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| From:            | Secretary-General of the European Commission,<br>signed by Mr Jordi AYET PUIGARNAU, Director |
| date of receipt: | 27 April 2018                                                                                |
| To:              | Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of<br>the European Union       |

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Delegations will find attached document SWD(2018) 120 final PART 1/3.

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Encl.: SWD(2018) 120 final PART 1/3



EUROPEAN  
COMMISSION

Brussels, 27.4.2018  
SWD(2018) 120 final

PART 1/3

## **COMMISSION STAFF WORKING DOCUMENT**

### **IMPACT ASSESSMENT**

*Accompanying the document*

**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} - {SEC(2018) 205 final} - {SWD(2018) 121 final} -  
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## Table of contents

|        |                                                                                |    |
|--------|--------------------------------------------------------------------------------|----|
| 1.     | <u>INTRODUCTION: POLITICAL AND LEGAL CONTEXT</u> .....                         | 2  |
| 2.     | <u>PROBLEM DEFINITION</u> .....                                                | 3  |
| 2.1.   | <u>What is/are the problems?</u> .....                                         | 3  |
| 2.2.   | <u>What are the problem drivers?</u> .....                                     | 7  |
| 2.2.1. | <b><u>Outdated and rigid legislation</u></b> .....                             | 7  |
| 2.2.2. | <b><u>Deficiencies in governance and accountability</u></b> .....              | 10 |
| 2.2.3. | <b><u>Rapid evolution of the market</u></b> .....                              | 11 |
| 2.3.   | <u>How will the problem evolve?</u> .....                                      | 14 |
| 3.     | <u>WHY SHOULD THE EU ACT?</u> .....                                            | 15 |
| 3.1.   | <u>Legal basis</u> .....                                                       | 15 |
| 3.2.   | <u>Subsidiarity: Necessity of EU action</u> .....                              | 15 |
| 3.3.   | <u>Subsidiarity: Added value of EU action</u> .....                            | 16 |
| 4.     | <u>OBJECTIVES: WHAT IS TO BE ACHIEVED?</u> .....                               | 17 |
| 4.1.   | <u>General objectives</u> .....                                                | 17 |
| 4.2.   | <u>Specific objectives</u> .....                                               | 17 |
| 5.     | <u>WHAT ARE THE AVAILABLE POLICY OPTIONS?</u> .....                            | 19 |
| 5.1.   | <u>What is the baseline from which options are assessed?</u> .....             | 21 |
|        | <u>STATUS QUO (BASE LINE SCENARIO)</u> .....                                   | 21 |
| 5.2.   | <u>Description of the policy options</u> .....                                 | 22 |
|        | <u>OPTION 1: COMMERCIALISATION</u> .....                                       | 22 |
| 5.3.   | <u>Options discarded at an early stage</u> .....                               | 25 |
|        | <u>OPTION 1: COMMERCIALISATION</u> .....                                       | 26 |
|        | <u>OPTION 4(a): INTERNALISATION</u> .....                                      | 26 |
|        | <u>OPTION 4(b)(ii): EU AGENCY/ENISA</u> .....                                  | 26 |
| 5.4.   | <u>Options relating to Vertical Integration and Eligibility Criteria</u> ..... | 27 |
| 6.     | <u>WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?</u> .....                       | 30 |
| 6.1.   | <u>Baseline</u> .....                                                          | 30 |
| 6.2.   | <u>Option 2. Modernisation of the legal framework</u> .....                    | 37 |
| 6.3.   | <u>Option 3. Separate governance</u> .....                                     | 40 |
| 6.4.   | <u>Option 4(b)(i). Existing EU Agency: full integration in EUIPO</u> .....     | 43 |
| 6.5.   | <u>Horizontal issues: Vertical integration/eligibility criteria</u> .....      | 46 |
| 7.     | <u>HOW DO THE OPTIONS COMPARE?</u> .....                                       | 49 |
| 8.     | <u>PREFERRED OPTION</u> .....                                                  | 52 |
| 8.1.   | <u>REFIT (simplification and improved efficiency)</u> .....                    | 53 |
| 9.     | <u>HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?</u> .....               | 54 |

## 1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

The .eu top-level domain (TLD) was established by 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, following discussions for the creation of a single top-level domain for European Union that were initiated by the European Council in 1999. The .eu TLD is governed by the implementing rules of Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules (PPR) concerning the implementation and functions of the .eu TLD and the principles governing registration. Both Regulations are referred to in this document as the ".eu Regulations".

The .eu TLD was delegated<sup>1</sup> by the Internet Corporation for Assigned Names and Numbers (ICANN) on 22 March 2005 and uploaded in the Internet root zone on 2 May 2005. It was formally launched in April 2006.

The domain name is operated and managed by EURid<sup>2</sup>, a non-profit organisation appointed by the European Commission under a service concession contract to act as its registry in 2003. On 12<sup>th</sup> April 2014 the service concession contract was renewed and it was awarded again to EURid.

Today the .eu TLD is the eighth largest country code TLD (ccTLD) in the world<sup>3</sup> with over 3,7 million registrations (end of Q3 2017)<sup>4</sup>. The .eu TLD is also used by all EU Institutions, Agencies and Bodies, as well as for a number of their projects and initiatives.

The vision behind the creation of the .eu TLD was broad and ambitious, ranging from the acceleration of electronic commerce, the promotion of the use of - and access to - Internet networks and the virtual market place, as well as the promotion of the European Union image on global information networks and the improvement of the interoperability of trans-European networks.

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<sup>1</sup> For an explanation of all technical terms used in this document, see the Glossary. In the Domain Name System (DNS), the 'delegation' of a domain name occurs when the relevant Top Level Domain (in this case, .eu) is published in the root IANA database by ICANN. Publication in the root IANA database enables a code (e.g. .eu) to operate as a top level domain as part of the Domain Name System.

<sup>2</sup> EURid stands for European Registry of Internet Domain Names.

<sup>3</sup> Verisign Domain Name Industry Brief, <https://www.verisign.com/assets/domain-name-report-Q32017.pdf>

<sup>4</sup> EURid Quarterly Report, Q3 2017 [https://eurid.eu/media/filer\\_public/62/aa/62aa8f63-e0ff-42c9-9fdf-b50e2c45601f/quarterly\\_report\\_q3\\_2017.pdf](https://eurid.eu/media/filer_public/62/aa/62aa8f63-e0ff-42c9-9fdf-b50e2c45601f/quarterly_report_q3_2017.pdf)

The .eu TLD is used today by companies and individuals to: 1. Indicate that the website owner is European, and is open for business across the 28 EU Member States and European Economic Area (EEA) countries<sup>5</sup>; 2. Signal quality and trustworthiness: a .eu website indicates that it belongs to a legal entity in the EU and is therefore subject to EU law and trading standards.

As the Internet has spread throughout the world and grown in commercial importance, there have been significant evolutions in the domain name market, in the global Internet governance, as well as in the European Union digital priorities.

A key priority of the Juncker Commission (2014-2019) is the creation of a Digital Single Market (DSM)<sup>6</sup>. It aims at removing existing barriers in the delivery of goods and services within the EU, thus boosting the EU economy and facilitating e-commerce across Member States, with a number of initiatives to reinforce security and trust in the online environment, promote European entrepreneurship and start-ups and uphold citizens' rights, including privacy, in the digital age.

In this context, the .eu TLD, as a trusted symbol of European digital identity, is still a strategic tool which can positively complement the initiatives for the completion of the DSM.

The objective of this impact assessment is to analyse, in line with the Better Regulation guidelines, how to address the problems identified in the retrospective evaluation, and where elements of the .eu Regulations are unfit for addressing new challenges, to identify and assess options which will allow the .eu TLD to continue to fulfil its mission in the future.

## **2. PROBLEM DEFINITION**

### **2.1. What is/are the problems?**

The original .eu Regulations were pivotal in enabling the creation of a dedicated namespace for the European Union. The .eu TLD, first launched in 2006 in accordance with the .eu Regulations, is a success. Despite being a late-comer<sup>7</sup> to the European TLD

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<sup>5</sup> Countries that are candidates to join the Union have the possibility to add their list of reserved names to the Annex containing the list of names reserved by Member States in Commission Regulation (EC) No 874/2004.

<sup>6</sup> The DSM strategy was established following Commission Communication COM/2015/0192.

<sup>7</sup> The .eu entered the market in 2006, much later than the years of the rapid growth in European domain name registrations of the early 2000s. Coming after the first wave of ccTLDs and gTLDs (such as .de, .fr, .uk and .com), the .eu TLD had to make space for itself in markets that had already become established.

market, the .eu Registry has managed to establish a healthy market share throughout the EU and EEA. Its rate of renewal and growth are in line with industry trends in the EU.

According to the findings of the retrospective evaluation:

The .eu Regulations have been **efficient** in making .eu domains widely available throughout the EU, at a low cost for the consumers<sup>8</sup>, providing an identifiable link between the TLD and the European Union. However, their rigid requirements are causing inefficiencies which place the .eu TLD at a competitive disadvantage in the market, reducing the possible benefits in terms of supporting ecommerce or the single market.

While the .eu Regulations have been **effective** in supporting ecommerce and the internal market with the .eu TLD being particularly appealing for business use, there are starting to be early signs of relative decline in the .eu TLD's performance<sup>9</sup>.

Over the years, it has become apparent that the .eu Regulations reflect the domain name market as it was in 2002-2004, and are no longer effective, efficient, or coherent in today's fast-changing technological market environment. With detailed provisions, which are time-consuming and costly to change, the .eu TLD is unable to implement operational or technical changes as swiftly as the market demands and as its competitors are able to.

The objectives of the .eu Regulations continue to be **relevant** to EU citizens. However, the .eu Regulations are now no longer in step with international best practices. The rules for registration ('eligibility criteria') restrict the availability of .eu domains to registrants located in the EU and EEA.

The regulatory framework for the .eu TLD is no longer **coherent** with its objectives. Most ccTLDs within the EU are not subject to the same regulatory burdens as the .eu TLD, which risks placing the .eu Registry at a competitive disadvantage amid toughening market conditions. Neither the .eu Regulations nor the operation of the .eu Registry are coherent with international best practices in relation to internet governance, which favours a multi-stakeholder approach rather than governmental regulation.

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<sup>8</sup> Please refer to section 6.1 for information about the price

<sup>9</sup> See section 5 of the evaluation report

While Regulation 874/2004 has been amended on four occasions to introduce technical updates<sup>10</sup> and Regulation 733/2002 has been amended once in 2008 merely to adapt it to the regulatory procedure with scrutiny<sup>11</sup>, the .eu Regulations have never been fully reviewed to ensure that they are modernised and freed of cumbersome administrative or implementation costs and thus they still deliver effectively their intended benefits of supporting online cross-border activities and promoting EU identity.

The .eu is a well-established TLD and the evaluation has shown that it continues to function well. The problem that this initiative is trying to tackle is that the two Regulations governing the .eu are outdated and rigid, in the sense of (i) obsolete or rigid provisions that cannot easily be updated, and in the sense of (ii) not providing for an optimum governance structure in terms of oversight and accountability in line with the Commission's stated approach to internet governance, so that (iii) increasing difficulties can be foreseen for the .eu TLD in a time of a rapidly evolving market.

The problem currently is not dramatic: it is observed in the functioning and management of the .eu TLD and therefore at the moment it affects primarily the actors that are involved in these functions, i.e. the registry and the Commission and to a lesser extent the registrars. Nevertheless, if precautionary action is not taken, the problem is likely to become large enough to affect end users, in terms of the sustainability of the .eu extension and the attractiveness of the .eu compared to other competitive domain names.

In a nutshell, the initiative is about making sure that a TLD that has worked relatively well continues to do so in the future, so that it still effectively delivers its expected benefits. The issues addressed by this REFIT initiative are of a predominantly technical nature pertaining to the domain name system (DNS) and/or of administrative nature pertaining to the day-to-day management of the .eu TLD; as such this review is of limited scope. Also, as explained above, the problem is not felt directly but by the registry operator, the Commission and to a lesser extent the registrars; hence it is of limited impact. These factors explain the relative lack of stakeholder interest in the initiative.

To mitigate that the Commission launched in parallel to the online public consultation, targeted consultation activities to reach out to stakeholders. Apart from the online public consultation, the consultation strategy included a formal brainstorming workshop with the current registry on the REFIT review, as well as other informal exchanges. To engage the registrars, two consultation sessions were held during the ICANN meeting<sup>12</sup> in

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<sup>10</sup> See consolidated version of EC 874/2004 showing various amendments introduced <http://data.europa.eu/eli/reg/2004/874/oj>

<sup>11</sup> See consolidated version of EC 733/2002 <http://data.europa.eu/eli/reg/2002/733/oj>

<sup>12</sup> ICANN meetings bring together the DNS industry: registries, registrars, as well as representatives from users' community and countries.

Copenhagen and the ICANN meeting in Johannesburg. Another consultation session was held with the Registrar Advisory Board of EURid<sup>13</sup>. On top of this, the Commission launched a survey (through a specialised survey company) among the .eu registrars.

Another group of stakeholders are the .eu peers (other TLDs registries), including the European ccTLDs association which is CENTR, and ICANN. These stakeholders are well placed to evaluate the .eu framework and future options against current practises in the DNS ecosystem, but have low interest in the initiative and in participating in the consultation. Or they even refrain from expressing a view, given that the .eu TLD is a peer/competitor in the industry (in the case of other registries) or a member (in the case of CENTR and ICANN). As we expected, these stakeholders did not respond to the online public consultation. To gather input from them, the Commission launched a survey with targeted questions within the CENTR members, held a consultation session with .eu peers at the CENTR General Assembly and a consultation bilateral meeting with ICANN.

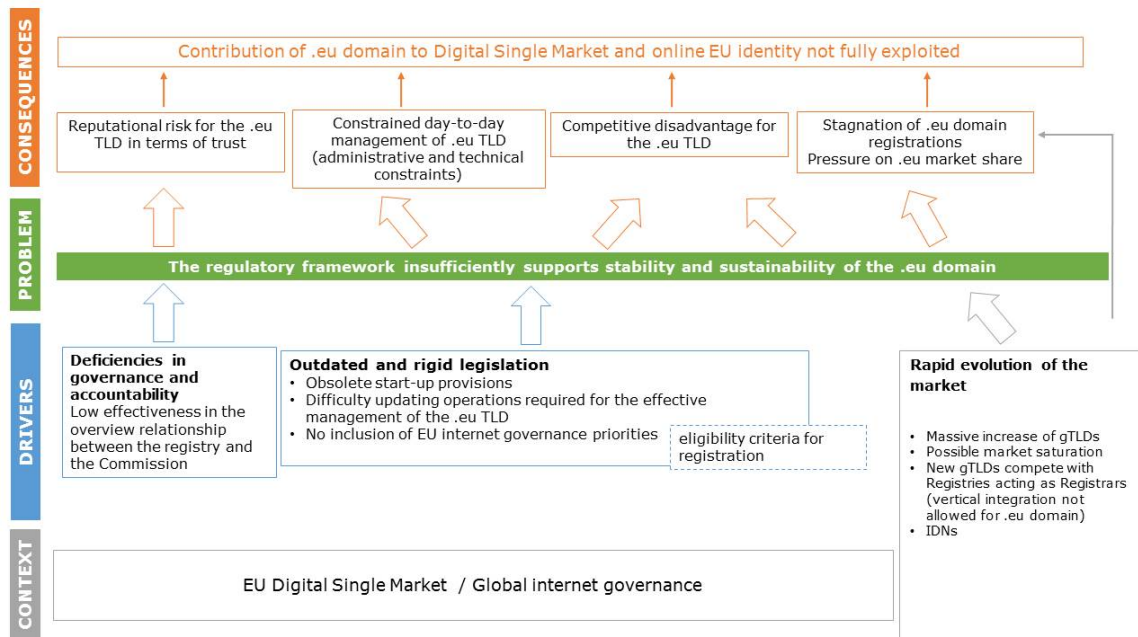
Finally, end users, because of the technical nature of the initiative and the limited/ only indirect impact on them, did not actively participate to the consultation, as shown by the low number of contributions collected during the online public consultation. To mitigate that, we sent targeted emails to European consumer and business associations to engage them. This generated some written contributions (although still limited).

The Commission also regularly informed Member States on the various stages of the REFIT, via the High Level Group on Internet Governance. Member States did not provide any particular feedback as their ccTLDs are not be affected by this initiative.

Figure 1. Problem tree

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<sup>13</sup> The Registrar Advisory Board has been set up by the current registry to gather advice and input from the .eu registrars on practical modalities and policies with respect to the way the .eu TLD is operated, marketed, etc. Accredited .eu registrars are sitting in this Board, members are rotating every two years.



## 2.2. What are the problem drivers?

Three main drivers have been identified (see figure 1): outdated and rigid legislation (2.2.1.); deficiencies in governance and accountability (2.2.2.); and a rapid evolution of the market (2.2.3.).

### 2.2.1. Outdated and rigid legislation

The .eu TLD has been one of the most successful implementations of a new Top Level Domain. Coming after the first wave of ccTLDs and gTLDs (such as .de, .fr, .uk and .com), the .eu TLD had to make space for itself among the so-called legacy TLDs.

While the .eu Regulations have been effective in creating the new TLD and supporting its successful implementation, the relative stagnation in the number of registrations is due in part to an outdated and ineffective legislative framework<sup>14</sup>.

The .eu Regulations contain some detailed provisions that have not been used since 2006 and are no longer needed as they relate to the set up phase of the .eu TLD, such as chapter IV of the Commission Regulation No 874/2004. These entail a phased registration, which aimed to protect the interest of intellectual property rights holders

<sup>14</sup> Please refer to the evaluation

against speculation and so-called ‘cybersquatting’<sup>15</sup>, by giving the possibility for eligible parties to apply for a .eu TLD before the general registration started. Such a provision is of less relevance today and merely prolongs the process.

Other provisions relating to operations to set up the .eu TLD had only been envisaged as once-off actions, whereas they proved to be required on an ongoing basis to manage the .eu TLD. For instance, the process for reserving .eu TLD names for the European Union institutions and/or Member States and/or Candidate countries, as described in article 9 of Commission Regulation No 874/2004, could be done no later than a week before the beginning of the phased registration period. The Regulation does not include any provision for updating the list of such reserved domain names for the European Institutions on a regular basis. Consequently, the procedure for reserving new .eu TLD names for the European Union institutions and/or Member States and/or Candidate countries is not only a cumbersome and inefficient process, but it might be questioned from a legal perspective.

For example:

- Internationalised Domain Names (IDNs) are an enhancement to the Domain Name System (DNS) which allows the introduction of names in scripts and alphabets other than in ASCII characters<sup>16</sup>. This is considered a way to encourage Internet usage amongst the local population. The .eu supports all 24 official languages of the EU, including Bulgarian and Greek, which require domain names in Cyrillic and Greek scripts. To implement updates in the technical standards relating to IDNs Commission Regulation 874/2004 had to be amended. The process took the Commission 19 months (solely due to the obligation to amend the Regulation), whereas for example the German ccTLD registry was able to implement the updates<sup>17</sup> within one month of publication.
- Chapter VI of Commission Regulation 874/2004 sets out rules for the resolution of domain name disputes, the .eu Alternative Dispute Resolution (ADR). Having such detailed provisions at the level of Regulation prevents flexibility or changes to practices in response to market conditions. Despite provisions in Regulation 733/2002 that the dispute resolution should reflect international best practices, the

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<sup>15</sup> The practice of registering names, especially well-known company or brand names, as Internet domains, in the hope of reselling them at a profit.

<sup>16</sup> American Standard Code for Information Interchange.

<sup>17</sup> The technical standards for internationalised domain names were updated (IDNA 2008) to support a small number of characters within the domain name system. Of the four characters implemented by the standard, only two are relevant to European languages, namely the German sharp ‘s’ (ß), and the Greek terminating sigma (ς). For guidance on the IDNA 2008 standard, see

<http://unicode.org/reports/tr46/#IDNA2008-Section>

.eu ADR is inconsistent with international best practices. For example the .eu ADR contains a prohibition on speculative domains, considers non-use as a criterion for deletion, and displays inconsistencies as to remedy (Article 21 refers to 'revocation' of domains, whereas Article 22(b)(11) refers to 'transfer') in the wording of the procedure.

- Article 17 of Commission Regulation 874/2004 provides 5 names that the registry can reserve for itself. In fact, today the registry uses different names than the ones listed in this article. Flexibility to permit the registry to reserve the necessary domain names for its operational functions (without having to amend the Regulation to that end) is needed.
- To implement a security feature for Greek and Cyrillic domain names<sup>18</sup>, it was necessary article 3 of Commission Regulation 874/2004. The change enabled the flexibility technical checks to take place prior to the registration of a .eu domain name, rather than only after a domain name was registered. The work took 37 months.

The .eu Regulations are also outdated in the sense that they do not adequately take into account and support the role that the .eu Registry can play in contributing to a trustworthy, reliable, resilient and safe online environment<sup>19</sup> and in promoting EU values like multilingualism on the Internet.

The retrospective evaluation identified an additional issue relating to the legal framework, which is the need to assess whether the eligibility criteria for registration should be amended. This issue deserves a special attention because of its direct link with the EU identity.

According to article 4(2)(b) of Regulation (EC) No 733/2002, the .eu TLD is available for registration by organisations and companies in, and residents of, EU member states, plus Iceland, Norway or Lichtenstein (EEA). Part of the findings that emerged from the evaluation is that the "residency principle" for registrants, as established in the current .eu Regulations, is not fair to EU and EEA citizens: if an EU/EEA citizen lives abroad but still has an EU/EEA nationality and passport (and as such is even allowed to vote in national elections), he/she is not allowed to register a .eu TLD name. On the other hand, it is possible to circumvent restrictions on eligibility for registering a domain name

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<sup>18</sup> To implement homoglyph bundling to avoid homograph attacks. For an in-depth explanation of homoglyph bundling and an example of a homograph attack see <https://eurid.eu/en/other-information/faq/technical-and-privacy-enquiries/what-is-homoglyph-bundling-does-eurid-offer-it/> and [https://www.theregister.co.uk/2017/04/18/homograph\\_attack\\_again/](https://www.theregister.co.uk/2017/04/18/homograph_attack_again/)

<sup>19</sup> TLD name registries are considered operators of essential services for digital infrastructure. (Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union).

through the use of proxies, i.e. a person or organisation who does not comply with the relevant restrictions arranges for registration of a domain name through a third party proxy. This can limit the effect in achieving the intended objective of restricting registrations to registrants residing in the EU.

The issue is becoming further complicated with respect to the UK leaving the EU. At the end of Q3 2017, there were more than 300 000 .eu TLD names registered by UK-based registrants<sup>20</sup>, showing that the UK is ranked fourth in terms of the highest number of registrations (following Germany, France and the Netherlands). From a registrar and registrant perspective, the UK represents one of the largest markets for the .eu TLD. According to the current eligibility criteria, UK registrants will not be eligible for a .eu TLD if the country leaves the EU. A reduction in registrations is a concern for the sustainability of the .eu TLD given increased competition in the market.

### ***2.2.2. Deficiencies in governance and accountability***

The .eu Regulations contain little or no guidance on the standards of technical competence and corporate governance expected from the .eu Registry operator. The retrospective evaluation showcased some concerns in this regard, whereas it is unclear whether/which regulatory tools exist for the Commission to ensure that the Registry is operated according to the public policy interest and under the strictest rules of transparency, fairness and accountability.

An example with respect to technical competence is the recent routine software update by the .eu Registry on 11 October 2017, which resulted in a two days outage of the registry website eurid.eu (and registration services). The technical resolution of existing .eu TLDs was not affected, but the outage resulted in the lack of availability of basic registration services, lack of ability for law enforcement authorities and others to find out the details of those responsible for individual .eu TLDs (or websites) through the WHOIS database. This outage should have been prevented by the business continuity and resilience plans of the .eu Registry. The impact of such technical outages on the EU and EEA registrants is a loss of key services in relation to .eu, and if such outages became a common occurrence, they would lead to a loss of trust and confidence in the .eu TLD.

As regards corporate governance, for example there is no guidance on how long individual board members are permitted to serve. The Articles of Association require the board to establish internal policies and procedures regarding conflicts of interest, corporate governance and accountability, and the service concession contract contains detailed obligations on conflicts of interest. There could be more information made

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<sup>20</sup> EURid Quarterly Report, Q3 2017, page 6, [https://eurid.eu/media/filer\\_public/62/aa/62aa8f63-e0ff-42c9-9fdf-b50e2c45601f/quarterly\\_report\\_q3\\_2017.pdf](https://eurid.eu/media/filer_public/62/aa/62aa8f63-e0ff-42c9-9fdf-b50e2c45601f/quarterly_report_q3_2017.pdf)

available on the website of the .eu Registry on key governance issues such as the number of directors, how such directors are appointed, the role of the board of the .eu Registry, processes for removing directors, evaluating performance, ensuring accountability or performing reviews, information that are necessary for transparency and accountability purposes. The CEO and three of the five Board directors<sup>21</sup> have all been in place since the foundation of the company in 2004. Another individual has been serving on the board since April 2009.

An audit report on the governance of the .eu Registry, conducted by the Commission in 2013, highlighted potential commercial conflicts of interest.

### **2.2.3. *Rapid evolution of the market***

Since the establishment of the .eu TLD over 10 years ago, the Internet eco-system has incurred major transformations. In general, the Internet-driven revolution has brought significant changes in the way businesses operate online and citizens access (new) content and services through the Internet. TLD operators have become important players in the Internet-ecosystem, as they manage a critical element of the Internet core technical infrastructure.

Today's domain name market is very different from 15 years ago, due to the following changes:

- In March 2002, the ICANN Board passed a resolution “stating the organisation's strong position for the implementation of "strict separation" of registries and registrars for new gTLDs”. The ICANN Board also stated that co-ownership was prohibited. In November 2010, the ICANN Board changed their position and therefore, allowed the so-called “vertical integration” which empowers registries to be also registrars and vice versa.
- Internationalised Domain Names (IDNs) were first launched in 2004 thanks to the IDNA protocol, and are now based on IETF standard RFC5890 published in 2010, which use the Punycode encoding algorithm to represent non-ASCII characters found in Latin scripts with diacritics and accents, Arabic, Chinese, Cyrillic, Hindi and other languages, into ASCII (plain text characters and numbers) domain names that the DNS system can resolve. This allows Internet users to type a domain name in their local script using their native language,

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<sup>21</sup> See appointed dates for directors from company search <http://kbopub.economie.fgov.be/kbopub/toonondernemingsps.html?ondernemingsnummer=864240405> three of five were appointed on 29 February 2004, and one other individual was appointed 2009.

instead of an ASCII transliteration. IDNs at the second level started being offered in 2007-2009.

- In late 2009, the Internationalised Domain Names – domain names containing non-ASCII characters – were enabled at the top level via the so-called IDN ccTLD Fast Track.
- In 2011, the ICANN Board approved a massive expansion of the domain name system via the launch of a new generic Top-Level Domain (new gTLD) round. The first new gTLD started being delegated in 2013 and at present, ICANN has delegated more than 1 300 new gTLDs which enjoy liberal rules in terms of marketing and vertical integration. Discussions for an additional expansion of gTLDs have started and a new wave of new gTLDs is expected to occur in the next five years.
- Most of the ccTLD registries have completely deregulated their markets, removing barriers to registration which were associated with the residency/citizenship of the registrant, and/or lifting the requirement of assigning only a limited number of domain names to individuals and/or companies (e.g., these changes occurred for .fr, .es, .it, .pt, .pl for instance);
- Security elements around domain names have become more and more relevant in the past decade. DNSSEC, short for Domain Name System Security Extensions, is an enhancement to the DNS protocol that ensures a greater level of trust when resolving domain names. Most of the registries enabled DNSSEC for the extension<sup>22</sup> they manage at the top level and for any second level registered domain name.

At the end of Q3 2017, there were **330.7 million domain names** across all top-level domains (TLDs) globally<sup>23</sup>.

The latest CENTR Domain Wire<sup>24</sup> clearly shows that the TLDs market is still adjusting and will continue to adjust to the multiple changes that have occurred in recent years.

*“Over the past 2 years, quarterly growth rates have been decreasing since peaks in early 2016. The slowdown is the result of deletes after a period of increased investment from Chinese registrants. Other explanations to the slowdown are*

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<sup>22</sup> Extension is another term for a domain name

<sup>23</sup> Verisign Domain Name Industry Brief Q3 2017 <https://www.verisign.com/assets/domain-name-report-Q32017.pdf>

<sup>24</sup> CENTR's statistical quarterly report on ccTLD.

*specific TLDs, such as .xyz and .top, which have contracted significantly. Without these outliers, global TLD growth would be at 1.0% for Q3 2017 and 2.5% YOY”<sup>25</sup>.*

*“There are around 71 million domains across 56 ccTLDs in the European region. Overall growth over the region was 1.8% with a median rate of 2.9%”<sup>26</sup>.*

*“Market share of ccTLDs in European countries ranges from 16% to 79%, with an average of 54%. These figures include gTLDs as well as other European ccTLDs registered from within the country”<sup>27</sup>.*

Most of the European registry operators managed well to cope with these changes by speeding up deregulation processes (e.g. .fr, .pt, .es) and introducing new services, or by expanding their range of activities in the domain name environment. Over twelve European ccTLD registries are involved in additional activities such as: being the registry manager of other extensions; providing back-end services to other extensions; offering Internet of Things related services; setting their own registrar (e.g. .se); being appointed as ICANN-accredited Third Party Provider for Registrar Data Escrow (e.g. .de), and; offering Anycast services<sup>28</sup> to other registries (e.g. .de).

Overall, the TLDs market is becoming more competitive and more aggressive – in terms of registration policies and marketing strategies – and more diversified, in terms of the activities which a registry operator might get involved in.

Considering the rigidity and lack of flexibility of the current .eu regulatory framework, the .eu TLD (and its registry operator) is at a disadvantage against the fast-changing domain name environment. Considering further that market conditions and fluctuations, as well as the overall rules applicable to gTLDs, are not within EU control, it will be crucial for the long-term sustainability and market competitiveness of the .eu TLD that its regulatory framework provides ready flexibility and adaptation potential to enable the .eu TLD to cope with future unforeseeable market developments.

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<sup>25</sup> CENTR Domain Wire Q3 2017.

<sup>26</sup> CENTR Domain Wire Q3 2017.

<sup>27</sup> CENTR Domain Wire Q3 2017.

<sup>28</sup> Anycast is an addressing and routing methodology wherein multiple physical endpoints are logically denoted by a single IP address.

### 2.3. How will the problem evolve?

Keeping the .eu Regulations/legal framework unchanged will potentially have detrimental consequences for the .eu TLD, and hamper its potential to contribute effectively to the DSM long-term strategy and to the online EU identity.

The following (not exhaustive) consequences for the future of the .eu top-level domain can be expected:

- *Possible overall stagnation of the .eu registration.* As extensively demonstrated by the last decade's facts in the domain name industry, the market for new domain name registrations has already experienced market shocks and fluctuations following the launch of the new gTLDs. The rapid changes to the DNS environment may lead to the introduction of new features and stakeholders, including from a further round of new gTLDs, which is expected to occur in the next five years. The .eu TLD should be enabled to cope with such future challenges. Outdated and/or overly rigid rules will restrict the .eu Registry's ability to enhance the .eu TLD environment.
- *Negative perception of the .eu TLD as too bureaucratic and/or as an institutional extension.* The .eu TLD is deeply linked to the European Union profile and events (see the recent drop of registrations and renewals of .eu domain names in the UK following that Member State's decision to exit the European Union). The bureaucratic image is strengthened by delays such as the Commission taking more than 30 months to enable the .eu Registry operator to offer the new characters supported by the IDNA2008 protocol, and this is a poor outcome for the image of the .eu TLD. The expansion of the gTLD market, and the consequential regulatory changes, which occurred between 2012 and 2014 could happen again. When technical standards are dramatically modified, it can pose an existential risk to the .eu TLD, because of the over-long lead times for amending its basic rules to support new standards. This would significantly affect registrants and registrar users' satisfaction.
- *Decreased trust in .eu at multiple levels.* Trust is one of the most important elements in the DNS environment. Respect for a TLD extension necessarily stems from trust in its policies and procedures. And to be trusted, these policies and procedures must be modern and regularly updated. At the same time, trust is and will always be connected to the reputation of the registry operator. Recent events which occurred in some registries, such as .dk, .pl and .au<sup>29</sup>, showed how a decline in the reputation of the TLD registry operator may adversely impact the trust in the products that registries are offering. A failure to introduce enhanced governance measures at the

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<sup>29</sup> [https://www.theregister.co.uk/2017/07/29/chair\\_australias\\_internet\\_registry\\_out/?page=2](https://www.theregister.co.uk/2017/07/29/chair_australias_internet_registry_out/?page=2)

level of the .eu Registry operator could increase the risk of reputational damages and will not bring the overall .eu Registry administrative structure up to speed with the most recent developments in the overall Internet governance organisations. As an important element of the digital identity of Europe, .eu must reflect a similar high reputation as that enjoyed by the European Union.

- *Possible financial unsustainability.* Should the volumes in new registrations and renewals drop, the financial stability of the .eu TLD will be negatively affected. Although a drastic drop is admittedly not likely for the .eu TLD, it should not be completely excluded. The negative impact will be further aggravated by the inability of the .eu Registry operator to differentiate its products and use its expertise to provide other services, unlike its industry peers which are getting involved in diversified activities to cope with the rapid changes in the DNS environment. At the moment the .eu is self-financed. In case financial problems arise, either the price of .eu domain names will have to increase or the EU may have to contribute to ensure the continued availability of the .eu TLD.

### **3. WHY SHOULD THE EU ACT?**

#### **3.1. Legal basis**

According to Regulation (EC) No 733/2002, the legal basis for the EU action is provided by Article 156 of the Treaty establishing the European Community. Following the entry into force of the Lisbon Treaty, the legal basis is Article 172 of the Treaty on the Functioning of the European Union (TFEU).

As it has been doing since its creation and establishment in the EU, the .eu TLD should continue to improve the interoperability of trans-European networks, in accordance with Articles 170 and 171 of the Treaty, by providing a complementary registration domain to existing country code Top Level Domains (ccTLDs) in EU Member States and global registration in the generic Top Level Domains (gTLDs), and should in consequence increase choice and competition in the Union domain names market.

The .eu TLD supports online cross-border activities for those users, both commercial and non-commercial, who wish to clearly signal their link with the EU, the associated legal framework, and the European market place.

#### **3.2. Subsidiarity: Necessity of EU action**

The .eu TLD has by definition a cross-border dimension: it is the TLD of the European Union and is a symbol of the European online identity. 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.

Regulatory action in respect of the .eu TLD cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at EU level.

The .eu TLD was established as a country code TLD (ccTLD) such as .de, .be or .uk, rather than as a generic TLD (.com, .berlin). This has important consequences in that ccTLD policies (regarding for instance rules for registration, accreditation of registrars, security related policies and data protection policies) are managed in accordance with the relevant jurisdiction, oversight and governance mechanisms within the country/public administration, with no role for ICANN. The ultimate public policy authority for a national ccTLD Registry rests with the relevant government or public authority. Accordingly, public policy responsibility for the .eu TLD rests with the European Union.

Regulation of the .eu TLD is therefore within EU competence and cannot be delegated to the Member States. This does not affect how each Member State manages its own ccTLD.

### **3.3. Subsidiarity: Added value of EU action**

The .eu is regulated at EU level because of its very nature. The existence of the .eu TLD is highly symbolic and reflects the existence of a European online community (of citizens, institutions and businesses) who wishes to be clearly identified as such. The .eu TLD gives users wishing to operate across the Single Market a specific European connotation which is recognised globally<sup>30</sup>.

A regulatory framework at EU level for the .eu is useful in order to continue providing for and expanding a domain name space on the Internet under the .eu TLD, in which relevant EU law, data and consumer protection rules are applicable.

Regulatory action taken at Member States level would not be able to deliver on the fundamental objectives standing behind the creation and management of a trusted and innovative namespace for the EU, to promote the European Union's image on the Internet and to deliver added value in terms of increased choice for users, in addition to the national ccTLDs.

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<sup>30</sup> There are over 200 testimonial videos published on EURid YouTube channel highlighting the transnational added value for users opting for a .eu TLD: <https://www.youtube.com/user/Europeanregistry>

Moreover, the .eu TLD gives the EU a "seat at the table" in international and multistakeholder discussions around the domain name system and rules regarding ccTLDs on the global Internet<sup>31</sup>.

#### 4. OBJECTIVES: WHAT IS TO BE ACHIEVED?

##### 4.1. General objectives

The general objective of the initiative is to ensure the stability and sustainability of the .eu TLD, so as to better enable it to achieve its intended mission to:

- ✓ Encourage online cross-border activities in Europe and support the Digital Single Market
- ✓ Enable/build an online European identity

##### 4.2. Specific objectives

Four specific objectives (SO) have been identified and are linked to the problem and drivers discussed in section 2.

Table 1. Specific objectives and drivers

| Specific Objectives |                                                                                                                                                                                                                                | Drivers                                                                               |
|---------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|
| SO 1                | Remove outdated legal/administrative requirements                                                                                                                                                                              | Outdated Regulations (2.2.1.)                                                         |
| SO 2                | Ensure the rules are future-proof and allow the .eu to adapt to the rapid evolution of the TLD market and the dynamic digital landscape, while at the same time incorporating and promoting EU priorities in the on line world | Outdated and rigid Regulations (2.2.1.)<br><br>Rapid evolution of the market (2.2.3.) |
| SO 3                | Ensure a governance structure that both reflects technical and governance best practices and serves EU public interest                                                                                                         | Deficiencies in governance and accountability (2.2.2.)                                |
| SO 4                | Promote the attractiveness of .eu                                                                                                                                                                                              | Rapid evolution of the market (2.2.3.)                                                |

##### *SO 1: Remove outdated legal/administrative requirements*

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<sup>31</sup> The European Commission is a full Member of the Governmental Advisory Committee (GAC) of ICANN, along with all EU Member States. The GAC provides public policy advice to ICANN, in charge of policy-making in the DNS space. As a GAC Member, the European Commission has the objective to avoid inconsistencies with the EU acquis, as well as to ensure the security, stability, resilience and reliability of networks and information systems.

This specific objective aims at addressing the problem driver relating to the outdated .eu Regulations, which contain obsolete or irrelevant provisions, and are no longer fit for purpose (driver 2.2.1.). Provisions related to the function of the domain name registry are obsolete, and other provisions are inadequate to support the sustainability of the .eu domain given the evolution of the DNS landscape. Lifting administrative constraints will enable the .eu TLD to function more effectively.

*SO 2: Ensure that the rules are future-proof and allow the .eu to adapt to the rapid evolution of the TLD market and the dynamic digital landscape, while at the same time incorporating and promoting EU priorities in the on line world*

This specific objective aims at addressing the drivers that the market has not only undergone major changes since the entry into force of the .eu Regulations, but also continues to dynamically evolve (drivers 2.2.1 and 2.2.3.). These drivers affect both global Internet governance, and the entire digital landscape.

The .eu regulatory framework should enable the adaptation of the .eu TLD to rapidly evolving market conditions, technical innovations and the EU's current objectives and strategies in the area of digital policy and governance. To do so, the rules should be future-proof. They should allow the necessary flexibility to adapt while at the same time provide legal certainty to stakeholders.

TLDs are an integral part of the Internet infrastructure. They are an essential element of the global interoperability of the World Wide Web. As such a TLD operator is a (technical) stakeholder in global discussions affecting the governance of the technical resources and functions of the Internet. In fact, ccTLD and gTLDs registries have been particularly active in Internet governance, either by participating as stakeholders in international fora or by running activities for the benefit of the Internet community in their respective countries or constituencies.

The EU prides itself for upholding a strong set of values such as multilingualism, respect of users' privacy and security, consumer protection, and human rights. The .eu TLD should promote European values and reflect EU priorities in the domain-name system (DNS) environment, particularly in light of ongoing changes in global arrangements affecting digital policies and Internet governance as discussed in section 2. Not using the .eu TLD as a means to promote EU priorities is a missed opportunity.

*SO 3: Ensure a governance structure that both reflects technical and governance best practises and serves EU public interest*

The .eu TLD was established as the TLD for the European Union, with the aim to make the link with the European Union evident in the online world. The .eu TLD is a tool that

serves both citizens and enterprises in the EU and the EEA. At the same time, this tool has to operate in the free market and compete with other TLDs.

An appropriate governance structure for the .eu TLD would be one that ensures both that the .eu TLD can successfully compete in a fast evolving market and that the EU/public interest is served/upheld. This specific objective is linked to the problem driver described with respect to governance (driver 2.2.2.).

#### *SO 4: Promote the attractiveness of .eu TLD*

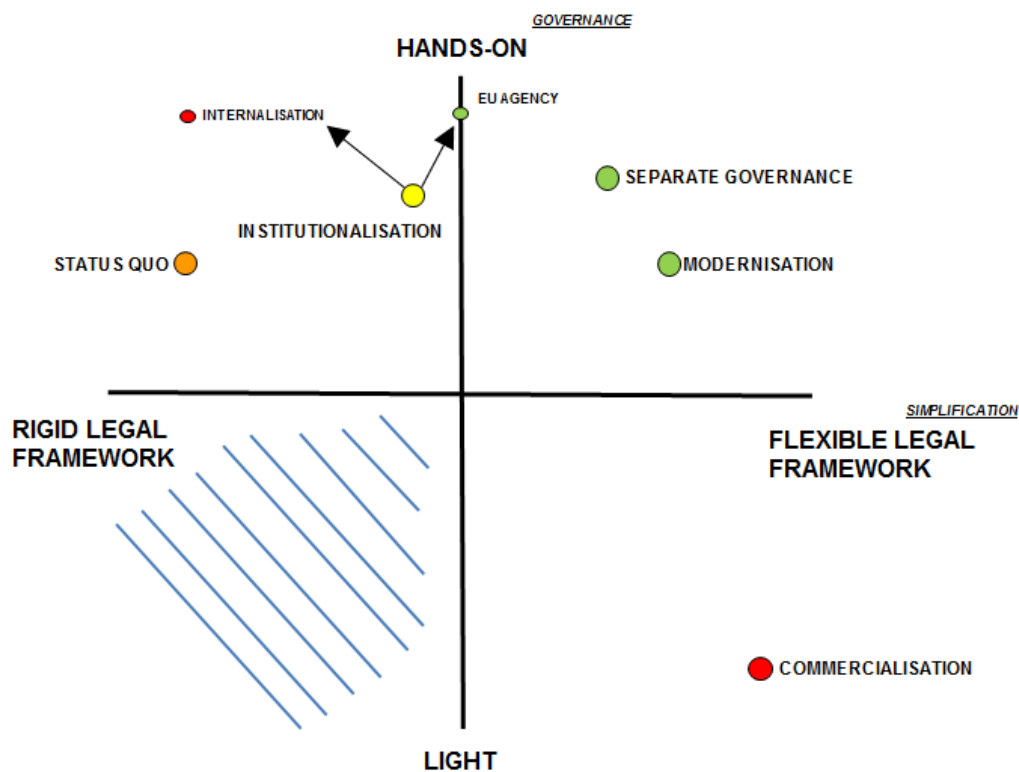
The main goals behind the creation of the .eu TLD were to improve the visibility of the EU's internal market on the Internet, provide a clear link with the EU and promote its image. To better enable the .eu TLD to fulfil its role, its use as an online European identity should be enhanced. In line with the .eu TLD's mission (referred to under Section 4.1), this specific objective seeks to ensure that options explored under this initiative will promote the attractiveness of the .eu TLD by means of reinforcing it as a trusted extension, supporting its competitiveness in the TLDs market, and attracting competition with respect to future would-be .eu Registry operators.

### **5. WHAT ARE THE AVAILABLE POLICY OPTIONS?**

The EU does not exert any oversight or control on how the domain name market evolves at international level. The evolution of the global TLD market is expected to continue, driven by constant technological developments. Therefore, the options that will be examined below are mainly, but not exclusively, extrapolated from the drivers relating to "the outdated and rigid legislation" and the "governance mechanisms". At the same time, issues emerging from the "rapid evolution of the market" are taken into account horizontally.

A matrix of options has been mapped taking into consideration these aspects, with a view to facilitate the description of the options and their assessment. The two axes of the matrix correspond to the "governance" variable (spanning from hands-on to light governance) and the "legal framework" variable (spanning from a rigid to a flexible framework). The two variables are embodied – at different level – in each of the assessed options.

Figure 2. Options' matrix



The matrix identifies the following options:

- Baseline (Status Quo) scenario
- Commercialisation
- Modernisation of the legal framework
- Separate governance
- Institutionalisation (including Internalisation and EU agency)

The purpose of the REFIT exercise is to assess policy options that would provide solutions to the problems identified in terms of governance and legal framework. In the context of the .eu TLD, this includes the removal of unnecessary administrative burdens to significantly ease the management of the .eu TLD both at Commission and at registry level. Given the purpose of REFIT as applied to the .eu TLD, options that would entail a high degree of "rigidity of the legal framework" coupled with a high degree of "light governance" are not considered adequate and therefore are not taken into account. That is why no policy options are identified on the lower left side of the matrix.

New rules introducing the possibility for the .eu Registry to sell directly to registrants, also known as vertical integration, and potential changes in the eligibility criteria for obtaining a .eu TLD can be implemented whatever decision is made on what option to pursue, and would lead to similar impacts. For this reason, the description and impact of

the rules relating to vertical integration and eligibility criteria are provided and assessed separately in section 5.4 and 6.5.1.

The policy options, including the baseline scenario, are described below, with analysis of the practical impact of each option, and a high level assessment of the advantages and issues in relation to the objectives (sections 5.1 and 5.2).

## **5.1. What is the baseline from which options are assessed?**

### **STATUS QUO (BASE LINE SCENARIO)**

The status quo entails maintaining the current regulatory framework for the .eu, which includes two Regulations (Regulation (EC) No 733/2002 and Commission Regulation (EC) No 874/2004) and the contractual arrangements with the selected .eu Registry.

The current concession contract with EURid (the existing .eu Registry operator) was concluded following the rebid of the .eu TLD in 2013. The initial term of the contract is 5 years, starting from 13 October 2014 and expiring on 12 October 2019. The contract allows the parties to agree to extend it on two occasions for additional periods of maximum 5 years. Alternatively, on expiry of the initial term on 12 October 2019, a new call for expression of interest could be launched on the basis of a new non-discriminatory selection procedure.

The service concession contract grants the Commission powers to intervene in the management and operations of the .eu Registry, particularly on matters of corporate governance, conflicts of interest and financial accountability. Effective enforcement of such provisions is crucial to avoid any potential mismanagement of the .eu TLDs which would, in turn, lead to a decrease in trust of the .eu TLD name.

Following the decision from the United Kingdom to withdraw from the European Union, and subject to any relevant provision in the agreement on the future relationship between the European Union and the United Kingdom, 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 not be allowed to register .eu domain names, and the rights of UK-based registrants regarding .eu domain names would be subject to revocation from the .eu Registry<sup>32</sup>.

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<sup>32</sup> <https://ec.europa.eu/digital-single-market/en/news/notice-stakeholders-withdrawal-united-kingdom-and-eu-rules-eu-domain-names>

In the context of stagnation in domain name registrations across the EU, increased competition from new gTLDs, and changing paradigms in Internet technological development such as the Internet of Things, several ccTLD registries have begun to diversify their activities. This is a trend that the .eu Registry cannot effectively keep pace with due to the combination of the details and rigidity of the current .eu Regulations.

## **5.2. Description of the policy options**

### **OPTION 1: COMMERCIALISATION**

This option would entail the substantial simplification of Regulation (EC) 733/2002 and the repeal of Regulation 874/2004 that contains most of the outdated provisions described in section 2. The operation and management of the Registry would be outsourced to an external for-profit service provider without direct oversight from the Commission. The legal simplification would aim at extensively streamlining the content of Regulation (EC) 733/2002 to grant the Commission the right to outsource the operation and management of the .eu TLD name. The core provision of the simplified Regulation would specify that the EU is the entity responsible for the .eu TLD<sup>33</sup> and that the Commission is in charge of designating the Registry on the basis of an open, transparent and non-discriminatory selection procedure. No detailed provisions on the operation of the Registry would be retained.

This option would provide a high level of flexibility, allowing the .eu Registry to adapt quickly to changing market conditions. On the other hand, it would significantly limit oversight by the Commission. The .eu Registry might still have to operate within an established framework and abide by certain conditions, which should be specified in a contract. The .eu Registry would however act in a purely commercial environment, on a for-profit basis.

### **OPTION 2: MODERNISATION OF THE LEGAL FRAMEWORK**

This option would entail replacing the current legal framework with one principle-based legal instrument, establishing the main objectives and *raison-d'être* of the .eu TLD (including its alignment to EU priorities) and guaranteeing essential transparency and flexibility.

All outdated provisions (described in section 2) would be either deleted (if not relevant anymore) or brought in line with current practices.

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<sup>33</sup> As per today, see Article 7 of Regulation 733/2002 holds that all ownership rights relating to the .eu TLD belong to the European Union which is represented to that end by the European Commission.

More detailed implementing provisions laying down Public Policy and Procedures (PPPs) would be contained in a separate document directly incorporated into the contract between the European Commission and the appointed Registry operator.

In that context, principles pertaining to the eligibility criteria, registration and revocation of domain names, accreditation of registrars, characteristics and obligations of the registry, designation of the registry would be laid down in primary legislation, to be further articulated in precise policies through the contract.

This policy option entails the continuation of an external management system, based on a contract between the Commission and a third party, with enhanced control mechanisms. To ensure the effective oversight of the .eu Registry, easy to implement oversight provisions should be inserted in the contract, such as foreseeing a strengthened participation of European Commission representatives in the Registry's Board. In this option, the daily operational management would be guaranteed by high-standards, provided that the contractor has the necessary technical expertise in-house. The management of an external entity also ensures an appropriate market strategy for the .eu, given that the external contractor puts in place all possible measures to achieve such business objectives whether on a for-profit or on a not-for-profit basis.

### **OPTION 3: SEPARATE GOVERNANCE**

This option combines the modernisation element of option 2 with the creation of a separate body, which would have an advisory role. Amongst its foreseeable tasks, there would be the advising on high-level priorities, strategy and activities of the .eu TLD. It would additionally provide expert advice to the Commission with respect to the oversight role of the latter over the .eu Registry (including on the surplus generated by the sale of the .eu TLD names). Its membership would be open to experts in the EU's domain name business, technical community, governments and international organisations, civil society academia. In order to prepare advice the separate body would need to engage in a structured dialogue with the Registry.

As in option 2, the management of the .eu TLD and the daily operational activities (i.e. technical operations, marketing, etc.) would be outsourced through a contract to the Registry operator. This contract would specify the detailed terms and conditions for the relations between the Registry operator and the separate body. From a practical perspective, the European Commission would retain a light-touch oversight on the .eu, while more technical and operational aspects would be dealt with by the Registry operator.

The basic practical modalities of setting up the separate body will be decided according to the requirements laid down in the future principles-based regulation. These requirements will not only serve as legal basis to build on the new separate governance structure but will also clarify its key aspects. The set-up of this governance structure could be executed by the Commission using established principles on expert groups. The legal requirements would include:

- a) Measures to guarantee that the newly formed governance body has the necessary autonomy and independence from the Registry;
- b) The guarantee that the newly formed governance body will work in line with Commission's objectives and policies;
- c) The key tasks (in principle, only advisory) entrusted to the newly formed governance body and its relations *vis-à-vis* the Commission and the Registry;
- d) The role and powers of the Commission *vis-à-vis* the Registry and the newly formed governance body (e.g. the oversight power of the Commission over the Registry).

The new governance structure will be designed in a way which reflects the Internet Governance Multi-stakeholder approach. Representatives of all relevant stakeholders will hence be able to participate in the dialogue and thus shed further light on the likely consequences of decisions and advise on the implementation of .eu ccTLD. The members of the new governance body will be appointed by the European Commission on the basis of an open and transparent procedure aimed at limiting any risk of potential conflicts of interest. For the elaboration of this option, we have looked for best practices in the ccTLD community and we have drawn inspiration from the Austrian, the Norwegian, the Brazilian and the New Zealand models which have structures ensuring a "separation" between the technical and operational tasks of the operator and the oversight structures for the definition of registry policies with the involvement of the following stakeholders: registrars, user groups, Internet service providers, trade associations and government. It is generally found that bottom-up, consensus driven policy making is the most effective governance mechanism for Internet organisations, while benefitting from the expertise of stakeholders, who are responsive to changes in the industry. A description of ccTLDs best practices is contained in Annex 6. The promotion of multistakeholder governance structures is a stated commitment by the European Commission as part of the basis for a common European vision for Internet governance<sup>34</sup>.

#### **OPTION 4: INSTITUTIONALISATION**

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<sup>34</sup> Communication on "[Internet Policy and Governance - Europe's role in shaping the future of Internet Governance](#),"

Options that would entail a much stronger involvement and oversight from the EU would bring the management and operation of the Registry within a department of the European Commission or an EU body, like an EU Agency. This option would provide longer-term stability and business continuity in the operation and management of the .eu TLD.

In particular, the following alternative sub-options were explored:

**a) INTERNALISATION**

This sub-option foresees the handover of the management of .eu TLD to the IT operating arm of the Commission (DG DIGIT). DG DIGIT is already in charge of some tasks for managing certain .eu TLDs and managing the .europa.eu TLD. Internalising the management of the .eu TLD name within the Commission services (DIGIT) would require a significant degree of outsourcing –at least in the early stages-, since the Commission does not possess the administrative capacity to directly implement and manage the .eu TLD.

**b) EU AGENCY**

This sub-option entrusts the management of the .eu TLD to an EU agency. EU agencies are governed by European Union law, have their own legal personality, and are set up and governed by secondary legislation. A potential candidate is the European Union Intellectual Property Office (hereafter "EUIPO"). In the context of this REFIT exercise, EUIPO made a proposal for the incorporation of the .eu Registry within the Agency. An alternative would be the European Union Agency for Network and Information Security (ENISA).

Under this sub-option, an expansion of the mandate of the EU agency would be required. A similar extension was managed by EUIPO in 2012 when the European Observatory on Infringements of Intellectual Property Rights (formerly the European Observatory on Counterfeiting and Piracy) was handed over by the Commission to the Agency. This was done via the adoption of a Regulation entrusting the Observatory to EUIPO, without the need to amend the founding Regulation of the Agency. A similar process could be foreseen for entrusting .eu TLD to an EU Agency.

### **5.3. Options discarded at an early stage**

A preliminary analysis of each of the identified options against the Specific Objectives (described in section 4.2.) shows that a number of options are not relevant, as they are unlikely to achieve the objectives previously identified. In particular, the early discarded options are: Commercialisation, Internalisation and the sub-option of a transfer to ENISA.

## OPTION 1: COMMERCIALISATION

This option would have the main advantage of ensuring that the registry operator provides good service and that the Commission gets competitive bids from a wider range of registry operators. However this option was discarded at early stage, because it does not fulfil the policy objective of ensuring a European online identity, as well as the specific objectives S03 and S04 as described above. Therefore the option of commercialisation has not been further analysed in chapter 6.

More specifically, the option is likely to create a fully commercial .eu TLD in which there would be little guarantee that EU values or objectives would be prioritised and adequately pursued. Moreover, weakening the involvement of the EU in an area which is becoming highly sensitive (such as the policy-making in the DNS space) and in a political context where increased political attention is given to issues related to the security and trust on the Internet, would not be in line with the current political context.

### Stakeholders' views:

Such an option does not have support from stakeholders. In the online public consultation, 70% of respondents strongly agreed that the .eu TLD should continue to be operated by a non-for-profit organisation.

## OPTION 4(a): INTERNALISATION

Preliminary analysis shows that this option is not relevant, as it would not enable the overarching objectives to be reached. Under the option it would still be necessary to have a contract with an external provider to ensure the necessary daily operational activities. The option is therefore not technically feasible and it is discarded.

## OPTION 4(b)(ii): EU AGENCY/ENISA

Both agencies' fields of expertise would represent an asset for the management of the .eu TLD. EUIPO could contribute to further strengthen the economic synergies between trademarks and the domain name industry, and ENISA would provide solid know-how and advice aimed at guaranteeing a secure and resilient domain name system. However, neither of the two agencies embodies the core values of Internet governance which go beyond the provision of an efficient infrastructural management. In addition, it is crucial that the .eu Registry operator will be a far-reaching and credible interlocutor in the area of domain names and Internet governance, on the full spectrum of issues including market and policy perspectives.

Despite the aforementioned considerations, the option of moving the .eu Registry to ENISA in particular is early discarded due to its political and technical implausibility.

Considering that the extension of the mandate of ENISA, as part of the cybersecurity package currently being examined by co-legislators, already foresees a number of new tasks for this agency, incorporation of the .eu is not a realistic option. Moreover, this agency does not currently have the technical capacity for the operation and management of the .eu. Acquiring it would be costly and inefficient.

This analysis is synthesised in the table below and is further detailed in Annex 5 on early discarded options.

Table 2. Options' outlook

|   |                                   |                       | Effectiveness |     |     |     | Efficiency                      | Coherence |    |
|---|-----------------------------------|-----------------------|---------------|-----|-----|-----|---------------------------------|-----------|----|
|   | OPTIONS                           | Technical feasibility | SO1           | SO2 | SO3 | SO4 | Overall balance of Cost/Benefit | DSM       | IG |
|   |                                   |                       |               |     |     |     |                                 |           |    |
| 1 | <b>Commercialisation</b>          | ✓                     | ✓             | ✓   | ✗   | ✗   | ✓                               | ✓         | ✗  |
| 2 | <b>Institutionalisation</b>       |                       |               |     |     |     |                                 |           |    |
|   | - a. internalisation              | ✗                     | ✓             | ✓   | ✗   | ✓   | ✗                               | ✓         | ✓  |
|   | - b.i Existing EU Agency (EUIPO)  | ✓                     | ✓             | ✓   | ✓   | ✓   | ✓                               | ✓         | ✓  |
|   | - b.ii Existing EU Agency (ENISA) | ✗                     | ✓             | ✓   | ✓   | ✓   | ✗                               | ✓         | ✓  |
| 3 | <b>Modernisation</b>              | ✓                     | ✓             | ✓   | ✓   | ✓   | ✓                               | ✓         | ✓  |
| 4 | <b>Separate Governance</b>        | ✓                     | ✓             | ✓   | ✓   | ✓   | ✓                               | ✓         | ✓  |

#### 5.4. Options relating to Vertical Integration and Eligibility Criteria

As explained in the introduction of section 5, two specific aspects of the current legislative framework are analysed separately in the assessment of the policy options:

- introduction of the possibility for the .eu Registry to offer direct registration to registrants in view of changed market conditions (vertical integration);
- changes in the eligibility criteria for obtaining a .eu TLD in order to enhance the use of the .eu TLD as an online European identity.

Possible modifications of these rules can be introduced in each of the policy options retained as relevant for further analysis (Modernisation of the legal framework, separate governance option or transfer to EUIPO) and would lead to the same impacts (see Section 6 below).

### **Vertical Integration**

There are three registration models currently observed in the DNS market: Vertical Integration (close model), Vertical Separation (also known as Registry-Registrar-Registrant model ('3 Rs' model), and Mixed. Please refer to Annex 7 for further details on each model's specifications, as well as an overview of their implementation in the European market. Currently, the .eu Registry implements the '3 Rs' model. Today's .eu legal framework<sup>35</sup> expressly forbids the Registry to act as Registrar, in line with a strict separation between the role of Registries and Registrars as mandated for gTLDs by ICANN at that time (as described in section 2.2 "rapid evolution of the market"). Such restriction at the level of primary legislation appears to be inconsistent with the market practices in the ICANN environment, where a prohibition on vertical integration for gTLDs was lifted in 2010.

The new .eu legal framework will have to provide legal specifications in order to either:

- a) Require the appointed Registry operator to implement Vertical Separation (as per today);
- b) Allow the appointed Registry to implement Vertical Integration or a mixed model.
- c) Lift the strict requirement for Vertical Separation with a view to allow the appointed Registry operator to provide direct registrations only through its website, while for additional services (such as email, webpage, etc.) the end user will still be directed to a registrar. In other words the Registry will not be allowed to become a full registrar but will only be able to give the end user the opportunity to register a domain name directly through its website.

Out of these possible policy choices, the second one is discarded. Although allowing the Registry to also act as a registrar would be feasible, this would nevertheless require that sufficient safeguards are put in place to prevent anti-competitive behaviours by the integrated .eu Registry & Registrar operator. This would mean that non-discriminatory clauses would be needed to ensure that the vertically integrated .eu Registry & Registrar

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<sup>35</sup> Art 3(4) of Regulation 733/2002.

will not treat more favourably its own Registrar services/activities (including in terms of wholesale pricing for the .eu domain names or related services) compared to the treatment that third-party Registrars would obtain and that the .eu Registry & Registrar would not impose unfair terms on competing Registrars. Monitoring that such non-discriminatory clauses are respected would imply setting up an adequate system at the Commission end.

Aside that, there are strong market and policy reasons for caution with regard to the introduction of the vertical integration model, given that registries are dependent on strong relationships with the registrar channel in order to achieve market success. Most registrars market several TLDs, and make their margins through value-add services such as hosting, websites and email services. Therefore, there is significant commercial risk for a registry entering into direct competition with its own marketing channel – particularly if this raises suspicions among registrars<sup>36</sup> that the registry will seek to give itself preferential business terms increasing and distorting competition. Such concerns are reduced in the context of the current .eu Registry operator which has obligations to deal with all registrars on equal terms. Yet, well established relations between the .eu Registry and its network of registrars would be shaken. Besides, .eu registrars were negative to the introduction of vertical integration during consultations.

### **Eligibility Criteria**

Eligibility criteria aim at creating restrictions on those eligible to register in a TLD. The .eu Regulations contain limitations, which determine that .eu registrants have to be based in the European Union.

The options available are to:

- a) Maintain the residency eligibility criteria as per current regulation<sup>37</sup>; or
- b) Introduce a citizenship criteria regardless of whether the natural person is or not resident in the EU, while maintaining the residency criteria for both natural and legal persons; or

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<sup>36</sup> As signalled in targeted consultation activities with the .eu registrars.

<sup>37</sup> Article 4, Regulation (EC) 733/2002, [...] The Registry shall: [...] (b) register domain names in the.eu TLD through any accredited.eu Registrar requested by any: (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) Introduce a full deregulation, where no citizenship/ residency criteria apply. This entails the adoption of a fully open, first-come, first-served registration system.

## **6. WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?**

This initiative concerns the functioning and management of a top-level domain name (ccTLD). This is a predominantly technical, sector-specific issue pertaining to the domain name system (DNS) industry. Moreover the initiative is aimed at better enabling an already well-established domain to function within a changed and continuously evolving environment. Therefore the impact of the intervention is going to be limited and to affect mostly the following stakeholders: first and foremost the Registry, that will have to implement the new framework; secondly, the network of accredited registrars that might need to adapt some of their day-to-day operations; and thirdly the European Commission, to the extent that the different options change its role in terms of oversight of the registry and with respect to the overall policies for the TLD's implementation.

Registries of other TLDs and other stakeholders in the domain name ecosystem, whereas they are well placed to evaluate the .eu framework and future options against current practices in the DNS ecosystem, will not be affected by the intervention.

As mentioned, the initiative is aimed at facilitating an operational domain to function better. It will therefore not bear significant direct impacts on end users, i.e. registrants or potential registrants. Indirect impacts on citizens and SMEs are expected to the extent the various options will ensure they will continue to enjoy the benefit that the .eu TLD brings to end users (deriving from the link to the online EU identity and the single market).

The options are compared to the baseline (efficiency) and assessed with respect to the level they contribute to achieving the Specific Objectives set for the initiative (effectiveness), described in section 4.2.

This initiative does not have any environmental impacts.

### **6.1. Baseline**

The .eu TLD's key objective was to promote the use of, and access to, the Internet and online marketplace, by providing a complementary registration domain to existing ccTLDs and gTLDs, and in consequence increase choice and competition. Domain names are part of a suite of factors that enable Internet access alongside essential physical infrastructure, low prices for Internet services (dependent on vibrant competition amongst providers), and high speed broadband. Once basic access is possible, domain name registration enables both e-commerce and non-commercial activities in the online environment, through websites and email.

According to the evaluation findings, the .eu TLD is used today by companies to "show" that they are European and open for business across the 28 EU Member States and EEA countries. The .eu TLD is viewed as a sign of quality and trustworthiness (according to the same findings): a .eu website indicates that it belongs to a legal entity in the EU and is therefore subject to EU law and trading standards. It is also used by individuals as a trusted, online tool to convey their 'European-ness' in the online world. This is the qualitative benefit (B) the .eu TLD brings to end users and it is one that cannot easily be quantified as it comes in terms of access to broader markets and inspiring more trust.

Two main groups of impacts can be identified, looking into the baseline: impacts with respect to the functioning of the .eu market and impacts with respect to regulatory costs.

i) Functioning of the .eu market

General introduction

According to the current Regulations, the .eu Registry is prohibited from acting as Registrar.<sup>38</sup> The .eu Registry works with a network of accredited registrars to provide .eu registrations to end users. There were 715 accredited registrars at the end of Q3 2017<sup>39</sup>.

Since January 2013, in order to remain in line with its contractual obligation to work at cost, the .eu Registry changed the renewal and term extension fee of a domain name from €4 to €3.75. At the same time, to be more competitive in the dynamic TLD market, EURid launched the Customised Reduction Schemes (CRS) for its registrars, which enable reduced new registration fees according to the registrar's sales volumes. As of January 2017, the basic fee for a new domain name for those registrars subscribing to the CRS is €1.75. In Q1 2017 98% of registrations were made by the 331 registrars who joined the CRS in 2017. The price referred to above is the price the .eu Registry sells to Registrars. The price the end users get depends then on the Registrars and any additional services they provide with the domain name. Retail prices for .eu TLDs can vary from as low as €0.99 (special registrar promotions) up to €100 or €200 if the domain is bought with value-added services such as content management, security features, or many email addresses.

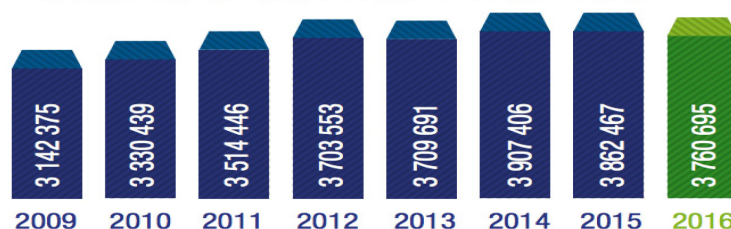
Competition and size of the .eu market

The .eu TLD is one of the largest ccTLDs in the EU, and has 3.7 m registrations as of 2016. Average annual growth for .eu has been +4.6% over the past ten years<sup>40</sup>. Over the

<sup>38</sup> See Article 3(4) of Regulation (EC) No 733/2002, and recitals 2, 3, 4 and Article 4 of Regulation (EC) 874/2004.

<sup>39</sup> EURid Q3 2017 Quarterly Report: [https://eurid.eu/media/filer\\_public/62/aa/62aa8f63-e0ff-42c9-9fdf-b50e2c45601f/quarterly\\_report\\_q3\\_2017.pdf](https://eurid.eu/media/filer_public/62/aa/62aa8f63-e0ff-42c9-9fdf-b50e2c45601f/quarterly_report_q3_2017.pdf)

## Total .eu domain names



past five years, however, growth has remained relatively static and 2015 saw negative growth for the first time in .eu's history.

Figure 3. Yearly growth of .eu domain names (2009-2016)

Considering the new round of gTLDs and the subsequent plethora of available TLDs which may be substituted for .eu TLDs, as well as the stagnation in the ccTLD market, the volumes in new registrations and renewals for the .eu TLD are likely to continue to drop. Although a dramatic drop is not foreseen for the .eu TLD, such an eventuality should not be altogether excluded.

In the event of a significant drop in .eu registrations, the financial sustainability of the .eu TLD would be negatively affected. Sustainability is guaranteed mainly by renewals. The following renewal scenario is calculated in the Operating Plan and Budget 2018 by the current .eu Registry:

Table 3. Renewal scenario (2018)

| <b>Renewal rate</b> | <b>Non-renewals</b> | <b>Surplus (in EUR)</b> |
|---------------------|---------------------|-------------------------|
| 50%                 | 1,898,562           | -1,372,885              |
| 55%                 | 1,708,704           | -1,063,624              |
| 60%                 | 1,518,849           | -754,376                |
| 65%                 | 1,328,990           | -445,116                |
| 70%                 | 1,139,134           | -135,864                |
| 75%                 | 949,278             | 173,391                 |

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<sup>40</sup> Source, EURid annual report 2016 [https://eurid.eu/media/filer\\_public/61/6a/616a9b08-13ca-4379-8e11-0a3580201bb5/annual\\_report\\_2016.pdf](https://eurid.eu/media/filer_public/61/6a/616a9b08-13ca-4379-8e11-0a3580201bb5/annual_report_2016.pdf)

|              |                |                |
|--------------|----------------|----------------|
| 80%          | 759,423        | 482,641        |
| <b>80.1%</b> | <b>738,122</b> | <b>563,316</b> |
| 85%          | 569,564        | 791,902        |

The current .eu Registry's 2018 budget takes into account an average renewal rate of 80.1% (projection). Should the renewal rate fall, the surplus will become negative from the moment these drop below 72.2%.

As discussed in section 5.1, following the decision from the United Kingdom to withdraw from the European Union, and subject to any relevant provision in the agreement on the future relationship between the European Union and the United Kingdom, 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 not be allowed to register .eu domain names, and the rights of UK-based registrants regarding .eu domain names would be subject to revocation from the .eu Registry.

The .eu registrations in the UK amount to 8% of the total .eu registrations<sup>41</sup>. It is impossible to foresee how many of these registrants would actually give up their domain name or re-register it through another country (possible in case an enterprise has a branch in another EU country or in case of a natural person if the person has a second residency in an EU country) or even re-register it through so-called proxies.

#### Access to the .eu

There is relevance between the current rigid legal framework and access to the .eu TLD, with the latter being negatively impacted by rigidity.

As a recent example, the .eu extension (.eu in Cyrillic) was launched on 1<sup>st</sup> June 2016. Within the first month of its launch 780 new domain names were registered under the new Cyrillic extension, .eu. Today there are 1.968 registrations in .eu. This means that there was a loss of 780 times the .eu benefit (B) for the time end users had to wait for the .eu extension to be implemented<sup>42</sup>.

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<sup>41</sup> EURid Quarterly report, Q3 2017

<sup>42</sup> New domain extensions are delegated by ICANN. Both the .eu extension (.eu in Cyrillic) and the .eu extension (.eu in Greek) entered a lengthy evaluation process at ICANN level. The .eu in Greek has yet to be resolved. Nevertheless for these IDN extensions to be launched, the 'homoglyph bundling' rule had to be enabled to protect end-users from possible confusing similarity issues. To introduce 'homoglyph

According to the Regulations, .eu is provided through the network of accredited registrars as mentioned before. Currently there are some countries, like Bulgaria or Malta, where the accredited registrars are both few in number and they do not actively promote the .eu TLD as well. There is low interest from the registrars' side and a preference for other TLDs, mostly the new gTLDs. With the Registry not being able to reach out directly to end users, the outcome is that in these underserved markets, end users have less choice.

The current .eu Regulations establish a "residency principle" for registrants. That means that an EU/EEA citizen who is living abroad but still has an EU/EEA nationality and passport is not allowed to register a .eu TLD name, despite being eligible to vote in national elections<sup>43</sup>. These EU/EEA citizens suffer the loss of the .eu benefit (B) that would otherwise be at their disposal should they choose to use it.

#### Oversight

It is of the utmost importance that the .eu Registry is operated under the strictest rules of transparency, fairness and accountability, and to the highest technical standards; potential mismanagement, corporate or technical, will lead to a risk of mistrust in the .eu TLD as a reliable online extension which in turn will diminish the benefit of the tool for the end users. Problems with proper oversight could lead to not reaching the .eu benefit (B).

#### Flexibility

Amending the .eu Regulations can take several months. When new technical improvements to the DNS are introduced, other ccTLDs and gTLDs can offer them to their end users at once. End users of the .eu TLD consequently suffer a loss through not being able to enjoy the benefits of the new technical improvements for the time it takes to amend the .eu Regulations.

#### ii) Regulatory costs

##### Compliance costs

The .eu legal framework foresees the allocation of a registry to organise, administer and manage the .eu TLD. EURid was established as a joint venture between the ccTLD operators of Belgium, Sweden, Italy and Czech Republic, with the sole intention of running the newly established TLD. Therefore all of EURid's costs are linked with the

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bundling', Commission Regulation Commission Regulation 874/2004 had to be amended. The process took the Commission 19 months.

<sup>43</sup> It is important to bear in mind that the right to vote in national elections is not only dependent of nationality and/or passport rights.

implementation of the .eu legal framework. The total costs of fiscal year 2016 were € 11.365.237<sup>44</sup>.

Figure 4. Evolution of costs

| <b>Costs</b>         | <b>2016 Actuals</b> |
|----------------------|---------------------|
| General costs        | 1.202.250           |
| Marketing & Comm.    | 2.742.089           |
| Depreciation cost    | 558.871             |
| Human resources      | 3.883.024           |
| Operating expenses   | 1.945.307           |
| Cost of subsidiaries | 1.033.696           |

*Evolution of the total costs per semester 2014-2016*

| <b>Costs</b>         | <b>H1 2014</b>   | <b>H2 2014</b>   | <b>H1 2015</b>   | <b>H2 2015</b>   | <b>H1 2016</b>   | <b>H2 2016</b>   |
|----------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| General costs        | 535.725          | 604.997          | 497.672          | 596.246          | 548.855          | 653.395          |
| Marketing & Comm.    | 1.571.386        | 1.480.096        | 1.526.913        | 1.501.869        | 1.617.075        | 1.125.014        |
| Depreciation cost    | 276.326          | 237.256          | 195.690          | 299.863          | 291.786          | 267.085          |
| Human resources      | 2.345.181        | 2.035.549        | 2.062.530        | 1.996.641        | 1.931.835        | 1.951.189        |
| Operating expenses   | 1.343.419        | 1.202.643        | 1.205.259        | 1.281.036        | 947.313          | 997.994          |
| Cost of subsidiaries | 655.522          | 559.242          | 525.899          | 589.623          | 511.424          | 522.272          |
| <b>Total</b>         | <b>6.727.559</b> | <b>6.119.783</b> | <b>6.013.963</b> | <b>6.265.277</b> | <b>5.848.287</b> | <b>5.516.950</b> |

In accordance with the .eu legal framework, the Commission assumes the role of supervising the .eu Registry by means of a contract<sup>45</sup>. The Commission exercises its supervising role by scrutinising the .eu Registry's reports, organising formal biannual meetings and ad hoc meetings, and through requests for information at any time. The additional calculations below take into account:

- Periods when amendments to the Regulations have to be introduced to allow technical updates; and
- Periods when the service concession contract has to be negotiated (through a new call for expression of interest) or renegotiated (through extension of the existing contract).

<sup>44</sup> EURid Financial Report H2 2016.

<sup>45</sup> Internal compliance cost.

There need to be two Commission officials devoting 50% of their time to the required action relating to .eu TLD, and a head of unit devoting 5%. Considering the average total cost of a Commission official is 143.000 €<sup>46</sup>, the compliance cost for the Commission equals to 150.150 €<sup>47</sup>.

For end users the cost they incur is equal to the retail cost of a .eu TLD name.

Registrars' costs are equal to the price paid by a registrar to the registry for a .eu plus the cost of the administrative procedure to check an applicant is eligible for a .eu TLD.

### Administrative Burden

Under current .eu Regulations the actor incurring external administrative burden is the .eu Registry. An examination of the mandatory information obligations (IO) EURid currently has with regard to the European Commission through the 'Standard Cost Model' (SCM) reveals that the .eu Registry is incurring a cost from administrative burden that equals to €115.688. Ten IOs need to be carried out by EURid. Please see table with detailed calculations of these ten IOs in Annex 8.

Some internal administrative burden is felt at Commission level. In particular eight IOs are part of Commission's workload when it comes to implementing the current .eu framework. According to SCM calculations in Annex 10 the Commission is incurring a cost from administrative burden that equals to €40.322.

### Delay costs

As mentioned above, amending the .eu Regulations can take several months. When new technical improvements to the DNS are introduced, other ccTLDs and gTLDs can offer them to their end users at once. The .eu end users suffer a loss of not being able to enjoy the benefits of the new technical improvements for the time it takes to amend the .eu Regulations.

### Monitoring / enforcement costs

The current .eu Registry is obliged by the contract to run an annual external audit on its financial accounts. The amount paid annually to the external auditors equals to 29.000 €.

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<sup>46</sup> Average total cost in legislative financial files.

<sup>47</sup>  $2 \times (50\% \times 143.000) + 1 \times (5\% \times 143.000) = 143.000 + 7.150 = 150.150 \text{ €}$ . This calculation considers the cost of two officials (at an average cost of 143.000€) devoting 50% of their time, plus one official with oversight functions devoting 5% of his/her time.

The cost of non-enforcement of the .eu legal framework could potentially equal to the loss of the benefit the end users enjoy from the .eu TLD.

The baseline scenario is not relevant as an option, as it would not allow reaching the objectives of this initiative. It is analysed as a threshold to compare impacts from other options.

## 6.2. Option 2. Modernisation of the legal framework

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Efficiency</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| the .eu market                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>A lightweight, principles-based framework would mitigate the negative impacts experienced currently under the baseline scenario. It would provide the necessary flexibility for the .eu TLD to adapt to rapidly changing technical improvements to the DNS. End users would thus not suffer a loss through not being able to enjoy the benefits of the new technical improvements for the time it takes to amend the Regulations. A better functioning .eu would be more attractive in the TLD market stirring competition between registrars, which in turn would be expected to a) possibly push end users prices further down, b) ensure availability of the .eu and its B to EU society, c) boost registrations and moving away from the scenario of the reduction of the renewal rate below the threshold that would threaten the financial sustainability of the domain name.</p> <p>The governance structure and oversight are currently dealt with extensively in the contract between the registry and the Commission. The option foresees ways to enhance supervisory mechanisms via the contract but not a change per se in the existing governance model. Improvements through the contract are easy to introduce, they can bring about different level of efficiency in terms of oversight depending on their implementation, considering the existing contract already includes provisions on transparency and accountability yet there is a risk of potential mismanagement. Problems with proper oversight could lead to not reaching the .eu B.</p> |
| Regulatory costs                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p>Compliance cost for the registry is not expected to change under this option. Even if the framework is lighter, there would still equally be a need and obligation stemming from the framework to properly organise, administer and manage the .eu TLD.</p> <p>For the Commission, nevertheless, the lighter framework would reduce the time that needs to be devoted. Benefit arise from: not having to go through lengthy review processes to introduce e.g. technical amendments; from simplified and streamlined administrative procedures (e.g. list of reserved names for institutions); from the ability to focus on strategic priorities and monitoring of adherence to high-level principles, rather than technical/operational detail or administrative processes. In particular periods when amendments to the Regulations have to be introduced would be replaced by shorter faster procedures, reducing rather drastically the time and effort on the Institutions side to implement technical improvements for the .eu TLD. Considering a second Commission</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

official would only need to devote 10% of his/her time to the .eu TLD the compliance cost for the Commission could be reduced by €57.200<sup>48</sup>

The administrative burden both for the .eu Registry and the Commission would not change under this option. Although the option entails a simplified way to introduce new features without the need to update primary legislation, the IOs needed (that mostly stem from the oversight role of the Commission over the Registry) would not change.

Delay costs would be significantly reduced, as there would be no lead time of numerous months to introduce necessary technical or operational improvements to the functioning of the .eu TLD. Monitoring costs are not expected to change.

End users and registrars are not expected to be affected (in terms of the price they pay for a .eu). Registrars might benefit from increased ability of registry staff to focus on the registrar channel as a result of simplifying and reducing administrative / compliance requirements. End users might benefit from enhanced ability of the .eu TLD to be at the forefront of technical and market innovations in the domain name sector.

### **Effectiveness**

#### **SO1 - Remove outdated legal/administrative requirements**

A lightweight, principles-based framework would achieve the objective of removing outdated legal/administrative requirements. Primary legislation would only contain the principles the functioning of the .eu TLD must abide by, while all unnecessary and detailed administrative and technical requirements that are outdated (such as those discussed in section 2.2.1) would be deleted.

It would also entail the ability (for Commission and .eu Registry) to focus resources on strategic issues rather than administrative processes.

#### **SO2 - futureproof rules that allow the .eu to adapt to the rapid evolution of the TLD market and the dynamic digital landscape, while at the same time they incorporate and facilitate promotion of EU priorities in the on line world**

A lightweight, principles-based framework would achieve the objective of ensuring the rules are future-proof and allow the .eu to adapt to the rapid evolution of the TLD market and the dynamic digital landscape. An adaptable, flexible framework would ensure the continuing relevance and attractiveness of the .eu TLD, to the registrar channel, to EU start-ups and SMEs. The competitiveness of the .eu TLD would be enhanced with the ability to innovate, diversify, build on the strengths of the existing business and its

<sup>48</sup> The compliance costs for the Commission would be as follows:  $1 \times (50\% \times 143.000) + 1 \times (10\% \times 143.000) + 1 \times (5\% \times 143.000) = 71.500 + 14.300 + 7.150 = \text{€}92.950$ . This calculation considers the cost of an official (at an average cost of 143.000€) working at 50%, another official working at 10% and a third one at 5%.

The difference with respect to the base line scenario is calculated as follows:  $\text{€}150.150 - \text{€}92.950 = \text{€}57.200$  (compliance costs for the base line scenario are explained in footnote 48).

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>reputation to further develop product and service offerings and pursue excellence.</p> <p>The existing service concession contract contains some obligations for the registry to promote EU priorities in the online world, including to provide services in the official languages of the EU (Annex 1, B1 of the contract), innovation (<i>ibid</i>), appropriate security measures (Annex 1, B2), involvement in relevant Internet governance organisations (Annex 1, B3.2); the service concession contract also annexes the .eu Registry's bid which contains substantial commitments in respect of EU values and priorities in the general interest, including multilingualism, combatting climate change and cybersecurity. Yet enshrining obligations to uphold EU values in the updated legislation, and use of the .eu TLD as a vehicle to promote EU priorities (including trust and security in the online world) would give greater transparency to such obligations and raise public awareness of the .eu TLD's strong links with EU values.</p> |
| <p><b>SO3 – governance</b></p> <p>The option foresees ways to enhance supervisory mechanisms via the contract between the Commission and the Registry. Explicitly allowing the participation of the European Commission in the Registry's Board would be an easy to implement mechanism to allow a more direct involvement in the strategic decisions of the Registry.</p> <p>Improvements through the contract are easy to introduce, they can bring about different level of efficiency in terms of oversight depending on their implementation, considering the existing contract already includes provisions on transparency and accountability yet there is a risk of potential mismanagement.</p>                                                                                                                                                                                                                                                                                                                                                          |
| <p><b>SO 4 – Promote the attractiveness of the .eu</b></p> <p>A modernized framework would contribute to the enhancement of an attractive, relevant .eu TLD (including for start-ups and SMEs), with the potential for new and innovative service offerings, for example by promoting uptake of .eu TLDs in other scripts used in official EU languages (i.e. Greek and Cyrillic script) so that EU businesses can register .eu TLDs in their own language. In the medium to longer term, it is foreseeable that technological changes in Internet usage (e.g. the Internet of things) would bring innovation and change to domain name markets – the .eu TLD should be enabled to be at the forefront of innovation in the future.</p>                                                                                                                                                                                                                                                                                                                          |
| <p><b>Coherence with other Policies</b></p> <p>The initiative would be highly coherent with the existing and forthcoming policies, in particular in the area of the internal market. By improving and making more efficient the management of the .eu TLD, it would become an even more strategic tool to positively complement EU policies in particular in the area of the digital single market, trust and security on the Internet, multilingualism, Internet governance, promotion of European entrepreneurship and start-ups.</p> <p>By reflecting and complementing ongoing efforts aimed at ensuring high consumer protection safeguards in the domain names environment and prevent DNS Abuse, this initiative would positively contribute to enhancing security in the DNS.</p> <p>By providing high level, principles-based, future-proof legislation, the option would support the objective of designing rules which match the pace of technology and support</p>                                                                                   |

infrastructure development. This would enable innovation both at the level of the registry and in the downstream market of registrars and SMEs.

Freeing the .eu TLD from restrictive, out of date legislation would enhance its ability to support EU digitalization and therefore contribute to ensuring that Europe's economy, industry and employment take full advantage of what digitalization offers.

Stakeholders' views:

A lightweight, principles-based framework is supported by key stakeholder groups (stakeholder survey, current .eu Registry and registrar surveys). Please refer to Annex 2, subsection *"Error! Reference source not found."*

### 6.3. Option 3. Separate governance

#### **Efficiency**

the .eu market

Similarly with the modernization option, this option entails a lightweight, principles-based framework that would mitigate the negative impacts experienced currently under the baseline scenario. It would provide the necessary flexibility for the .eu TLD to adapt to rapidly changing technical improvements to the DNS. End users would thus not suffer a loss through not being able to enjoy the benefits of the new technical improvements for the time it takes to amend the Regulations. A better functioning .eu would be more attractive in the TLD market stirring competition between registrars, which in turn would be expected to a) possibly push end users prices further down, b) ensure availability of the .eu and its B to EU society, c) boost registrations and moving away from the scenario of the reduction of the renewal rate below the threshold that would threaten the financial sustainability of the domain name.

This option nevertheless further entails a different governance structure than the current one, with a separate body advising on strategic decisions with respect to the .eu functioning and the oversight over the registry. Implementation is not as easy as introducing enhancements to the supervisory mechanisms via the contract, but it can guarantee improved transparency and accountability and effectively mitigate the risk of potential mismanagement, ensuring thus there would be no loss of reaching the .eu B.

#### **Regulatory costs**

Compliance cost for the registry is expected to be reduced under this option. As discussed for the modernisation option, even if the framework is lighter, there will still equally be a need and obligation stemming from the framework to properly organise, administer and manage the .eu TLD. Nevertheless some of the governance cost for the Registry would be lifted. Currently the governance costs are budgeted under the general costs and it is estimated at €296.000 for 2018<sup>49</sup>. The governance costs comprise the presence fees paid to the members of the Strategic Committee (€ 170.000) and the meeting costs related to the EURid Governance bodies such as the Strategic Committee, the Board of Directors and the General Assembly (€108.000) as well as the Registrar Advisory Board (€ 18.000). The Strategic Committee would be replaced by the new

<sup>49</sup> See annex 8.

body, thus there would be at least a € 170.000 cost saving for the registry. This amount equals to the presence fee for the Strategic Committee. The cost saving is even higher considering EURid reimburses traveling, accommodation and meals for the members of the Committee and contracts venues for the meetings (figures not available).

For the Commission the lighter framework would again reduce the time that needs to be devoted as discussed in previous option. Time to be devoted would be further reduced by the body that would facilitate some of the oversight tasks the Commission is currently performing. The Commission would nevertheless need to provide some support to the body depending on the way it would be organised - for example, scheduling meetings, and providing conference call, remote meeting room facilities, or physical meeting spaces, recording and summarising the decisions of the separate body, encouraging active participation, providing training/onboarding for new members of the separate body. For this analysis we consider the benefits from reduced oversight would be offset from the additional tasks with respect to supporting the body. Therefore the compliance cost for the Commission could be reduced similarly with the previous option by €57.200<sup>50</sup>

The multi-stakeholder separate body would need to be adequately resourced by the European Commission (in order to guarantee independence from the Registry operator). The cost for reimbursing the members of the new body, organising the meetings, etc. would therefore be an additional cost for the Commission. The financial support necessary for the body is estimated around €50.000. Please refer to Annex 11 for calculations.

The administrative burden for EURid is expected to be reduced by €4.570 due to the omission of IO6 (attending informal meetings to discuss specific actions including possible refinements to the Regulations). The administrative burden for the Commission is expected to be reduced by €4.644 similarly due to the omission of IO6. Please refer to Annexes 9 and 10 for administrative burden calculations respectively under the separate governance option.

Delay costs would be significantly reduced. Monitoring costs are not expected to change.

End users and registrars are not expected to be affected (in terms of the price they pay for a .eu). Registrars might benefit from increased ability of registry staff to focus on the registrar channel as a result of simplifying and reducing administrative / compliance requirements. End users might benefit from enhanced ability of the .eu TLD to be at the forefront of technical and market innovations in the domain name sector.

#### **Effectiveness**

SO1 - Remove outdated legal/administrative requirements

As for the modernization option, a lightweight, principles-based framework would

<sup>50</sup> €150.150 - €92.950 = €57.200 and  $1 \times (50\% \times 143.000) + 1 \times (10\% \times 143.000) + 1 \times (5\% \times 143.000) = 71.500 + 14.300 + 7.150 = €92.950$ . (See footnote 49 for explanation of this calculation).

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| achieve the objective of removing outdated legal/administrative requirements.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| SO2 - futureproof rules that allow the .eu to adapt to the rapid evolution of the TLD market and the dynamic digital landscape, while at the same time they incorporate and facilitate promotion of EU priorities in the on line world                                                                                                                                                                                                                                                                                                                                                                            |
| As for the modernization option, a lightweight, principles-based framework would achieve the objective of ensuring the rules are future-proof and allow the .eu to adapt to the rapid evolution of the TLD market and the dynamic digital landscape.                                                                                                                                                                                                                                                                                                                                                              |
| With a multi-stakeholder separate body advising on high-level decisions, some time and resources to build consensus among diverse stakeholders would be necessary (but certainly less than amending a Regulation like it is at present). The operational rules and policies would be quickly amended, benefitting further from the input and expertise of Internet stakeholders.                                                                                                                                                                                                                                  |
| The creation of such a separate body would be fully in line with the European Union support for multistakeholder approaches to Internet policy and governance, therefore demonstrating that the Commission is ready to "walk the talk" when dealing with Internet resources such as the .eu TLD.                                                                                                                                                                                                                                                                                                                  |
| A multi-stakeholder advisory separate body could enhance EU values, so long as there is a balance of stakeholder views and consistent levels of participation by all members of the body.                                                                                                                                                                                                                                                                                                                                                                                                                         |
| SO3 – governance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| The introduction of a multistakeholder body could be effective in strengthening and widening the input into the good governance of the .eu Registry and increasing the transparency of its corporate governance. Such a governance structure offers the advantage to substantially increase the transparency, accountability and inclusivity in the governance of the .eu Registry, therefore addressing one of the main drivers outlined in the problem definition. Public interest would be better ensured.                                                                                                     |
| However, there are also considerable risks and down-sides associated with this structure, such as lack of effective participation. Experience of multi-stakeholder mechanisms at the national level within the EU (and experiments within the .eu Registry itself) have shown that there is a small group of people willing to participate, while many are unable to devote sufficient time to such a body. With low participation, there are also risks of capture by those with salient commercial interests or strong advocacy positions who more likely to become involved rather than the ‘silent majority’. |
| Care would be needed to ensure that appointment, renewal and oversight of such a body were robust, and that mechanisms exist to avoid conflicts of interest, and preserve the public interest. For instance, attention needs to be given to who screens and selects individuals to such bodies, what duties those individuals have, whether or not they are remunerated (and by whom), and how to remove individuals from the body.                                                                                                                                                                               |
| SO 4 – Promote the attractiveness of the .eu                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Similar with the modernization option.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| One minor downside could be that with a multi-stakeholder body dealing with some                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

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| decisions, sometime and consensus among diverse stakeholders would be necessary (but certainly significantly less than amending a Regulation like it is at present) in comparison to those ccTLDs that can take decisions and introduce changes immediately.                                                                                                                                                                                                                                                                                                               |
| <b>Coherence with other Policies</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| In addition to the aspects highlighted for the previous option, it is hoped that the policies and procedures developed through a multi-stakeholder process would be coherent with policies to achieve better access for business and consumers to the online environments.                                                                                                                                                                                                                                                                                                 |
| As far as the .eu contribution to ensuring that Europe's economy, industry and employment take full advantage of what digitalization offers, the assessment of this initiative is mixed: – the potential exists for a multi-stakeholder body to enhance participation in the digital environment; at the same time, it may become inward-looking and process orientated – as is experienced in the ICANN multi-stakeholder policy-making environment.                                                                                                                      |
| Stakeholders' views:<br>As mentioned in the modernisation option the lightweight, principles-based framework that is supported by key stakeholder groups (stakeholder survey, registry and registrar surveys). With respect to the governance model, in the results of the public consultation the model where policies and procedures are developed by the .eu operator through a multi-stakeholder process and approved by the Commission stood as the most preferred option. Please refer to Annex 2, subsection " <a href="#">Error! Reference source not found.</a> " |

#### 6.4. Option 4(b)(i). Existing EU Agency: full integration in EUIPO

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| <b>Efficiency</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| the .eu market                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| This option entails a framework that would entrust EUIPO with the organisation, administration and management the .eu TLD. Similarly with both previous options the framework would be lightweight, principles-based with a view to mitigate the negative impacts experienced currently under the baseline scenario. It would provide the necessary flexibility for the .eu TLD to adapt to rapidly changing technical improvements to the DNS. End users would thus not suffer a loss through not being able to enjoy the benefits of the new technical improvements for the time it takes to amend the Regulations.                                                                                                                                                                                                                                                                                            |
| The transfer of a domain name registry from the private sector to a public sector agency is nevertheless an unprecedented action. The current .eu private registry has built up strong, collaborative relationships with the registrar channel. The transition to a new .eu TLD provider and in particular to a provider that has nothing to do with the DNS market insofar is expected to create some disruptions. Those could be temporary or could be permanent to the extent that the new registry would need to change the established workflows with registrars. The greater the change with the introduction of a new public registry, the greater the likelihood that some registrars would drop out of supporting .eu TLD, leading to a reduction in the availability of .eu TLD in the downstream market. Less competition is likely to lead to a raise of the .eu price for registrars which might in |

turn lead to a raise of the retail .eu price.

On the other hand, transition to an EU Agency would protect continuity of service of the .eu TLD against the notional risk that no willing bidder would come forward on a future re-tender. In addition an EU Agency would ensure the continuity of the .eu TLD even if renewals dropped below the threshold that would threaten the financial sustainability of the domain name.

With respect to oversight, EUIPO being an EU Agency would ensure enhanced transparency and accountability over the way the .eu TLD is being operated, which would ensure there would be no loss of reaching the .eu B due to potential mismanagement issues.

### **Regulatory costs**

Compliance cost for the registry is expected to be reduced with respect to the annual cost for running the .eu once it has been incorporated into EUIPO and considering EUIPO provides the same level of service as the current registry. Savings are expected primarily from synergies with existing technical infrastructure and technical expertise at EUIPO level. According to EUIPO's calculations the annual cost would be €10.465.724.

There would be nevertheless a cost to implement the transition, which amounts to €1.688.400 for an 18-month transition period again according to EUIPO. Please refer to Annex 12 for detailed calculations.

The administrative burden for the Registry is expected to be reduced by €21,565 mainly due to the fact that while most of the IOs would still be necessary, their frequency would be reduced. Similarly the administrative burden for the Commission would be reduced by €23.686. Please refer to Annexes 9 & 10 for administrative burden calculations respectively under the EUIPO option.

Considering though that no external entity would be incurring administrative burden any longer (it would be an EU Agency and the Commission), there would not be external but only internal administrative burden. It might therefore be argued that administrative burden would be eliminated.

Delay costs would be significantly reduced as well. Monitoring costs would be eliminated.

End users are not expected to be affected (in terms of the price they pay for a .eu).

### **Effectiveness**

#### **SO1 - Remove outdated legal/administrative requirements**

Provisions to give legal basis for the transfer of responsibility for the .eu TLD to an EU Agency would have to be included in the legal framework, which at the same time would be replaced by a lightweight, principles-based framework to achieve the objective of removing outdated legal/administrative requirements, similar to previous options.

SO2 - futureproof rules that allow the .eu to adapt to the rapid evolution of the TLD market and the dynamic digital landscape, while at the same time they incorporate and

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| facilitate promotion of EU priorities in the on line world                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| EUIPO has strong abilities in its field of operation, but would be likely to introduce additional rules/restrictions arising from its operational perspective (intellectual property protection), that might impeded rather than enhance the flexibility to keep up with the dynamic market environment. On the other hand, an EU agency would enshrine EU values and priorities more effectively than a private entity.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| SO3 – governance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>The transfer of a domain name registry from the private sector to a public sector agency would be an unprecedented action. Since the late 1990s with the US government's privatization of the management of the Internet's unique identifiers (including the domain name system), the trend has been for governments to step away from direct management of such resources.</p> <p>The proposed structure would not reflect international best practices for technical operations. Private sector organisations tend to be more efficient and dynamic in implementing effective technical solutions. However, these risks might be mitigated if the integration into an EU agency is coupled with multistakeholder decision making mechanisms, signalling an increased support to multi-stakeholder model of governance, which the EU advocates.</p> <p>In a fast-changing technological industry the pace of market developments outstrips that of formal rules or regulation. In the ccTLD environment, operators rely on regular, collaborative dialogue among industry peers to keep up with best practices. EU Agency as operator (whilst having extensive expertise in its own field) is unlikely to be perceived as a neutral and impartial operator by industry peers or the downstream registrar channel. Care should therefore be devoted from the Agency to nurture the established network of accredited .eu Registrars.</p> <p>The transition to a new technical operator inevitably includes some disruptions with the established registrar channel. Experience with new gTLDs indicates that where the registrar channel anticipates significant inconveniences, increasingly some would choose not to support a TLD, particularly if the inconveniences are also associated with rigid rules for registration or usage of the domains.</p> <p>On the positive side, an EU Agency would ensure transparency and accountability, upholding public interest and securing the continuity of the .eu even in the event the domain name stops producing surplus.</p> |
| SO4 – Promote the attractiveness                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| An EU agency whose area of expertise is intellectual property protection could enhance and promote the attractiveness of .eu by associating the .eu TLD with stronger security or intellectual property protections. The .eu TLD would also gain increased visibility, particularly amongst trade mark applicants. EUIPO offering .eu TLD services and embedding them within its e-filing tools would provide valuable complementary services to the registration of trademarks and designs, thus supporting other integral parts of building a brand or a business name and at the same time helping to combat fraudulent activities.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

On the other hand, one of the negative perceptions of the .eu TLD at present is that it is seen as too institutional compared with other more innovative or dynamic TLDs. Having an EU agency manage the .eu TLD would reinforce and strengthen that perception. The market is currently over-supplied with TLDs, and this change would tend to make the .eu TLD less attractive to registrars and to EU SMEs and start-ups than the current arrangements.

The transition of management of .eu TLD to an EU agency is likely to be interpreted by the market as a lack of confidence by the EU Commission in existing arrangements, with potential negative impact on the market performance, the perception of dynamism of the .eu TLD and perhaps the dynamism of the .eu TLD itself.

#### **Coherence with other Policies**

Better access for consumers and business to online goods – a seamless and level marketplace to buy and sell. Transition may cause disruption and/or drop out from registrar channel, leading to lower availability or support for .eu TLD.

An EU Agency – particularly one with a specific security or intellectual property focus – would aim at improving the security or intellectual property protections within the .eu TLD. While these are laudable aims, the corollary is likely to be an adverse impact on the enabling environment necessary to foster innovation both at the level of the registry and in the downstream market of registrars and SMEs.

Startup Europe – increase networking opportunities for startups, investors and accelerators. The proposed option might decrease the dynamism and responsiveness of the .eu TLD to compete in a fast-changing market environment, making it less able to support EU startups, investors and accelerators.

Stakeholders' views:

EUIPO submitted a written contribution to the.eu REFIT, proposing the integration of the .eu Registry in the Agency. As the EUIPO option was formulated at a later stage than the closure of the consultation activities (which in the case of this back-to-back initiative were aimed both at gathering input on the evaluation and the impact assessment at the same time), it has not been formally tested with other stakeholders.

## **6.5. Horizontal issues: Vertical integration/eligibility criteria**

### **Vertical integration**

Keeping the status quo, i.e. the requirement for the Registry not to act itself as a registrar, means that the Registry has to reach out to the markets it caters through advertisement campaigns to strengthen the registrar network. The.eu market and its registry should not be compared to any worldwide ccTLD registry as 90% of the ccTLDs serve primarily their local market while the .eu Registry has to cater for 31 countries that are extremely different because of their historical, economic, political and cultural backgrounds. In

some of these countries, such as Bulgaria, Romania, Lithuania, Latvia, Finland, and Malta, the registrar network is very weak as registrars in these countries do not actively promote the .eu TLD. In turn the end user is deprived of the choice of a .eu TLD name. The current prohibition for the .eu Registry prevents it from stepping in to provide access to .eu TLD in such underserved markets.

The current Registry is making efforts to mitigate that through various campaigns, which are not delivering the desired outcome.

A very prominent example is the Bulgarian market, where registrars are not actively promoting the .eu TLD and its equivalent in Cyrillic even less. When the .eu in Cyrillic was launched in June 2016, the Registry launched a campaign that cost over €60.000 among Google online campaign, local awareness initiatives (including the .eu in Cyrillic event launch), participation in the Webit conference to promote the .eu and more. Only 200 registrations were made in return. The situation is not much different that June 2016, today equally due to the fact that the Registry cannot reach end users registration in the .eu in Cyrillic are only 1.952.

Promoting multilingualism on line is a priority for the EU. Making sure that .eu in other scripts is available (by effectively going through lengthy delegation processes at ICANN level) but yet it not being offered to end users annuls every effort and commitment to enabling EU citizens to use their own languages online.

Allowing the appointed Registry operator to provide direct registrations through its website (but not becoming a full registrar) would help the registry to promote the .eu in other scripts - Cyrillic and eventually, Greek - as registrars do not have any interest in IDNs due to the scarce demand from the end-users in comparison to other extensions in Latin characters. Moreover, it may stimulate a more competitive environment for registrars in certain EU countries so that local registrars are forced to do more promotional actions and the end users would thus be offered more choices.

On top of that, end users that would register a domain name from the .eu Registry website would be then directed to the full list of the .eu accredited registrars to get more services if they so wish. Meaning the registrars would not only be placed at a disadvantageous position with respect to the Registry (as it would not be allowed to act as a full registrar) but they would receive more clients from the registry.

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| Please refer to Annex 2, subsection <i>"Error! Reference source not found."</i> <i>Error! Reference source not found.</i> for stakeholders' views. |
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## Eligibility Criteria

The market changed considerably since the launch of .eu TLD in the early 2000s. In 2006, the OECD noted a trend towards ‘liberalisation’ of the ccTLD namespace. In this context, liberalisation means the elimination of rules seeking to restrict those eligible to register in a particular TLD<sup>51</sup>.

The purpose of eligibility criteria is to reduce speculation, cybersquatting, or domain name disputes between intellectual property holders and domain name users. However, in practice, the consequence is the reduction in overall registrations, leading to a loss of market share. Such restrictions are also easy to circumvent through the use of proxies, i.e. a person or organisation who does not comply with the relevant restrictions arranges for registration of a domain name through a third party proxy.

As domain name dispute resolution processes such as ICANN’s Uniform Domain-Name Dispute-Resolution Policy (UDRP)<sup>52</sup> and the .eu Alternative Dispute Resolution (ADR)<sup>53</sup> came into being, much of the market adopted fully open, first-come, first-served registration policies confident that disputes could be managed after the fact, rather than in advance. Registries that have eliminated eligibility criteria experienced rapid growth in domain name registrations afterwards, for example Afnic (France) and Red.es (Spain).

We identified three possible alternatives for the new .eu legal framework: a) maintaining the residency eligibility; b) introducing citizenship criteria for natural persons, while maintaining the residency criteria for both natural and legal persons; or c) introducing a full deregulation, where no citizenship/ residency criteria apply.

If retaining the residency eligibility criteria (a) helps maintaining a strong link with EU values while supporting the reputation of the .eu TLD in terms of quality and security, it does not address the concerns expressed by several registrars that strict eligibility criteria represent a barrier to any TLD growth. Furthermore, EU citizens residing in / moving to third countries are denied the possibility to make use of a .eu TLD.

On the other hand, maintaining such approach would not require any technical changes in the Registry and/or Registrars' normal operations.

The introduction of a citizenship criterion for natural persons mixed with residency requirement for both natural and legal persons (b), represents a viable option which preserves the strong link with the EU. While removing the inconsistency of having EU citizens living in third countries being denied the right to register or keep their .eu TLD

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<sup>51</sup> Evolution in the management of country code Top-level domain names, OECD, 2006  
<https://www.oecd.org/sti/ieconomy/37730629.pdf>

<sup>52</sup> <https://www.icann.org/resources/pages/help/dndr/udrp-en>

<sup>53</sup> <https://eurid.eu/en/register-a-eu-domain/domain-name-disputes/>

name, the renewed eligibility criteria (b) will also allow third country citizens residing in the EU/EEA registering a .eu domain.

However, such change would lead to more complex and costly compliance checks by the appointed registry operator. The operational implementation to adjust the technical and operational systems by both the appointed Registry and registrars has been estimated to take between 9 and 12 months.

Introducing a full deregulation (c), where no citizenship/ residency criteria apply, would reflect present trends among ccTLDs tending to remove or simplify eligibility criteria in order to promote uptake. Such removal may increase registration numbers but not necessarily the quality of such turn out, potentially producing higher levels of abusive behaviours. Indeed, a recent report<sup>54</sup> on DNS Abuse in new gTLDs indicates that abuse counts in domain names primarily correlate with stricter registration policies. At the same time, it may decrease the accuracy of WHOIS data while raising speculative registrations.

A full deregulation would certainly reduce compliance cost for registry and registrars, but would boost the costs to deal with a foreseeable higher number of disputes or legal challenges relating to .eu TLD names.

Please refer to Annex 2, subsection "*Error! Reference source not found.*"*Error! Reference source not found.* for stakeholders' views.

## 7. HOW DO THE OPTIONS COMPARE?

This section presents a comparison of the options in the light of the impacts identified. The options are assessed against the core criteria of effectiveness, efficiency and coherence. It is reminded that all retained and further analysed options are technically feasible options.

### Efficiency

To facilitate the comparison of the regulatory costs, the table below recaps the regulatory costs described for each option in the previous chapter and highlights the differences between the options: for instance it shows that option 3 offers slightly greater savings in comparison to option 2 as the costs for the creation of a separate governance body

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<sup>54</sup> "... next to TLD size, abuse primarily correlates with domain pricing (free versus paid registrations), efforts of intermediaries (measured through the proxy of their DNSSEC deployment rate), and strict registration policies (...) Miscreants prefer to register, for example, standard new gTLD domain names, which are generally open for public registration, rather than community new gTLDs for which registries may impose restrictions on who or which entities can register their domains"  
<https://newgtlds.icann.org/en/reviews/cct/dns-abuse>

(estimated at €50.000) is still lower than the current governance costs borne by the registry (estimated at €170.000), as well as because option 3 has slightly reduced administrative costs. Option 4(b)(i) offers even greater savings in terms of regulatory costs (but only once the transition costs will be absorbed after an 18-month period).

### Regulatory costs

| Option 2                                                                                                 | Option 3                                                                                                                              | Option 4(b)(i)                                                                                                                                                                                            |
|----------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Compliance costs</b>                                                                                  |                                                                                                                                       |                                                                                                                                                                                                           |
| Baseline<br>Registry: €11.365.237<br>Commission: €150.150                                                |                                                                                                                                       |                                                                                                                                                                                                           |
| <ul style="list-style-type: none"> <li>• registry: no change</li> <li>• Commission: -€57.200</li> </ul>  | <ul style="list-style-type: none"> <li>• Registry: -€170.000</li> <li>• Commission: -€57.200</li> </ul> <p>Separate body: €50.000</p> | <ul style="list-style-type: none"> <li>• Registry: -€899.513<br/>however transition costs for 18-month period: €1.688.400</li> <li>• Commission: -€150.150<br/>only after 18-months transition</li> </ul> |
| <b>Administrative burden</b>                                                                             |                                                                                                                                       |                                                                                                                                                                                                           |
| <ul style="list-style-type: none"> <li>• registry: no change</li> <li>• Commission: no change</li> </ul> | <ul style="list-style-type: none"> <li>• Registry: -€4.570</li> <li>• Commission: -€4.644</li> </ul>                                  | <ul style="list-style-type: none"> <li>• Registry: -€21.565</li> <li>• Commission: -€23.686</li> </ul>                                                                                                    |
| <b>Delay costs</b>                                                                                       |                                                                                                                                       |                                                                                                                                                                                                           |
| Significantly reduced                                                                                    | Significantly reduced                                                                                                                 | Significantly reduced                                                                                                                                                                                     |
| <b>Monitoring costs</b>                                                                                  |                                                                                                                                       |                                                                                                                                                                                                           |
| No changes                                                                                               | No changes                                                                                                                            | eliminated                                                                                                                                                                                                |

All three options would have a positive impact compared to the baseline scenario. While the EUIPO option would bring about significant reduction of regulatory costs, amplified by the internalisation of the administrative cost currently incurred by external stakeholders (the .eu Registry), it would not bring about nor a positive neither a negative impact with respect to the .eu market. In contrast, the modernisation and the separate governance options would bring about positive impacts with both the regulatory costs and the .eu market, with the separate governance option scoring slightly better when it comes to the .eu market.

### Effectiveness

While all three options would induce an aggregate positive impact compared to the baseline scenario, it seems that only the separate governance option strikes a positive impact in all four specific objectives. Indeed, option 2 scores "0" for SO3 (governance) because it does not introduce any major changes in the current governance structure; and option 4(b)(i) scores "0" on SO3, considering the overall result of balancing on the one

hand the enhanced accountability and sustainability that an EU Agency would ensure and on the other hand the negative impacts in terms of risks of disrupting the Registrar channel. Option 4(b)(i) also scores "-" for SO4 because even if there could be some advantages in terms of increasing the attractiveness of the .eu (for instance by building synergies with other services and activities performed by the Agency), it would nevertheless be perceived in a negative way by the market, therefore making the .eu less attractive to registrars and ultimately to end users.

### Coherence

The modernisation and the separate governance options are coherent with other policies, whereas the EUIPO option is not, given that it presents higher disruption risks with respect to the other two options and that it might decrease the dynamism of the .eu in a fast changing market

The following table summarises the merits of each option against the baseline scenario, based upon the impact analysis performed in Section 6:

Table 4. Comparison of the impact of the different options<sup>55</sup>.

|                               | Technical feasibility | Efficiency    |                  | Effectiveness |     |     |     | Coherence |
|-------------------------------|-----------------------|---------------|------------------|---------------|-----|-----|-----|-----------|
| Options                       |                       | The.eu market | Regulatory costs | SO1           | SO2 | SO3 | SO4 |           |
| Baseline                      | ✓                     | 0             | 0                | 0             | 0   | 0   | 0   | 0         |
| Option 2: Modernisation       | ✓                     | +             | +                | ++            | ++  | 0   | ++  | +         |
| Option 3: Separate Governance | ✓                     | ++            | +                | ++            | ++  | +   | ++  | +         |
| Option 4(b)(i): EUIPO         | ✓                     | 0             | ++               | ++            | +   | 0   | -   | -         |

The main reason why option 3 scores better than option 2 is that while the set-up and implementation of the separate governance structure (option 3) requires some additional efforts in comparison to option 2 (which would be only partially offset by a small decrease in EC governance work), it is expected to improve transparency and accountability, therefore better fulfilling the SO3 of ensuring a governance structure in line with technical and governance best practices in the field. Indeed option 3 combines

<sup>55</sup> The symbol "✓" indicates the technical feasibility of the option. The comparison is performed on the core criteria, efficiency, effectiveness and coherence, on a scale of "++" indicating a very positive impact; "+" indicating a positive impact; "0" indicating no impact; "-" indicating a negative impact and "- -" indicating a very negative impact.

the advantages of a modernised, light-weight and principles-based framework as foreseen in option 2 (modernisation) with the additional mechanism to ensure a separate governance.

## **8. PREFERRED OPTION**

The above analysis has shown that option 3 "Separate Governance" constitutes the best option. The modernisation option is slightly lagging behind it, because it does not effectively meet specific objective 3 on governance. A sensitivity analysis (detailed in Annex 4) demonstrates the robustness of the options' ranking irrespective of the ranking method used (aggregative method - without or with weights - versus outranking method).

In summary, the main arguments in favour of the separate governance option are:

- The introduction of a multistakeholder separate body would effectively strengthen and widen the input into the good governance of the .eu Registry and increase the transparency of its corporate governance.
- At the same time a significant simplification would be achieved by the amendment of Regulation 733/2001 and the removal of technical and administrative constraints included in current Commission Regulation 874/2004, boosting the .eu TLD readiness to adapt to the market and its attractiveness – therefore the benefit it can bring – to end users.

In addition, the EU would show consistency with its declared support for the multistakeholder model with respect to Internet governance. Caution would be exercised to ensure that mechanisms exist to harness the best of the model. Such mechanisms can be (but are not limited to) robust appointment criteria, renewal clauses and oversight of such a multistakeholder separate body.

With respect to vertical integration, the option of keeping a strict requirement (prohibition) in primary legislation is highly unusual; it adds to rigidity and does not help achieve the objectives of the initiative. Lifting strict prohibition of vertical integration from primary legislation is the option that would better serve the objective of creating a future-proof legal framework; the appointed Registry will be allowed to offer direct registrations to end users only through its website. The Registry operator will not become a full registrar: the end users will be able to reserve a domain name with the Registry and they will be redirected to accredited registrars to get additional services (such as webhosting, webpage, email). This system will be implemented through the contract, which will provide the restriction to the Registry to only offer direct registration from the website and the obligation to set the price in consultation with the Commission, on the basis of non-discrimination on registrars and affordability for end users. The price of the registration will not be stipulated in the contract, leaving space for different

approaches. Furthermore, the price for the end users to reserve a .eu domain name will be the same, whether they will refer to the Registry or registrars for registration. The registrars will continue offering different additional services at different prices. Not differentiating the price is technically and administratively easier to be implemented by the Registry rather than introducing a complete separate set-up for end users registering directly; it also facilitate the Commission monitoring that the Registry does not abuse its market power over the registries.

With respect to the eligibility criteria the preferred option is to introduce citizenship as a criterion for registration for natural persons while keeping residency as the criterion for both natural and legal persons. Third country citizens residing in the EU/EEA will continue to be eligible to register a .eu domain, furthermore, EU/EEA citizens, regardless of their place of residence, will also be able to register a .eu domain.

It is reminded that neither the pursued option for the vertical integration, neither the pursued option for the eligibility criteria is going to affect or alter the impacts expected from implementing separate governance.

As mentioned in the first sections of this impact assessment, the .eu Registry is appointed through a call for expression of interest and is awarded a contract following the selection process. The duration of the contract is currently for five years, whereas there is the option to renew it. The new rules will apply to the selection of the next .eu Registry operator and the planning of the legislative review will be aligned with the selection procedure of the next operator.

### **8.1. REFIT (simplification and improved efficiency)**

This initiative includes simplification and improved efficiency objectives clearly articulated in specific objective 1 "remove outdated legal/administrative requirements" and in specific objective 2 "create futureproof rules for the .eu TLD". The preferred option would entail a lightweight, principles-based framework. Primary legislation would only contain the principles which the functioning of the .eu TLD must abide by, while all unnecessary and detailed administrative and technical requirements would either be suppressed if they are outdated, or moved to a separate easily adaptable framework<sup>56</sup>, thus enabling the .eu to adapt to the rapid evolution of the TLD market and dynamic digital landscape, and the Registry and the Commission to focus their resources on strategic issues rather than on administrative processes.

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<sup>56</sup> More detailed implementing provisions laying down Public Policy and Procedures (PPPs) would be contained in a separate document directly incorporated into the contract between the European Commission and the appointed Registry operator.

As analysed in section 6, the preferred option would reduce regulatory costs with respect to the baseline:

Table 5. Regulatory costs reductions for the preferred option.

| <b>REFIT Cost Savings – Preferred Option(s)</b>                                                                                   |                                                                         |                                                                                                            |
|-----------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|
| <b>Description</b>                                                                                                                | <b>Amount</b>                                                           | <b>Comments</b>                                                                                            |
| Reduced governance cost for the .eu Registry (as some of these tasks would be taken over by the multistakeholder separate body)   | €170.000<br><i>Recurrent</i>                                            | Reduced compliance cost for the .eu Registry                                                               |
| Reduced time to be devoted at Commission level to the implementation of the .eu Regulations (as the Regulations would be simpler) | €57.200<br><i>Recurrent</i>                                             | Reduced compliance cost for the Commission                                                                 |
| Omission of IO6 (attending informal meetings to discuss specific actions including possible refinements to the Regulations)       | €4.570<br><i>Recurrent</i>                                              | Reduced administrative burden for the .eu Registry                                                         |
| Omission of IO6 (attending informal meetings to discuss specific actions including possible refinements to the Regulations)       | €4.644<br><i>Recurrent</i>                                              | Reduced administrative burden for the Commission                                                           |
| Reduced delay costs                                                                                                               | By the lead time necessary to amend the Regulations<br><i>Recurrent</i> | For the end users by the timely availability of technical and market innovations in the domain name sector |

#### **Additional compliance cost related to the preferred option**

As discussed in section 6, the multi-stakeholder body would need to be adequately resourced by the European Commission, with a cost estimated at around €50.000 per year.

#### **9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?**

Under the preferred option, the new legal framework would allow the required flexibility to cope with market changes without the need for legislative reviews. It would thus create a future-proof legal framework. At the same time the introduction of a multistakeholder body will enhance oversight over the Registry and better governance.

To evaluate the actual impacts of the preferred option, the following set of operational objectives and corresponding core indicators are proposed.

Table X. Specific objectives, operational objectives and core indicators

| Specific Objectives                                                                                                                                                                                                                  | Operational Objectives                                                                                                                                                                                                                                                                                                        | Core Indicators                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SO 1: Remove outdated legal/administrative requirements                                                                                                                                                                              | Delete obsolete provisions<br>Lift administrative constraints                                                                                                                                                                                                                                                                 | <ul style="list-style-type: none"> <li>• Lead time to introduce a technical update or a new policy</li> <li>• Number of international engagement MoU and/or agreements and/or activities</li> <li>• Number of publications</li> </ul>                                                                                                                                                                                                                                                                                                                                                                          |
| SO 2: Ensure the rules are future-proof and allow the .eu to adapt to the rapid evolution of the TLD market and the dynamic digital landscape, while at the same time incorporating and promoting EU priorities in the on line world | Simplify the .eu legal framework and move necessary detailed arrangements concerning the functioning of the .eu TLD to the policy principles and procedures document (annexed to the contact with the registry operator and therefor easy to amend)<br><br>Promote the EU priorities in the on line world through the .eu TLD |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| SO 3: Ensure a governance structure that both reflects technical and governance best practices and serves EU public interest                                                                                                         | Set up an advisory separate body with multistakeholder participation<br><br>Enhance oversight over and accountability of the Registry                                                                                                                                                                                         | <ul style="list-style-type: none"> <li>• Number and importance of findings of external audits on the .eu Registry</li> <li>• Robustness and resilience of the technical infrastructure</li> <li>• Annual vulnerability and penetration tests rates</li> <li>• Long-term financial sustainability indicators including percentage of bad-debtors</li> <li>• Number of assessed risks, number of business continuity plan exercises over a year, non-conformities out of BCP exercises</li> <li>• Disaster recovery timeframes</li> <li>• Number of Court cases per year and possible financial costs</li> </ul> |
| SO 4: Promote the attractiveness of .eu                                                                                                                                                                                              | Reinforce consumers' choice in the .eu TLD<br><br>Support its competitiveness in the TLD market<br><br>Attract competition with respect to future would-be .eu Registry operators                                                                                                                                             | <ul style="list-style-type: none"> <li>• Registration volumes and renewal rates</li> <li>• Number of DNSSEC signed domain names</li> <li>• Registrar network expansion rates and geographical gap filling performances</li> <li>• eu perception among end-users</li> </ul>                                                                                                                                                                                                                                                                                                                                     |

|  |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|--|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  |  | <ul style="list-style-type: none"> <li>• Click-through rates (CTR) and impressions of awareness campaigns</li> <li>• Social media positive followers and engagement rates</li> <li>• Standards and service levels for customer support (end users) including responsiveness rates</li> <li>• Standards and service levels for customer support (registrars) including responsiveness rates</li> <li>• Registrar satisfaction survey ratings</li> <li>• Number of abuses on .eu TLD names</li> </ul> |
|--|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Please refer to Annex 13 for a thorough explanation of the indicators and the benchmark for each indicator.

Under the current legal framework, the Commission has to submit regularly a report to the European Parliament and the Council on the implementation, effectiveness, and functioning of the .eu TLD. In the new framework, this reporting will also serve as assessment tool to test the success of the preferred option, by means of examining and reporting on all the aforementioned indicators.