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⁽¹⁾ Text with EEA relevance.

EN

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II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) 2019/672

of 29 April 2019

implementing Regulation (EU) No 401/2013 concerning restrictive measures in respect of Myanmar/Burma

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Council Regulation (EU) No 401/2013 of 2 May 2013 concerning restrictive measures in respect of Myanmar/Burma and repealing Regulation (EC) No 194/2008 ⁽¹⁾, and in particular Article 4i(1) thereof,

Having regard to the proposal of the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) On 2 May 2013, the Council adopted Regulation (EU) No 401/2013.
- (2) In accordance with Article 4i(1) of Regulation (EU) No 401/2013, the Council has reviewed the list of designated persons and entities set out in Annex IV to that Regulation.
- (3) For two listings updated information has been received, and for all listed persons their gender should be included.
- (4) Annex IV to Regulation (EU) No 401/2013 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex IV to Regulation (EU) No 401/2013 is amended as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 29 April 2019.

For the Council
The President
G. CIAMBA

⁽¹⁾ OJ L 121, 3.5.2013, p. 1.

ANNEX

Entries 1 to 14 in the list of persons and entities set out in Annex IV to Regulation (EU) No 401/2013 are replaced by the following entries:

| | Name | Identifying information | Reasons | Date of listing |
|----|-----------------|---|--|-----------------|
| 1. | Aung Kyaw Zaw | Date of birth: 20 August 1961 Gender: male Passport No: DM000826 Date of issue: 22 November 2011 Date of expiry: 21 November 2021 Military identification number: BC 17444 | Lieutenant General Aung Kyaw Zaw was the Commander of the Bureau of Special Operations No 3 of the Myanmar Armed Forces (Tatmadaw) from August 2015 to the end of 2017. The Bureau of Special Operations No 3 oversaw the Western Command and, in that context, Lieutenant General Aung Kyaw Zaw is responsible for the atrocities and serious human rights violations committed against the Rohingya population in Rakhine State by the Western Command during that period. These include unlawful killings, sexual violence and the systematic burning of Rohingya houses and buildings. | 25.6.2018 |
| 2. | Maung Maung Soe | Date of birth: March 1964 Gender: male National Identification Number: Tatmadaw Kyee 19571 | Major General Maung Maung Soe was the Commander of the Western Command of the Myanmar Armed Forces (Tatmadaw) from October 2016 to 10 November 2017 and oversaw the military operations in Rakhine State. In that context, he is responsible for the atrocities and serious human rights violations committed against Rohingya population in Rakhine State by the Western Command during that period. These include unlawful killings, sexual violence and systematic burning of Rohingya houses and buildings. | 25.6.2018 |
| 3. | Than Oo | Date of birth: 12 October 1973 Gender: male Military identification number: BC 25723 | Brigadier General Than Oo is the Commander of the 99th Light Infantry Division of the Myanmar Armed Forces (Tatmadaw). In that context, he is responsible for the atrocities and serious human rights violations committed against the Rohingya population in Rakhine State in the second half of 2017 by the 99th Light Infantry Division. These include unlawful killings, sexual violence and the systematic burning of Rohingya houses and buildings. | 25.6.2018 |
| 4. | Aung Aung | Gender: male Military identification number: BC 23750 | Brigadier General Aung Aung is the Commander of the 33rd Light Infantry Division of the Myanmar Armed Forces (Tatmadaw). In that context, he is responsible for the atrocities and serious human rights violations committed against the Rohingya population in Rakhine State in the second half of 2017 by the 33rd Light Infantry Division. These include unlawful killings, sexual violence and the systematic burning of Rohingya houses and buildings. | 25.6.2018 |
| 5. | Khin Maung Soe | Date of birth: 1972 Gender: male | Brigadier General Khin Maung Soe is the Commander of the Military Operation Command 15, also sometimes known as the 15th Light Infantry Division, of the Myanmar Armed Forces (Tatmadaw), under which Infantry Battalion No 564 falls. In that context, he is responsible for the atrocities and serious human rights violations committed against the Rohingya population in Rakhine State in the second half of 2017 by the Military Operation Command 15, in particular by Infantry Battalion No 564. These include unlawful killings, sexual violence and the systematic burning of Rohingya houses and buildings. | 25.6.2018 |

| | Name | Identifying information | Reasons | Date of listing |
|-----|----------------|--|---|-----------------|
| 6. | Thura San Lwin | Date of birth: 17 March 1959 Gender: male | Brigadier General Thura San Lwin was the Commander of the Border Guard Police from October 2016 until early October 2017. In that context, he is responsible for the atrocities and serious human rights violations committed against Rohingya population in Rakhine State by the Border Guard Police during that period. These include unlawful killings and systematic burning of Rohingya houses and buildings. | 25.6.2018 |
| 7. | Thant Zin Oo | Gender: male | Thant Zin Oo is the Commander of the 8th Security Police Battalion. In that context, he is responsible for the atrocities and serious human rights violations committed against Rohingya population in Rakhine State in the second half of 2017 by the 8th Security Police Battalion. The serious human rights violations include unlawful killings and systematic burning of Rohingya houses and buildings. Those violations were conducted in conjunction with and in direct support of the 33rd Light Infantry Division of the Myanmar Armed Forces (Tatmadaw) led by Brigadier General Aung Aung. Thant Zin Oo is therefore associated with listed person, Brigadier General Aung Aung. | 25.6.2018 |
| 8. | Ba Kyaw | Gender: male | Ba Kyaw is a Staff Sergeant in the 564th Light Infantry Battalion (LIB) of the Myanmar Armed Forces (Tatmadaw). He committed atrocities and serious human rights violations, including murder, deportation and torture, against the Rohingya population in Rakhine State in the second half of 2017. In particular, he has been identified as one of the key perpetrators of the Maung Nu massacre on 27 August 2017. | 21.12.2018 |
| 9. | Tun Naing | Gender: male | Tun Naing is the Commanding Officer of the Border Guard Police (BGP) base in Taung Bazar. In that capacity, he is responsible for the atrocities and serious human rights violations against the Rohingya population in Rakhine State committed by the BGP in Taung Bazar before, around and after 25 August 2017, including forced detention, ill-treatment and torture. | 21.12.2018 |
| 10. | Khin Hlaing | Date of birth: 2 May 1968 Gender: male | Brigadier General Khin HLaing is the former Commander of the 99th Light Infantry Division (LID) and the current Commander of the North-eastern Command of the Myanmar Armed Forces (Tatmadaw). As the Commander of the 99th LID he oversaw military operations carried out in Shan State in 2016 and early 2017. In that context, he is responsible for the atrocities and serious human rights violations committed against ethnic minority villagers in Shan State in the second half of 2016 by the 99th LID. These include unlawful killings, forced detention and destruction of villages. | 21.12.2018 |

| | Name | Identifying information | Reasons | Date of listing |
|-----|---------------|-------------------------|--|-----------------|
| 11. | Aung Myo Thu | Gender: male | Major Aung Myo Thu is the Field Unit Commander of 33rd Light Infantry Division (LID) of the Myanmar Armed Forces (Tatmadaw). As the Field Unit Commander of the 33rd LID he oversaw military operations carried out in Rakhine State in 2017. In that context, he is responsible for the atrocities and serious human rights violations committed against the Rohingya population in Rakhine State in the second half of 2017 by the 33rd LID. These include unlawful killings, sexual violence and forced detention. | 21.12.2018 |
| 12. | Thant Zaw Win | Gender: male | Thant Zaw Win is a Major in the 564th Light Infantry Battalion (LIB) of the Myanmar Armed Forces (Tatmadaw). In that capacity, he oversaw military operations carried out in Rakhine State and is responsible for the atrocities and serious human rights violations committed against the Rohingya population in Rakhine State by the 564th LIB, notably in and around Maung Nu village on 27 August 2017. These include unlawful killings, sexual violence and systematic burning of Rohingya houses and buildings. | 21.12.2018 |
| 13. | Kyaw Chay | Gender: male | Kyaw Chay is a Corporal in the Border Guard Police (BGP). He was formerly based in Zay Di Pyin and was the Commanding Officer of the BGP base in Zay Di Pyin in the period around 25 August 2017 when a series of human rights violations were committed by the BGP under his command. In that context, he is responsible for the atrocities and serious human rights violations by the BGP against the Rohingya population in Rakhine State in that period. He also participated in serious human rights violations. These violations include the ill-treatment of detainees and torture. | 21.12.2018 |
| 14. | Nyi Nyi Swe | Gender: male | Major General Nyi Nyi Swe is the former Commander of the Northern Command of the Myanmar Armed Forces (Tatmadaw). In that capacity, he is responsible for the atrocities and serious human rights violations committed in Kachin State from May 2016 to April 2018 (until his appointment as Commander of the South-western Command) by the Northern Command, including ill-treatment of civilians. He is also responsible for obstructing the provision of humanitarian assistance to civilians in need in Kachin State in that period, in particular the blocking of food transports. | 21.12.2018' |

COMMISSION DELEGATED REGULATION (EU) 2019/673**of 27 February 2019****amending Regulation (EU) 2018/196 on additional customs duties on imports of certain products originating in the United States of America**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2018/196 of the European Parliament and of the Council of 7 February 2018 on additional customs duties on imports of certain products originating in the United States of America ⁽¹⁾, and in particular Article 3 thereof,

Whereas:

- (1) As a result of the United States' failure to bring the Continued Dumping and Subsidy Offset Act (CDSOA) in compliance with its obligations under the World Trade Organization (WTO) agreements, Regulation (EU) 2018/196 imposed a 4,3 % *ad valorem* additional customs duty on imports of certain products originating in the United States of America. In conformity with the WTO authorisation to suspend the application of concessions to the United States, the Commission is to adjust the level of suspension annually to the level of nullification or impairment caused by the CDSOA to the European Union at that time.
- (2) The CDSOA disbursements for the most recent year for which data are available relate to the distribution of anti-dumping and countervailing duties collected during the Fiscal Year 2018 (1 October 2017 – 30 September 2018) as well as the additional distribution anti-dumping and countervailing duties collected during the Fiscal Years 2015, 2016 and 2017. On the basis of the data published by the United States' Customs and Border Protection, the level of nullification or impairment caused to the Union is calculated at USD 3 355,82.
- (3) The level of nullification or impairment and consequently of suspension has decreased. However, the level of suspension cannot be adjusted to the level of nullification or impairment by adding or removing products from the list in Annex I to Regulation (EU) 2018/196. As a consequence, in accordance with Article 3(1)(e) of that Regulation, the Commission should keep the list of products in Annex I unchanged and amend the rate of the additional duty in order to adjust the level of suspension to the level of nullification or impairment. The four products listed in Annex I should therefore be maintained on the list and the rate of additional import duty should be amended and set at 0,001 %.
- (4) The effect of a 0,001 % *ad valorem* additional import duty on imports from the United States of the products in Annex I represents, over one year, a value of trade that does not exceed USD 3 355,82.
- (5) To make sure that there are no delays in the application of the amended rate of additional import duty, this Regulation should enter into force on the day of its publication.
- (6) Regulation (EU) 2018/196 should therefore be amended accordingly.

HAS ADOPTED THIS REGULATION:

Article 1

Article 2 of Regulation (EU) 2018/196 is replaced by the following:

'Article 2

An *ad valorem* duty of 0,001 % additional to the customs duty applicable under Regulation (EU) No 952/2013 of the European Parliament and of the Council (*) shall be imposed on the products originating in the United States listed in Annex I to this Regulation.

(*) OJ L 269, 10.10.2013, p. 1.'

⁽¹⁾ OJ L 44, 16.2.2018, p. 1.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

It shall apply from 1 May 2019.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 27 February 2019.

For the Commission
The President
Jean-Claude JUNCKER

*ANNEX**'ANNEX I*

The products on which additional import duties are to apply are identified by their eight-digit CN codes. The description of products classified under these codes can be found in Annex I to Council Regulation (EEC) No 2658/87 ⁽¹⁾.

0710 40 00

ex 9003 19 00 "frames and mountings of base metal"

8705 10 00

6204 62 31'

⁽¹⁾ Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

COMMISSION REGULATION (EU) 2019/674**of 29 April 2019****amending Annex III to Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 ⁽¹⁾, and in particular Article 20(3) thereof,

Whereas:

- (1) Pursuant to Article 20(1) of Regulation (EC) No 110/2008, Member States submitted technical files for 243 out of 330 established geographical indications for spirit drinks.
- (2) In accordance with Article 9(1) of Commission Implementing Regulation (EU) No 716/2013 ⁽²⁾, the Commission assessed the technical files based on the requirements laid down in Article 15(1) of Regulation (EC) No 110/2008, and set a time period for the amendment or withdrawal of those technical files by the Member State concerned.
- (3) The technical files of 'Königsberger Bärenfang', 'Grappa di Marsala', 'Kirsch Veneto'/'Kirschwasser Veneto' and 'Sliwovitz del Veneto' were withdrawn by Germany and Italy respectively.
- (4) In accordance with Article 9(2) of Implementing Regulation (EU) No 716/2013, if the deficiencies found in the technical file of an established geographical indication submitted following Article 20(1) of Regulation (EC) No 110/2008 are not remedied by the Member State within the time period set out by the Commission, that technical file is to be deemed as not submitted.
- (5) The deficiencies found in the technical files of 'Karlovarská Hořká', 'Polish Cherry', 'Orehovec', 'Janeževcevec' and 'Slovenska travarica' were not remedied.
- (6) The established geographical indications 'Karlovarská Hořká', 'Königsberger Bärenfang', 'Grappa di Marsala', 'Kirsch Veneto'/'Kirschwasser Veneto', 'Sliwovitz del Veneto', 'Polish Cherry', 'Orehovec', 'Janeževcevec' and 'Slovenska travarica' should therefore be removed from Annex III to Regulation (EC) No 110/2008.
- (7) Annex III to Regulation (EC) No 110/2008 should therefore be amended accordingly.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Spirit Drinks,

HAS ADOPTED THIS REGULATION:

Article 1

Annex III to Regulation (EC) No 110/2008 is amended in accordance with the Annex to this Regulation.

*Article 2*This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

⁽¹⁾ OJ L 39, 13.2.2008, p. 16.

⁽²⁾ Commission Implementing Regulation (EU) No 716/2013 of 25 July 2013 laying down rules for the application of Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks (OJ L 201, 26.7.2013, p. 21).

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 29 April 2019.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Annex III to Regulation (EC) No 110/2008 is amended as follows:

- (1) in product category 6. Grape marc spirit, the line

| | | |
|--|---------------------------|--------|
| | <i>'Grappa di Marsala</i> | Italy' |
|--|---------------------------|--------|

is deleted;

- (2) in product category 9. Fruit spirit, the lines

| | | |
|--|--|--------|
| | <i>'Sliwovitz del Veneto</i> | Italy |
| | <i>Kirsch Veneto/Kirschwasser Veneto</i> | Italy' |

are deleted;

- (3) in product category 25. Aniseed-flavour spirit drinks, the line

| | | |
|--|------------------|-----------|
| | <i>'Janeževc</i> | Slovenia' |
|--|------------------|-----------|

is deleted;

- (4) in product category 30. Bitter-tasting spirit drinks/bitter, the line

| | | |
|--|-----------------------------|-----------|
| | <i>'Slovenska travarica</i> | Slovenia' |
|--|-----------------------------|-----------|

is deleted;

- (5) in product category 32. Liqueur, the lines

| | | |
|--|--------------------------|-----------------|
| | <i>'Polish Cherry</i> | Poland |
| | <i>Karlovarská Hořká</i> | Czech Republic' |

are deleted;

- (6) in product category 40. Nocino, the line

| | | |
|--|------------------|-----------|
| | <i>'Orehovec</i> | Slovenia' |
|--|------------------|-----------|

is deleted;

- (7) in product category Other spirit drinks, the line

| | | |
|--|--------------------------------|----------|
| | <i>'Königsberger Bärenfang</i> | Germany' |
|--|--------------------------------|----------|

is deleted.

COMMISSION IMPLEMENTING REGULATION (EU) 2019/675**of 29 April 2019****amending Regulation (EC) No 1067/2008 opening and providing for the administration of Community tariff quotas for common wheat of a quality other than high quality from third countries**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular point (a) of the first paragraph of Article 187 thereof,

Whereas:

- (1) Article 2(1) of Commission Regulation (EC) No 1067/2008 ⁽²⁾ provides for the opening of an overall tariff quota for the import of 3 073 177 tonnes of common wheat falling under CN code 1001 99 00 of a quality other than high quality, at a duty rate of EUR 12 per tonne.
- (2) Within the overall tariff quota, Article 3(1) of Regulation (EC) No 1067/2008 provides for a subquota of 2 378 387 tonnes for third countries, except Canada and the United States of America, as well as for a subquota *erga omnes* of 122 790 tonnes.
- (3) In the context of the Agreement with the United States in the framework of Article XXIV:6 GATT pursuant the European Union enlargement of 2004 ⁽³⁾, it was however agreed to take into account, within the subquota *erga omnes*, a volume of 6 787 tonnes. Therefore, 6 787 tonnes are to be added to the subquota *erga omnes* while the same quantity is to be deducted from the subquota for third countries, except Canada and the United States of America.
- (4) On the basis of Article 3(3) of Regulation (EC) No 1067/2008, the subquota for third countries, except Canada and the United States of America, is to be divided into four quarterly subperiods. Taking into account the abovementioned reduction of the quantity for that subquota, it is needed to adapt the volume of each quarterly subperiod.
- (5) Regulation (EC) No 1067/2008 should therefore be amended accordingly.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Article 3 of Regulation (EC) No 1067/2008 is amended as follows:

(1) paragraph 1 is replaced by the following:

‘1. The import tariff quota referred to in Article 2(1) shall be divided into three subquotas:

- (a) subquota I (order number 09.4123): 572 000 tonnes for the United States of America;
- (b) subquota II (order number 09.4125): 2 371 600 tonnes for third countries, except Canada and the United States of America;
- (c) subquota III (order number 09.4133): 129 577 tonnes for *erga omnes*;

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ Commission Regulation (EC) No 1067/2008 of 30 October 2008 opening and providing for the administration of Community tariff quotas for common wheat of a quality other than high quality from third countries and derogating from Council Regulation (EC) No 1234/2007 (OJ L 290, 31.10.2008, p. 3).

⁽³⁾ Council Decision 2006/333/EC of 20 March 2006 on the conclusion of an Agreement in the form of an Exchange of Letters between the European Community and the United States of America pursuant to Article XXIV:6 and Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions in the schedules of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic in the course of their accession to the European Union (OJ L 124, 11.5.2006, p. 13).

(2) paragraph 3 is replaced by the following:

‘3. Subquota II shall be divided into four quarterly subperiods, covering the following dates and quantities:

- (a) subperiod 1: 1 January to 31 March: 592 900 tonnes;
- (b) subperiod 2: 1 April to 30 June: 592 900 tonnes;
- (c) subperiod 3: 1 July to 30 September: 592 900 tonnes;
- (d) subperiod 4: 1 October to 31 December: 592 900 tonnes.’

Article 2

This Regulation shall enter into force on the seventh day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 29 April 2019.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2019/676**of 29 April 2019****approving the low-risk active substance ABE-IT 56 (components of lysate of *Saccharomyces cerevisiae* strain DDSF623), in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC ⁽¹⁾, and in particular Article 22(1) in conjunction with Article 13(2) thereof,

Whereas:

- (1) In accordance with Article 7(1) of Regulation (EC) No 1107/2009, the Task Force ABE-IT 56 submitted to France on 1 April 2016 an application for the approval of the active substance ABE-IT 56 (components of lysate of *Saccharomyces cerevisiae* strain DDSF623) (hereinafter 'ABE-IT 56').
- (2) In accordance with Article 9(3) of Regulation (EC) No 1107/2009, France, as rapporteur Member State, notified the applicant, the other Member States, the Commission and the European Food Safety Authority (the Authority) of the admissibility of the application on 25 May 2016.
- (3) On 20 June 2017, the rapporteur Member State submitted a draft assessment report to the Commission, with a copy to the Authority, assessing whether that active substance can be expected to meet the approval criteria provided for in Article 4 of Regulation (EC) No 1107/2009.
- (4) The Authority complied with Article 12(1) of Regulation (EC) No 1107/2009. In accordance with Article 12(3) of that Regulation, it requested that the applicant supply additional information to the Member States, the Commission and the Authority. The assessment of the additional information by the rapporteur Member State was submitted to the Authority in the format of an updated draft assessment report in May 2018.
- (5) On 26 July 2018, the Authority communicated to the applicant, the Member States and the Commission its conclusion on whether the active substance ABE-IT 56 can be expected to meet the approval criteria provided for in Article 4 of Regulation (EC) No 1107/2009 ⁽²⁾. The Authority made its conclusion available to the public.
- (6) On 23 October 2018 the Commission presented to the Standing Committee on Plants, Animals, Food and Feed the review report for ABE-IT 56 and on 22 March 2019 a draft Regulation providing that ABE-IT 56 is approved.
- (7) The applicant was given the possibility to submit comments on the review report.
- (8) It has been established with respect to one or more representative uses of at least one plant protection product containing the active substance, and in particular the uses which were examined and detailed in the review report, that the approval criteria provided for in Article 4 of Regulation (EC) No 1107/2009 are satisfied. It is therefore appropriate to approve ABE-IT 56.
- (9) The Commission further considers that ABE-IT 56 is a low-risk active substance pursuant to Article 22 of Regulation (EC) No 1107/2009. ABE-IT 56 is not a substance of concern and fulfils the conditions set in point 5 of Annex II to Regulation (EC) No 1107/2009. ABE-IT 56 is a fractionation product of the lysate of *Saccharomyces cerevisiae* strain DDSF623. *Saccharomyces cerevisiae* is the most widely used yeast in industrial/commercial food and beverage production and is ubiquitous in the environment. It is not pathogenic to humans or animals, nor is it infective to humans. It is in general naturally occurring and does not constitute a distinct risk to any compartment of the environment.

⁽¹⁾ OJ L 309, 24.11.2009, p. 1.⁽²⁾ Conclusion on the peer review of the pesticide risk assessment of the active substance ABE-IT 56 (components of lysate of *Saccharomyces cerevisiae* strain DDSF623). EFSA Journal 2018;16(9):5400, 14 pp. <https://doi.org/10.2903/j.efsa.2018.5400>.

- (10) It is therefore appropriate to approve ABE-IT 56 as a low risk substance for a period of 15 years.
- (11) In accordance with Article 13(4) of Regulation (EC) No 1107/2009, the Annex to Commission Implementing Regulation (EU) No 540/2011 ⁽³⁾ should be amended accordingly.
- (12) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Approval of active substance

The active substance ABE-IT 56 (components of lysate of *Saccharomyces cerevisiae* strain DDSF623), as specified in Annex I, is approved subject to the conditions laid down in that Annex.

Article 2

Amendments to Implementing Regulation (EU) No 540/2011

The Annex to Implementing Regulation (EU) No 540/2011 is amended in accordance with Annex II to this Regulation.

Article 3

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 29 April 2019.

For the Commission
The President
Jean-Claude JUNCKER

⁽³⁾ Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances (OJ L 153, 11.6.2011, p. 1).

ANNEX I

| Common Name, Identification Numbers | IUPAC Name | Purity ⁽¹⁾ | Date of approval | Expiration of approval | Specific provisions |
|--|----------------|-------------------------------|------------------|------------------------|---|
| ABE-IT 56 (components of lysate of <i>Saccharomyces cerevisiae</i> strain DDSF623) | Not applicable | 1 000 g/kg (active substance) | 20 May 2019 | 20 May 2034 | For the implementation of the uniform principles, as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the review report on ABE-IT 56 (components of lysate of <i>Saccharomyces cerevisiae</i> strain DDSF623) and in particular Appendices I and II thereof, shall be taken into account. |

⁽¹⁾ Further details on identity and specification of active substance are provided in the review report.

ANNEX II

In Part D of the Annex to Implementing Regulation (EU) No 540/2011, the following entry is added:

| Number | Common Name, Identification Numbers | IUPAC Name | Purity ⁽¹⁾ | Date of approval | Expiration of approval | Specific provisions |
|--------|--|----------------|-------------------------------|------------------|------------------------|--|
| '16 | ABE-IT 56 (components of lysate of <i>Saccharomyces cerevisiae</i> strain DDSF623) | Not Applicable | 1 000 g/kg (active substance) | 20 May 2019 | 20 May 2034 | For the implementation of the uniform principles, as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the review report on ABE-IT 56 (components of lysate of <i>Saccharomyces cerevisiae</i> strain DDSF623) and in particular Appendices I and II thereof, shall be taken into account.' |

⁽¹⁾ Further details on identity and specification of active substance are provided in the review report.

COMMISSION IMPLEMENTING REGULATION (EU) 2019/677**of 29 April 2019****concerning the non-renewal of the approval of the active substance chlorothalonil, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending Commission Implementing Regulation (EU) No 540/2011****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC ⁽¹⁾, and in particular Article 20(1) and Article 78(2) thereof,

Whereas:

- (1) Commission Directive 2005/53/EC ⁽²⁾ included chlorothalonil as an active substance in Annex I to Council Directive 91/414/EEC ⁽³⁾.
- (2) Active substances included in Annex I to Directive 91/414/EEC are deemed to have been approved under Regulation (EC) No 1107/2009 and are listed in Part A of the Annex to Commission Implementing Regulation (EU) No 540/2011 ⁽⁴⁾.
- (3) The approval of the active substance chlorothalonil, as set out in Part A of the Annex to Implementing Regulation (EU) No 540/2011, expires on 31 October 2019.
- (4) An application for the renewal of the approval of chlorothalonil was submitted in accordance with Article 1 of Commission Implementing Regulation (EU) No 844/2012 ⁽⁵⁾ within the time period provided for in that Article.
- (5) The applicants submitted the supplementary dossiers required in accordance with Article 6 of Implementing Regulation (EU) No 844/2012. The application was found to be complete by the rapporteur Member State.
- (6) The rapporteur Member State prepared a renewal assessment report in consultation with the co-rapporteur Member State and submitted it to the European Food Safety Authority ('the Authority') and the Commission on 2 September 2016.
- (7) The Authority communicated the renewal assessment report to the applicant and to the Member States for comments and forwarded the comments received to the Commission. The Authority also made the supplementary summary dossier available to the public.
- (8) On 6 December 2017 the Authority communicated to the Commission its conclusion ⁽⁶⁾ on whether chlorothalonil can be expected to meet the approval criteria provided for in Article 4 of Regulation (EC) No 1107/2009.

⁽¹⁾ OJ L 309, 24.11.2009, p. 1.

⁽²⁾ Commission Directive 2005/53/EC of 16 September 2005 amending Council Directive 91/414/EEC to include chlorothalonil, chlorotoluron, cypermethrin, daminozide and thiophanate-methyl as active substances (OJ L 241, 17.9.2005, p. 51).

⁽³⁾ Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ L 230, 19.8.1991, p. 1).

⁽⁴⁾ Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances (OJ L 153, 11.6.2011, p. 1).

⁽⁵⁾ Commission Implementing Regulation (EU) No 844/2012 of 18 September 2012 setting out the provisions necessary for the implementation of the renewal procedure for active substances, as provided for in Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market (OJ L 252, 19.9.2012, p. 26).

⁽⁶⁾ EFSA (European Food Safety Authority), 2016. Conclusion on the peer review of the pesticide risk assessment of the active substance chlorothalonil. EFSA Journal 2018;16(1):5126, 40 pp.; <https://doi.org/10.2903/j.efsa.2018.5126>.

- (9) A critical concern was identified by the Authority in relation to the contamination of groundwater by metabolites of chlorothalonil. In particular, metabolites R417888, R419492, R471811, SYN507900, M3, M11, M2, M7 and M10 are predicted to occur above the parametric value of 0,1 µg/L in all pertinent scenarios for all proposed uses of chlorothalonil. Therefore, it cannot currently be established that the presence of metabolites of chlorothalonil in groundwater will not result in unacceptable effects on groundwater and in harmful effects on human health as required by Article 4(3)(b) of Regulation (EC) No 1107/2009. Furthermore, the Authority could not exclude a genotoxicity concern for residues to which consumers will be exposed and identified a high risk to amphibians and fish for all the uses evaluated.
- (10) Furthermore, several areas of the risk assessment could not be finalised due to insufficient data in the dossier. In particular, the assessment of consumer risk from dietary exposure could not be completed because of lack of data to confirm the definition of the residue in plants and the livestock exposure assessment, including the toxicological assessment of a metabolite.
- (11) Additionally, chlorothalonil is classified as carcinogen category 2 in accordance with Regulation (EC) No 1272/2008 of the European Parliament and of the Council ⁽⁷⁾ while in the conclusion of the Authority it is indicated that chlorothalonil should be classified as carcinogen category 1B. For the representative uses considered, residue levels as referred to in point (b) of Article 18(1) of Regulation (EC) No 396/2005 could not be confirmed for plant and animal products due to lack of data on the magnitude and toxicity of metabolites that are included in the residue definition for risk assessment. Consequently, the requirement set out in Point 3.6.3 of Annex II to Regulation (EC) No 1107/2009 is not fulfilled.
- (12) The Commission invited the applicants to submit their comments on the conclusion of the Authority and, in accordance with the third subparagraph of Article 14(1) of Implementing Regulation (EU) No 844/2012, to submit comments on the draft renewal report. The applicants submitted comments, which have been carefully examined.
- (13) However, despite the arguments put forward by the applicants, the concerns related to the substance could not be eliminated.
- (14) Consequently, it has not been established with respect to one or more representative uses of at least one plant protection product that the approval criteria provided for in Article 4 of Regulation (EC) No 1107/2009 are satisfied. It is therefore appropriate not to renew the approval of the active substance chlorothalonil in accordance with Article 20(1)(b) of that Regulation.
- (15) Implementing Regulation (EU) No 540/2011 should therefore be amended accordingly.
- (16) Member States should be allowed sufficient time to withdraw authorisations for plant protection products containing chlorothalonil.
- (17) For plant protection products containing chlorothalonil, where Member States grant any grace period in accordance with Article 46 of Regulation (EC) No 1107/2009, that period should, at the latest, expire on 20 May 2020.
- (18) Commission Implementing Regulation (EU) 2018/1262 ⁽⁸⁾ extended the approval period of chlorothalonil to 31 October 2019 in order to allow the renewal process to be completed before the expiry of the approval of that substance. However, given that a decision on the non-renewal of the approval is taken ahead of that extended expiry date, this Regulation should apply as soon as possible.
- (19) This Regulation does not prevent the submission of a further application for the approval of chlorothalonil in accordance with Article 7 of Regulation (EC) No 1107/2009.
- (20) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

⁽⁷⁾ Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p. 1).

⁽⁸⁾ Commission Implementing Regulation (EU) 2018/1262 of 20 September 2018 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval periods of the active substances 1-methylcyclopropene, beta-cyfluthrin, chlorothalonil, chlorotoluron, clomazone, cypermethrin, daminozide, deltamethrin, dimethenamid-p, diuron, fludioxonil, flufenacet, flurtamone, fosthiazate, indoxacarb, MCPA, MCPB, prosulfocarb, thiophanate-methyl and tribenuron (OJ L 238, 21.9.2018, p. 62).

HAS ADOPTED THIS REGULATION:

Article 1

Non-renewal of approval of active substance

The approval of the active substance chlorothalonil is not renewed.

Article 2

Amendments to Implementing Regulation (EU) No 540/2011

In Part A of the Annex to Implementing Regulation (EU) No 540/2011, row 101, on chlorothalonil, is deleted.

Article 3

Transitional measures

Member States shall withdraw authorisations for plant protection products containing chlorothalonil as active substance by 20 November 2019 at the latest.

Article 4

Grace period

Any grace period granted by Member States in accordance with Article 46 of Regulation (EC) No 1107/2009 shall be as short as possible and shall expire by 20 May 2020 at the latest.

Article 5

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 29 April 2019.

For the Commission
The President
Jean-Claude JUNCKER

DECISIONS

COUNCIL DECISION (CFSP) 2019/678

of 29 April 2019

amending Decision 2013/184/CFSP concerning restrictive measures against Myanmar/Burma

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Having regard to the proposal of the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) On 22 April 2013, the Council adopted Decision 2013/184/CFSP ⁽¹⁾ concerning restrictive measures against Myanmar/Burma.
- (2) On the basis of a review of Decision 2013/184/CFSP the restrictive measures should be renewed until 30 April 2020.
- (3) For two listings updated information has been received, and for all listed persons their gender should be included.
- (4) Decision 2013/184/CFSP should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2013/184/CFSP is amended as follows:

- (1) Article 12 is replaced by the following:

'Article 12

This Decision shall apply until 30 April 2020. It shall be kept under constant review. It shall be renewed, or amended as appropriate, if the Council deems that its objectives have not been met.;

- (2) The Annex is amended as set out in the Annex to this Decision.

Article 2

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 29 April 2019.

For the Council

The President

G. CIAMBA

⁽¹⁾ Council Decision 2013/184/CFSP of 22 April 2013 concerning restrictive measures against Myanmar/Burma and repealing Decision 2010/232/CFSP (OJ L 111, 23.4.2013, p. 75).

ANNEX

Entries 1 to 14 in the list of persons and entities set out in the Annex to Decision 2013/184/CFSP are replaced by the following entries:

| | Name | Identifying information | Reasons | Date of listing |
|----|-----------------|---|--|-----------------|
| 1. | Aung Kyaw Zaw | Date of birth: 20 August 1961 Gender: male Passport No: DM000826 Date of issue: 22 November 2011 Date of expiry: 21 November 2021 Military identification number: BC 17444 | Lieutenant General Aung Kyaw Zaw was the Commander of the Bureau of Special Operations No 3 of the Myanmar Armed Forces (Tatmadaw) from August 2015 to the end of 2017. The Bureau of Special Operations No 3 oversaw the Western Command and, in that context, Lieutenant General Aung Kyaw Zaw is responsible for the atrocities and serious human rights violations committed against the Rohingya population in Rakhine State by the Western Command during that period. These include unlawful killings, sexual violence and the systematic burning of Rohingya houses and buildings. | 25.6.2018 |
| 2. | Maung Maung Soe | Date of birth: March 1964 Gender: male National Identification Number: Tatmadaw Kye 19571 | Major General Maung Maung Soe was the Commander of the Western Command of the Myanmar Armed Forces (Tatmadaw) from October 2016 to 10 November 2017 and oversaw the military operations in Rakhine State. In that context, he is responsible for the atrocities and serious human rights violations committed against Rohingya population in Rakhine State by the Western Command during that period. These include unlawful killings, sexual violence and systematic burning of Rohingya houses and buildings. | 25.6.2018 |
| 3. | Than Oo | Date of birth: 12 October 1973 Gender: male Military identification number: BC 25723 | Brigadier General Than Oo is the Commander of the 99th Light Infantry Division of the Myanmar Armed Forces (Tatmadaw). In that context, he is responsible for the atrocities and serious human rights violations committed against the Rohingya population in Rakhine State in the second half of 2017 by the 99th Light Infantry Division. These include unlawful killings, sexual violence and the systematic burning of Rohingya houses and buildings. | 25.6.2018 |
| 4. | Aung Aung | Gender: male Military identification number: BC 23750 | Brigadier General Aung Aung is the Commander of the 33rd Light Infantry Division of the Myanmar Armed Forces (Tatmadaw). In that context, he is responsible for the atrocities and serious human rights violations committed against the Rohingya population in Rakhine State in the second half of 2017 by the 33rd Light Infantry Division. These include unlawful killings, sexual violence and the systematic burning of Rohingya houses and buildings. | 25.6.2018 |
| 5. | Khin Maung Soe | Date of birth: 1972 Gender: male | Brigadier General Khin Maung Soe is the Commander of the Military Operation Command 15, also sometimes known as the 15th Light Infantry Division, of the Myanmar Armed Forces (Tatmadaw), under which Infantry Battalion No 564 falls. In that context, he is responsible for the atrocities and serious human rights violations committed against the Rohingya population in Rakhine State in the second half of 2017 by the Military Operation Command 15, in particular by Infantry Battalion No 564. These include unlawful killings, sexual violence and the systematic burning of Rohingya houses and buildings. | 25.6.2018 |

| | Name | Identifying information | Reasons | Date of listing |
|-----|----------------|--|---|-----------------|
| 6. | Thura San Lwin | Date of birth: 17 March 1959 Gender: male | Brigadier General Thura San Lwin was the Commander of the Border Guard Police from October 2016 until early October 2017. In that context, he is responsible for the atrocities and serious human rights violations committed against Rohingya population in Rakhine State by the Border Guard Police during that period. These include unlawful killings and systematic burning of Rohingya houses and buildings. | 25.6.2018 |
| 7. | Thant Zin Oo | Gender: male | Thant Zin Oo is the Commander of the 8th Security Police Battalion. In that context, he is responsible for the atrocities and serious human rights violations committed against Rohingya population in Rakhine State in the second half of 2017 by the 8th Security Police Battalion. The serious human rights violations include unlawful killings and systematic burning of Rohingya houses and buildings. Those violations were conducted in conjunction with and in direct support of the 33rd Light Infantry Division of the Myanmar Armed Forces (Tatmadaw) led by Brigadier General Aung Aung. Thant Zin Oo is therefore associated with listed person, Brigadier General Aung Aung. | 25.6.2018 |
| 8. | Ba Kyaw | Gender: male | Ba Kyaw is a Staff Sergeant in the 564th Light Infantry Battalion (LIB) of the Myanmar Armed Forces (Tatmadaw). He committed atrocities and serious human rights violations, including murder, deportation and torture, against the Rohingya population in Rakhine State in the second half of 2017. In particular, he has been identified as one of the key perpetrators of the Maung Nu massacre on 27 August 2017. | 21.12.2018 |
| 9. | Tun Naing | Gender: male | Tun Naing is the Commanding Officer of the Border Guard Police (BGP) base in Taung Bazar. In that capacity, he is responsible for the atrocities and serious human rights violations against the Rohingya population in Rakhine State committed by the BGP in Taung Bazar before, around and after 25 August 2017, including forced detention, ill-treatment and torture. | 21.12.2018 |
| 10. | Khin Hlaing | Date of birth: 2 May 1968 Gender: male | Brigadier General Khin HLaing is the former Commander of the 99th Light Infantry Division (LID) and the current Commander of the North-eastern Command of the Myanmar Armed Forces (Tatmadaw). As the Commander of the 99th LID he oversaw military operations carried out in Shan State in 2016 and early 2017. In that context, he is responsible for the atrocities and serious human rights violations committed against ethnic minority villagers in Shan State in the second half of 2016 by the 99th LID. These include unlawful killings, forced detention and destruction of villages. | 21.12.2018 |

| | Name | Identifying information | Reasons | Date of listing |
|-----|---------------|-------------------------|--|-----------------|
| 11. | Aung Myo Thu | Gender: male | Major Aung Myo Thu is the Field Unit Commander of 33rd Light Infantry Division (LID) of the Myanmar Armed Forces (Tatmadaw). As the Field Unit Commander of the 33rd LID he oversaw military operations carried out in Rakhine State in 2017. In that context, he is responsible for the atrocities and serious human rights violations committed against the Rohingya population in Rakhine State in the second half of 2017 by the 33rd LID. These include unlawful killings, sexual violence and forced detention. | 21.12.2018 |
| 12. | Thant Zaw Win | Gender: male | Thant Zaw Win is a Major in the 564th Light Infantry Battalion (LIB) of the Myanmar Armed Forces (Tatmadaw). In that capacity, he oversaw military operations carried out in Rakhine State and is responsible for the atrocities and serious human rights violations committed against the Rohingya population in Rakhine State by the 564th LIB, notably in and around Maung Nu village on 27 August 2017. These include unlawful killings, sexual violence and systematic burning of Rohingya houses and buildings. | 21.12.2018 |
| 13. | Kyaw Chay | Gender: male | Kyaw Chay is a Corporal in the Border Guard Police (BGP). He was formerly based in Zay Di Pyin and was the Commanding Officer of the BGP base in Zay Di Pyin in the period around 25 August 2017 when a series of human rights violations were committed by the BGP under his command. In that context, he is responsible for the atrocities and serious human rights violations by the BGP against the Rohingya population in Rakhine State in that period. He also participated in serious human rights violations. These violations include the ill-treatment of detainees and torture. | 21.12.2018 |
| 14. | Nyi Nyi Swe | Gender: male | Major General Nyi Nyi Swe is the former Commander of the Northern Command of the Myanmar Armed Forces (Tatmadaw). In that capacity, he is responsible for the atrocities and serious human rights violations committed in Kachin State from May 2016 to April 2018 (until his appointment as Commander of the South-western Command) by the Northern Command, including ill-treatment of civilians. He is also responsible for obstructing the provision of humanitarian assistance to civilians in need in Kachin State in that period, in particular the blocking of food transports. | 21.12.2018' |

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**

THE EUROPEAN SECURITIES AND MARKETS AUTHORITY BOARD OF SUPERVISORS,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC ⁽¹⁾, and in particular Articles 9(5), 43(2) and 44(1) thereof,

Having regard to 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 ⁽²⁾, and in particular Article 40 thereof,

Having regard to 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 ⁽³⁾, and in particular Article 19 thereof,

Whereas:

- (1) By Decision (EU) 2018/796 ⁽⁴⁾, the European Securities and Markets Authority (ESMA) restricted the marketing, distribution or sale of contracts for differences (CFDs) to retail clients with effect from 1 August 2018 for a period of three months.
- (2) In accordance with Article 40(6) of Regulation (EU) No 600/2014, ESMA must review a temporary product intervention measure at appropriate intervals and at least every three months.
- (3) By Decision (EU) 2018/1636 ⁽⁵⁾, ESMA renewed and amended the temporary restriction on the marketing, distribution or sale of CFDs to retail clients with effect from 1 November 2018 for a period of three months. By Decision (EU) 2019/155 ⁽⁶⁾, ESMA renewed again the temporary restriction on the marketing, distribution or sale of CFDs to retail clients on the same terms as Decision (EU) 2018/1636, with effect from 1 February 2019 for a period of three months.
- (4) ESMA's further review of the restriction on CFDs has been informed by, *inter alia*, a survey among national competent authorities ⁽⁷⁾ (NCAs) on the practical application and impact of the product intervention measure as well as additional information provided by NCAs and stakeholders. This information presents similar trends as the information which led to the previous renewal, Decision (EU) 2019/155.
- (5) NCAs detected only limited examples of non-compliance with the ESMA product intervention measure, which mainly related to the risk warnings, notably CFD providers displaying internet banners or other electronic advertisements which did not contain the required risk warning. While internet banners or other electronic

⁽¹⁾ OJ L 331, 15.12.2010, p. 84.

⁽²⁾ OJ L 173, 12.6.2014, p. 84.

⁽³⁾ OJ L 87, 31.3.2017, p. 90.

⁽⁴⁾ 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).

⁽⁵⁾ 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).

⁽⁶⁾ 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).

⁽⁷⁾ 20 NCAs have responded: Financial Market Authority (AT — FMA), Cyprus Securities and Exchange Commission (CY — CySEC), Bundesanstalt für Finanzdienstleistungsaufsicht (DE — BaFin), Finanstilsynet (DK — Finanstilsynet), Hellenic Capital Markets Commission (EL — HCMC), Comisión Nacional del Mercado de Valores (ES — CNMV), Finnish Financial Supervisory Authority (FI — FSA), Autorité des Marchés Financiers (FR — AMF), Magyar Nemzeti Bank (HU — MNB), Central Bank of Ireland (IE — CBI), Commissione Nazionale per le Società e la Borsa (IT — Consob), Commission de Surveillance du Secteur Financier (LU — CSSF), Finanšu un kapitāla tirgus komisija (LV — FKTK), Malta Financial Services Authority (MT — MFSA), Autoriteit Financiële Markten (NL — AFM), Komisja Nadzoru Finansowego (PL — KNF), Comissão do Mercado de Valores Mobiliários (PT — CMVM), Romanian Financial Supervisory Authority (RO — FSA), Finansinspektionen (SE — Finansinspektionen), Financial Conduct Authority (UK — FCA).

advertisements typically did not refer explicitly to CFDs but rather to online investment activities, NCAs and ESMA will continue monitoring their compliance with the risk warning requirements and that they are not used as a means of circumvention.

- (6) NCAs reported an overall decrease in the number of CFD retail client accounts, trading volume and total retail client equity over the three months from November 2017 to January 2018 (first period) in comparison with November 2018 to January 2019 (second period). The share of profitable accounts remained broadly stable when comparing these periods ⁽⁸⁾. The average costs incurred by retail clients while trading CFDs, which appear to be less dependent on market conditions than the overall client outcomes, were significantly lower in the second period in comparison to the first period ⁽⁹⁾. Average costs in respect of active retail accounts containing CFDs on cryptocurrencies fell disproportionately 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 for retail client accounts ⁽¹⁰⁾.
- (7) NCAs also reported an increase in the number of clients treated as professional clients on request in the second period in comparison with the first period. ESMA is aware that some CFD providers are advertising to retail clients the possibility of becoming professional clients on request. However, a retail client may request to be treated as a professional client when, in particular, the client submits a request in writing in accordance with all the requirements set out in the applicable legislation. Providers should ensure that they comply at all times with those requirements ⁽¹¹⁾. ESMA is also aware that some third-country firms are actively approaching Union clients or that some CFD providers in the Union are marketing the possibility for retail clients to move their accounts to an intra-group third-country entity. However, without authorisation or registration in the Union, third-country firms are only allowed to offer services to clients established or situated in the Union at the client's own exclusive initiative. Finally, ESMA is aware that firms are starting to provide other speculative investment products. ESMA will continue to monitor the offer of these other products to determine whether any other Union measures are appropriate.
- (8) Since the adoption of Decision (EU) 2018/796, ESMA did not obtain evidence contradicting its overall finding of a significant investor protection concern identified in Decision (EU) 2018/796, Decision (EU) 2018/1636 or Decision (EU) 2019/155 (Decisions). ESMA has therefore concluded that the significant investor protection concern identified in the Decisions would persist if the temporary restriction on the marketing, distribution or sale of CFDs to retail clients is not renewed.
- (9) Moreover, the applicable existing regulatory requirements under Union law have not changed and continue not to address the threat identified by ESMA. Furthermore, NCAs have not taken action to address the threat or the actions taken do not adequately address the threat. This continues to be a pan-European concern. Therefore, ESMA considers that, without additional NCAs taking national product intervention measures, a further renewal of ESMA's measure is needed for the significant investor protection concern identified in the Decisions to be adequately addressed.
- (10) The renewal of the restriction does not have a detrimental effect on the efficiency of financial markets or on investors that is disproportionate to the benefits of the action and does not create a risk of regulatory arbitrage for the same reasons set out in the Decisions.

⁽⁸⁾ The share of profitable retail client accounts increased in January 2019, a development that may be associated with market conditions.

⁽⁹⁾ This is consistent with observed decreases in total trade volumes on which spreads and fees are typically calculated. Average client equity increased slightly among active retail client accounts, though this was a significantly smaller change in percentage terms than the decrease in total trade volumes and total exposure for these accounts.

⁽¹⁰⁾ In the second period, the negative balance protection was applicable. However, market gapping can lead to the client initially being closed out at a price that creates negative equity, with the account then re-credited back to zero equity by the provider to meet the new requirement of negative balance protection. This was also the case for those providers that offered negative balance protection in the first period.

⁽¹¹⁾ Annex II, Section II of 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). See also Section 11 of ESMA's Questions and Answers on MiFID II and MiFIR investor protection and intermediaries topics (ESMA35-43-349), where ESMA has identified forms of practices that investment firms should not use when applying the legal requirements on the categorisation of clients as professionals on request. Section 11 was last updated on 25 May 2018.

- (11) If the temporary restriction is not renewed, ESMA continues to consider it likely that CFDs will again be offered to retail clients without adequate measures to sufficiently protect them against the risks related to those products that gave rise to the consumer detriment identified in the Decisions.
- (12) In view of these reasons, taken together with the reasons set out in the Decisions, ESMA has decided to renew the restriction on the same terms as those set out in Decision (EU) 2018/1636 and Decision (EU) 2019/155 for a further three-month period to address the significant investor protection concern.
- (13) As the proposed measures may, to a limited extent, relate to agricultural commodities derivatives, ESMA has consulted the public bodies competent for the oversight, administration and regulation of physical agricultural markets under Council Regulation (EC) No 1234/2007⁽¹²⁾. None of those bodies has raised any objections to the proposed renewal of the measures.
- (14) ESMA has notified NCAs of the proposed renewal Decision,

HAS ADOPTED THIS DECISION

Article 1

Definitions

For the purposes of this Decision:

- (a) ‘*contract for differences*’ or ‘*CFD*’ means a derivative other than an option, future, swap or forward rate agreement, the purpose of which is to give the holder a long or short exposure to fluctuations in the price, level or value of an underlying, irrespective of whether it is traded on a trading venue, and that 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) ‘*excluded non-monetary benefit*’ means any non-monetary benefit other than, insofar as they relate to *CFDs*, information and research tools;
- (c) ‘*initial margin*’ means any payment for the purpose of entering into a *CFD*, excluding commission, transaction fees and any other related costs;
- (d) ‘*initial margin protection*’ means the *initial margin* determined by Annex I;
- (e) ‘*margin close-out protection*’ means the closure of one or more of a retail client’s open *CFDs* on terms most favourable to the client in accordance with Articles 24 and 27 of Directive 2014/65/EU when the sum of funds in the *CFD* trading account and the unrealised net profits of all open *CFDs* connected to that account falls to less than half of the total *initial margin protection* for all those open *CFDs*;
- (f) ‘*negative balance protection*’ means the limit of a retail client’s aggregate liability for all *CFDs* connected to a *CFD* trading account with a *CFD* provider to the funds in that *CFD* trading account.

Article 2

Temporary restriction on CFDs in respect of retail clients

The marketing, distribution or sale to retail clients of *CFDs* is restricted to circumstances where at least all of the following conditions are met:

- (a) the *CFD* provider requires the retail client to pay the *initial margin protection*;
- (b) the *CFD* provider provides the retail client with the *margin close-out protection*;
- (c) the *CFD* provider provides the retail client with the *negative balance protection*;

⁽¹²⁾ Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ L 299, 16.11.2007, p. 1).

- (d) the CFD provider does not directly or indirectly provide the retail client with a payment, monetary or *excluded non-monetary benefit* in relation to the marketing, distribution or sale of a CFD, other than the realised profits on any CFD provided; and
- (e) the CFD provider does not send directly or indirectly a communication to or publish information accessible by a retail client relating to the marketing, distribution or sale of a CFD unless it includes the appropriate risk warning specified by and complying with the conditions in Annex II.

Article 3

Prohibition of participating in circumvention activities

It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the requirements in Article 2, including by acting as a substitute for the CFD provider.

Article 4

Entry into force and application

1. This Decision enters into force on the day following that of its publication in the *Official Journal of the European Union*.
2. This Decision shall apply from 1 May 2019 for a period of 3 months.

Done at Paris, 17 April 2019.

For the Board of Supervisors
Steven MAIJOOR
The Chair

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ANNEX I

INITIAL MARGIN PERCENTAGES BY TYPE OF UNDERLYING

- (a) 3,33 % of the notional value of the *CFD* when the underlying currency pair is composed of any two of the following currencies: US dollar, Euro, Japanese yen, Pound sterling, Canadian dollar or Swiss franc;
 - (b) 5 % of the notional value of the *CFD* when the underlying index, currency pair or commodity is:
 - (i) any of the following equity indices: Financial Times Stock Exchange 100 (FTSE 100); Cotation Assistée en Continu 40 (CAC 40); Deutsche Bourse AG German Stock Index 30 (DAX30); Dow Jones Industrial Average (DJIA); Standard & Poors 500 (S&P 500); NASDAQ Composite Index (NASDAQ), NASDAQ 100 Index (NASDAQ 100); Nikkei Index (Nikkei 225); Standard & Poors / Australian Securities Exchange 200 (ASX 200); EURO STOXX 50 Index (EURO STOXX 50);
 - (ii) a currency pair composed of at least one currency that is not listed in point (a) above; or
 - (iii) gold;
 - (c) 10 % of the notional value of the *CFD* when the underlying commodity or equity index is a commodity or any equity index other than those listed in point (b) above;
 - (d) 50 % of the notional value of the *CFD* when the underlying is a cryptocurrency; or
 - (e) 20 % of the notional value of the *CFD* when the underlying is:
 - (i) a share; or
 - (ii) not otherwise listed in this Annex.
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ANNEX II

RISK WARNINGS

SECTION A

Risk warning conditions

1. The risk warning shall be in a layout ensuring its prominence, in a font size at least equal to the predominant font size and in the same language as that used in the communication or published information.
2. If the communication or published information is in a durable medium or a webpage, the risk warning shall be in the format specified in Section B.
3. If the communication or published information is in a medium other than a durable medium or a webpage, the risk warning shall be in the format specified in Section C.
4. By way of derogation to paragraphs 2 and 3, if the number of characters contained in the risk warning in the format specified in Section B or C exceeds the character limit permitted in the standard terms of a third party marketing provider, the risk warning may instead be in the format specified in Section D.
5. If the risk warning in the format specified in Section D is used, the communication or published information shall also include a direct link to the webpage of the CFD provider containing the risk warning in the format specified in Section B.
6. The risk warning shall include an up-to-date provider-specific loss percentage based on a calculation of the percentage of CFD trading accounts provided to retail clients by the CFD provider that lost money. The calculation shall be performed every three months and cover the 12-month period preceding the date on which it is performed ('12-month calculation period'). For the purposes of the calculation:
 - a. an individual retail client CFD trading account shall be considered to have lost money if the sum of all realised and unrealised net profits on CFDs connected to the CFD trading account during the 12-month calculation period is negative;
 - b. any costs relating to the CFDs connected to the CFD trading account shall be included in the calculation, including all charges, fees and commissions;
 - c. the following items shall be excluded from the calculation:
 - i. any CFD trading account that did not have an open CFD connected to it within the calculation period;
 - ii. any profits or losses from products other than CFDs connected to the CFD trading account;
 - iii. any deposits or withdrawals of funds from the CFD trading account.
7. By way of derogation from paragraphs 2 to 6, if in the last 12-month calculation period a CFD provider has not provided an open CFD connected to a retail client CFD trading account, that CFD provider shall use the standard risk warning in the format specified in Sections E to G, as appropriate.

SECTION B

Durable medium and webpage provider-specific risk warning

CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage.

[insert percentage per provider] % of retail investor accounts lose money when trading CFDs with this provider.

You should consider whether you understand how CFDs work and whether you can afford to take the high risk of losing your money.

SECTION C

Abbreviated provider-specific risk warning

[insert percentage per provider] % of retail investor accounts lose money when trading CFDs with this provider.

You should consider whether you can afford to take the high risk of losing your money.

SECTION D

Reduced character provider-specific risk warning

[insert percentage per provider] % of retail CFD accounts lose money.

SECTION E

Durable medium and webpage standard risk warning

CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage.

Between 74-89 % of retail investor accounts lose money when trading CFDs.

You should consider whether you understand how CFDs work and whether you can afford to take the high risk of losing your money.

SECTION F

Abbreviated standard risk warning

Between 74-89 % of retail investor accounts lose money when trading CFDs.

You should consider whether you can afford to take the high risk of losing your money.

SECTION G

Reduced character standard risk warning

74-89 % of retail CFD accounts lose money.

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