

Institutional Aspects of Internet Governance

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Introduction

Internet Governance is a very broad concept. It is widely used (and abused) to deal with at least two matters. First of all, Internet Governance is a term that reflects institutional issues (“Who controls the Internet?”); second, the notion of Internet Governance is strongly linked to debates on the content that is transported over the Internet and the function of the Internet for society. This contribution is about the first type of Internet Governance, and in particular about the most central addressing/routing structure of the Internet, namely domain names. Domain names are the prime instrument to structure the Internet so that information can be found. They are also at the core of communication between users, as they provide an essential element for the use of e-mail addresses.

In this article we first describe in very general terms the international institutional context of domain names, with a focus on country code top-level domain names (ccTLDs), such as .nl, .de and .uk. In sections 3 and 4, we provide information on the national aspects of domain naming. In particular, we give a detailed description of the European framework for assigning .eu domain names. This description covers most of the relevant “national” governance issues and may therefore serve as an example or a checklist for the regulation of national domain names.

Global Issues Related to Domain Naming

The WSIS

Although the Internet Governance debate has been going on for some time, the UN World Summit on the Information Society (WSIS) represents a clear demarcation point. The WSIS – which held meetings in 2003 (Geneva) and 2005 (Tunis), and subsequently created the Internet Governance Forum (2006) – is the first more coherent attempt to structure the global debate on Internet Governance in its broadest sense. The Working Group on Internet Governance (WGIG), one of the supporting activities in this process, gave the following definition of Internet Governance:

Internet governance is the development and application by Governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet.²⁴

As indicated, this article focuses on only some of the governance issues concerning the allocation of domain names.

What was discussed and concluded during these WSIS activities as far as domain names are concerned? When we look at the declaration of principles that resulted from the Geneva conference, it is important to notice that it strongly promotes the responsibility of all stakeholders involved.²⁵ This is an important element because sometimes the debate about who controls the Internet is dominated either by those who want the Internet to be in the hands of governments (or who support strong governmental control) or by those who see the Internet as a free environment without any regulatory

²⁴ World Summit on the Information Society (WSIS), Tunis Agenda for the Information Society, document WSIS-05/TUNIS/DOC/6(Rev.1)-E, Tunis, 18/11/2005 (WSIS 2005), p. 4.

²⁵ World Summit on the Information Society (WSIS), Declaration of Principles, document WSIS-03/GENEVA/DOC/4-E (12 December 2003), Geneva, 12/12/2003 (WSIS 2003), par. 20.

framework or relevant level of responsibility. An “all stakeholders approach” offers a better basis for finding compromises and a forward-looking approach to problems.

This underlying principle is also reflected in the paragraphs of the Geneva Declaration of Principles as far as the management of the Internet is concerned. The management of the Internet should be multilateral, transparent and democratic, with the full involvement of governments, the private sector, civil society and international organizations (paragraph 48). It should ensure an equitable distribution of resources, facilitate access for all and ensure a stable and secure functioning of the Internet, taking into account multilingualism. The subsequent two paragraphs of the Declaration provide more details about the role of the various stakeholders and promote a co-ordinated approach to Internet Governance issues.

The Tunis Agenda for the Information Society, while reconfirming the Geneva Principles, further narrows down what is at stake when it comes to assigning domain names.²⁶ Paragraph 63 introduces the autonomy of countries concerning their own ccTLD:

Countries should not be involved in decisions regarding another country’s country code top-level domain (ccTLDs). Their legitimate interests, as expressed and defined by each country, in diverse ways, regarding decisions affecting their ccTLDs, need to be respected, upheld and addressed via a flexible and improved framework and mechanisms.

The subsequent paragraph addresses international domain name assignment: “We recognize the need for further development of, and strengthened cooperation among, stakeholders for public policies for generic

²⁶ WSIS 2005.

top-level domains (gTLDs, such as .com, .org, .net).” Both paragraphs seem to be inspired by the report of the WGIG.²⁷ This report points out in a more detailed way what the institutional governance issues are and includes alternative models for the restructuring of the present Internet Corporation for Assigned Names and Numbers (ICANN) model.

ICANN and the GAC

ICANN constitutes the epicentre of the institutional governance debate. It is the organization (to summarize it briefly without the intention of being complete) that, based on authority given to it by the US Commerce Department, a) controls the assignment of gTLDs, b) more or less authorizes the organizations responsible for the ccTLDs, and c) manages the necessary addressing system (the “DNS”, the Domain Name System with its root servers). In theory, ICANN acts as an independent organization, but it is the general assumption that there is a strong interdependence between ICANN and the US Government – not only because of some formal powers but also because various other factors are considered to be relevant, such as the fact that ICANN is based in the USA (as is the case with most of the root servers) and therefore is subject to US law. Recently, ICANN entered into a new agreement with the US Government that should result in more autonomy for ICANN by 2009.²⁸ Nevertheless, ICANN’s role remains highly debated.²⁹

One of the instruments within the present structure to counterbalance these issues is the existence of the Governmental Advisory Committee (GAC), which represents countries that are interested in Internet Governance.³⁰ The GAC has adopted principles and guidelines for the delegation

²⁷ Working Group on Internet Governance (WGIG), *Report of the Working Group on Internet Governance*, Château de Bossey, June 2005 (WGIG 2005).

²⁸ Joint project agreement between the US Department of Commerce and ICANN, 29 September 2006.

²⁹ E.g. <<http://www.icannwatch.org/>>.

³⁰ More information on the GAC can be found at <<http://gac.icann.org>>.

and administration of ccTLDs.³¹ The principles underline the national responsibilities for ccTLDs. Actually, according to the document

... the main principle is the principle of subsidiarity. ccTLD policy should be set locally ... Most of the ccTLD policy issues are local in nature and should therefore be addressed by the local Internet community according to national law.

Article 4.1 goes even further by claiming that ultimate public policy authority over the relevant ccTLD rests with the relevant government or public authority. And every country or distinct economy with a government or public authority should be able to ask for its appropriate country code to be represented as a ccTLD and to designate the registry. The GAC principles are not undisputed and, as such, are not a condition for the relationship between ICANN and the registries. It is interesting to notice that the new agreement between ICANN and the US Government contains a specific paragraph about the GAC: ICANN is to work with the GAC to review the role of the GAC within ICANN “so as to facilitate effective considerations of GAC advice on the public policy aspects of the technical coordination of the Internet”. This seems to hint at a stronger involvement of the GAC and at a greater role for its principles on the delegation and administration of ccTLDs.

The European Dimension

The EU has constantly tried to increase its influence on ICANN and related governance issues.³² It has sought to limit the control by the US Government over ICANN and has supported attempts to increase the role of national governments in ICANN's operations, for example through the GAC. In fact,

³¹ Governmental Advisory Committee (GAC), GAC Principles and Guidelines for delegation & administration of ccTLDs <<http://gac.icann.org>> (GAC 2005). This is the current version of the principles; the original version was adopted in 2000.

³² More information on the EU and Internet governance can be found at the website of the EU: <http://ec.europa.eu/information_society/policy/internet_gov/index_en.htm>.

the secretariat of the GAC has been run by the European Commission for quite some time. The GAC principles were influenced by the EU, and the EU strongly supported the various statements made during the WSIS conference on the ccTLDs.³³ Although its suggestions were not fully incorporated in the governance model of ICANN, the subsequent efforts of the Commission to influence ICANN's functioning through the GAC have been moving in the same direction.

National and European Assignment of Domain Names

In this section we look at the institutional design for the allocation of domain names at the national and European level. The various models are mentioned and a more in-depth analysis is made of the .eu model.

Institutional Aspects

The national institutional arrangements underlying the assignment of domain names are poised between the two extremes of private and public governance. In its pure version, private governance consists of self-regulation mechanisms, occurring “when those regulated design and enforce the rules themselves”³⁴, whereas its counterpart refers to the traditional “command and control” state-dominated governance. However, in the contemporary legal orders these two models of governance are not usually found in their genuine form. Accordingly, self-regulation is rarely detached from some kind of state participation and almost always amounts to what is

³³ Also see: European Commission, Communication from the Commission to the Council and the European Parliament, The Organisation and Management of the Internet International and European Policy Issues 1998 – 2000, COM(2000) 202 final, Brussels 11/4/2000 (EC 2000[3]); European Commission, International Policy Issues related to Internet Governance, 20/2/2001 (EC 2001); Volker Leib, “ICANN-EU can't: Internet Governance and Europe's role in the formation of the Internet Corporation of Assigned Names and Numbers (ICANN)”, *Telematics and Informatics* 2002/19; and E. F. Halpin and S. Simpson, “Between Self-regulation and Intervention in the Networked Economy: the European Union and Internet Policy”, *Journal of Information Science*, 28(4), 2002, pp. 285 et seq.

³⁴ Virginia Hauffer, *A Public Role for the Private Sector. Industry Self-Regulation in a Global Economy* (Washington D.C.: Carnegie Endowment for International Peace, 2001) p. 8.

referred to as “co-regulation”³⁵ or “regulated self-regulation”,³⁶ with different variations depending on the degree of public intervention. In addition, the traditional positive State is being increasingly replaced by the “regulatory State” characterized by privatization, liberalization and re-regulation, with the state intervening to address market failures in pursuance of the public interest. This in turn brings about different institutional structures, based on the delegation of the regulatory tasks to bodies that operate at arm’s length from the government (“agencies”).³⁷

If one looks at the national registries, one can see that certain registries are acting on a very independent basis with hardly any regulatory framework. In other countries the registry is more or less a fully government controlled entity.

At the EU level, the shift towards the aforementioned regulatory-state architecture has induced several calls for the creation of Community-wide agencies charged with the implementation of European regulatory policies and functioning as the central nodes of transnational networks composed of the different levels of administration and stakeholders.³⁸ A variation of the regulatory State is the emergent “post-regulatory State” that relies to a significant extent on co-regulation mechanisms,³⁹ thereby approaching a mixed mode public-private governance. A categorization of the governance patterns of the different applications of the EU Internet policy according to the above distinctions is not straightforward. What can be safely said,

35 See e.g. European Commission, Communication from the Commission-Action Plan “Simplifying and Improving the Regulatory Environment”, COM (2002) 287 final, Brussels, 2002 (EC 2002).

36 See Nicolinas, “Nature and scope of Content Regulation for On-Line services”, (2000) C.T.L.R. 6(5), pp. 126 et seq.

37 See e.g. M. Moran, “Understanding the regulatory state”, *British Journal of Political Science*, 2002/32, pp. 391 et seq.

38 See e.g. G. Majone, “The credibility crisis of Community Regulation”, *Journal of Common Market Studies*, 2002/38 (2), pp. 273 et seq.

39 See Christou/Simpson, p. 48.

though, is that all the policies adopted at the EU level contain, at least to a certain extent, some private governance characteristics. This is partly a result of the decentralized and complex nature of the Internet and of the immense influence exerted by the strongly organized Internet community. More than that, in some parts of the EU Internet policy, recourse is made exclusively to private governance mechanisms, as it was the case, for instance, in the initial Safer Internet Action Plan, which incited the development and implementation of adequate systems of self-regulation in the fields of illegal and harmful Internet content.⁴⁰

In the vast majority of cases, a mixture of the above defined models of governance is found within one and the same Internet policy field. This is the case, for example, with the e-commerce framework, where the encouragement of codes of conduct and alternative dispute resolution (ADR) procedures⁴¹ coexists with legislative measures pursuing public policy objectives, such as the protection of consumers and of intellectual property rights (IPR) holders and the promotion of consumer confidence,⁴² as well as economic policy objectives, namely the consolidation of the European “digital” internal market. Such legislative measures are enacted by the Community institutions and implemented by the national public administrations. The .eu governance model and its underlying institutional arrangements are a typical example of a mixed mode public-private governance model. It represents a public-private dispersed agentification model, with the public dimension shaped by the European Commission acting as an agent of the Member States. Seen from another angle, the .eu

40 Decision No. 276/199/EC of the European Parliament and of the Council adopting a multi-annual Community action plan on promoting safer use of the Internet by combating illegal and harmful content on global networks, OJ L 33/1 of 6.2.1999.

41 Directive 2000/31 of the European Parliament and of the Council of 8 June 2000 on certain aspects of information society services, in particular electronic commerce, in the Internal Market (“Directive on electronic commerce”) OJ L 178/1 of 17.7.2000.

42 Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, OJ L 13/12 of 19.1.2000.

model has been held to combine elements of regulatory governance with a negotiated reading of self-regulation, partially resembling what was described above as a post-regulatory state model.⁴³

National Assignment

Based on a relationship with ICANN, national registries are authorized to hand out domain names. The national registries use registrars as an intermediary between those who wish to use a domain name and the registration/activation of that domain name. In general, the role of registrar is exercised by Internet service providers (however, depending on the by-laws of the national registry, other parties may also have a similar role in the allocation process).

Most national registries “received” the right to manage the national domains in the early days of the Internet.⁴⁴ The authority, sometimes given to individuals, was then passed on to other organizations or to “natural” successors. Because of this organic process, the institutional design differs from country to country. This is the main reason why this contribution does not look into the various national structures for the allocation of domain names. Instead, the focus is on the recently developed .eu model, because it reflects in a much more structured way the various issues that are at stake.

The .eu Model

Towards the Adoption of the .eu TLD

The first steps towards the adoption of the .eu TLD were taken in 1997 when the Commission initiated consultations on this issue with users and representatives of the industry. In December 1999, the Commission undertook, as a part of the e-Europe initiative, to support the creation of a

⁴³ See G. Christou, and S. Simpson, “The Internet and Public-Private Governance in the European Union”, *Journal of Public Policy* (2006), 26, pp. 43 et seq.

⁴⁴ There is still no full transparency about what type of right registries have with respect to their national domain name and on what legal basis control was given to them.

.eu TLD, with a view to encouraging cross-border e-commerce within the EU and to assisting those companies that wish to establish an EU-wide Internet presence.⁴⁵

In February 2000, the Commission issued a Working Paper concerning the creation of a .eu TLD as a means of strengthening the image and infrastructure of the Internet in Europe for the purposes of European institutions and private users, and for commercial purposes including e-commerce.⁴⁶ In a statement that partly reflects the .eu governance structure, the Commission held that

... in view of the highly decentralized structure of the Internet and the private statute of nearly all the organizations concerned (including ICANN itself) the European Institutions are only called upon to decide to fulfil the minimal responsibility of requesting the domain from ICANN and acting as the relevant public authority with ultimate oversight should the need arise.

Thereupon, the Commission considered several options regarding the bodies to which the operation of the .eu TLD could be delegated, the criteria and the entity responsible for the development and implementation of the registration policy, and the possibilities for trademarks and dispute policies. The replies submitted in the course of the subsequent consultation overwhelmingly supported the creation of .eu. Almost all respondents preferred the option of the .eu TLD being run by some form of non-profit organization in the private sector working in the public interest. As for alternative dispute resolution

45 European Commission, Communication of 8 December 1999 on a Commission initiative for the special European Council of Lisbon 23 and 24 March 2000 – e Europe – an information society for all, OOM (1999) 687 final. (EC 1999).

46 European Commission, Commission Working Paper of 2.2.2000, The creation of the .EU Internet Top Level Domain Name, Brussels, 2/2/2000 (EC 2000).

procedures, the responses were divided between the uniform alternative dispute resolution initiated by ICANN and that of a European forum. Lastly, there were many variations in the views on the different policy issues.

In July 2000, the Commission presented a Communication on how the creation of the .eu TLD was progressing, whereby it set out the principal results of the public consultation and its conclusions and drew the next steps to be taken.⁴⁷ The Communication made apparent the Commission's determination to promote a mixed governance in the regime to be applied to the .eu domain. On the one hand, the Commission endorsed the solution supported by the majority of the respondents, namely that the registry should be a not-for-profit private entity independent of the EU policy structure and that it should be assigned the .eu code for a limited period by means of a renewable contract. On the other hand, the Commission favoured the option of the EU assuming a role equivalent to the one assumed by national governments regarding ccTLDs as mentioned in the GAC Operating Principles (see par 2.2). By the same token, the EU would participate, through the Commission, in the overall policy formation process of the .eu domain, as a guarantee that the operation of the registry would be consistent with EU law and policy in the areas of, *inter alia*, competition law, intellectual property and data protection. The subsequent deliberations were mainly carried out under the auspices of the Interim Steering Group (ISG) set up within the European Community Panel of Participants (EC-POP) to report on options for the .eu registry. The general view was that the launch of .eu would have territorial and institutional implications for the EU that would necessitate a policy role of both the Commission and the Internet Community.⁴⁸

⁴⁷ European Commission, Communication from the Commission to the European Parliament and the Council, Internet Domain Name System-Creating the .EU Top Level Domain, COM (2000) 421 final, Brussels, 5/7/2000 (EC 2000[2])

⁴⁸ Christou/Simpson 2006, p. 52.

At the international level, the proposal for .eu was negatively received by ICANN. The formal ground for this was that the EU is a regional entity. The Commission, however, managed to overcome the initial objections by focusing on arguments that could hardly be overlooked by ICANN. For instance, the Commission underlined the limited alternatives available for registration in the World Wide Web in the existing TLDs and the possible exhaustion of existing name space in the near future. Furthermore, a determinative factor was the general support that the Commission managed to recruit in favour of an EU domain name. This support was difficult to ignore, as the mission of ICANN is to act in the best interest of the Internet community. In 2000, the Commission formally requested ICANN to delegate the .eu. Due to the complex negotiations between the European Union and ICANN, but also because a registry had to be selected, it took about five years before .eu was put in the root as a ccTLD.

The Creation of the .eu TLD

In April 2002, the European Parliament and the Council of the EU adopted Regulation 733/2002, establishing the conditions of implementation of .eu TLD and providing for the designation of a registry as well as the general policy framework within which the latter would function.⁴⁹ The regulation stated that to the extent possible and without prejudice to Community law, the principles of non-interference, self-management and self-regulation should apply to the .eu ccTLD. Article 3.1 of the regulation states that the registry should be a non-profit organization designated by the European Commission on the basis of an open, transparent and non-discriminatory procedure. The delegation of the .eu code should take effect by virtue of a contract stipulating the conditions according to which the Commission supervises the organization, administration and management of the .eu

⁴⁹ Regulation (EC) 733/1002 of the European Parliament and of the Council of 22 April 2002, on the implementation of the .eu TLD, OJ L 113/1 of 30/4/2002.

TLD by the registry. A draft service concession contract was annexed to the Regulation.

According to the Regulation and the draft contract, the registry is charged with the organization, administration and management of the .eu TLD in the general interest and on the basis of principles of quality efficiency, reliability and accessibility. Its main tasks comprise the registration of domain names through registration agents, setting up extra-judicial procedures for the resolution of disputes related to .eu, and maintaining and ensuring the integrity of the databases of domain names. Moreover, the registry had to establish procedures for and carry out accreditation of .eu registrars and adopt its initial registration policy. Lastly, the registry, having obtained the prior consent of the Commission, should enter into the appropriate contract providing for the delegation of the .eu TLD code in accordance with the principles of the GAC.

The set of rules relating to the designation of the registry illustrate the private governance features of the .eu regime. Such features are reflected primarily in the fact that the management of the .eu TLD is contracted out to a private sector body. The same holds for the registrars that are to supply the domain name registration services. In addition, provision is made for setting up an alternative dispute resolution mechanism. Overall, a private transnational network is created by the regulation. The registry is the central node of this network (the registrars and alternative dispute resolution providers are its constitutive parts) and has the remit to organize, administer and manage the .eu TLD.⁵⁰ Moreover, private parties are afforded a significant role in the shaping and implementation of the .eu registration policy. In the first place, according to regulation 733/2002, interested parties (here, the term embraces undertakings, organizations and natural

⁵⁰ See Halpin/Simpson 2006.

persons) are to be consulted by the registry concerning the adoption of its registration policy. In the second place, the articles of association of the registry eventually appointed by the Commission (the European Registry for Internet Domains; EURID)⁵¹ illustrate the great influence that interested parties can exert on its operation.⁵² Those rules allow for any legal entity or natural person serving the interests of participants in the Internet or with an interest therein, to become a member of the association. The relevance of this provision is highlighted by the fact that each associated member has the right to nominate one director of EURID. Furthermore, the representatives of the various interest groups that together form the local European Internet community, set up the EURID Policy Council, which must be consulted on any decision that relates to the registration policy of the association.

Notwithstanding the pivotal role of the private actors, the Commission's role and, consequently, the public dimension of the .eu scheme is far from negligible. The Commission designates the registry and has the power to terminate, re-designate or abstain from renewing its contract with it. The registry is under the obligation to submit periodic reports to the Commission. In addition, the public dimension of the .eu governance becomes more apparent in the provisions on the public policy rules (PPRs). According to article 5 of Regulation 733/2002, after consulting the registry, the Commission shall adopt public policy rules concerning the implementation and functions of the .eu TLD and the public policy principles on registration. Such rules shall refer to the dispute resolution policy, the policy on speculative and abusive registration, and the policy on the possible revocation of domain names, issues of language and geographical concepts, the treatment of IP, and other rights. The public policy rules are to be implemented in the .eu registration policy adopted by the registry

51 Commission Decision of 21 May 2003 on the designation of the .eu TLD registry, OJ L 128/29 of 24/5/2003. The service concession contract between EURID and the Commission was signed in October 2004.

52 See European Registry for Internet Domains (EURID), Articles of Association <www.eurid.eu> (EURID 2006).

in consultation with the Commission. The failure to implement the public policy rules in the initial registration policy or the failure to manage, operate and control the .eu in accordance with those rules is stipulated as a valid reason for the Commission to terminate its contract with the registry. Lastly, another restriction of private governance relates to the codes of conduct. The Regulation stipulates that the implementation of the .eu TLD may take into consideration best practices in this regard and could be supported by voluntary guidelines or codes of conduct where appropriate. In accordance with the service contract between the Commission and EURID, a code of conduct is to be designed by EURID and proposed to the interested parties for consultation. However, the Commission has to be duly consulted on those matters for which it has competences and must ensure that the codes comply with public policy rules.⁵³

All in all, a public-private partnership model of governance is established, whereby the registry (a private operator that is separate from but legally answerable to the Commission) adopts its registration policy in consultation with the stakeholders and the Commission, and in accordance with the public policy rules set out by the latter. In implementing the .eu TLD, the registry is called upon to play a role as the central node of a transnational network of other private operators, with the Internet community being in a position to substantially influence its policies. Such private governance mechanisms as self-regulation and alternative dispute resolution are designed to form part of this architecture, although under parameters drawn from public policy considerations and established by the Commission.

The Public Policy Rules

The rules that lay down the public policy parameters concerning the implementation and functions of the .eu TLD and the principles governing

⁵³ See Halpin/Simpson 2002, p. 56.

registration were introduced by Regulation 874/2004 of the Commission.⁵⁴ In general, the provisions of this Regulation further exhibit features of public-private partnership for the governance of the .eu TLD. On the one hand, those features are reflected in the institutional arrangements set out by the regulation; on the other hand, the substantive or procedural rules applying to the .eu TLD as such are an illustration of private or public governance elements. This is because, bearing in mind that they were set out by the Commission, the more or less intrusive nature of these rules is indicative of the degree of public interference in the shaping of the .eu policy. The following are the main issues of the Regulation.

1. The Regulation refers to Regulation 733/2002 to define the eligible parties that may request domain names under .eu and establishes the principle of “first come, first serve” to govern the procedure (article 2). The data to be submitted upon the request for a domain name registration are also provided for, which is a clear example of substantial involvement of the Commission to the registry’s and registrars’ operations (article 3).
2. The Regulation lays down the general principles for the procedure for the accreditation of registrars by the registry, which should take effect through a contract entailing the obligation of the registrars to observe the terms of accreditation and to comply with the public policy rules (articles 4 and 5). Such procedure shall be determined by the registry, it shall be reasonable, transparent and non-discriminatory, and shall ensure effective and fair conditions of competition. In that connection, the registry’s responsibility to select and accredit the registrars according to the procedure and terms set out by it, readily implies

⁵⁴ Commission Regulation (EC) No 874/2004 of 28 April 2004, laying down public policy rules concerning the implementation and functions of the .eu TLD and the principles governing registration, OJ L 162/40 of 30/4/2004.

a certain degree of private governance, whereas the registrar's obligation to observe the public policy rules indicates the opposite. In addition, some specific procedural rules are set out stipulating the registrars' obligation to forward requests in the chronological order in which they received them, and to require applicants to submit accurate and reliable contact details of the person responsible for the technical operation of the domain name that is being applied for. Lastly, a private governance element is inserted by the provision empowering registrars to develop label, authentication and trust mark schemes to promote consumer confidence in the reliability of information that is available under a domain name, in accordance with applicable national and Community law.

3. The Regulation imposes on the registry the obligation to ensure the availability of the registration procedures in all Community languages (article 6). This obligation, which is an implication of sound political considerations of the Commission, entails a considerable administrative burden for the registry. Language-related considerations are also taken into account with regard to other issues (see the following points).
4. The public policy rules provides for a "sunrise period", during which the owners of intellectual property rights and related rights recognized or established by Community/national law and public bodies can pre-register a domain name (articles 10–14). Detailed rules are laid down regarding the names to be registered (e.g. concerning the characters to be included in such names), the duration and the carrying out of the procedure (e.g. blocking of the names concerned until the validation), which certainly diminish the possibilities of the registry to shape the registration policy. The prioritization of public bodies as well as the concern to safeguard the rights of IP and related rights holders are an indication of the public policy parameters

present in the governance of .eu. On the institutional ground, the phased registration procedure also contains mixed governance elements. On the one hand, the validation agents are considerable actors in the sunrise period, as they are responsible for validating the documentary evidence of prior rights claimed by applicants or rights to a name claimed by public bodies. Such validation agents are private entities designated by the registry. However, the validators should be bound by their contract to follow objective, transparent and non-discriminatory procedures. In addition, rules are set out concerning the form and time limits for the submission of information to the validation agents and the validation procedure (e.g. order of examination of the requests). On the other hand, the considerable involvement of the Commission is exemplified by the provision that an auditor shall be appointed by the registry in consultation of the Commission, with the purpose of confirming the fair, appropriate and sound operational and technical administration of the phased registration period by the registry.

5. Regulation 733/2002 already provided for the right of Member States to reserve country names and to limit the registration of geographical and geopolitical names only under second-level domain names (i.e. info@amsterdam.netherlands.eu). According to article 8 of Regulation 874/2004 (as amended by Regulation 1654/2005), a list of names set out in an annex to the Regulation shall be reserved or registered only as second-level domain names directly under the .eu TLD by the countries indicated in the list. In addition, geographical and geopolitical names that can be registered only under a second-level domain name have to be notified to the Commission, which is to carry out the relevant objection resolution procedure and further notify the names to the registry.

6. Provision is made in the Regulation for the creation of a WHOIS database to provide information about the technical and administrative contact administering the domain names under .eu (article 16). At the same time, specific rules are laid down that aim at ensuring the protection of the privacy of the holders of domain names, thereby inserting another public policy consideration into the .eu framework (article 5).
7. A denoting element of public policy parameters is found in article 18 of Regulation 874/2004, which provides that where a domain name is considered by a court of a Member State to be defamatory, racist or contrary to public policy, it shall be blocked by the registry upon notification of a court decision and shall be revoked upon notification of a final court decision. Such names shall be blocked from future registration.
8. The rules contain specific provisions on the revocation of domain names (articles 18–21). Besides traditional reasons for revocation (e.g. non-payment of the registration fee), particular attention is given to speculative and abusive registrations. Such registrations can be at stake in the case of issues related to property rights as well as when a domain name has been registered or is being used in bad faith. For example, the rules forbid the acquisition of domain names for the purpose of selling or renting, or in order to behave in an anti-competitive or abusive manner.
9. As mentioned above, the registry is responsible for implementing an extra-judicial settlement of conflicts policy that takes into consideration the recommendations of the World Intellectual Property Organization (WIPO). The regime for dispute resolution can be found in articles 22–23 of the policy rules). The registry is to select the alternative dispute resolution (ADR) providers (EURID has appointed

the Prague-based arbitration court for this purpose). Although the availability of an ADR procedure amounts to a great degree of private governance, the power of the registry to shape an ADR policy has been considerably circumscribed by the provisions of the public policy rules. For example, the rules refer in detail to the cases in which an ADR procedure may be initiated by a party, namely when a registration is speculative or abusive, or when a decision taken by the registry conflicts with the policy rules. In addition, specific rules are stipulated to govern the procedure concerning, for instance, the language, means of communication with the parties, time limits for the different stages of the procedure, the majority required for an ADR decision, the number of members of the ADR panels, etc.

Thus, as the above review shows, the public policy rules introduce many private governance features. Apart from the registry and the registrars, other private actors were introduced in the .eu institutional network, namely the validation agents and, more importantly, the ADR providers. On the other hand, the provision for the adoption of public policy rules by the Commission and the latter's power to oversee their implementation already inserts a public dimension into the .eu governance.

Conclusion

The assignment of domain names represents an important aspect of Internet Governance. Assignment is part of the global discussion about Internet Governance and is strongly linked to the role of ICANN. Awareness of the importance of the institutional aspects of domain names is clearly increasing. Here, at least two trends can be identified, namely the growing focus on national involvement and, subsequently, the growing emphasis on national regulatory embedment. As far as the latter is concerned, the creation and structuring of the .eu TLD is used as an example in this article. The .eu regime deals with a broad range of topics in order to safeguard the fair allocation of domain names, data privacy, intellectual property and related

rights, geographical names, etc. For this purpose, it is not possible to rely exclusively on the discretion of such a highly specialized entity as the registry, as it would likely prove to be ill-suited to take into full consideration and to weigh up the different interests affected by its policies. Therefore, the private entities entrusted with the task of implementing the .eu TLD needed to become bound to take into account those parameters in the exercise of their self-regulatory functions under the oversight of the European Commission. An indication of the impact of the chosen institutional design is the detail in which such rules are drawn. The public policy rules that have been adopted considerably influence the exercise of the self-regulatory remit of the private actors involved in the .eu scheme. This remit is further affected by the influential institutional position of the Commission in the .eu regime. Instead of the detailed level of regulation in the public policy rules, it might have been sufficient enough to indicate the relevant topics in a more general way and to leave it up to the registry to deal with the further implementation (i.e. in by-laws that then could be subject to approval by the European Commission). Such a process would also allow for more flexibility. Changing the public policy rules now requires an amended Commission Regulation which takes quite some time. Topics like the revocation of domain names, speculative/abusive registrations and a dispute resolution procedure might need quick adaptation in order to remain in line with the needs of the parties involved. Nevertheless, the .eu structure offers a broad scope of relevant aspects that are worth taking into account when addressing the issue of regulating the assignment of domain names.