

Before the Arbiter for Financial Services

Case ASF 141/2021

MF ('the Complainant')

vs

Foris DAX MT Limited (C 88392)

('Foris DAX' or 'the Service Provider')

Sitting of the 28 September 2022

The Arbiter,

Having seen **the Complaint** relating to the Service Provider's alleged failure to prevent, stop or reverse the payment in crypto (USDT) made by the Complainant from her account held with *Crypto.com* to a third-party who was allegedly a fraudster.

The Complaint

The Complainant explained that on 11 August 2021, a transaction for the amount of 2,780 USDT (equivalent to EUR2,400) was made on her account.

She informed Foris DAX of this transaction and explained that this transaction was made because of a scam and her funds were sent to a fraudulent wallet.

The Complainant explained that this transaction resulted further to an email she received from someone who imitated a bank, where she was instructed to pay the said funds due to a business transaction.

The Complainant noted that, at that time, she was unaware she was being scammed.

She explained that she was a victim of a scam and when this was brought to the Service Provider's attention, no assistance was forthcoming notwithstanding the large amount of money lost to the fraudster.

The Complainant submitted that had this transaction been looked into further, it would have been apparent that this was an unusual transaction which was never made in her crypto account before.

She further submitted that the Service Provider had no interest in her circumstances as a customer, and there was no means of retrieving the money or offer a reimbursement of the funds lost.

The Complainant noted that she was informed that nothing could be done about this situation, and indeed felt nothing had been done to help her.

The Complainant provided a link to the terms and conditions of the service which was supposed to be provided.¹

A copy of the comprehensive and detailed formal complaint that was made by the Complainant with the Service Provider was also attached to the Complaint Form.²

In her formal complaint with the Service Provider, the Complainant provided *inter alia* a detailed explanation of the merchant's fraud scheme and the alleged misconduct of the Service Provider. Her claims against the Service Provider included the following:

- That Foris DAX '*completely failed to adequately investigate the fraudster's accounts*' and '*willfully blinded itself to obvious red flags*';³
- That suspicions should have been raised at Foris DAX in respect of '*the unusual activity taking place in [her] account*' with the Service Provider having '*at best merely and insufficiently performed a minimal hasty and haphazard review of the account(s) held by the fraudsters or possibly asked only a few trivial questions regarding the suspicious activities, and at worst,*

¹ P. 3 – https://crypto.com/document/eu_card_uk

² P. 7-16

³ P. 10

*shut [its] eyes completely rather than being careful, methodical and vigilant’;*⁴

- That had the necessary checks been made, the Service Provider ‘*would probably have realized that the funds were associated with fraud and financial crime, rather than some other legitimate revenue/activity*’;⁵
- That Foris DAX sought ‘*no adequate information and/or documentation*’ and ‘*no appropriate safeguards were implemented*’;⁶
- That there would be a breach of anti-money laundering (AML), combating the financing of terrorism (CFT) and know your customer (KYC) requirements if a financial institution executed a customer’s order to transfer money knowing to be dishonest or acting recklessly in failing to make the necessary enquiries. It was claimed that, in such case, ‘*the financial institution should still be liable for negligence resulting in damages*’;⁷
- That ‘*on the basis of various signs, [Foris DAX] should have assumed that something fishy was going on and should have suspended transaction(s) until reasonable enquiries could be made to verify that the transaction(s) was/were properly executed*’;⁸
- That she was a victim of the Service Provider’s negligence, who allegedly facilitated the misappropriation of funds and did little to safeguard public financial interest;
- That had Foris DAX ‘*audited or reviewed the Blockchain history of the cryptocurrencies in question, it would have been transparent and beyond obvious ...that those transaction were not in any way legitimate, but were fraudulent in nature*’;⁹

⁴ P. 10-11

⁵ P. 11

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

- That Foris DAX *'knew or should have known that the funds being transferred to [its] services did not rightfully belong to the recipient fraudsters'* and had *'no legitimate or lawful purpose'*;¹⁰
- That Foris DAX *'turned a blind eye to the crimes that [it has] facilitated and thus provided an array of essential Crypto transfer services, acting as a vehicle, with the awareness that it was enabling the fraudsters to commit crimes and enrich themselves with victims' assets'*;¹¹
- That the services of Foris DAX *'undoubtedly served as a crucial element in the fraudulent scheme'*, and had the Service Provider *'conducted an adequate account analysis, including proper KYC procedures, [Foris DAX] would have discovered [her] vulnerability, [her] financial illiteracy and the nature of [her] relationship with the recipient'* and acted accordingly;¹²
- That Foris DAX *'had the duty to stop those crimes, yet ... refused to do so because [it was] more interested in enriching [itself]'*. The Complainant further claimed that accordingly, the Service Provider *'did not have in place adequate security measures to properly safeguard [her] assets'*;¹³
- That as a *'regulated and licensed financial institution, [Foris DAX had] strict statutory and regulatory obligations to monitor transactions and report any suspicious activities to law enforcement authorities'*.¹⁴

The Complainant further claimed that:

'The importance of implementing robust internal systems to detect and report money laundering and other suspicious activities has been continuously emphasized in the industry in addition to having the appropriate policies, procedures and internal controls in place to ensure ongoing compliance in respect of the aforementioned systems. [Foris DAX] should have analysed [the] client's activities and distinguished thereafter between that which may be normal activity as opposed to that which might

¹⁰ *Ibid*

¹¹ *Ibid.*

¹² P. 11-12

¹³ P. 12

¹⁴ *Ibid.*

suggest illegal activity. This is a well-known industry standard which plays a substantial role in preventing criminals from liquidating and laundering customer funds;

- That the Service Provider was furthermore *'liable for committing actual fraud'*,¹⁵ with the Complainant also claiming that there was, on the part of the Service Provider *'negligent misrepresentation, 'unjust enrichment', and 'violations of international law'* (with respect to anti-fraud policies). It was further claimed that the Service Provider *'aided and abetted'* the fraudster and exercised *'lack of vigilance'* by failing to prevent the Complainant, as customer, from engaging in the said activity;¹⁶
- That the Service Provider *'failed to satisfy [itself] that the cryptocurrencies were actually being sent to legitimate recipients'* and in its *'indisputable duty to inquire and/or report if suspicious activities are involved in the movement of the digital funds'*;¹⁷
- That it was upon the Service Provider *'to invest in fraud detection services, irrespective of whether or not it is expressly specified in the relevant regulatory requirements'*.¹⁸

The Complainant further submitted that it was *'expected of firms to take action within the existing legislative and regulatory framework to suspend or freeze payments based on their risk assessment managing the risks of financial crime. The standards that financial institutions need to meet would include processes – such as the use of technology, rules and procedures – that help prevent and respond to scams ...'*¹⁹

Remedy requested

The Complainant requested the reimbursement of the full amount of EUR2,400 back into her crypto account.²⁰

¹⁵ *Ibid.*

¹⁶ P. 13-14

¹⁷ P. 14

¹⁸ P. 15

¹⁹ *Ibid.*

²⁰ P. 3

In its reply, Foris DAX MT Limited essentially submitted the following:^{21, 22}

That *Foris DAX MT Limited* ('Foris DAX' or 'the Service Provider'), previously known as *MCO Malta DAX Limited*, is licensed as a Class 3 VFA Service Provider by the MFSA.

Foris DAX offers a crypto custodial wallet ('the Wallet') and purchase/sale of digital assets on own account, through the *Crypto.com* App. The Wallet is only accessible through the App and the latter is only accessible via a mobile device.

The Service Provider noted that the Complainant became a customer through the *Crypto.com* App on the 2 April 2021.

The following timeline was provided by the Service Provider:

- a) 10 August 2021 – The Complainant purchased the amount of 2,780 Tether (USDT) in exchange for GBP2,109.04 through the *Crypto.com* App using her personal debit/credit card to complete the transaction.

Later on the same day, the Complainant transferred the total amount of 2,768.006472 USDT from her Wallet to an unknown external wallet address.

The transaction was successfully executed and a withdrawal transaction fee of 12 USDT was debited from her Wallet.

- b) 11 August 2021 – The Complainant contacted the *Crypto.com* Customer Service team reporting that she has been the victim of a scam and was enticed to send the above-mentioned amount to a '*fraudulent addressed*' and asking if Foris DAX could reverse the transfer of 2,768.006472 USDT executed from her Wallet on the 10 August 2021. (A copy of the said communication was attached to its reply).²³

It was noted that the Customer Service representative correctly advised the Complainant that it was unable to reverse the transaction performed from

²¹ P. 53-56

²² During the hearing of 25 January 2022, the Service Provider was provided with the opportunity to file a note to justify its contumacy as it had not filed its reply to the Complaint within the time limit established by law (P. 99). Having considered the explanations provided by the Service Provider as to its contumacy and after determining that there was a valid reason for filing the reply later than the established timescale, the Arbitrator subsequently admitted the Service Provider's reply as per the decree dated 7 March 2022 (P. 104).

²³ P. 89

the Complainant's Wallet since transactions done on the blockchain are immediate and immutable.

- c) 20 August 2021 – The Complainant sent the *Crypto.com* Customer Service team a demand letter requesting a full refund of the 2,768.006472 USDT transfer completed on 10 August 2021. (A copy of the demand letter was attached).²⁴

The Customer Services representative once again reiterated that Foris DAX cannot reverse the previously completed transfer. (A copy of this communication was also attached).²⁵

- d) 26 August 2021 – The Complainant contacted the *Crypto.com* Customer Service team asking to raise a complaint. (A copy of the said communication was attached).²⁶

The *Crypto.com* Complaints Handling team acknowledged receipt of the complaint on the same day.

- e) 30 August 2021 – The Complaints Handling team officially addressed the complaint.

In its reply to the Complainant, the Service Provider reiterated its position on the requested reimbursement answering that *Crypto.com* cannot revoke or reverse virtual asset withdrawals as transactions done on the blockchain are immediate and immutable. The Service Provider also advised the Complainant that it cannot be held responsible for her actions, which lead to the unfortunate event of the Complainant transferring virtual assets from her Wallet to a third party.

Foris DAX submitted that the Complainant is solely responsible for the security and authenticity of all instructions submitted through her *Crypto.com* Wallet as outlined in Section 7.2 of its Terms of Use, an extract of which was provided as follows:

'7.2 Digital Asset Transfers

²⁴ P. 57-88

²⁵ P. 91

²⁶ P. 92-95

...

(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'.

Foris DAX further noted that, at the time, the Complainant was also provided with details of the Office of the Arbiter for Financial Services ('OAFS') to submit an official complaint should she consider that the issue requires further escalation. (A copy of the said communication was attached).²⁷

- f) 29 October 2021 – The Complainant sent the *Crypto.com* Customer Service team a further response reiterating her request to be reimbursed for the 2,768.006472 USDT transfer completed on 10 August 2021.

It was noted that the complaint was once again passed to the *Crypto.com* Complaints team for review. Based on the previous investigation, the Complainant was advised that the Service Provider's stance remains unchanged. The details of the OAFS were once again provided. (A copy of the said communication was attached).²⁸

The Service Provider submitted that, in summary, the Complainant claims that she has fallen victim of an alleged scam and has voluntarily transferred the amount of 2,768.006472 USDT from her *Crypto.com* Wallet to an external wallet address she has no access to. The alleged owner of the said external wallet address has refused to cooperate with the Complainant and return her crypto

²⁷ P. 95-96

²⁸ P. 97-98

assets. While the Service Provider sympathises with the Complainant it noted that unfortunately they are not able to help her recover her funds.

The Service Provider further noted that it is unable to reverse any of the transactions performed through the Complainant's Wallet since transactions done on the blockchain are immediate and immutable.

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 555²⁹ which stipulates that he should deal with complaints in '*an economical and expeditious manner*'.

The Complainant and her crypto account

The Complainant, who is resident in the United Kingdom, became a customer of Foris DAX on 2 April 2021 through the *Crypto.com App*, as confirmed by the Service Provider.³⁰

On 10 August 2021, the Complainant purchased 2,780 USDT (at the total cost of GBP2,108.63)³¹ and within a few minutes on the same day, made a withdrawal of 2768.006472 USDT³² to an external address.³³

The disputed transaction was done by the Complainant herself as confirmed during the hearing of 8 March 2022, where the Complainant confirmed *inter alia* that '*I say it was me who entered into the Crypto.com App*'.³⁴

²⁹ Art. 19(3)(d)

³⁰ P. 53 & 136

³¹ P. 20, 54

³² Total amount deducted actually being 2780.006472 USDT – 2,768.006472 USDT plus 12 USDT transaction fee.

³³ P. 19-20, 54 & 134

³⁴ P. 106

This was not the first time that the Complainant made use of the *Crypto.com* App. She made a number of transactions previously, namely, various crypto purchases and sales since her opening of her crypto account in April 2021 as reflected in the transaction history statement supplied by the Service Provider.³⁵

During the hearing of 8 March 2022, the Complainant confirmed that she '*made a number of previous transactions*'³⁶ to '*invest in different coins*',³⁷ but she claimed that the disputed transaction was different in that this was the first time she transferred coins externally to a different account.³⁸

The Service Provider

Foris DAX MT Limited ('Foris DAX' or 'the Service Provider') is a company registered in Malta on 19 September 2018 with Company Registration Number C 88392 as per the records held with the Malta Business Registry.³⁹

Foris DAX is licensed by the Malta Financial Services Authority ('MFSA') as a VFA Service Provider as per the MFSA's Financial Services Register.⁴⁰ It holds a Class 3 VFAA licence granted by the MFSA pursuant to Article 15 of the Virtual Financial Assets Act, 2018 ('VFAA').

As per the unofficial extract of its licence posted on the MFSA's website, the Class 3 VFAA Licence authorises Foris DAX to provide the following VFA Services: (i) Execution of orders on behalf of other persons (ii) Dealing on own account and (iii) Custodian or Nominee Services to Experienced and Non-Experienced investors.⁴¹

As outlined in the disclaimer section of the *Crypto.com* website, Foris DAX is '*trading under the name 'Crypto.com' via the Crypto.com app*'.⁴²

The Application

³⁵ P. 134

³⁶ P. 106

³⁷ P. 105

³⁸ P. 106 & 138

³⁹ <https://registry.mbr.mt/ROC/index.jsp#/ROC/companiesReport.do?action=companyDetails&fKey=ab2b4261-837f-4d91-8547-e97ed3935ef2>

⁴⁰ <https://www.mfsa.mt/financial-services-register/>

⁴¹ <https://www.mfsa.mt/financial-services-register/>

⁴² <https://crypto.com/eea/about>

The *Crypto.com App* is a 'mobile application software developed, owned and released by *Crypto.com* and available for download for Android or Apple iOS ...'.⁴³

It offers the account holder 'a crypto custodial wallet' and 'the purchase and sale of digital assets on own account'.⁴⁴

Observations & Conclusion

Summary of main aspects

The Complainant made a transfer of her digital asset (USDT) using the *Crypto.com* platform. The said transfer was made to an external wallet address allegedly used by a fraudster. The transfer was in respect of a transaction which the Complainant claimed was a scam as testified during the hearing of 8 March 2022.⁴⁵

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

The Complainant *inter alia* claimed that the said transaction was unusual and that if the Service Provider had appropriate procedures, it would not have allowed the transaction to occur.⁴⁶

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 *Crypto.com App Terms of Use*) and that it was not possible for Foris DAX to revoke or reverse the crypto withdrawal once the transaction was done on the blockchain.

Applicable Regulatory Framework

As outlined above, Foris DAX is the holder of a Class 3 VFSA licence granted by the Malta Financial Services Authority ('MFSA') under the Virtual Financial Assets Act, 2018 ('VFSA').

⁴³ P. 109

⁴⁴ P. 53

⁴⁵ P. 105-106

⁴⁶ P. 106

Apart from the relevant provisions under the VFAA, Foris DAX 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*⁴⁷ 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').

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.

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:

- As outlined in her Complaint and during the hearing of 8 March 2022,⁴⁸ the Complaint involves a payment made by the Complainant in respect of a transaction which allegedly involved a scam or fraudulent transaction by an external third-party.

The Complainant expected that the Service Provider should have prevented, stopped or reversed her transaction. She claimed *inter alia* that the transaction she made was abnormal compared to her usual activities and the Service Provider should have accordingly intervened.

⁴⁷ Guidance 1.1.2, Title 1, '*Scope and Application*' of the '*Guidance on Technology Arrangements, ICT and Security Risk Management, and Outsourcing Arrangements*'.

⁴⁸ P. 2 & 105-106

The Arbiter does not however have sufficient comfort that, in the particular circumstances of this case, the Service Provider could have itself prevented or stopped the transaction given the nature of the transaction involving crypto assets and type of service provided and other reasons outlined below.

- **Whilst the historical list of transactions in respect of the Complainant's crypto account does indicate that the previous transactions were namely purchases and sales of crypto assets and not transfers to external wallets, however, a transfer to an external wallet cannot, in the case in question, be reasonably deemed as something abnormal in the first place - either in its own right and even when considering the amounts involved with reference to the previous deposits and crypto sales undertaken in the same month which were in higher figures.⁴⁹**
- **It has also not been demonstrated or 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*'.⁵⁰**
- **In any case, the Complainant contacted the Service Provider the day after the disputed transaction,⁵¹ by which time the transaction (withdrawal and transfer of crypto) had already been completed and finalised.⁵²**

Once finalised, the crypto cannot be transferred or reversed as specified in the Service Provider's Terms and Conditions of Use⁵³ (and as typically indicated on various other internet sites).⁵⁴

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

⁴⁹ P. 134

⁵⁰ P. 105

⁵¹ On 11 August 2021 (P. 54 & 89) in respect of the withdrawal of 2780 USDT done on 10 August (P.134).

⁵² 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).

⁵³ Clause 7.2(b) of the *Crypto.com* App Terms & Conditions - P. 122

⁵⁴ 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.⁵⁵

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 ...'⁵⁶

It is also noted that Clause 7.2(d) of the said Terms and Conditions which deals with *'Digital Asset Transfers'* further warns a customer about the following:⁵⁷

'We have no control over, or liability for, the delivery, quality, safety, legality or any other aspect of any goods or services that you may purchase or sell to or from a third party. We are not responsible for ensuring that a third party buyer or seller you transact with will complete the transaction or is authorised to do so. If you experience a problem with any goods or services purchased from, or sold to, a third party using Digital Assets transferred from your Digital Asset Wallet, or if you have a dispute with such third party, you should resolve the dispute directly with that third party'

It is noted that in her formal complaint to the Service Provider the Complainant did refer in a general manner to the regulations and standards applicable to *'regulated and licensed financial institutions'*,⁵⁸ and also included a reference to *'The Federal Trade Commission (FTC) Act, 15 U.S.C.'*⁵⁹ enacted in the USA.

It is to be noted however that these are not considered applicable as such given that the Service Provider is not *'a regulated and licensed financial*

⁵⁵ Clause 3.1 and Clause 7.2(b) of the Terms and Conditions on the use of the Crypto.com App Services (P. 109-133).

⁵⁶ P. 122

⁵⁷ P. 122-123

⁵⁸ P. 7-16

⁵⁹ P. 16

institution' but is only regulated and licensed as a VFA Service Provider being based in Malta as outlined above.

The regulatory regime applicable to a VFA Service Provider is indeed a different one and does not necessarily reflect the requirements and consumer protection measures applicable to a financial institution falling under EU regulatory regimes.⁶⁰

- The Complainant attached copies of communications exchanged with the alleged fraudster. It is noted that in one of the said communications the Complainant was informed that she had been '*successfully added as a beneficiary in the Millionaire account of Talal Khan to receive 1,000.000/- GBP*' purportedly from '*Soneri Bank*'.⁶¹

She later received a further message that '*1,000,000/- GBP has been transferred to your A/C ...*' requesting her to '*complete the validation within 24h to verify the wire transfer*' also purportedly from '*Soneri Bank*'.⁶²

- It is clear that the Complainant has unfortunately been a victim of a scam done by a third party.
- Ultimately, the Arbiter does not consider that, in the case in question, there is any clear and satisfactory evidence that has been brought forward by the Complainant, 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 regulatory regime applicable in respect of its business.
- The Arbiter notes that the crypto business is a relatively new area with no harmonised regulation existing at the time of the disputed transactions. A

⁶⁰ Financial institutions based in Malta are regulated under a separate and distinct regulatory framework, namely that provided for under the Financial Institutions Act (Cap. 376) which also covers the Payment Services Directive (PSD2), (Directive EU 2015/2366 on payment services in the internal market).

⁶¹ p. 22

⁶² *Ibid.*

regulatory framework is indeed still yet to be implemented for the first time in this field within the EU.⁶³

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. However, such regimes, which 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.

Indeed, 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.⁶⁴

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

Since crypto currency is a new area in the financial services sector, the Arbiter would like to make a few observations.

⁶³ 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 is expected to enter into force in 2023 / 2024 – <https://www.financemagnates.com/cryptocurrency/can-mica-take-europe-to-the-crypto-promised-land/>

⁶⁴ 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

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, 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.

The Arbiter cannot help but notice the lack of, and inadequate education that many retail consumers have in this field, 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. Genuine service providers operating in this field need to also do their part and actively work to improve the much-needed knowledge for consumers who opt to venture into this field.

Given the particular circumstances and novel nature of this case, each party is to bear its own legal costs of these proceedings.

Dr Reno Borg
Arbiter for Financial Services