Reverse solicitation

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The only route by which a non-Union firm may serve a Union client without authorisation is Art. 61, the reverse-solicitation exemption. Where a client established in the Union initiates at its own exclusive initiative the provision of a service by a third-country firm, the authorisation requirement does not apply to that service. The exemption does not permit the firm to market new types of crypto-assets or services to that client. ESMA's guidelines, adopted after a December 2024 final report, read the exemption narrowly. Any form of solicitation, promotion or advertising directed at the Union excludes it, whether done by the firm or by a third party on its behalf, through sponsorship, influencers, apps available in Union app stores or websites in Union languages.[1]

The practical consequence for a Zug or Singapore exchange is that reverse solicitation is a defence for individual relationships, never a business model. A firm with a thousand Union customers acquired through a product that is visible in the Union will not succeed in showing that each of them came at its own exclusive initiative. The sensible course is to geo-block, to turn off Union-language marketing and to document any remaining Union client's initiative, or to set up the Union subsidiary. Swiss firms know the pattern from the FinSA client-adviser register and the cross-border rules of the Union's MiFID regime. Singapore firms know it from the mirror image: MAS's FSMA Part 9 regime treats the Singapore base of an overseas-serving business as the licensing trigger, which is the same logic in the opposite direction.

Notes

1. Regulation (EU) 2023/1114, Art. 61. ESMA, Final Report on Guidelines on reverse solicitation under MiCA, 17 December 2024 (ESMA35-1872330276-1899). The guidelines treat the exemption as a narrow exception that cannot be used to circumvent MiCA.

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