



## Support to Enforcement of the Intellectual Property Rights

EuropeAid/137467/DH/SER/MD



### **Recommendations of EU funded Project** **“Support to Enforcement of the Intellectual Property Rights”:**

#### **Barriers to the Development of AO, GI, TSG System in the Republic of Moldova**

One of the elements of the project *“Support to Enforcement of Intellectual Property Rights”* is the implementation of Activity A6.3 – *“Identifying the Administrative Gaps in the System of Management and Promotion of GI in the Republic of Moldova”*. The analysis and meetings held so far have identified a significant certification barrier affecting the development of the system of AO, GI and TSG agri-food products. Certification of registered GI, AO and TSG products is an essential element of the smooth functioning of the whole registration and protection system. According to EU and Moldavian requirements, each product, after registration as an AO, GI, TSG and before placing on the market, should be subject to verification of compliance with a technical specification.

**Currently in the Republic of Moldova there is no entity that would be able to verify the conformity of the registered agri-food products at the request of the manufacturer.** In the wine sector this problem was solved by appointing the entity responsible for verification of compliance.

#### **Possible options**

##### 1. Accredited certification bodies

Verification of compliance may be ensured by certification bodies. The basic requirement for a certification body is to obtain accreditation. All the certifying bodies must be accredited pursuant to a standard 17065:2012 *“Conformity assessment — Requirements for bodies certifying products, processes and services”*. That standard defines the requirements to be fulfilled by a certification body in order to be acknowledged as competent and reliable. Accreditation is carried out by the National Accreditation Centre of the Republic of Moldova (MOLDAC). So far none of the certification bodies have expressed any interest in obtaining accreditation. This is an independent decision of the business entity. Lack of interest in accreditation may result from the small number of registered products, high costs and long process of obtaining accreditation. Restraint in applying for accreditation may also be related to the lack of financial incentives for manufacturers that could encourage them to register products.

##### 2. State inspection

Verification of compliance may also be provided by a competent authority (eg. state inspection). In this case, the competent authority can be authorized by adopting a relevant legal act. Although Article 34 of Law no. 66-XVII *“On the protection of the geographical indications, appellations of origin and traditional specialties guaranteed”* indicates the possibility of issuing a mandate for a state entity to carry out a verification of conformity, the current authorization issued by the Government Decision No. 644 of July 19, 2010, *“On appointing competent authorities empowered with attributions and responsibilities related to the products with appellations of origin, geographical indications and traditional specialties guaranteed, and competent authorities responsible for official controls on the conformity of the*



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*products*” only identifies entities authorized to carry out ex officio controls. During a workshop on implementation of EU Quality Policy (PDO, PGI, TSG) certification and ex officio control held on July 25<sup>th</sup>, organized in the framework of the project, while analyzing possible certification solutions an additional issue was raised. According to the Article 15 of the LAW No. 235 of 01.12.2011 on accreditation and conformity assessment, a state inspection must also be accredited prior to conducting verification of compliance. Such a requirement is not reflected in EU legislation (See annex 1).

### 3. Mixed system

It is also possible to maintain a mixed system in which both the private certification bodies and the state inspection can provide verification of compliance. In this case, the producer decides which entity will carry out the verification of compliance. This solution works in several EU countries (eg. in Poland).

#### **Possible solution to the problem:**

**Supplement the Government Decision No 644 by authorizing state inspection to conduct verification of compliance whilst leaving the possibility of accreditation by certification bodies.**

#### **Option 1**

Verification of conformity provided by the Competent Authority (state inspection) without the need for accreditation

In this case, the competent authority should be authorized by introduction a relevant amendment in the Government Decision No. 644 of July 19, 2010. Article 34 of the Law no. 66-XVII “On the protection of the geographical indications, appellations of origin and traditional specialties guaranteed” indicates the possibility of issuing a mandate for a state entity to carry out a verification of conformity, but the current authorization issued by the Government Decision No. 644 of July 19, 2010, only identifies entities authorized to carry out ex officio controls. Necessary changes should also apply to legal acts indicating the obligation to obtain accreditation.

#### **Action to be taken:**

- Introduction an amendment to the Government Decision No. 644 indicating state inspection as a body responsible for verification of compliance;
- Implementation of the exemption regarding the obligation of accreditation by the state inspection in the other relevant legal acts (in particular LAW No. 235 of 01.12.2011 on accreditation and conformity assessment).

#### **Results:**

- A quick solution of the problem. The inspection could begin to provide a verification of compliance as soon as the revised legislation will be adopted;
- No costs associated with obtaining accreditation.

#### **Option 2**

Verification of conformity provided by the accredited Competent Authority (state inspection)

In this case, the competent authority should be authorized by introduction a relevant amendment in the Government Decision No. 644 of July 19, 2010 (as in option 1).

#### **Action to be taken:**

- Introduction an amendment to the Government Decision No. 644 indicating state inspection as a body responsible for verification of compliance;



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- Filing an application to MOLDAC for accreditation in the scope of verification of compliance of products registered as AO, GI, TSG.
- Providing financial resources necessary to fulfill the requirements related to obtaining accreditation.

### **Results:**

- The ability to provide verification of conformity only after obtaining accreditation. According to information from MOLDAC representatives, the process may take 2 years. Detailed guidelines have not been issued yet;
- Necessity to incur costs associated with accreditation.

### **Conclusion:**

**Option1 is recommended as consistent with the EU approach and quickly solving the problem. The implementation costs are also limited compared to option 2.**

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### Annex 1: Accreditation of control bodies

#### 1. EU approach

##### 1.1 REGULATION (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs

**Article 37** Verification of compliance with product specification be carried out by one or more of the competent authorities and/or one or more of the control bodies within the meaning of point (5) of Article 2 of Regulation (EC) No 882/2004 operating as a product certification body.

**Article 39** Competent authorities may delegate, in accordance with Article 5 of Regulation (EC) No 882/2004, specific tasks related to official controls of the quality schemes to one or more control bodies. Such control bodies shall be accredited in accordance with European Standard EN 45011 or ISO/IEC Guide 65 (General requirements for bodies operating product certification systems).

##### 1.2 REGULATION (EC) No 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules

###### **Article 2** Definitions

"competent authority" means the central authority of a Member State competent for the organization of official controls or any other authority to which that competence has been conferred; it shall also include, where appropriate, the corresponding authority of a third country;

"control body" means an independent third party to which the competent authority has delegated certain control tasks;

**Article 5** The competent authority may delegate specific tasks to a particular control body only if the control body works and is accredited in accordance with European Standard EN 45004 "General criteria for the operation of various types of bodies performing inspection" and/or another standard if more relevant to the delegated tasks in question;

#### 2. Moldovan requirements

##### 2.1 LAW No. 235 of 01.12.2011 on accreditation and conformity assessment

Article 15. Conformity assessment in the regulated area shall be made only by the accredited conformity assessment bodies.

##### 2.2 ORDER no. 149 of 04.08.2015 on the procedure for approval of food products specification with appellations of origin (AO), geographical indications (GI) and traditional specialties guaranteed (TSG). Article 31. The conformity certificate for the agricultural products and foodstuffs with protected AO, protected GI and protected TSG is issued by a conformity assessment body certified according to EN 17065 „General requirements for bodies operating a product certification system”, under the conditions provided in this chapter.

#### Conclusion:

EU regulations do not require competent authorities to have accreditation. Only in the case of delegation control activities to a control body such accreditation is required. The Moldovan regulations indicate that every entity carrying out verification of conformity should have an accreditation