

## Before the Arbiter for Financial Services

**Case ASF 030/2023**

**EN ('the Complainant')**

**vs**

**OKCOIN Europe Limited**

**(C 88193)**

**('OKX' or 'the Service Provider')**

### **Sitting of 3 November 2023**

#### **The Arbiter,**

Having seen **the Complaint** dated 06 March 2023,<sup>1</sup> relating to the Service Provider's alleged failure to prevent, stop or reverse the payment in crypto with a value equivalent to €34,500 made by the Complainant from her account held with OKX trading platform to a third party who was allegedly a fraudster.

#### **The Complaint**

The Complainant explained that between 21 July 2022 and 19 August 2022, she made 14 transfers from her Card account with Hanseatic Bank in Germany to her account with OKX. In all, she transferred circa €33,300,<sup>2</sup> and such funds were upon her instructions used to purchase digital asset USDT<sup>3</sup> which then transferred by Complainant to an unknown external wallet following directions received from the fraudsters.

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<sup>1</sup> Pages (P.) 1 – 206

<sup>2</sup> In her Complaint, Complainant quotes €35,853; €35,500 and €34,500; but P. 8 – 9 listing the 14 payments amount to approx. €33,300

<sup>3</sup> Tether (USDT) is the most dominant and widely traded stablecoin in the global crypto market today. The idea behind Tether was to provide a digital asset pegged directly to the US dollar and other fiat currencies thereafter, in order to provide traders and investors with an ecosystem to park or hold crypto assets away from the volatility of other cryptocurrencies.

She reported that fraudsters trading as BKYHYO Ltd blocked her account after a major transaction amount of €36,853.07 was transferred to them.

*“I have been using a language app (tandem) to improve my English skills, since I have been talking to ‘Yu’ for more than 2 months and participating in language parties where you meet online and talk about any topic. Korean ‘Yu’ works in the financial sector. I told him that I thought it was interesting and that I had already invested once. He then had the suggestion that he wanted to show me how Forex traded for a little extra income. Since I am not averse to the topic in principle, I agreed to test it on a demo account. We have a demo account with MT5 platform and made a few positive trades together. After that, we set up an account with broker Lotus, during which I was guided step by step by Yu and I bought cryptocurrency from the crypto platform OKX. USDT for €1,000 via credit card. The ‘Yu’ gave me via WhatsApp the Customer service contact ‘Duke Clinton’ as a contact person.*

*From my credit card of Hanseatic Bank I have bought USDT on the platform of OKX starting from amount €500 till €3,000 over approximately a period of 4 weeks from July 2022 till August 2022 as investment for a trading account. This is how approximately €35,500 transactions are seen in the account statements.*

*From the receiver bank OKCoin.com, money has gone to the OKX platform of BKYHYO Ltd ... Now the access to the Broker account of Lotus and BKYHYO Ltd. is denied. No access to investment as well”.<sup>4</sup>*

Complainant admits she has been a victim of a financial scam from fraudsters styled BKYJYO Ltd and pretending broker termed Lotus. She however blames the Service Provider for her loss because they have not made *“any attempts to recall my transactions due to money laundering thereby OKCoin.com violated its own regulations and laws, transferred my money to scammers and supported money laundering.”<sup>5</sup>*

The Complainant filed an elaborate multi-page (10 pages plus attachments) complaint letter dated 23 February 2023<sup>6</sup> to the MFSA as regulators of the

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<sup>4</sup> P. 15

<sup>5</sup> P. 18

<sup>6</sup> P. 14 - 23

Service Providers alleging the latter's responsibility for her loss *inter alia* for reasons that the Service Provider:

1. Made his infrastructure available to fraudsters
2. Failed to prevent the illicit transfer of wealth caused by the alleged fraud
3. Failed to perform adequate Anti-Money Laundering (AML) and Know Your Customer (KYC) procedures resulting in onboarding of fraudsters
4. Failed to follow FATF recommendations including obtaining details about the beneficiaries of her transfers
5. Failed to notice clear signals that the transfer effected by the Complainant to the fraudsters were suspicious and therefore had a duty to warn the Complainant that he was making himself vulnerable to a fraudulent scheme.
6. Failed to have monitoring systems to distinguish between normal activity and other activities which are not normal and suggest an illegal enterprise.
7. Allowed scammers to handle OKX platform
8. Aided and abetted, knowingly or with severe recklessness, the execution of fraudulent transactions as suffered by the Complainant possibly enriching themselves unjustly in the process.

As a remedy, the Complainant was expecting the Service Provider to make her whole on her alleged loss of €36,853.07.

### **Service Provider's reply**

The Service Provider's official reply was received on 25 March 2023<sup>7</sup> stating that:

*'This letter responds to your correspondence relating to your Case Reference Number: ASF 030/2023 with the date registered 06 March 2023 on behalf of an individual complaint by EN (hereinafter 'Complainant') to Okcoin Europe Limited (hereinafter 'Okcoin'). EN is seeking a refund in the amount of €36,853.07.*

*We have conducted an investigation into the Complainant's allegations against Okcoin. Our investigation has concluded, and the documentation provided by the Complainant supports that the transactions at issue were authorised and*

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<sup>7</sup> P. 212 - 214

*completed by the Complainant. Accordingly, for the reasons set forth in more detail below, we must respectfully deny the demand for compensation.*

*The Complainant maintained an account on the cryptocurrency exchange known as OKX. OKX, formally known as Aux Cayes Fintech Co. Ltd. ('OKX') is an affiliate of OKCoin Europe Ltd ('Okcoin Europe'). Both OKX and Okcoin Europe are part of a group of affiliated entities for which OKX Holdings Corporation ('OKX Holdings') is the ultimate parent. OKCoin Europe and OKX, as well as the other affiliated entities, provide intercompany services to one another.<sup>8</sup>*

*The Complainant has alleged that she began trading at OKX after meeting two online acquaintances named 'Yu' and 'Duke Clinton'. She states that those individuals instructed her to purchase USDT on the OKX exchange and then to transfer her USDT holdings to BKYHYO. She claims that she is now unable to access the assets that she transferred to BKYHYO.*

*It appears that the individuals who coaxed the Complainant into purchasing USDT deceived her in two important ways. First, they led her to believe that Mr Clinton was a 'broker' for OKX. He was not. OKX does not employ brokers or other individuals who provide one-on-one trading advice to customers. Second, they deceived the Complainant into believing that OKX was affiliated with BKYHYO. OKX is not affiliated with BKYHYO. In light of these facts, it appears that the Complainant was a victim of an online scam.*

*With respect to the Complainant's activity at OKX, OKX's records show there was no wrongdoing on the part of OKX or Okcoin. Indeed, the documents show that OKX followed the Complainant's instructions in a timely and accurate manner. The Complainant placed orders to purchase USDT on the OKX exchange on 16 different occasions. After each purchase, the USDT holdings were credited to her OKX account. Thereafter, the Complainant withdrew her USDT assets. No representative of OKX advised the Complainant to execute any of these transactions.*

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<sup>8</sup> Prior to December 31, 2022, Okcoin Europe and OKX did not share the same parent but shared certain control persons and resources. The December 31 change to the corporate structure was disclosed to the MFSA on 01 February 2023.

Importantly, as a customer of OKX, the Complainant agreed to the OKX Terms of Service. Section 4.16 of the Terms of Service specifically states:

*'We shall not ask for any password or private keys from our users, **nor shall we ask users to transmit any funds or digital assets as applicable. Accordingly, we shall not be responsible for any losses caused by your transmitter of funds or digital assets as applicable.**' (Emphasis added)*

Section 4.16 of the Terms of Service put the Complainant on notice that OKX would not direct her to transmit her assets away from the exchange. Furthermore, the OKX Terms of Service specifically state that while an order can be withdrawn or cancelled after it is submitted, **actions are irreversible once executed**. Thus, the Complainant was on notice that once OKX executed her request to transfer her assets away from OKX, that action could not be undone.<sup>9</sup>

Finally, under the Terms of Service the Complainant acknowledged that she would not use her account on behalf of any third party.<sup>10</sup>

Finally, Okcoin rejects the allegation that it failed to comply with AML laws. Okcoin acts to the highest standards that are required for any VFA Service Provider with respect to all applicable laws, including AML. Similarly, OKX conducts appropriate KYC on users who wish to utilise its services. In this case, however, the Complainant transferred her funds **away** from OKX to a third party entity. OKX does not conduct KYC on third parties who are not users of its services.

It is unfortunate that the Complainant fell victim to the scam that she describes. However, neither OkCoin nor OKX had any role in that scam. The only activity taken by OKX was directed by the Complainant and OKX executed her instructions in an accurate and timely manner. Given these circumstances, we must respectfully deny the request for compensation.<sup>11</sup>

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<sup>9</sup> Terms of Service, Section 5.7 reads: 'A User may withdraw or cancel an Order after it is submitted, as long as such Order has not been executed pending confirmation by the relevant Digital Asset network. Digital Assets which are the subject of a pending Trade will not be reflected in a User's Account, and shall therefore not be available for the User to trade. Users understand and agree that: (a) Trades are irreversible once Orders are executed ...' Section 5.9 states: users 'acknowledge and agree that (a) by entering a Trade on the OKX platform, a User is instructing OKX to carry out the Trade' and 'Users shall not claim against OKX regarding such Trades.'

<sup>10</sup> Terms of Service, Section 7.1 states: 'By registering an account with OKX, You agree and represent that You will use the Account for yourself, and not on behalf of any third party, unless approved by OKX.'

<sup>11</sup> P. 212 - 214

## **The hearing process**

The first hearing was held on 19 June 2023 where the Complainant basically repeated what she had already stated in her official complaint.

For the second hearing of 18 September 2023, the Service Provider submitted the Terms of Service accepted by the Complainant when she opened her account with OKX.<sup>12</sup>

Furthermore, they reiterated that OKX has no affiliation whatsoever with BKYHYO or that Mr Clinton was a broker for OKX. They argued that Complainant only turned to seek recovery of her scam losses from OKX after she failed to get any joy from Hanseatic Bank who, like OKX, also insisted that they were simply complying with Complainant's authenticated instructions. She contacted her Bank firstly on 25 August 2022, a week after her last scam transaction and, after several exchanges, the Bank refused her claim definitely on 14 November 2022 after a first refusal on 19 September 2022. It was only then that Complainant turned her guns on the Service Provider with her first dispute letter dated 14 December 2022 and a formal complaint sent on 16 January 2023.

The Service Provider made various references to the Terms of Service, specifically, articles 4.16, 5.7, 5.9 which explain that the Service Provider cannot be held liable for executing clients' instructions.

OKX strongly affirmed that *"they act to the highest standards that are required for any VFA service provider with respect to all applicable laws including anti-money laundering. Similarly, OKX conducts appropriate KYC on users who wish to utilise their services. In this case however, the Complainant transferred her funds away from OKX to a third-party entity. OKX does not conduct KYC on third parties who are not users of its services or even requested by law."*<sup>13</sup>

## **Final submissions**

Parties did not file any final submissions

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<sup>12</sup> P. 222 - 284

<sup>13</sup> P. 289

**Having heard the parties and seen all the documents and submissions made,**

**Further Considers:**

### **The Merits of the Case**

The Arbiter is considering the Complaint and all pleas raised by the Service Provider relating to the merits of the case together to avoid repetition and to expedite the decision as he is obliged to do in terms of Chapter 555<sup>14</sup> which stipulates that he should deal with complaints in *'an economical and expeditious manner'*.

### The Service Provider

OKCoin Europe Ltd is licensed by the Malta Financial Services Authority ('MFSA') as a VFA Service Provider as per the MFSA's Financial Services Register.<sup>15</sup> It holds a Class 4 licence granted on 02 November 2021, by the MFSA pursuant to Article 15 of the Virtual Financial Assets Act, 2018 ('VFAA'). It is authorised to deal with Experienced and Non-experienced clients.

### **Observations & Conclusion**

Summary of main aspects

The Complainant made a transfer of her digital assets (USDT) using the OKX platform. The said transfer was made to an external wallet address allegedly used by a fraudster. The transfer was in respect of a fake trading platform which the Complainant claimed was a scam.

In essence, the Complainant is seeking full reimbursement from OKX for the Service Provider's failure to prevent, stop or reverse the payment she made to the fraudster.

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<sup>14</sup> Art. 19(3)(d)

<sup>15</sup> <https://www.mfsa.mt/financial-services-register/>

**Class 4 Services –**

Custodian or Nominee Services

**Services** - The operation of a VFA Exchange

**Services** - Transfer Services

The Complainant *inter alia* claimed that the services provided by OKX were not correct given that it transferred the funds but failed to protect her from fraud and allowed their infrastructure to be used for fraudulent purposes.

On its part, the Service Provider is, in essence, claiming that it has no responsibility for the payment done by the Complainant as she herself had to verify the transaction information (as per the provisions of the Terms of Service) and that it was not possible for OKX to revoke or reverse the crypto withdrawal once the transaction was done on the blockchain.

### Applicable Regulatory Framework

As outlined above, OKX is the holder of a Class 4 VFAA licence granted by the Malta Financial Services Authority ('MFSA') under the Virtual Financial Assets Act, 2018 ('VFAA').

Apart from the relevant provisions under the VFAA, and the *Virtual Financial Assets Regulations, 2018 (L.N. 357 of 2018)* issued under the same act, OKX is also subject to the rules outlined in the Virtual Financial Assets Rulebook ('the VFA Rulebook') issued by the MFSA. The said rulebook complements the VFAA by detailing *inter alia* ongoing obligations applicable for VFA Service Providers.

Chapter 3 of the VFA Rulebook specifically includes the rules applicable for VFA Service Providers which such providers must adhere to.

The Arbiter further notes that in the year 2020, the MFSA has also issued a '*harmonised baseline guidance on Technology Arrangements*<sup>16</sup> applicable to its licence holders (including under the Virtual Financial Assets) titled '*Guidance on Technology Arrangements, ICT and Security Risk Management, and Outsourcing Arrangements*' ('the Guidance').

### **Further Considerations**

Having considered the circumstances of the case, including the submissions made and evidence provided, the Arbiter considers that there is no sufficient and

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<sup>16</sup> Guidance 1.1.2, Title 1, '*Scope and Application*' of the '*Guidance on Technology Arrangements, ICT and Security Risk Management, and Outsourcing Arrangements*'.



adequate basis on which he can uphold the Complainant's request for the reimbursement by the Service Provider of the sum the Complainant herself transferred to an external wallet from her crypto account. At no stage has the Complainant raised any doubt as to her having authenticated the transactions personally.

This is particularly so when taking into consideration various factors, including, the nature of the complaint, activities involved, and the alleged shortfalls as further detailed below:

- The Complaint involves a series of payments made by the Complainant from her account held with OKX to an allegedly fraudulent external trading platform causing the loss complained of.

The Complainant expected the Service Provider to prevent or stop her transactions. She claimed that the Service Provider had an obligation to warn her of potential fraud.

The Arbiter considers that no adequate and sufficient evidence has however emerged to substantiate the claim that the Service Provider could have itself prevented or stopped the transaction. This is also given the nature of the transaction which involved crypto assets, the type of service provided, and other reasons as outlined below.

- The exchange of fiat currency into crypto and withdrawals from one's crypto account, including withdrawals to an external wallet is part of the typical services provided to millions of users by operators in the crypto field such as the Service Provider.
- Furthermore, it has not been demonstrated nor emerged that the alleged fraudster, to whom the payment was made by the Complainant, was another OKX service and, thus, a client of the Service Provider in the first place. The transfer was rather indicated to have been done to an '*external wallet*' and hence the Service Provider had no information about the third party to whom the Complainant was transferring her crypto. Whilst making allegations about fraudsters handling the OKX platform, no evidence has

been provided about such claims or any involvement of the Service Providers with the fraudsters.

- The Complainant seems to have only contacted the Service Provider four months after the disputed transactions were already executed and finalised.<sup>17</sup>

Once finalised, the crypto cannot be transferred or reversed as specified in the Service Provider's Terms of Service (and as typically indicated on various other internet sites).<sup>18</sup>

Once a transaction is complete and accordingly is not in a pending state, the crypto transaction cannot be cancelled or reversed by the Service Provider.

On the basis of the facts presented during the case, the Arbiter could not conclude that the Service Provider failed to adhere to any specific obligation, or any specific regulatory requirements applicable to it, nor did he find any infringement of the Terms of Service applicable in respect to the service offered.

Allegations about non-compliance with AML regulations have not been supported by any reliable evidence and, in any case, such allegations should have been reported to the competent authorities, as the Arbiter has no competence on money laundering issues.

It is noted that in her formal complaint to the Service Provider, the Complainant imputes responsibility of the Service Provider for not respecting FATF recommendations regarding transfers of digital assets.

The Arbiter however notes that the crypto business is a relatively new area with no *harmonised regulation* existing at the time of the disputed transactions. A regulatory framework is still yet to be implemented for the first time in this field within the EU.<sup>19</sup> The FATF articles referred to are not

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<sup>17</sup> Crypto transactions may be processed and completed within a few minutes or hours (as indicated on various websites following a general search on the internet).

<sup>18</sup> E.G. <https://www.chargebackgurus.com/blog/chargebacks-more-volatile-complex-than-cryptocurrency>

<sup>19</sup> Provisional agreement has been reached on the EU's Markets in Crypto-Assets Regulation (MiCA) only in June 2022 - <https://www.consilium.europa.eu/en/press/press-releases/2022/06/30/digital-finance-agreement-reached-on-european-crypto-assets-regulation-mica/>

yet applicable in the EU and they are recommendations which the EU is still working to turn them into a formal binding directive by 2025.

Whilst this area of business remains unregulated in certain jurisdictions, other jurisdictions, like Malta, chose to regulate this field in the meantime and subject it to a home-grown national regulatory regime. While such regimes offer a certain amount of security to the consumer, since they are still relatively in their infancy, may not necessarily reflect the same standards and protections applicable in other sectors of the financial services industry which have long been regulated.

A person who chooses to venture into the area of crypto which, itself, is typically a highly speculative and risky market, needs to also be highly conscious of the potential lack of, or lesser, consumer protection measures applicable to this area of business, as compared to those found and expected in other established sectors of the financial services industry. EU regulatory bodies have issued various warnings to this effect over the past years.<sup>20</sup>

**The Complainant has unfortunately fallen victim of a scam done by a third party and no evidence resulted that this third party was in any way related to the Service Provider.**

- **Ultimately, the Arbiter does not consider that in the case in question, there is any clear and satisfactory evidence that has been brought forward, and/or emerged, during the proceedings of the case which could adequately corroborate that the Service Provider failed in any of the applicable obligations, contractually and/or arising from the VFA regulatory regime applicable in respect of its business.**

## **Decision**

**The Arbiter sympathises with the Complainant for the ordeal she suffered as a victim of a scam but, in the particular circumstances of this case, he cannot**

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MiCA is expected to enter into force in 2025 – <https://www.financemagnates.com/cryptocurrency/can-mica-take-europe-to-the-crypto-promised-land/>

<sup>20</sup> [https://www.eiopa.europa.eu/document-library/other-documents/crypto-assets-esas-remind-consumers-about-risks\\_en](https://www.eiopa.europa.eu/document-library/other-documents/crypto-assets-esas-remind-consumers-about-risks_en)  
[https://www.esma.europa.eu/sites/default/files/library/esa\\_2022\\_15\\_joint\\_esas\\_warning\\_on\\_crypto-assets.pdf](https://www.esma.europa.eu/sites/default/files/library/esa_2022_15_joint_esas_warning_on_crypto-assets.pdf)

**accept the Complainant's request for compensation for the reasons amply mentioned. The Arbiter is accordingly rejecting the Complaint.**

However, since trading and investing in crypto assets is a new area in the financial services sector, the Arbiter would like to make a few observations.

Apart from the high risks and speculative nature commonly associated in trading with crypto, a consumer venturing in this area needs to be conscious and aware of the additional risks being taken, also, due to other factors including the risks associated with the infancy of the regulatory regime applicable, if at all, to this sector in general, which may not provide the same safeguards and protection normally expected and associated with other well-regulated sectors of the financial services sector.

Moreover, given the increasing and alarming volume of scams and fraud existing in the crypto field, retail consumers need to, more than ever, be vigilant and take appropriate and increased measures to safeguard themselves as much as possible to minimise and avoid the risk of falling victim for scams and fraud.

**Retail unsophisticated investors would do well if before parting with their money they bear in mind the maxim that if an offer is too good to be true then in all probability it is not true.**

The Arbiter cannot help but notice the lack of or inadequate knowledge that many retail consumers have with respect to the various risks applicable to this area and on how to better protect themselves despite the rush by many to join and participate into this sector.

The Arbiter considers that much more needs to be done on this front, apart from in other areas, to better protect consumers. Service providers operating in this field need to also do their part and actively work to improve their onboarding process by evaluating the much-needed knowledge of benefits and risks for consumers who opt to venture into this field.<sup>21</sup>

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<sup>21</sup> It would not be amiss if at onboarding stage retail customers are informed of typical fraud cases involving crypto asset transfers and warned against get rich quick schemes.

**Given the circumstances of this case, each party is to bear its own legal costs of these proceedings.**

**Alfred Mifsud  
Arbiter for Financial Services**