Commission Delegated Regulation (EU) 2020/884 of 4 May 2020 derogating in respect of the year 2020 from Delegated Regulation (EU) 2017/891 as regards the fruit and vegetables sector and from Delegated Regulation (EU) 2016/1149 as regards the wine sector in connection with the COVID-19 pandemic

COMMISSION DELEGATED REGULATION (EU) 2020/884

of 4 May 2020

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THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008[(1)], and in particular Articles 62(1) and 64(6),

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[(2)], and in particular Articles 37, 53, and 173 in conjunction with Article 227 thereof,

Whereas:

(1) Due to the COVID-19 pandemic and the resulting extensive movement restrictions, exceptional difficulties have been encountered by all Member States and by farmers throughout the Union with planning and implementing aid schemes laid down in Articles 32 to 36 of Regulation (EU) No 1308/2013 for the fruit and vegetables sectors, and in Articles 39 to 52 of that Regulation for the wine sector. Logistical problems and shortage of workforce have made those farmers vulnerable to the economic disruption caused by the COVID-19 pandemic. In particular, they experience financial difficulties and cash-flow problems. The situation has resulted in disruption and disturbance of the functioning of the supply chain in those sectors.

(2) In view of the unprecedented nature of those combined circumstances, it is necessary to alleviate those difficulties by derogating from certain provisions of Delegated Regulations applicable in the fruit and vegetables sector and in the wine sector.

(3) Exceptional difficulties have been encountered in all Member States with the planning, management and implementation of operational programmes of recognised producer organisations and associations of producer organisations in the fruit and vegetables sector. This may have the consequence of delaying the implementation of these

operational programmes and therefore producer organisations and associations of producer organisations may fail to conform to Union legal requirements, laid down for those operational programmes in particular in Commission Delegated Regulation (EU) 2017/891[(3)]. Producer organisations are also vulnerable to the disruption and disturbance caused by the COVID-19 pandemic and are experiencing financial difficulties and cash-flow problems caused by a disruption of the supply chains, the closure of certain outlets in particular at the wholesale level and in the hospitality sector. They are experiencing logistical problems and difficulties in harvesting their produce due to a shortage of workforce and difficulties in reaching consumers due to disruption of the supply chain. This is having a direct impact on the financial stability of producer organisations and on their capacity to implement operational programmes not only in the year 2020 but also in the subsequent years, as the value of marketing production for the year 2020 impacts the calculation of the Union financial assistance for the subsequent years. This is further influencing the ability of producer organisations to introduce measures and actions targeting the effects of this crisis. In addition, the reduction of the value of marketed production caused by the COVID-19 pandemic impairs the future continuity and viability of the producer organisations' operational programmes in the fruit and vegetables sector, as the value of marketing production for the year 2020 impacts also the calculation of the Union financial assistance for the subsequent years.

(4) Recognised producer organisations and associations of producer organisations are to fulfil the recognition criterion of democratic accountability, subject to the requirements laid down in Article 17 of Delegated Regulation (EU) 2017/891. Pursuant to the first subparagraph of Article 17(2), the maximum percentage of voting rights and shares or capital of any legal or natural person is to be below 50 % of the total voting rights and below 50 % of the shares or capital. For reasons linked to the COVID-19 pandemic, it may transpire that some producer members finish their activity and, for this reason, certain producer organisations or associations of producer organisations may not fulfil this criterion in the year 2020. Such irregularity could lead to the suspension or loss of recognition, suspension of payments of aid, financial penalties and recovery of Union financial assistance. In view of this, for the year 2020, provision should be made to allow the percentage of voting rights and shares or capital of any legal or natural person to exceed 50 % of the total voting rights and 50 % of the shares or capital in the producer organisation. However, to avoid abuses of power of natural or legal persons that temporarily exceed these limits of voting rights and shares or capital, Member States should take measures to protect producer organisations and associations of producer organisations from abuses of power. Such measures may concern decisions concerning the use of Union financial assistance and changes of operational programmes that would disproportionately benefit to single natural or legal persons.

(5) Losses in the value of marketed production in the fruit and vegetables sector caused by the COVID-19 pandemic will have a major impact on the amount of Union aid received by producer organisations in the subsequent year, as the amount of Union aid is to be calculated as a percentage of the value of marketed production of each producer organisation. If substantial loss in the value of marketed production were to occur in 2020 for reasons linked to the COVID-19 pandemic, producer organisations

would risk losing their recognition as producer organisations, as one of the criteria for such recognition is reaching a certain minimum value of marketed production fixed at a national level. This would put the long-term stability of producer organisations at risk. Therefore, if a reduction of at least 35 % in the value of a product were to occur in the year 2020 for reasons linked to the COVID-19 pandemic and if this were to occur outside the responsibility and control of producer organisations, the value of marketed production for 2020 should be established as 100 % of the value of marketed production for the previous period. The threshold of 65 % of the value of marketed production in the previous period, laid down in Article 23(4) of Commission Delegated Regulation (EU) 2017/891, is insufficient to achieve economic and financial stability in the circumstances of the COVID-19 pandemic for the producer organisations concerned by such loss of value of marketed production. It should be increased to 100 % of the value of marketed production in the previous period for the year 2020, in view of the extensive economic impact of the COVID-19 pandemic in the fruit and vegetables sector.

(6) With a view to improving the strategy, planning, management and implementation of the approved operational programmes in order to address the effects of the COVID-19 pandemic in the fruit and vegetables sector, Member States should be able in the year 2020 to amend their national strategies referred to in Article 27 of Delegated Regulation (EU) 2017/891, even after the operational programmes were submitted for approval. Member States should ensure that the continuity and implementation of multiannual and ongoing operations that are part of approved operational programmes are not disrupted.

(7) Member States should also be exempted in the year 2020 from the obligation laid down in Article 27(5) of Delegated Regulation (EU) 2017/891, to set in the national strategy the maximum percentages of the operational fund which may be spent on individual measures or types of action. This should ensure greater flexibility for producer organisations to take measures to address the effects of the COVID-19 pandemic in the fruit and vegetables sector.

(8) In view of the duration of the severity of the impact of the COVID-19 pandemic in the fruit and vegetables sector, and subject to approval by Member States, producer organisations or associations of producer organisations may amend their operational programmes for subsequent years or even during the year of implementation, as laid down in Article 34 of Delegated Regulation (EU) 2017/891. To address the effects of the COVID-19 pandemic, they should also be able in the year 2020 to temporarily suspend their operational programmes, in full or in part.

(9) Pursuant to Article 36(1) of Delegated Regulation (EU) 2017/891, if a producer organisation or association of producer organisations ceases to implement its operational programme before the end of its scheduled duration, no further payments are to be made to that organisation or association for actions implemented after the date of cessation of that operational programme. In order to ensure the financial stability of producer organisations, aid received for eligible actions carried out before the cessation of the operational programme shall not be recovered where the producer organisation or association of producer organisations demonstrates to the competent authority of the

Member State that the cessation of that operational programme occurred in the year 2020 for reasons linked to the COVID-19 pandemic and was outside the control and responsibility of the producer organisation.

(10) In order to ensure the financial stability of producer organisations, Union financial assistance received for multiannual commitments in the fruit and vegetables sector, such as environmental actions, should not be recovered to the EAGF if their long-term objectives could not be realised because of their interruption in the year 2020 for reasons linked to the COVID-19 pandemic.

(11) Taking into account the disruption and disturbance resulting from the COVID-19 pandemic, in particular the shortages of workforce for product harvesting and the disruption in logistics in the year 2020, as well as the perishability of the products of the fruit and vegetables sector, flexibility should be granted to producer organisations for the implementation of the non-harvesting measure referred to in Article 48(3) of Delegated Regulation (EU) 2017/891. In the year 2020, it should therefore be possible to undertake non-harvesting operations even where the commercial production has been taken from the area concerned during the normal production cycle or even where the same area was previously subject to a green-harvesting measure.

(12) Pursuant to Articles 54(b) and 58(3) of Delegated Regulation (EU) 2017/891, monitoring and evaluation of operational programmes and schemes in the fruit and vegetables sector for assessing their effectiveness and efficiency by both producer organisations and Member States is subject to an evaluation to be notified to the Commission by 15 November 2020. In view of the disruption to the operation of public administrations in the Member States for reasons linked to the COVID-19 pandemic, the period for the communication of the report of the evaluation exercise for 2020 referred to in Article 58 of that Regulation should be extended until 30 June 2021.

(13) The disruption in the fruit and vegetables sector for reasons linked to the COVID-19 pandemic is affecting the ability of producer organisations to take in the year 2020 the corrective measures referred to in Article 59(1) and (4) of Delegated Regulation (EU) 2017/891 within the maximum time limit of four months. Member States should therefore be authorised to extend these time limits beyond the maximum of four months in the year 2020.

(14) Pursuant to Article 5 of Delegated Regulation (EU) 2017/891, to retain recognition a producer organisation is to meet continuously the requirement of a minimum number of members laid down by a Member State. Where producer organisations fail to meet this requirement, pursuant to Article 59(2) of Delegated Regulation (EU) 2017/891 Member States are to suspend the recognition of the producer organisation concerned, withhold aid payments and reduce by 2 % the yearly amount of aid per calendar month or part thereof during which recognition is suspended. In view of the disruption caused by the COVID-19 pandemic, Member States should not suspend payments of aid to producer organisations that fail to meet the minimum number of members in the year 2020 in the fruit and vegetables sector.

(15) Member States should be able to extend the time period for corrective measures during the suspension of recognition referred to in Article 59(2) of Delegated Regulation (EU)

2017/891 beyond the period of 12 months from the date of receipt of the warning letter by a producer organisation concerned where that producer organisation could not take the corrective measures for reasons linked to the COVID-19 pandemic. Such extensions should not go beyond 31 December 2020, which should ensure that producer organisations have sufficient time to take corrective measures.

(16) In view of the disruption caused by the COVID-19 pandemic in the fruit and vegetables sector, Member States should not apply the reduction of 2 % of the annual amount of aid per calendar month or part thereof, laid down in Article 59(2) of Delegated Regulation (EU) 2017/891, where a producer organisation with suspended recognition would not be able to take corrective measures in the year 2020 for reasons linked to the COVID-19 pandemic. For the same reason, Member States should not apply the reduction of 1 % of the annual amount of aid per calendar month or part thereof, laid down in Article 59(5) of Delegated Regulation (EU) 2017/891.

(17) Pursuant to Article 59(6) of Delegated Regulation (EU) 2017/891, Member States are to withdraw recognition if a producer organisation does not prove compliance with the minimum value or volume of marketed production criteria by 15 October of the second year following the year in which those criteria were not complied with. Due to the impact of disruption caused by the COVID-19 pandemic in the fruit and vegetables sector on the value and volume of marketed production of producer organisations, the year 2020 should not be taken into account for the purposes of establishing compliance with the minimum value or volume of marketed production under Article 59(6) of that Regulation.

(18) Producer organisations implementing operational programmes ending in the year 2020 may not be able to comply with the conditions laid down in Article 33(5)(b) of Regulation (EU) No 1308/2013 for reasons linked to the COVID-19 pandemic. Under these circumstances, the reduction of the total amount of support referred to in Article 61(6) of Delegated Regulation (EU) 2017/891 should not be applied to operational programmes concerned in 2020 in the fruit and vegetables sector.

(19) Exceptional difficulties have been encountered in wine producing Member States with the planning, management and implementation of operations under support programmes in the wine sector. This may have the consequence of delaying the implementation of those operations and therefore those operations may fail to conform to Union legal requirements, laid down in particular in Commission Delegated Regulation (EU) 2016/1149[(4)]. Operators in the wine sector are also vulnerable to the disruption and disturbance caused by the COVID-19 pandemic and are experiencing financial difficulties and cash-flow problems caused by a disruption of the supply chains, the closure of certain outlets in particular at the retail level and in the catering sector. They are experiencing logistical problems and difficulties in managing their production due to a shortage of workforce and difficulties in reaching consumers due to disruption of the supply chain. This is having a direct impact on the financial stability of wine operators and on their capacity to implement operations under the wine support programmes in 2020.