

# RegCORE – Client Alert

## MiCAR – Final guidelines on reverse solicitation

January 2025

## Financial Services

### MiCAR – Final guidelines on reverse solicitation

---

**Dr. Michael Huertas**

Tel.: +49 160 973 757-60

michael.huertas

@pwc.com

**Contact the EU RegCORE Team**

de\_regcore@pwc.com

---

---

**QuickTake**

---

The EU's Market in Crypto-Assets Regulation (**MiCAR**) became fully operational as of 30 December 2024. As explored in PwC Legal's EU RegCORE' series covering developments across the "EU's Digital Single Market, financial services and crypto-assets" MiCAR marks a momentous achievement in creating (i) a new chapter of the EU's Single Rulebook for certain types of crypto-assets that are not classified as "financial instruments" and (ii) concurrently extending existing chapters of the Single Rulebook to those crypto-assets that do qualify as "financial instruments".

MiCAR thus introduces the world's largest Single Market for crypto-assets, with uniform concepts and rules applicable to crypto-asset issuers (**CAIs**) as well as crypto-asset service providers (**CASPs**). In accordance with Article 59(1) of MiCAR, only legal persons or other undertakings that have been authorised as CASPs under Article 63 of MiCAR and certain EU-authorised financial entities (subject to a notification procedure) may provide crypto-asset services in the EU. Only a firm with a registered office in a Member State of the EU shall be able to be authorised as CASP in accordance with Article 63 of MiCAR. Accordingly, "third-country" i.e. non-EU firms<sup>1</sup> may not solicit EU-27 clients as they are not authorised to provide CASP services in the EU, but clients are free to use such third-country firms if they choose to do so provided they have not been solicited by such firms.

As offerings of and trading activity in digital-assets, whether regulated or not as "crypto-assets" by MiCAR or as financial instruments and thus under traditional EU legislative and regulatory rulemaking regimes continues to grow, so too do the questions on how and when reverse solicitation (also known as reverse enquiry) exemption for third-country firms can be applied as well. The reverse solicitation exemption, as defined in Article 61 of MiCAR, allows third-country firms to provide crypto-asset services or activities to clients in the EU only if such service or activity is "initiated at the own exclusive initiative of the client, without any solicitation by the third-country firm". MiCAR's reverse solicitation exemption may not be relied upon by EU-based firms to "escape the authorisation or notification requirements" under MiCAR.

---

<sup>1</sup> In full the definition used is: "A firm that would be subject to Article 59 of MiCAR if its head office or registered office were located within the EU."

On 17 December 2024, the European Securities and Markets Authority (**ESMA**) published its Final Report containing, in Annex III, the now final Guidelines regarding reverse solicitation (the **Reverse Solicitation Guidelines**) under MiCAR.<sup>2</sup> As discussed in an earlier Client Alert<sup>3</sup> assessing the draft version of the guidelines, ESMA ran a consultation between January and April 2024 and received 35 responses from industry as well as advice from ESMA's Securities and Markets Stakeholder Group (the **SMSG**). These responses have been reflected in the 13 pages that make up the final Reverse Solicitation Guidelines and in the 36 pages of the Final Report setting out the context and rationale for the changes plus industry and SMSG feedback. This provides useful context to ESMA's and other supervisors' expectations of (all) market participants as it relates to the permitted use of reverse solicitation.

This Client Alert assesses the key takeaways for traditional financial services firms and for CASPs as well as CAIs resulting from ESMA's commentary set out in the Final Report and in the principles communicated in the Reverse Solicitation Guidelines and how this differs from the draft version. This Client Alert should equally be read in conjunction with the Client Alert on ESMA's guidelines on qualification of crypto-assets as financial instruments with further analysis on MiCAR (notably also on use of social media and/or (f)influencers) along with further coverage on supervisory clarifications provided by ESMA and its sister European Supervisory Authorities (**ESAs**) comprised of the European Banking Authority (**EBA**) and the European Insurance and Occupational Pensions Authority (**EIOPA**) plus expectations of the European Central Bank (**ECB**).

---

### Key takeaways from ESMA's Reverse Solicitation Guidelines

---

ESMA takes the view that the definition of solicitation and the person soliciting should be construed broadly. Accordingly, the exemption in the Reverse Solicitation Guidelines, like in the draft version, is meant to be very narrowly framed, time bound and should not be used to circumvent MiCAR or to harm EU-based investors and MiCAR-compliant CASPs.

The draft and equally the final versions of the Reverse Solicitation Guideline equally serve to harmonise what had been differing interpretations amongst EU national competent authorities' (**NCA**s) on reverse solicitation, the use of social media and/or (f)influencers as it applies to traditional financial services activity and/or crypto-asset relevant services. ESMA's final Reverse Solicitation Guidelines (and non-exhaustive examples set out in Annex 1 thereto) specify the situations in which a third-country firm is deemed to solicit clients in the EU, the means of solicitation, the person soliciting and the timing and scope of the reliance on the reverse solicitation exemption. They also provide guidance on the supervision practices that NCAs may employ to detect and prevent the abuse of the exemption, such as monitoring, reporting, cooperation, and enforcement measures.

ESMA is clear that solicitation should be construed in a technology neutral way and thus reflect the following principles:

- **Broad definition of solicitation:** the Reverse Solicitation Guidelines adopt a broad and technology-neutral definition of solicitation, encompassing various forms of promotion, advertisement, and offers by and of any means. This includes internet commercials, emails, social media activities and even sponsorship deals. Firms must be cautious in their marketing strategies, ensuring that no aspect of their promotional activities can be construed as soliciting EU clients. ESMA is clear that contractual arrangements and/or use of disclaimers cannot supersede contrary facts;
- **Education materials and industry events:** while purely educational materials and industry events (in particular where they are purely focused on sharing knowledge about underlying technologies or innovations of the industry) are not considered solicitation, any activity that indirectly promotes the firm's services or directs the audience to the firm's website may be deemed solicitation. Firms must ensure that their educational initiatives do not inadvertently breach the Reverse Solicitation Guidelines;
- **Narrow interpretation of reverse solicitation:** ESMA reiterates that the provision of crypto-asset services by third-country firms is strictly limited to cases where the service is initiated at the exclusive initiative of the client. This narrow framing is intended to prevent circumvention of MiCAR and protect EU investors. Firms must ensure that any engagement with EU clients is genuinely client-initiated and not the result of any solicitation, direct or indirect.

---

<sup>2</sup> Available [here](#).

<sup>3</sup> Available [here](#).

- **(F)influencers:** own initiative reviews by (f)influencers and/or other persons of a third-country firm's crypto-asset services or activities should not be regarded as solicitation by or on behalf of the third-country firm;
- **Categorisation of list of pairs of crypto-assets:** Article 61(2) of MiCAR does leave open the possibility for the third-country firm to market to that client crypto-assets or crypto-asset services or activities of the same type. The Reverse Solicitation Guidelines provide a non-exhaustive list of pairs of crypto-assets which should not be considered as belonging to the same type of crypto-assets (e.g. utility tokens, asset-referenced tokens (**ARTs**) or electronic money tokens (**EMTs**); crypto-assets not stored or transferred using the same technology; EMTs not referencing the same official currency; ARTs based mostly on fiat currencies and asset-referenced; liquid and illiquid crypto-assets, etc.).
- **Timing and ongoing relationships:** The Reverse Solicitation Guidelines clarify that the reverse solicitation exemption applies only to the specific product or service requested by the client and cannot be used to market new types of crypto-assets or services. The timing of the client's request and the firm's subsequent actions are crucial. Firms must maintain detailed records of client interactions to prove that any subsequent offers are made within the context of the original transaction.
- **Supervision practices:** to detect and prevent circumvention, ESMA outlines several supervision practices for NCAs. These include monitoring online activities, conducting consumer surveys, and collaborating with other authorities, including the usage of mystery shopping (see coverage from our EU RegCORE on how this supervisory tool is used). Firms should anticipate increased scrutiny and be prepared to demonstrate compliance with MiCAR's requirements.

Importantly, it is likely that these current final Reverse Solicitation Guidelines may be updated over time as (i) the relevant regulatory regime changes and/or (ii) the principles detailed therein are carried over to more than just MiCAR relevant activity. Indeed, ESMA hints at this possibility and the future aligning of the principles in the MiCAR relevant Reverse Solicitation Guidelines to be reflected in updates to the separate MIFID II relevant reverse solicitation regime. This would then likely apply to all financial instruments and not just crypto-assets classified as such.

---

### Key messages and differences between the draft and final Reverse Solicitation Guidelines

---

In addition to the above, it is important to review how the focus, tone and expected level of scrutiny differs, even if ever so slightly, between the draft and final versions of the Reverse Solicitation Guidelines:

Topic – running order as used in publications	Draft Reverse Solicitation Guideline	Final Reverse Solicitation Guideline
<b>Solicitation methods and criteria</b>	<ul style="list-style-type: none"> <li>• Included internet commercials, brochures, telephone calls, face-to-face meetings, press releases, and other forms of physical or electronic means, including websites, social media platforms, and mobile applications.</li> <li>• Mentioned participations in road shows and trade fairs, invitations to events, affiliation campaigns, retargeting of advertising, invitations to fill in a response form or to follow a training course, and messaging platforms.</li> <li>• Included promotions.</li> </ul>	<ul style="list-style-type: none"> <li>• Expanded to include emails, banners, pop-ups, and similar tools on websites and social media.</li> <li>• Added sponsorship deals.</li> <li>• Reformatted the list for clarity, using bullet points for each item.</li> <li>• Retained all previously mentioned methods and added new ones, providing a more comprehensive and detailed list of solicitation methods.</li> </ul>
<b>Third-party involvement and remuneration</b>	<ul style="list-style-type: none"> <li>• Indications of acting on behalf of a third-country firm include directing the audience to the firm's website, providing access to services, offering promotional deals, or displaying the firm's logo.</li> <li>• Solicitation done on behalf of a third-country firm by a person or entity regulated in the EU should be regarded as a breach of MiCAR, including redirecting clients to payment services provided by a third-country firm, whether part of the same group or not.</li> </ul>	<ul style="list-style-type: none"> <li>• The existence of any form of remuneration or benefit (monetary or non-monetary) provided by the third-country firm to the third party is a strong indication that the third party is acting on behalf of the third-country firm.</li> <li>• Indications that a person is acting on behalf of a third-country firm include directing the audience to the firm's website, providing access to services, offering promotional deals, or displaying the firm's logo.</li> <li>• Solicitation done on behalf of a third-country firm by a person or entity regulated in the EU should be regarded as a breach of MiCAR, including redirecting clients to crypto-asset services provided by a third-country firm, whether part of the same group or not.</li> </ul>

<p><b>Client initiative and reverse solicitation exemption</b></p>	<ul style="list-style-type: none"> <li>The original document referenced Article 3(31) of MiCAR without providing detailed explanations about 'own initiative reviews.'</li> <li>The guidelines on the exclusive initiative of the client and the reverse solicitation exemption were numbered differently and lacked some of the clarifications found in the revised version.</li> <li>The original text did not include the new section 33, which provides examples and clarifications on electronic money tokens and crypto-assets.</li> <li>The original document did not contain the new guideline describing a scenario where a third-country firm offers a package of bundled crypto-asset services to an EU-based individual.</li> <li>The categorisation of crypto-assets and crypto-asset services or activities was mentioned but without specifying that it should be done by the third-country firm.</li> </ul>	<ul style="list-style-type: none"> <li>Added a detailed explanation about 'own initiative reviews' and their conditions, clarifying that such reviews are not considered solicitation if the third-country firm is unaware and has not facilitated them.</li> <li>Clarified that the exclusive initiative of the client should be construed narrowly and that the assessment should be factual, with contractual arrangements or disclaimers not superseding contrary facts.</li> <li>Added a new section 33, clarifying that the same reference currency or technology does not necessarily imply the same type of electronic money tokens or crypto-assets.</li> <li>Introduced a new guideline describing a scenario where a third-country firm offers a package of bundled crypto-asset services to an EU-based individual who initially requested a specific service.</li> <li>Specified that the categorisation of crypto-assets and crypto-asset services or activities should be done by the third-country firm to ensure compliance with the reverse solicitation exemption and avoid circumventing authorisation requirements under Article 59 of MiCAR.</li> </ul>
<p><b>Marketing and promotional activities</b></p>	<ul style="list-style-type: none"> <li>General promotions, advertisements, and offers of a general nature addressed to the public, such as brand advertisements by way of sponsorship deals, may also constitute solicitation.</li> </ul>	<ul style="list-style-type: none"> <li>General promotions, advertisements, marketing, and offers of a general nature, such as brand advertisements, may also constitute solicitation.</li> <li>A footnote explaining geo-targeted link building as obtaining backlinks from other websites within a geographic region, thereby redirecting or encouraging web traffic.</li> <li>Guidelines specifying that, where third-country firms send push notifications to EU clients encouraging them to trade more and may market or offer different types of crypto-assets, such as meme coins, to EU clients, this is deemed to be solicitation.</li> </ul>
<p><b>Examples and practical guidance</b></p>	<ul style="list-style-type: none"> <li>Detailed criteria for assessing solicitation included specific indicators such as the use of an official EU language on a website and geo-blocking.</li> <li>Solicitation may arise when done by the third-country firm itself or by any person acting explicitly or implicitly on behalf of the firm or having close links to it.</li> </ul>	<ul style="list-style-type: none"> <li>General guideline for assessing solicitation, with a reference to an annex for specific examples.</li> <li>Clarification that solicitation can be done on behalf of the third-country firm or by those with close links to it, with added examples and references to MiCAR.</li> <li>Addition of an annex providing detailed examples of circumstances where a third-country firm might be seen as soliciting clients in the EU, including SEO strategies, digital ads, sponsorships, website redirections, marketing strategies, and use of (f)influencers.</li> <li>Specific guideline added regarding the use of EU official languages on third-country firm websites, indicating that this could be seen as soliciting EU clients without a clear reason related to the firm's origin or target market.</li> </ul>

In summary, the changes from the draft and final version of the Reverse Solicitation Guidelines means that firms may need to focus on how they meet:

- The expanded definition and scope of solicitation of EU clients by third-country firms including the understanding in light of clarifications provided by several examples;
- The conditions and limitations of the reverse solicitation exemption, which was refined and narrowed with specific criteria and examples in the new guidelines 23 to 28;
- The categorisation and assessment of crypto-assets and crypto-asset services or activities of the same type, which was explained and illustrated with examples in the new guidelines 34 to 40;
- The precautionary measures that third-country firms can take to avoid breaching MiCAR authorisation requirements, such as not accepting new EU clients' accounts or geo-blocking the means of access to their crypto-asset services or activities, as suggested in the new guideline 19;
- The existence and implications of any form of remuneration or benefit provided by the third-country firm to a third party acting on its behalf, which was indicated as a strong indication of solicitation in the new guideline 21.

---

### Further key implications for firms

Reverse solicitation has long been subject to stricter supervisory scrutiny in the EU. While reverse solicitation remains a permitted means of servicing clients' requests, it should be seen more the exception

than the rule when a third-country firm looks to engage with clients ordinarily domiciled in the EU-27. Third-country firms should continue to:

1. observe the boundaries of the relevant regulatory perimeter of MiCAR as well as traditional financial services legislation as sanctions can be levied against third-country firms and key function holders of those firms. In some instances, this can also apply when tied agents or other distributors may be acting for a third-country firm;
2. review their existing and new arrangements on a client-by-client as well as a transaction-by-transaction basis and assess whether they can or indeed should rely on reverse solicitation;
3. assess all their direct and indirect: (i) marketing channels, (ii) client facing communications and (iii) those of distributors (as well as (f)influencers) for compliance with the requisite reverse solicitation exemption requirements. As ESMA's supervisory expectations are that NCAs should cast a wide net in their review, firms should ideally be conducting a comprehensive review irrespective of whether the communications and/or marketing materials, including websites, search engine optimisation (**SEO**), social media posts and promotional emails, do not inadvertently target EU clients, a specific market or customer type as any strategy that increases the visibility of the firm's 'services to EU clients' (but not services overall – provided they meet the educational material exemption discussed above) could be considered solicitation. This is particularly the case in case of specific strategies like regional or country-specific SEO and geo-targeted digital ads that must be carefully managed. For instance, using country-code top-level domains (**TLDs**) or geo-targeted link building to attract EU clients could be seen as solicitation. Firms should avoid using geographic targeting that could lead to their services being prominently displayed to EU clients. The same principle also applies to sponsorship deals and (f)influencer marketing. Firms must ensure that any sponsorship of events or use of influencers does not target EU clients. Influencers, in particular, should not be used to promote the firm's services to an EU audience, and any content created by influencers should be carefully monitored;
4. ensure they (as well as other persons they rely on) have sufficiently detailed and robust evidence to show how, when and on what basis for what precise products and services the client approached the (third-country) firm and whether it was at its own exclusive initiative or that there is no evidence to the contrary. Importantly, this may require a periodic review that the own exclusive initiative test is indeed being applied on service by service or product by product basis as opposed to a relationship basis; and
5. be sensitive to the supervisory presumption that an overuse of reverse solicitation may be interpreted by the NCAs as a circumvention of the rules or misuse, which will not be tolerated and can attract adverse supervisory interest and/or enforcement action.

Given the above, many firms, in particular third-country firms, may want to draft and maintain a reverse solicitation policy and procedures document that considers (i) the EU-level supervisory expectations along with those as specific to individual Member States as well as (ii) client-type and product/service-type specific considerations. Such a policy and/or procedures document may also help in evidencing compliance efforts to supervisors for MiCAR relevant crypto-assets and ultimately any other assets if the principles in the Reverse Solicitation Guidelines are rolled-out to such other financial instruments (including crypto-assets classified as such).

---

### Timing considerations

---

In terms of immediate next steps, the Reverse Solicitation Guidelines are set to be translated into each of the official languages of the EU and published on the ESMA website. The publication of these translations will trigger a two-month period, in which NCAs must notify ESMA whether they intend to comply with the Reverse Solicitation Guidelines. The Reverse Solicitation Guidelines will apply from three months after the publication of the translations. However, all firms should consider getting to grips with the Reverse Solicitation Guidelines' implications earlier rather than later. This also applies to those that may look to make use of MiCAR's overall grandfathering period(s) – again an area where national options and discretions have hardwired potential for divergence.

While MiCAR's full operationalisation starts 30 December 2024, an 18-month transitional phase i.e., a grandfathering period applies until 1 July 2026. These transitional measures (e.g. grandfathering and simplified procedure) apply in those Member States who have opted in.<sup>4</sup> Entities in participating Member States are permitted to make use of the simplified CASP authorisation procedure (in Art. 143(6) MiCAR) but must acquire an authorisation in accordance with Article 63 of MiCAR by then. This grandfathering period varies from Member State to Member State with some having lower periods than the full 18 months (either

---

<sup>4</sup> ESMA has published this list [here](#).

at 6 or 12 months) and others yet to announce what they will offer. Notwithstanding this grandfathering period, the Reverse Solicitation Guidelines will apply as per the timeline above, so for firms making use of grandfathering, they will still need to assess compliance with the Reverse Solicitation Guidelines.

---

## Outlook

---

The implementation of MiCAR and the accompanying final version of the Reverse Solicitation Guidelines mark a significant shift in the regulatory landscape for CASPs and CAIs engaging with EU persons. As the world's largest Single Market for crypto-assets, the EU's stringent rules and narrow interpretation of reverse solicitation are designed to protect EU investors and ensure a level playing field for MiCAR-compliant firms. Many third-country firms may need to step up their efforts to navigate these regulations carefully, ensuring that any engagement with EU clients is genuinely client-initiated and not the result of any direct or indirect solicitation. The broad definition of solicitation, encompassing various forms of promotion and advertisement, may necessitate a thorough review of marketing strategies to avoid inadvertent breaches.

Looking ahead, firms should anticipate increased scrutiny from both ESMA and NCAs and be prepared to demonstrate compliance with MiCAR's and the Reverse Solicitation Guidelines' requirements in particular. Moreover, as regulatory expectations evolve, it is crucial for firms to maintain detailed records of client interactions and continuously review their compliance strategies to mitigate the risk of enforcement actions. The potential future alignment of MiCAR principles on reverse solicitation and changes to the existing reverse solicitation regime under MiFID II further underscores the need for a proactive and comprehensive approach to getting compliance correct on when and how to employ reverse solicitation.

# About us

PwC Legal is assisting a number of financial services firms and market participants in forward planning for changes stemming from relevant related developments. We have assembled a multi-disciplinary and multijurisdictional team of sector experts to support clients to navigate challenges and seize opportunities as well as to proactively engage with their market stakeholders and regulators.

In order to assist firms in staying ahead of their compliance obligations we have developed a number of RegTech and SupTech tools for supervised firms. This includes PwC Legal's [Rule Scanner](#) tool, backed by a trusted set of managed solutions from PwC Legal Business Solutions, allowing for horizon scanning and risk mapping of all legislative and regulatory developments as well as sanctions and fines from more than 2,000+ legislative and regulatory policymakers and other industry voices in over 170 jurisdictions impacting financial services firms and their business.

Equally, in leveraging our Rule Scanner technology, we offer a further solution for clients to digitise financial services firms' relevant internal policies and procedures, create a comprehensive documentation inventory with an established documentation hierarchy and embedded glossary that has version control over a defined backward plus forward looking timeline to be able to ensure changes in one policy are carried through over to other policy and procedure documents, critical path dependencies are mapped and legislative and regulatory developments are flagged where these may require actions to be taken in such policies and procedures.

The PwC Legal Team behind Rule Scanner are proud recipients of ALM Law.com's coveted "2024 Disruptive Technology of the Year Award".

If you would like to discuss any of the developments mentioned above, or how they may affect your business more generally, please contact any of our key contacts or PwC Legal's RegCORE Team via [de\\_regcore@pwc.com](mailto:de_regcore@pwc.com) or our [website](#).

**Dr. Michael Huertas**  
Tel.: +49 160 973 757-60  
[michael.huertas@pwc.com](mailto:michael.huertas@pwc.com)