

## LEGAL ALERT

# ESMA ISSUES GUIDELINES ON REVERSE SOLICITATION UNDER MICA REGULATION

### Background

On 26 February, 2025, the European Securities and Markets Authority (ESMA) released [Guidelines](#) to clarify the application of the reverse solicitation exemption (Guidelines) under the Markets in Crypto-Assets Regulation (MiCAR).

These Guidelines, based Article 61(3) of MiCAR, aim to ensure a harmonised approach by all National Competent Authorities (NCAs) when assessing whether third-country firms improperly solicit European Union (EU) clients while providing crypto-asset services and the «[...] supervision practices to detect and prevent circumvention of the reverse solicitation exemption under MiCAR».

Reverse solicitation remains a strictly limited exemption under MiCAR, and ESMA's Guidelines emphasise the narrow interpretation of what qualify as services that truly initiated by clients.

As such, these Guidelines clarify the following key aspects: *(i)* the strict conditions for claiming to be operating under the reverse solicitation exemption; *(ii)* what constitutes solicitation, including indirect marketing strategies; *(iii)* the regulatory expectation for record-keeping and supervision; and *(iv)* the enforcement measures that NCAs should take to prevent circumvention of MiCAR.

The Guidelines also include various more practical examples of circumstances where a third-country firm is likely to be regarded as soliciting clients in the EU.

## Key insights and potential implications

### 1. Limits on reverse solicitation

- ESMA reinforces that the reverse solicitation exemption applies only when an EU client explicitly initiates a request for services from a third-country firm;
- Any active engagement by the third-country firm that encourages EU clients to request services invalidates the exemption;
- Ongoing client relationships cannot be used to claim reverse solicitation for future services that were not originally requested.

### 2. Broad definition of solicitation

ESMA's Guidelines provide a broad interpretation of what constitutes solicitation, covering the following:

Solicitation	Description
Direct solicitation	Advertising, target email campaigns, cold calls, and any promotional outreach to potential EU clients.
Indirect solicitation	Social media marketing, influencer partnerships, sponsored events, and regional online advertising.
Website optimisation	If a website has geo-targeted content, EU-specific languages, or promotional materials addressing EU-clients, this may be considered as solicitation by the third-country firm.
Affiliate marketing	Partnerships with EU-based individuals or firms to attract clients might fall under the scope of solicitation.

ESMA reinforces that merely having a website accessible in the EU does not automatically qualify as solicitation but additional factors such as language, disclaimers, and targeting practices will be duly evaluated by NCAs.

### **3. Responsibilities of third-country firms**

To comply with Guidelines, third-country firms must:

- Avoid any form of direct or indirect solicitation of EU clients;
- Maintain robust documentation providing that every EU client interaction is entirely client-initiated;
- Ensure all records of client interactions are detailed and preserved to demonstrate compliance in case of regulatory scrutiny;
- Restrict their outreach strategies to avoid regulatory enforcement actions.

### **4. Supervisory Expectations for NCAs**

NCAs across EU Member States will be required to implement monitoring and enforcement mechanisms to detect and prevent unauthorised solicitations. For that, ESMA suggests that NCAs should:

- Conduct market surveillance and monitor firms engaging with EU clients;
- Investigate client complaints among third-country firms' possibility breach MiCAR rules;
- Establish cross-border cooperation with other NCAs to detect circumvention tactics; and
- Implement enforcement actions, including penalties and potential banks against third-country firms that do not comply.

### **5. Prohibition of circumvention practices**

The Guidelines highlight that NCAs should closely scrutinise firms that regularly onboard EU clients under the pretence of reverse solicitation. For that, ESMA explicitly prohibits third-country firms from structuring their business action in ways that indirectly target EU clients while claiming the reverse solicitation exemptions.

This means that firms attempting to manipulate contractual terms or create artificial client request to bypass MiCAR requirements risk severe regulatory consequences.

## Implications and next steps

Considering these new guidelines, third country firms should:

- Review their **marketing and engagement strategies** to ensure compliance with ESMA's strict interpretation of this exemption;
- Review and reinforce their **documentation and record-keeping policies** to be able to demonstrate full compliance in case of regulatory review.

In the meanwhile, NCAs will be incorporating these Guidelines into their national legal and/or supervisory frameworks, as appropriate.

Beyond the matter addressed in this Legal Alert, Morais Leitão's team continues to closely monitor all the communications and updates related to the MiCA Regulation.

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