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Berlin District Court
Ref.: 66 O 20/21

In the name of the people

Judgment

In the legal dispute

Bankruptcy estate of envion AG i.L., represented by the bankruptcy trustee Dr. Fritz Rothenbühler and Pablo Duc, attorneys at law, Wenger Plattner, Jungfraustraße 1, 3000 Bern 6, Switzerland, Zugerstraße 74, 6340 Baar, Switzerland
- Applicant/Injunction Plaintiff -

Legal Representative:
AUVP, Au von Pochhammer Rechtsanwälte PartG, Wilmersdorfer Straße 98/99, 10629 Berlin

Against

1) **Michael Luckow**, Johanniterstraße 11, 10961 Berlin
- Respondent/Injunction Defendant -

2) **Trado GmbH**, represented by the managing director Michael Luckow, Mühlenstraße 8a, 14167 Berlin, currently: Hüttenweg 37, 14195 Berlin
- Respondent/Injunction Defendant -

Legal representatives to 1 and 2:
Lawyers **Wegnerpartner Wegner & Partner mbB**, Georgenstrasse 24,10117 Berlin,
reference number: 21/0058

the Berlin Regional Court - Civil Chamber 66 – has ruled, by the Presiding Judge of the Regional Court Schulz, the Judge at the Regional Court Heichel-Vorwerk and the Judge at the Regional Court Pohl based on of the oral hearing on March 24, 2021, the following:

1. the preliminary injunction pursuant to the Court's decision of February 12, 2021 is confirmed with the (editorial) clarification that in its tenor to No. 1

   a) after the words "The defendants are ordered to..." the word "the" is deleted without replacement

   b) after the notation of the wallet with the concluding letters and numbers “...cff4374d", the parenthetical addition "(arising from the transfer of the 2411.0639 Ether)" shall be omitted without replacement.

2. the Defendants shall also bear the additional costs of the proceedings as joint and several debtors.

Statement of Facts

The parties dispute the consequences of a cooperation in an investment project of Swiss-based envion AG (hereinafter referred to as AG). In the meantime, bankruptcy proceedings have been initiated in Switzerland against the assets of the AG, which was founded in October 2017. The Plaintiff in the injunction is the legitimate representative of the AG as the bankrupt.

The AG was founded for the purpose of manufacturing and operating mobile data centers, through which value creation in the form of cryptocurrencies (so-called mining or fomentation) and the decentralized calculation of digitally defined processes in the so-called "blockchain" application was planned to be operated. The injunction Plaintiff demands from the injunction Defendants to secure assets in the form of cryptocurrencies by transferring the associated wallet from the injunction Defendants to a judicial sequester.

Defendant 2, of which Defendant 1 is the managing director, was involved in the investment project, among other things, to create the technical requirements for the handling of virtual assets, as well as to technically supervise and implement related processes. A written agreement regarding the purpose, the objectives, the details of the cooperation or concrete obligations was never formulated between the AG and the Defendants. Due to (inter alia) his responsibility for the programming of the digital platforms and tools required for the investment project, Defendant 1 was the only natural person in a position to control the assets, which originated from investors who, in turn, had invested in the company in order to participate in the AG's project. The Defendants in the present case are demanded to transfer significant assets, which came into their sole power of disposition, to a judicial sequester in order to avoid permanent legal losses.

1.

The AG's project, which was published in a prospectus, was aimed at the creation, promotion and trading of cryptocurrencies. For the purpose of financing, a fundraising (this procedure hereinafter referred to as ICO) took place, in which interested investors were recruited to make specified investment amounts. The economic countervalue to which an investor would be entitled in the event of a successful investment, and which would represent the denominator of the respective investment, was the so-called envion-token.

a) It was intended that - for the practical establishment of such a participation of an investor - the investor would first provide the capital to be invested (in the form of customary currencies). All investments were then transferred to a “wallet” designated and programmed by the Defendants. A wallet is a kind of virtual pool for assets, similar to a bank account but without the involvement of a bank. Within the scope of the issue at hand, the investments in the original wallet were initially recorded and booked in the virtual currency "Ether" (traded in so-called "coins").

b) It was planned that after the booking of an investment in Ether, for each investor a so-called "know-your-customer-procedure" (hereinafter KYC) was to be carried out, which, among other things, had the purpose of preventing unauthorized money laundering. In this procedure it was established whether the specific investor met the necessary characteristics and requirements to be eligible for the cooperation in the project (and the allocation of envion-tokens). As soon as this procedure was completed positively for a specific investor, the investment amount raised from the investor was made available to the AG in virtual currency. In return, envion-token(s) were allocated to the - now officially accepted - investor. In this specific process, among other processes, the "smart contract" also developed by the Defendant 2 became effective. The smart contract is a software-based feature of the wallet, according to which, upon the occurrence of certain circumstances (e.g., releases), the desired consequences are carried out automatically by purely technical means, so that no intervention of a natural person is required in such a process.

c) In the way described under b) above, the great majority of the total investments in the AG was transferred via the original wallet, namely in all cases in which the KYC was successfully completed. The assets remaining in the original wallet thereafter represented, in mirror image, those investments for whose specific investors the KYC had not (yet) been completed; these investments were therefore still pending with regard to their final economic allocation to the AG. As a natural person, only the 1st Defendant had the necessary information to exert any control and, in particular, to carry out a transaction from the wallet using the aggregation of access data, passwords etc. (so-called "private key".). Beginning on December 30, 2020, the Plaintiff discovered that certain processes had been triggered in the smart contract, which led to units of the currency Ether being transferred to other wallets.

(d) Cryptocurrencies and the coins representing them differ in their denomination and in their properties depending, among other things, on how the currency has been financially constructed and by whom it has been technically created. In this context, Ether, which was originally booked in the wallet programmed by the Defendant 1 and then transferred from there, represents a particularly volatile

cryptocurrency for which market events can cause large upward and downward swings and can mean correspondingly large opportunities and risks for the development of the economic value. The ("pending") investments that initially remained in the original wallet were therefore exchanged into two other cryptocurrencies after being transferred into other wallets (also programmed and controlled by the 1st Respondent), namely into "USDT" and "USDC", which are described in more detail in the Order of 12.2.2021. These two currencies are characterized by extreme stability with low fluctuations and, accordingly, lower risks, which is why the assets represented by them are referred to as "stable-coins". In this form the cryptocurrencies at issue ultimately ended up in the specific wallet at issue, for which Defendant 1 as a natural person was – again – the sole owner of the private key.

2.

Following the discovery of technical processes that had been initiated on 30.12.2020 in the context of the smart contract and relating to the Ether present in the original wallet, in a letter dated January 6, 2021 (Exhibit AST 11), the Plaintiff demanded from the Defendants that the affected investment assets were to be surrendered to the Plaintiff. In an e-mail dated January 21, 2021, the legal representative of the Defendants replied to this request with a reference to an (alleged) civil-law partnership between the AG, the Defendant 2 and another company, to which the investment assets in question would belong. For the same reason, the respondents to the injunction would be "...no longer in a position to dispose of them themselves..." (Exhibit AST 12).

In its application received by this Court on January 27, 2021, the Plaintiff requested that the Defendants, as the custodians of the disputed wallet, be sentenced to transfer the wallet, including the stable coins (quantified in detail) in USDT and USDC currencies contained therein, to a judicial sequester.

In the opinion of this Court, the requirements for the issuance of the requested preliminary injunction were generally met. However, inquiries concerning the technical feasibility of the requested injunction revealed that the bodies typically designated as sequester (namely bailiffs and notaries) were not equipped to the receive and exercise further custody of the cryptocurrencies at issue, and are therefore technically unable to do so. Thereafter, by order dated 12.2.2021, this Court issued the preliminary injunction to the effect that the respective quantified amounts of the currency USDT and the currency USDC contained in the disputed wallet are to be transferred to the bank in Munich detailed in the order, acting as sequester.

The order of 12.2.2021 was served to both Defendants on the same day.

3.

In a written statement dated February 19, 2021, the Defendants filed an objection.

In support of the opposition, the Defendants essentially submit:

The Defendant 1 in the injunction does not have passive legitimization, because he was never personally involved in the disputed transactions at any time, but solely in the role of the managing director of the Defendant 2 at all times. The claim against Defendant 2 was also unfounded, because the disputed assets had never belonged to the AG. In particular, Defendants had not carried out their activities for the AG within the scope of a contractual relationship or any other legally dependent relationship, but as co-partners of a founding company (civil-law partnership) operated in the run-up to the formation of the AG. The assets in dispute could therefore not be determined outside of their entanglement under corporate law and not without an overall regulation of all rights and obligations of all parties involved.

By no means, the Plaintiff in the injunction would be temporally authorized to proceed by way of an interim injunction, because it has already filed various pending lawsuits at the Berlin Regional Court since 2018, in which the alleged rights that are now being pursued belatedly by way of injunction had already been asserted or presented with essentially the same content.

Furthermore, the claim of the Plaintiff for the injunction could not be lawfully pursued in accordance with § 888 ZPO. At any rate, this would be true after the fulfillment of Plaintiff's demand has become impossible for the Defendants. In this regard, the Defendants refer to a contract signed 2 days before delivery of the preliminary injunction (i.e., on February 10, 2021) with Mr. Felix Krusenbaum, for whose detailed content reference is made to Annex ZVAG 1. According to the content of the contract, the disputed cryptocurrencies would have been already sold, and the private key for the wallet had to be transferred to the buyer and all copies had to be deleted. As per this agreement, beginning on February 10, 2021, and subsequently before and after the delivery of the injunction, the buyer was authorized to sell - and actually sold - the cryptocurrencies on exchanges. Defendant 2 as the seller had also received all purchase prices in accordance with the contract and no longer had any claims from the purchase contract against the buyer.

4.

In the oral proceedings before this Court, the Plaintiff admitted that the wallet in dispute (which can be monitored virtually) is currently empty. Nevertheless, the wallet itself would exist unchanged, and it could also be replenished at any time with the amounts of value in USDT and USDC which were indisputably originally contained in the wallet, as designated in the resolution of February 12, 2021. Both currencies would be virtually defined and freely traded assets, which would define a purely class-specific obligation of the Defendants. Even if the Defendants did truly lose access to the assets originally held in the wallet, and did not merely (as has been the case in previous cases) move the assets to other locations under their control, the obligation of the Defendants to transfer the aforementioned "...currencies in the wallet..." would neither have become impossible nor otherwise ceased to exist.

In the case of USDT and USDC, the assets claimed by the Plaintiff would be described, traded and transferred as cryptocurrencies under the designations of the respective stable coins. As such, the assets claimed by the Plaintiff would be no physical objects and legally not movable things in the first place; neither would units in a cryptocurrency represent a secured "claim" in a banking system (e.g., against a

financial institution), in contrast to account balances in conventional monetary transactions (i.e., book money in customary bank currencies). Similarly, a representation of the claimed assets as tangible physical objects (in particular in coins or banknotes) would be inadmissible for structural reasons already. Cryptocurrencies would be (currently) recognized as an immaterial asset category living exclusively in the virtual world. Therefore, by their very nature, an actual concretization of initially only generic assets (as in the case of coins or banknotes) could not have taken place at any time. Despite their disposition of the contents of the wallet, the Defendants were neither legally nor actually prevented from fulfilling the requirements imposed on them by the injunction.

Against the backdrop of this argument, the Plaintiff filed a motion at the oral hearing on March 24, 2021, that

> the preliminary injunction of February 12, 2021, with the clarifications reflecting the changed circumstances, is to be confirmed, so that the wallet containing the stable coins of the of the units of currency and number of units as designated in the order is to be transferred to the judicial sequester.

The Defendants have requested that,

> to annul the order of 12.2.2021 and to reject the application of the Plaintiff.

For further details of the pleadings of the parties, as well as for the contents and resources of the substantiations submitted by the parties, reference is made to the content of the written pleadings and annexes submitted, as well as to the statements regarding the court records of the oral proceedings on 24.3.2021.

Reasons for the Decision

The preliminary injunction issued in the order of February 12, 2021, is to be confirmed according to the results of the hearing on the objection of the Defendants in the case.

According to the facts plausibly presented, it is clear to this Court that the Defendants executed the creation of the assets, which were subsequently solely in their power of disposition, in the context of a dependent service relationship for the AG as the legitimate beneficiary of the assets. The amounts economically paid by investors in this context, as it relates to the relationship of the parties in this proceeding, were at no time meant to belong to the Defendants, but were at all times meant to belong exclusively to the AG.

As agreed, all of the investments of the investors in the AG ended up in the domain of the virtual platforms or rather lists and tools, which were to be created by Defendant 2 on the basis of the of the service relationship, and to be controlled and administered by Defendant 1 during the transitional phase. The "Positions" thus initially entered into the original wallet in the unit Ether and recorded therein represented the unchanged investment amounts of the investors. For the duration of the KYC proceedings, these assets were to be kept on behalf of the respective investor; in the event of the successful conclusion of the proceedings, they were to be transferred to the AG. Although the Defendants were the sole legal entities in a position to actually exert control over these assets, because they alone had the access data (private key), which they had also created themselves; however, at no time were they materially authorized to actually make use of their ability to dispose of the contents of the wallet based on their own economic considerations. Instead, they were the bearers of a respective duty to take care of assets, which only extended to the safeguarding of the assets, but which was to strictly follow the instructions of the materially entitled parties (i.e., the investors and/or the AG) in respect to any and all materially defined dispositions. The Defendants violated this duty to safeguard the assets by executing unauthorized transactions, and therefore fulfilled the criminal offense of embezzlement (§ 266 StGB); the claim for injunctive relief in favor of the Plaintiff, in order to enforce a provisional protective order against the permanent consequences of this conduct, is based on Section 823 (2) of the German Civil Code (BGB) in conjunction with the aforementioned criminal provision.

The objections by the Defendants are mostly incomprehensible, but in any case, do not justify any different assessment.

The temporary injunction issued is to be confirmed without any changes to its content. Insofar as this Court has decided to make editorial clarifications in accordance with § 937 ZPO, this is solely due to the circumstance that originally the wording of the order was based on the application of the Plaintiff, which corresponded to the actual circumstances at the time when the application was submitted; it is undisputed that on January 27, 2021, the currencies and the numbers of units specified in more detail in the order of February 12, 2021, were then present on the disputed wallet. Also, linguistically this reality was correctly represented in the tenor of the resolution to number 1, according to which "the (...) USDT" and "the (...) USDC" "...in the Wallet (...)" must be transferred.

Insofar as this condition does not currently continue, this does not result in a different subject matter of the dispute, but merely a different (linguistically more precise) description of the same. The aim of the motion has always been and remains that the disputed wallet be handed over to a judicial sequester, while containing said currencies in said quantities. Decisive for this result is solely that at the moment of the transfer to the judicial sequester, there is a corresponding connection between the transferred wallet and the assets contained therein in the said currencies and quantities. Whether the assets have been in the wallet for a short time or for a long time and continuously or with interruptions, was and is irrelevant for the Plaintiff’s request. This was expressed by the Plaintiff in the oral hearing with an appropriate clarification of the wording in view of the changed factual circumstances; this does neither constitute a change of the contents of the request, nor a change of the contents of the preliminary injunction issued by this Court.

1.

The Plaintiff has made a credible case that the Defendant 2 has provided its services as a dependent service provider. The de facto control over the invested assets, which were required to be routed through a Portal programmed by the Defendants, was unavoidable due to the architecture of the cooperation and accompanied by a corresponding duty of care and safeguarding, but at no time changed the fact that these assets, which originated from interested investors, were never meant to be economically at the disposal of the Defendants or to be exposed to the free power of control of Defendants.

The Plaintiff has insofar presented the contents of the agreements between the parties despite the non-existence of a written contract, making reference to the statements on record made by Defendant 1 in the questioning of the Swiss bankruptcy office on 21.6.2019 (submitted as Exhibit AST 9). In the answer to question number 10, the Defendant 2 is expressly presented therein as a service provider which, in certain contexts, subcontracted further external service providers.

It is also undisputed that Defendant 1 as the person responsible for Defendant 2 wrote invoices for the latter, in which the services were charged entirely in the manner of a commissioned service provider with a corresponding remuneration. These invoices, which the Defendants now characterize in their written depositions (legally not comprehensible for this Court) as a kind of customary "pro forma documents" under corporate law, were also discussed by Defendant 1 in his questioning.

According to the version then explained in answer to Question 38a, the reason for the AG's filing of a lawsuit against Defendant 2 originated specifically from the fact that "...Trado (has) rendered services for which it has not yet been remunerated...". Explicitly, it is represented there that the goal was to settle the amount of the remuneration and all mutual claims (namely from the service relationship and its consequences) within the framework of an agreement.

Also, the specific power of disposition of both Defendants is clearly confirmed several times in the statements of the questioning. In the answer to question 12, Defendant 1 declares that he has received his salary exclusively from Defendant 2 at all times, but otherwise did not participate in any of the financial assets moved. On further request, in question 13 he explains expressly that "...Trado legally and I technically control all PrivateKeys of the Wallets...". In line with this, in the answer to question 24, Defendant 1 explicitly states the following about the assets on the wallet of the AG wallet "...which I control...", and subsequently further claims, "...I would be however, prepared to deliver these (...) to the bankruptcy office...". He also declares in Question 35 in detail his complete and sole control over the smart contract.

The Plaintiff rightly concludes from this that it can and must demand injunctive relief from Defendant 1 independently and in addition to Defendant 2 (its contractual partner). The power of disposition over the disputed assets is centrally embodied in the Private Keys, for whose personal responsibility Defendant 1 himself, during the questioning, does not significantly distinguish between his own (natural) person and the (legal) person of Defendant 2. Such separation is also neither legally nor factually possible, since Defendant 2, within the area of activity relevant here, cannot take any action other than through Defendant 1, because his knowledge (about the required legitimations) and actual powers conveyed by

his position as managing director represents the entirety of powers of Defendant 2. The knowledge of the data and keys required for transactions concerning the virtual assets is merely an inner knowledge that is scientifically embodied in the person of Defendant 1, while legally it is therewith available to Defendant 2 at the same time. In which of his functions Defendant 1 makes use of his personal knowledge, is merely a purely internal fact which is neither externally recognizable nor legally relevant, and which leaves the legal responsibility on the part of both Defendants unaffected.

2.

The submissions of the Defendants are already inconclusive insofar as they are failing to deal with the inconsistencies to the cited statements and data, which indisputably originate from the Defendants themselves, in any coherent manner. Instead, in the current hearing, the Defendants suddenly want to refer to a construction under corporate law by way of an alleged founding company in the run-up to the AG. It is the impression of this Court that this simply a self-serving protective assertion.

First of all, it would have been expected that the Defendants would also have declared an alleged involvement of the disputed assets in unbalanced participations of alleged co-shareholders in an alleged founding company to the bankruptcy office in Switzerland, instead of simply describing Defendant 2 as a service provider that has merely not yet sufficiently been paid on the invoices issued.

In addition, it is undisputed that the AG was ultimately founded by third parties without involvement of the Defendants, so that insofar as that there truly was a founding company in the run-up to the AG, it is clear that even according to the own submissions of the Defendants, under no circumstances a founding company participated in the AG as a founding shareholder.

Finally, the Plaintiff also quite rightly points out that the construction presented by the Defendants could under no circumstances lead to legal consequences that would make the positions or even the actions of the Defendants to appear plausible. Between the members of an alleged founding company, after the undisputed 2017 ending of the foundation phase of the since then existing AG, an accomplishment of purpose would have occurred, with which the alleged founding company would have lost its active role in any case, and after which any previously triggered legal consequences would now have to be observed by the successfully incorporated AG. In any case, it remains completely incomprehensible on which grounds the Defendants could assume to possess any material authority in relation to the assets contributed by investors of the AG, which were not paid in by Defendants and were never meant to be at the economic disposal of the Defendants.

3.

The temporal sequences suggest nothing to the contrary. The Plaintiff is not prevented from seeking to enforce its claim via preliminary injunction, because the decisive event (also) for the presence of urgency, as well as the necessary grounds for the injunction, was not the disputes in the written pleadings about

mutual claims and their fulfillment from earlier years, but rather the transactions of December 30, 2020, which were undisputedly executed on that date, using the smart contract programmed by the Defendants. Therefore, it is irrelevant whether certain content, which is used in this current proceeding to explain the factual background, was already presented in various lawsuit proceedings from the year 2018 (which are currently suspended in view of the insolvency proceedings of the Plaintiff). After the relevant news at the end of December 2020, the Plaintiff has by no means let any longer period of time pass before it pursued the security interest which is also the subject matter of the current proceedings.

The continued arbitrary and unauthorized actions of the Defendants also give rise to the valid concern that Defendants will continue to make unauthorized disposals and dispositions of the assets currently under their care, thereby jeopardizing or thwarting the access to these assets for its legal beneficiaries.

4.

The factual changes that occurred after the initiation of the present proceedings do not give rise to any legally relevant objection to the preliminary injunction, either. In particular, the fulfillment of the injunction claim has not become impossible for the Defendants. Regarding the legal nature of the cryptocurrencies at issue and the resulting consequences for the possibilities of legally pursuing the interests of the Plaintiff in the injunction, this Court agrees with the opinions of the Plaintiff as summarized in the Statement of Facts, particularly in item 4. It is the opinion of this Court that a concretization of the obligations, delineated in a virtual generic debt, to individual concrete physical items, to whose fate (and existence) the debt relationship between the parties could therefore have been limited, could not have occurred. It is undisputed that the procurement of the currencies (as described in the decision under item 1) in the quantities specified therein is possible for the Defendants. Whether Defendants simply have to use identical assets for this purpose, which (as the Plaintiff presumes) are located at a different "booking location", but remain factually unmodified in Defendants' power of disposal, or whether they have to use the proceeds of the sale, which - according to Defendants' presentation – has been transferred into their fortune (although not substantiated) in the form of the presented "purchase price" from the contract of 10.02.2021, or how else Defendants must (in accordance with the materially justified order) effect the replenishment of the disputed wallet from which the currencies disappeared under Defendants' own responsibility, remains legally and actually Defendants' own decision (and their own problem). An obstacle to the confirmation of the preliminary injunction could only be established if the order had become impossible for the Defendants. However, in which respect and by what concrete means this could have occurred, is neither conclusively submitted by Defendants, nor otherwise recognizable for this Court.

5.

In this Court decision it was assumed that, in accordance with the prima facie evidence, the submitted contract document dated February 10, 2021 (Annex ZVAG 1) was actually signed by the gentlemen as indicated.

However, in the view of this Court, there is much to suggest that the legal relationship implied in the contract document is void as a sham transaction. The Defendants would have to have sold millions in value to "buyer Krusenbaum" without any retained collateral (and irreversibly shared the Private Key for the wallet with him) in order for him to effect the "sell-off" of the cryptocurrencies. It is not only completely incomprehensible that (or for what reason) the Defendants could consider themselves competent and authorized for such dispositions, but it also remains completely incomprehensible why the involvement of a third party (as a buyer) was suddenly required for the first time for this unauthorized disposition, when Defendant 1 had made and executed all previous decisions alone.

The presentation of the Defendants regarding such alleged circumstances remained contradictory and not comprehensible until the end of the oral proceedings. Most recently, at the hearing before this Court, in short time intervals Defendant 1 at first explained that he had changed the volatile Ether currency into stable and secure "stable coins" for the benefit of all parties involved and in the interest of mutual security, only to claim shortly thereafter that the currency on the disputed wallet was now suddenly "insecure", which was the alleged driving force behind the renewed unauthorized dispositions.

The Defendants also failed to provide any comprehensible answer as to the amount of the alleged purchase price payments made by the purchaser, and when and to where exactly these payments were allegedly made. The corresponding submission is unsubstantiated in every respect with regard to amounts, times and exact payment details, and (including the associated affidavits) is clearly construed solely to achieve a predefined and desired result, namely the assertion that "between the Defendants and Mr. Krusenbaum everything had been settled and handled in the best possible way".

This Court did not have to investigate these aspects for the sole reason that (as already explained) there is no legally valid objection by the Defendants against Plaintiff's claim even if all events had actually taken place with the involvement of Mr. Krusenbaum as they were presented by the Defendants without any details and any viable explanations.

The decision on costs is based on Section 91 (1) of the German Code of Civil Procedure.

Schulz	Heichel-Vorwerk	On behalf of the signature due to vacation
Presiding Judge at the District Court	Judge at the District Court	Judge at the District Court Pohl

VRiLG Schulz

Delivered on 07.04.2021

Fuhlbrügge, JOSekr'in
as clerk of the office

For the correctness of the transcript
Berlin, 08.04.2021

Fuhlbrügge, JOSekr'in
Clerk of the Registry