

# ADR.eu - .eu Alternative Dispute Resolution .eu Alternative Dispute Resolution Rules (the "ADR Rules")

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Alternative dispute resolution proceedings for the resolution of disputes under Paragraph 22(1)(a) and (b) of Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and principles governing registration shall be governed by these *ADR Rules* and the *Supplemental ADR Rules* of the *Provider* administering the *ADR Proceedings*, as far as available and posted on its web site. The interpretation and application of these *ADR Rules* will be done in the light of the EU legal framework which will prevail in case of conflict.

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## A GENERAL

### 1 Definitions

These ADR Rules are applicable to domain name disputes, where the domain name has been registered under the .eu Top Level Domain or possible .eu variants in other scripts. The mention of .eu in these ADR rules not only refers to the Latin script, but also to .eu variants in other scripts.

*In these ADR Rules:*

**ADR** means an alternative dispute resolution.

**ADR Proceeding** is a proceeding initiated in accordance with the Procedural Rules.

**Complaint** means the document including all annexes prepared by the *Complainant* to initiate a cause of action under the *ADR Proceeding*.

**Complainant** means the *Party* initiating a *Complaint* concerning a .eu domain name registration or requesting to change the language of the *ADR Proceeding*.

**Date of Commencement of an ADR Proceeding** means a date on which all the following conditions are fulfilled:

- (a) an administratively compliant *Complaint* has been properly filed with the *Provider*; and
- (b) the appropriate fee for the *ADR Proceeding* is paid.

**Domain Name Holder** means a legal or natural person who holds an activated registration of a .eu domain name.

**European Union Regulations** refer to 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<sup>1</sup> and Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and principles governing registration<sup>2</sup> and any further regulation that would replace, amend or complete such rules and principles.

**Registry** means the entity entrusted by the European Commission with the organization, administration and management of the .eu designated in accordance with the procedure established in Article 3 of Regulation (EC) No 733/2002.

**Mutual Jurisdiction** means a court jurisdiction at the location of either

- (a) the principal office of the *Registrar* (provided the *Respondent* has submitted in its *Registration Agreement* to that jurisdiction for court adjudication of disputes concerning or arising from the use of the domain name, and provided that the court thus designated is located within the European Union) or
- (b) the *Respondent's* address as shown for the registration of the domain name in the *Registry's* Whois database at the time the *Complaint* is submitted to the *Provider* or as received from *the Registry* by the *Complainant* if such information is not available in *the Registry's* Whois database or
- (c) the principal office of *the Registry* in case of *ADR Proceedings* against *the Registry*.<sup>3</sup>

**Panel** means an *ADR* panel appointed by a *Provider* to decide a *Complaint* concerning a .eu domain name registration.

**Panelist** means an individual appointed by a *Provider* to be a member of a *Panel*.

**Party** means a *Complainant* or a *Respondent*; **Parties** means both of them.

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<sup>1</sup> O.J. L 113 of 30.04.2002, page 1.

<sup>2</sup> O.J. L 162 of 30.04.2004, page 40.

<sup>3</sup> O.J. L 12 of 16.01.2001, page 1

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**Procedural Rules** means these *ADR Rules*, *Provider's Supplemental ADR Rules* and *European Union Regulations*. In case of conflict between any of these rules, the European Union Regulations take precedence.

**Provider** means a dispute resolution service provider selected by *the Registry*.

**Registrar** means an entity with which the *Respondent* has registered a domain name that is the subject of a *Complaint*.

**Registration Agreement** means the agreement between a *Registrar* and a domain name holder.

**Registration Policy** means the .eu Domain Name Registration Policy issued by *the Registry*.

**Respondent** means the holder of a .eu domain name registration (or the holder's legal heirs or *the Registry* in case of an *ADR Proceeding* against *the Registry*) in respect of which a *Complaint* and/or a request to change the language of the *ADR Proceeding* is initiated.

**Response** means the document including all annexes filed by the *Respondent* responding to the allegations set forth in the *Complaint* in accordance with these *ADR Rules* and the *Supplemental ADR Rules*.

**Sunrise Appeal Period** means a 40 day period during which a *Complaint* against *the Registry's* decision to register a domain name within the Sunrise period can be filed as specified in the *Sunrise Rules*.

**Sunrise Rules** means the .eu *Registration Policy* and the Terms and Conditions for Domain Name Applications made during the Phased Registration Period issued by *the Registry*.

**Supplemental ADR Rules** means the rules adopted by the *Provider* administering *ADR Proceedings* to supplement these *ADR Rules*.

**Terms and Conditions** mean the .eu Domain Name Registration Terms and Conditions issued by *the Registry*.

**Time of Filing** means a point in time when the following conditions are fulfilled:

- (a) a *Complaint* or a request to change the language of the *ADR Proceeding* has been properly filed with the *Provider*; and
- (b) the appropriate fee for the *ADR Proceeding* is received by the *Provider*.

**Working days** mean all days falling between Monday and Friday other than those which are public holidays in the country or the state where the *Provider* or either of the Parties, as the case may be, is subject to an obligation to adhere to a period of time as specified under these *ADR Rules*.

## **2 Communications and Periods of Time**

- (a) When forwarding a *Complaint* to the *Respondent*, it shall be the *Provider's* responsibility to employ reasonably available means calculated to achieve actual notice to the *Respondent*.
- (b) The *Provider* shall discharge its obligation to achieve actual notice by (i) sending the *Complaint* or a notice with information how to access the *Complaint* (e.g. for the purposes of an on-line platform operated by the *Provider*) to the *Respondent* employing the means stipulated in (c) below to the address which *the Registry* has communicated to the *Provider* for the registered domain name holder or to *the Registry's* seat in case of a *Complaint* against *the Registry's* decision; and (ii) in case the *Respondent* does not confirm receiving the electronic communication made pursuant to (i) above within five (5) days from sending the communication, by forwarding the above mentioned notice with information how to access the *Complaint* by registered postal or courier service, postage pre-paid and return receipt requested, to the address(es) specified in (i) above.
- (c) Unless specified otherwise in these *ADR Rules*, any written communication to the *Complainant*, the *Respondent* or the *Provider* provided for under these *ADR Rules*, shall be made by the preferred means stated by the *Complainant* or *Respondent*, respectively, or in the absence of such specification:

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- (1) electronically via the Internet, provided a record of its transmission is available; or
  - (2) by telecopy or facsimile transmission, with a confirmation of transmission; or
  - (3) by registered postal or courier service, postage pre-paid and return receipt requested.
- (d) Either *Party* may update its contact details by notifying the *Provider* and *the Registry*.
- (e) Except as otherwise provided in these *ADR Rules*, all communications provided for under these *ADR Rules* shall be deemed to have been received, in accordance with this provision:
- (1) if via the Internet, on the date that the communication was transmitted, provided that the date of transmission is verifiable; or
  - (2) if delivered by facsimile transmission, on the date shown on the confirmation of transmission; or
  - (3) if by registered postal or courier service, on the date marked on the receipt, or, if it is not possible to deliver the communication in this way, on the expiry of twelve (12) days from the handing over of the communication to a postal or courier service provider.
- (f) It shall be the responsibility of the sender to retain records of the fact and circumstances of delivery, which shall be available for inspection by the *Provider* and for reporting purposes.
- (g) A system log of data messages of the *Provider* shall be considered as valid records in the absence of any evidence of malfunction of the *Provider's* system.
- (h) Except as otherwise provided in these *ADR Rules*, all time periods calculated under these *ADR Rules* begin on the earliest date that the communication is deemed to have been made in accordance with Paragraph A2(e).
- (i) At the request of a *Party* filed before the expiration of the relevant period(s) of time, the *Provider* and, after its appointment, the *Panel*, may – in its sole discretion - extend the periods of time laid down in these *ADR Rules* which are applicable to the *Parties* in exceptional circumstances or upon agreement by both *Parties*. The *Provider* and, after its appointment, the *Panel*, shall decide on any such limited period of extension.
- (j) No *Party* or anyone acting on its behalf may engage in any unilateral communication with the *Panel*. All communications between a *Party*, on the one hand, and the *Panel* or the *Provider* on the other shall be made to a case administrator appointed by the *Provider* by the means and in the manner prescribed in the *Provider's Supplemental ADR Rules*.
- (k) Any communication in an *ADR Proceeding* initiated by
- (1) a *Panel* to a *Party* shall be made through the *Provider*;
  - (2) a *Party* shall be made through the *Provider*;
  - (3) the *Provider* to any *Party* or by a *Party* on after the *Date of Commencement of an ADR Proceeding* shall be copied by the *Provider* to the other *Party* and the *Panel*.
- (l) In the event a *Party* sending a communication receives notification of non-delivery of the communication, the *Party* shall promptly notify the *Provider* of the circumstances of the notification.

### **3 Language of Proceedings**

- (a) The language of the *ADR Proceedings* must be one of the official EU languages. Unless otherwise agreed by the *Parties*, or specified otherwise in the *Registration Agreement*, the language of the *ADR Proceeding* shall be the language of the *Registration Agreement* for the disputed domain name. In the absence of an agreement between the *Parties*, the *Panel* may in its sole discretion, having regard to the circumstances of the *ADR Proceeding*, decide on the written request of a Complainant, filed before

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initiating a *Complaint*, that the language of the *ADR Proceeding* will be different than the language of the *Registration Agreement* for the disputed domain name.

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- (b) The procedure related to the request of a change of the language of the *ADR Proceeding* shall be as follows:
- (1) The request shall be submitted to the *Provider* and shall:
    - (i) specify the information under Paragraphs B1 (b)(2), (b)(3), (b)(5), (b)(6), and (b)(7) of the *ADR Rules*;
    - (ii) specify the requested change of the language of *ADR Proceeding*;
    - (iii) specify the circumstances that would justify such a change of the language of an *ADR Proceeding*;
    - (iv) conclude with the statement under B1(b)(15) of the *ADR Rules*.
  - (2) The *Provider* will acknowledge receiving the request from the *Complainant*, subject to the receipt of the fees due hereunder, and, if applicable, shall notify *the Registry* of the *Time of Filing* in accordance with B1(e) of the *ADR Rules*, having the same consequences as under B1(e) of the *ADR Rules*.
  - (3) The *Provider* shall notify the *Respondent* of the request to change the language of the *ADR Proceeding* within five (5) days following receipt of the fees payable hereunder.
  - (4) The *Respondent* shall have a right to submit a response to the *Provider* within twelve (12) days of the date of notification of the request to change the language of the *ADR Proceeding*.
  - (5) The *Provider* will acknowledge receiving the response from the *Respondent* and will appoint a single *Panel* to decide the request. Paragraph B5 applies accordingly.
  - (6) The *Panel* shall issue a decision whether or not to allow the requested change of the language of the *ADR Proceeding* within twelve (12) days from the date of its appointment. The *Panel's* decision shall be final and not subject to appeal. The decision shall be communicated to the *Parties* without delay.
  - (7) In case the *Complainant* files the *Complaint* within thirty (30) *Working days* from receiving the decision under (b)(6) above, the *Time of Filing* of the request to change the language of the *ADR Proceeding* shall apply with respect to the *Complaint*, provided the appropriate fee is paid.
- (c) All documents including communications made as part of the *ADR Proceeding* shall be made in the language of the *ADR Proceeding* or in different requested language if the *Complainant* proves in his submission that the *Respondent* has adequate knowledge of such different language. Notwithstanding anything mentioned above, the *Panel* may request the translation of any documents submitted in other languages than the language of the *ADR Proceeding*. The *Panel* may disregard documents submitted in other languages than the language of the *ADR Proceeding* without requesting their translation. Any communication by the *Provider* which, from its content, cannot be regarded as amounting to procedural documents (such as cover letters with which the *Provider* sends procedural documents or automatic system notifications generated by the *Provider's* application) shall be made in the language of the *ADR Proceeding* or in English.
- (d) The *Provider* and, after its constitution, the *Panel* by itself or upon the request of a *Party*, may order that any documents submitted in languages other than the language of the *ADR Proceeding* be accompanied by a translation in whole or in part into the language of the *ADR Proceeding*.

### **4 Settlement or Other Grounds for Termination**

- (a) The *ADR Proceeding* will be understood to be concluded once the *Panel* has received confirmation from both *Parties* that an agreement has been entered into by the *Parties* concerning the object of the dispute.
- (b) If the *Parties* wish to negotiate a settlement, the *Complainant* may request that the *Provider* or, after its constitution, the *Panel* suspend the *ADR Proceeding* for a limited period. The suspension period

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may be extended by the *Panel* upon the *Complainant's* request. Any such suspension shall be without prejudice to the obligation of the *Panel* to forward its decision on the *Complaint* to the *Provider* within the time period specified in Paragraph B12(b) below. Resumption of the ADR Proceeding shall take place automatically upon receipt of a request thereto from either the *Respondent* or the *Complainant* or upon the expiration of such limited and specified time period.

- (c) The *Panel* shall terminate the *ADR Proceeding* if it becomes aware that the dispute that is the subject of the *Complaint* has been finally decided by a court of competent jurisdiction or an alternative dispute resolution body.
- (d) The *Panel* shall suspend *ADR Proceeding(s)* pursuant to Paragraphs B1(f) , B2(e) and B3(d) below.

### **5 Court Proceedings**

The conduct of the *ADR Proceeding* shall not be prejudiced by any court proceeding, subject to Paragraph A4(c) above.

### **6 Fees**

- (a) The *Complainant* shall pay to the *Provider* an initial fixed fee, in accordance with the *Supplemental ADR Rules*. Until the *Provider* has received this initial fee, it is not obliged to take any action on the *Complaint*. If the *Provider* has not received the fee within ten (10) days of the date of notification of unpaid fees, the *Complaint* shall be deemed withdrawn and the *ADR Proceeding* canceled.
- (b) A *Complainant* initiating a request to change the language of the *ADR Proceeding* under Section A3 above or initiating a challenge to the withdrawal of *Complaint* due to its administrative deficiency under Paragraph B2(c) below shall pay to the *Provider* separate fees in accordance with the *Supplemental ADR Rules*. If the *Provider* has not received the fee within five (5) days of the date of notification of unpaid fees, the request shall be deemed as withdrawn.
- (c) A *Respondent* electing under Paragraph B3(b)(4) to have the dispute decided by a three-member *Panel*, rather than single-member *Panel* elected by the *Complainant*, shall pay the *Provider* an additional fee specified in the *Supplemental ADR Rules*. In all other cases, the *Complainant* shall bear all of the *Provider's* fees.
- (d) In exceptional circumstances, for example in the event an in-person hearing is held, the *Provider* shall request the *Party* or the *Parties* requesting such event respectively to pay additional fees, which, after its constitution, shall be established in consultation with the *Panel* before scheduling any such hearing.
- (e) Subject to Paragraph B1(f) below, the fees paid are not reimbursable.



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## B CONDUCT OF THE PROCEEDINGS

### 1 The Complaint

(a) Any person or entity may initiate an *ADR Proceeding* by submitting a *Complaint* in accordance with the *Procedural Rules* to any *Provider*. A *Complaint* may be filed:

- (1) against a *Domain Name Holder* in respect of which domain name the *Complaint* is initiated; or
- (2) against *the Registry*.

For the avoidance of doubt, until the domain name in respect of which the *Complaint* is initiated has been registered and activated, a party can initiate an *ADR Proceeding* only against *the Registry*.

(b) The *Complaint* shall:

- (1) Request that the *Complaint* be submitted for a decision in an *ADR Proceeding* in accordance with the *Procedural Rules*;
- (2) Provide the name, postal and e-mail addresses, and the telephone and fax numbers of the *Complainant* and of any representative authorized to act for the *Complainant* in the *ADR Proceeding*;
- (3) Specify a preferred method for communication directed to the *Complainant* in the *ADR Proceeding* (including the person to be contacted, means of communication, and address information);
- (4) Designate whether the *Complainant* elects to have the dispute decided by a single-member or a three-member *Panel* and, in the event the *Complainant* elects a three-member *Panel*, provide the names of three candidates to serve as one of the *Panelists* (these candidates may be drawn from the list of panelists of the *Provider* dealing with the proceedings); to the maximum extent practicable, such candidates should not have been involved in the past three (3) years in any prior *ADR Proceeding* where the *Complainant* was a *Party*;
- (5) Provide the name of the *Respondent* and, in case of an *ADR Proceeding* against a *Domain Name Holder* provide all information (including any postal and e-mail addresses and telephone and fax numbers) known to the *Complainant* on how to contact the *Respondent* or any representative of the *Respondent*, including contact information based on pre-*Complaint* dealings, in sufficient detail to allow the *Provider* to send the *Complaint* to the *Respondent* as described in Paragraph A2(a);
- (6) Specify the domain name(s) that is/are the subject of the *Complaint*;
- (7) Identify the *Registrar(s)* with whom the domain name(s) is/are registered at the time the *Complaint* is filed (not applicable for *Complaints* filed against the decision(s) of *the Registry* before the registration of the disputed domain name);
- (8) In case the *Complaint* is filed against the decision(s) of *the Registry*, identify the disputed *Registry* decision(s) and whether or not the disputed decision deals with the registration of a domain name within the Sunrise Period.
- (9) Specify the names in respect of which a right is recognized or established by the national law of a Member State and/or Community law. For each such name, describe exactly the type of right(s) claimed, specify the law or law(s) as well as the conditions under which the right is recognized and/or established.
- (10) Describe, in accordance with these *ADR Rules*, the grounds on which the *Complaint* is made including, in particular,
  - (i) In case of an *ADR Proceeding* against the *Domain Name Holder* in respect of which domain name the *Complaint* is initiated:

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- A. why the domain name is identical or confusingly similar to the name or names in respect of which a right or rights are recognized or established by national and/or Community law (as specified and described in accordance with Paragraph B 1 (b) (9)); and, either
  - B. why the domain name has been registered by its holder without rights or legitimate interests in respect of the domain name that is the subject of the *Complaint*; or
  - C. why the domain name should be considered as having been registered or being used in bad faith.
- (ii) In case of an *ADR Proceeding* against *the Registry*, the reasons why a decision taken by *the Registry* conflicts with *European Union Regulations*.
- (11) Specify, in accordance with these *ADR Rules*, the remedies sought (see Paragraph B11 (b) and (c) below);
- (12) If the *Complainant* requests transfer of the domain name, provide evidence that the *Complainant* satisfies the general eligibility criteria for registration set out in Paragraph 4(2)(b) of Regulation (EC) No 733/2002;
- (13) Identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain name(s) that is/are the subject of the *Complaint*;
- (14) State that the *Complainant* will submit, with respect to any challenges to a decision in the *ADR Proceeding* revoking or transferring the domain name, to the jurisdiction of the courts in at least one specified *Mutual Jurisdiction* in accordance with Paragraph A1;
- (15) Conclude with the following statement followed by the signature of the *Complainant* or its authorized representative; in case of electronic filing the signature must comply with requirements of the *Provider's* on-line platform:
- "*Complainant* warrants that all information provided hereunder is complete and accurate.
- Complainant* agrees with the processing of his personal data by the Provider to the extent necessary for the due performance of the Provider's responsibilities hereunder.
- Complainant* also agrees with the publication of the full decision (including personal details contained in the decision) issued in the *ADR Proceeding* initiated by this *Complaint* in the language of the *ADR Proceeding* and in an unofficial English translation secured by the *Provider*.
- Complainant* further agrees that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution shall be solely against the domain name holder and hereby waives any and all claims and remedies against
- (i) the *Provider*, as well as its directors, officers, employees, advisors and agents, except in the case of deliberate wrongdoing;
  - (ii) *Panelists*, except in the case of deliberate wrongdoing;
  - (iii) the *Registrar*, except in the case of deliberate wrongdoing; and
  - (iv) *the Registry*, as well as its directors, officers, employees, advisors, and agents, except in the case of deliberate wrongdoing;"
- (16) Annex any documentary or other evidence, including any evidence concerning the rights upon which the *Complaint* relies, together with a schedule indexing such evidence.
- (17) Include any forms prescribed in the *Supplemental ADR Rules* and comply with any formal requirements contained in the *Supplemental ADR Rules*, including any word limit.
- (c) The *Complaint* may relate to more than one domain name, provided that the *Parties* and the language of the *ADR Proceedings* are the same.

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- (d) The *Provider* will acknowledge receiving the *Complaint* from the *Complainant*, subject to the receipt of the fees due above.
- (e) As soon as practicable after the *Time of Filing*, but in any event not later than five (5) days from the date of *Time of Filing* and before notifying the *Respondent* pursuant to Article B2 below, the *Provider* shall inform *the Registry* of the identity of the *Complainant* and the domain name(s) involved. Upon receiving information from the *Provider*, *the Registry* shall block the disputed domain name pursuant to eu Domain Name Registration *Terms and Conditions*.
- (f) Any *ADR Proceeding(s)* against a *Domain Name Holder* with a later *Time of Filing* with respect to the same domain name(s) shall be suspended pending the outcome of the ADR Proceeding initiated by the *Complaint* with the earliest *Time of Filing*. If in such *ADR Proceeding* the *Panel* decides to grant the *Complainant* the remedies requested, all suspended *ADR Proceedings* will be terminated and any fees paid shall be reimbursed. If in the *ADR Proceeding* the *Panel* rejects the *Complaint*, the *Provider* shall activate the *Complaint* next in time to the *Time of Filing*. The *Provider* shall notify the respective *Complainant(s)* of the termination, activation, or continued suspension of their *Complaint(s)* in writing within five (5) days from the date the *Panel* decision related to the prior *Complaint* is issued.
- (g) In case an *ADR Proceeding* is initiated against *the Registry* with a later *Time of Filing* than another *ADR Proceeding* against the *Registry* with respect to the same decision taken by the *Registry*, the *ADR Proceeding* against the *Registry* with a later *Time of Filing* shall be terminated and any fees paid shall be reimbursed.
- (h) Nothing mentioned in Paragraph 15, (i) to (iv) above, prevents the *Complainant* from initiating an *ADR Proceeding* against *the Registry* where a decision taken by *the Registry* conflicts with *European Union Regulations*.
- (i) In case of an *ADR Proceeding* against the *Registry*, any request of a *Complainant* for documents or other information related to the *Registry* decision challenged in the *ADR Proceeding* must be made directly to the *Registry* in accordance with the *Registration Policy*.

### **2 Notification of Complaint**

- (a) The *Provider* shall review the *Complaint* for administrative compliance with the *Procedural Rules* and with Regulation (EC) No 733/2002 and, if in compliance, shall forward the *Complaint* (together with the explanatory cover sheet prescribed by the *Provider's Supplemental ADR Rules*) to the *Respondent*, in the manner prescribed by Paragraphs A2(a) and A2(b), within five (5) *Working days* following receipt of the fees to be paid by the *Complainant* in accordance with Paragraph A6.
- (b) If the *Provider* finds the *Complaint* not to be in administrative compliance with the *Procedural Rules*, it shall promptly notify the *Complainant* of the nature of the deficiencies identified. If the deficiencies are capable of being corrected, the *Complainant* shall have seven (7) days within which to correct any such deficiencies and submit an amended *Complaint*, after which, if not corrected, the *Provider* shall inform the *Complainant* that the *ADR Proceeding* is deemed to be withdrawn due to administrative deficiency and without prejudice to submission of a different *Complaint* by the *Complainant*.
- (c) A *Complainant* can challenge the withdrawal of its *Complaint* due to administrative deficiency pursuant to Paragraph B2(b) above. The procedure related to such a challenge shall be as follows:
  - (1) The request shall be submitted to the *Provider* within 5 days from receiving the information about the withdrawal and shall:
    - (i) specify the information under Paragraphs B1 (b)(2), B1 (b)(6) and B1 (b)(8) (if applicable) of the *ADR Rules*;
    - (ii) specify the requested cancellation of the withdrawal of the *Complaint* due to administrative deficiency;

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- (iii) specify the reasons of the requested cancellation;
- (iv) conclude with the statement under B1(b)(15) of the *ADR Rules*.
- (2) The *Provider* will acknowledge receiving the request from the *Complainant*, subject to the receipt of the fees due pursuant to Paragraph A6(a) above and will appoint a single *Panel* to decide the request. Paragraph B5 applies accordingly.
- (3) The *Panel* shall issue a decision whether or not to allow the requested challenge within twelve (12) days from the date of its appointment. The *Panel's* decision shall be final and not subject to appeal. The decision shall be communicated to the *Complainant* without delay.
- (d) The *Provider* shall immediately notify the *Complainant*, the *Respondent*, and the *Registry* of the *Date of Commencement of an ADR Proceeding*.
- (e) The *Provider* shall suspend the *ADR Proceeding* until the procedures specified in Paragraphs B2(b) and B2(c) above are completed.

### 3 The Response

- (a) Within thirty (30) *Working days* of the date of delivery of the *Complaint* in accordance with Paragraph A2(b), the *Respondent* shall submit a *Response* to the *Provider*.
- (b) The *Response* shall:
  - (1) Provide the name, postal and e-mail addresses, and the telephone and fax numbers of the *Respondent* and of any representative authorized to act for the *Respondent* in the *ADR Proceeding*;
  - (2) Specify a preferred method for communication directed to the *Respondent* in the *ADR Proceeding* (including person to be contacted, medium, and address information);
  - (3) If the *Complainant* has elected a single-member *Panel* in the *Complaint* (see Paragraph B1(b)(3)), state whether the *Respondent* elects instead to have the dispute decided by a three-member *Panel*;
  - (4) If either *Complainant* or *Respondent* elects a three-member *Panel*, provide the names and contact details of three candidates to serve as one of the *Panelists* (these candidates may be drawn from any *Provider's* list of panelists; to the maximum extent practicable, such candidates should not have been involved in the past three (3) years in any prior *ADR Proceeding* where the *Respondent* was a *Party*;
  - (5) Identify any other legal proceedings that have been commenced or terminated in connection with or relating to any of the domain name(s) that is/are the subject of the *Complaint*;
  - (6) Describe, in accordance with these *ADR Rules*, the grounds on which the *Response* is made.
  - (7) Conclude with the following statement followed by the signature of the *Respondent* or its authorized representative; in case of electronic filing the signature must comply with requirements of the *Provider's* on-line platform:

"*Respondent* warrants that all information provided hereunder is complete and accurate.

*Respondent* agrees with the processing of his personal data by the *Provider* to the extent necessary for the due performance of the *Provider's* responsibilities hereunder.

*Respondent* also agrees with the publication of the full decision (including personal data contained in the decision) issued in this *ADR Proceeding* in the language of the *ADR Proceeding* and in an unofficial English translation secured by the *Provider*.

*Respondent* hereby waives any and all claims and remedies related to the current *ADR Proceeding* against

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- (i) the *Provider* as well as its directors, officers, employees, advisors and agents, except in the case of deliberate wrongdoing;
  - (ii) *Panelists*, except in the case of deliberate wrongdoing,
  - (iii) the *Registrar*, except in the case of deliberate wrongdoing and
  - (iv) *the Registry*, as well as its directors, officers, employees, and agents, except in the case of deliberate wrongdoing."
- (8) Attach any documentary or other evidence, including any evidence concerning the rights upon which the *Respondent* relies, together with a schedule indexing such evidence.
- (9) Include any forms prescribed in the *Supplemental ADR Rules* and comply with any formal requirements contained in the *Supplemental ADR Rules*, including any word limit.
- (c) If the *Complainant* has elected to have the dispute decided by a single-member *Panel* and the *Respondent* elects a three-member *Panel*, the *Respondent* shall be required to pay a fee in accordance with Paragraph A6(b). This payment shall be made together with the submission of the *Response* to the *Provider*. In the event that the required payment is not made, the dispute shall be decided by a single-member *Panel*.
- (d) The *Provider* shall confirm receipt of the *Response* to the *Respondent*. If the *Provider* finds the *Response* not to be in administrative compliance with the *Procedural Rules*, it shall promptly notify the *Respondent* of the nature of the deficiencies identified. If the deficiencies are capable of being remedied, the *Respondent* shall have seven (7) days within which to correct any such deficiencies and submit an amended *Response*, after which the *Response* shall be deemed not submitted by the *Respondent*. The *Provider* shall suspend the *ADR Proceeding* until either of the two actions happens first: (i) it receives the amended *Response* or (ii) the time period mentioned in this Paragraph expires.
- (e) The *Provider* shall forward the administratively compliant *Response* to the *Complainant* without delay.
- (f) If a *Respondent* does not submit a *Response* or submits solely an administratively deficient *Response*, the *Provider* shall notify the *Parties* of *Respondent's* default. The *Provider* shall send to the *Panel* for its information and to the *Complainant* the administratively deficient *Response* submitted by the *Respondent*.
- (g) The *Respondent* can challenge the *Provider's* notification of the *Respondent's* default in a written submission to the *Provider* filed within five (5) days from receiving the notification of *Respondent's* default. The *Provider* shall acknowledge receiving the *Respondent's* challenge and shall forward the *Respondent's* challenge to the *Panel* within three (3) days from its receipt. The *Respondent's* challenge shall be considered by the *Panel* in its sole discretion as part of its decision making. If the *Panel* confirms that the *Response* is administratively deficient, the *Panel* may decide the dispute based upon the *Complaint* only.
- (h) Nothing mentioned in Paragraph 7, (i) to (iv) above, prevents the *Respondent* from initiating an *ADR Proceeding* against a decision taken by *the Registry* which conflicts with *European Union Regulations*.

### 4 Appointment of the Panel and Timing of Decision

- (a) The panelists shall be selected in accordance to the internal procedures of the *Providers*. They shall have appropriate expertise and shall be selected in an objective, transparent and non-discriminatory manner. Each *Provider* shall maintain and publish a publicly available list of panelists and their qualifications.
- (b) If neither the *Complainant* nor the *Respondent* has elected a three-member *Panel* (Paragraphs B1(b)(3) and B3(b)(4)), the *Provider* shall appoint a single *Panelist* from its list of panelists.
- (c) Unless it has already elected a three-member *Panel*, the *Complainant* shall submit to the *Provider*, within five (5) days of communication of a *Response* in which the *Respondent* elects a three-member

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*Panel*, the names and contact details of three candidates to serve as one of the *Panelists*. These candidates may be drawn from any *Provider's* list of panelists; to the maximum extent practicable, such candidates should not have been involved in the last three (3) years in any prior *ADR Proceeding* where the *Complainant* was a *Party*.

- (d) In the event that either the *Complainant* or the *Respondent* elects a three-member *Panel*, the *Provider* shall appoint one *Panelist* from the list of candidates submitted by the *Complainant*, one *Panelist* from the list of candidates submitted by the *Respondent*, and one *Panelist* from its list of panelists. If either *Party* does not duly submit its list of candidates, the *Provider* shall appoint an additional *Panelist* from its list of Panelists.
- (e) Once the entire *Panel* is appointed, the *Provider* shall notify the *Parties* of the identity of the *Panelists* appointed and the date by which, absent exceptional circumstances, the *Panel* shall forward its decision on the *Complaint* to the *Provider*.

### 5 Impartiality and Independence

- (a) The *Panelists* shall have no personal or economic interests in the results of the dispute, and they undertake to resolve the dispute under the principles of good faith, fairness and due diligence. The *Panelists* shall maintain the confidential character of the information disclosed to them during the *ADR Proceedings*.
- (b) A *Panelist* shall be impartial and independent and shall have, before accepting appointment, disclosed to the *Provider* any circumstances giving rise to justifiable doubt as to the *Panelist's* impartiality or independence. If, at any stage during the *ADR Proceeding*, new circumstances arise that could give rise to justifiable doubt as to the impartiality or independence of a *Panelist*, that *Panelist* shall promptly disclose such circumstances to the *Provider*. In such event, the *Provider* shall have the sole discretion to appoint a substitute *Panelist*.
- (c) Apart from the above, the *Parties* can also challenge the appointment of a *Panelist*. The *Party* that challenges a *Panelist* should explain to the *Provider* his reasons for the challenge. The challenge shall be filed within two (2) days from receiving the notice of the subject *Panelist's* appointment, or after having become aware of the circumstances giving rise to justifiable doubt in regard to the impartiality or independence of the *Panelist*.
- (d) When a *Panelist* has been challenged by one *Party*, the other *Party* and/or the challenged *Panelist* will be entitled to submit a response. This right will be exercised within two (2) days after receiving the communication to which the previous Paragraph refers.
- (e) The *Provider* will decide on the challenge, and its decision will be final and not subject to appeal.

### 6 Transmission of the File to the Panel

The *Provider* shall forward the file to the *Panel* as soon as the *Panelist* is appointed in the case of a *Panel* consisting of a single member, or as soon as the last *Panelist* is appointed in the case of a three-member *Panel*.

### 7 General Powers of the Panel

- (a) The *Panel* shall conduct the *ADR Proceeding* in such manner as it considers appropriate in accordance with the *Procedural Rules*. The *Panel* is not obliged, but is permitted in its sole discretion, to conduct its own investigations on the circumstances of the case.
- (b) In all cases, the *Panel* shall ensure that the *Parties* are treated fairly and with equality.

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- (c) The *Panel* shall ensure that the *ADR Proceeding* takes place with due expedition.
- (d) The *Panel* shall determine in its sole discretion the admissibility, relevance, materiality and weight of the evidence.

### 8 Further Statements

In addition to the *Complaint* and the *Response*, the *Panel* may request or admit, in its sole discretion, further statements or documents from either of the *Parties*.

### 9 In-Person Hearings

There shall be no in-person hearings (including hearings by teleconference, videoconference, and web conference). The decision will be handled based on documents or other types of written evidence unless the Panel determines, in its sole discretion and as a matter of exceptional circumstances, that such a hearing is necessary for rendering a decision on the Complaint.

### 10 Default

- (a) In the event that a *Party* does not comply with any of the time periods established by these *ADR Rules* or the *Panel*, the *Panel* shall proceed to a decision on the *Complaint* and may consider this failure to comply as grounds to accept the claims of the other *Party*.
- (b) Unless provided differently in these *ADR Rules*, if a *Party* does not comply with any provision of, or requirement under, these *ADR Rules*, the *Supplemental ADR Rules* or any request from the *Panel*, the *Panel* shall draw such inferences therefrom as it considers appropriate.

### 11 Basis for Decision

- (a) A *Panel* shall decide a *Complaint* on the basis of the statements and documents submitted and in accordance with the *Procedural Rules*.
- (b) The remedies available pursuant to an *ADR Proceeding* where the *Respondent* is the *Domain Name Holder* in respect of which domain name the *Complaint* was initiated shall be limited to the revocation of the disputed domain name(s) or, if the *Complainant* satisfies the general eligibility criteria for registration set out in Paragraph 4(2)(b) of Regulation (EC) No 733/2002, the transfer of the disputed domain name(s) to the *Complainant*.
- (c) The main remedy available pursuant to an *ADR Proceeding* where the *Respondent* is the *Registry* shall be the annulment of the disputed decision taken by the *Registry*. The *Panel* may decide in appropriate cases pursuant to the *Procedural Rules*, *Registration Policy*, *Sunrise Rules* and/or the *Terms and Conditions* that the domain name in question shall be transferred, revoked or attributed. However, with regard to any *Registry* decision relating to a prior right invoked during the phased registration period such measures of transfer and attribution will only be granted by the *Panel* if the *Complainant* is the next applicant in the queue for the domain name concerned and subject to the decision by the *Registry* that the *Complainant* satisfies all registration criteria set out in the *European Union Regulations* and to the subsequent activation by the *Registry* of the domain name in the name of the *Complainant* who is the next applicant in the queue.
- (d) The *Panel* shall issue a decision granting the remedies requested under the *Procedural Rules* in the event that the *Complainant* proves
  - (1) in *ADR Proceedings* where the *Respondent* is the holder of a .eu domain name registration in respect of which the *Complaint* was initiated that

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- (i) The domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or Community law and; either
  - (ii) The domain name has been registered by the *Respondent* without rights or legitimate interest in the name; or
  - (iii) The domain name has been registered or is being used in bad faith.
- (2) in *ADR Proceedings* where the *Respondent* is *the Registry* that the decision taken by *the Registry* conflicts with the *European Union Regulations*.
- (e) Any of the following circumstances, in particular but without limitation, if found by the *Panel* to be proved based on its evaluation of all evidence presented, shall demonstrate the *Respondent's* rights or legitimate interests to the domain name for purposes of Paragraph B11(d)(1)(ii):
- (1) prior to any notice of the dispute, the *Respondent* has used the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparation to do so;
  - (2) the *Respondent*, being an undertaking, organization or natural person, has been commonly known by the domain name, even in the absence of a right recognized or established by national and/or Community law;
  - (3) the *Respondent* is making a legitimate and non-commercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name in which a right is recognized or established by national law and/or Community law.
- (f) For purposes of Paragraph B11(d)(1)(iii), the following circumstances, in particular but without limitation, if found by the *Panel* to be present, may be evidence of the registration or use of a domain name in bad faith:
- (1) circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the holder of a name, in respect of which a right is recognized or established by national and/or Community law, or to a public body; or
  - (2) the domain name has been registered in order to prevent the holder of such a name in respect of which a right is recognized or established by national and/or Community law, or a public body, from reflecting this name in a corresponding domain name, provided that:
    - (i) the *Respondent* has engaged in a pattern of such conduct; or
    - (ii) the domain name has not been used in a relevant way for at least two years from the date of registration; or
    - (iii) there are circumstances where, at the time the *ADR Proceeding* was initiated, the *Respondent* has declared its intention to use the domain name, in respect of which a right is recognized or established by national and/or Community law or which corresponds to the name of a public body, in a relevant way but failed to do so within six months of the day on which the *ADR Proceeding* was initiated;
  - (3) the domain name was registered primarily for the purpose of disrupting the professional activities of a competitor; or
  - (4) the domain name was intentionally used to attract Internet users, for commercial gain to the *Respondent's* website or other on-line location, by creating a likelihood of confusion with a name on which a right is recognized or established, by national and/or Community law, or it is a name of a public body, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the Respondent; or



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- (5) the domain name is a personal name for which no demonstrable link exists between the *Respondent* and the domain name registered.

### 12 Decision-Making and Form of Decisions

- (a) The decisions of the *Panelists* will be final, not subject to appeal, and compulsory for the *Parties*, without detriment to the right of the *Parties* to initiate a court proceeding in a *Mutual Jurisdiction* which will have consequences to the implementation of the decision as described in the *Terms and Conditions*.
- (b) The *Panel* shall forward its decision on the *Complaint* to the *Provider* within one month of the *Provider's* receipt of administratively compliant *Response* or the lapse of the time period for its submission.
- (c) In the case of a three-member *Panel*, the *Panel's* decision shall be made by simple majority.
- (d) The *Panel's* decision shall be in writing, provide the reasons on which it is based, indicate the date on which it was rendered and identify the name(s) of the *Panelist(s)*. If the *Panel* decides that the disputed domain name be revoked or transferred to the *Complainant*, it shall state that the decision shall be implemented by *the Registry* within thirty (30) days after the notification of the decision to the *Parties*, unless the *Respondent* initiates court proceedings in a *Mutual Jurisdiction* (see Paragraphs B12(a) and B14).
- (e) *Panel* decisions shall comply with formal requirements set forth in the *Provider's Supplemental ADR Rules*.
- (f) If the *Panel* concludes that the dispute is not within the scope of the Regulation (EC) No 874/2004, it shall so state.
- (g) If the *Complainant* has
- (1) proved that the domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by a Member State's national law and/or Community law or to a name of a public body; and
  - (2) failed to prove the *Respondent's* lack of rights and legitimate interests, as specified in Paragraph B11(d)(1)(ii) of these *ADR Rules*; and
  - (3) relied on Paragraph B11(f)(2)(iii) of these *ADR Rules* to prove bad faith; and
  - (4) failed to prove bad faith on any other grounds;
- the *Panel* shall issue an interim decision setting out its findings on issues (1) to (4) above and shall suspend the proceedings until a date six months after the *Time of Filing*. In such an event (and should the *Respondent* not submit evidence of relevant use by the postponed date and the *Complainant* prove the remaining elements required by Paragraph B11(f)(2)(iii)), the *Panel* shall decide whether or not to grant to the *Complainant* the requested remedy. Under all other circumstances, the *Panel* shall proceed to a decision without reference to Paragraph B11(f)(2)(iii).
- All evidence submitted by the *Respondent* must be accompanied by a declaration of completeness and accuracy and be given to the *Complainant*. The *Complainant* shall have a right to submit a response to the *Respondent's* evidence within fifteen (15) days from receiving the evidence.
- (h) If after considering the submissions the *Panel* finds that the *Complaint* was initiated in bad faith, the *Panel* shall declare in its decision that the *Complaint* was brought in bad faith and constitutes an abuse of administrative proceeding.
- (i) Each *Panel* decision shall contain a brief summary in English in accordance with guidelines prepared by the *Provider*.

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### **13 Communication of Decision to Parties**

- (a) Within three (3) *Working days* after receiving the final decision from the *Panel*, the *Provider* shall communicate the full text of the decision to each *Party*, the concerned *Registrar(s)* and to *the Registry*.
- (b) The *Provider* shall publish the full decision on a publicly accessible web site.

### **14 Implementation of Decision**

The implementation of the decision shall follow the *Terms and Conditions*.

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### C CONCLUDING PROVISIONS

#### 1 Exclusion of Liability

Except in the case of deliberate wrongdoing, neither the *Provider* nor a *Panelist* shall be liable to a *Party* for any act or omission in connection with any *ADR Proceeding* under these *ADR Rules*.

#### 2 Amendments

The version of these *ADR Rules* in effect at the time of the submission of the *Complaint* to the *Provider* shall apply to the *ADR Proceeding* commenced thereby. The *Provider* may amend these *ADR Rules* at any time after receiving the prior written approval of *the Registry*.

#### 3 Effective Date

These *ADR Rules* apply to all *Complaints* filed on or after 1 February 2010.