

Bundesverband der Wertpapierfirmen e.V.
Unterlindau 29, D-60323 Frankfurt am Main

ESMA Consultations

your reference

[ESMA35-1872330276-1619](#)

your message of

city_date

Frankfurt am Main, 29.04.2024

Consultation Paper on the draft guidelines on reverse solicitation under the Markets in Crypto Assets Regulation (MiCA) - ESMA35-1872330276-1619

Dear Sir, dear Madam,

As there is no explicit form for this part of the Consultation Draft guidelines on reverse solicitation under the Market in Crypto Assets Regulation (ESMA35-1872330276-1619), please find some comments that we also added as general remarks in the form [ESMA75-453128700-954](#).

General remarks:

The current wording of the Guidelines occasionally exceeds the requirements for the use of reverse solicitations under Art. 61 of MiCA in comparison to Art. 42 MiFID II significantly and without any obvious justification. The only “partial compliance” with the requirements of MiFID II (Art. 42) is justified by the necessity to protect EU-based investors and MiCA-complaint CASPs from undue incursions by third-country entities in the European market. However, the current wording bears the high risk of encapsulating the EU market from the global market and restricting the business activities of MiCA-complaint CASPs, which thrive on a global approach, particularly in the provision of crypto asset services.

Remarks on Guideline 2:

We see para. 16 of Guideline 2 as particularly problematic, as it states that the participation of regulated institutions acting on behalf of third-country entities is also considered as a breach of solicitation. We suggest at least to include a clarification that there is no breach of solicitation in the provision of crypto-asset swaps or in the execution of orders on behalf of clients in crypto-assets (as the provision of crypto-asset services under MiCA) on trading platforms operated by third-country firms. Otherwise, the activities of CASPs in the area of trading would be severely restricted or even made impossible.

Guideline 3

We also suggest deleting the time limit of one month set in para. 20 and aligning it with the existing requirements of the parallel provision Art. 42 MiFID II. A justification for a time limit on the use of the exemption provision can neither be derived from Art. 61 MiCAR itself nor from a higher need for protection (than that which applies in relation to MiFID II).

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Dr. Thorsten Freihube
Director Market Structure &
Regulatory Policy

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