



Decision on how the European Commission dealt with a complaint that a winner of the EIC Horizon Prize on Blockchains for Social Good infringed intellectual property rights (case 1756/2020/VS)

Decision

Case 1756/2020/VS - Opened on 09/11/2020 - Decision on 06/10/2021 - Institution concerned European Commission (No maladministration found) |

The case concerned how the European Commission dealt with a complaint that one of the winners of the 2018 EIC Horizon Prize on Blockchains for Social Good infringed intellectual property rights.

The complainant contacted the Commission arguing that one of the winning entries was almost identical to a utility model, which the complainant owned. The complainant considered that the Commission did not investigate the concerns properly and therefore complained to the Ombudsman.

The Ombudsman found that, in the course of the inquiry, the Commission provided sufficient information about the actions it had taken in reaction to the complainant's concerns and about its conclusion. The Ombudsman also found that the conclusion reached by the Commission, namely that the dispute should be settled by a court, is reasonable. The Ombudsman thus closed the inquiry finding no maladministration by the Commission. To ensure greater clarity in future, the Ombudsman encourages the Commission, in the context of future innovation contests and awards, to proactively inform contestants and other stakeholders of its approach to related intellectual property rights disputes.

Background to the complaint

- 1.** In 2018, the European Commission launched the EIC [1] Horizon Prize on Blockchains for Social Good [2] . Under the contest, five awards of EUR 1 million each were to be given to contestants providing the best solutions to social innovation challenges leveraging Distributed Ledger Technology, such as the one used in blockchains.
- 2.** Following the award of the prizes, the complainant wrote to the Commission, complaining that one of the winners had submitted a solution which was 'almost identical' to a particular utility model that the complainant owned and was using since 2017. The complainant asked the Commission to suspend the payment of the prize money to the winner in question pending an equitable resolution of the complainant's claim on the prize money.
- 3.** On 27 July 2020, the Commission replied that it would investigate the matter and, if



necessary, take appropriate measures in accordance with the specific Rules of contest and the EU Financial Regulation.

4. On 11 September 2020, the Commission wrote to the complainant again, saying that it was not competent to assess the complainant's claim, which could only be done by a competent court. In the absence of a final court decision, the Commission could not withhold the payment of the prize money to the winner in question. In any case, in accordance with the Rules of contest, the Commission could not pay the prize money to an entity that had not taken part in the contest. In case a prize winner is excluded, the Commission can only recover the prize money.

5. In October 2020, the complainant turned to the Ombudsman.
The inquiry

6. The Ombudsman opened an inquiry into the following aspects of the complaint:

1) In its first letter to the complainant, the Commission said that it would investigate the matter and, if necessary, take appropriate measures. It was thus reasonable for the complainant to expect a more substantive reply to its concerns than the one that it received on 11 September 2020.

2) Whether the Commission investigated the matter, taking into account the Rules of contest and in particular, Rules 4.2 [3] and 8.10 [4], which specifically provide for the possibility to exclude a contest participant, withdraw the prize and recover undue amounts.

7. In the course of the inquiry, the Ombudsman received the Commission's reply on the complaint and the complainant's comments on the Commission's reply.

Arguments presented to the Ombudsman

The Commission's arguments

8. In its reply to the Ombudsman, the Commission said that on 31 July 2020, the Commission department in charge of the EIC prize contacted the Central IP Service [5] of the Commission at the Joint Research Centre (JRC) to ask for advice on the allegations made by the complainant. The Central IP Service also requested an external legal expert on intellectual property law and German law to assess the issue. The expert analysis indicated that, in the absence of a court decision settling the dispute, the complainant's allegations did not provide a sufficient legal basis for a withdrawal of the prize granted. It is not for the Commission to decide whether the complainant's utility model is valid and whether the prize winner's solution infringes on the complainant's intellectual property rights.

9. The Commission argued that it promptly examined the allegations raised by the complainant and that its reply of 11 September 2020 contained all the essential elements, explaining the actions taken and the conclusions. The complainant may inform the Commission if a court establishes an infringement of its intellectual property rights, in which case the Commission would assess the matter under the Rules of contest - section 4.2 Exclusion criteria and section 8.10 Withdrawal of the prize - Recovery of undue amounts.



The complainant's arguments

10. The complainant argued that the purpose of the Commission's investigation was to discredit the complainant's utility model. The complainant criticised the investigation because key elements, such as Annexes 3 and 4 to the Commission's reply to the European Ombudsman, were declared confidential by the Commission and thus not shared with the complainant.

11. The complainant further argued that in the absence of a superseding EU law or rule, its utility model is 'presumptively valid'. The investigation should have focussed on the similarity between the prize winner's solution and the complainant's utility model.

12. The complainant would like the Commission to offer it compensation on the basis of economic and procedural injustices.

The Ombudsman's assessment

13. The starting point of this inquiry was that the complainant did not know if and how the Commission had investigated the concerns brought to its attention.

14. In the course of the inquiry, the Ombudsman received the reply showing that the Commission investigated the matter and sought both in-house and external expert legal advice. The Commission's reply to the complaint (with the exception of two confidential annexes) was shared with the complainant. The reply contains relevant quotes from the confidential legal expert opinion. In this way, the complainant has now been informed of the steps taken by the Commission to investigate the concerns, as well as of the Commission's conclusion and the main reasons for its conclusion. The Ombudsman therefore considers that this aspect of the complaint is now resolved.

15. Regarding the substantive matter, that is, whether the Commission investigated the matter *properly* and drew the correct conclusions, the Ombudsman finds nothing to suggest that the aim of the investigation was to discredit the complainant's utility model. The fact that the legal advice was not shared in full with the complainant does not imply that the investigation was not carried out properly. The Ombudsman's inquiry team has reviewed the confidential annexes, which support the final conclusion reached by the Commission, namely that the dispute should be settled by a court. The Ombudsman is thus of the view that the conclusion reached by the Commission is reasonable and there is nothing to suggest maladministration by the Commission in the way it handled the matter.

16. Nevertheless, intellectual property rights issues are often at the heart of innovation contests and awards, such as the one in this case. In this context, it could be useful for contestants and other stakeholders to know, through the rules of contest or in another proactive manner, about the Commission's approach to related intellectual property disputes. The Ombudsman therefore encourages the Commission, in the context of future innovation contests and awards, to proactively inform contestants and other stakeholders of its approach to related intellectual property rights disputes .



Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion [6] :

There was no maladministration by the European Commission.

The complainant and the European Commission will be informed of this decision .

Tina Nilsson Head of the Case-handling Unit

Strasbourg, 06/10/2021

[1] European Innovation Council,
https://eic.ec.europa.eu/about-european-innovation-council_en

[2]
<https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/opportunities/topic-details/block>

[3] 'Participants will be excluded if they (or one of them)...have misrepresented information required for participating in the contest or fail to submit such information...'

[4] 'The Commission may withdraw the prize after its award and recover all payments made, if it finds out that: (a) false information, fraud or corruption was used to obtain it (b) a winner was not eligible or should have been excluded (c) a winner is in serious breach of its obligations under these Rules of Contest.'

[5] A dedicated institutional service that responds to all of the Commission's needs on intellectual property, see
<https://ec.europa.eu/jrc/en/research/crosscutting-activities/intellectual-property/central-ip-service>

[6] This complaint has been dealt with under delegated case handling, in accordance with Article 11 of the Decision of the European Ombudsman adopting Implementing Provisions