

COMMISSION IMPLEMENTING REGULATION (EU) 2021/238**of 16 February 2021****amending Implementing Regulation (EU) 2020/532 as regards a derogation from Implementing Regulations (EU) No 180/2014 and (EU) No 181/2014 for checks of specific measures for agriculture in the outermost regions of the Union and the smaller Aegean islands**

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 points (a) and (b) of the first subparagraph of 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 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.
- (2) In view of the unprecedented nature of those circumstances, it was necessary to alleviate those difficulties by derogating from different Implementing Regulations applicable in the area of the common agricultural policy as regards certain administrative and on-the-spot checks.
- (3) Commission Implementing Regulation (EU) 2020/532 ⁽⁴⁾ contains derogations from, inter alia, Commission Implementing Regulations (EU) No 809/2014 ⁽⁵⁾, (EU) No 180/2014 ⁽⁶⁾ and (EU) No 181/2014 ⁽⁷⁾.

⁽¹⁾ OJ L 347, 20.12.2013, p. 549.

⁽²⁾ OJ L 78, 20.3.2013, p. 23.

⁽³⁾ OJ L 78, 20.3.2013, p. 41.

⁽⁴⁾ 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 (OJ L 119, 17.4.2020, p. 3).

⁽⁵⁾ Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance (OJ L 227, 31.7.2014, p. 69).

⁽⁶⁾ Commission Implementing Regulation (EU) No 180/2014 of 20 February 2014 laying down rules for the application of Regulation (EU) No 228/2013 of the European Parliament and of the Council laying down specific measures for agriculture in the outermost regions of the Union (OJ L 63, 4.3.2014, p. 13).

⁽⁷⁾ Commission Implementing Regulation (EU) No 181/2014 of 20 February 2014 laying down rules for the application of Regulation (EU) No 229/2013 of the European Parliament and of the Council laying down specific measures for agriculture in favour of the smaller Aegean islands (OJ L 63, 4.3.2014, p. 53).

- (4) Article 22 of Implementing Regulation (EU) No 180/2014 and Article 20 of Implementing Regulation (EU) No 181/2014 provide that in all appropriate cases, Member States concerned shall make use of the integrated administration and control system when performing checks on specific measures for agriculture in the outermost regions of the Union and the smaller Aegean islands. The derogations specified in Chapter I of Implementing Regulation (EU) 2020/532 in respect of controls performed in the integrated administration and control system for direct payments and cross compliance apply therefore *mutatis mutandis* for these controls.
- (5) Certain on-the-spot checks on specific measures for agriculture in the outermost regions of the Union and the smaller Aegean islands are however performed outside of the integrated administration and control system, the derogations provided for in Chapter II of Implementing Regulation (EU) 2020/532 appeared not be sufficient to address the difficulties encountered in performing the on-the-spot-checks accurately and within the time limit, especially taking into account the geographical remoteness of the outermost regions.
- (6) Therefore it is appropriate to extend the derogations referred to in Chapter II of Implementing Regulation (EU) 2020/532 to the use of alternative evidence and/or adapted timing, provided that these could serve to verify the correct implementation of the measures while maintaining an appropriate level of assurance.
- (7) As this Regulation provides for an additional derogation from Implementing Regulations (EU) No 180/2014 and (EU) No 181/2014 in respect of claim year 2020 due to the pandemic of COVID-19, it should enter into force on the day of its publication in the *Official Journal of the European Union* and apply retroactively from the same date as Implementing Regulation (EU) 2020/532.
- (8) Article 59(5) of Regulation (EU) No 1306/2013 provides that Member States are to ensure a minimum level of on-the-spot checks needed for an effective management of the risks, and are to increase that minimum level where necessary. Considering the nature of these obligations and the proportionality of the control efforts in the circumstances of the pandemic of COVID-19, Member States making use of the derogations provided for in Implementing Regulation (EU) 2020/532 should be allowed not to take into account, in respect of the following claim year, the results of the checks performed. However, the increase in control rates that should have been applied in claim year 2020, should be applied by means of a corresponding increase in claim year 2021.
- (9) Implementing Regulation (EU) 2020/532 should therefore be amended accordingly.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Direct Payments.

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) 2020/532 is amended as follows:

- (1) in Article 12, the following paragraphs are added:

‘5. By way of derogation from Article 16(2) and Article 22 of Implementing Regulation (EU) No 180/2014, where due to the measures put in place to address the pandemic of COVID-19 Member States are not in a position to carry out on-the-spot checks in respect of the specific measures in favour of the outermost regions in accordance with the rules set out in those Articles, Member States may decide:

- (a) to substitute on-the-spot checks by the use of new technologies, including geotagged photos, dated photographs, dated drone surveillance reports, videoconferences with the beneficiaries or any relevant documentary evidence that could serve as support when verifying the correct implementation of the measures;
- (b) to carry 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, including after the final payment is effected.

Member States making use of the derogations provided for in the first subparagraph, and in particular changing the timing of checks or reducing their number shall set procedures to use alternative methodology in order to maintain the appropriate level of assurance on the legality and regularity of expenditure and compliance with the requirements and standards of cross-compliance.

6. The results of the checks carried out in accordance with paragraphs 2 and 4 of this Article shall not be taken into account in respect of the following claim year for the purposes of Article 59(5) of Regulation (EU) No 1306/2013. However, the increase in control rates that should have been applied in claim year 2020 in accordance with Article 59(5) of that Regulation, shall be applied by means of a corresponding increase in claim year 2021.;

(2) in Article 13, the following paragraphs are added:

‘5. By way of derogation from Article 13(2) and Article 20 of Implementing Regulation (EU) No 181/2014, where due to the measures put in place to address the pandemic of COVID-19 Greece is not in a position to carry out on-the-spot checks in respect of the specific measures in favour of the smaller Aegean islands in accordance with the rules set out in those Articles, Greece may decide:

- (a) to substitute on-the-spot checks by the use of new technologies, including geotagged photos, dated photographs, dated drone surveillance reports, videoconferences with the beneficiaries or any relevant documentary evidence that could serve as support when verifying the correct implementation of the measures;
- (b) to carry 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, including after the final payment is effected.

If making use of the derogations provided for in the first subparagraph, and in particular changing the timing of checks or reducing their number, Greece shall set procedures to use alternative methodology in order to maintain the appropriate level of assurance on the legality and regularity of expenditure and compliance with the requirements and standards of cross-compliance.

6. The results of the checks carried out in accordance with paragraphs 2 and 4 of this Article shall not be taken into account in respect of the following claim year for the purposes of Article 59(5) of Regulation (EU) No 1306/2013. However, the increase in control rates that should have been applied in claim year 2020 in accordance with that provision, shall be applied by means of a corresponding increase in claim year 2021.’.

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 20 April 2020.

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

Done at Brussels, 16 February 2021.

For the Commission
The President
Ursula VON DER LEYEN
