



**The  
Good  
Token  
Society**

# **Position Sheet of the Good Token Society on ESMA's Consultation Paper on the draft Guidelines on reverse solicitation under MICA (29.01.2024)**



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On the 29th of January 2024, the European Securities and Markets Authority (ESMA) issued a public consultation paper on the topic of [“reverse solicitation under MICA”](#).

## ***What is reverse solicitation?***

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In practice, the notion of **reverse solicitation** is crucial for companies based in Switzerland.

The rule is simple : if a crypto-asset service company solicits clients based in the EU, then an authorization is needed under MICA (i.e. *solicitation*, art. 59 MICA). **An exception exists** (art. 61 MICA, Regeste n°75) when two cumulative conditions are met : (i) the Swiss company has not targeted the EU market ; (ii) the client has solicited the Swiss company at their own initiative (i.e. *reverse solicitation*).

The consultation gives a definition of solicitation as being “**very broad**: it includes the promotion, advertisement or offer of crypto-asset services by any means including by way of, without limitation, internet commercials, brochures, telephone calls, face-to-face meetings, press releases, or any other form of physical or electronic means, including **social media platforms**, mobile applications. It may also include **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 as well as promotions, advertisements and offers of a general nature and addressed to the public such as, for instance, brand advertisements by way of sponsorship deals.

## ***Effects on Swiss Crypto Companies***

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If this definition were to be upheld in a formal guidance by the ESMA, Swiss Crypto companies would have only four solutions at hand 1) Don't do any marketing nor create nor possess any link with the EU or ; 2) Incorporate a Company in Europe and be regulated under the two jurisdictions or ; 3) Partner with a regulated entity in EU ; 4) Expect that Swiss diplomats negotiate for Switzerland to fall under the “equivalence regime” (art. 140 al.2 let.v MICA). In summary, **the set up of most crypto projects in Switzerland would be made impractical.**



## ***What do we do at the Good Token Society?***

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The Good Token Society is a Geneva-based association dedicated to the support and promotion of blockchain-based innovations. We aim to connect public and private sectors, civil society and businesses, academics and entrepreneurs to foster sustainable investments and provide opportunities for economic development. We are actively supporting the interests and needs of our members, engaged in lobbying activities for a favorable regulatory environment, or policy discussions to address industry-specific challenges

**The Good Token Society**  
**30th of January 2024**  
**Geneva, Switzerland**

