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## INTRODUCTION

As prediction markets gain prominence internationally, Europe faces a question that goes beyond how to regulate the platforms that have popularised them. The more immediate European response to prediction markets has, in practice, come from gambling authorities. Regulators from several jurisdictions discussed prediction markets and enforcement cooperation in Rome on 22 May 2026. On 26 May, the DGOJ announced proceedings against Kalshi and Polymarket and precautionary blocking of their websites in Spain, and on 18 June, nine European gambling regulators issued a joint statement warning of unlicensed platforms and pledging closer cooperation.

Yet the debate surrounding prediction markets should extend beyond whether Kalshi, Polymarket or other platforms seeking to operate under financial-services regulation can enter the European market. The opportunity exists on both sides of this regulatory divide. Many established gambling groups already possess the technology, operational infrastructure and relationships with specialised providers to expand their product portfolios with new event-based betting offerings. For these operators, innovation may be less about building an entirely new business than adapting existing capabilities to a broader range of markets. Their competitive advantage extends beyond technology. Established operators already have experience in managing betting markets, verifying customers, settling outcomes and complying with responsible-gambling requirements.

For US prediction-market platforms, Europe presents opportunities, but not a straightforward route to replicating their existing business models. EU financial-services authorisation does not, in itself, overcome the prohibitions on the retail distribution of event contracts qualifying as binary options, while other products may fall within national gambling regimes. Europe's prediction-market industry may therefore develop differently from its US counterpart, with gambling operators playing a significant role alongside specialised financial-market platforms.

## 01 MERGE MADRID 2026: THE DGOJ'S POSITION

The growing popularity of prediction markets has renewed the debate over the regulatory boundaries between financial instruments and gambling. Although these platforms facilitate trading in contracts linked to future events, many of their defining economic features are already familiar from traditional betting exchanges, including the matching of opposing offers from participants (rather than bets placed against the operator), prices that fluctuate according to supply and demand and mechanisms allowing users to offset their exposure before an event is resolved. None of those attributes, taken in isolation, establishes their legal character. The question has acquired immediate significance in Spain following the intervention of Mikel Arana, Director-General of the Dirección General de Ordenación del Juego (Spanish Directorate-General for Gambling Regulation, the 'DGOJ'), at MERGE Madrid 2026.

In its statement of 30 October 2026, the DGOJ reiterated the existing rule: where a platform offers products qualifying as gambling under Spanish law, it must hold the requisite authorization. Absent that authorisation, the products may not lawfully be offered to Spanish customers and access restrictions may follow. The statement neither classified all event contracts as gambling nor clarified whether prediction markets would require a dedicated regulation or could be accommodated within the existing framework.

The DGOJ's initiation of sanctioning proceedings against the two leading prediction market operators for offering their products to Spanish residents indicates that, in the regulator's view, such activities may fall within the definition of gambling under Article 3 of Law 13/2011 on Gambling Regulation. Activities falling within this definition are subject to the regulatory regime established by that Law, which among other

requirements, prohibits the offering of gambling modalities that have not been specifically regulated. Spain currently recognises 14 regulated types of gambling and against this background, Section 3 examines whether prediction markets can be accommodated within the existing regulatory framework governing exchange betting (apuestas cruzadas).

Before turning to the Spanish gambling framework, a preliminary question must be addressed under European Union law: when does an event-based contract qualify as a financial instrument?

## 02 FINANCIAL-INSTRUMENTS PERIMETER UNDER EUROPEAN UNION LAW

The analysis should begin with Directive 2014/65/EU on markets in financial instruments ("**MiFID II**"). This does not mean that EU financial regulation automatically overrides national gambling laws, as both regulatory frameworks may apply to the same product. It reflects the more precise point that a Member State's betting licence cannot remove a product from a harmonised European financial instruments definition. By contrast, Gambling services are not governed by a single European Union licensing regime and their regulation remains predominantly national, subject to Union law constraints.

The European Securities and Markets Authority ("**ESMA**") responds to the growing popularity of prediction markets (or event contracts) on their 3 July 2026 Public Statement. As clarified by ESMA, event contracts are products whose financial outcome is binary (a fixed payout or no payout at all) and depends on a yes-or-no answer to a question about a future event. Event contracts exist for a wide variety of event questions. Whether they qualify as financial instruments depends on the event question. Accordingly, not every yes/no event contract is a financial instrument; the relevant question is whether its contractual reference concerns an underlying within points (4) to (10) of Section C of Annex I to MiFID II. These points classify types of derivatives, not permissible or prohibited betting questions. Their relevance lies in the nature of the referenced asset, variable or measure and the characteristics of the contractual payoff.

While ESMA acknowledges that event contracts may also qualify as bets under national gambling legislation, it does not further examine the critical question of how the boundaries between financial services regulation and national gambling regimes should be delineated, particularly where a contract may potentially fall within the scope of both.

Point C(4) of Section C of Annex I under MiFID II includes derivatives on securities, currencies, interest rates, financial indices and measures, points C(5)–(7) concern commodities, C(8) addresses credit derivatives, and C(9) financial contracts for differences. Point C(10) is considerably broader in scope: in addition to weather, freight rates, inflation and other official economic statistics, it reaches qualifying derivatives on other assets, rights, obligations, indices and measures. Articles 7(3) and 8 of Commission Delegated Regulation (EU) 2017/565 give substance to that residual provision, including specific physical variables and indices or measures of value or transaction volume. Cash settlement is an important criterion within that analysis, but it does not make every cash-settled wager a MiFID II derivative.

The distinction is visible when examining the questions on which prediction contracts are based. *Will the euro fall below parity with the US dollar by the end of 2026?* engages a financial index under C(4). *Will Banco Santander's share price exceed €10 by the end of 2026?* requires scrutiny as an interest-rate reference. *Will annual inflation exceed 3%?* and *Will rainfall exceed a specified threshold?* engage underlyings expressly contemplated by C(10). Conversely, contracts based on the outcome of a football match, an election or an awards ceremony are generally more likely to fall outside MiFID II. Guidance Q&A issued by the European Commission under the previous MiFID regulatory framework supports this interpretation, acknowledging that contracts based on sporting or electoral outcomes may fall outside the scope of financial instruments regulation.

The key lies in distinguishing between (i) the contract itself, (ii) its underlying asset or variable and (iii) the event or condition that determines its settlement. For example:

| ELEMENT | DESCRIPTION |
|---|---|
| **Event contract** | A binary YES/NO contract paying €1 if the predicted event occurs and €0 otherwise. |
| **Underlying evento/variable** | The adoption of a regulatory measure by the Spanish Government concerning electricity prices. |
| **Settlement condition** | Whether the Spanish Government introduces a statutory cap on wholesale electricity prices before 30 June 2027. |

In the example above, although the contract concerns a regulatory measure with direct implications for energy markets, its settlement depends on a governmental decision rather than movements in electricity prices. This distinction may support its exclusion from the financial instruments perimeter under MiFID II.

The foregoing analysis addresses the first question: whether an event contract qualifies as a financial instrument under MiFID II. Where it does, a second question arises: whether its binary payoff brings it within the restrictions applicable to binary options. In its statement of 3 July 2026, the ESMA clarified that where event contracts qualify as financial instruments, they classify as derivatives and, given the binary outcome, fall within the scope of the existing national product intervention measures on binary options adopted by national competent authorities prohibiting their marketing, distribution or sale to retail clients.

In Spain, the Comisión Nacional del Mercado de Valores (Spanish National Securities Market Commission, the "**CNMV**"), pursuant to its Resolution of 27 June 2019 on product intervention measures concerning binary options and contracts for differences, adopted under Article 42 of Regulation (EU) No 600/2014 ("**MiFIR**"), expressly prohibits the marketing, distribution and sale of binary options to retail clients, subject to two specific exceptions[1] expressly provided for in Article 1(3) of that Resolution.

This distinction is also reflected in comments made by CNMV Chairman Carlos San Basilio in September 2026. While expressing the view that prediction markets such as Kalshi and Polymarket should not generally be equated with financial instruments, he acknowledged that certain activities conducted on these platforms could be comparable to binary options and therefore prohibited on retail distribution in the EU.

## 03 GAMBLING PERIMETER UNDER UNDER SPANISH GAMBLING REGULATION

In Spain, Law 13/2011 on Gambling Regulation and its implementing regulations provide the starting point for assessing prediction markets under gambling law. Within its territorial scope, the risking of value on future uncertain outcomes and expressly extends to operators offering gambling from abroad to Spanish residents. Where betting products are offered to Spanish residents, operators must hold both a general betting licence and the corresponding singular licence. Of particular relevance is Order HAP/1369/2014, which regulates *apuestas cruzadas* (exchange betting), including *otras apuestas cruzadas* (other exchange bets) for non-sporting and non-horse-racing events. Its definition of an event encompasses society, the media, the economy, entertainment and culture, although that express reference to "the economy" does not disapply MiFID II.

The Order defines exchange betting as the matching of opposing betting offers submitted by participants, with the licensed operator acting as intermediary and guarantor. Under Article 14(4), participants may modify or cancel their offers before they are matched. Once matched, the bet is legally perfected and, pursuant to Article 15(1), its agreed odds generally remain unchanged despite subsequent market fluctuations.

[1] Article 1(3) provides two exceptions: (i) binary options whose minimum payout covers the client's entire investment, including fees and associated costs, and (ii) binary options with a minimum period of 90 calendar days between issuance and maturity, a publicly available approved prospectus, and a structure under which the provider bears no market risk until maturity and neither the provider nor its group entities derive profits or incur losses beyond previously disclosed intermediary fees and charges.

However, this does not prevent new bets on the same event from being matched at different odds as supply and demand evolve.

Nor must a participant necessarily sell or cancel an existing bet to secure a profit or limit a loss before the event is resolved. By placing a new bet in the opposite direction at the prevailing odds with a third player, a participant may offset the exposure arising from the original bet. Provided that the new bet is successfully matched, this mechanism can secure an economic outcome regardless of the event's final result, without altering the original bet or the rights associated with the opposing participant's position. The operator would not necessarily assume additional betting risk, as it would remain responsible for matching opposing offers. However, this mechanism depends on sufficient market liquidity and does not automatically release the funds committed to the original bet or make the secured profit immediately available.

A separate question arises where a participant seeks to sell or settle an existing position directly, rather than offset its exposure through a new bet. Article 15(6) establishes that the matching of bets does not create a contractual relationship between participants, each of whom contracts with the operator. The Order does not expressly provide for the secondary transfer of matched bets, meaning that the direct resale of existing positions cannot be assumed to fall within the authorized exchange-betting framework.

By contrast, cash-out mechanisms are already offered by existing Spanish exchange-betting operators. The DGOJ's Resolution of 6 June 2024 expressly contemplates cash-out transactions in exchange betting, including multiple cash-outs relating to the same bet. These may operate through the automatic placement of additional opposing bets, allowing participants to secure a profit or limit a loss without cancelling the original matched bet. The operator's role is nevertheless subject to an important limitation: Article 2(1) requires it to act solely as intermediary and guarantor. Accordingly, an automated cash-out facility must be structured consistently with that role. Executing offsetting bets pursuant to a participant's instructions is materially different from independently trading with participants' funds or assuming betting exposure as a counterparty.

The foregoing analysis does not suggest that the existing framework can accommodate existing US models of prediction markets without adaptation. A further obstacle is that applications for general betting licences closed since December 2018, meaning that market entry require acquiring an existing licensed operator. Nevertheless, Spain already has a regulatory foundation upon which the industry and the DGOJ could build. For suitable products, this may be achieved through the existing exchange-betting framework and case-specific authorisations from the DGOJ, without necessarily requiring an entirely new regulatory regime.

For operators holding a general betting licence in Spain, this presents a commercial opportunity which should not be overlooked in a regulated online betting market that generated €698.13 million in gross gaming revenue (GGR) in 2025. Some operators have already announced plans to expand into prediction markets by leveraging existing technology and partnering with specialised odds providers, rather than developing new platforms from scratch. However, this approach raises a broader commercial question: whether such products will offer a sufficiently distinctive user experience compared with traditional betting, and whether there is genuine demand for them among European consumers.

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