



European Securities and
Markets Authority

Call for evidence

Effects of product intervention measures regarding CFDs and binary options on market participants and clients



Responding to this paper

ESMA invites comments on this paper and in particular on the specific questions summarised in **Chapter 5**.

ESMA will consider all comments received by **4 November 2019**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Publication of responses

All contributions received could be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading '[Data protection](#)'.

Who should read this paper

All interested stakeholders are invited to respond to this call for evidence.

This call for evidence is primarily of interest to (i) investment firms and credit institutions providing investment services (and in particular providers of contracts for differences or binary options impacted by ESMA product intervention measures) and (ii) consumer groups and investors. When mentioning ESMA product intervention measures, reference is made to the measures in relation to the marketing, distribution or sale of contracts for difference (CFDs) and binary options to retail clients as set out in ESMA Decisions (EU) 2018/796¹, (EU)

¹ European Securities and Markets Authority Decision (EU) 2018/796 of 22 May 2018 to temporarily restrict contracts for differences in the Union in accordance with Article 40 of Regulation (EU) No 600/2014 of the European Parliament and of the Council (OJ L 136, 1.6.2018, p. 50).

2018/1636 ², (EU) 2019/155 ³, (EU) 2019/679 ⁴, (EU) 2018/795 ⁵, (EU) 2018/1466 ⁶, (EU) 2018/2064 ⁷ and (EU) 2019/509 ⁸.

² European Securities and Markets Authority Decision (EU) 2018/1636 of 23 October 2018 renewing and amending the temporary restriction in Decision (EU) 2018/796 on the marketing, distribution or sale of contracts for differences to retail clients (OJ L 272, 31.10.2018, p. 62).

³ European Securities and Markets Authority Decision (EU) 2019/155 of 23 January 2019 renewing the temporary restriction on the marketing, distribution or sale of contracts for differences to retail clients (OJ L 27, 31.1.2019, p. 36).

⁴ European Securities and Markets Authority Decision (EU) 2019/679 of 17 April 2019 renewing the temporary restriction on the marketing, distribution or sale of contracts for differences to retail clients (OJ L 114, 30.4.2019, p. 22).

⁵ European Securities and Markets Authority Decision (EU) 2018/795 of 22 May 2018 to temporarily prohibit the marketing, distribution or sale of binary options to retail clients in the Union in accordance with Article 40 of Regulation (EU) No 600/2014 of the European Parliament and of the Council (OJ L 136, 1.6.2018, p. 31).

⁶ European Securities and Markets Authority Decision (EU) 2018/1466 of 21 September 2018 renewing and amending the temporary prohibition in Decision (EU) 2018/795 on the marketing, distribution or sale of binary options to retail clients (OJ L 245, 1.10.2018, p. 17).

⁷ European Securities and Markets Authority Decision (EU) 2018/2064 of 14 December 2018 renewing and amending the temporary prohibition in Decision (EU) 2018/795 on the marketing, distribution or sale of binary options to retail clients (OJ L 329, 27.12.2018, p. 27).

⁸ European Securities and Markets Authority Decision (EU) 2019/509 of 22 March 2019 renewing the temporary prohibition on the marketing, distribution or sale of binary options to retail clients (OJ L 85, 27.3.2019, p.19).

Table of Contents

Executive Summary	5
1 Product Intervention Powers under Article 40 and 42 of MiFIR	6
2 ESMA's product intervention measures under Article 40	8
3 NCAs' product intervention measures under Article 42	10
4 Effects	11
5 Questions	11

Executive Summary

In 2018, following the entry into application of new legislation in the European Union (Markets in Financial Instruments Regulation or MiFIR), ESMA was given the power to temporarily prohibit or restrict the marketing, distribution or sale of financial instruments (product intervention), subject to a number of specific conditions. Given the investor detriment caused by binary options and CFDs, ESMA temporarily prohibited the marketing, distribution and sale of binary options to retail clients and imposed a set of restrictions in relation to CFDs marketed, distributed or sold to retail clients.

The temporary product intervention measures of ESMA started to apply on 2 July 2018 for binary options and 1 August 2018 for CFDs. Following three consecutive renewals, these temporary measures expired on 1 July 2019 for binary options and 31 July 2019 for CFDs. At this moment the large majority of National Competent Authorities in the EU have taken national product intervention measures in order to address, in a permanent way, the investor protection concerns arising from these products.

The European Commission has asked ESMA to report on its experience with the new product intervention powers, including the practical effects of the measures. As part of its review and renewal process of the temporary measures in relation to binary options and CFDs, ESMA has already collected significant information on the impact of product intervention powers. This call for evidence invites market participants, consumers and their associations to share any further information on the effects of the measures.

ESMA will consider the responses to this call for evidence when drafting its response to the European Commission.

1 Product Intervention Powers under Article 40 and 42 of MiFIR

1. The Markets in Financial Instruments Regulation (EU) No 600/2014⁹ (MiFIR) introduced product intervention powers for National Competent Authorities (NCAs), the European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA)¹⁰. The product intervention powers allow NCAs and ESMA to prohibit or restrict (i) the marketing, distribution or sale of financial instruments or financial instruments with certain specified features or (ii) a type of financial activity or practice. MiFIR also introduced product intervention powers for EBA in relation to structured deposits.
2. For the purpose of this document, we consider the product intervention powers set out in Article 40 (ESMA temporary intervention powers) and Article 42 (Product intervention by competent authorities) of MiFIR.
3. MiFIR and Commission Delegated Regulation (EU) 2017/567¹¹ specify the conditions that have to be met to use the product intervention powers. While the specific conditions applicable to ESMA' and NCAs' product intervention powers may slightly differ, in essence these conditions are designed to ensure that the powers are used where there is a significant investor protection concern, a threat to the orderly functioning and integrity of the financial markets or commodity markets or a threat to financial stability.
4. A prohibition or restriction taken by ESMA shall be reviewed at appropriate intervals and at least every three months and shall expire after three months, if not renewed (Article 40(6) of MiFIR). As part of the recent legislative package in relation to the review on the operations of the European Supervisory Authorities (ESAs), the temporary aspect of the product intervention powers of ESMA has been amended. The new Article 40(6) of MiFIR will require ESMA to review a prohibition or restriction at least every six months. Furthermore, following at least two consecutive renewals and based on an analysis of the impact on consumers, ESMA may decide to renew the measure on an annual basis.
5. Article 40(2) and Article 42(2) of MiFIR clarify that the product intervention powers can also be used on a precautionary basis before a financial instrument has been marketed, distributed or sold to clients. For NCAs, in exceptional cases, there is the possibility to take urgent action on a provisional basis as set out in Article 42(4) of MiFIR.
6. An NCA may take product intervention measures that apply in or from that Member State as set out in Article 42(1) of MiFIR. This enables a given NCA to address the threats caused by firms authorised in that jurisdiction or the threats caused by firms authorised in another EU jurisdiction and providing services in that particular jurisdiction. In order to properly assess the consequences of a national product intervention measure, an NCA that intends to take a measure is required to consult *inter alia* the NCAs in other Member States that may be significantly affected by the action (Article 42(2)(d)).

⁹ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, (OJ L 173, 12.6.2014, p. 84).

¹⁰ The European Insurance and Occupational Pensions Authority (EIOPA) has similar product intervention powers in relation to certain insurance products following from Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p.1).

¹¹ Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions (OJ L 87, 31.3.2017, p. 90).

7. NCAs shall notify the details of a national product intervention measure they intend to take to all other NCAs and ESMA in writing not less than one month before the measure is intended to take effect (Article 42(3) of MiFIR).
8. As part of its coordination role, ESMA shall assess that the action taken by an NCA is justified and proportionate and that, where appropriate, a consistent approach is taken by NCAs (Article 43(1) of MiFIR). More specifically, as set out in Article 43(2), ESMA shall adopt an opinion on whether the proposed national product intervention measure is justified and proportionate and whether ESMA considers that it is necessary that other NCAs take measures to address the risk. This opinion shall be published on ESMA's website.
9. The relevant NCA shall immediately publish on its website a notice fully explaining the reasons for its actions when it intends to take or takes action contrary to an opinion adopted by ESMA or declines to take action contrary to such an opinion (Article 43(3) of MiFIR).
10. The above regulatory framework started to apply on 3 January 2018.
11. In the context of the reports and review foreseen under the Markets in Financial Instruments Directive 2014/65/EU (MiFID II)¹², the Commission shall, after consulting ESMA, present a report to the European Parliament and the Council on, *inter alia*, “the experience with the mechanism for banning certain products or practices, taking into account the number of times the mechanisms have been triggered and their effects” (Article 90(1)(d) of MiFID II).
12. On 23 May 2019, the European Commission has addressed a mandate to ESMA with the following specifications: “*The Commission has followed the procedure leading to the adoption of temporary product intervention measures on binary options and Contracts For Differences (CFDs) by ESMA. As these measures first became applicable in summer 2018, it is due time to have a closer look at the practical effects of the measures on market participants and clients. On this basis, ESMA should not only refer to the measures it has taken but also provide a clear and complete overview of the measures taken at national level, be it those replicating ESMA's as well as other measures that may go beyond ESMA's actions at European level. In light of the upcoming changes on product intervention rules due to review of the European System of Financial Supervision, ESMA is also invited to inform the Commission on other areas in which ESMA might consider adopting more product intervention measures in the near future or in the long term.*”
13. The present call for evidence aims at collecting information and views from market participants and clients on the application of the product intervention measures taken by ESMA and NCAs, with a particular focus on the practical effects of these measures. Stakeholders' responses will support ESMA in replying to the request of the European Commission.

¹² Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

2 ESMA's product intervention measures under Article 40

14. Following the introduction of the product intervention powers on 3 January 2018, ESMA adopted product intervention measures in relation to the marketing, distribution or sale of contracts for differences (CFDs) and binary options to retail clients. On 1 June 2018, the first ESMA product intervention measures were published in the Official Journal of the European Union^{13 14}. The measure in relation to binary options started to apply on 2 July 2018 and the measures in relation to CFDs on 1 August 2018.
15. The product intervention Decisions set out in detail the reasons and evidence that ESMA analysed when taking the measures. The measures included a prohibition of the marketing, distribution or sale of binary options to retail clients and restrictions of the marketing, distribution or sale of CFDs to retail clients. The measures in relation to CFDs consisted of:
 - Leverage limits on the opening of a position by a retail client from 30:1 to 2:1, which varied according to the volatility of the underlying:
 - 30:1 for major currency pairs;
 - 20:1 for non-major currency pairs, gold and major indices;
 - 10:1 for commodities other than gold and non-major equity indices;
 - 5:1 for individual equities and other reference values;
 - 2:1 for cryptocurrencies;
 - A margin close out rule on a per account basis, in order to standardise the percentage of margin (at 50% of minimum required margin) at which providers were required to close out one or more retail client's open CFDs;
 - Negative balance protection on a per account basis, in order to provide an overall guaranteed limit on retail client losses;
 - A restriction on the incentives offered to trade CFDs; and
 - A standardised risk warning, including the percentage of losses on a CFD provider's retail investor accounts.
16. The initial product intervention measures in relation to the marketing, distribution or sale of CFDs and binary options to retail clients have been reviewed and renewed three times in accordance with Article 40(6) of MiFIR. Since the ESMA temporary product intervention measures have not further been renewed they have expired¹⁵.
17. During its first review of the product intervention measure regarding binary options, ESMA considered the specific features of binary options within the scope of the original

¹³ European Securities and Markets Authority Decision (EU) 2018/795 of 22 May 2018 to temporarily prohibit the marketing, distribution or sale of binary options to retail clients in the Union in accordance with Article 40 of Regulation (EU) No 600/2014 of the European Parliament and of the Council (OJ L 136, 1.6.2018, p. 31).

¹⁴ European Securities and Markets Authority Decision (EU) 2018/796 of 22 May 2018 to temporarily restrict contracts for differences in the Union in accordance with Article 40 of Regulation (EU) No 600/2014 of the European Parliament and of the Council (OJ L 136, 1.6.2018, p. 50).

¹⁵ See for binary options: <https://www.esma.europa.eu/press-news/esma-news/esma-ceases-renewal-product-intervention-measure-relating-binary-options> and see for CFDs: <https://www.esma.europa.eu/press-news/esma-news/esma-ceases-renewal-product-intervention-measures-relating-contracts>

measures and amended and renewed its prohibition in order to exclude a limited sub-set of binary options¹⁶ from the scope of the measures¹⁷.

18. During its first review of the product intervention measures regarding CFDs, ESMA obtained information that the application of the prescribed risk warnings were causing technical difficulties due to certain character limitations imposed by third party marketing providers. For this reason ESMA introduced an additional reduced character risk warning when it amended and renewed its measures¹⁸.
19. The reviews of ESMA's product intervention measures have been informed by surveys among NCAs on the practical application and impact of the product intervention measures as well as additional information provided by NCAs and stakeholders.
20. The temporary product intervention measures by ESMA were reviewed and renewed three times.
21. As part of its review ESMA reported in its renewal Decisions relevant outcomes of the review process. With regard to binary options, there were no new authorisations of firms offering binary options to retail clients and NCAs reported limited numbers of non-compliance in relation to the prohibition to market, distribute or sell binary options to retail clients.
22. For CFDs, NCAs reported an overall decrease in the number of CFD retail client accounts, trading volume and total retail client equity when comparing the reporting period with the same period a year earlier (when the CFD measures were not applicable). The share of profitable retail client accounts remained broadly stable, and the average costs incurred by retail clients while trading CFDs were significantly lower in the periods after the introduction of the ESMA measures. Average costs in respect of active retail accounts containing CFDs on cryptocurrencies fell significantly in comparison to others, though such accounts continued to incur higher costs than accounts with no cryptocurrency exposure. Finally, NCAs reported a sustained decrease in the number of automatic close-outs, the number of times accounts went into negative equity and the size of negative equity balances.
23. NCAs reported that, both for binary options and for CFDs, there has been an increase in the number of clients treated as professional clients on request. For binary options, this number was relatively small in comparison to the number of retail clients before the ESMA prohibition of providers of binary options.
24. Furthermore, ESMA clarified that, unless authorised or registered in the Union, third-country firms are only allowed to offer services to clients established or situated in the

¹⁶ Certain binary options were found to have specific features which mitigate the risk of investor detriment, namely: they are sufficiently long-term (at least 90 days); are accompanied by a prospectus; and are fully hedged by the provider or another entity within the same group as the provider. ESMA considered that a binary option that benefits from the cumulative effect of these three criteria is less likely to lead to a significant investor protection concern. In addition, products that at the end of the term have one of two predetermined pay-outs, neither of which is less than the initial investment of the client, were excluded.

¹⁷ See <https://www.esma.europa.eu/press-news/esma-news/esma-renew-prohibition-binary-options-further-three-months>

¹⁸ See <https://www.esma.europa.eu/press-news/esma-news/esma-renew-restriction-cfds-further-three-months>

Union at the client's own exclusive initiative. ESMA clarified this as ESMA was aware that some third-country firms seemed to actively approach Union clients.

25. ESMA also re-iterated that it will continue to monitor the offer of other speculative investment products in order to determine whether any other Union measures are appropriate.
26. In order to promote common supervisory approaches and practices in the application of ESMA's temporary product intervention measures in relation to the marketing, distribution or sale of CFDs and binary options to retail clients, ESMA has published questions and answers¹⁹ directed to market participants and dealing with practical technical questions in relation to the ESMA product intervention measures.
27. On 12 July 2019, ESMA published a statement addressed to providers marketing, distributing or selling CFDs to retail clients²⁰. The statement deals with some practices and situations observed in the market, which raise concerns of non-compliance with the applicable legal requirements when providing services to retail clients. More specifically, the statement deals with professional clients on request and the marketing, distribution or sale by third-country CFD providers.

3 NCAs' product intervention measures under Article 42

28. Under Article 42 of MiFIR, NCAs have the power to introduce permanent product intervention measures. As set out in section 1, NCAs that propose to take national product intervention measures (NPIMs) have to consult NCAs in other Member States that may be significantly affected by their action and notify all NCAs as well as ESMA not less than one month before the NPIMs are intended to take effect.
29. Nearly all NCAs have taken NPIMs in relation to the marketing, distribution or sale of binary options and CFDs to retail clients. In relation to these NPIMs, ESMA has adopted opinions indicating whether the proposed NPIMs were considered justified and proportionate. Furthermore, ESMA has concluded in its opinions that it was necessary for the NCAs of other Member States to take product intervention measures that are at least as stringent as ESMA's measures.
30. Although most of the NPIMs have the same scope as the scope of ESMA's temporary product intervention measures, some NCAs took NPIMs that diverge from ESMA's ones. Divergences in NPIMs should be taken into account by firms providing services on a cross-border basis. For example, if Member State (MS) A adopts stricter NPIMs than MS B, then firms from MS B still have to abide by the NPIMs of MS A in respect of any cross-border activity provided to retail clients in MS A that is within the scope of the NPIMs of MS A.
31. An overview of the NPIMs taken by NCAs in relation to binary options and CFDs can be found in Annex I to this document. The overview also contains summary information concerning divergences from the ESMA measures. Furthermore, a link to the relevant

¹⁹ See: <https://www.esma.europa.eu/document/technical-qas-product-intervention-measures-cfds-and-binary-options>

²⁰ See: https://www.esma.europa.eu/sites/default/files/library/esma35-36-1743-statement_product_intervention.pdf

ESMA opinion is included. The ESMA opinions in relation to the proposed NPIMs are also published on ESMA's website ²¹.

32. At this stage, no NPIMs dealing with products other than binary options and CFDs has been taken by NCAs in accordance with Article 42 of MiFIR.

4 Effects

33. For the purposes of the review of the ESMA product intervention Decisions, ESMA conducted surveys amongst NCAs in order to assess the practical application and impact of its product intervention measures. In turn, NCAs have collected periodic information from market participants. Furthermore, ESMA received direct additional information from stakeholders that served as input for the review of its measures.
34. The significant information, both quantitative and qualitative on the effects of the measures have been reflected in the renewal Decisions (see also section 2 – paragraphs 21-24) and will be used to inform the European Commission on the practical effects of the ESMA product intervention measures as well as the NPIMs, as requested by the Commission.
35. ESMA invites respondents to this call for evidence to express any views they may have on the application of product intervention powers and to share any additional information or comments they may have on the practical effects of the ESMA product intervention measures as well as the NPIMs on clients and market participants.
36. Questions D, E, F and G below may be of specific interest for consumer groups and investors. Any respondents may however respond to any of the questions below if they wish to. Market participants that market, distribute or sell CFDs or have marketed, distributed or sold binary options to retail clients may be especially well-placed to provide responses to questions A, B, C, E, F and G.
37. Respondents are invited to provide any qualitative or quantitative information they may have. Quantitative information will be highly appreciated.

5 Questions

A: In addition to the effects of ESMA's product intervention measures regarding CFDs mentioned in the renewal Decisions and in paragraphs 22-24 above, were there further practical effects of ESMA's product intervention measures regarding CFDs on you as a market participant that you would like to share?

B: In addition to the effects of ESMA's product intervention measures regarding binary options mentioned in the renewal Decisions and in paragraphs 21, 23-24 above, were there further

²¹ <https://www.esma.europa.eu/policy-activities/mifid-ii-and-investor-protection/product-intervention>

practical effects of ESMA's product intervention measures regarding binary options on you as a market participant that you would like to share?

C: As a market participant, did you experience any issues arising from the transition between ESMA's and national product intervention measures or from differences between the national product intervention measures taken by NCAs in different jurisdictions?

D: As a client, do you experience any issues arising from the transition between ESMA's and national product intervention measures or from differences between the product intervention measures taken by NCAs in different jurisdictions?

E: What is your view on the temporary nature (see paragraph 4) of ESMA's product intervention powers?

F: Would you have any examples of circumvention of the product intervention measures? If yes, could you please share your views on such circumvention.

G: Are there any suggestions or comments you wish to share to improve the application of the regulatory framework regarding the product intervention powers?

Annex I: overview national measures

Annex I –

Planning national product intervention measures

Binary options					
NCA	Date of the ESMA opinion	Date the measure intended to take effect	Differences with ESMA's measure (if any)	ESMA opinion	Link to NCA's measure
FSMA-BE ²²	N/A	N/A		N/A	N/A
FSC-BG	26-Jun-19	02-Jul-19		Link	Link
CNB-CZ	05-Jun-19	02-Jul-19	The measure (i) does not expressly prohibit participating in circumvention (ii) includes a definition of 'group', 'provider' and 'retail investor' and (iii) explicitly explains that only binary options that qualify as financial instruments fall within the scope of the measure.	Link	Link
Finanstilsynet-DK	26-Jun-19	07-Jul-19		Link	Link

²² Legislative measures in place in BE.

BaFin-DE	26-Jun-19	02-Jul-19	No express exclusion of the binary options referred to in Article 1(3)(a) of ESMA's measure. Nevertheless, BaFIN confirmed its national prohibition does not capture these products.	Link	Link
FSA-EE	05-Jun-19	02-Jul-19		Link	Link
CBI-IE	13-Jun-19	02-Jul-19		Link	Link
HCMC-EL	26-Jun-19	04-Jul-19		Link	Link
CNMV-ES	28-May-19	02-Jul-19		Link	Link
AMF-FR	01-Jul-19	02-Jul-19		Link	Link
HANFA-HR	23-Jul-19	01-Aug-19		Link	Link
CONSOB-IT	13-Jun-19	02-Jul-19		Link	Link
CySEC-CY	01-Jul-19	07-Jul-19	The measures do not apply to credit institutions	Link	Link
FKTK-LV	26-Jun-19	01-Aug-19		Link	Link
LB-LT	28-May-19	02-Jul-19		Link	Link

CSSF-LU	13-Jun-19	01-Jul-19		Link	Link
MNB-HU	N/A	N/A		N/A	N/A
MFSA-MT	01-Jul-19	11-Jul-19		Link	Link
AFM-NL	26-Mar-19	19-Apr-19		Link	Link
FMA-AT	03-May-19	30-May-19	The measure does not expressly prohibit circumvention of the measure.	Link	Link
KNF-PL	26-Mar-19	02-Jul-19		Link	Link
CMVM-PT	13-Jun-19	02-Jul-19		Link	Link
ASF-RO ²³	N/A	N/A		N/A	N/A
SMA-SI	23-Aug-19	01-Oct-19		link	Link
NBS-SK	05-Jun-19	01-Jul-19		Link	Link
FSA-FI	14-May-19	02-Jul-19		Link	Link

²³ Legislative measures in place in RO.

FI-SE	01-Jul-19	02-Jul-19		Link	Link
FCA-UK	26-Mar-19	02-Apr-19	The measures also applies to the binary options referred to in Article 1(3)(b) of ESMA's measure (securitised binary options).	Link	Link
Contracts for differences					
NCA	Date of the ESMA opinion	Date the measures intended to take effect	What are the differences with ESMA's measure	ESMA opinion	Link to NCA's measure
FSMA-BE ²⁴	N/A	N/A	N/A	N/A	N/A
FSC-BG	23-Jul-19	01-Aug-19		Link	Link
CNB-CZ	11-Jul-19	01-Aug-19	the measure (i) does not expressly prohibit participating in circumvention (ii) includes a definition of 'group', 'provider' and 'retail investor' (iii) explicitly explains that only CFDs that qualify as financial instruments fall within the scope of the measure and (iv) the definition of initial margin protection relates to the total notional value of the differential contract	Link	Link

²⁴ Legislative measures in place in BE.

Finanstilsynet-DK	23-Jul-19	01-Aug-19		Link	Link
BaFin-DE	30-Jul-19	01-Aug-19		Link	Link
FSA-EE	05-Jun-19	01-Aug-19		Link	
CBI-IE	13-Jun-19	01-Aug-19		Link	Link
HCMC-EL	26-Jun-19	01-Aug-19		Link	Link
CNMV-ES	26-Jun-19	01-Aug-19	The national measures require providers offering CFDs to retail clients in Spain, including without a Spanish branch or tied agent through the freedom to provide services, to obtain, prior to selling a CFD to a retail client, the following statement from the client in writing (handwritten, in a text-box for online services, or recorded for telephone sales): “Product that is difficult to understand. The CNMV considers that, in general, it is not appropriate for retail investors” . This additional requirement does not apply to discretionary portfolio management and investment advice services. The additional requirement would have to be obtained in writing (handwritten or in a text-box for online services). CFD providers would have to obtain the statement only for the first two orders placed by a retail client, and not for subsequent orders placed by the client.	Link	Link

AMF-FR	02-Jul-19	01-Aug-19	For virtual currency the definition set out in Article 3(18) of Directive (EU) 2015/849 is used.	Link	Link
HANFA-HR	23-Jul-19	01-Aug-19		Link	Link
CONSOB-IT	13-Jun-19	01-Aug-19		Link	Link
CySEC-CY	27-Sep-19	02-Oct-19	<p>The measures do not apply to credit institutions and the content of the national measures is variable based on the country of residence of the client. Therefore where an entity falling under CySEC’s remit markets, distributes or sells CFDs to a resident of:</p> <ul style="list-style-type: none"> i Cyprus, the national measures will have their “<i>Default Content</i>”, namely the same as ESMA’s measures with the only difference the risk warning (see below). ii A Member State, where the NCA has introduced national measures, CySEC’s measures will have the content of the measures taken by the NCA of the respective Member State. 	Link	Link

			<p>iii A Member State, where the NCA has not introduced national measures, CySEC's measures will have their Default Content.</p> <p>iv A third country, CySEC's measures will have their Default Content.</p> <p>Finally, the national measures use a different wording for the the standard risk warnings than the corresponding risk warning in ESMA's measures. For the durable medium and webpage standard risk warning and for the abbreviated standard risk warning, the national measures refer to the 'the vast majority of retail investor accounts' instead of including a specific percentage range of retail investor accounts that lose money and, for the reduced character standard risk warning, the refer to 'CFD-retail clients accounts generally lose money'.</p>		
FKTK-LV	26-Jun-19	01-Aug-19	The standard risk warnings in the national measures use different wording than the corresponding risk warnings in ESMA's measures. For the abbreviated standard risk warning, the national measures refer to 'the vast majority of retail clients accounts' instead of including a specific percentage and, for the reduced character standard risk warning, they refer to 'retail clients accounts generally lose money'.	Link	Link
LB-LT	28-May-19	01-Aug-19		Link	Link
CSSF-LU	13-Jun-19	01-Aug-19		Link	Link
MNB-HU	30-Jul-19	01-Aug-19	The measures take the form of individual decrees instead of measures of general application.	Link	Link

MFSA-MT	30-Jul-19	11-Aug-19		Link	Link
AFM-NL	26-Mar-19	19-Apr-19		Link	Link
FMA-AT	03-May-19	30-May-19	(i) For virtual currency the definition set out in Article 3(18) of Directive (EU) 2015/849 is used (ii) the measures donot expressly prohibit participating in circumvention (iii) the standard risk warnings in the national measures use different wording than the corresponding risk warnings in ESMA's measures. For the abbreviated standard risk warning, the national measures refer to 'the vast majority of retail clients accounts' instead of including a specific percentage and, for the reduced character standard risk warning, they refer to 'retail clients accounts generally lose money' (iv) an exclamation mark is included at the end of the reduced character risk warnings; and (v) a graphical exclamation mark is included at the beginning of the durable medium and webpage risk warnings.	Link	Link
KNF-PL	30-Jul-19	01-Aug-19	The national product intervention measures (i) do not apply 'from' Poland in case of a related product intervention measure is applicable to those services in the host Member State and (ii) in the case of services provided to clients with habitual residence in Poland that qualify as experienced clients by firms authorised to provide services in Poland, the initial margin protection for (a) main currency pairs; and (b) other currency pair, main equity indices and gold is set at 1%. In order to be qualified as an experienced client the client has to be located in Poland and meet several conditions in relation to knowledge and experience.	Link	Link
CMVM-PT	13-Jun-19	01-Aug-19		Link	Link

ASF-RO ²⁵	N/A	N/A	N/A		
SMA-SI	23-Aug-19	01-Oct-19		link	Link
NBS-SK	05-Jun-19	01-Aug-19		Link	Link
FSA-FI	14-May-19	01-Aug-19		Link	Link
FI-SE	02-Jul-19	01-Aug-19		Link	Link
FCA-UK	02-Jul-19	01-Aug-19 and 01-Sept-19 for CFD like options	(i) The measures also apply to CFD-like options defined as “an option (1) that is in the money at the point of sale, (2) where the value is determined by one-to-one fluctuations in the value or price of the underlying asset, and (3) for which the value is not significantly affected by the time to expiry.” The measures do not apply to CFD-like option providers authorised in other Member States other than through a UK branch or tied agent in respect of the sale or distribution of those products to UK retail clients; (ii) the initial margin protection is 3.33% for CFDs referencing government debt of the following jurisdictions: a) the government of the United Kingdom; b) the Scottish Administration; c) the Executive Committee of the Northern Ireland Assembly; d) the National Assembly of Wales; e) a member state of the EU that has adopted the Euro as its currency; f) the United States of America; g) Japan; h) Canada; or i) Switzerland; (iii) the standardised risk warnings must be “statically fixed and visible at the top of the	Link	Link

²⁵ Legislative measures in place in RO.

			<p>screen even when the retail client scrolls up or down the webpage” (iv) the standard risk warnings in the national measures use different wording than the wording in the corresponding risk warnings in ESMA's measures . For the abbreviated standard risk warning, the national measures refer to 'the vast majority of retail cliens accounts' instead of including a specific percentage and for the reduced character standard risk warning they refer to 'retail clients accounts generally lose money' and (v) the definition of initial margin expressly state that initial margin is to be calculated based on the exposure provided by the ultimate underlying of a CFD.</p>		
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