HELIAST

KLEROS' TOKEN LISTING COURT

CHALLENGE BRIEF

GRIDPLUS (GRID) Badge

Case #82

26th June 2019

SUMMARY

The request does not comply with the Kleros Listing Criteria. We therefore invite the Jurors to reject this request.

Indeed, it is hereby demonstrated that

- the GRID token has no other use than to raise funds;
- no audit has been carried out by a third party since ConsenSys cannot be qualified as a third-party to GridPlus and the GridPlus code has not really been audited;

We also draw the attention of the Kleros Jurors to several points that determine the usefulness and effectiveness of Kleros.

The system aims to resolve disputes in a factual and civilised manner. The Requester's manifest willingness to mislead jurors and the personal attacks issued greatly undermine the effectiveness of his argument but more generally the effectiveness of Kleros.

We invite Jurors to keep these elements in mind when assessing the legal and factual arguments presented.

1.   DISPUTE STATEMENT

On April 28, 2019, the GRIDPLUS Token (GRID) was accepted into the Kleros Token Curated List

On 22 May 2019, an application for a Badge (the **Badge Request**) was filed by the **Requester**.

On 23 May 2019, this request was contested by a **Challenger** on the grounds that points 3.2, 4.1, 4.2 and 5.2 of the Listing criteria were not respected. On June 1, 2019, non-compliance with point 1.1.5 of the Listing criteria was raised.

From May 5 to June 8, 2019, 41 briefs were filed.

By a decision of 8 June 2019, Kleros' jurors rejected the Badge request.

On 9 June 2019, this decision was appealed, the Requester maintaining that its application for a Badge is compliant.

On 10 June, the non-compliance of the request with point 1.1.4 of the Listing criteria was raised by a third party.

From June 9 to June 23, 2019, 25 new briefs were filed.

By a decision of 23 June 2019, Kleros' Jurors accepted Badge request.

On 23 June 2019, this decision was again appealed, the Challenger maintaining that the violation of point 4.1. of the Listing criteria was established since an independent audit had not been carried out.

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The Requester has attempted by various means, including the less legal ones, to mislead the Kleros jurors despite the fact that its application clearly breaches the applicable standards as already decided.

The latter's defence went so far as to personally accuse the parties to the dispute on the grounds that they legitimately raised questions about the conformity of the token and even though **anonymity is a founding and determining principle of decentralized justice.**

By this brief, filed in the name and on behalf of the Challengers, the non-compliance of the Badge request will be factually demonstrated.

2. EXPLANATORY STATEMENT

2.1. LEGAL STANDARDS

Kleros is a dispute resolution protocol running on the Ethereum blockchain and based on crypto-economic mechanisms. For more information, visit the project blog.

Token Curated List is an application to select tokens accepted for listing on the Ethfinex Decentralized Exchange. The selection rules are specified here and are deemed to have been accepted by the Requester, the Challenger and the Jurors when they use the service. Thus, the only applicable standards are Listing criteria and fairness, excluding other contractual or legal provision.

2.2. DISCUSSION

2.2.1. Violation of Article 3.2 − The GRID token has no other utility than fundraising.

The GRID is a fungible token which serve "*as a coupon*" within the Grid+ services.

The Listing criteria imposes that:

> *"There is a demand for the token driven by an existing or future utility. This utility is obtained from obtaining, holding, participating, or spending the token. The team has identified a reason for the token to exist which is not just fundraising.*
>
> *Accept if: The token is used for staking."*

This condition is part of the 3rd Section of the Listing criteria "Technologies and product". Consequently, the utility notion should not be qualified legally, as in Section 1 "*Compliance and Legal*", but according to the use value regarding user's perspective within the project.

Based on the project description (*white paper*[1]), the elements highlighted by the Requester himself in its arguments[2] and the observation of the token's rights, it can be concluded that the mere coupon feature of the GRID token is not effective enough to characterize a use value.

In the end, it seems that the only purpose of the sale of a $10 token (for instance) was to raise $9 to found the Company.

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[1] *« Each GRID token will be a credit on the Grid+ platform, redeemable by customers of the Grid+ platform for the right to purchase 500 kWh of electricity at the wholesale price available to Grid+ in the relevant jurisdiction at the time such electricity is received by the redeeming customer. », Grid + white paper V2.0, p40*

[2] *« GRID is essentially a coupon represented in token form which can be spent to obtain the right to discounted pricing on goods or services offered by Grid+ or other firms that implement their stack. » Kleros TCR Grid+ Compliance Badge Challenge Response (pdf), p8*

The sale of a payment token in exchange for a discount on services is actually a fundraising operation in the meaning of the point 3.2. of the Listing criteria.

In that extent, the GRID token has not enough utility to satisfy the Listing criteria.

2.2.3.   Violation of Article 4.1 − No external audits from a third party have been conducted

The Listing criteria imposes that :

> *"The token has passed a third-party review or security audit that deems it as safe, or be using a well-known audited framework (such as OpenZeppelin) without changes. Accept if: The token has been audited by Trail of Bits".*

The Requester alleges:

- that the smart contract of the sale has been audited by ConsenSys Diligence team;

- that the Listing criteria do not require him to provide evidence of this or to publish the audit report;

- that the conduct of this audit was publicly disclosed on 11 September 2017[3] ;

- that the initial code on the basis of which the code of the project had been developed had already been audited, an additional audit was not necessary even if the code had evolved; that, in addition, it was legitimate to use the code initially developed by ConsenSys since GridPlus is a team derived from Consensys;

- that the auditor, ConsenSys, is an independent third party[4] since GridPlus is a separate legal entity;

- that a Badge has been granted to the Airswap and Gnosis tokens also developed by ConsenSys which have not been challenged, which sets a high precedent.

These elements do not demonstrate that the project has complied with the obligation to have an external audit of the code carried out by an independent third party.

Indeed, the Listing criteria provides for two ways of satisfying this criterion:

- *or the token has passed a third-party review or security audit that deems it as safe ;*

- *or the token has been using a well-known audited framework.*

When it does not use a well-known audited framework, article 4.1. of the Listing criteria sets 2 conditions for the token to be considered compliant:

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[3] GridPlus, "Announcing the Grid+ Token Sale", *Medium*, September 11, 2017.

[4] Requester, "Grid+ Incorporation Date", *GridPlus Badge Request*, June 10, 2019.

i.   the token must be reviewed or be subject to a safety audit;

ii.   these operations must be carried out by a third-party;

i.   The token has not been reviewed

Regarding the performance of an audit, only two evidences are provided by the Requester:

- on 30 May 2019, the Requester produced an email[5] from Mr Gonçalo Sà, ConsenSys, attesting to having audited the contract. The veracity of this evidence was confirmed by the latter in a message published on Twitter on June 17, 2019 ;

- on 11 September 2017, the GRIDPLUS team published a post on Medium.com to announce the sale stating that: "*Grid+ will re-use the token sale contracts developed by AdChain, who successfully completed their token sale earlier this year with code that was audited by ConsenSys Diligence. The Grid+ fork of this fully audited code*".

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The message from the auditor **does not specify the scope of the audit or its results**; nor does it specify whether the code has been completely revised or whether only the part used has been examined.

Moreover, this evidence has no influence on the outcome of the dispute since it does not make it possible to judge the relevance of the Challenge

Indeed, as <u>already ruled</u> by the Kleros Court[6], the conformity of Badge requests must be assessed at the date of their submission, otherwise the Kleros system could not work.

This implicit rule inevitably results from the token selection process. Indeed, pursuant to this procedure, it is the Requester's responsibility to satisfy the criteria established by Ethfinex. However, for the selection process to work, it must also enable Kleros users to verify this compliance, failing which the Listing criteria could not be implemented;

"What can be asserted without evidence can also be dismissed without evidence"

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[5] Requester, "Kleros TCR Grid+ Compliance Badge: Submitters' Response to Challenger's Supplemental Documents", *GridPlus Badge Request*, May 30, 2019.

[6] Kleros Ruling, "Juror's Opinion", *Spacechain Badge Request*, April 29, 2019: *"It is the Submitter's responsibility to submit a project in accordance with the policy at the time of application. The possibility of regularizing during the proceedings could be relevant as long as the violation is regularizable and demonstrates the good faith of the project. However, this possibility is not provided for in the texts and would lead to a misuse of the dispute resolution system by including many perverse effects. Indeed, Submitters could systematically submit non-compliant projects deliberately in order to regularize them only after their request has been challenged. This could lead to undue enrichment and discourage any challenge. In the end, many projects could either become richer at the expense of honest challengers, or benefit from impunity allowing them to list non-compliant projects."*

This evidence is therefore <u>neither relevant nor admissible</u>.

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The Requester invokes a message posted on 11 September 2017 to demonstrate that the audit of its code has been made public, acknowledging in this way that the Listing criteria requires the publication of the existence of this audit.

However, this message simply states that:

- the GRID token will be developed on the basis of the AdChain contract;

- that AdChain's contract has been audited.

However, the code of the GRID token has evolved and is not identical to that of AdChain.

This message therefore does not in any way demonstrate that the Requester has published information relating to the audit of its code.

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Thus, at the date of the badge request, no Kleros user was able to ensure that the token complied with point 4.1. of the Listing criteria.

In addition, the Requester does not provide sufficient evidence to demonstrate that an audit in accordance with the requirements of Article 4.1. has been conducted.

For this reason alone, Jurors are invited to reject the Badge request.

> ii.   *The token has not been reviewed by a third-party*

Contrary to what the Requester claims both the review and the security audit must be carried out by a third-party. This is very clearly understood from the reading of article 4.1. which states, as a reminder, that "*The token has passed a third-party review or security audit that deems it as safe*".

To state otherwise is a sign of particular bad faith that should draw the Jurors' attention to the Requester's inability to demonstrate factually the conformity of its application.

To state the contrary would also lead to the introduction of a contradictory rule which would imply that a review would have to be carried out by a third-party, but that a safety audit could be carried out internally... What would be the basis or objective pursued by such a rule?

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However it is clear that ConsenSys cannot be qualified as a third-party to GridPlus.

In the context of external audit operations, it is quite traditional to require that the audit be carried out by a third-party party in order to prevent any conflict of interest and to ensure the relevance of such a procedure.

The qualification as a third-party must therefore be assessed in the light of this objective of preventing conflicts of interest in order to guarantee the independence, objectivity and reliability of the audit.

It results from common sense, the criminal law of almost all States in the world, and the many codes of conduct published by key players in the audit industry[7], that one entity cannot audit another entity that is connected by either <u>legal or economic ties</u>.

The Requester argues that ConsenSys is a third-party party as long as the company is a legal entity independent of GridPlus. He produces a registration certificate in support of this argument.

However, this argument is totally ineffective with regard to the issue at stake and makes absolutely no sense.

Indeed, the fact that the entity is legally separate does not in any way demonstrate that GridPlus and ConsenSys are neither <u>legally nor economically linked</u>.

On the one hand, GridPlus was created by ConsenSys, which is not contested by the Requester and is confirmed by multiple public sources[8].

On the other hand, it appears that ConsenSys holds the majority of the capital of the company GridPlus, as is the case with many publications whose source can only come from interested parties[9].

The Requester was careful never to produce any evidence regarding the composition of its capital and the identity of the persons holding GridPlus.

It is therefore not reasonable to consider that ConsenSys is a third-party to GridPlus even though it legally and economically owns this entity.

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[7] See in particular, Deloitte LLP and affiliated entities, "Deloitte. Code of Conduct".

[8] See in particular, Mechanikalk, "ConsenSys Creates Grid+ to bring Ethereum to Electricity markets", BitcoinTalk, July 12, 2017; ConsenSys Press, "GridPlus Opens Pre-Sales for its Lattice1 Hardware Wallet", Official Announcements and Press Releases, May 10, 2019; ConsenSys, "GridPlus sale", Github.

[9] See in particular, Jason Deign, "Grid+ Raises $29 Million as Blockchain Fever Grows", *GreenTechMedia*, September 22, 2017: "*The startup, owned by New York blockchain development house ConsenSys*";

If this were the case, the requirement for a third party audit would no longer be relevant.

For this reason alone, Jurors are invited to reject the application.

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These elements alone demonstrate the non-conformity of the Requester, which he is clearly aware of, as can be seen from the methods used to mislead the Kleros Jurors.

Indeed, the latter relies on the principle of *stare decisi*s to argue that the Airswap and Gnosis projects, developed and audited by ConsenSys, have been accepted into the Kleros list and that a case law has therefore been established.

It should be noted at this point that these Badge requests have never been challenged.

Now, assuming that the principle of stare decisis – which the Requester obviously does not understand but about which he will find useful clarifications on Wikipedia – is applicable to Kleros' Court, this principle means that **a rule established in a previous legal case is binding on a court when deciding subsequent cases with similar issues or facts.**

In the present case, no rules have been established by the Kleros jurors in the context of the Airswap and Gnosis applications since no juror has been seized of this application.

This argument must therefore obviously be rejected, but must above all draw once again the jurors' attention to the Requester's fallacious intentions.

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AS A RESULT OF ALL THE ABOVE, WE ASK THE JURORS TO REJECT THE BADGE REQUEST.

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