Commission Implementing Regulation (EU) 2020/532 of 16 April 2020 derogating in respect of the year 2020 from Implementing Regulations (EU) No 809/2014, (EU) No 180/2014, (EU) No 181/2014, (EU) 2017/892, (EU) 2016/1150, (EU) 2018/274, (EU) 2017/39, (EU) 2015/1368 and (EU) 2016/1240 as regards certain administrative and on-the-spot checks applicable within the common agricultural policy

COMMISSION IMPLEMENTING REGULATION (EU) 2020/532

of 16 April 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 Article 62(2) thereof,

Having regard to Regulation (EU) No 228/2013 of the European Parliament and of the Council of 13 March 2013 laying down specific measures for agriculture in the outermost regions of the Union and repealing Council Regulation (EC) No 247/2006[(2)], and in particular Article 8 and the second subparagraph of Article 18(1) thereof,

Having regard to Regulation (EU) No 229/2013 of the European Parliament and of the Council of 13 March 2013 laying down specific measures for agriculture in favour of the smaller Aegean islands and repealing Council Regulation (EC) No 1405/2006[(3)], and in particular Article 7, Article 11(3) and the second subparagraph of Article 14(1) thereof,

Whereas:

(1) Due to the current pandemic of COVID-19 and the extensive movement restrictions put in place in the Member States, exceptional administrative difficulties have been encountered in all Member States with the planning and execution of timely on-the-spot checks to the required number. Those difficulties risk delaying the performance of the checks and the ensuing payment of aid. At the same time, farmers are vulnerable to the economic disruptions caused by the pandemic and experience financial difficulties and cash-flow problems.

(2) In view of the unprecedented nature of those circumstances, it is necessary to alleviate those difficulties by derogating from different Implementing Regulations applicable in

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the area of the common agricultural policy as regards certain administrative and on-the-spot checks.

(3) Commission Implementing Regulation (EU) No 809/2014[(4)] lays down rules on, inter alia, time limits for the notification of control data and control statistics covering the previous calendar year, the timing of the on-the-spot checks, the control rates of certain on-the-spot checks within the integrated system, including for area-related aid schemes other than the payment for agricultural practices beneficial for the climate and environment, for the greening payment, for rural development measures, for animal aid schemes, and the increase or reduction of the control rate as regards certain schemes. In addition, Implementing Regulation (EU) No 809/2014 contains rules on on-the-spot checks relating to the eligibility criteria, commitments and other obligations in respect of livestock aid applications and payment claims under animal-related support measures, control rates for non-area-related and non-animal-related rural development measures and minimum control rates relating to cross-compliance.

(4) Article 9 of Implementing Regulation (EU) No 809/2014 requires Member States to notify the Commission by 15 July of each year of the control data and control statistics covering the previous calendar year for all direct payment schemes, rural development measures and technical assistance and support schemes in the wine sector, of subsequent modifications to the report in respect of the options chosen for the control of the cross-compliance requirements and the competent control bodies responsible for the checks of the cross-compliance requirements and standards and of the report in respect of the measures taken for the administration and the control of the voluntary coupled support concerning the previous calendar year. In view of the current situation, it is appropriate to extend that deadline this year to 15 September 2020.

(5) Article 24(4) of Implementing Regulation (EU) No 809/2014 requires the competent authority to carry out physical inspections in the field whenever photo-interpretation of satellite or aerial images does not provide conclusive results on compliance with eligibility criteria or the correct size of the area that is the subject of administrative or on-the-spot checks. In view of the current unprecedented circumstances, it is appropriate to encourage the performance of checks with remote sensing and the use of new technologies such as unmanned aircraft systems, geo-tagged photographs, global navigation satellite system (GNSS) receivers combined with the European Geostationary Navigation Overlay Service (EGNOS) and Galileo, data captured by the Copernicus Sentinels satellites and other relevant documentary evidence to be used for checking compliance with eligibility criteria, commitments or other obligations for the aid scheme or support measure concerned, as well as compliance with the requirements and standards relevant for cross-compliance.

(6) Several obligations pursuant to Regulation (EU) No 1306/2013 in relation to cross-compliance and Regulation (EU) No 1307/2013 of the European Parliament and of the Council[(5)] in relation to greening rely on specific and differentiated time frames for their fulfilment and consequently require the on-the-spot checks to be carried out within those frameworks. The measures Member States put in place in 2020 to address the current pandemic of COVID-19 affect the feasibility of performing the required on-

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the-spot-checks accurately and within the time limit corresponding to those obligations. It is therefore necessary, in relation to certain checks to be carried out in 2020, to derogate from Articles 30 to 33a and Article 68(1) of Implementing Regulation (EU) No 809/2014 and to reduce the minimum rate of the on-the-spot checks compared to the normal control rates for greening and cross-compliance obligations, respectively. Considering the nature of the obligations and the proportionality of the control efforts in the circumstances of the pandemic, the control population should be limited in accordance with the obligations applicable to beneficiaries and the relevant land use.

(7) Article 42(1) of Implementing Regulation (EU) No 809/2014 contains rules on on-the-spot checks to verify that all eligibility criteria, commitments and other obligations are fulfilled covering all animals for which aid applications or payment claims have been submitted under the animal aid schemes or animal-related support measures to be checked. In view of the current situation, it is appropriate to provide that where Member States are not in a position to carry out those on-the-spot checks as required by that provision, Member States may decide to carry out those checks in respect of claim year 2020 at any time of the year, in so far that they still allow the checking of the eligibility conditions.

(8) For non-area-related and non-animal-related rural development measures Article 48(5) of Implementing Regulation (EU) No 809/2014 provides that administrative checks on investment operations are to include at least one visit to the operation supported or the investment site to verify the realisation of the investment. In view of the current circumstances, it is appropriate to provide that where Member States are not in a position to carry out any visits before granting the final payments, Member States may decide to substitute such visits, as long as the measures put in place to address the pandemic of COVID-19 apply, by any relevant documentary evidence.

(9) Articles 50(1), 60(2) and 52(2) of Implementing Regulation (EU) No 809/2014 contain rules for on-the-spot checks and *ex-post* checks for non-area-related and non-animal-related rural development measures. In view of the current circumstances, Member States should be allowed to reduce the number of those checks or substitute on-the-spot checks by relevant documentary evidence.

(10) The confinement rules decided in certain Member States for the purpose of protecting public health provided for extensive movement restrictions and thus prevented the actual execution of on-the-spot checks in cases where inspectors were subject to constraints making it impossible to visit beneficiaries or physically reach the farms. Considering the unprecedented nature of these circumstances, it should exceptionally be accepted, in relation to the year 2019, that a lower rate of checks was executed in those Member States. In order to ensure transparency and equal treatment, the acceptance of the lower rate of checks for claim year 2019 and, in the case of the non-area and non-animal related rural development measures for calendar year 2019, should be limited to cases where large scale movement restrictions were in place, in particular with a clear date on which the confinement started to apply, and which prevented the completion of the relevant checks.

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(11) The derogations from Implementing Regulation (EU) No 809/2014 provided for in this Regulation should enable Member States to avoid delays in the control measures and processing of aid applications, and thus avoid delays of payments to beneficiaries for the year 2020. Member States using those derogations should endeavour to use alternative sources of evidence, which may include the use of documentary checks, the use of new technologies or reliable evidence provided by the beneficiary, to replace the information normally obtained from the checks that would have been carried out under normal circumstances. It is however imperative that those derogations do not impede the sound financial management and the requirement of a sufficient level of assurance. Accordingly, Member States making use of those derogations are responsible for taking all necessary measures to ensure that overpayments are avoided and that the recovery of undue amounts is instigated. Moreover, the use of these derogations should be covered by the management declaration referred to in point (b) of the first subparagraph of Article 7(3) of Regulation (EU) No 1306/2013 for financial years 2020 and 2021.

(12) Commission Implementing Regulations (EU) No 180/2014[(6)] and (EU) No 181/2014[(7)] provide for control rates for checks of specific measures for agriculture in the outermost regions of the Union and the smaller Aegean islands. Due to the measures put in place to address the pandemic of COVID-19 that affect as well the outermost regions of the Union and the smaller Aegean islands, it is appropriate to derogate from those Regulations by adapting control rates of on-spot-checks for the year 2020.

(13) Article 27(2) of Commission Implementing Regulation (EU) 2017/892[(8)] fixes sample for annual on-the-spot checks at least 30 % of the total aid applied for and provides that each producer organisation or association of producer organisations implementing an operational programme is to be visited at least once every 3 years. Article 27(7) of that Regulation provides that actions implemented on individual holdings of members of producer organisations covered by the sample referred to in Article 27(2) of that Regulation are to be subject of at least one visit to verify their execution. Due to the measures put in place to address the pandemic of COVID-19, Member States may not be able to meet these requirements and should therefore be allowed to carry out a lower percentage of those checks in the year 2020 and should not be subjected in the year 2020 to the requirements on frequency of visits in producer organisations.

(14) Article 29(2) of Implementing Regulation (EU) 2017/892 provides that the first-level checks on withdrawal operations is to cover 100 % of the quantity of the products withdrawn from the market, with the exception of products intended for free distribution, for which pursuant to Article 29(3) of that Regulation Member States could check a smaller percentage, but not less than 10 % of the quantities concerned during the marketing year of any given producer organisation. Due to the measures put in place to address the pandemic of COVID-19, Member States may not be able to meet this requirement and should be allowed in the year 2020 to check a smaller percentage, but not less than 10 % of the quantities concerned during the marketing year of any given producer organisation also for all other withdrawn products, irrespective of their intended destination.

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(15) Article 30(3) of Implementing Regulation (EU) 2017/892 provides that each check is to include a sample representing at least 5 % of the quantities withdrawn by the producer organisation during the marketing year. Due to the measures put in place to address the pandemic of COVID-19, Member States may not be able to meet this requirement and should be allowed in the year 2020 to use samples representing at least 3 % of the quantities withdrawn by the producer organisation during the marketing year 2019.

(16) Due to the crisis caused by the pandemic of COVID-19, it is going to be materially impossible for Member States to carry out in 2020 systematic and sample based on-the-spot checks for operations supported under Articles 45 to 52 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council[(9)]. Therefore, a derogation from Article 32(1) and 42(3) of Commission Implementing Regulation (EU) 2016/1150[(10)] should be introduced in respect of financial year 2019-2020 to allow Member States to define controls that are equivalent to systematic on-the-spot checks, such as dated photographs, dated drone surveillance reports, administrative checks or videoconferences with the beneficiaries, and guarantee that the rules of the legislation relating to the support programmes in the wine sector are respected before payments are made. This derogation should apply irrespective of whether Member States have put into place measures to address the pandemic of COVID-19.

(17) For the same reason, it is also going to be materially impossible for Member States to carry out in respect of financial year 2019-2020, within the deadline set by Article 43(3) of Implementing Regulation (EU) 2016/1150, systematic on-the-spot checks for green harvesting operations supported under Article 47 of Regulation (EU) No 1308/2013. Therefore, a derogation should be introduced to postpone the completion of the checks until 15 September 2020.

(18) Article 27(3) of Commission Implementing Regulation (EU) 2018/274[(11)] fixes the number of samples of fresh grapes to be taken from vineyards during the period when the plot in question is harvested for the establishment of the analytical databank of isotopic data referred to in Article 39 of Commission Delegated Regulation (EU) 2018/273[(12)]. In cases where the crisis due to the pandemic of COVID-19 prevent Member States from carrying out such checks, Member States should be allowed to derogate from the minimum number of samples, irrespective of whether they have put in place measures to address the COVID-19 pandemic.

(19) Article 31(2)(b) of Implementing Regulation (EU) 2018/274 provides that Member States are to carry out yearly on-the-spot checks on at least 5 % of all wine growers identified in the vineyard register. In cases where the crisis due to the pandemic of COVID-19 prevents such checks in several wine producing Member States over a long period of time, this percentage should be reduced for the year 2020. This derogation should apply irrespective of whether Member States have put into place measures to address the pandemic of COVID-19. For the same reason, Member States should be allowed to temporarily suspend the systematic on-the-spot checks referred to in Article 31(2)(c) of that Regulation which are to be carried out in areas planted with vines which are not included in any wine grower file in the year 2020.