

## **Before the Arbiter for Financial Services**

**Case ASF 010/2025**

**TR**

**(‘the Complainant’)**

**vs**

**Foris DAX MT Limited**

**(Reg. No. C88392)**

**(‘Foris’ or ‘**

**Service Provider’)**

### **Sitting of 28 November 2025**

#### **The Arbiter,**

Having seen the Complaint made against Foris DAX MT Limited relating to its alleged failure to warn client that his transfer of digital assets (which digital assets were funded by transfer of Euro currency from his bank account with Caisse D’Epargne – Ile de Franc to his account with Service Provider) to a fraudulent platform, has caused him a financial loss for which he is seeking compensation of €70,799.77<sup>1</sup>.

#### **The Complaint<sup>2</sup>**

In his complaint form to the Office of the Arbiter for Financial Services (‘OAFS’), the Complainant submitted that he was a victim of a cybercrime perpetrated by a fraudulent person who called herself Nathalie whom he met on dating site, Tinder. As their online encounter developed, Nathalie expressed proficiency

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<sup>1</sup> Page (p.) 3

<sup>2</sup> P. 1 - 8 with supporting documentation on P. 9 - 51.

with crypto investments and suggested a small investment on a platform **gate.vip**.

In his complaint, he presented extensive evidence of online conversations with Nathalie and WhatsApp conversations related to investments. However, as the Arbiter has no competence against Nathalie, whoever she may be, this documentation is quite irrelevant to this complaint as Foris was not a party to such knowledge and had no access to such knowledge at the time when the transfers complained of were being executed.

He claims that when his investments reached €40,000, he was pressured to increase his investments and, also, to make payments supposedly to pay taxes on fictitious profits before he would be able to withdraw his profits.

By the time Complainant realised he was being scammed and reported the matter to the police, he had already made the following payments:

| <b>Date</b>  | <b>Amount in EURO</b> | <b>Received by Service Provider</b> |
|--------------|-----------------------|-------------------------------------|
| 03.03.2023   | 199.31                | p. 58                               |
| 03.03.2023   | 1,100.00              | p. 58                               |
| 06.03.2023   | 6,000.00              | p. 59                               |
| 13.03.2023   | 3,000.00              | p. 59                               |
| 20.03.2023   | 10,000.00             | p. 61                               |
| 20.03.2023   | 10,000.00             | p. 61                               |
| 20.03.2023   | 10,000.00             | p. 61                               |
| 28.03.2023   | 10,000.00             | p. 62                               |
| 03.04.2023   | 4,500.00              | p. 63                               |
| 03.04.2023   | 10,000.00             | p. 63                               |
| 03.04.2023   | 6,000.00              | p. 64                               |
| <b>TOTAL</b> | <b>70,799.31</b>      |                                     |

These funds were invariably converted to USDT soon after their arrival in the crypto account and then transferred to two external wallets which were later discovered to be fraudulent and/or under the control of the scammers.

In total, between 04 March 2023 and 04 April 2023, USDT 73793.12 were transferred to such wallets spread across 5 withdrawals. At one stage, his fictitious investment account was showing USDT 58,000 earnings.<sup>3</sup>

In his complaint, he explained that when he realised he had been scammed, he filed a report with national police<sup>4</sup> on 10 April 2023.

He seeks compensation from Service Provider for his total loss of €70,799.

He maintains that Service Provider should have detected the irregularity of the transactions on his account and, therefore, held them responsible for the loss.

He claims that Foris should have protected him from sending his assets to the wallets controlled by the fraudsters and quoted various references to French law on this matter.<sup>5</sup>

Complainant denied he was guilty of negligence and explained that he had no intention of transferring his money for purposes other than investment and the Service Provider (whom he addresses as Bank/neobank) failed to note the unusual nature of the transfers.<sup>6</sup> He then quotes various transaction monitoring obligations related to banks and finally concludes as follows:

*“In this case, (Complainant) made no error ... He has not disclosed any personal data to third parties. As a result, (Service Provider) are required to return the funds ... as (Complainant) has not committed any fault”.<sup>7</sup>*

### **Service Provider’s reply**

Having considered in its entirety, the Service Provider's reply<sup>8</sup>

Where the Service Provider provided a summary of the events which preceded the Complainant’s formal complaint and explained and submitted the following:

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<sup>3</sup> P. 4

<sup>4</sup> P. 28 - 37

<sup>5</sup> P. 12 - 14

<sup>6</sup> *Ibid.*

<sup>7</sup> P. 12 -13

<sup>8</sup> P. 59 - 66 with attachments from p. 67 - 78

## 1. “Background

- *Foris DAX MT Limited (the ‘**Company**’) offers the following services: a crypto custodial wallet (the ‘**Wallet**’) and the purchase and sale of digital assets through the Wallet. Services are offered through the Crypto.com App (the ‘**App**’). The Wallet is only accessible through the App and the latter is only accessible via a mobile device.*
- *Our Company additionally offers a single-purpose wallet (the ‘**Cash Wallet**’) (formerly referred to as the Crypto.com Fiat (EUR) Wallet), which allows customers to top up and withdraw fiat currencies from and to their personal bank account(s). This service is offered by the legal entity Foris MT Limited.*
- *(The Complainant), e-mail address [xxx@hotmail.fr](mailto:xxx@hotmail.fr), became a customer of Foris DAX MT Limited through the Crypto.com App and was approved to use the Wallet on 3 March 2023.*
- *The Company notes that in the submitted complaints file, the Complainant’s representative has outlined the desired remedy as: (i) reimbursement for incurred financial losses.”<sup>9</sup>*

The Service Provider then provided a timeline for the transactions of the Complainant’s account with them. These included above listed inward transfers of Euro fiat currency collectively amounting to €70,799.31. These funds were then converted to crypto assets (USDT) and in total transferred USDT 73793.12 to two external wallets on the instructions of the Complainant between 04 March 2024 and 04 April 2024.<sup>10</sup>

The Service Provider concluded that:

*“Based on our investigation, the Company has concluded that we are unable to honor the Complainant’s refund request based on the fact that the reported transfers were made by the Complainant himself.*

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<sup>9</sup> P. 57

<sup>10</sup> P. 64

*While we sympathize with the Complainant and recognize that he may have been misled or induced into transferring funds to an alleged fraudster, it is important to note that these transfers were made solely at the Complainant's request. We must also emphasize that the addresses the funds were transferred to, do not belong to the Company and as such, any due diligence of the ownership of these addresses falls under the responsibilities of the provider of said wallets.*

*Unfortunately, Crypto.com cannot revoke any virtual asset withdrawals because blockchain transactions are fast and immutable.*

*The Complainant is solely responsible for the security and authenticity of all instructions submitted through his Wallet as outlined in the Foris DAX MT Limited Terms of Use.*

*Please see the relevant section of the Terms of Use for your reference:*

*QUOTE*

## *7.2 Digital Asset Transfers*

*...*

*(b) Crypto.com processes all Digital Asset Transfers according to the instructions received from you and does not guarantee the identity of any recipient. You should verify all transaction information prior to submitting instructions for a Digital Asset Transfer to Crypto.com as the Digital Asset Transfer may not be cancelled or reversed once processed by Crypto.com unless Crypto.com decides at its sole discretion that the transaction should be cancelled or reversed and is technically capable of such cancellation or reversal. You acknowledge that you are responsible for ensuring the accuracy of any instructions submitted to Crypto.com and that any errors may result in the irreversible loss of your Digital Asset.*

*...*

*UNQUOTE*

*In summary, it seems conceivable that the Complainant has been the victim of an alleged scam. However, due to the nature of the external wallet and the fact*

*that it is not hosted or operated by Foris DAX MT, we can neither confirm nor deny this.*

*Whilst we fully empathize with (the Complainant) in this regard, it cannot be overlooked that he had willingly, transferred his virtual asset holdings from his Crypto.com Wallet to external wallet addresses which he nominated.*

*As outlined above in the Foris DAX MT Limited Terms of Use, the Complainant is solely responsible for the security and authenticity of all instructions submitted through the Crypto.com App and, as such, the Company cannot accept liability for the veracity of any third party or for the instructions received from the Complainant themselves.”<sup>11</sup>*

## **Hearings**

For the first hearing on 16 May 2025, the Complainant failed to make presence and was represented by his French counsel.

This raised objections from the Service Provider who, in the absence of possibility to cross-examine the evidence submitted by Complainant, claimed that such evidence should not be considered.

The Arbiter ruled that in the absence of Complainant making himself available for cross-examination, he is taking a clear position that the payments and transfers complained of were executed with the full authority of the Complainant, and the Service Provider need only defend themselves from the claim that through their monitoring systems, they should have stopped the transfers to external wallets controlled by the fraudsters as there were clear signs of fraud.

Complainant’s lawyers assented to such ruling whilst Service Provider wished to register the following statement:

*“I would like to make a short statement on the absence of the complainant.*

*I contest the fact that the complainant is not present as it is a well-established principle at law that anyone who is initiating proceedings must actively participate in those proceedings. The fact that the complainant is not present,*

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<sup>11</sup> P. 65 - 66

*consequently, gives the regrettable status of the service provider that it is unable to effectively address and challenge the facts made in the complaint and the allegations also made in the complaint and, thereby, hindering Foris DAX the opportunity to protect and uphold its name and reputation.*

*The purpose of cross-examination is not only a contestation, but it is also evidence in itself. So, Foris DAX and I, as the representative, would like to make it amply clear that this is not an acceptable position, and it is being contested for all intents and purposes.*

*I cannot make a cross-examination, not even on the transaction documents. It is what it is. I cannot ask the lawyer anything.”<sup>12</sup>*

The Arbiter explained that as Complainant has accepted that he had personally authorised the transfers subject of this complaint<sup>13</sup>, the issue of not being at fault because he did not disclose his secret credentials is irrelevant. The relevant issue is whether the Service Provider could or should have anything, according to law and regulations, to identify the fraud and stop the payments in spite of their being fully authorised.

At the hearing, the Arbiter requested the Complainant’s representative to file a copy of the fraud report made to the French Authorities,<sup>14</sup> and to inform whether a complaint was filed against Société Générale. The Complainant’s representative confirms that such complaint had been made by sending a formal notice and are awaiting the appointment of a mediator.<sup>15</sup>

A second hearing was held 10 June 2025 for the evidence of the Service Provider.

The Complainant made presence and declared he had nothing to add to the evidence already submitted.

The Service Provider’s lawyer requested postponement of their evidence and a rescheduling of the hearing so that she could cross-examine the Complainant on his evidence. This request was granted.<sup>16</sup>

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<sup>12</sup> P. 81

<sup>13</sup> P. 80

<sup>14</sup> This was filed subsequently p. 84 - 94

<sup>15</sup> P. 80

<sup>16</sup> P. 95 - 96

A third hearing was held on 22 September 2025 for cross-examination of Complainant, but his legal representative informed he will not be attending. The Arbiter protested that this attitude rendered the hearing of 10 June 2025 irrelevant and a waste of time.

The Service Provider then proceeded with their evidence and stated:

***"I just want a clarification.***

***So, the first time, the complainant didn't appear, and the legal advisors gave their hearsay.***

***And then, he appeared and said, 'I don't have anything to add'.***

***So, are we going to consider that as just hearsay? Because he's not here to be cross-examined personally again.***

***So, under my assumption, whatever he said and confirmed cannot be cross-examined because he's not here again.***

***So, again, I'm going to consider it as hearsay.***

***The Arbiter confirms that at the second hearing, the complainant said he had nothing to add. The Arbiter could not allow the service provider to proceed with their evidence before making the cross-examination of what the complainant had said in his complaint.***

***The Arbiter states that now we are back to the situation before this hearing. So, basically, the second hearing of 10 June 2025 now becomes irrelevant.***

***Solemn Declaration of Pema Fung:***

***Without repeating in detail the transactions that have been filed in the service provider's reply, we would like to highlight that a number of transactions occurred between the 4<sup>th</sup> of March and the 4<sup>th</sup> of April 2023.***

***As agreed by the complainant's legal advisors at the first hearing, these transactions and the withdrawals, were all initiated and executed under the full authority or apparent consent of the complainant using his valid access credentials to his account.***

***These transactions, the withdrawals, were all made to two external wallets. Due to the nature of these external wallets not being operated, maintained, or***

***controlled by the service provider, they accordingly fall outside of the scope of our service duties.***

***We would also like to highlight the fact that upon signing up for the complainant's Crypto.com account, he expressly agreed by ticking a box to agree to our terms and conditions, which clearly state that he, as the account holder, bears all responsibility for transactions executed using his credentials, including ones that they personally authorised, or, in other cases, where they have given authorisation to others to make these transactions through their account.***

***The service provider would also like to highlight that at the time of these transactions, these withdrawals, the service provider had no knowledge or indication that the receiving wallets were associated with any fraudulent activity.***

***Nor had any reports or alerts been generated to us in this regard.***

***Finally, we would like to highlight that there was no information available at the time of the withdrawals to the service provider that gave rise to any reasonable or any suspicion of fraud which had necessitated any action on the service provider under any of its general fiduciary obligations.***

***Ms Samanta Roskach declares that she has no questions for the service provider.”<sup>17</sup>***

Complainant’s representative did not cross-examine the evidence.

## **Final Submissions**

In their final submissions, the parties basically repeated what had already emerged in the complaint, the reply and the hearing proceedings.

## **Having heard the parties**

## **Having seen all the documents**

## **Considers**

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<sup>17</sup> P. 98 -99

In failing to give proper evidence before the Arbiter and denying the Service Provider their right for a proper cross-examination of the case made in his complaint, the Complainant has substantially prejudiced his case. As the identity of the beneficial owners of the external wallets' recipients of the claimed fraudulent payments cannot be established, it was necessary to hear an emphatic negation from the Complainant that he was not a party to such wallets.

Such emphatic negation was only forthcoming from the side of the Service Provider.

### Applicable Regulatory Framework

Foris DAX was, at the time of the events leading to this complaint, the holder of a Class 3 VFSA licence granted by the Malta Financial Services Authority ('MFSA') under the Virtual Financial Assets Act, 2018 ('VFSA').

Apart from the relevant provisions under the VFSA, and the *Virtual Financial Assets Regulations, 2018 (L.N. 357 of 2018)* issued under the same act, Foris DAX was also subject to the rules outlined in the Virtual Financial Assets Rulebook ('the VFA Rulebook') issued by the MFSA. The said rulebook complements the VFSA 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>18</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').

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<sup>18</sup> Guidance 1.1.2, Title 1, '*Scope and Application*' of the '*Guidance on Technology Arrangements, ICT and Security Risk Management, and Outsourcing Arrangements*'.

## Further Considerations

Having considered the particular circumstances of the case including the submissions made and evidence provided, the Arbiter considers that there is no sufficient and adequate basis on which he can uphold the Complainant's request for the reimbursement by the Service Provider of the sum the Complainant himself transferred to an external wallet from his crypto account. At no stage has the Complainant raised any doubt as to his 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 his account held with Foris DAX to an unknown external wallet.

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 transactions 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, in its own right, 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 *Crypto.com* App user 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 his crypto.

- The Complainant seems to have only contacted the Service Provider on 13 July 2023,<sup>19</sup> some 3 months after the last of the disputed transactions was already executed and finalised.<sup>20</sup>

Once finalised, the crypto cannot be cancelled or reversed as specified in the Service Provider's Terms and Conditions of Use (and as typically indicated on various other internet sites).<sup>21</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 as provided for and warned in the Terms and Conditions of Foris DAX.

Based on 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 and Conditions applicable in respect to the service offered.

In arriving at his decision, the Arbiter considered the following aspects:

i. AML/CFT Framework

Further to the Prevention of Money Laundering Act (Cap. 373) and Prevention of Money Laundering and Funding of Terrorism Regulations ('PMLFTR'), the Financial Intelligence Analysis Unit (FIAU) issued Implementing Procedures including on the *'Application of Anti-Money Laundering and Countering the Funding of Terrorism Obligations to the Virtual Financial Assets Sector'*.<sup>22</sup> These are *'sector-specific Implementing Procedures [which] complement the Implementing Procedures – Part I [issued by FIAU] and are to be read in conjunction therewith'*.<sup>23</sup> Section 2.3 of these Implementing Procedures detail the monitoring and transaction records obligations of VFA licensed entities.

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<sup>19</sup> P. 9 - 14 with attachments

<sup>20</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>21</sup> E.G. <https://www.chargebackgurus.com/blog/chargebacks-more-volatile-complex-than-cryptocurrency>

<sup>22</sup> [https://fiaumalta.org/app/uploads/2020/09/20200918\\_IPsII\\_VFAs.pdf](https://fiaumalta.org/app/uploads/2020/09/20200918_IPsII_VFAs.pdf)

<sup>23</sup> Page 6 of the FIAU's Implementing Procedures on the *'Application of Anti-Money Laundering and Countering the Funding of Terrorism Obligations to the Virtual Financial Assets Sector'*

It is noted that the VFA Act, mainly imposes transaction monitoring obligations on the Service Provider for the proper execution of their duties for Anti Money Laundering ('AML') and Combating of Financing of Terrorism ('CFT') obligations in terms of the local AML and CFT legislative framework.

Failures of the Service Provider in respect of AML/CFT are not in the remit of the OAFS and should be addressed to the FIAU. In the course of these procedures, no such failure was indeed alleged.

The Arbiter shall accordingly not consider compliance or otherwise with AML/CFT obligations in this case.

ii. MiCA and the Travel Rule

As to the identification of the recipient of the funds, it is noted that MiCA<sup>24</sup> and Travel Rule<sup>25</sup> obligations which entered into force in 2025 and which give more protection to consumers by having more transparency of the owners of the recipient wallets were not applicable at the time of the events covered in this Complaint which happened in 2023.

The Arbiter shall thus not consider the MiCA provisions and Travel Rule obligations for the purposes of this Complaint.

iii. Other - Technical Note

A Technical Note (issued in 2025) with guidance on complaints related to pig butchering was recently published by the Arbiter. In respect of VFA licensees the Technical Note states as follows:

*"Virtual Financial Assets Service Providers (VASPs)*

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<sup>24</sup>EU Directive 2023/1114 on markets in crypto assets <https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=celex:32023R1114>

<sup>25</sup> EU Directive 2023/1113 <https://eur-lex.europa.eu/legal-content/AUTO/?uri=CELEX:32023R1113&qid=1740401464257&rid=1> and EBA Guidelines on Travel Rule <https://www.eba.europa.eu/sites/default/files/2024-07/6de6e9b9-0ed9-49cd-985d-c0834b5b4356/Travel%20Rule%20Guidelines.pdf>

*VASPs should be aware that with the coming into force of Regulation (EU) 2023/1113 and the Travel Rule Guidelines<sup>26</sup> their obligation to have reliable records on the owners of external (unhosted) wallets increases exponentially as from 30 December 2024.*

*Arguments that they have no means of knowing who are the owners of external wallets which have been whitelisted for payments by their client will lose their force.*

*VASPs have been long encouraged by the Office of the Arbiter (in decisions dating back from 2022),<sup>27</sup> for the devise of enhanced mechanisms to mitigate the occurrence of customers falling victims to such scams.*

*Furthermore, in the Arbiter's decisions of recent months there is a recommendation that VASPs should enhance their on-boarding processes where retail customers are concerned warning them that custodial wallets may be used by scammers promoting get-rich-quick schemes as a route to empty the bank accounts of retail customers and disappear such funds in the complex web of blockchain anonymous transactions.<sup>28</sup>*

***Compliance with such recommendations or lack thereof will be taken into consideration in future complaint adjudications.***<sup>29</sup>

The Arbiter will not apply the provisions of the Technical Notes retroactively.

**Hence, for the avoidance of any doubt, the said Technical Note is not applicable to the case in question.**

iv. Duty of Care and Fiduciary Obligations

It is noted that Article 27 of the VFA Act states:

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<sup>26</sup> Guidelines on information requirements in relation to transfers of funds and certain crypto-assets transfers under Regulation (EU) 2023/1113 - EBA/GL/2024/11 of 04/07/2024

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023R1113>

<https://www.eba.europa.eu/publications-and-media/press-releases/eba-issues-travel-rule-guidance-tackle-money-laundering-and-terrorist-financing-transfers-funds-and>

<sup>27</sup> Such as Case ASF 158/2021

<sup>28</sup> Such as Case ASF 069/2024

<sup>29</sup> Emphasis added by the Arbiter

*“27. (1) Licence holders shall act honestly, fairly and professionally and shall comply with the requirements laid down in this Act and any regulations made and rules issued thereunder, as well as with other legal and regulatory requirements as may be applicable.*

***(2) A licence holder shall be subject to fiduciary obligations as established in the Civil Code (CAP 16) in so far as applicable.”<sup>30</sup>***

Article 1124A (1)(a) of the Civil Code (Chapter 16 of the Laws of Malta), in turn further provides the following:

***“1124A. (1) Fiduciary obligations arise in virtue of law, contract, quasi-contract, unilateral declarations including wills, trusts, assumption of office or behaviour whenever a person (the "fiduciary") –***

***(a) owes a duty to protect the interests of another person and it shall be presumed that such an obligation where a fiduciary acts in or occupies a position of trust is in favour of another person;...”<sup>31</sup>***

It is further to be pointed out that one of the High-Level Principles outlined in Section 2, Title 1 ‘General Scope and High-Level Principles’ Chapter 3, Virtual Financial Assets Rules for VFA Service Providers of the VFA Rulebook, that applied to the Service Provider at the time of the disputed transactions in 2022, provides that:

***“R3-1.2.1 VFA Service Providers shall act in an ethical manner taking into consideration the best interests of their clients and the integrity of Malta’s financial system.”***

It is also noted that Legal Notice 357 of 2018, Virtual Financial Assets Regulations, 2018 issued under the VFA Act, furthermore, outlined various provisions relevant and applicable to the Service Provider at the time. Article 14 (1) and (7) of the said Regulations, in particular, which dealt with the ‘Functions and duties of the subject person’ provided the following:

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<sup>30</sup> Emphasis added by the Arbiter

<sup>31</sup> Emphasis added by the Arbiter

*“14. (1) A subject person having the control of assets belonging to a client shall safeguard such assets and the interest of the client therein.*

*...*

*(7) The subject person shall make appropriate arrangements for the protection of clients' assets held under control and shall ensure that such assets are placed under adequate systems to safeguard such assets from damage, misappropriation or other loss and which permit the delivery of such assets only in accordance with the terms and conditions of the agreement entered into with the client.”*

The Arbiter is of the view that for the general fiduciary obligations to apply in the context of the VFA ACT there must be something which is truly out of the ordinary and which should really act in a conspicuous manner as an out of norm transaction which triggers the application of such general fiduciary duties. No such out of norm event can be claimed during the short period of one month when the fraudulent transfers were happening in relatively consistent quantity values in funds transferred from Complainant's account with his French Bank.

The Arbiter thus considers that the Service Provider did not breach, in terms of the provisions outlined in this decision, the duty of care and fiduciary obligations towards its customer, the Complainant, when considering the particular circumstances of this case.

## **Decision**

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

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.

The Arbiter notes that the crypto business is a relatively new area with no *harmonised regulation* existed at the time of the disputed transactions. An EU

regulatory framework was only recently implemented effective for the first time in this field in 2025.<sup>32</sup>

Whilst this area of business had remained 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.

In fact, the Arbiter notes that in his complaint, the Complaint refers to provisions of the PSD 2,<sup>33</sup> as translated into French legislation, which whilst applying to banks are not applicable to VFA licensees. He also often wrongly addresses Foris as a bank which clearly, they are not.

The Arbiter was informed that similar claims for compensation was made on Complaint's French Bank on the basis that they had an obligation to intervene and stop Complainant from transferring his funds to a crypto exchange, given the much longer relationship between Complainant and his Bank permitting them to view in better context the claimed abnormality of such payments.

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>34</sup>

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<sup>32</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/>

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

<sup>33</sup> EU Directive 2015 - 2366

<sup>34</sup> [https://www.eiopa.europa.eu/document-library/othis-documents/crypto-assets-esas-remind-consumers-about-risks\\_en](https://www.eiopa.europa.eu/document-library/othis-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)

**The Arbiter sympathises with the Complainant for the ordeal he may have suffered as a victim of a scam but, in the particular circumstances of this case, he cannot accept the Complainant's request for compensation for the reasons amply mentioned. The Arbiter is accordingly rejecting the Complaint.**

**Each party is to bear its own legal costs of these proceedings.**

**However, the Arbiter warns that for new complaints registered after September 2025, in cases where Complainants fail to attend hearings to defend their complaint without valid reasons, they will be obliged to settle the fees of the respondent service providers.**

**Alfred Mifsud**

**Arbiter for Financial Services**

### **Information Note related to the Arbiter's decision**

#### *Right of Appeal*

The Arbiter's Decision is legally binding on the parties, subject only to the right of an appeal regulated by article 27 of the Arbiter for Financial Services Act (Cap. 555) ('the Act') to the Court of Appeal (Inferior Jurisdiction), not later than twenty (20) days from the date of notification of the Decision or, in the event of a request for clarification or correction of the Decision requested in terms of article 26(4) of the Act, from the date of notification of such interpretation or clarification or correction as provided for under article 27(3) of the Act.

Any requests for clarification of the award or requests to correct any errors in computation or clerical or typographical or similar errors requested in terms of article 26(4) of the Act, are to be filed with the Arbiter, with a copy to the other party, within fifteen (15) days from notification of the Decision in terms of the said article.

In accordance with established practice, the Arbiter's Decision will be uploaded on the OAFS website on expiration of the period for appeal. Personal details of the Complainant(s) will be anonymised in terms of article 11(1)(f) of the Act.