

# PROTECTING EU SOVEREIGNTY IN THE CRYPTO MARKET

CLOSING THE MiCAR ENFORCEMENT GAP TO ENSURE FAIR COMPETITION

MiCAR's reverse-solicitation framework<sup>1</sup> is clear, yet enforcement across National Competent Authorities (NCAs) remains uneven. This creates an unlevel playing field: EU-licensed firms bear the full cost of compliance, while some third-country actors (and some groups with an EU authorisation but global operating structures) continue to acquire EU users in practice without equivalent supervisory scrutiny. Political leadership is needed to ensure consistent enforcement and supervisory convergence across the EU.

## THE REGULATORY ENFORCEMENT GAP

The challenge is non-enforcement, not missing rules. The core problem is insufficient supervision and inconsistent execution of existing ESMA guidance and national administrative tools, not a lack of legal basis.

### Digital acquisition is hard to evidence at scale.

Supervisors struggle to apply reverse-solicitation concepts to modern distribution (apps/app stores, online marketing, affiliates/influencers). While ESMA's guidance covers digital solicitation in principle, supervisory practice and prioritisation have not kept pace. This gap is increasingly problematic as the digital-asset sector has scaled rapidly and is expected to continue growing, which warrants a higher supervisory priority.

### Circumvention via "practical ambiguity".

Some third-country firms rely on English-language interfaces, strong app-store visibility, and scalable online promotion while arguing there is no "targeting" of specific Member States. The effect is nevertheless EU customer acquisition. ESMA explicitly warns that "third-country firms may try to circumvent the authorisation requirements under Article 59 of MiCA by various means and practices (...)", supporting an effect-based assessment rather than a narrow focus on formal local indicators.

### Risk of delayed action.

Some NCAs signal that focused enforcement may only start after the last grandfathering period ends (30 June 2026). This would entrench non-compliant positions and makes a sudden "overnight" shift in market practice unlikely. Hence, we welcome ESMA's statement on the end of transitional periods under MiCA<sup>2</sup> clearly stating that e.g. wind-down plans need to be "immediately executable" and all entities providing services from the 1 July 2026 without proper license must cease offering their services.

## FAIR COMPETITION AND EUROPEAN GROWTH

Weak or inconsistent enforcement enables a de facto two-tier market. Compliant providers implement MiCAR standards (including governance, custody expectations, and conduct requirements), while others retain competitive advantages through lighter obligations in practice e.g., offering product features that resemble regulated investment services without the corresponding supervisory treatment, and relying on global liquidity pools and infrastructure rather than genuinely EU-aligned arrangements.

This unequal level playing field undermines Single Market integration, discourages compliant investment, and weakens the EU's ambition to foster globally competitive European champions.

### International Comparison:

Jurisdictions like the UK demonstrate a stronger enforcement mindset. The UK's financial promotion rules apply broadly without a reverse solicitation carve-out, making enforcement and communication obligations clear under the forthcoming regime. The FCA also takes swift enforcement action when regulatory requirements are not met.

# RECOMMENDATIONS: CLOSE THE ENFORCEMENT GAP NOW

MiCAR will only deliver a safe and competitive Single Market if it is enforced consistently and if circumvention is addressed quickly. While centralised supervision of CASPs under the MiCA/MiSP package could be a structural solution in the long run (currently discussed with an indicative 2029–2031 horizon), policymakers and supervisors have effective tools available today. We recommend the following actions.

## Immediate actions:

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### ESMA clarification on reverse solicitation:

ESMA should issue an in-depth public statement (and, where appropriate, Q&As) clarifying how reverse solicitation applies in digital distribution models (apps/app stores, online advertising, affiliates, influencers, and cross-border onboarding).

### Action via digital gatekeepers and service providers:

Policymakers must increase engagement with, and enforcement through, relevant digital service providers (e.g., app stores, online advertising platforms, social media platforms, hosting providers) to reduce the distribution and promotion of unauthorised services to EU users.

## Medium-term

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### Strengthen ESMA's toolkit:

Provide ESMA with a mandate to issue legally binding opinions and to take own-initiative action in cases of cross-border regulatory arbitrage or inconsistent enforcement.

### Mandatory NCA reporting to ESMA:

Introduce an obligation for NCAs to notify ESMA of suspected cases of circumvention and unfair competition (including material enforcement actions and outcomes), enabling EU-level coordination and consistent follow-up.

### Use of EU competition tools:

Where market power and conduct warrant it, apply competition law to address dominant positions and unfair competitive practices that arise from systematic circumvention of EU financial-services rules.

<sup>1</sup> Guidelines on reverse solicitation under MiCA | [ESMA35-1872330276-2030](#)

<sup>2</sup> Statement on the End of Transitional Periods under MiCA | [ESMA75-113276571-1679](#)