**INSOL EUROPE**

**DIGITAL ASSETS CASE SUMMARIES**

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| **Overview** | |
| **Case Citation** | **3-14-50581**  O. A. de V complaint for revocation of precept of 24 March 2014 No. 1-9/1011 of the Financial Intelligence Unit (FIU) of the Estonian Police and Border Guard Board. |
| **Date of judgment** | 18 June 2015 |
| **Country** | Estonia |
| **Original Language of Judgment** | Estonian |
| **Court** | Tallinn Circuit Court |
| **Subject matter/catchwords** | Competence of the FIU to supervise the trading of bitcoins (and other virtual or cryptocurrencies). |
| **Decision summary** | The FIU has the competence to supervise because:  1. Bitcoin is classified as an alternative means of payment within the meaning of Money Laundering and Terrorist Financing Prevention Act.  2. Although the website www.btc.ee was not hosted on a server located in Estonia, the website showed that the location of the public offering of bitcoin purchase and sale services is in Tallinn, Estonia (incl. The possibility to pay in cash at the service provider's office). Thus, the FIU had sufficient reason to believe that O. A. de V was offering a bitcoin purchase and sale service in Estonia and could therefore initiate supervision proceedings against it.  3. The fact that O. A. de V stated on the website www.btc.ee that he trades in bitcoins as a hobby does not preclude the supervisory competence of the FIU. If a person sells bitcoins at a higher price than he buys them, it is clearly a gainful activity. Nor does the facts show that it was a one-off or occasional transaction, but that it was a permanent activity. Classification as an economic activity does not imply that such trading in bitcoins should be the sole or principal activity or source of income of a person, nor is its actual profitability relevant. |
| **Digital asset involved (e.g. Bitcoin, Ethereum, Ripple etc.)** | Bitcoin |
| **Valuation issues** | N/A |
| **Expanded Case Description** | |
| **Applicant** | Private person O. A. de V. |
| **Identity of Insolvency Practitioner (if applicable)** | N/A |
| **Authorities considered by this case (categorised by country)** | Estonia:   * Judgment No. 3-3-1-15-01 of the Supreme Court of 20 December 2001   EU:   * Judgment of the European Court of Human Rights of 8 April 2004 in Weh v. Austria, no. 38544/97. |
| **Domestic legislation applied** | Money Laundering and Terrorist Financing Prevention Act |
| **Factual background** | O. A. de V has registered a website with the address www.btc.ee, which as of 14.02.2014 and 19.03.2014 offers the opportunity to buy or sell units of monetary value called bitcoin with certain service providers.  It is not clear from the website who the service provider is, but it can be seen that the service provider's office is located in Tallinn, Rävala pst 8 and the source of bitcoins is in Tallinn. An explanation of the bitcoin buying and selling process and information that bitcoins can also be paid for in cash are also provided. The FIU has requested O. A. de V to monitor the activities of the person providing its service on this website in order to apply the requirements set out in the Money Laundering and Terrorist Financing Prevention Act.  So far, the FIU has not received an explicit answer as to which person actually carries out the purchase and sale of bitcoins, and the documents necessary to verify compliance with the requirements of the Money Laundering and Terrorist Financing Prevention Act have not been submitted when providing the service. As of 24.03.2014, the website www.btc.ee is not registered as a place of business with the registration data of any alternative payment service provider.  Based on the above, FIU obliged O. A. de V to submit information on its activities by post or e-mail no later than 28.03.2014 (the term has been extended by a precept until 28.04.2014).  On 21 April 2014, O. A. de V filed a complaint with the Tallinn Administrative Court for annulment of the precept of the FIU of 24 March 2014, finding that the precept was both materially and formally unlawful and violated the applicant's subjective rights. |
| **Legal issues** | 1. Is bitcoin an alternative payment instrument? 2. Does the fact that the website www.btc.ee is not hosted on a server located in Estonia cause the situation that the service provided through it is not covered by the regulation of the Money Laundering and Terrorist Financing Prevention Act, therefore FIU also does not have supervisory competence? 3. Does the fact that O. A. de V stated on the website www.btc.ee that he trades in bitcoins as a hobby preclude the FIU's supervisory competence? |
| **Reasoning** | 1. Bitcoin must be classified as an alternative payment instrument insofar as it meets all the identification criteria arising from § 6 (4) of the Money Laundering and Terrorist Financing Prevention Act: 1) bitcoin has a price expressed in traditional money at any given time (exchange value); 2) bitcoins can be bought and sold for traditional money in a user environment; 3) bitcoines are accepted as a means of payment by a number of traders (means of payment). 2. Although the website www.btc.ee was not hosted on a server located in Estonia, the website showed that the location of the public offering of bitcoin purchase and sale services is in Tallinn, Estonia (incl. The possibility to pay in cash at the service provider's office). Thus, the FIU had sufficient reason to believe that O. A. de V was offering a bitcoin purchase and sale service in Estonia and could therefore initiate supervision proceedings against it. 3. The supervisory competence of the FIU is also not excluded by the fact that O. A. de V stated on the website www.btc.ee that he trades in bitcoins as a hobby. If a person sells bitcoins at a higher price than he buys them, it is clearly a gainful activity. Nor does the facts show that it was a one-off or occasional transaction, but that it was a permanent activity. Classification as an economic activity does not imply that such trading in bitcoins should be the sole or principal activity or source of income of a person, nor is its actual profitability relevant. |
| **Further information (e.g. liquidator’s website)** | N/A |