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CENTR Comment on EU insolvency reform

Summary of CENTR key recommendations

- The insolvency proposal should establish a clear hierarchy between the different methods of tracing assets under Title III. Only after exhausting access to bank account and beneficial ownership information (Articles 13 to 17) should ccTLD registries be consulted for additional information regarding the identified assets (Article 18, Annex).
- CENTR calls for extending the data protection safeguards already in place for banking and beneficial ownership information (Articles 13 to 17) to access requests targeting national asset registers (Article 18).
- Rules on access to national asset registers should respect existing national procedures for obtaining such information, which respect data protection.
- In order to facilitate expeditious access and equal treatment of non-domestic insolvency practitioners, the verification of requestors and requests' legitimacy in cross-border cases must be eased. The mandatory use and maintenance of the EU's e-Justice portal by member states, as an authoritative source of information on insolvency proceedings, would ease the burden of verification and would provide a one-stop-shop for all insolvency related matters across the EU.
- CENTR emphasises the need for maintaining the authoritative nature of ccTLD registries' databases, as an essential function of the Domain Name System. ccTLD registries must be notified of any 'ownership' changes, via assignments of contracts or auctions of domains as assets of an insolvency estate. Changes in domain ownership must comply with ccTLD registry policies, rooted in member state and EU law.

Introduction

CENTR is the association of European country code top-level domain registries (hereinafter ccTLDs). The CENTR membership includes every ccTLD registry for EU and EEA member states (such as '.cz', '.no', and '.it').

CENTR members are at the core of the public internet, safeguarding its stability and security. The majority of European ccTLDs are non-profit organisations or SMEs, providing an internet infrastructure service in the interest of and in close cooperation with their local internet communities (i.e., registrars, end-users, rightsholders but also in cooperation with CSIRTs and law enforcement authorities).

ccTLDs are responsible for operating and maintaining the technical Domain Name System (DNS) infrastructure for their top-level domain (TLD). The DNS is a well-established network protocol at the heart of the internet infrastructure – commonly thought of as the “phone book of the internet”. It provides a navigation function to map user-friendly domain names to numeric IP addresses.

ccTLD registries maintain a domain name registration database. This database contains various information of domain name holders (e.g., name and contact details), as well as technical and administrative data necessary to provide DNS services. Registration data can be queried by the general public using different protocols like the web, WHOIS and RDAP. For entities providing services in the EU, access to non-public domain name registration data containing personal data is governed by the General Data Protection Regulation (GDPR) and other national data protection legislation.

ccTLD registries are considered to be "essential entities" according to the Directive on measures for a high common level of cybersecurity across the Union (the "NIS 2 Directive")¹. To maintain the essential functioning of the DNS, CENTR members see substantial room for improvement in the Commission proposal for a Directive harmonising certain aspects of insolvency law² ('insolvency proposal').

Inclusion of ccTLD registries in the scope of the Proposal for a Directive to harmonise certain aspects of insolvency law

The insolvency proposal seeks to ease the identification of assets in cross-border insolvency cases. To facilitate the tracing of assets, the insolvency proposal includes several national asset registers in scope, among them 'registers of internet domains' (see Annex).

While domains may be considered assets, the 'purchase' of a domain from a registrar only denotes the purchase of a *right of use*. Registries manage all registered domain names in their TLD, and offer the opportunity to register a domain for a set period of time, established contractually, after which 'ownership' in line with 'purchase' may be renewed or opened to the public. In the course of an insolvency proceeding, the right of use for a domain may expire or be transferred to an acquirer.

¹ [Directive \(EU\) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union](#) ("NIS 2 Directive").

² [Proposal for a Directive of the European Parliament and of the Council harmonising certain aspects of insolvency law](#) (COM/2022/702 final).

CENTR members ask co-legislators to **take into account the essential nature of ccTLD registries to the functioning of digital society and their primary role as technical infrastructure** when considering the scope of the proposal. ccTLD registries differ significantly from the other national asset registries included in the Annex, and the overall landscape of internet domains is more complex.

There is no central ‘register of internet domains’ per member state

Unlike the other registers enumerated in the Annex, EU member states have no single national register responsible for all domains registered in their jurisdiction. Rather, all member states and EEA countries have a ccTLD registry related to their national zone (such as ‘.pt’ for Portugal or ‘.no’ for Norway), which administers all domain registrations under this TLD extension. Many popular ‘generic’ TLDs (so-called gTLDs), such as ‘.com’ or ‘.org’, are provided by operators not domiciled in the European Union. National ccTLD registries tend to cover a significant proportion of domains registered in their respective member states: the median across CENTR members lies at a 53% market share³. In effect, individual ccTLD registries will only be able to account for their ‘zone’, which is a proportion of the domains registered in a member state.

The process of registering a domain usually involves at least two separate service providers: a registrar and a TLD registry⁴. Similar in name, but different in function, domain registrars are businesses which handle the domain registration process per agreement with a registry. They can serve cross-TLD functions, since they can offer domain name registrations to multiple ccTLD and gTLD registries. Registrars sell available domains in a given TLD to the public, interact with the end user (‘registrant’), and collect their data (identity, contact and payment information, etc.). In contrast, registries are an authoritative repository and the technical administrators of their TLD, whose primary functions are to maintain the stability and security of the DNS. Unless a registry offers the possibility for direct domain name registration to the public, they rely on registrars to provide them with relevant registration data.

ccTLD registries significantly differ from other national asset registers: they are providers of technical internet infrastructure, deemed essential for the functioning of digital society under EU cybersecurity legislation, such as the NIS 2 Directive. The data which the insolvency proposal seeks access to is intertwined with ccTLD registries’ critical functions. The collected registration data concerning individual domain names is part of an authoritative database maintained by ccTLD registries, necessary for the DNS to function.

Interfering with the authoritative databases, for example by transferring contracts for a domain without registry’s involvement (see Articles 27 and 50 of the insolvency proposal), **may undermine the database and can lead to adverse consequences for its integrity**.

Impact on domain registration information

Keeping in mind the complexities of including ccTLD registries in scope as national asset registers, the following areas of the insolvency proposal are of particular concern.

³ For more information, see the “[CENTR Global TLD Report](#)”, CENTR.

⁴ For more information, see “[The domain name registration process](#)”, CENTR.

Direct access to non-public information (Article 18, Recital 14)

The insolvency proposal expects that “registers of internet domains” shall provide “direct” “access to information held in databases which are not publicly accessible” (Recital 14, Article 18(1), Annex). It is not specified what form such direct access shall take.

CENTR members would like to highlight two central issues with this requirement: first, ccTLD registries’ non-public databases contain personal data, raising data protection risks; second, the identification of assets must be done via bank account information before insolvency practitioners can approach other national asset registers, including ccTLDs, for more information.

ccTLD registries maintain a domain name registration database, which contains the personal information of domain name holders (e.g., name and contact details). In the EU, personal data is governed by the GDPR, which emphasises foundational data protection principles, such as data minimisation and data accuracy (Article 5 of the GDPR). Requests for data access must be made on a sufficient legal basis, respect due process, and be limited to what is strictly necessary.

The insolvency proposal specifies that personal data shall only be processed “where it is necessary and proportionate for the purposes of identifying and tracing assets belonging to the insolvency estate[...] in ongoing insolvency proceedings” (Recital 18; see also Recital 61f). However, the European Data Protection Supervisor (EDPS) points out that data protection “safeguards are provided for in much more detail for the access to bank account registries”⁵, and recommends extending additional safeguards to national asset registers. An expansion of data protection safeguards to non-public information held by national asset registers, including ccTLD registries, is necessary and will ensure consistency with existing legal frameworks applicable to ccTLDs.

Additionally, **direct access requests to ccTLD registries’ non-public registration data must always mean access to a designated expert at the ccTLD registry who reviews the access request.** This mechanism corresponds to similar provisions from the proposed regime for access to bank account information: foremost, the ‘case-by-case’ evaluation of access requests by appropriately skilled staff, and the requirement of measures to ensure the security of the data to a high technological standard (Article 15). The human review at the ccTLD registry acts as a safeguard to verify the legitimacy of the requesting insolvency practitioner, the legal basis for their access request, as well as the compliance with data protection requirements on a case-by-case basis.

The best way to identify all domain names registered by an insolvent enterprise is via bank account information (a ‘follow the money’ approach), available for insolvency practitioners by the insolvency proposal. Therefore, **CENTR members strongly recommend that insolvency practitioners prioritise access to bank account information, in order to identify assets (Articles 13ff.) before resorting to querying additional information under Article 18.** Bank statements of payments made to registrars or registries will reveal a complete list of

⁵ See “[Opinion 5/2023 on the Proposal for a Directive harmonising certain aspects of insolvency law](#)”, European Data Protection Supervisor.

domain names belonging to insolvent enterprises across all TLDs. On the basis of this information, insolvency practitioners can approach ccTLD registries for confirmation and/or further information, if necessary.

Notably, a significant amount of information regarding registered domain names is already publicly accessible via existing lookup protocols, such as WHOIS⁶ and RDAP⁷ that are available to anyone online. In addition, according to the NIS 2 Directive, TLD registries and registrars are required to make publicly available, without undue delay after the registration of a domain name, the domain name registration data which are not personal data (Article 28(4) of the NIS 2 Directive⁸). It is therefore very likely that a lot of information is already publicly available for insolvency practitioners.

Importantly, the **‘follow the money’ approach ensures that ccTLD registries are approached to query their databases within proportionate and reasonable limits, after an asset has already been identified**. This limits the duplication of efforts by both insolvency practitioners and ccTLD registries, and contributes to more efficient insolvency proceedings.

Due to the fact that most information necessary to identify and trace domain names belonging to a liquidated enterprise is either publicly available or can be acquired via bank statements, **it is advisable to establish a clear hierarchy between levels of access to different types of information. National asset registers, including domain name registries, should only be consulted in cases where insolvency practitioners’ asset tracing activity requires additional information after having consulted bank account and beneficial ownership information registers** (Articles 13 to 17). All access requests must respect data protection safeguards and national procedures for obtaining such information.

In sum, concerning ‘direct access to non-public databases’, ccTLD registries stress the importance of expanding data protection safeguards from provisions on access to banking and beneficial ownership information to national asset registers, and prioritising the ‘follow the money’ approach to identifying domains as assets. ‘Direct access’ to a ccTLD registry’s non-public databases must respect existing national access procedures established across EU ccTLDs, taking into account data protection and cybersecurity related safeguards, due to ccTLD registries’ essential function for digital society. **Human review of each data access request to non-public information is of paramount importance** to ensure adequate levels of data protection in cross-border cases.

Expeditious access and equal treatment of insolvency practitioners appointed in other member states (Article 18, Recital 14)

The formulation ‘expeditious access’ is undefined and, considering ccTLDs critical technical function, must be clarified in order to avoid unnecessary burdens on essential internet infrastructure actors.

If expeditiousness is understood as access to domain name information ‘in a timely manner’, the verification of the legitimacy of non-domestic insolvency practitioners and their requests is the central obstacle. In their national contexts, ccTLD registries have several procedures in place to confirm legitimate access seekers’

⁶ For more information, see [“About WHOIS”](#), ICANN.

⁷ For more information, see [“Registration Data Access Protocol \(RDAP\)”](#), ICANN.

⁸ See footnote 1.

mandate. For example, many member states, such as Belgium, Poland, Latvia and Slovakia, maintain official public registries or state journals, which registries rely on to confirm insolvency practitioners' legitimacy. Most registries rely on national court rulings, court orders and appointments, as well as official bankruptcy or insolvency decrees. All of these legal documents have in common that they tend to be written in the member states' languages. An employee at the Spanish ccTLD registry may not be able to verify the legitimacy of a Hungarian insolvency practitioner's appointment and request based on Hungarian court documents or websites, and vice versa.

The difficulty of verifying the legitimacy of non-domestic requestors and requests effectively makes their equal treatment with domestic insolvency practitioners impossible. Their vetting will place a high burden on ccTLD registries, and will likely result in delays.

In order to facilitate expeditious access and equal treatment of non-domestic insolvency practitioners, CENTR recommends expanding the information on insolvency proceedings in the EU's e-Justice portal⁹. The Insolvency Registers Interconnection search interface is a functionality of the e-Justice portal, which was developed under Article 25 of Regulation (EU) 2015/848 ('Regulation on insolvency proceedings (recast)')¹⁰. The e-Justice portal's interface seeks to serve as a central public electronic access point for the interconnection of insolvency registers and provides a search service in the official languages of the EU.

This resource is a possible solution to many issues outlined above, however, requires improvement. First, not all member states are participating in the resource (e.g., Denmark), and even among some member states which formally participate, the service is at times not available, pending their completion of the interface setup (e.g., Italy, Czech Republic). **The first necessary improvement is to make the use and maintenance of the e-Justice portal mandatory in all member states, to improve its public credibility.**

Second, the data is not always useful or consistent. This may be due to different types of data being collected at member state level, and may call for a higher minimum threshold of necessary information. For example, some results on the e-Justice portal include the name of the insolvency practitioner responsible for a case, whereas some member states' results make no mention of insolvency practitioners at all. In the Austrian example, results do not contain a dedicated 'insolvency practitioner' line. They do however contain a timeline of proceedings which may include information on the insolvency practitioner's identity and contact information, under the date of their appointment. Notably, the Austrian results also offer the insolvency practitioner's e-mail address and phone number, whereas many other member states' results tend to contain their address, at most. Sending letters back and forth runs counter to the need for expeditious communication. Therefore, the inclusion of e-mail addresses and phone numbers would accelerate progress.

Finally, CENTR members who use the e-Justice portal in other contexts report that the platform often faces considerable downtime, to the extent that it loses utility for them. **In order for the e-Justice portal to be as**

⁹ See "[Bankruptcy & insolvency registers - search for insolvent debtors in the EU](#)", e-Justice Portal.

¹⁰ [Regulation \(EU\) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings \(recast\)](#).

useful as possible, and taking the above recommendations for improvement into account, **it is also necessary to invest into the stability and maintenance of the service.**

Transfer or auction of domain contracts (Article 27, Recital 28 & Article 50, Recital 44)

The insolvency proposal contains two provisions concerning a contract for a domain being transferred from an insolvent holder to an acquirer (Article 27, Recital 28) or auction winner, in the case of simplified winding-up proceedings (Article 50, Recital 44). Article 27 states that the assignment of a domain contract to an acquirer shall not require the consent of the counterparties to a contract, i.e., the relevant registry. Article 50 does not specify the form of the auctions.

Both scenarios raise concerns regarding ccTLD registries' notification or involvement. CENTR members would like to highlight that knowledge of domain contract transfers is essential for the accuracy of registries' databases and the acquirer's right to a domain. Secondly, domain ownership is subject to conditions in registries' policies, rooted in national and EU law. Transfers of contracts which are not in compliance with registry policies may encounter legal trouble.

ccTLD registries maintain authoritative databases known as 'zone files', which hold information on all registered domain names in their TLD. Should the right to a domain be assigned to an acquirer or auction winner without the relevant ccTLD registry's knowledge, the acquirer or auction winner's information cannot be included in the zone file. Contracts for the right to use a domain are, in many cases, temporary and expire if not renewed. When it comes to renewing the contract, if the registry attempts to contact the previous owner without success - based on their outdated zone file information - the domain could be put back on the market without the acquirer or auction winner's knowledge.

Ensuring that a domain holder's registration data is correct is a role which primarily falls to registrars. Only very few European ccTLD registries provide direct registration services themselves; the majority are reliant on registrars to provide them with accurate and up-to-date registrant data, including on whether a domain has been transferred to a new owner. Unless registrars are informed of changes, and inform ccTLD registries in turn, the acquirer's new information will not be registered, and their control over a domain will be at risk. Examples are already known across several ccTLD registries and cause a high administrative burden, once acquirers or auction winners realise the mistake.

To illustrate one possible example: If a domain holder terminates a contract for a domain, or lets it expire, the right to use this newly-available domain could rightfully be acquired by a third party while an insolvency procedure is ongoing in which this domain may be considered an asset. In the case of conflict, the third party may rely on an acquisition in good faith, as the unique domain was available per the first-come-first-served principle. An acquirer in an insolvency proceeding may rely on Article 27, which permits the assignment of assets without the counterparty's consent. The ccTLD registry, as the counterparty, now faces two legitimate acquirers based on different legal grounds. This dilemma could be solved by requiring that all counterparties are informed of an ongoing insolvency proceeding, and ensuring the maintenance of contractual obligations for a domain.

In addition, all ccTLD registries have policies which set conditions for who may hold a domain. Some of these conditions may not be met by the acquirer of a domain. For example, a ccTLD registry may only make domains available to registrants based in their state, or registrants which can show a proven connection to it (e.g., trade or intention to trade)¹¹. Other ccTLD registries may require that a new registrant meets certain conditions (i.e., conclusion of a new agreement with the registry, fee payment and identity validation), before a transfer can be released¹². In some cases, legislation at EU or member state level sets out eligibility criteria. The Regulation (EU) 2019/517 on the implementation and functioning of the .eu top-level domain name¹³, for instance, would preclude an organisation or undertaking not established in the EU from acquiring a '.eu' domain. In effect, unless there are procedures in place to ensure that an acquirer meets the policy requirements of the ccTLD registry and their applicable legislation, transferring the contract for a domain without consent creates a situation where a purchase may be contrary to policy or law.

Should the provision on on-line judicial auctions of assets in simplified winding-up proceedings (Article 50, Recital 44) pass into law unchanged, auctions would likely become a regular occurrence. The insolvency proposal envisages that member states install a framework for simplified winding-up proceedings for insolvent microenterprises, and possibly small and medium-sized enterprises (Title IV). The intention seems to be that this framework shall apply regardless of whether the insolvency case is domestic or cross-border in nature.

EU statistics indicate that microenterprises make up approximately 99% of the EU businesses which form part of the non-financial business economy (see Eurostat research from 2019¹⁴ and 2020¹⁵). The implication is that, should the Commission proposal be adopted as is, simplified winding-up proceedings will soon make up the majority of insolvency proceedings in member states.

Hence, auctions of domains as assets would likely increase in number, compounding the two risks outlined above. **It is therefore paramount that the insolvency proposal clarifies that ccTLD registries be (i) informed of transfers of domain contracts for the integrity of their databases, and (ii) that mechanisms be introduced making the transfer of a domain conditional on it being in compliance with ccTLD registry policies, member state and EU law.**

¹¹ See, for example, "[Registration and Naming in the .IE Namespace](#)", .ie website.

¹² See, for example, "[Terms and conditions for the right of use to a .dk domain name](#)", Punktum dk.

¹³ [Regulation \(EU\) 2019/517 of the European Parliament and of the Council of 19 March 2019 on the implementation and functioning of the .eu top-level domain name](#).

¹⁴ See "[EU small and medium-sized enterprises: an overview](#)", Eurostat.

¹⁵ See "[Structural business statistics overview](#)", Eurostat.; The German Bundesrat, for example, estimates that more than 80% of businesses which go insolvent in Germany are microenterprises, with few being cross-border insolvency cases, resulting in the insolvency proposal overwhelmingly targeting purely domestic proceedings; See "[Beschluss des Bundesrates Vorschlag für eine Richtlinie des Europäischen Parlaments und des Rates zur Harmonisierung bestimmter Aspekte des Insolvenzrechts](#)", Bundesrat.