

The Consumer Voice in Europe

CALL FOR EVIDENCE ON PRODUCT INTERVENTION

Measures proposed by ESMA: BEUC response



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Why it matters to consumers

Consumers should not be exposed to toxic financial products. These are often aggressively marketed and overwhelmingly result in losses. An EU ban on binary options and contracts for difference is necessary to avoid further consumer detriment.

BEUC welcomes this call for evidence and ESMA's implicit intention to use its product intervention powers to prevent further consumer detriment.

We firmly believe that strong market intervention is necessary in the case of binary options and contracts for difference (CFDs). The evidence provided by different national supervisors on consumer detriment is staggering, with between 74% and 89% of consumers losing money with these toxic gambling products.

Both binary options and CFDs are prime examples of a flawed financial system, where financial products are engineered with the only purpose of extracting rents from consumers, without any purpose for the real economy.

We believe that EU action is necessary in this case. First of all, these products are distributed online, which is why national measures only are insufficient. Secondly, we believe that ESMA should give a clear signal that such business models, causing consumer detriment in all member states, are no longer welcome in the EU. It would reinforce the idea that its mandate is indeed to protect consumers across the EU.

This said, we have two big concerns regarding this call for evidence.

Firstly, we wonder why the blanket ban as suggested for the distribution of binary options does not include CFDs. We have seen no substantiation of why CFDs should be treated differently to binary options, while the reported consumer detriment covers both type of products. There is also a clear risk that binary options providers will simply modify their products into a CFD to dodge the distribution ban.

The fact that CFDs are seen as riskier and more complex than binary options – because of the use of leverage – strengthens this belief. Furthermore, CFDs also speculate on more exotic asset classes, including cryptocurrencies. We would also like to highlight that in many big jurisdictions, the use of leverage for CFDs is outwardly forbidden.¹ We also don't buy the false pretext that CFDs are used for genuine hedging purposes, as suggested in question 'G'. Consumers with such needs – if any- could still turn to regulated markets for such purposes.

Secondly, in its call for evidence, ESMA seems to only be preoccupied with potential adverse consequences of regulatory intervention on the business model of CFD providers. We firmly believe that no trade-offs should be made between consumer protection and upholding unsustainable business models.

To conclude, BEUC fully supports ESMA's ambition to make use of its product intervention powers and clean up the market by removing toxic financial products. However, we also warn against a calibration of measures that is too careful, just for the sake of narrow business interests.

END

¹ As is the case in the US, Hong Kong, Japan, Singapore and Belgium. <https://www.fsma.be/en/faq/fsma-regulation-governing-distribution-certain-derivative-financial-instruments-binary-options-0>



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