



EU RegCORE Client Alert

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Prediction markets under the regulatory spotlight: ESMA's Public Statement confirms that existing binary options prohibitions apply to event contracts

QuickTake



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On 3 July 2026, the European Securities and Markets Authority (**ESMA**) published a Public Statement on the application of the national product intervention measures on binary options to event contracts (the **Public Statement**),¹ addressed to firms and national competent authorities (**NCA**s) across the European Union (**EU**).

The intervention responds to the increased offering of "event contracts" and the growth of "prediction markets" — products with a binary financial outcome (fixed payout or nothing) depending on a yes-or-no answer to a question about a future event. ESMA confirms that event contracts qualifying as MiFID II financial instruments are derivatives falling within the scope of permanent national

¹Available [here](#).

product intervention measures on binary options, now in place in all EU Member States. This means the marketing, distribution or sale of such products to retail clients is prohibited.

The Public Statement does not create new law. It is a supervisory convergence tool — a formal reminder that the existing prohibition framework, established by ESMA Decision (EU) 2018/795 and now embedded in permanent national measures, captures this newly prominent product category. Regulated firms face an immediate priority: assessing whether products currently offered or planned fall within the scope of the national binary options measures and ensuring MiFID II authorisation and conduct requirements are met.

Key elements include:

- **What.** Event contracts with a binary outcome qualifying as MiFID II financial instruments are captured by the existing national binary options measures. Retail marketing, distribution or sale is prohibited; even non-retail distribution requires MiFID II authorisation.
- **When.** Published 3 July 2026 with immediate effect as supervisory guidance. The underlying national measures have been in force across all EU Member States since 1 July 2019.
- **Who.** All firms offering, distributing or marketing event contracts or products with similar binary characteristics, and NCAs across the EU. This encompasses investment firms, trading venue operators, prediction market platforms and any entity providing investment services in relation to qualifying event contracts — whether EU-established or providing services cross-border into the EU.
- **Where.** All 27 EU Member States, each NCA having adopted permanent measures mirroring the original ESMA prohibition.
- **Why.** ESMA and NCAs have observed rapid growth of prediction markets and increasing retail participation globally. Firms may be offering event contracts to EU retail clients without appreciating these products are caught by the existing prohibition.
- **How.** Firms must conduct a careful legal analysis of every product with binary payout characteristics to determine MiFID II financial instrument status and product intervention scope, adhering to the overarching obligation to act honestly, fairly and professionally in clients' best interests.

Key takeaways

Regulatory lineage: from ESMA Decision (EU) 2018/795 to permanent national measures

The Public Statement sits within a well-established regulatory lineage. On 22 May 2018, ESMA adopted Decision (EU) 2018/795 under Article 40 of MiFIR, temporarily prohibiting the marketing, distribution or sale of binary options to retail clients across the Union. That binding Decision, published in the Official Journal, took effect on 2 July 2018.

ESMA renewed the measure through Decisions (EU) 2018/1466, (EU) 2018/2064 and (EU) 2019/509 before allowing it to lapse on 1 July 2019. By then, all NCAs had adopted permanent national measures at least as stringent. The Public Statement confirms these measures remain in place in all Member States, mostly mirroring the original Decision without changes.

The classification gateway: not all event contracts are financial instruments

ESMA is explicit: not all event contracts are financial instruments. Classification turns on whether the event question relates to an underlying in Section C(4) to (10) of Annex I of MiFID II — covering derivatives relating to securities, currencies, interest rates, commodities, emission allowances, financial indices and climatic variables.

The following table illustrates how the classification test may apply in practice:

Event question	Likely MiFID II underlying?	Event contract classified as a financial instrument?
“Will the EUR/USD exchange rate exceed 1.15 by 31 December 2026?”	Yes – currency (Section C(4))	Likely yes
“Will the ECB deposit facility rate be above 3% on 1 March 2027?”	Yes – interest rate (Section C(4))	Likely yes
“Will the S&P 500 close above 6,000 by year-end?”	Yes – financial index (Section C(4))	Likely yes
“Will it rain in Frankfurt on 1 August 2026?”	Potentially – climatic variable (Section C(10))	Requires analysis

This classification is the critical first step. The commercial name, whether “event contract”, “prediction market” or otherwise, is irrelevant for MiFID II categorisation.

The binary options definition remains unchanged

The Public Statement reproduces the 2018 definition of “binary option” without modification: a derivative that (a) must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event; (b) only provides for payment at close-out or expiry; and (c) its payment is limited to (i) a predetermined fixed amount or zero if the underlying meets one or more predetermined conditions, and (ii) a predetermined fixed amount or zero if the underlying does not meet one or more predetermined conditions. Event contracts with a binary outcome and payout are, in ESMA’s view, likely to meet this definition and fall within scope. ESMA also notes that certain binary options (as described in paragraph 3 of Article 2 of the ESMA Decision) are excluded from the scope of the product intervention measures.

Ancillary features do not alter the binary character

ESMA addresses a specific structuring technique: some event contracts pay investors a “coupon” or “reward” representing interest earned on deposited funds. Such features do not change the binary nature of the contract. This addition (absent from the 2018 Decision) reflects ESMA’s awareness of structuring practices in the prediction market space.

MiFID II authorisation is required irrespective of client category

A reminder absent from the 2018 Decision: MiFID II authorisation is required for investment services concerning financial instruments irrespective of client category. Distribution of qualifying event contracts even solely to non-retail clients requires authorisation. This signals that ESMA has observed firms – likely fintech platforms and crypto-native operators – offering event contracts without MiFID II authorisation, whether assuming non-retail distribution is exempt or that event contracts fall outside the financial instruments taxonomy.

Multi-regime complexity: MiFID II, gambling and MiCAR

The Public Statement introduces regulatory dimensions absent from the 2018 Decision:

Regulatory regime Relevance to event contracts

MiFID II / national product intervention measures Event contracts qualifying as financial instruments are derivatives caught by the binary options prohibition for retail clients. MiFID II authorisation required for all distribution.

National gambling legislation Event contracts may also classify as a bet under national gambling legislation, irrespective of whether they are financial instruments.

MiCAR (Regulation (EU) 2023/1114) Tokenised event contracts that are not financial instruments may qualify as crypto-assets regulated under MiCAR.

Firms may therefore need to navigate the interaction of financial services regulation, gambling law and crypto-asset regulation simultaneously, requiring cross-disciplinary expertise.

Anti-circumvention

Circumvention of the product intervention measures is prohibited. This echoes Article 2 of the 2018 Decision, which prohibited knowing and intentional participation in activities designed to circumvent the prohibition, including acting as a substitute for the provider. Its restatement suggests awareness that avoidance structuring may be occurring in the prediction market space.

How the 2026 Public Statement differs from the 2018 Decision

The key differences between the two instruments:

Dimension	2018 Decision (EU) 2018/795	2026 Public Statement
Legal nature	Binding decision under Article 40 MiFIR	Non-binding supervisory statement
Product focus	Binary options in traditional form	Event contracts and prediction market products
Classification analysis	Assumed – binary options were inherently MiFID II instruments	Threshold question introduced – not all event contracts qualify
Investor evidence protection	Exhaustive – 15+ pages of NCA data, loss statistics (74–89% of accounts losing money), market growth analysis	None – relies entirely on the 2018 evidentiary foundation
Multi-regime considerations	MiFID II and PRIIPs only	MiFID II, national gambling law and MiCAR

Dimension	2018 Decision (EU) 2018/795	2026 Public Statement
MiFID authorisation for non-retail	Not addressed – prohibition limited to retail	Expressly required irrespective of client category
Coupon/reward structuring	Not addressed	Expressly addressed – does not alter binary nature
Anti-circumvention	Formal prohibition in Article 2	Restated in footnote – cross-reference to national measures
Proportionality assessment	Full assessment as required by Article 40(2)(a) and MiFIR	None – statement is not a new measure
Duration	Temporary – 3 months	Indefinite – refers to permanent national measures

Practical Considerations

The following areas may warrant attention.

Product classification and inventory review

Firms offering or planning to offer products with binary payout characteristics, regardless of labelling, may wish to undertake a systematic product inventory review considering:

1. **Event question mapping:** whether the product’s event question relates to an underlying within MiFID II Annex I Section C(4) to (10), such as securities, currencies, interest rates, commodities, financial indices or climatic variables.
2. **Binary option definition test:** whether the product meets the three-limb definition of a binary option: cash settlement, payment only at close-out or expiry, and payment limited to a predetermined fixed amount or zero.
3. **Ancillary features analysis:** whether any coupon, reward or interest-like feature has been added to the product, and confirmation that such features do not alter the binary classification.
4. **Documentation:** retaining the analysis in formal legal memoranda or opinions as evidence of compliance, given that ESMA has expressly placed firms on notice of the expectation to conduct such a review. Such documentation should be version-controlled and integrated into the firm’s broader policy and procedure framework.

Distribution channel controls and client categorisation

Firms wishing to continue offering qualifying event contracts to non-retail clients may wish to ensure robust client categorisation controls. Any leakage into the retail channel, even inadvertent, would breach the national measures. This is particularly relevant for digital platforms with automated onboarding, where the retail/professional boundary requires careful gatekeeping. From a contractual and policy documentation

perspective, firms should review client onboarding agreements, professional client opt-up documentation and acknowledgement forms to ensure they accurately capture client categorisation status and include appropriate risk warnings.

MiFID II authorisation verification

Firms may wish to verify that their MiFID II authorisation covers the specific investment services provided in relation to derivatives (e.g., execution, dealing on own account, investment advice). Cross-border services require adequate passporting arrangements. Firms should ensure that authorisation documentation and passporting notifications are current and that internal policies accurately reflect the scope of permitted activities.

Third-country firms and cross-border considerations

The implications extend beyond the EU. Third-country prediction market platforms soliciting or accepting EU retail clients may breach both the product intervention measures and MiFID II authorisation requirements. Firms may wish to assess whether their distribution model involves EU-facing activity triggering regulatory exposure. NCAs may be expected to take enforcement action – including website-blocking orders and public warnings – against non-compliant operators. Firms should document their jurisdictional analysis and implement contractual controls – such as geo-blocking provisions, terms of service restrictions and client representations – to evidence that EU retail clients are not being solicited or served.

Multi-regime assessment

Firms need to assess whether their products engage regulatory regimes beyond MiFID II. Tokenised event contracts that are not financial instruments may qualify as crypto-assets under MiCAR; non-tokenised contracts falling outside MiFID II may trigger national gambling licensing requirements. This multi-regime analysis spans financial services regulation, gambling law and digital asset regulation. Firms should document this assessment in a regulatory perimeter analysis, with clear conclusions on the applicable regime(s) and corresponding licence requirements and ensure that relevant policies and procedures reflect the multi-regime obligations.

Product governance and senior management awareness

MiFID II product governance processes may need to capture the classification analysis; this includes target market identification, compatibility assessment and ongoing distribution monitoring. Board-level awareness of prediction market exposure and associated regulatory risk may be considered a matter of good governance. From a documentation perspective, firms should update product governance policies to incorporate the event contract classification analysis, ensure product approval committee records reflect the assessment, and implement management information reporting to evidence ongoing senior management oversight.

Anti-circumvention compliance

ESMA reminds firms that participation in circumvention activities is prohibited. Firms should document their product structuring rationale to demonstrate that features such as coupons or rewards are not designed to circumvent the prohibition. Internal policies should expressly address anti-circumvention obligations and establish escalation procedures where product structures raise potential concerns.

Outlook

The Public Statement forms part of a broader supervisory trend. On 24 February 2026, ESMA issued a substantively similar statement confirming that derivatives marketed as “perpetual futures”² – particularly those providing leveraged crypto-asset exposure – fall within the national CFD product intervention measures. The July 2026 event contracts statement follows the same template: ESMA is systematically confirming that existing frameworks capture innovative or rebranded products.

This signals an active supervisory convergence phase. Further statements (or enforcement referrals to NCAs) may follow for other product categories presenting similar boundary questions. The supervisory message is clear: commercial innovation does not create regulatory gaps where underlying product characteristics fall within established definitions.

For prediction markets specifically, the trajectory is likely to involve heightened NCA scrutiny, enforcement action against unlicensed operators and further ESMA guidance on borderline classifications, particularly where the event question’s relationship to a MiFID II underlying is ambiguous. Firms that proactively assess their product inventory, document their classification analysis and - where needed - ensure authorisation compliance are better positioned to navigate this landscape. Those that have not yet begun, face increasing regulatory risk.

² [Available here.](#)

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 navigate challenges and seize opportunities as well as to proactively engage with their market stakeholders and regulators.

Moreover, we have developed a number of RegTech and SupTech tools for supervised firms, including 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 2,500 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" and the "2025 Regulatory, Governance and Compliance Technology Award in 2025".

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 or our [website](#).



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