



EIC Board statement

26 April 2023

Revision of the EIC IP Provisions

1. INTRODUCTION

Since the launch of the European Innovation Council (EIC), a number of additional provisions on intellectual property (IP) were introduced for EIC Pathfinder and EIC Transition projects in order to promote the innovation objectives of the EIC. These provisions, set out in the last annex of the annual EIC Work Programmes, include giving access rights to 'EIC Inventors' to protect and commercialise the newly generated IP, while leaving attribution of ownership of IP to follow national and other applicable rules.

A considerable amount of feedback has been received so far on these rules, highlighted in a joint statement of 5 December 2022 by nine associations of universities, other research performing, and knowledge transfer organisations¹. The main concerns raised by the associations include: unclear differentiation between 'inventorship' and 'authorship' in the definition of EIC Inventors; potential barriers to knowledge transfer and the work of knowledge transfer offices posed by granting wide ranging access rights to EIC inventors; and possible conflicts with institutional, regional or national rules.

In order to assess this feedback, the EIC Board tasked one of its working groups to meet with the associations, which subsequently took place on 6th February 2023. The meeting demonstrated a shared objective to promote knowledge transfer and acknowledge the vital role of knowledge transfer offices within research organisations with the overall aim of increasing the innovation impact of results. The meeting also demonstrated the complex and inter-related set of issues including ownership, access rights, royalties and license fees in spin-outs, costs of IPR protection and equity shares in spin-offs, and set a common line of understanding of the innovation support environment in the public research organizations to support result based exploitation.

¹ https://www.the-guild.eu/publications/statements/joint-statement_eic-ip-provisions_5-december-2022.pdf

2. RECOMMENDATIONS

Following the meeting with the representatives of the concerned associations and subsequent discussions, the EIC Board examined the current provisions on Intellectual Property. The Board found that many aspects of the provisions are fit for purpose. However, the EIC Board also recommends some targeted improvements which are recommended to be incorporated in the next update to the EIC Work programme as follows:

Recommendation 1: The definition of EIC Inventor should be aligned with standard international definitions according to IP legislation.

Recommendation 2: The host institutions of EIC Inventors should be allowed a period of three to six months to commit to supporting the protection and commercialisation of results, which must include full or partial patenting support (including costs) and may include technology and market assessment, analysis of commercialisation routes, business plan preparation, and other expert support.

Recommendation 3: A condition of EIC funding is that if it results in a potentially commercially exploitable invention, the EIC inventor must work diligently to realise that commercial exploitation potential. This includes working with any Technology Transfer organisation in the EIC inventor's institution and/or nationally and may include the EIC inventor taking an active role in the commercialisation.

Recommendation 4: In the case the host institution commits to provide such financial and expert support, the institutions may receive fair returns (e.g. royalties, equity stakes), proportionate to the support provided.

Recommendation 5: If an institution is unwilling or unable to commit and execute this support, it must then allow the EIC Inventor full and royalty free access rights to exploit the IP. The ownership of the IP may be retained by the institution or assigned to the inventor/spinoff company, depending also on technology field and on the agreed distribution of IP costs.

Recommendation 6: Joint work with the stakeholder associations and TTOs should be carried out to prepare guidance/ FAQ/ best practice on what 'fair and proportionate' terms may be, and also to establish performance metrics/KPIs that measure and encourage commercialisation. The board also supports the establishment of standard spin-off deal terms to simplify the transition of the EIC Inventor and the newly created IPR to a spin-off company.