

Decision No. H-JÉ-III-11/2020. of the Magyar Nemzeti Bank to restrict the marketing, distribution and sale of binary options to retail clients

The Magyar Nemzeti Bank (head office: 1054 Budapest, Szabadság tér 9., Hungary, Customer Service: 1013 Budapest, Krisztina krt. 39., Hungary) (**MNB**) acting in its capacity determined in Article 48 (3a) of Act CXXXIX of 2013 on the Magyar Nemzeti Bank adopts the following

D e c i s i o n

- I. As of 10 April 2020, the MNB prohibits the marketing, distribution and sale of binary options (hereinafter together as: Sale) to retail clients, with the exception of the binary options specified in point II.**

- II. The prohibition in point I does not apply to:**
 - a) a binary option for which the lower of the two predetermined fixed amounts is at least equal to the total payment made by a retail client for the binary option, including any commission, transaction fees and other related costs;**
 - b) a binary option that meets all of the following conditions:**
 - i) the term from issuance to maturity is at least 90 calendar days;**
 - ii) a prospectus drawn up and approved in accordance with Directive 2003/71/EC and Regulation 2017/1129/EU is available to the public; and**
 - iii) during the term of the binary option, the binary option does not expose the service provider to any market risk, and neither the service provider, nor any organization belonging to the service provider's group makes any profit or loss on the binary option, other than preliminarily announced commissions, transactions charges and related fees.**

The MNB draws service providers' attention to the fact that the above restriction shall apply to any activity that aims at or results in bypassing the requirements specified in points I-II by the service provider or any person acting on its behalf.

Adopting this decision did not entail any procedural charges.

The Decision shall be delivered by the MNB in an announcement. The date of communicating the Decision shall be the date of its publication.

The Decision shall be implemented immediately after its publication.

The Decision cannot be appealed, but parties whose rights or legal interests are directly affected by the administrative activity may submit a statement of claim to file an administrative lawsuit at the Budapest-Capital Regional Court within 30 (thirty) days of the announcement, referring to a violation of law.

The statement of claim shall be addressed to the Budapest-Capital Regional Court and submitted to the MNB by using the form submission support service. The form submission support service can be accessed at: <https://www.mnb.hu/felugyelet/engedelyezes-es-intezmenyfelugyeles/hatarozatok-es-vegzesek-keresese>. Legal representation is mandatory in any lawsuit.

Submitting a statement of claim may not cause delays in the Decision coming into force, but if the administrative activity or the maintenance of the resulting situation violates the rights or legal interests of any party, that party may ask for immediate legal protection to prevent a directly threatening disadvantage, temporarily settle the challenged legal relationship, and maintain the status that triggered the legal dispute.

As a main rule, the court shall pass judgement in the case without a hearing. The client may request a hearing in the statement of claim. In case the hearing is not requested, no application for extension of deadline shall be permitted.

J u s t i f i c a t i o n

I. DEFINITION OF THE BINARY OPTION

For the purposes of this Decision:

- 'binary option' means, irrespective of whether it is traded on a trading venue, a derivative that meets the following conditions:
 - a) excluding non-performance or other termination events, it has to be – or may be, based on the choice of one of the parties – paid in cash;
 - b) it only provides for payment at its close-out or expiry;
 - c) its payment is limited to:
 - i) a predetermined fixed amount or zero if the underlying of the derivative meets one or more predetermined conditions; and
 - ii) a predetermined fixed amount or zero if the underlying of the derivative does not meet one or more predetermined conditions.

Based on the above, the binary option is a derivative asset paid in cash, and the payment of a fixed amount depends on whether one or more specified events – regarding the price, level or value of the underlying asset (commodity) – occur on the maturity of the derivative or before that [for instance, the underlying asset reached a certain price (the 'strike price') on maturity].

When using a binary option, the investor bets on the occurrence of a certain event regarding the price, level or value of an underlying asset (e.g. shares, foreign currency, commodity or index). If the event does not occur, the investor loses money [i.e. the option closes 'out-of-the-money']. If the referenced event occurs, the option pays or the contract remains open, and it is still possible for the investor to win if another event occurs [the option closes 'in-the-money']. In this sense, the binary option can be considered as a 'yes/no offer'. The question in a 'yes/no' offer is often whether the price of the underlying asset ends up over or below the given price ('strike price'). In certain cases the 'strike price' is identical with the market price of the underlying asset at the time of concluding the binary option or at a later point of time. In addition, at service providers offering binary options, investors may bet on a series of possible market results.

II. PRELIMINARIES

With decision No. (EU)2018/795 of the European Securities and Markets Authority of 22 May 2018 on the temporary prohibition of the marketing, distribution and sale of binary options to retail clients (**Decision No. 2018/795**), the European Securities and Markets Authority (**ESMA**) prohibited the Sale of binary options within the European Union for three months starting on 2 July 2018.

The ESMA renewed the prohibition specified in Decision No. 2018/795

- in the European Securities and Markets Authority Decision (EU) 2018/1466 of 21 September 2018 (**Decision No. 2018/1466**) with effect from 2 October 2018, for three months - in a modified form, then
- in ESMA Decision (EU) 2018/2064 of 14 December 2018 (**Decision No. 2018/2064**) with effect from 2 January 2019, for three additional months, with the same conditions as specified in Decision 2018/1466, and finally

- in ESMA Decision (EU) 2019/509 of 22 March 2019 with effect from 2 April 2019, for three additional months with the same conditions as specified in Decision 2018/2064 (**Decision No. 2019/509**) (hereinafter together as: **Prohibiting Decisions**).

The ESMA did not prolong the prohibition on the Sale of binary options with a new measure, but still considers that the Sale of financial assets affected by the prohibition is an all-European issue.

(...)

V. PRODUCT INTERVENTION INTRODUCED BY THE MNB

Pursuant to Article 42 (1) of the MiFIR regulation, a competent authority may prohibit or restrict the marketing, distribution or sale of certain financial instruments or structured deposits or financial instruments or structured deposits with certain specified features, in or from that Member State, or a certain type of financial activity or practice, if the conditions specified in Article 42 (2) a)-f) of the MiFIR regulation exist.

In accordance with the above points, pursuant to Article 48 (3a) of the MNB Act, the MNB may prohibit or restrict the distribution or sales of certain financial instruments or structured deposits or the performance of certain market actions or behaviours in a decision, if the conditions specified in Article 42 of the MiFIR regulation exist. Instead of the data of persons and organizations subject to Article 39 of the MNB Act as obligors, the Decision includes the scope of financial assets or structured deposits, or certain market actions and behaviours affected by the decision.

In order to ensure that the above measure is justified, pursuant to Article 39 (3) of the MiFIR regulation, the competent authorities shall monitor the market of financial instruments and structured deposits which are marketed, distributed or sold in or from their Member State.

As a result of the monitoring activity specified in Article 39 (3) of the MiFIR regulation and detailed in point II of the justification for this Decision, and as a result of the continuous supervision exercised over domestic service providers, the MNB did not acquire any information that would refute the investor protection concerns specified in Decision 2018/795. In view of all that, as well as the aspects detailed in point III.1.3. of the justification of this Decision – relying on the evaluations and conclusions related to Decision 2018/795 and specified in Decision No. 2018/1466 – the MNB found that the Sale of binary options raised significant concerns from the aspect of investor protection.

In line with the findings of ESMA and its own findings detailed in point III.2.1 of the justification of this Decision – as explained in point III.2.2 of the justification of this Decision – the MNB came to the conclusion that the existing EU and domestic regulatory environment – in spite of the strict enforcement of the requirements of legal regulations – was unable to manage the risks involved in the Sale of binary options in a satisfactory way. In addition, it was found that risks and concerns related to the Sale of binary options could not be managed better even with an improved supervision and performance of the existing legal regulations.

Based on the above points, the MNB found the prohibition of the Sale of binary options as defined in the operative part of this Decision necessary and justified, and this measure – pursuant to point III.3.2. and III.5 in the justification of this Decision – is proportionate in the view of the nature of the identified risks and the effects of the measure, and it has no discriminative effect on services or activities extended from other Member States.

Furthermore – pursuant to points III.4 and III.6 of the justification of this Decision – the MNB points out that the measures taken on the basis of this Decision do not mean a serious threat to the regular operation and integrity of agricultural commodity markets, and no other Member State is affected by the measures

taken under this Decision, as there is no domestic service provider that offers binary options to either domestic, or foreign retail clients.

Meeting its obligation defined in Article 42 (3) of the MiFIR regulation, the MNB informed the ESMA before the introduction of the measure defined in the operative part of this Decision, within the deadline and with the contents specified in Article 42 (3) of the MiFIR regulation.

(...)

Budapest, 9 April 2020

Acting on behalf of the Magyar Nemzeti Bank

Dr. Laki Gábor (sgd.)

Director for Capital Markets and Market Surveillance

deputy of

Szeniczey Gergő (sgd.)

Executive Director for Prudential, Consumer Protection Supervision
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