

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

**Case ASF 025/2025**

**QU**

**(‘the Complainant’)**

**vs**

**Foris DAX MT Limited**

**(Reg. No. C88392)**

**(‘Foris’ or ‘the Service Provider’)**

**Sitting of 28 August 2025**

**The Arbiter,**

Having seen the Complaint made against Foris DAX MT Limited relating to its alleged failure to warn client that her transfer of digital assets (which digital assets were funded by transfer of Euro currency from her Bank account to her account with Service Provider) to a fraudulent platform, has caused her a financial loss for which she is seeking compensation of €78,700<sup>1</sup>.

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

In her Complaint Form to the Office of the Arbiter for Financial Services (‘OAFS’), the Complainant submitted that she was a victim of a cybercrime perpetrated by a fraudulent investment platform NIXSE.com through *Crypto.com* whose misconduct allowed the fraudster operating the fraudulent platform to steal her money.

She stated that following her request for investment information on [www.analustesreels.fr](http://www.analustesreels.fr), she was contacted by traders from NIXSE who helped

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<sup>1</sup> P. 3

<sup>2</sup> P. 1 - 7 with supporting documentation on P. 8 - 53.

her instal software ANYDESK and ATOMIXCHAT supposedly to help better communications with the trader but, in fact, giving full access to the trader to her accounts with banks, etc.

In her Complaint, she presented extensive documentation of contracts and correspondence exchanged with NIXSE explaining the investment. However, as the Arbiter has no competence against NIXSE, this documentation is quite irrelevant to this Complaint as Foris was not a party to such contracts and had no access to such knowledge at the time when the transfers complained of were being executed.

In July 2023, assisted by the scammers, Complainant opened an account with Crypto.com (brand name of the Service Provider) and she started funding such account with following Euro transfer from her bank account with Société Générale in France as follows:

<b>Date</b>	<b>Amount in EURO</b>	<b>Received by Service Provider</b>
24.07.2023	4,000	p. 60
25.07.2023	11,200	p. 60
26.07.2023	15,000	p. 60
01.08.2023	15,000	p. 61
11.09.2023	15,000	p. 62
12.09.2023	15,000	p. 62
15.03.2024	3,500	p. 63
<b>TOTAL</b>	<b>78,700</b>	

In her Complaint, she explained that she realised she had been scammed as whilst her investment account fabricated by fraudsters showed she had a balance of €222,921, she was denied withdrawal on 23 August 2024 after she was informed that she had to make more investments before withdrawal was permitted.

She filed a report with Toulouse Judicial Court<sup>3</sup> on 14 October 2024, where there are listed total payments of €188,700 being €110,000 more than the payments listed in the Complaint. These seem to consist of 6 payments of €15,000 each, 1 payment of €10,000 and 2 payments of €5,000 ( $[6 \times 15k = 90k] + 10k + [2 \times 5k = 10k] = 110k$ ) which seem losses suffered by Complainant through channels other than Crypto.com, in addition to those covered in this Complaint.

She seeks compensation from Service Provider for her total loss of €78,700.

She maintained that Service Provider should have detected the irregularity of the transactions on her account and, therefore, held them responsible for her loss.

She claims that Foris should have protected her from sending her assets to the wallets controlled by the fraudsters and quoted various references to French law on this matter.<sup>4</sup>

Complainant denied she was guilty of negligence and explained that she had no intention of transferring her money for purposes other than investment and Service Provider (whom she addresses as Bank) failed to note the unusual nature of the transfers.<sup>5</sup> She then quotes various transaction monitoring obligations related to banks and finally concludes as follows:

*“In this case, (Complainant) did not make any mistake. Furthermore, she did not disclose any personal data to third parties. Consequently, (Service Provider) must reimburse the funds to the client as she has committed no wrongdoing”.*<sup>6</sup>

### **Service Provider’s reply**

Having considered in its entirety the Service Provider's reply,<sup>7</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. 81 - 90

<sup>4</sup> P. 10 -13

<sup>5</sup> *Ibid.*

<sup>6</sup> P. 12

<sup>7</sup> P. 59 - 66 with attachments from p. 67 - 74

## 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 [xxxxx@gmail.com](mailto:xxxxx@gmail.com), became a customer of Foris DAX MT Limited through the Crypto.com App and was approved to use the Wallet on 18 July 2023.*
- *The Company notes that in the submitted complaints file, the Complainant’s representative has outlined her desired remedy as: (i) reimbursement for incurred financial losses.”<sup>8</sup>*

The Service Provider then provided a timeline for the transactions of the Complainant’s account with them. These included above listed 7 inward transfers of Euro fiat currency collectively amounting to €78,700. These funds were then converted to crypto assets (USDT and POLYX).

The POLYX were eventually converted to USDT and, in total, transferred USDT 84297.61 to an external wallet on the instructions of the Complainant between 28 July 2023 and 20 March 2024.

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 herself.*

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<sup>8</sup> P. 59

*While we sympathize with the Complainant and recognize that she 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 her 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 she had willingly, transferred her virtual asset holdings from her Crypto.com Wallet to external wallet addresses which she 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>9</sup>*

## **Hearings**

During the hearings, the Complainant failed to make presence and was represented by her 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 herself 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>9</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.***

***With regard to what Miss XXX has said, I feel that I am not going to cross-examine hearsay, so it is pointless asking any questions.”<sup>10</sup>***

The Arbiter explained that as Complainant has accepted that she had personally authorised the transfers subject of this Complaint<sup>11</sup>, the issue of not being at fault because she did not disclose her secret credentials is irrelevant. The relevant issue is whether the Service Provider could or should have done 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>12</sup>, and to inform whether a complaint was filed against Société Générale. The Complainant’s representative confirms that such complaint had been made<sup>13</sup>.

During the second hearing of 10 June 2025, the Service Provider submitted:

***“The complainant became a client and user of Crypto.com App on 18 June 2023.***

***The disputed transactions in question all relate to withdrawals of cryptocurrency by the name of USDT, a stablecoin and occurred between various transactions from 28 July 2023 and 20 March 2024. All these***

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<sup>10</sup> P. 77 - 78

<sup>11</sup> P. 76

<sup>12</sup> This was filed subsequently p. 81 - 90

<sup>13</sup> P. 78

***withdrawals were made to the same wallet address, which is featured in our pleadings and reply to the complainant's complaint.***

***The wallet address in question is not one that is serviced by Crypto.com and from all indications, from our own investigation, is a non-custodial wallet which is not operated by any centralised exchange.***

***In the present case, the complainant has admitted that the transactions were executed on her behalf. There is no evidence to suggest that the service provider has executed any of these transactions in an improper manner. All the transactions were executed pursuant to instructions received by the complainant or her device. The device is, as always, protected by a passcode and password which is only available to the user.***

***With that in mind, we would say that these transactions have been properly performed, have been executed according to the instructions of the complainant and, as such, there are no grounds for the complainant to complain that these transactions are those which the service provider must be responsible for.***

***From the dates of the transactions which start in July 2023 and end in March 2024, we would also bring up that warnings of various natures were brought to the attention of the complainant during the withdrawal proceedings. Firstly, at any point in which a new wallet is added to the Crypto.com App for withdrawal, a warning is presented to advise users that they should not be making withdrawals to people that they do not trust and to platforms that are promising, unrealistically high returns. And, as always, a warning is added for reference to an article on the Crypto.com website, which highlights common scams and scam patterns.***

***This same or similar warning is also brought again in respect of each transaction which occurs before each of the withdrawals are made. So that's to say that the complainant had various warnings over the course of their transactions from 28 July 2023 to 20 March 2024. And, as such, a further step has been taken by Crypto.com to warn its users of the presence and the prevalence of scams and transactions of a malicious nature that they themselves should be careful of.***

***With all these factors in mind, the warnings provided by the service provider, the nature of the transactions executed, as well as the fact that all transactions***



***on the blockchain are of course irreversible and immutable from the moment they're executed, along with the fact that we were not warned previously of any complaints from the complainant regarding these transactions. There were no circumstances or reasons for Crypto.com to question the nature of the transactions had been anything but proper.***

***So, with that in mind, we would say that the service provider does not have any reason to compensate the complainant in these circumstances. The complainant has no grounds for their application.***

***That is the evidence of the service provider.”<sup>14</sup>***

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

Service Provider requested Arbiter's consent, which was given, to attach with their final submissions copies of the warnings given to Complainant every time she made a transfer to the external wallet and when originally the external wallet had been whitelisted by the Complainant.

### **Final Submissions**

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

Service Provider did not submit copies of the warnings. The Arbiter is, however, familiar with such warnings from evidence collected in similar complaints.

### **Having heard the parties**

### **Having seen all the documents**

### **Considers**

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 her complaint, the Complainant has substantially prejudiced her 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 she was not a party to such

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<sup>14</sup> P. 91 - 92

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>15</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 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 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.

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<sup>15</sup> Guidance 1.1.2, Title 1, '*Scope and Application*' of the '*Guidance on Technology Arrangements, ICT and Security Risk Management, and Outsourcing Arrangements*'.

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 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 her crypto.
- The Complainant seems to have only contacted the Service Provider on 25 October 2024,<sup>16</sup> some 7 months after the last of the disputed transactions were already executed and finalised.<sup>17</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>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

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<sup>16</sup> P. 8 - 12 with attachments

<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>

Provider as provided for and warned in the Terms and Conditions of Foris DAX.

As indicated by the Service Provider, Clause 7.2(b) of its Terms and Conditions regarding the use of the Crypto.com App Services specifies that:

*“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 ...”.*<sup>19</sup>

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 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>20</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>21</sup> Section 2.3 of these Implementing Procedures detail the monitoring and transaction records obligations of VFA licensed entities.

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

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<sup>19</sup> P. 65

<sup>20</sup> [https://fiaumalta.org/app/uploads/2020/09/20200918\\_IPsII\\_VFAs.pdf](https://fiaumalta.org/app/uploads/2020/09/20200918_IPsII_VFAs.pdf)

<sup>21</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*’

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>22</sup> and Travel Rule<sup>23</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 largely 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)*

*VASPs should be aware that with the coming into force of Regulation (EU) 2023/1113 and the Travel Rule Guidelines<sup>24</sup> their obligation to have reliable*

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<sup>22</sup>EU Directive 2023/1114 on markets in crypto assets <https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=celex:32023R1114>

<sup>23</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>

<sup>24</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>

*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>25</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>26</sup>*

***Compliance with such recommendations or lack thereof will be taken into consideration in future complaint adjudications.*"<sup>27</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:

*"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.*

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<sup>25</sup> Such as Case ASF 158/2021

<sup>26</sup> Such as Case ASF 069/2024

<sup>27</sup> Emphasis added by the Arbiter

***(2) A licence holder shall be subject to fiduciary obligations as established in the Civil Code (CAP 16) in so far as applicable.***<sup>28</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>29</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:

***“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.***

...

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<sup>28</sup> Emphasis added by the Arbiter

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

*(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 some seven months when the fraudulent transfers were happening in relatively consistent quantity values in funds transferred from Complainant's account with her 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 is 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.

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>30</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 her Complaint, the Complainant refers to provisions of the PSD 2,<sup>31</sup> as translated into French legislation which whilst applying to Banks, are not applicable to VFA licensees. She also often wrongly addresses Foris as a bank which clearly they are not.

The Arbiter was informed that similar claims for compensation were made on Complainant's French Bank on the basis that they had an obligation to intervene and stop Complainant from transferring her funds to a crypto exchange, given the much longer relationship between Complainant and her 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>32</sup>

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<sup>30</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>31</sup> EU Directive 2015 - 2366

<sup>32</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 she 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.**

**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.