for the transfer of personal data to processors established in third countries, under Directive 95/46/EC;

organise, administer and manage the .eu TLD in the general interest and on the basis of principles of quality, efficiency, reliability and accessibility;

register domain names in the .eu TLD through any accredited .eu registrar requested by any:

undertaking having its registered office, central administration or principal place of business within the Union, or organisation established within the Union without prejudice to the application of national law, or natural person resident within the Union;

impose fees directly related to costs incurred;

implement the extrajudicial settlement-of-conflicts policy and a procedure to resolve promptly disputes between domain name holders regarding rights relating to names including intellectual property rights as well as disputes in relation to individual decisions by the Registry. This policy shall be adopted in accordance with Article 5(1) of the Regulation and take into consideration the recommendations of the World Intellectual Property Organisation. The policy shall provide adequate procedural guarantees for the parties concerned, and shall apply without prejudice to any court proceeding;

adopt transparent and non-discriminatory procedures for, and carry out, accreditation of .eu registrars and ensure effective and fair conditions of competition among .eu registrars;

ensure the integrity of the database.

2. Moreover, the contractor undertakes to:

establish and maintain communication with, and if appropriate participate in, relevant international Internet organisations (including ICANN, CENTR (Council of European National Top Level Domain Registries), RIPE (Réseaux IP Européens));

consult and take account of the views of other interested parties, in particular with public authorities, undertakings, organisations and natural persons representing different elements of the European Internet community;

ensure the independence of the decisions to be taken under the extrajudicial settlement of conflicts policy.

C. Controls

C.1. Technical verification of the contractor's activities

1. The Commission, or any representative authorised by it, may initiate a technical verification of the contractor's activities in order to check that the contract is being or has been carried out in accordance with the conditions set out in this contract or indicated by the contractor.

The verification procedure shall be deemed to be initiated on the date of receipt of the relevant registered letter with acknowledgement of receipt sent by the Commission. It shall be carried out on a confidential basis.

2. The Commission or any authorised representative may have access to the locations and premises where the work is being carried out, and to any document concerning the work, and may request the submission of documents.

The Commission shall take appropriate steps to ensure that its authorised representatives treat confidentially the data to which they have access or which have been provided to them. Prior to the carrying out of the technical verification, the Commission shall communicate to the contractor the identity of the authorised representatives who are intended to perform the verification.

The contractor shall provide appropriate assistance to the Commission or its authorised representatives.

A report on the technical verification of the contractor's activities shall be sent to the contractor. The latter may communicate his observations to the Commission within a month of receiving it. The Commission may decide not to take into account the observations conveyed after that deadline.
