

**SINER-GI**  
**Strengthening International Research on Geographical Indications:**  
**from research foundation to consistent policy**

Task1 – WP1  
Theoretical frame  
*GI legal and institutional issues*

Months 1-12

# WP1 GUIDELINES

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Responsible:

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## WP1 Objectives

### **Objectives**

- Characterisation of the different legal and institutional frames related to GIs, taking combinations between administrative scales into account.
- Identification of methods of analysis aimed at assessing the effectiveness and effects of different types and levels of legal protection (both in national and international scopes), in relation with different institutional frames.

## Deliverables

Deliverable No	Deliverable title	WP n°	Lead participant	Assistants	Estimated person-month*	Nature	Dissemination level	Delivery date
D1	Report on legal and institutional issues	1	4	1, 2	2	R	PP	12

**D1** WP1 Report containing the theoretical basement and bibliographical analysis of legal status and institutional organisations of GIs in different EU countries, and with extensive analysis of non-EU countries, with reference to developing countries. This report will contemplate the evaluation grid on the legal and institutional aspects of GIs (month 12).

The WP1 Deliverable will contain three parts:

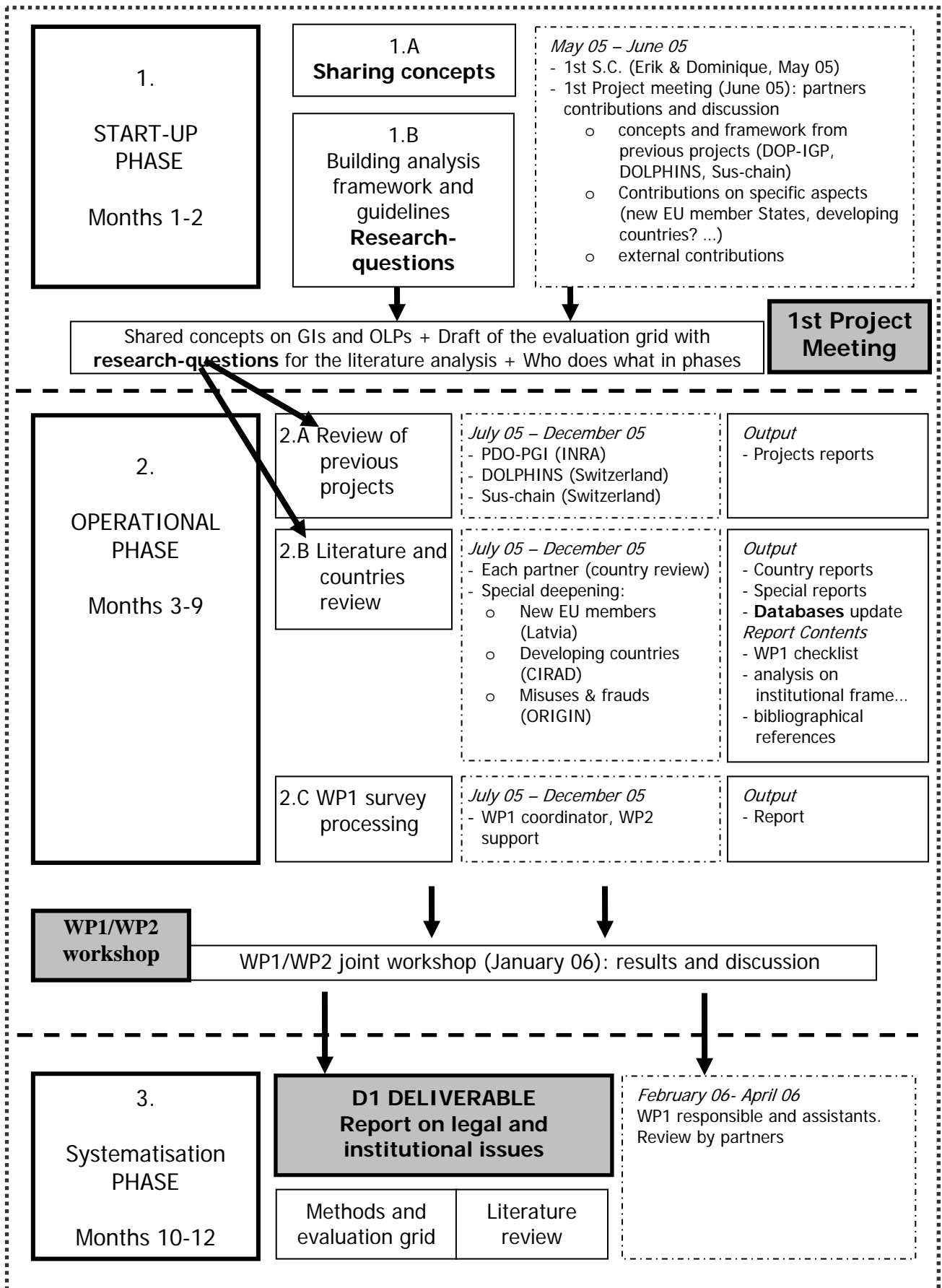
1. **Review on theoretical frames regarding protection and recognition of GIs**, including institutional frames and implications in related legal fields (e. g. competition legislation), and analysing different kinds of usurpation and misuse of GIs in relation with the scope of legal protection
  2. **World-wide review of the different legal and institutional frames**, establishing a typology based on in-depth analysis
  3. Analysis of **cases of usurpation and misuse of GIs**
- Link with WP2: *“Identification of method of analysis aimed at assessing the effectiveness and effects of different types and levels of legal protection (both in national and international scopes), in relation with different institutional frames”*

## Milestones (TA)

month			Milestone
1	May 2005	M1	<b>Setting up the guidelines</b> (SC1 - Steering Committee, Paris)
2	June 2005	M2	<b>Advising on GL1</b> – Guidelines 1 provided by the 1 <sup>st</sup> PAB – Project Advisory Board meeting (Parma)
2	June 2005	M3	<b>First Meeting</b> . Team presentation, improvement and validation of GL1 (Parma, PM1 – 1 <sup>st</sup> Project Meeting)
9	January 2006	M4	<b>Follow up</b> of WP1, WP2, WP8 and WP9 and decision GL2: methodology for case study selection (SC2)
9	January 2006	M6	<b>joint WP1/WP2 workshop</b> . Follow up WP1: legal and institutional issues, validation of report structure of the Deliverable n.1 (D1)
12	April 2006	M8	<b>Deliverable 2</b> . Delivery of the Report about the state of the art including bibliography and selected relevant issues (WP1), Deliverable n.2 (D1)

SC : Steering Committee ; PAB : Project Advisory Board ; PM : Project Meeting ; GL : Guideline ; WP : Workpackage ; D : Deliverable

# WP1 General overview



## Phases

To reach our objectives, WP1 activities will be divided into three phases:

1. START-UP PHASE (MONTHS 1-2): Sharing basic concepts and building analysis framework and guidelines (research questions)
2. OPERATIONAL PHASE (MONTHS 3-9): Review on existing frames of legal protection and recognition for GIs and on cases of usurpation and misuse of GIs
3. SYSTEMATISATION PHASE (MONTHS 10-12): typological analysis, assessment of advantages and weaknesses of each system of protection for GIs, in relation with cases of usurpation and misuse

### 1. START-UP PHASE (MONTHS 1-2)

#### Sharing basic concepts and building analysis framework and guidelines (research questions)

In this phase we will have to share and agree on common concepts on GIs and OLPs, and fix the analytical framework to carry on the literature review in phase 1. The phase ends with the First Project Meeting (Parma, June 2005), and with the definition of the guidelines for phase 1 (methodology, who does what, research-questions, timing, etc.).

The start-up phase aims at:

- 1.A. sharing and consolidating common definitions and identification of the focus of the analysis
- 1.B. building analysis framework and guidelines for phase 2

#### *1.A. sharing and consolidating common definitions and identification of the focus of the analysis*

##### 1.A.1. Distinctions between concepts and products

SINER-GI, as a EU-Swiss funded project aiming at having a worldwide echo, should deal as much as possible with the most commonly shared concepts, at the general and international levels. The reference concept is **Geographical Indication (GI)** as defined in the TRIPS Agreement (Art. 22.1):

“Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.”

GIs are not necessarily

- geographical names
- protected by any special mean of legal protection (that means legal provisions out of the usual laws on business practices, trademarks, protection against misleading, unfair competition, or even legal provisions implementing the minimum requirements of the section on GIs of the TRIPS Agreement)
- recognised by any special institutional frame

GI does not implies any particular legal protection out of the one provided by the TRIPS Agreement

and the implemented national legislations. That minimum level is not specific to GIs, but covers all the kinds of intellectual property rights, usually through legal provisions on unfair competition and misleading of the consumers. As a consequence, we must be careful in using the notion of GI, which is only a very broad category of rights. Even in most of non-Members of the WTO, **all GIs complying with the TRIPS definition are generally protected by the legislation**. It is another matter to determine by which means GIs are protected, if the protection is effective or not, etc.

The concept of GI is a legal one, without preliminary consideration for the realities it may include. When considering the products themselves, we should talk about **GI products**.

In the SINER-GI research project, WP1 has a legal focus; as a consequence, it sticks first to the TRIPS definition of GI, and secondly to the definitions, tools and processes that institutions apply to GIs. WP2 aims at studying socio-economic aspects of production systems of goods originating from territories and having specific features due to their link with the territory. Therefore WP2 is also interested in potential GI products, and in the consequences from using or not a GI, and of benefiting or not from a GI special protection scheme.

### 1.A.2. How to name the products which are studied?

#### ***Origin Products***

In the SINER-GI project, we will refer to the products fitting the TRIPS definition for GIs as **Origin products (OP)** when it is necessary to include all of them without considering the fact that they are labelled / designated by a GI or not. It is important to note that there are many Origin products that are not exchanged on markets with a geographical indication, and for which sometimes the very consciousness of having an Origin Product is lacking. The use of a geographical indication to indicate an Origin product is a step in the process of valorisation of the product and it is a result of the behaviour of the actors (local and non local).

As a consequence of their link with a specific territory, Origin products are characterised by one or more of these key elements (even though with different intensity):

- material characteristics making them “special” (that is to say: one can not find other products being similar in characteristics)
- specificity of the resources used in the production process;
- history and tradition of the product, and links with history and tradition of the people of the territory;
- collective dimension (many actors involved) and local shared (production and consumption) knowledge.

Origin Products are usually named differently across countries (typical products, regional food, traditional food, produits du terroir), although with some differences in their meanings, and different cultures across countries give a different weight to the above mentioned elements in the definition of the link with the territory.

#### ***GI Products***

**GI products (GIP)** are all the Origin Products which are named or labelled with a GI (being or not a geographical name). The fact that a GI is used or not for the products concerned is the main difference between GIP and OP. GIP are also characterised by one or more of the key elements that characterize OP.

The TRIPS definition is as large as possible, being a matter of interpretation when someone has to determine if a product is a GI product or not. That interpretation consists in evaluating to what extent a product has a given quality, or a reputation, or another characteristic which is essentially attributable to its geographical origin. No matter in which frame and by who the evaluation is made: authority registering PDOs, court on requirement of producers, scientists, etc.

Using the TRIPS definition for GI does not prevent us to propose, in a second step of WP1 analysis, grids of analysis and typologies which would go into further details to determine what products can be considered as GI products. We may also demonstrate that GI must not be limited to geographical names (that is in line with the TRIPS definition).

A GI can also be an addition of many sub-GIs, like it is the case for Berner Alpkäse (cheese from Berner Oberland), the cheeses being designated with the names of the hundreds of alp pastures units.

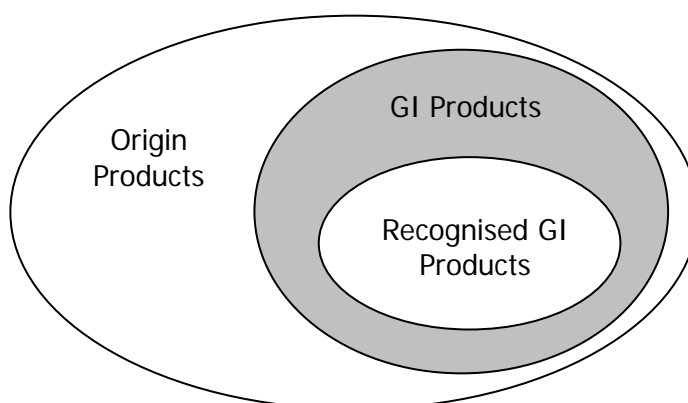
### **Recognised GI Products**

For GIs which are protected by special legal means of protection, we propose to use the expression **Recognised GI<sup>1</sup> (RGI)**, or **Recognised GI products (RGIP)** when talking about the products themselves and the related supply chain. Hence, the protection of a GI by a special legal mean of protection requires what we can call a “recognition”, that one being granted through a formal registration process (e. g. PDOs and PGIs), or through juridical decisions made by courts.

In the RGI category, we must be careful to not use such terms like PDO in a general meaning, but only when one deals with the specific legal categories as they reflect the various ways of implementing the protection of GIs by special legal means.

WP1 and WP2 should analyse the benefits and the costs (at social, supply chain and firm level) of the use – and of the lack – of these specific protection schemes.

Scheme: A taxonomy of different types of products linked to the territory



#### **1.B. building analysis framework and guidelines for phase 2**

In the start-up phase guidelines for phase 2 should be discussed and prepared. The **present document** is the last version of these guidelines.

The WP1 guidelines and documents were discussed and adopted at the **First Project Meeting**, and the present document results from the contributions of all the SINER-GI teams.

In WP1, available literature means, in our sense, not only scientific or legal publications, but also legal texts themselves and documents from public institutions.

A **general scheme on legal and institutional issues** will be provided by the responsible partner with the assistance of the other partners, giving the frame for:

- legal concepts: different types of laws (passing off, competition, sui generis, etc.)
- GIs main legal concepts and debates

<sup>1</sup> RGI or RGIP will be used in order to avoid any confusion with PGI, which is a legally defined category in many sui generis legal frames, whereas the special means of protection can consist in other legal frames such as case by case legal definitions or court decisions.

- international and regional frames (WIPO agreements, TRIPS, EC Reg. 2081/92, Andean Community, etc.) which do not need to be analysed by several teams

**Literature review:** the same database as for DOLPHINS (Access) will be used by each partner to enter new literature references; the database will be available on the website.

**Research projects and institutions:** the same database as for DOLPHINS (Access) will be used by each partner and external contributors to enter references on research projects and institutions related to GIs; the database will be available on the website.

A WP1 main checklist will be provided; one should be filled for each country.

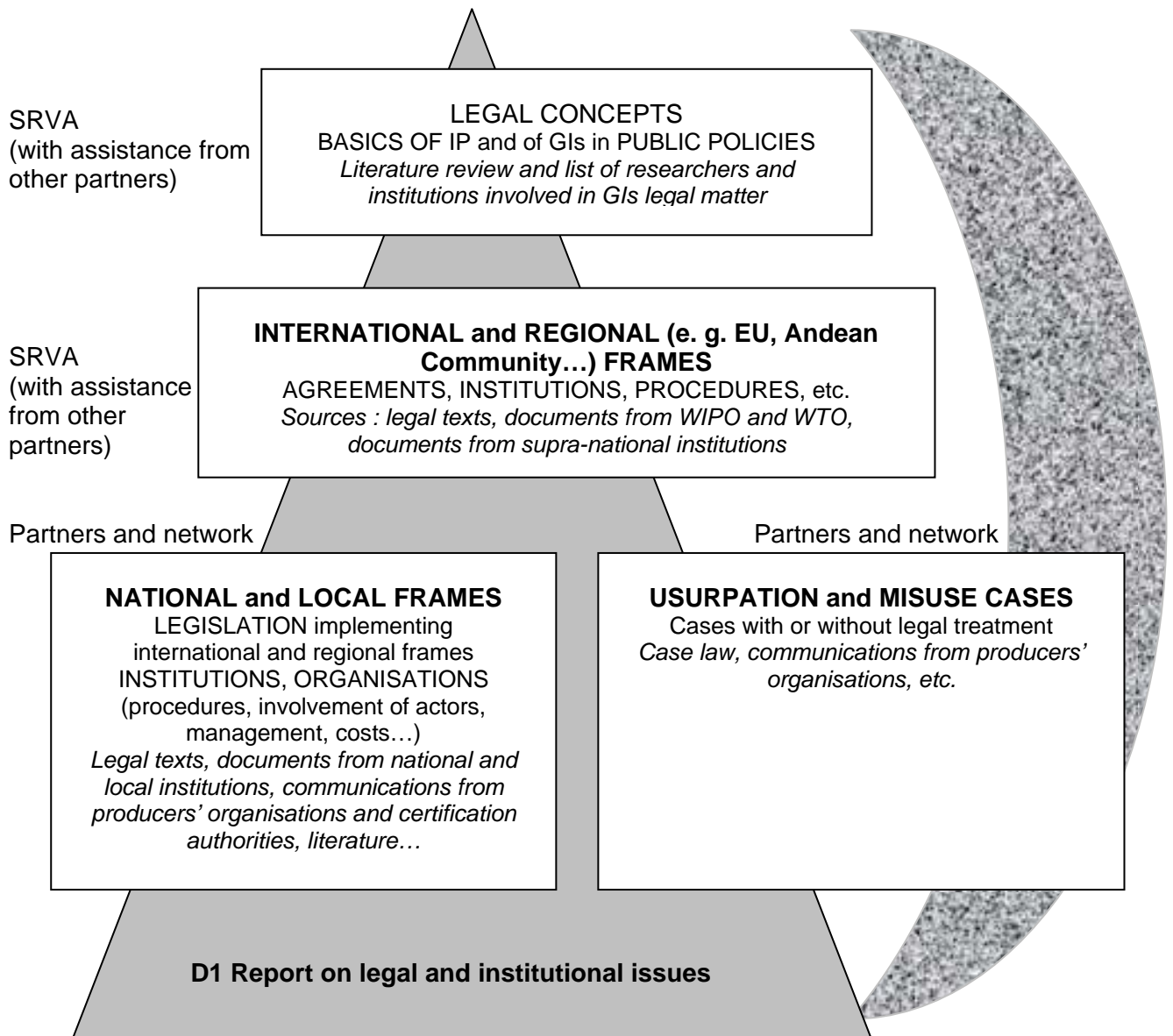
This checklist has to be coherent with:

- the economic and social issues (WP2);
- the establishment of a world-wide GIs database

Each partner will fill the checklist for his own country, and at least one checklist for another country.

In addition, a questionnaire on cases of usurpation and misuse of GIs will be provided; one should be filled for each case.

## General overview of WP1 documents





## 2. OPERATIONAL PHASE (MONTHS 3-6)

Review on existing frames of legal protection and recognition for GIs and on cases of usurpation and misuse of GIs

### *2.A. Work to do*

During this phase a systematic literature review on GIs definition and protection has to be produced. In particular, activities to be done are:

- the review of the concepts and debates on GIs legal issues
- the review of existing frames of protection and recognition
- the review of cases of usurpation and misuse of GIs

### *2.B. Geographical areas*

The collection of information for the WP1 main questionnaire is dispatched between the project teams and their relations in third countries, according to the table which follows.

WP1 SINER-GI							
PARTNERS' ROLE							
no.	Participant name Country	Role	Months	WP1 checklist	Updating of DOLPHINS databases	Special Report	Special tasks
1	INRA France	Ass.	6	France	France	PDO-PGI Project	Review of D1
				Vietnam			Complements to the general scheme on legal and institutional issues
				China	China		
				Mexico			
				Argentina			
2	CIRAD France	Ass.	4	Brazil	Brazil		Review of D1
				Tunisia			Complements to the general scheme on legal and institutional issues
				Turkey			
				South Africa	South Africa		
				India	India		
				Indonesia			
				Costa Rica			
				Dominican Rep			
				ARIPO (OAPI)			
				Laos			
Colombia							
3	DSE-UNIFI Italy		1	Italy	Italy (in cooperation with partner 8)		
				Greece	Greece		
4	ASCA-SRVA Switzerland	Resp.	8	Switzerland	Switzerland	General scheme on legal and institutional issues	D1 Report on legal and institutional issues
				Germany	Germany		
				USA	USA		
				Australia	Australia	DOLPHINS Project	Evaluation grid on legal and institutional issues
				Canada	Canada	Sus-chain Project	
5	University of Newcastle Upon Tyne (UNEW) UK		0.5	UK	UK (in cooperation with partner 11)		
6	Wageningen University (WU) The Netherlands		1	The Netherlands	The Netherlands		
				A Scandinavian country			
7	University of Latvia (LU) Latvia		1	Latvia	Latvia	New EU Member States	
				Poland or Russia	Poland or Russia		
				Georgia			
				Roumania			
				Moldavia			
8	UNIPR-DSE Italy		1		Italy (in cooperation with partner 3)		
				Portugal	Portugal		
				Spain	Spain		
				Nicaragua			
9	ENITAC France		0.25	Croatia	Croatia		
10	ORIGIN BE – CH		0.5	Thailand & Asean		GIs misuses and frauds	
				Kenya			
11	University of Edinburgh UK		0.5	Chile	UK (in cooperation with partner 5)		

## 2.C. Where to collect information. Sources:

- 2.C.1. analysis of the outputs from previous **research projects** (for example PDO-PGI products, markets, supply chains and institutions (1996-1999), DOLPHINS (2001-2003), SUS-CHAIN (2002-2004))
- 2.C.2.- analysis of the outputs from **literature**: articles, books, conferences proceedings, legal texts, etc.;
- 2.C.3.- analysis of the outputs from **institutional system knowledge**: private and public institutions involved in GIs protection and promotion
- 2.C.4. update of Dolphins Databases: bibliographic references, institutions, research activities.

## 2.D. How to reach our objectives?:

See the **table WP1 General Overview** with all the partners contributions.

## 3. SYSTEMATISATION PHASE (MONTHS 6-12)

Review on legal and institutional issues regarding GIs

This phase is devoted to the compilation of D1 *Report on legal and institutional issues*

## WP 1– Legal and institutional devices

Workpackage Number	WP 1		Start or starting event					Month 1		
Activity type	RTD / Innovation activity									
Participant id	1	2	3	4	5	6	7	8	9	10
Person-months per participants	6	4	1	8	1	1	1	1	0.25	0.5

### Objectives

- Characterisation of the different legal and institutional frames related to GIs, taking combinations between administrative scales into account.
- Identification of methods of analysis aimed at assessing the effectiveness and effects of different types and levels of legal protection (both in national and international scopes), in relation with different institutional frames.

### Description of work

- Start up meeting during the first steering committee and advisory board to enhance interdisciplinary exchanges and allow for final methodological adjustments jointly with WP2 researchers.
- Literature review on the relations between effective legal systems of protection or lack of protection for GIs and the characteristics of GIs development, structures and supply chains, relation with generic laws touching food and trade. Systematic analysis of the literature gathered in DOLPHINS ([www.origin-food.org](http://www.origin-food.org)), updating of literature surveys, analysis of outcomes from PDO-PGI project, DOLPHINS project, SUS-CHAIN project.
- Survey processing regarding legal institutional aspects and SWOT analysis of country situations (approximately 20, out from the contacts already taken by the SINERGI team : see table 7 beneath). The main criteria will be ; existence of institutional devices, their nature (fight against frauds, codes of practices for GIs, control and inspection, monitoring, etc..) , efficiency, enforcement of the generic law, etc..
- Desk analysis and systematisation on the following main areas:
  1. legal frames (sui generis, trademarks or common law systems, recognition procedures, codes of practices, monitoring and certification, enforcement, competition laws, etc.)
  2. institutional frames (administrative bodies, associations of producers and interprofessional bodies, certification bodies, public supports, etc.)
  3. cases of usurpation, copy, misuse of GIs. The source for such a list will be obtained from public bodies (INAO), juridical data (jurisprudence , European court , etc..), association ORIGIN (subcontractor of partner 4), etc.
- Work package Workshop at Month 9 (parallel with a WP2 Workshop).

### Responsible partners : 4 (ASCA-SRVA), assistants : 1 (INRA), 2 (CIRAD)

All partners will gather information and analysis in this WP, on the basis of guidelines provided by the responsible partner. However, as most of the literature on the GIs' field is produced in French and/or in French language countries, the partners 1, 2 and 4 have a working time suited to this requirement. On the same way, as the French government has many partners in developing countries in this field, most of the information will be gathered by partners 1 and 2.

The association "ORIGIN" (partner 10) will :

- provide the projects with data about relevant cases of misuse and usurpation,
- list official and researchers involved in the countries which are represented in ORIGIN
- provide the project with analysis of various national situations, negotiation standpoints, evolutions of each party's positions, etc..
- evaluate the relevance and scope of the analysis produced by SINERGI
- take part in the conclusions on the opportunities and problems regarding the definition and protection of GIs in particular in countries where a sui generis legal system does not exist or is newly established

**Outputs:** Evaluation grid on legal and institutional dimensions.  
Short institutional and legal description per country  
**Contribution to summary table 7 (see beneath)**

### Deliverables

**D1** WP1 Report containing the theoretical basement and bibliographical analysis of legal status and institutional organisations of GIs in different EU countries, and with extensive analysis of non-EU countries, with reference to developing countries. This report will contemplate the evaluation grid on the legal and institutional aspects of GIs (month 12).

### Milestones and expected result

- M2- Start up meeting (month 2).
- M5- WP1 meeting (month 9).
- M7- Delivery of the Report about the state of the art including bibliography and selected relevant issues (month 12).