

Development of origin-based food quality labels in the Bursa Region

Certification options

Bursa Black fig and Bursa Peach

November 2017



Food and Agriculture Organization
of the United Nations



European Bank
for Reconstruction and Development

Abbreviations

AO: Appellation of Origin

AB: Accreditation Body

CB: Certification Bodies

CoP: Code of Practices

GI: Geographical Indication

PGS: Participatory Guarantee System

TRIPS: Trade Related Aspect of Intellectual Property Rights

Definitions

'Accreditation': means an attestation by a national accreditation body that a control body meets the requirements set by harmonised standards and, where applicable, any additional requirements including those set out in relevant sectoral schemes, to carry out a specific conformity assessment activity.

'Applicant': the one entitled to apply for geographical indication and traditional product name

'Certification': the provision by an independent body of written assurance (a certificate) that the products, meets specific requirements (ISO definition).

'Control': inspection of products or processes and determination of their conformity with defined requirements.

'Control body': an third party (private) who carry out GI's controls.

'GI's right owner': represents the applicant who both have a role in the registration of the GI and the promotion and defence of the GI.

'National accreditation body': means the sole body in a Member State that performs accreditation with authority derived from the State.

'Operator': a legal person of a juridical entity involved in the GI products supply chain and who must be controlled according to the Turkish Law No 6769/2016 and its implementing regulation.

Introduction

Geographical Indications (GI) represent an effective way to achieve a differentiation and add value to a product. They aim to provide to consumers **specific guarantees on product's quality** based on the establishment of a Code of Practices (CoP). Nevertheless, the GI system do not only rely on a CoP. The reputation of a GI product is both based **on product features** (or CoP) **and its assurance system**, that rely on controls, and which permit to guarantee the respect of the GI standard. Therefore, the development of an adapted and credible control system is an integral part of the GI system.

The objectives of **GI control system** are three-fold:

- Controls guarantee the compliance of GI-user to the CoP
- Controls provide guarantees to consumers that the compliance of the CoP is controlled, ensuring the specific quality of the GI product, its credibility and reputation.
- Controls contribute to economic development by preserving consumers' trust.

Thus, the assurance system and the associated controls need to be part of an effective and trustworthy GI system to guarantee authenticity and quality.

1. Juridical Framework

1.1. Protection within Turkey

In Turkey registered GIs obey to the Turkish law No.6769/2016 and its implementing rules which protect consumers and GI operators against frauds and discrepancies with the Code of Practice observance.

In case of infringement of rights to use the GI, GI applicant may apply for a lawsuit to the court. The infringement may be reported/notified to the GI applicant by GI users (art.53 (2) of law No.6769/2016).

In case of infringement of the Code of Practices by GI users, the non-compliances are noted in the inspection report by the inspection body. Every inspection reports are forwarded to GI applicant for review. GI applicant takes legal action in case non-compliance against the registry (art. 44 (8) of the implementing rules).

Thus, there are juridical tools to prevent and sanction misleading practices as well as unfair competition such as logo fraud, use of the GI name by non-GI users.

1.2. Protection out of Turkey

As part of the Intellectual Property Rights, GI are governed by the right obtained in a particular country/jurisdiction and not abroad. Therefore, outside Turkey, Turkish GI are protected only and insofar they are covered by international agreement.

Five main routes exist to protect GI outside Turkey:

- By obtaining the protection directly in the country;
- Through the TRIPS agreement: The World Trade Organization (WTO) established in 1995 an Agreement on Trade Related Aspect of Intellectual Property Rights (TRIPs) to recognize and protect Geographical Indications as intellectual property rights. The members of the WTO, of

which Turkey is a member since 1995, have the responsibility to ensure the protection of GIs on their territory. TRIPs agreement does not specify any legal system to ensure the protection of GIs, hence several and diversified legal tools have been implemented by WTO members;

- Through the Lisbon Agreement for the protection of Appellation of Origin (AO) and their International Registration. This agreement was adopted in 1958 and is administered by the World Intellectual Property Organization (WIPO). This arrangement provides an international recognized definition to the concept of appellation of origin. The signatories of the treaty provide protection to the registered AO;
- Through the Madrid Agreement for the Repression of False and Deceptive Indications. This multilateral agreement allows the registration of marks among the signatories (in which the GI concerned is protected in the country of origin as a collective or certification mark);
- By concluding bilateral agreements between states.

2. Turkish legal framework for controls

In accordance with the provisions of Article 49 of the Turkish law n°6769/2016 and Articles 44 to 46 of the Implementing Regulation, the inspection of the respect of the Code of Practices is assured by a control body (CB).

The inspection of GIs is delegated to control body. Control body shall be approved by the TPTI during the registration process of the GI and shall:

- Be objective
- Provide sufficient and qualified personnel for conducting inspections
- Have necessary resources and equipment

Article 23 paragraph 2 of the Food Codex Chapter of the law on Veterinary Services, Plant Health, Food and Feed No 5996, authorised the Ministry of Food, Agriculture and Livestock to carry out controls, as a control body to verify the compliance with the specifications of agricultural products which are Protected Designation of Origin.

In the framework of the project it has been highlighted that:

- The controls carried out by the Ministry of Food, Agriculture and Livestock are very occasional.
- Other control bodies performed controls as commission composed of members of the GI, academics, chamber of commerce etc.

The tasks delegated to the control body only refers to the control/inspection. Control bodies are not required to deliver any certification decision. In the Turkish law, the inspection is based on:

- Verification of the compliance of the product with the CoP at all the stages of productions, storage, processing, packaging and labelling;
- Verification of the use of the logo.

There is no specific reference to traceability but Art. 45 of the IPL No 6769/2016 is enough vague to consider that traceability shall be taken into consideration during inspection.

The inspection body shall also prepare an inspection plan which describe the frequency of inspection.

Every year, the applicant shall provide to the TPTI all the inspection reports.

To conclude, the Turkish legal framework is slightly different from the EU legal framework for the control of Geographical Indications.

First, the profile of the control body is different. In the EU, controls and certification decision are delegated to control bodies (CB) which are accredited ISO 17065 while in Turkey, control bodies can be either the Ministry of Food, Agriculture and Livestock or any organisation demonstrated specific qualifications (see above). Nevertheless, the qualifications required do not take into account the impartiality and independency mentioned by the ISO 17065 nor in the EU definition of “official controls” when the control activity is conferred to a control body (public authority). Secondly, the norm ISO 17065 clearly detail the control process and the procedures that must be set up by the CB including the decision of certification. In the Turkish law, the control body is only responsible of the inspection activities and there is no detail on the modalities to implement them. Thus, if we want to make a parallel with international standards we could expect the Turkish inspection body to be accredited ISO 17021 (take only into account the inspection activities).

So, the second main difference is related to the scope of the control body assignment. In the Turkish law the inspection body is only in charge of the inspection while in the EU the CB is also in charge of the decision of certification. In the Turkish law, the “decision of certification” is taken by the applicant itself. The concept of certification is not known in Turkey, except for organic certification.

Finally, the Turkish law is vague enough to suggest / implement different control systems. Therefore, once developing the control system, the applicant shall bear in mind:

- The international dimension of the GI products: is the applicant wishing an international recognition and protection?
- The risk of non-compliance with the CoP: is there a high risk of non-compliances by the GI-users/operators?
- The involvement of the applicant in supporting and implementing the relevant systems (e.g. internal control system, promotion etc.) to increase the credibility of the GI.

3. Assurance system

The assurance system should provide to consumers the guarantee on the conformity of the GI product to the features detailed in the CoP. This system should define the rules to ensure the compliance of the GI operators to the requirements and the information delivered to consumer and it is based on a credible and trustworthy control system.

The assurance system is based on the following verification:

- Compliance of the GI operators to the requirements of the CoP in terms of practices (production and/or processes);
- Traceability of the GI product: a traceability system must be implemented to allow a full segregated traceability of each batch of GI products;
- Compliance of the use of GI logo and communication related materials (packaging...).

3.1. Setting up the control system

One key phases of the development of a GI is the design of a control system which is based on the development of document called the control and sanction plan. This document specifies the procedures to control the compliance of GI operators to the CoP. The control system must prevent from threats which can jeopardize the GI reputation. Therefore, for each requirement of the CoP a check point, a control method and a sanction in case of non-compliance are defined.

The control system may complete the legal framework.

In the framework of the project, the Turkish legal framework requires the implementation of controls by control bodies to ensure the compliance of GI-operators with the CoP and those controls complement controls that can be carried out by the Ministry of Ministry of Food, Agriculture and Livestock (GTHB) in the scope of the law No.5996/2010.

3.2. The different verification systems

Depending on the socio-economic context and the legal framework of the country, different control systems may be designed and implemented to constitute the assurance system. There are four main control systems which can be used:

- **The first party verification:** this verification system is based on self-control of the producers/GI operators. GI operators own the full responsibility of their compliance and reputation of the GI.
- **The second party verification:** this verification system is based on the verification of the compliance of GI operators by a trade agent (e.g. purchaser) or the implementation of an Internal Control System by the GI owner.
- **The participatory guarantee system:** this verification system is based on the participation of GI operators and external stakeholders (including institutions, consumers etc.) in the control process.
- **The third-party certification:** this system is based on external control (control include both inspection/verification and certification) which are carried out by an independent body. This independent body can be a public authority and/or a private organization as certification bodies (CB) without any direct interest in the economic relationship between the supplier and the buyer.

In the framework of the project, all options are open.

3.3. Role of the GI right owner in the assurance system

GIs are managed and overseen by the GI applicant. In Turkey, applicants may be (Art. 36 (1) of the law No.6769/2016):

- Producers groups (union of producers);
- State institutions and organizations and professional organizations with public institution status associated with either the product or the geographic area from which the product originates;
- Authorized associations, foundations and cooperatives working for public interest or for protecting the economic interest of their members regarding the product;

- If the product has a single producer, the concerned producer given that she/he has proven the claim.

Note: in the Turkish law No.6769/2016, producer means the person who produces or processes or plays a part in supply chain and operates the GI products so as to have affect the features of the product (Art.36 (2) of the law No.6769/2016).

From this definition, it is observed that **GI is a voluntary and collective system** which is managed and overseen by a representative group of actors of the GI supply chain. Therefore, the GI applicant will be named in this report GI right owner.

Based on experience, GI right owner role is multiple and is not limited to the development of the Code of Practices. The GI right owner also play an important role through the life of the GI. Its role is based on several aspects:

- The GI right owner is the interlocutor of the government as it is the applicant;
- The GI right owner should promote the GI products;
- **The GI right owner must set up rules for all the members of the group;**
- **The GI right owner must protect and defend the GI.**

The last two aspects are of paramount importance. It means that the GI right owner is both responsible of the correct implementation of the GI rules by the GI operators (and members of the group) and the protection against fraud and misuses by non-GI users. Therefore, it is highly recommended that that the GI right owner implement:

- An internal control system to ensure the compliance of all its members;
- An external supervision to prevent from fraud from non-GI users.

Note that the development of an internal control system is not mandatory but it can be an option to provide higher guarantee to the assurance system. Similarly, the external supervision by the GI right owner is not mandatory but it can be implemented in case the State is not able to provide this assurance or is failing in providing such guarantee due to internal and external factors (e.g. Human resources, competency, etc.)

4. Control options for GI Bursa Black Fig and GI Bursa Peach

Considering:

- The Turkish legal framework;
- The existing control options in, the following options are suggested for the control and, the objective of getting a recognition of the GIs at the EU level,

The following options are suggested:

- Participatory Guarantee System (PGS)
- First party verification: self-verification
- Third Party Verification: inspection performed by accredited control bodies

4.1. Participatory Guarantee System

This option is suggested the implementation of a participatory Guarantee System. In this case, the inspection body is composed of several stakeholders external and internal of the GI value chain but all involved in the local social network. This system is used for the GI Gemlik Olive.

Similarly, to the GI Gemlik Olive, the inspection body can be composed for instance of: 1 member of the GI right owner, 1 member from Uludag University and 1 person from Bursa Chamber of Agriculture. According to the Turkish law No. 6769/2016, the inspection body shall be qualified and shall demonstrate objectivity, inspection competencies and have necessary resources and equipment.

The inspection will consist in:

- The verification GI-users' compliance with the CoP including traceability;
- The verification of the labelling;
- Sampling of products at the traders' level for chemico-physical and organoleptic testing (likewise for the Gemlik Olive);
- The production of a report stating the compliance and non-compliance of each requirements if the CoP.

This option implies the development by the inspection body of:

- Training materials for the inspectors;
- Inspection tools: questionnaire / checklist;
- A control plan including the sampling and frequency of inspection;
- A sanction plan, although it is not requested by the Turkish law No 6769/2016.

The decision of certification can be either provided by:

- The inspection body: it is recommended for more impartiality or;
- Or, the application / GI right owner, as requested by the Turkish law No 6769/2016.

In the Gemlik Olive case, the inspection body is not remunerated. It is done on a voluntary basis.

STRENGTHS	WEAKNESSES
<ul style="list-style-type: none"> - Low cost solution - Transitional system: first we try then we reinforce - Adapted to small-scale farms and direct markets (as for peach) 	<ul style="list-style-type: none"> - Weak involvement of the operators - Absence of mechanism to increase control body competences - Sustainability of the mechanism could be questioned (time increasing, cost increasing...) - Absence of mechanisms of non-conformities follow up (due to vague provisions in the law and absence of experience in inspection and certification) - lack of objectivity and impartiality (involve member of the GI right owner)
OPPORTUNITIES	THREATS
<ul style="list-style-type: none"> - As long as the overprice on GI fruits is weak compare to non-GI products, the risk of traceability fraud is also weak 	<ul style="list-style-type: none"> - Lack of confidence from clients - Difficulties for exportation to the EU and possible recognition of the GI at the EU level - This system will not be accepted at the EU level

4.2. Second-party verification

The GI right owner implements an internal control system. This option suggests that the inspection is realized by the GI right owner itself.

In this case, the inspection body is the GI right owner. The GI right owner set up an inspection team which can be composed of GI right owner staff and GI-users who are trained to inspection procedures and tools.

The inspection will consist in:

- The verification GI-users' compliance with the CoP including traceability;
- The verification of the labelling;
- Sampling of products at the traders' level for chemico-physical and organoleptic testing (likewise for the Gemlik Olive);
- The production of a report stating the compliance and non-compliance of each requirements if the CoP.

This option implies the development by the GI right owner of:

- Training materials for the internal inspectors;
- Inspection tools: questionnaire / checklist;
- A control plan including the sampling and frequency of inspection;
- A sanction plan, although it is not requested by the Turkish law No 6769/2016.

It also requires the GI right owner to identify an administrative officer to organize, plan and manage the inspection system.

The decision of certification is provided by the GI right owner.

This system requires a strong and powerful GI right owner.

STRENGTHS	WEAKNESSES
<ul style="list-style-type: none"> - Strong involvement of the GI users - Awareness on risk sharing - Costs are moderate 	<ul style="list-style-type: none"> - Lack of independence of the system: GI users must sanction GI users - Depends on internal inspectors' choices: among the producers? Competence assessment? - Sustainability of the mechanism could be questioned (time increasing, cost increasing...) - Administrative mechanism of non-conformities follow up should be implemented - Possible difficulties because of lack of internal resources and capacities
OPPORTUNITIES	THREATS
<ul style="list-style-type: none"> - Consultancies and capacity building can be acquired - Know-how exchanges with other GIs 	<ul style="list-style-type: none"> - Confidence on the system can be questioned by clients - Reliability of the system in case of non-detected non-compliance - Full juridical responsibility - This system will not be accepted at the EU level

Cost assessment¹

Estimation based on: 200 registered producers, 10 registered non-producers (5 for figs and 5 for peaches), producers within 30 km area; 100 figs producers and 100 peach producers.

Implementing this control plan requests time and some expenses (fuel, document printing, internet services, etc...).

Figs production

Operation	Time requested	Cost per day	Total
Control of the producers before harvest	10 days	200	2000
Control producer during harvesting	5 days	200	1000
Control processor	8 days	200	1600
		Sub total	4600
		Expenses (20%)	920
		Total	5520

The cost per producer is 5520/100=55TL

Evaluation on the turnover impact :

Fruit	Average Da	Yield T/Da	Price/T	Total turnover	% on turnover
Fig	8	2,6	3150	65520 TL	0,084%

Control cost is negligible if we consider the additional cost on a constant turnover.

Peach producers

Operation	Time requested	Cost per day	Total
Control of the producers before harvest	10 days	200	2000
Control producer during harvesting	5 days	200	1000
Processor	4 days	200	800
		Sub total	3800
		Expenses (20%)	760
		TOTAL	4560

Cost per producer: 4560/100=46TL

Evaluation on the turnover impact:

Fruit	Average Da	Yield T/Da	Price/KG	Total turnover	% on turnover
Peach	36	2,6	1,8*	168480	0,03%

*average 2016 price

Control cost is negligible if we consider the additional cost on a constant turnover.

¹ Cost assessment is based on the current cost roughly estimated; it is only an assessment to give a trend of the cost and to compare with other options, it is not in any case a cost estimate.

4.2. Third Party Certification by Control Bodies (CB)

This option is reflecting one option of the EU system in terms of control. In that case the control is carried out by control bodies which shall be accredited according to the norm ISO 17065 by a national accredited body (AB).

In this case the control consists in

- The verification of the internal control system of the GI right owner
- The verification GI-users' compliance with the CoP including traceability;
- The verification of the labelling;
- The production of a report stating the compliance and non-compliance of each requirements if the CoP.

The decision of certification **provided by the control body** and notify to both the GI right owner (to be compliant with the Turkish law) and the TPTI. In case of severe infringements, non-compliances which can jeopardize the reputation of the GI, the CB shall inform the GI right owner and TPTI immediately to take the required corrective actions (lawsuit etc.).

STRENGTHS	WEAKNESSES
- Full reliability on the control body - Full juridical responsibility of the CB in case of discrepancy	- Control fees/costs
OPPORTUNITIES	THREATS
- External recognition of the label value - Easier recognition at the EU level	- High cost only sustainable if the overprice GI fruit is sufficient

Costs estimates:

For fig producer

Operation	Days	Cost per day	total
Internal control system			5520
Audit of ICS	2*	750	1500
Report and follow up	2	750	1500
Certification	2	750	1500
		Total	10020
		% in turnover	0,15%

*10% of 100 producers= 10 producers + 2processors

For peach producer

Operation	Days	Cost per day	total
Internal control system			4560
Audit of ICS	2*	750	1500
Report and follow up	2	750	1500
Certification	2	750	1500
		Total	8300
		% in turnover	0,09%

*10% of 100 producers= 10 producers + 2processors

5. Results of producers' survey on certification options

The survey was carried out in 45 villages, for a total of 184 stakeholders interviewed: 136 fig + 48 peach producers, and other related parts (retailer, trader, ministry and chamber of agriculture)

Results are summarized in the following table:

Options of control	Distribution of Choice (%)
1. Public institution	28,80
2. Do it yourself	2,72
3. Share with professional service	60,87
4. Full professional service	7,61