

Project no CIT3-CT-2005-513420

REFGOV

Reflexive Governance in the Public Interest

Integrated Project

Priority 7 – Citizens and Governance in a knowledge-based society

PART I

PERIODIC ACTIVITY REPORT 1

June 2005 – May 2006

Period covered	from 1/06/2005 to 31/05/2006	Date of preparation
Start date of project	1/06/2005	Duration 5 years
Project coordinator name	J. Lenoble	
Project coordinator Organisation name	CPDR (Centre de Philosophie du Droit) Université catholique de Louvain	Revision

Section 1 – Project objectives and major achievements during the reporting period

The proposed IP is based on an interdisciplinary research on the notion of public interest and the mode of governance it calls for on a theoretical hypothesis based on new developments within the Theory of Action and the Theory of Governance. The proposal is based, indeed, on a specific conception of what constitutes the added value of interdisciplinary research. Economists, Lawyers, Political Scientists, Philosophers, are all involved in this project and will be working in close cooperation with one another. We conceive of interdisciplinary research as a collaborative enterprise in which the different disciplines question the epistemological presuppositions they are based upon, and therefore are led to accordingly reflect upon their own limits and redefine both themselves and their policy proposals. Interdisciplinarity thus understood requires that each of the disciplines are encouraged to become reflexive, that is open for the reception of the theoretical and practical offerings of neighbouring and as such complementing disciplines.

This is the function the Theory of Action will have on the nature of our collective research: the question which will have to be addressed by the different disciplines involved in the IP is notably that of which notion of *collective action* is – implicitly more often than explicitly – presupposed by their existing paradigms.

This IP will set up an interaction, not only between the most advanced questions of Economics, Law, Political Science, but also, between them and the recent reflections in Theory of Action related to public interest governance. Indeed, the hypothesis guiding the proposed research is that our governance devices today need to integrate, beyond the incentives already well pointed out by the theory of incentive contracts or by the recent new institutionalist and evolutionist approaches, reflexive incentives: both these incentives are required to ensure that public and private are involved in collective learning processes normatively oriented towards the solution of collective action problems in the pursuit of the public interest. One of the outcomes of our research will be a Public Interest Assessment protocol. Such a protocol would favour a better evaluation of the organisation of services of general interest. It will be discussed with the most concerned stakeholders in the conference concluding the research.

Theory of the Norm Unit

The objectives of the theory of the norm unit (TNU) are to advance further in the theoretical foundations of research into governance issues. It means to set up an interaction between the most advanced approaches to governance proposed in Economics, Law, Political Science and in the different material fields that the REFGOV project (Services of General Interest, Global Public Services, Institutional Frames for Markets, Corporate Governance, Fundamental Rights) studies, and second to set up an interaction between them and the recent reflections in Theory of Action related to public interest governance. Indeed, the hypothesis guiding the proposed research is that our governance devices today need to integrate, beyond the incentives already well pointed out by the theory of incentive contracts or by the recent new institutionalist and evolutionist approaches, reflexive incentives: both these incentives are required to ensure that public and private are involved in



collective learning processes normatively oriented towards the solution of collective action problems in the pursuit of the public interest.

The research is organised along two axes which constitute the two workpackages of the unit. In this first year: the theory of the norm workpackage (WP24) explores the most recent developments in theory of the norm and their connection with theory of action, and the theory of governance workpackage (WP25) studies the theory of governance in connection with the theory of learning (democratic experimentalism), in order to present the added value of the REFGOV hypothesis.

In the theory of the norm workpackage, the objective for the period was to discuss the recent pragmatist turn in the philosophical reflection of the theory of the norm, the new approach to normativity it entails and the new approach to governance it generates.

In the theory of governance the objective was, on the basis of the work in the theory of the norm workpackage, to reconstruct the recent dynamics of the theory of governance in order to highlight the added value of the recent emerging pragmatist and experimentalist theories of governance and, finally, to show the next step still required to overcome the remaining insufficiencies of such a pragmatist approach to governance.

- In the theory of the norm workpackage

The REFGOV researchers involved in the workpackage and the international scientists and academics invited to participate worked on a set of articles and texts on the issue. The results of the researchers' reflection was discussed and further developed at a key seminar organised in June 2005.

- Contractors more directly involved were involved: the Centre for Philosophy of Law/UCLouvain, the Johann Wolfgang Goethe Universität Frankfurt, Paris X Nanterre, University of Cambridge (John Paterson) – invited researchers : Prof. Jules Coleman School of Law Yale University, Brian Leiter (University of Texas), Stephen Perry (New York University).

Two scientific articles will be published on “the requirement of the pragmatist turn and the redefinition of the concept of law” , (one in French (as part of collective work) in a special issue of the “revue “Philosophiques”, one in English) – The preliminary draft version presented in deliverable 40 of the REFGOV project (Working Papers REFGOV -TNU – 1)

- In theory of governance

In the theory of governance workpackage the objective was to reconstruct the recent dynamics of the theory of governance in order to highlight the added value of the recent emerging pragmatist and experimentalist theories of governance and, finally, to show the next step still required to overcome the remaining insufficiencies of such a pragmatist approach to governance. The result of this research is the synthesis report #1 (Working Papers series REFGOV-TNU-SGI -1 on the website) prepared by the CPDR (Prof. J. Lenoble and M. Maesschalck who are in charge of the TNU). This report ('Beyond neo-institutionalist and Pragmatist approaches to



Governance') is presented in the deliverable 2. This synthesis report is intended to orient the methodological approaches followed by the different sub-network in their thematic studies. To this end, in the second half of the year 2006, the different researchers in charge of these thematic studies are going to submit to their sub-teams some methodological guidelines defined on the basis of this synthesis report and to organize a discussion of both this theoretical synthesis report and these guidelines.

Moreover, this synthesis report will be specifically discussed by the members of the TNU in a seminar organized in Brussels on 26th-27th October 2006. The leading American representatives of the recent pragmatist and experimentalist approach to governance will also participate in this seminar (Prof. Ch. Sabel and W. Simon from Columbia University, and Prof. J. Zeitlin from Wisconsin University).

Global Public Services and Common Goods

Reminder of the work plan :

- First phase
 - Identification, selection and evaluation of the ongoing transformations in the provision of global public services in the public interest
 - Report the University of Oldenburg-Gelena and report the University of Paris X-EconomiX
 - Workshop organised by the University of Oldenburg in Berlin
- Second phase : institutional frameworks and architecture
 - Component 1 : institutional frameworks
 - Case study reports (not in first 18 months)
 - The Vrije Universiteit Amsterdam- IVM, University College London with the Bio-econ team in the University of Heidelberg
 - Component 2 : institutional architecture
 - Report on Sustainability Impact Assessment (SIA) (not in first 18 months)
 - Workshop on Public Interest Assessment (PIA) (not in first 18 months)
- Third phase : Final synthesis conference (M38) and report on PIA

A : First phase : the identification, selection and evaluation of the ongoing transformations in the provision of global public services in the public interest.

The first step of the research has been completed with the theoretical background study : Preparing the theoretical framework for the case studies (Workpackage 6 Deliverable 17-18 (Working Papers – REFGOV - GPS –1) and Workpackages 7)

Inspired by the New-Institutional approach, we consider that the analysis of the organization of the institutional framework (to generate knowledge for the provision of global public goods) should not be analyzed from scratch. We are not thinking in the framework of the Nirvana economics. We therefore consider that individuals are already organized in communities, while the global community is not fully organized yet. There are therefore various types of sub-global communities in which individual



actors develop their strategies to impact on the provision of public goods in general and global ones in particular.

For the stake of building the theoretical framework, we needed a more fundamental characterization of the different actors, in terms of their involvement in elementary governance mechanisms that play a role in the governance of global public goods.

We propose a typology based on “who” decides and according to “what” rule. In the classic nation-state context, collective choices are based on modes of decision and delegation of decision through so-called “vertical accountability”. The key players are the citizens and the representatives. Through a delegation mechanism (election, co-optation etc.), citizens delegate decision-making power to representatives, who remain “accountable” to the individuals that appointed them. If the citizens can decide themselves upon some matters, through referendum or other forms of direct democracy, no delegation takes place and decision is made by “self-accountable” individuals.

Another form of accountability has an increasing influence, the so-called “second-order” accountability through the action of organized communities or what we will call “horizontal” accountability. In the absence of state-like institutions on the global scale, accountability depends on the creation of public spheres by organized communities with the goal of making the democratic debate on GPG provision more transparent, accessible and open to a greater variety of actors and perspectives. There is no formal delegation mechanism between the citizens and these organized communities – the members (and therefore decision makers) are only accountable amongst themselves –, but nevertheless to remain legitimate as collective agents they have to take into account the legitimate concerns and preferences of citizens.

In this first phase, we developed in detail this theoretical framework and applied it to a first set of case studies in the field of biodiversity governance.

Contractors involved : The CPDR 01, the university of Oldenburg, the Economix research centre (Paris X) ,

B: The second phase on institutional frameworks and architecture.

- Component 1 : Institutional frameworks case-studies

The three case studies have been started, the partners involved in are: the University of Amsterdam, the IDDRI- France, the University College London, the Queen Mary Institute for Intellectual Property Rights UK

IDDRI : The Role of institutional framework in the bio-genetic resources innovation chain (Workpackage 8)

Brahy N. (CPDR) & Louafi S. (IDDRI)

The objective of this case study is to examine the renewed role of the academic sector in the innovation chain starting from traditional knowledge and wild genetic resources and ending with a final product marketed by bio-industries; to identify

changes in the institutional framework in which scientists carry out their task and reorganize their interactions with TK and GR holders.

UCLondon – Queen Mary Institute : (Workpackage 10) The Economics of IPR for Bio Prospecting - Considering the Importance of Property Right Placement

Tim Swanson and Mare Sarr (University College London)

The present study will address the importance of creating property rights for traditional knowledge and investigate where these rights should be placed along the R&D process. This will allow us to highlight the trade-off between rewarding the various stages contributing to innovation and the cost generated by the successive distortionary monopolies in a single vertical industry.

Vrije Universiteit Amsterdam: Global legal pluralism and the Dutch effort to reduce pesticide use (Workpackage 9)

Nicolien van der Grijp (University of Amsterdam)

Against this background and from the perspective of global legal pluralism, the paper aims to elaborate on the efforts that have been undertaken by state and non-state actors to create a framework of rules that could stimulate growers to reduce pesticide use. More specifically, it focuses on the claims and concerns of the stakeholders involved, and the opportunities for learning and upgrading of production that the different regulatory approaches have created.

These cases have been presented at an open international conference at the Université catholique de Louvain, Louvain-la-Neuve, Belgium, June 15th and 16th, 2005. The object of this workshop was :

“what are the different institutional frameworks (property rights, contracts, markets, trust funds, public institutions, etc.) that are appropriate for the provision of global environmental goods in a multilevel governance framework ? How can the design of appropriate governance mechanisms deal with strong uncertainty and diverse collective preferences?”

- The component 2 :

The second component consists in the elaboration of an empirical research protocol on the orientation chosen by our transversal hypothesis on the procedural limitations will be started on month 16. This will be applied to one particular empirical problem: the current elaboration of Impact Assessment in the field of environmental service provision in Europe.

Fundamental Rights

During this first phase of 12 months, three seminars were organized, on the basis of working papers prepared beforehand, to arrive at an adequate identification of the substantive and methodological questions to be examined (during phase 2) in the material fields selected. Each seminar led to revising the working papers on the basis of the exchanges between the participants.



A first seminar (WP 21) was held in New York in November 2005. It analysed and discussed the relationship between the fundamental rights policies of the Member States and the fundamental economic freedoms of the internal market: to which extent freedom of movement of persons, goods and investment, free provision of services, and competition law influences the freedom of Member States to act in order to realize fundamental rights in their jurisdiction. Working papers from prof. O. De Schutter (CPDR/UCL), prof. G. de Burca (EUI/Flo) and prof. R. Lawson (U. Leiden) were prepared. They were discussed and coordinated through a one-day seminar to be organised under the direction of prof. G. de Burca. One member of the Legal Service of the European Commission, a number of PhD researchers from the EUI/Flo and from Columbia University, and other academics from both Columbia University and New York University also took part in this seminar. One framing paper explored the relationship between monitoring compliance with fundamental rights and collective learning, relating the working hypothesis of the reflexive governance project to the developing architecture of fundamental rights protection in the EU. This paper was authored by O. De Schutter. The main commentator was Ch. Sabel (Columbia); other substantive comments were made by W. Simon (Columbia), Ph. Alston (New York University) and Peter Oliver (European Commission, visiting at Yale Law School).

Two other working papers covered the following issues :

- The relationship between economic freedoms and fundamental rights in the case-law of the European Court of Justice: the constitutional constraints Member States are facing in the implementation of fundamental rights due to the requirements of the internal market and due to the fact that they share with other Member States a common area of freedom, security and justice (G. de Burca)
- The relationship between economic freedoms and fundamental rights in the case-law of the European Court of Human Rights: the impact the free movement of right-holders and inter-State cooperation between the EU Member States has on their obligations to respect and protect the human rights protected under the European Convention on Human Rights (R. Lawson)

The objective of this first seminar was to formulate a preliminary diagnosis of the problem to be addressed in the research, which how to protect and promote fundamental rights in the Union while maximizing the potential of both the existing constitutional structure and the possible reliance on the 'soft' mechanisms introduced in other fields. The seminar examined to which extent is there a tension between the "economic Constitution" of the Union and the protection of fundamental rights, and how does the case law contribute to easing any such tension. The seminar also examined the tools which have been developed in other fields where the current division of competences between the Union and the Member States may lead to suboptimal solutions and not adequately meet the risk of regulatory competition (fiscal, environmental and social policies) may contribute to identifying the contours of a fundamental rights policy for the Union which would maximize the positive effects of a decentralized implementation of fundamental rights, while at the same time minimizing its negative effects.

The second seminar (WP 22) was held in Brussels on 16 March 2006. It focused on the tools which currently exist to facilitate the convergence of the fundamental rights



policies pursued at the level of each individual Member State, and the institutional framework under which improved forms of coordination could emerge. The working papers which were commissioned for this second seminar concerned the following issues:

- Tools measuring the progress made in the implementation of fundamental rights by the Member States: indicators and statistical tools in human rights (M. Nowak and V. Wagner)
- The Promotion of Fundamental Rights by the Union as a contribution to the European legal space (I) : Mutual Recognition and Mutual Trust in the Establishment of the Area of Freedom, Security and Justice (O. De Schutter)
- The Promotion of Fundamental Rights by the Union as a contribution to the European legal space (II) : the Balance between Economic and Social objectives in the European Economic Constitution (O. De Schutter)
- The role of non-governmental actors and national institutions for the promotion and protection of human rights in promoting good practices (R. Lawson)

These contributions were discussed and coordinated at a one-day seminar which was organised by the CPDR/UCL (O. De Schutter) in Brussels.¹ The objective of this second seminar was to identify the tools which currently exist in order to promote the cooperation between the EU Member States in fundamental rights, the development of which is seen as dependent on processes of mutual learning and exchange and comparison of experiences. The seminar asked whether these tools were adequate to meet the challenge faced by the decentralized implementation of fundamental rights by States which, because they share a common area of freedom, security and justice, are strongly interdependent, the actions of each State affecting the other States in ways which the first seminar sought to identify. Indeed, since the research led us to identify as one crucial dimension of our inquiry the question of externalities (implying potential difference between the costs for the State implementing one policy and the social costs supported also by the other Member States sharing a same legal space), and to question the relationship between mutual recognition and the development of common standards in the field of fundamental rights, we commissioned another paper to Prof. V. Van den Eeckhout (Leiden University), on the relationship between the tools of European private international law and fundamental rights protection.²

On the basis of these working papers and two introductory seminars, it was possible to draw preliminary conclusions to feed into the development of the general hypothesis of the research. Those preliminary conclusions were both descriptive and prescriptive. At the descriptive level, they identified the problems to be addressed (to which extent the decentralized implementation of fundamental rights may be constrained by the constitutional structure of the Union), the solutions currently found to these problems and their insufficiencies, as well as the theoretical frameworks on which these solutions are based, more or less explicitly. In that respect, we are proposing a diagnosis. At the prescriptive level, we propose an alternative theoretical framework, and we seek to examine which mechanisms could offer a way out of the current situation. It was the purpose of the third event organized during this period – the first open conference of the sub-network, held in Brussels on 24 May – to present

¹ PhD researchers and academics from the UCL were involved. We also benefited from the input, especially on the question of indicators, of one public servant from the European Commission, previously at DG Market, currently in the Fundamental Rights and Citizenship Unit of DG JLS.

² That paper was initially presented on 16 March, and was further developed for the open conference of 24 May.



these preliminary conclusions, also discussed with the team in charge of the cross-thematic analysis in the reflexive governance research, and relate them explicitly to the inquiry into the material fields explored during the second phase of the research.

The conference organized in Brussels on 24 May 2006 (WP23), which essentially concluded the first phase of the research, was organized in three parts. The first part of the conference examined the role of fundamental rights in the establishment of the internal market and in the creation of an area of freedom, security and justice between the Member States. The papers which were presented asked which role fundamental rights have played as a limit to the process of 'negative' integration, by the abolishing of barriers to free movement and mutual recognition as a technique to facilitate integration in the absence of harmonization, and the extent to which they have served as a tool to promote 'positive' integration, through harmonization or approximation of national legislations. They also questioned through which tools, both methodological and institutional, the protection and promotion of fundamental rights can be improved in the Union, putting a particular emphasis on the relationship between the architecture for the protection of fundamental rights at the level of the Union and the role of national institutions and actors in the monitoring of fundamental rights, on the use of indicators in the monitoring of fundamental rights in the Union, and on the possible contribution of the EU Fundamental Rights Agency to the improvement of the fundamental rights policy of the Union. The introductory presentations, by Olivier De Schutter (substantive issues), Rick Lawson and Manfred Nowak (process, institutions and methods) respectively, built on the papers presented at the first two seminars organized in this project, in order to present the main conclusions provisionally arrived at. The purpose was not to explore the details of these papers, which have been presented and discussed on previous occasions. Rather, the objective of these presentations was to introduce the participants in the conference to the themes which had dominated the research project so far, and thus to facilitate establishing a bridge between those previous discussions and the second phase of the research.

The second part of the conference consisted in a preliminary exploration of the four substantive areas which will be investigated in depth during the second phase of the REFGOV research project. The interveners were all eminent specialists in these respective fields. They were asked to address explicitly the following questions, which relate both to the substance and to the tools of European integration:

1° the role of fundamental rights and of subsidiarity in the debates surrounding the shape, the degree and the methods of integration – for example, the choice between harmonization or approximation of laws on the one hand, mutual recognition on the other hand –;

2° the respective roles of international and European standards on the one hand, and of comparisons between the levels of protection achieved by the Member States on the other hand, where the European Community / Union have adopted instruments seeking to promote fundamental rights, as well as the techniques used to define the adequate level of protection of fundamental rights at the level of the Union;

3° the role of national actors in the development of instruments protecting and promoting fundamental rights at the level of the Union and, in particular, whether the definition of instruments adopted at European level was left to negotiation by the

national governments, or led instead to an involvement of other actors' representative at national or European level, in particular civil society organisations, unions, experts;

4° the evaluation of the balance between decentralization (the protection of fundamental rights by the Member States) and harmonization (the protection of fundamental rights at the level of the Community / Union). See D 37-38-39 (Working Papers REFGOV FR - 1 to - REFGOV FR - 10)

Corporate Governance

Project objectives and state of the art

The work of the Corporate Governance sub-network is concerned with contemporary developments in four fields: the evolution of corporate governance codes in a number of European countries; the 'financialisation' of the enterprise, that is to say, the growing influence of financial logic on the structure and organization of the firm, as indicated by case studies and by econometric analysis of the UK WERS dataset (see Nash, 2005) and the French equivalent, REPOSE; case studies of the impact of corporate governance rules, legal norms and accounting regulation at enterprise level; and governance arrangements with inter-firm networks.

The theoretical strand linking the four different projects (or 'work packages') is the concept of reflexive governance which, broadly speaking, refers to a set of mechanisms for dealing with coordination failures, in the name of the public interest, in ways which goes beyond hierarchical or 'command-and-control' techniques of regulation. The corporate enterprise provides a useful context in which to study reflexive governance, given the coexistence, in this field, of multiple forms of normative ordering (legislation, case-law, codes, disclosure regimes, accounting standards), and the conscious mixing of regulatory and incentive-based approaches, as in the case of the 'comply or explain' principle which underlies the corporate governance codes which first emerged in the 1990s. The project aims to advance the theoretical understanding in the corporate governance field, through a constructive critique of the predominant 'agency theory' approach.

The work of the sub-network is also seeking to advance understanding of developing social and economic phenomena in the governance field. As a result of the wave of privatisation and economic liberalisation of the 1980s and 1990s, the listed company is now the primary economic form through which a variety of public service functions, previously the preserve of the state, are now delivered; however, the properties of listed companies, by comparison to other corporate forms, are by no means completely well understood. How precisely, for example, has the area of utility provision and regulation been affected by the move from state owned enterprises to listed companies as the predominant mode of delivery of essential services? In addition, however, the developing theme of corporate social responsibility (CSR) affects companies in all sectors, and particularly calls into question their ability to reconcile the drive for shareholder value with their need to take into account the interests of other stakeholder groups.

Objectives for the reporting period, work performed, contractors involved and the main achievements in the period



The main objectives for the reporting period were to set up the work of the sub-network through initial meetings of the project teams, to establish the theoretical groundwork for the projects, and to develop common approaches to empirical work (survey instruments and questionnaires).

In CG1 (Workpackage 17) , which is looking at the evolution of corporate governance codes, papers presented by the teams have illustrated the tension which exists in all systems between shareholder-driven conceptions of the firm and the growing role of CSR. For example, Bristol group, the Liège group and the Louvain-la-Neuve group have carried out complementary studies examining the use of disclosure and accounting rules to open up a debate about the costs of corporate activity. The CEU contribution has focused on the development of the corporate governance code and stock exchange rules in the transition period in Hungary. (see Working Papers REFGOV - CG - 6)

In CG2 (Workpackage 18) the econometric analysis of the WERS and REPONSE datasets (Cambridge, Paris-10) has already made considerable progress towards developing the first systematic, quantitative study of the relationship between corporate governance and HRM in the UK and France. Two joint meetings were held, a common approach to the analysis of the datasets was developed, and the first results were presented at conferences in September 2006. This has been complemented by case study work on the 'financialisation' of French and Belgian companies, focusing on employee financial participation and pension fund governance (Louvain-la-Neuve, Paris-10). (see Working Papers REFGOV - CG - 4)

In CG3 (Workpackage 19) the empirical work which has been carried out on case studies at enterprise level shows, for example, how some of the hopes expressed for shareholder activism as mechanism for CSR have been disappointed (in particular in the UK). These studies also demonstrate the tensions which exist in coordinated market systems as a result of the growing intervention of Anglo-Saxon style corporate governance mechanisms and US and UK institutional investors (the Cambridge, Louvain-la-Neuve, Liège teams). (see Working Papers REFGOV - CG – 1 and 3)

In CG4 (Workpackage 20) , the work on the governance of networks is providing the foundations for a comparative study, based on Italian, French and British practice, of the role of new forms of inter-firm cooperation, which will take the story forward from the well-known industrial district studies of the 1980s and 1990s (Cambridge, Trento, EUI). More theoretical papers have also been written on different network types in law and economics (EUI), and on the historical antecedents of network forms (Cambridge). (see Working Papers REFGOV - CG – 2 and 5). Work on a joint questionnaire for the empirical stage of the work is well advanced.

Thus the main achievements to date are: progress on operationalising the theoretical concepts of reflexive governance in the concrete setting of corporate governance; first reports of findings from case studies and econometric analysis; and development of common survey instruments and questionnaires.

Problems and corrective action

There are no significant problems to report.

Institutional Frames for Markets

The objective of the IFM sub-project in the RefGov project is to provide a systematic analysis of the interplay between governmental regulations and self-regulations in the building of institutional frameworks for markets. It will focus both on the complex processes by which governmental interventions and agreements between stakeholders combine to establish collective rules framing market activities, and on the results of these processes both in terms of efficiency of the performance of markets and considering the ability to take into account the interests of the various stakeholders in the society (i.e., the public interest).

The IFM will develop in three phases:

- A short starting phase (May 2005-Feb 2006) aimed at stating the “state of the art” on the subject.
- A longer interim phase (Feb 2006-June 2009) during which five parallel applied research programs will be carried out dealing with complementary issues.
- A concluding phase (July 2009-May 2010) aimed at collectively build a synthesis of these researches.

The objective of the first year was to launch both the surveys on the state of the art and the five parallel applied studies.

Two meetings of the whole team were organized in 2005-2006. The first one was held at the University of Pompeu Fabra in Barcelona in September (Month 4) and the second one was held at the University of Paris X in February (Month 8).

At the first meeting, we decided to re-align more precisely the Work Program as it was presented in the description of the various WPs in the Technical Annex with the means provided by the EC; and, mainly, with the organization of the whole IFM project. Indeed, during the preparation phase of the contracts, some misunderstanding about the horizon of the WPs led several partners to describe the work plan for the whole second phase (Feb 2006-June 2009) in their WP description rather than the planned activities for the sole first 18 months. Thus, the descriptions of the WP in the technical annex often cover a much longer period than the first 18 months. In addition, many of the related activities started only at the beginning of 2006. Both factors explain most of the discrepancies between the forecasted deliverables and what has actually been delivered, even if each of the projects is progressing satisfactorily.

One of the major decisions made has been to reschedule the organization of the joint workshops of the whole sub-network to take into account the actual funding, the actual needs of coordination among the partners, and a reasonable schedule to let the various teams really work between the workshops.

This results in the following Working Plan corresponding to what was promised in the Technical Annex, but taking into account the necessity to adjust the program for the first 18 months period.

- First Phase

The first phase the two IFM - synthesis-reports on the state of the art in economics, and especially in New Institutional Economics on have been completed in a draft version:

- The analysis of the Institutional Frameworks enabling market to perform (jointly written by Eric Brousseau (U. of Paris X) and Antonio Nicita (U.of Siena)). in a draft version (D24)
- The assessment of the current deregulation processes in network industries (to be written by Jean-Michel Glachant (U. of Paris XI)). This report is "*The "Reflexive Governance" in the area of services of economic general interest and competitive reforms of network industries in the European Union*" presents the research undertaken for the RefGov project at the University of Paris Sud XI (ADIS research center) from June 2005 to May 2006 (D25)

These reports are based on inputs provided by the five teams involved in the project. First drafts of these reports were discussed at a kick-off workshop organized at the University of Paris X in February 2006. A revised draft of the D24 has been written in the summer 2006. it has been decided that it must be further discussed by the different teams before being delivered. The final version will be ready and delivered around on Month 20 (December 2006, to be published in scientific journals during 2007).

- Second Phase

The second phase started in February 2006 and should end in June 2009. It is made of five parallel programs coordinated by a specific team:

- *Creation and Governance of Competitive Mechanisms in Network industries* [Coordinator: Adis/U.Paris XI / Teams Involved Adis/U.Paris XI, CE.El/Praha, U.Siena, EconomiX/U.Paris X]. (Workpackage 12)
- *The Regulation of Digital and Information Networks* [Coordinator: EconomiX/U.Paris X/ Participants: EconomiX/U.Paris X, UPF/Barc]. (Workpackage 13)
- *Intellectual Property Rights, Incentives to Invent, to Accumulate Knowledge and to Circulate Intangibles* Coordinator: U.Siena/ Teams Involved: U.Siena, EconomiX/U.Paris X. (Workpackage 15)
- *The Collective Governance of Quality* [Coordinator: U.Oviedo/Teams involved: U.Oviedo, Adis/U.Paris XI, UPF/Barc]. (Workpackage 14)
- *Behaviours, Contractual Practices and the Legal Environment* [Coordinator: UPF/Barc / Teams Involved: U.Siena, EconomiX/U.Paris X, UPF/Barc]. (Workpackage 16)

Each of the programs will consist in research carried out either collectively or separately and of regular exchanges among the participants in the various programs. Specific meetings will gather members and non-members of the programs.

Every year, a specific workshop dedicated to Ref-Gov-IFM will be organized to gather all the members of the IFM sub-network (and additional partners) on issues of

interest for the whole IFM project. These workshops should be high-quality scientific events dedicated to the production of a significant scientific publication.

It has been decided to have three of these workshops for this second phase:

- December 2006: Paris XI,
- December 2007: Siena, and
- December 2008: Barcelona

All of them will be combined with a Ref-Gov coordination meeting organized the day before or the day after the workshop.

The next expected workshop is going to be organized (because of schedule constraints) in January 2007 at the University of Paris X. It should be oriented toward the implementation and maintenance of competitive mechanisms in markets.

- Third Phase

In September 2009 and December 2009, respectively, Paris XI and Paris X will organize two workshops/conferences around the final reports:

- Paris XI will be responsible for an event oriented toward policy making.
- Paris X will organize something more oriented toward our analytical advances on the economics of institutional frameworks.

To prepare these final reports, the five teams will write a Draft Report by November 2008, and these reports will be discussed during a special meeting right before or after the Barcelona workshop.

The final versions of the reports highlighting theoretical advances and policy implications drawn from each of the 5 programs will be provided to Paris X in June 2009.

The synthesis report of the whole project will be drawn from these five reports and from the two workshops/conferences organized in 2009 in Paris. It will be released in June 2010

Services of general Interest

The notion of public services (or service of general interest) knew a considerable evolution in Europe and other mature welfare states. The pressing question, how the public action can be reconceived, results from a criticism of efficacy and legitimacy of both the bureaucratic and the market model. Today, appear new models of regulation, between hierarchic and market. Therefore problems are relating to the question of the coordination of agents' actions and to the efficacy of decentralised forms of organisation. The research in the field of the services of general interest proposes to analyse these questions in the perspective of more reflexive governance. Concerning the new mode of coordination, the key issue concerns the ability of private or public actors to define the references that will allow the evaluation of a situation or the determination of an action. Indeed such ability may not be presupposed: it is not a resource available as such, but rather a capacity which needs to be constituted.



Therefore, the research seeks to improve the different designs of governance which are able to encourage “responsive” forms of regulation and the capacity of a reflexive organizational learning.

Two orientations structure the research of the SGI-sub-network.

The first and main orientation of the research aims to analyze the problems related to the recent reorganisation of public services provisions in different fields and to suggest some institutional improvements of the governance design in the perspective of the reflexive governance hypothesis. A specific attention will be attached on the design of contractual relations to enable responsiveness and reflexive organizational learning four specific thematic researches have been initiated.

This orientation is organised through four specific studies. (WP2 - WP 3 - WP 4 -WP 5) The two first aim to analyze the problems in the healthcare and the energy provisions:

- *The energy sub-team (WP2)* developed a distinct analytical structure for the energy study, based on three major classificatory concepts of governance techniques, institutions, and substantive goals of energy regulation. This was a result of both the application of the general theoretical approach to be undertaken in the SGI work, and adaptation of this to the specific energy context Discussions also took place with Professor Jean-Michel Glachant concerning the role of collaboration with the ‘Institutional Frames for Markets’ work. The analytical structure adopted for the energy sector was tested through the preparation of initial national reports by each of the teams relating to the application of the analytical structure to national experience; these reports covered the UK, Canada, Hungary and Germany. The implications have been discussed by e-mail and will result in some relatively minor amendments to the theoretical structure. A bibliography of the major theoretical work has been prepared by each team. This work has provided the basis for the detailed empirical work to be undertaken in the second year of the project. Further theoretical and methodological guidance is being prepared for the next workshop to be held in Paris at the end of November; this will link the energy work clearly with other work being undertaken on SGIs.

- As to the *healthcare sub-team (WP3)*, following the second healthcare meeting held in Leeds in January 2006, an analytical grid was developed focusing on asymmetrical and contract-like governance mechanisms in European healthcare organization. National teams were invited to structure the next stage of their research on the basis of a distinction between bureaucratic regulation, vertical contracts, regulatory contracts, and purchaser-provider contracts. The results of this phase of the research were due to be presented at the 3rd Healthcare meeting in Paris in September, postponed to November 2006. In addition in the June 2005-May 2006 period, teams prepared bibliographies of major theoretical works, discussion of which has informed the refinement of the analytical focus.

- The third one, on regulation of public bodies, (WP4) deals with the procedures, which may be envisaged to control the behaviour of public sector actors who remain central to the delivery of public services, even when these are privatised or contracted out. Essentially, this research will draw on comparison between controls applied in Australia and UK on the making off regulations, the provision higher education and provision of prison services.



These three main thematic studies have been initiated in this first year of the research. A common workshop was organized in September 2005 in Paris. A first common discussion of the theoretical framework of the research was discussed in presence of the representative of the TNU sub-network. The different sub-teams in charge of these thematic studies also determined the preparatory work to be done during this first year. Two tasks were decided. First, the different researchers would select and summarize the most significant literature concerning the different leading approaches to governance in their specific fields. Second, they would gather the empirical data to be used in their reconstruction of the dynamics of the recent reorganization of public services in their specific fields in their respective countries. Both these steps have been done. So, on the basis of the guidelines which will be defined in the next Fall on the basis of the first synthesis report (see above), the empirical studies in these three fields will be pursued and lead to the outlining, in November 2007, of the main institutional improvements to suggest. A second workshop has been organized by the healthcare sub-team in Leeds in January 2006 to discuss some problems related to the selection of these data. These guidelines that thus "operationalize" the synthesis report #1 will be discussed and adopted during the second common workshop of the SGI sub-network that will be organized in Paris in November 2007.

- In parallel of these three first thematic studies, a fourth specific empirical study (led by some researchers of the CPDR) is attached to the Theory of the Norm Unit-TNU sub-network. It aims to explicit the political fruitfulness of the peculiar approach to reflexive governance developed by the TNU. To this end, it undertakes to highlight and reconstruct reflexivity of collective actors who have been involved in the debate on the recent transformation of SGI-Governance. (WP5). In this specific research the selected collective actor is the trade unions in the electricity sector in Belgium. The first step of this research consisted in 'reconstructing' or analysing the collective actors' position in the social debate to identify the theoretical frames underpinning the culture of collective action, the generic beliefs determining the self perception of capacities of action, hence the selection of plausible strategies. This was carried out by a systematic screening of various actors' discourses, by an analysis of the antagonism between different preoccupations of the unions in a new context. It showed as a first result the identification of the conditions leading to a change in their strategies.

A second orientation has also been used to structure the SGI research. It concerns the historical perspective research (WP1). It aims at building up a common grammar on the public services conception. Even if such an orientation is not as central to the collective research as the first one and not mainly focused on the institutional improvements that the reflexive governance hypothesis aims to suggest in the recent reorganization of the SGI, it is useful because it helps to clarify some elements of the current debate. To this end, it a historical survey on the different conceptions of public services in Europe will be prepared. The historical perspective develops in a comparative way of the organisational frames of public provisions confronted to the challenge of legitimacy and efficacy. How the national conceptions on public services and organisation frames have been adapted to the iterative critic of the performance failure developed either by the economic sciences or the analysis of the political sciences. This collective research is engaged in cooperation with all national teams involved in the SGI sub-network. Such an historical perspective expected to give an epistemic context for a critic evaluation of the new design of the



reflexive governance. During the common workshop organized in Paris in September 2005, an analysis grid was proposed and discussed. On this basis, the different members of the SGI sub-network will select and communicate to the IIPLD (in charge of this specific workpackage) the data necessary for such reconstruction of the historical perspective. These data have to be delivered at the second common workshop to be organized at the end of November 2007 in Paris.

The partners involved are the Institut International Paris La Défense – IIPLD, the University of Bristol – School of Law, the University of Leeds – School of Law, with additional collaboration of British scientists through the link with the project, 'Contractual Governance in a System of Mixed Modes of Regulation' UK Department of Health, the University of Giessen, the ELTE University – Budapest, the London School of economics, the York University Toronto – CCGES, the CPDR of the catholic University of Louvain.

Section 2 – Workpackage progress of the period

Workpackage 1	SGI	Start date or starting event: Month 0
<p><u>Objectives:</u></p> <p><i>General objectives</i></p> <ul style="list-style-type: none"> -To design a common analysis grid -To synthesize the Teams' theoretical backgrounds used by each Team <p><i>Specific objective</i></p> <ul style="list-style-type: none"> -To prepare a historical survey on the different conceptions of public services in Europe (the reconstruction of the European historical perspective on Public Services) 		
<p><u>Progress towards objectives:</u></p> <p>-The IIPLD/Paris and the CPDR/UCL worked on the drafting of a common grid of analysis on the basis of the five core questions mentioned in the implementation plan and on the basis of which it is possible:</p> <ul style="list-style-type: none"> ▪ To obtain from the different Teams the theoretical frames they use to cope with the insufficiencies of the Services of General Interest regulation. (month 8) ▪ To organise the theoretical reflection on these theoretical frames at a common workshop for the SGI sub-network in which all the partners will be involved ▪ To analyse the first results of the theoretical reflection provided by the Teams reports and debated at the workshop 		
<p><u>Deviations:</u></p> <p><u>Two adaptations in the Work package have to be mentioned :</u></p> <p><u>1/ A clarification on the analytical grid was necessary.</u></p> <p>The "analysis grid" mentioned in the initial research project covered two objectives:</p> <ul style="list-style-type: none"> - to provide documentation for the overall historical perspective - to provide for theoretical frames used to cope with the insufficiency of the SGI (contribution to the preparation of the Synthesis Report 1 under the responsibility of TNU). <p>The preliminary discussion of the Common orientation group led to dissociate both objectives:</p> <ul style="list-style-type: none"> - the first one will be reached through the "Analytical guidelines", the testing version of which was adopted during the workshop; - the second one will be reached thanks to the "Key bibliography on theoretical frameworks" in order to be transmitted to the TNU by each Team in December. The "grids" adopted by each sector group for its own objectives are completely dissociated 		

from these common tools.

As a consequence, the definition of the Deliverables has to be slightly adapted.

- D1 to D3 remain attached to WP1, but the "Report on historical perspective" will be produced later as initially planned.

Thus, the D3 becomes the "Reports on the first analyses carried out in accordance with the "analysis grid" to be transmitted to IIPLD by each team on February 2005 and the first Synthesis by IIPLD.

- The "Key bibliography on theoretical frameworks" to be transmitted to the TNU does not correspond to a deliverable.

- The sector group Energy and the sector group Healthcare have formalized their own output like foreseen, as part of WP2, and WP3.

Deliverables:

D1: Common Workshop: month 4 - Delivered

- General session: presentation and discussion by all the partners of the SGI sub-network of the proposed analysis grid integrating the five questions defined in the outlines implementation plan (IIPLD/Paris, CPDR/UCL, CBR/Cam)

-Special session: preparation of the report on the historical perspective of public services in Europe (IIPLD/Paris and EUI/Flor.).

Short reports on the proceedings of the two sessions of the workshop

D2: Synthesis report n° 1 of the theoretical frameworks and of the debate concerning the sub-network, orientation for the workshop n°2 (CPDR/UCL, CBR/Cam), month 12 – delivered.(Working Papers REFGOV – SGI-TNU-1)

<http://refgov.cpdr.ucl.ac.be/?go=publications>

D3: "Report on the first analyses carried out in accordance with the "analysis-grid" and first synthesis by IIPLD, month 9 – delivered on month 12.

Milestones:

-The design of a common analysis grid was completed and proposed by the IIPLD at the first Common Workshop in September 2005. Each Team, working per sub-groups – Energy - Healthcare – have developed their own analytical grid to implement their empirical research.

-The synthesis of the theoretical backgrounds and orientation of the research have been carried out and will be presented at the next Common Workshop which will take place in November 2006.

<http://refgov.cpdr.ucl.ac.be/?go=all>

Workpackage 2	SGI 2 energy	Start date or starting event: Month 1
<p><u>Objectives:</u></p> <p><i>Main objectives:</i></p> <ul style="list-style-type: none"> - To adapt the general themes of the research to the context of energy markets. - To ensure effective communication and an integrated approach between the national Teams involved in the energy research. <p><i>Specific objectives:</i></p> <ul style="list-style-type: none"> - To contribute to the development of the analysis grid in the energy field - To test its application in the different national contexts of each Team. 		
<p><u>Progress towards objectives:</u></p> <p>The energy group (University of Bristol, the Giessen Universität. the CCGES York University Toronto and the Hungarian Partners ELTE University Budapest) contributed to the development of the project's general analysis grid for the organisation of public service provision through giving expertise from the energy sector. It further developed a distinct analytical structure for the energy study, based on three major classificatory concepts of governance techniques, institutions, and substantive goals of energy regulation. This was a result of both the application of the general theoretical approach to be undertaken in the SGI work, and adaptation of this to the specific energy context. Discussions also took place with Professor Jean-Michel Glachant concerning the role of collaboration with the 'Institutional Frames for Markets' work.</p> <p>The application of the analysis grid to the national contexts. The analytical structure adopted for the energy sector was tested through the preparation of initial national reports by each of the teams relating to the application of the analytical structure to national experience; these reports covered the UK, Canada, Hungary and Germany. The implications have been discussed by e-mail and will result in some relatively minor amendments to the theoretical structure. A bibliography of the major theoretical work has been prepared by each team. This work has provided the basis for the detailed empirical work to be undertaken in the second year of the project. Further theoretical and methodological guidance is being prepared for the next workshop to be held in Paris at the end of November; this will link the energy work clearly with other work being undertaken on SGIs.</p>		
<p><u>Deviations:</u></p> <p>No deviation from the initial goals contents in the technical annex, except for the establishment of a distinct analytical grid for the empirical research of the group.</p>		

Deliverables SGI for the Energy sub-group:

The following deliverables have been completed, as planned in the Work Package.

D4: Workshop, month 4 (Paris) on energy to contribute to the development of the analysis grid in the energy field, and to test its application in the different national contexts of each Team. Short report on the proceedings of workshop; issued after the workshop.

D5 : 4 reports from the 4 Teams involved on the appropriation on the grid, on the first results and on theoretical references.

D6: Energy sector report on the implementation plan for the next period (up to month 26) month 8

D7: Workshop month 17 (Paris), discussing the findings of each team at this stage;

Milestones:

Conclusions from the test allowing improvement of the grid. This has resulted in the preparation of a clear methodological structure for the detailed empirical and analytical work in the study which adapts the general analytical structure of the work to the peculiarities of the energy sector.

<http://refgov.cpdr.ucl.ac.be/?go=all>

Workpackage 3	SIG- HC	Start date or starting event:	Month 0
<p><u>Objectives:</u></p> <p><i>Main objectives:</i> To adapt the general themes of the research to the context Health Care To ensure effective communication and an integrated approach between the national teams involved in the energy research.</p> <p><i>Specific objective:</i> To contribute to the development of the analysis grid in the Health Care field To test its application in the different national contexts of each team.</p>			
<p><u>Progress towards objectives:</u></p> <p>The health care group (University of Leeds, the IIPLD and the ELTE university of Budapest) will contribute to the development of the project's general analysis grid for the organisation of public service provision through bringing expertise from the healthcare sector. Following the second healthcare meeting held in Leeds in January 2006, an analytical grid was developed focusing on asymmetrical and contract-like governance mechanisms in European healthcare organization. National teams were invited to structure the next stage of their research on the basis of a distinction between bureaucratic regulation, vertical contracts, regulatory contracts, and purchaser-provider contracts. The results of this phase of the research were due to be presented at the 3rd Healthcare meeting in Paris in September, postponed to November 2006. In addition in the June 2005-May 2006 period, teams prepared bibliographies of major theoretical works, discussion of which has informed the refinement of the analytical focus.</p>			
<p><u>Deviations:</u></p> <p>No deviation from the initial goals content in the technical annex, except for the establishment of a provisional analytical grid for the empirical research of the group.</p> <p>The membership of the healthcare team has expanded and now includes: <u>Leeds team</u>: Vincent-Jones, Allen, Giarelli, Griffiths, Hughes, and Keen; <u>IIPLD</u>: Lyon-Caen, Gignon, Lockiec, Porta; <u>ELTE</u>: Gallai. Ferrari has withdrawn from the project.</p> <p>The Leeds team has been strengthened through the linking of the REFGOV project with another project, funded by the UK Department of Health, 'Contractual Governance in a System of Mixed Modes of Regulation'. The partnership will extend the breadth and duration of empirical work to be conducted in the next two years in the UK healthcare sector.</p>			
<p><u>Deliverables SIG:</u></p> <p>D8: Meeting health care 1, month 4 (Paris). Introductory meeting, determination of a</p>			

methodological framework. Short report on the proceedings of the meeting

D9: Meeting health care 2, month 7 (Leeds), for the preparation of deliverables, a common grid adapted to Health care, and implementation plan. Short report on the proceedings of the meeting

D10.1-D10.2-D10.3: 3 Reports, month 8, Appropriation of the analysis grid, first results and identifying theoretical approaches and key reference texts

D11: Report, month 8, implementation plan of the health care sector for the next period up to month 26

D12: Meeting health care 2, month 16 (Paris) assessing the results so far. Short report on the proceedings of the meeting

Milestones:

Agreement among the members of the healthcare sub-group of an analytical framework to inform the next stage of the research focusing on healthcare organisation and governance in each country.

Workshop in Leeds in January 2006 <http://refgov.cpdr.ucl.ac.be/?go=all>

Workpackage 4	SGI	Start date or starting event:	Month 1
<p><u>Objectives:</u></p> <p><i>Main objective:</i></p> <ul style="list-style-type: none"> - To carry out a survey of the literature on regulation of public bodies. Comparison of regulation mechanisms as stated in the literature in domains such as prisons and higher education, in Australia and in the UK. - To undertake empirical work and generate new empirical data comparing regulation of the public sector across the domains of higher education and prisons an across jurisdictions as between Australia and the UK. 			
<p><u>Progress towards objectives:</u></p> <p>The research will be undertaken in two parts. First will be a literature survey on regulation of the public sector and on the substantive domains of control in prisons and higher education in the two jurisdictions. The second part will be an empirical study using primary data generated by the variety of agencies and departments in the domains within the two countries and through the method of elite interviewing with key regulators and regulatees. Interview data will be triangulated with primary and secondary literature to develop an understanding of contrasting mechanisms of regulation in the two domains and in the two jurisdictions. The analysis of the data will be used to evaluate the character and extent of reflexivity in the governance of the domains.</p> <p>During this first year, the literature survey has been done and collection of empirical material has been started.</p> <p>Researchers from the research Centre “CARR” at the LSE, Australian researchers will be involved in this research. A Scandinavian Researcher from the SCORE (Stockholm Centre organisational Research) will be informally associated to the research</p>			
<p><u>Deviations:</u></p>			
<p><u>Deliverables SGI regulation of the Public sector:</u></p> <p>D13: Report on theoretical references, month 8</p> <p>D14: Report on the implementation plan for the next period up to month 26</p>			
<p><u>Milestones:</u></p> <p>Important empirical material on the genesis of new forms of management and control of public or regulatory bodies.</p>			

Workpackage 5	SGI	Start date or starting event:	Month 8
<p><u>Objectives:</u></p> <p><i>Main objectives:</i></p> <p>This research will be developed to highlight and reconstruct empirically the reflexivity of collective actors who have been involved in the debate on the recent transformation of SGI governance</p>			
<p><u>Progress towards objectives:</u></p> <p>This part of the study means to focus on trade unions (as such collective actors) in France and in Belgium. This empirical research aims first to reconstruct the manner in which the Trade Union actors, in France and in Belgium, have perceived the context and have formed a representation of their strategy for intervening in the debates on the changes taking place in the regulation of electricity production and distribution and, second, to define the institutional incentives for improving SGI governance which such an analysis of this reconstruction leads to.</p> <p>In the general implementation plan of the project as designed in the Technical Annex, this work-package was meant to deliver an implementation plan, which was delivered.</p> <p>The present report concerns the first step - starting on month 8 up to month 13 – on the rebuilding the collective actors' position in the social debate by analyzing the experts' discourses inside and outside the unions so as to identify the different theoretical frames underpinning the culture of collective action and the generic beliefs determining the self perception of the capacities of action and therefore the selection of plausible strategies.</p> <ul style="list-style-type: none"> - In this regard, a systematic screening on discourses has been initiated such as, at the Belgian level, political scientists describing the evolution of the sector in relation to the implementation of the UE Directives of 1996 and 2003 and, at the European level, some more benchmarking oriented analysis of economists identifying the consequences of that strategy on the employment in the sector, the cost and the standard of universal services; discourses from 'experts' inside the trade unions has also been taken into account such as critics of the Federation of Public Service Unions (EPSU) and of the Trade Unions Advisory Committee to the OECD concerning the employment rate in the sector and the consequences of the liberalisation about the access to electricity for the more vulnerable users. - Until now a first analysis has been carried out which shows a gap between two kinds of preoccupation in the unions: preoccupation for employment and protection of the employees of the sector from one part and, from another part, preoccupation for the general interest included in the social finality of the sector thematized as standard of quality in the service, also as the question of universal access to energy for all the citizens in a democracy and the social assessment of the impact of liberalization on the users satisfaction (for ex. Question of transparency in the price comparison). - The first results are the identification of a double level of condition determining the position of the unions in front of the evolution of the sector. The first level of condition is a constraint of institutional adaptation of the unions of its role regarding the workers of the sector. At this level, the conditions under which unions were part of the regulation of the sector changed fundamentally and their 'command and control' culture of public interest governance is now obsolete. The second level of 			

condition is a constraint of creativity in the new situation ruled by a private/public partnership under a principal agent governance approach where unions become a potential speaker for non market requisites such as universal access to energy or users satisfaction assessment.

A second objective of this first step was, on a more practical ground, to locate the major institutions where this background culture has been able to experiment itself in confronting the prevailing position leading the economic reforms.

- The research shows, on this specific point, that in Belgium the institutions where such experimentation could occur at two level: at the level of regulation and at the level of distribution. At the level of regulation, unions have interaction with the Regulation Commission of the sector (CREG), namely as members of the Energy Comity of the regional governments. At the level of distribution, unions can interact with members of the civil society involved in 'intercommunal' management of the distribution network (GRD). But there is also some more internal instance where representative positions are elaborated such as the Comité Régional Wallon de la CSC, where global measures are identified for example to decrease the price of electricity on the Belgian market.
- A question is now how to better identify the relationship with this regional level of effectiveness in the decision-making and the more general ideas and principles elaborated at an European level when unions are involved in instance such as the European electricity social dialogue committee (where they deal with usual social aspects of the European energy policy in the professional relations).

A third point to be studied in the work-package, was to relate the background culture of collective action to the effective experimentation in key-proposals in order to relate the background culture of collective action and its effective experimentation in key-proposals In such a way as to determine its final position in the face of the specific issue of the electricity sector regulation. This operation of connecting the background culture and the proposals has been started in identifying key-actors to be interviewed in the next step of the research.

Deviations: no deviation from the initial goals such as presented in the technical annex

Deliverable SGI Collective actors:

D16: Month 8 Implementation plan - Delivered

Workpackage 6	GPS1	Start date or starting event:	Month 1
<u>Objectives:</u> <p>The first workpackage consisted of two preliminary reports had to be prepared and distributed to the members of the team. The goal of the reports was to outline the theoretical content and methodology of the overall project. Specifically, the first workpackage considered the insufficiencies and the proposed improvements for the provision of environmental services in the direction of hybrid approaches to governance while confronting the normative beliefs mobilized in such hybrid approaches.</p>			
<u>Progress towards objectives:</u> <p>Two preliminary reports have been gathered in one single text shown in deliverable 17-18. It was prepared in anticipation of the meeting of the research group. The contributors were the EconomiX (ex-Forum) research centre of the University Paris X and the university of Oldenburg, in collaboration with the CPDR. The workpackage worked both on the contribution of neo-institutional economics and ecological economics to improving the insufficiencies in current governance strategies of the global commons and on the contributions of regime theory, theories of reflexive governance and learning in the context of environmental regulation.</p>			
<u>Deviations:</u> 			
<u>Deliverables GPS:</u> <p>D17-18 A commonly re-framed report prepared by Forum/ U. Paris X and by U. Oldenburg considering the contributions of neo-institutional economics and ecological economics towards the amelioration of the governance of global commons considering the contributions of regime theory, theories of reflexive governance, and theories of learning towards the development and articulation of new modes of environmental governance</p>			
<u>Milestones:</u> <p>This report (D17-18) was the basis for a more detailed workshop which was hosted as part of workpackage 7.</p>			

Workpackage 7	GPS2	Start date or starting event:	Month 10
<p><u>Objectives:</u></p> <p>To establish a common understanding of the insufficiencies and propose improvements of strategies of environmental governance. Specifically, workpackage 7 (GPS 2) provides the opportunity to collectively consider the questions that have been raised in workpackage 6 (GPS 1) in the broader academic community. During this workpackage, we seek to expose the concepts and ideas explored within our sub-network during workpackage 6 to the critiques and criticisms of leading scholars in the field of the governance of the global commons.</p>			
<p><u>Progress towards objectives:</u></p> <p>A theoretical workshop has been hosted by U.Oldenb based on the contributions of the reports prepared in workpackage 6. The workshop worked on the insufficiencies of current strategies of global environmental governance and has attempted to develop, on the basis of the reports and presentations by key academics, new strategies to overcome the insufficiencies. The outcomes of the workshop and reports are two scientific articles are being prepared for publication in leading academic journals. The first is being prepared by GELENA (U.Oldenb) and considers the establishment of new modes of governance within the field of environmental regimes and the evaluation their contribution to the governance of the global commons. The second is prepared by Forum/U.Paris X) and explores the strengths and limits of neo-institutional and ecological economics for the theories of global public services.</p>			
<p><u>Deviations:</u></p> <p>An international conference was organised in Louvain-la-Neuve in June 2006, which gathered a very differentiated array of experts in the field of biodiversity governance. This conference had not been initially planned. It allowed the team to present their theoretical reflection to a wider audience and also to hear the different participants various devices and arrangement or tools for public commons and public global services governance experienced in a variety of contexts. See the call for paper and programme of the seminar at the following web page http://biogov.cpdr.ucl.ac.be/bioinstitut/</p>			
<p><u>Deliverables GPS:</u></p> <p>D19-20: Scientific article to be published end of 2006 in a leading academic journal by U. Oldenb by B. Siebenhüner, E. Brousseau, T. Dedeurwaerdere</p>			
<p><u>Milestones:</u></p> <ul style="list-style-type: none"> - Workshop hosted by U. Oldenburg, see http://refgov.cpdr.ucl.ac.be/?go=all - The workshop and articles provide the theoretical foundations for consideration of specific case studies in workpackage 8 (GPS3). A synthesis of these deliverables (with a special focus on the outline of the theoretical orientations) has been submitted to theory of the norm unit for the preparation of the 1st cross-thematic seminar (year4). 			

Workpackage 8	GPS3	Start date or starting event:	Month 7
Objective In workpackage 8, we develop a case study in which the lessons and theoretical insights developed in the first two workpackages are contextualized and explored.			
<u>Progress towards objectives:</u> <p>This first case study concerns the role of institutional framework in the bio-genetic resources innovation chain. This case study is part 1 of a set of three case studies, prepared in the context of the lessons learned in workshop hosted previously. The set of cases studies will end with a common workshop will be organized by University College London to consider the results of the case studies and expose the studies to the critique of the wider academic community (cf. WP 6)</p> <p>The objective of this case study is to examine the renewed role of the academic sector in the innovation chain starting from traditional knowledge and wild genetic resources and ending with a final product marketed by bio-industries; to identify changes in the institutional framework in which scientists carry out their task and reorganize their interactions with TK and GR holders.</p>			
<u>Deviations:</u> The case was reoriented from the study of the institutional framing of the public-private partnership in the provision of water in the developing countries to the role of institutional framework in the bio-genetic resources innovation chain			
<u>Deliverables GPS:</u> D21: Case study on the role of institutional framework in the bio-genetic resources innovation chain Report to be prepared by IDDRI/Paris .Month 24- CPDR /UCL			
<u>Milestones:</u> This first case study contextualizes the theoretical examination of the governance of the global commons in the previous two workpackages, and will provide the foundation for a workshop to be hosted during the next GPS synthesis workpackage.			

Workpackage 9	GPS4	Start date or starting event:	Month 7
<p><u>Objectives:</u></p> <p>In workpackage 9, we develop a second case study in which the lessons and theoretical insights developed in the first two workpackages are contextualized and explored.</p>			
<p><u>Progress towards objectives:</u></p> <p>This second case study concerns the institutional framing of public-private partnerships for sustainability (Type II Partnerships) in the field of sustainable technologies including renewable energies and pesticides reduction. This case study is part of a set of three case studies, prepared in the context of the lessons learned in the workshop hosted previously. The set of cases studies will end with a common workshop will be organized by UCLondon to consider the results of the case studies and expose the studies to the critique of the wider academic community (cf. WP 6).</p> <p>The case study considers proposed improvements of environmental governance in the context of renewable energies and reduction of pesticides, more particularly the recourse to contractual mechanisms and the possible contribution of institutional framing of such contractual mechanisms. They will explore the question of access and distribution of benefits.</p>			
<p><u>Deviations:</u></p>			
<p><u>Deliverables GPS:</u></p> <p>D22: Case study of the institutional framing of partnerships for sustainability (Type II Partnerships) in the field of sustainable technologies including renewable energies and of reduction of pesticides. Report to be prepared by VU.Amst. Month 24</p>			
<p><u>Milestones:</u></p> <p>This second case study will contextualize the theoretical examination of the governance of the global commons in the previous two workpackages, and will provide the foundation for a workshop to be hosted during the sixth GPS Synthesis workpackage.</p>			

Workpackage 10	GPS5	Start date or starting event:	Month 7
<p><u>Objectives:</u></p> <p>In workpackage 10 (GPS5), we develop a third case study in which the lessons and theoretical insights developed in the first two workpackages are contextualized and explored.</p>			
<p><u>Progress towards objectives:</u></p> <p>This third case study concerns the institutional framing of bioprospection contracts and provisions for access and benefit sharing. This case study is part of a set of three case studies, prepared in the context of the lessons learned in the workshop hosted previously. The set of cases studies will end with a common workshop will be organized by UCLond to consider the results of the case studies and expose the studies to the critique of the wider academic community (cf. WP GPS 6)</p> <p>The case study will consider proposed ameliorations of environmental governance in the context of environmental services, specifically focusing on the fields of water sanitation, biodiversity protection, renewable energies and strategies for pesticides reduction. The case studies will consider the recourse to contractual mechanisms and the possible contribution of institutional framing of such contractual mechanisms. They will explore the question of access and distribution of benefits.</p>			
<p><u>Deviations:</u></p>			
<p><u>Deliverables GPS:</u></p> <p>D23: Case study of the institutional framing of bioprospection contracts and provisions for access and benefit sharing. Report to be prepared by the UCLond and the QMU/Lond. Month 24</p>			
<p><u>Milestones:</u></p> <p>This third case study will contextualize the theoretical examination of the governance of the global commons in the previous two workpackages, and will provide the foundation for a workshop to be hosted during the sixth GPS synthesis workpackage.</p>			

Workpackage 11 IFM1	Start date or starting event:	Month 0
<p><u>Objectives:</u></p> <p>1° To provide the participants to the sub-network with an up-to-date synthesis on the applied and theoretical literature on the public vs. private regulation of competitive activities so as to guarantee consistencies among the applied researches</p> <p>2° To disseminate these results in the Ref-Gov network and beyond</p> <p>3° To synthesize the results of the applied researches carried out by the sub-network so as to provide the members of the sub-network and the theoretical unit with a synthesis of what has been achieved and understood, and to identify the question to be dealt with in the second phase of the program.</p>		
<p><u>Progress towards objectives:</u></p> <p>EconomiX and Siena have cooperated in reviewing the current theoretical literature on the contrasts and complementarities between public and private order The resulting draft will be discussed in an open workshop in which the members of the sub-network and distinguished scholars in the field will be involved. In addition, the various partners will prepare a synthesis of the specific literature on public v. private ordering in the field of applied research they are investigating. This will provide the basis for a review of applied literature By the completion of the first 16 months of applied research, the sub-network coordinator will synthesize from a theoretical point of view for the theoretical unit the results drawn from the applied studies. EconomiX will also coordinate the on-line publication of the various papers and reports generated by the sub-network.</p> <p>The documents delivered in D25 <i>The “Reflexive Governance” in the area of services of economic general interest and competitive reforms of network industries in the European Union</i>, - present the research undertaken for the RefGov project at the University of Paris Sud XI (ADIS research center) from June 2005 to May 2006.</p> <p>It consists into nine pieces of work: <i>a general overview</i> giving the main results of the research; plus <i>eight particular applied research topics</i> which cover *the governance of competitive changes in the electrical industry at the EU level (Annexes 1 to 3); **the governance of competitive markets in the electrical industry, both at the retail and the wholesale level (Annexes 4 to 6); ***the governance of the electricity transmission business in the context of competitive markets (Annexe 7); **** and a comparison of the governance of change in the electrical and the water industry (Annexe 8).</p>		

Deviations:

No significant deviation. A synthesis working paper (D24) is available and has already been discussed. It has been decided to postpone the delivery of the definitive version for methodological reasons, to allow further discussion within the sub-network.

Deliverables IFM:

D24: "Preliminary reports on Institutional Frames for Markets: the state of the art, theory, debates and new questions" (EconomiX/U. Paris X – U. Siena) final version delivered Month 20

D25: "*The "Reflexive Governance" in the area of services of economic general interest and competitive reforms of network industries in the European Union*" presents the research undertaken for the RefGov project at the University of Paris Sud XI (ADIS research centre) from June 2005 to May 2006. (ADIS / U. Paris XI) : one overview and 8 *eight particular applied research topics*

<http://refgov.cpdr.ucl.ac.be/>

I

Milestones:

"International Workshop on Institutional Frames for Markets: The state of the art, theory, debate and new questions" (EconomiX/U. Paris X – U. Paris XI)

See agenda at <http://refgov.cpdr.ucl.ac.be/>

Workpackage 12.1	IFM2.1	Start date or starting event: Month 0
<p><u>Objectives:</u></p> <p>1° To assess the main results of the competitive reforms in network industries (notably the competitive nature of regulation, market rules and industry structure as well as the economical and social benefits resulting for the customers and in the public interest)</p> <p>2° To assess the main results of the competitive reforms in electricity industry and to confront theories of competitive electricity regulation and its reality (notably the actual nature of the competition process, of its regulation and the actual benefits for the customers)</p> <p>3° To analyze and compare the governance mechanisms used in conducting these electricity reforms, notably the roles performed by market mechanisms and by regulatory monitoring (either with public regulation or self regulation) and their influence on the results obtained</p> <p>4° To assess new market design components like complex auction procedures (multiple units, complementarities) that have been implemented in the recently liberalized network industries (particularly the electricity sector) and their effect on the social welfare and public interest</p> <p>5° To explore the critical properties of the European electric power system as assembling a variety of technical and regulatory national components</p> <p>6° To disseminate these findings in the research community as well as the widest public, including public policy makers, private decision makers, European and national groups of interest and the stakeholders involved in the network industries reforms</p>		
<p><u>Progress towards objectives:</u></p> <p>1° Collecting data and documents for the assessment and conceiving benchmarks and indicators of competition and economical and social benefits for customers and public interest</p> <p>2° Reviewing the academic and professional literature on network industries reforms, regulation and market design and confronting it to the results of the assessment</p> <p>3° Preparing further deep case studies in UK, Scandinavia, Germany, Italy, and Czech Republic to further realize a deep analysis of the governance mechanisms used in conducting these electricity reforms and their influence on the results found in the assessment</p> <p>4° Reviewing the academic and professional literature on market design by auctioning and confronting it to the results of the recently liberalized network industries. Conducting the corresponding laboratory experiments</p> <p>5° Creating the basis of a computational laboratory modelling of the European electric power system</p> <p>6° Creating and nurturing a web site exposing the data, the interim and the final results, the 'experimental' and 'computational' software; organizing a news network, a launching meeting, and an international workshop</p>		



On each of the mentioned the partners involved have significantly progressed.

For the next 18 months, we plan to organise a 2 days Workshop in December 2006 or January 2007 in the University of Paris-Sud 11.

We also plan to produce 6 or 7 more working papers to complete and foster the research program undertaken in the field of competitive networks industries.

We will also start an EU DG Research *Concerted Action* named "Economics and Policy for Gas, Nuclear Energy and Hydrogen in the context of energy security of supply". The program will start in the mid 2007.

1° Scientific and administrative coordination will be ensured by Université Paris XI (J-M Glachant) and Ecole des mines de Paris (F. Lévêque).

2° Workpackage leaders would include Cambridge University (D. Newbery), University Comillas in Madrid (I. Perez-Arriaga), Berlin University of Technology (Ch. von Hirschhausen).

3° Other partners would include University of Birmingham (R. Green), the Institute Cligendael in the Netherlands (J. de Jong), International Energy Agency (F. Roques), Paul Joskow and Steve Stoft (from the US), P. Ranci from Florence School of Regulation.

4° A large number of EU stakeholders will be added, as in the former SESSA, except that the focus will be put on stakeholders related to Gas, Nuclear and Hydrogen.

5° The main activities would consist in organising conferences gathering scholars and stakeholders and setting recommendations and priority actions.

6° the program will really focus on synthesising existing research and ideas and confronting to available national and international studies.

In this program University Paris-Sud 11 and Jean-Michel Glachant will work more deeply in the work package N°5 devoted to the study of countries going to enter the European Union. It will review both the actual state of preparing their entry (notably in restructuring the industry, creating markets and a competitive regulation), the transposition and harmonization agenda they will cover in the coming years and the remaining hot issues. In the light of the European Green Paper it will address to acceding countries as a specific area of EU regulation and policy but of the same nature regarding the sustainability issues. Accordingly, WP5 will treat 1° market design for acceding countries; 2° market power and industry restructuring for sustainability and consumers benefits; 3° harmonizing an effective regulation; and 4° investing for sustainability. For simplifying the work of WP5 only significant case studies on a short list of core issues will be undertaken, avoiding the detailed analysis of the 10 various acceding countries energy systems. It seems that most significant cases for ensuring a sustainable EU energy enlargement are those of the countries interacting with the EU continental energy supply system: namely Poland, Czech Republic and Hungary.

- analysis of market designs and their compatibility with those of other EU countries
- assessment of market power and industry restructuring impacts on sustainability and consumers benefits
- comparison of existing regulation with the regulation of other EU countries
- survey of existing investment programmes for the sustainability of energy systems

Description of work

The participant institutions in this work package will carry out individual studies and they will also interact with one another following an organized format that is common to other work packages. On one hand, the participants will collaborate in the writing of a report that will include a critical review of the considered regulatory practices, the results of the benchmark analysis, the studies that will be performed on specific regulatory schemes and the proposals for novel approaches and their implementation. On the other hand they

will contribute to the conferences and workshops that will be organized within this project in order to facilitate the exchange of experiences and the dissemination of the results.

The leader institution of this work package will organise one academic workshop and one stakeholder conference on the topics that have been included in the work package.

The academic workshop will be devoted to the review and analysis of existing and proposed regulatory policies that are relevant for the aforementioned objectives.

The stakeholder conference will examine specific proposals of policy measures and instruments, with a view to evaluate their potential to be implemented, either at national or EU level.

The participants in this work package will also contribute to the final conferences of the project in Brussels and Florence.

Prior to each conference and workshop, each Research Partner will provide a report with its contribution, according to the tasks that have been previously assigned to each one of them. After each conference and workshop the leader institution of this work package will elaborate a report, where the relevant contributions and conclusions will be included. The outcome of the several conferences and workshops will be reflected in the final report of this work package.

Deliverables IFM:

D26: *“First Report on Creation and Governance of Competitive and Regulatory Mechanisms in the Network industries”* This report will make a review of the academic and professional literature of electricity market design and regulation; it will present an assessment of the competitive nature of regulation, market rules and electricity industry structure as well as the economical and social benefits resulting for the customers and for the public interest, a set of data and indicators assessing the results of the competitive reforms in electricity utility industry; a review of the academic and professional literature of the competitive nature of market rules and electricity industry structure confronted to the results of the assessment;; a project of a further case study of UK, Scandinavia, Germany, Italy, and Czech Republic governance mechanisms used in conducting these electricity reforms and of their influence on the results found in the assessment; an assessment of electricity market design as a conclusion of the corresponding laboratory experiments and a basis of a computational laboratory modelling of the European electric power system). (Adis/U.Paris XI – CE-EI/Praha – U.Siena)

Milestones:

- *An International workshop on “Creation and Governance of Competitive and Regulatory Mechanisms in the Network Industries”* will be used to expose and disseminate the results (month 18) (Adis – CE-EI/Praha – U.Siena)
- The opening of the dedicated section in the web site as a support for the networking

Workpackage 12.2	IFM2.2	Start date or starting event:	Month 0
<p><u>Objectives:</u></p> <p>1° To assess the main results of the theoretical and empirical literature concerning the impact of institutional and regulatory environment and organizational choices on the contracting and the performances of local public services</p> <p>2° To assess the main results of the theoretical and empirical literature concerning the way to benchmark the performances of local public services</p> <p>3° To confront theories of contracts and law and economics approaches with reality (notably the actual relationships between contractual choices – institutional and regulatory environments and – observed performances)</p> <p>4° To collect international data, in order to make and develop a database that can be use for statistical and econometrical tests</p> <p>5° To disseminate these findings in the research community as well as the widest public, including public policy makers, private decision makers</p>			
<p><u>Progress towards objectives:</u></p> <p>1° Collecting data and documents for the assessment and conceiving benchmarks and indicators of performances, institutional and regulatory environments and contractual choices</p> <p>2° Reviewing the academic and professional literature and confronting it to the results of the assessment</p> <p>3° Conducting deep case studies in order to realize a deep analysis of the governance mechanisms used in conducting local public services and to assess the role of institutional and regulatory environments</p> <p>4° Collecting international data on those issues</p> <p>5° Creating and nurturing a web site exposing the data, the interim and the final results; organizing a news network, an intermediate workshop and a final conference</p>			
<p><u>Deviations:</u></p> <p>No significant deviation. Several working papers on Public-Private Partnership in the Water Industry and other Services have been published</p> <p>A special issue of the Journal of Industrial Organization is under preparation.</p>			
<p><u>Deliverables IFM:</u></p> <p>D27: A first report on “Assessment of Alternative Arrangement for Local Services of Economic General Interest” will present: The main results of the theoretical and empirical literature concerning the impact of institutional and regulatory environment and organizational choices on the contracting and the performances of local public services;</p>			



The main results of the theoretical and empirical literature concerning the way to benchmark the performances of local public services; An empirical study concerning contractual choices and performances for local public services (Adis/U. Paris XI) Month 18

Milestones:

- 1° An International Workshop or more probably a special session in an international conference on “Assessment of Alternative Arrangement for Local Services of Economic General Interest” will diffuse the results (month 17) (Adis/U. Paris XI)
- 2° the opening of the dedicated section in the web site as a support for the networking
- 3° an intermediate workshop or a special session in an international conference to diffuse the research

Workpackage 13	IFM3	Start date or starting event:	Month 0
<p><u>Objectives:</u></p> <p>The objective of this project is to deepen the analysis of the regulation of digital networks by focussing on on-line communities to highlight the various pattern of self-regulations and self-governance, to identify the paths along which these patterns emerge and differentiate, and to analyze the impact of these various modes of self-regulations on the performance of exchange or co-production process among them. We also seek to analyze how these self-regulations interact with public ones.</p> <p>While the open-source software communities have been extensively analyzed, other types of communities are less investigated. The additional goal of this project is to address that lack of knowledge</p>			
<p><u>Progress towards objectives:</u></p> <p>1° An extended analysis of the existing literature (often in a digital form on the web) will be analyzed to identify the various types of communities in function of their purpose, mode of governance, dynamics</p> <p>2° Case studies based on interviews, analyses of log-data files and content of the exchanges will be performed to deepen the analysis of the most stimulating cases identified in phase 1 and not extensively analyzed by the literature</p> <p>3° Stylized facts on the dynamics of emergence, mode of performances and properties of various types of communities will be highlighted</p> <p>4° Models based either on Network Dynamics of Governance Theory will be developed to analyze the structuring dynamics of alternative self-regulation regime. Institutional frames will be taken into account to point out how alternative institutions can impact on the characteristic of private ordering</p> <p>5° Industrial Organization models will be used to analyze the impact of these alternative private institutional regimes on the production and distribution of wealth.</p>			
<p><u>Deviations:</u></p> <p>This project has advanced without any significant deviation. Two publications are on their way</p> <p>-a book edited by Eric Brousseau (U. Paris X) and Nicolas Curien (CNAM) entitled "Internet and Digital Economics" will be published in the Fall 2007 by Cambridge University Press. Several papers address the issue of the regulation of digital network</p> <p>-a book edited by Eric Brousseau (U. Paris X), Meryem Marzouki (CNRS) and Cecile Meadel (ENSMP) and to be published by CUP is under preparation. It follows a workshop held in May 2005 in Paris on "Governance, Regulations and Powers on the Internet". It will group the contributions of a multidisciplinary and international team of scholars focussing on proposing a really global perspective on the issue</p> <p>A working paper entitled "The Economics Of Private Institutions" address the issue of self-regulation</p>			

**Milestones:**

1° Academic Papers

2° An international and multidisciplinary workshop on the economics of on-line self regulation will provide an opportunity to enrich the collection of cases, and to cross perspectives on the logic of emergence and functioning of theses communities

3° A web site will seek to provide synthesis and details of our analysis to the members of theses communities, both to benefit from feedback and insights for them and to disseminate the results.

Workpackage 14	IFM4	Start date or starting event:	Month 0
<p><u>Objectives:</u></p> <p>Our general objective is to analyze the provision of quality in business networks to assess how it is developed and managed. Particularly, we will try to show how self-regulation of retailing chains solves asymmetric information problems, reaching homogeneous quality throughout the chain and, consequently, how it favours public interest. Then, our operative objective is twofold. First, it is to provide a comprehensive explanation, drawing on New Institutional Economics (mainly Transaction Cost Economics, Agency Theory and Property Rights Theory), for how incentive scheme, control devices and compensation provisions in franchise contracts lead to find a level of quality which could be offered at a reasonable price (i.e. an efficient solution). Second, the aim is to assess the impact of institutional environment on contractual and organizational choices in franchising relationships.</p> <p>This interest on the incentive scheme is because we think that the success of franchising and the possibility of providing homogeneous quality rely on the coexistence of different incentive systems. On the one side, the franchisee incentive system bases on the perception of his outlet profits (residual claims) and a (theoretical) future premium stream. Both complementary aspects, combined with the threat of termination, reduce the interest of the franchisee in decreasing the provision of quality to extract short run profits (self-enforcing agreement). Consequently, checking the existence of a premium stream is essential to assess this agency argument. On the other side, franchisor incentives rely on several compensation arrangements, which mainly link franchisee sales with his earnings. We will attempt to expand the analysis to the sales of quality controlled inputs to franchisees at prices exceeding marginal costs, which has received little attention from researchers (apart from the royalty rate and the up-front franchise fee).</p> <p>Finally, if this incentive scheme is optimum, it should exist at any institutional environment. Our goal is to check differences among incentive arrangements in diverse regulatory environments, drawing on Law and Economics arguments and collecting international data.</p> <p>Specific objectives are then:</p> <ol style="list-style-type: none"> 1° To study how private and public mechanisms of governance are designed to provide quality services. We will also try to assess theoretically if private governance mechanisms designed at self-regulated chains are relevant to organize the provision of other public services. 2° To analyze the terms of franchise contracts that facilitate the provision of quality services, such as ownership, control devices and financial conditions (including those contracts which do not contain any specific compensation clause: they base their compensation system on the margins charged on input sales to franchisees). 3° To test the existence of economic rents as an incentive device and to study possible complementarities with the residual claim incentive. The feasibility of this objective strongly depends on the availability of reliable information in our secondary sources of information. Otherwise, it will be necessary to launch a survey that will extend longer than this 18-months planning. 			

4° To search for some clues about the influence of regulatory environment on the contractual and incentive structure of the franchise chains for providing homogeneous quality.

Progress towards objectives:

1. THE GOVERNANCE OF QUALITY

1.1. Bibliographic revision and theoretical model propositions

- Theoretical survey on public and private governance mechanisms to promote the provision and standardization of quality in markets. This survey was presented at ISNIE 2005 and it is an input for the IFM report. "The Diversity of Products' Quality Enforcement Devices and their Interactions" (Manuel González-Díaz and Emmanuel Raynaud)

1.2. Case processing

- Several European cases were selected to understand how quality is reached and governed along the vertical chain.

1.3. Working papers.

- A preliminary draft about the main mechanism of governance will be at the beginning of the next 18 months period. "The Governance of Quality: the Case of Agrifood Brand Name" (Marta Fernández-Barcala, Manuel González-Díaz and Emmanuel Raynaud)

2. THE ANALYSIS OF FRANCHISE CONTRACTS

2.1. Bibliographic revision and theoretical model propositions

- Revision of relevant literature (articles and working papers) about franchising, incentive systems, self-enforcement and institutional environment.

2.2. Empirical work

a) Data sources and sample.

We used two main data sources:

- SABI, which provides financial data for all types of firm in Spain. Our target population in this case will be the franchisees operating in Spain.
- Web sites of franchisors. We will try to obtain the complete population of franchise chains operating in Spain at the end of 2003

b) Integration of all data sources in a panel database.

d) Data mining and econometrical analysis.

- Descriptive analysis, depuration and variable design in order to build the econometric model to test the theoretical hypotheses using different statistical and econometric techniques.

2.3. Working papers

- a) Preliminary comparison of franchising ownership structure between France and Spain. "La forma plural de la franquicia española: estructura y evolución" (Vanesa Solis and Manuel González-Díaz)

- b) Financial arguments for Franchising: “Es la franquicia un medio de financiación: Evidencia para el caso español” (Vanessa Solis y Manuel González-Díaz).
- c) “Up-front franchise fees and ongoing variable payments as substitutes: An agency perspective” *Review of Industrial Organization*, 2005, vol. 26, 445-460 (Luis Vázquez).

Deviations:

The lack of appropriate information prevents us from starting the empirical study about the existence of rents. This confirms the need of launching a complementary survey that will extend further than the 18 months (as initially planned).

Given the difference methodology required, we have delayed the beginning of this research to avoid interferences with the other running researches.

This means that the deliverables for the next 18 months will be:

- Working paper about the governance of quality
- Working paper about the determinants of multifranchising.
- Working paper about the financial conditions in franchise contracts.
- A draft about the use of rents as an incentive devices in franchising

Deliverables IFM:

D29: Preliminary reports on franchise contracts and on quality devices. Franchising reports present a theoretical background and some preliminary results from the national study of franchise contracts and from the France-Spain comparison. (Adis/U. Paris XI – U. Oviedo – UPF/Barc). Quality devices survey is a first attempt to summarize and to classify the most important (public and private) mechanism to ensure the quality to consumers.

“La forma plural de la franquicia española: estructura y evolución” (Vanessa Solis and Manuel González-Díaz) (soon available in English)

“Es la franquicia un medio de financiación: Evidencia para el caso español” (Vanessa Solis y Manuel González-Díaz) (soon available in English)

“The Diversity of Products’ Quality Enforcement Devices and their Interactions” (Manuel González-Díaz and Emmanuel Raynaud)

Milestones:

1° Third quarter: We should finish the revision of literature and an assessment of private and public mechanisms of governance for the provision of quality services. Sample and cases should be selected, secondary information collected

2° Fourth quarter (end of first year): primary information collected. Database completed. Then, we have to make a decision about launching complementary survey to gather more detailed information about specific questions. This will extend more than the present 18 months planning.

3° Sixth quarter (second year): first draft with empirical results and international comparison.

We should obtain two types of output:

- a) Report on the use of public and private governance mechanisms for promoting and



protecting uniform quality, including a detailed explanation of the functioning of incentive schemes and their complementarities.

b) Preliminary report on the relevance of using economic rents and other compensation systems as incentive devices to promote quality within the chain. We will also include a pilot comparison between Spain and France in order to assess the influence of the institutional environments in the incentive scheme and, consequently, on the provision of quality services.

Workpackage 15	IFM5	Start date or starting event:	Month 0
<p><u>Objectives:</u></p> <p>1° To assess legal and economic aspects of the governance of intellectual property in a contractual incompleteness perspective that takes into account institutional complementarity existing between innovative investments and property rights on intellectual assets</p> <p>2° To analyze incentives to innovate according to alternative regimes devoted at the protection of intellectual property concerning patents, trademarks and copyright</p> <p>3° To assess possible trade-offs between competition law and intellectual property rights, with specific reference to the application of the essential facility doctrine to the intellectual property domain</p> <p>4° To apply the compared analysis of alternative IPRs regimes to specific sectors such as that of multimedia products, the software or the biotechnology sector</p> <p>5° To collect data on Technology Licensing Agreement in four selected EU countries and to analyze alternative methods to collect and create a panel data on patent and trademark registrations rates at national and EU levels</p> <p>7° To disseminate these findings in the research community as well as the widest public, including public policy makers, private decision makers, European and national groups of interest</p>			
<p><u>Progress towards objectives:</u></p> <p>1° Reviewing the academic and professional literature on historical analysis of the evolution of (public and private) IPRs frames in various industries will be performed to better understand the process of emergence of these devices</p> <p>2° Elaborating theoretical models on costs and benefits of alternative systems of protecting Intellectual property and innovation</p> <p>3° Elaborating case studies concerning, respectively, the evolution of innovation and intellectual property in biotechnology and in software industry (with particular reference to open source)</p> <p>4° Elaborating statistical and econometric analysis of Technology Licensing Agreement (thanks to databases developed in cooperation with the French patent office and with an international business association the LESI)</p> <p>5° Creating a web site exposing the theoretical results, launching meeting, intermediate workshop and the final conference</p>			
<p><u>Deviations:</u></p> <p>1) The Siena Unit has coordinated an edited volume of the International Journal of the Economics of Business (the final 2005 volume), The title of the special issue is: "Intellectual Property Rights and the Organization of Industries: New Perspectives in Law and Economics" edited by Antonio Nicita (Siena), G. Ramello and F. Scherer. Participants in the RefGov project as Eric Brousseau (EconomiX Paris) contributed to the volume. The scientific papers hosted in the special issue critically revised the literature on IPRs and suggested – also through the use of some econometric data – alternative policy options with respect to the current ones adopted in Europe and in US.</p>			

2) the Siena Unit has organized an international workshop which has been held during the first day of the Italian Society of Law and Economics conference held in Siena in 2005. National and International Scholars have been invited in approaching the issue of the governance of intangibles in the globalized era. The session has been introduced by a paper by prof. Ugo Pagano (Siena) titled: "Legal positions and globalization"

3) in 2007 an edited volume published by Routledge will host scientific papers on the relationship between IPRS, Competition and Innovation (edited by A. Nicita, G. Ramello and F. Scherer)

4) A. Nicita together with other two members of the Siena unit has organized a scientific workshop in Toronto, where two papers have been presented: (1) "winback strategies and competition in the communications industry" (A. Nicita); (2) Incomplete Intellectual property Rights and the complementarity between IP and antitrust law" (A. Nicita, M. Rizzolli, A. Rossi). The papers have been presented also at the 2005 ISNIE conference, at the refgov workshop organized by E. Brousseau.

5) A. Nicita (Siena) and A. Castaldo (Siena) presented a paper at the 2005 EALE Conference analyzing the economic criteria to define an essential facility and a mandatory duty to share access to an essential facility by a dominant firm. A topic which is of fundamental importance also for the antitrust treatment of IPRs. The paper titled: "Essential facility access and antitrust in Europe" is currently under revision at the Review of Law and Economics (Berkley Press)

6) M. D'Antoni (Siena) and A. Rossi (Siena and EconomiX) will present at the 2006 EALE conference in Madrid a paper titled "Private, Public And GPLed Innovations" in which the authors clarify the economic implications of the distinction between proprietary, public domain and GPL-ed innovations and to explain how recourse to the GPL system of licenses affects the interaction among economic agents in a setting characterized by multiple producers/innovators and sequential innovations.

6) A. Nicita (Siena) and M. Vatiéro (Siena) present a paper at the 2006 EALE conference in Madrid titled: "When do property rights really matter: hold-up and competition in incomplete contracts". The paper analyzes the relationship between access to property and dominance in the market. A section of the paper is explicitly devoted at analyzing the impact of the model for IPRs.

The first part of the research coordinated by the Siena unit has been dedicated to analyze the theoretical foundations and development of the law and economics literature on IPRs and on the debate on policy options. This has somehow delayed with respect to previous commitments the organization of the other activities planned for the year. While significant progress has been made on objectives 1° and 2° in the past year, the activities of 2006 and 2007 will be devoted at attempting to reach the objectives 3°, 4° and 6°.

The activities on Objective 5 are about to be launched. The first year of Ref Gov has been dedicated to organize an international consortium that will group a US, a Canada, a Japanese together with the University of Paris X to launch the survey.

Also in 2006 and in 2007 the unit will be committed in a strong dissemination activity also through a specific website uploading of working papers.

Deliverables IFM:

D30: A first edited volume on Competition, Innovation and IPRs will review the academic and professional literature on historical analysis of the evolution of (public and private) IPRs frames in various industries will be performed to better understand the process of emergence of these devices and the trade-off between competition law and IPR law (definitive month 10)

A report on will present at least 3 case studies concerning the evolution of innovation and intellectual property in selected sectors (biotechnology, software industry, media);

An econometric analysis of Technology Licensing Agreement (interim month 11; definitive month 16) a Framework Database on patent and trademark registrations rates at national and EU levels in selected sectors (interim 13; definitive month 16) (EconomiX/U. Paris X – U. Siena)

Milestones:

1° A final conference will be organized to expose and disseminate the final results (month 18) (EconomiX/U. Paris X – U. Siena)

2° the opening of the dedicated section in the web site as a support for the networking

3° Edited volume on IPRs, Innovation and Competition

4° Edited volume on case studies in IPRs

5° a workshop will be organized in cooperation with the French Patent Office (and possibly the European Patent Office) and the LESI, to have the hypotheses and the findings of the researchers commented by/diffused to practitioners, both from public institutions and from the business community

6° a multidisciplinary workshop will be organized on the historical analysis of the evolution of (public and private) IPRs frames in various industries (media, biotechnology and software)

Workpackage 16	IFM6	Start date or starting event:	Month 0
<p><u>Objectives:</u></p> <p>1° To assess the theoretical framework concerning the interaction between public and private orderings with particular reference to the emergence of economic and legal norms and to the comparison between most European Legal systems (in Italy, France, Spain and Germany) and the Common Law systems (US, UK)</p> <p>2° To analyze the specialization advantages and costs of the decentralization of rule making to courts, describing the essence of the common and civil law, and stating our hypothesis concerning their structures and evolution, also in a context of endogenous preferences. To test the consistency of our hypothesis on economic behaviour and institutional performance by reviewing the relevant historical evidence and the alternative explanations provided in recent comparative performance of legal systems and by adopting the experimental methodology. To examine the policy implications, emphasizing the importance of local circumstances for designing these institutions</p> <p>3° To analyze the efficiency of private orderings in a context of dynamic competition, with reference to the trade-off between contract enforcement and ex-competition and to apply the theoretical insights to the analysis of the rules applied in Competition Laws at European and National levels with specific reference to vertical restraints</p> <p>4° To assess the property of public enforcement by analyzing the criminalization of the civil law through the lenses of the economics of law enforcement (sanctions, power of judges, determination of economic evidence, ...), the analysis of strategic behaviors of public and private agents and more generally the debate on efficiency of common law and civil law</p> <p>5° To disseminate these findings in the research community as well as the widest public, including public policy makers, private decision makers, European and national groups of interest</p>			
<p><u>Progress towards objectives:</u></p> <p>1° Reviewing the academic and professional literature on private orderings and the emergence of economic, legal and social norms in crafting institutional complementarity and the co-evolution of economic and legal rules in shaping alternative economic systems and institutional frameworks</p> <p>2° Reviewing recent cases and legal doctrines debates through the lenses of law and economics and transaction cost economics with particular focus on contract law&economics, competition law&economics, constitutional law&economics, criminal law&economics.</p> <p>3° Organizing an intermediate workshop and a final conference to discuss and synthesize the results of the three parallel researches</p>			
<p><u>Deviations:</u></p> <p>The activities have advanced in several fronts:</p>			

1. Publication of several works related to the Work Package, mainly:

ANDONOVA, Veneta, "Reglas electorales, competencia política y derechos de propiedad: Un estudio del ámbito internacional," en *Organización de gobiernos y mercados en las sociedades democráticas. Análisis de casos desde la Nueva Economía Institucional*, Fernando Toboso y Xose Carlos Arias (eds.), Universidade de Vigo, Universitat de Valencia, Spain, 2006.

ARRUÑADA, Benito, and Veneta ANDONOVA, "Market Institutions and Judicial Rulemaking," in Claude Ménard and Mary M. Shirley, eds., *Handbook of New Institutional Economics*, Dordrecht, Springer, 2005, 229-250. Portuguese translation: "Instituições de mercado e competência do Judiciário," in Décio Zylbersztajn and Rachel Sztajn (ed.), *Direito e economia*, Rio de Janeiro, Elsevier, 2005, 197-227.

CASARI, Marco, "On Decentralized Punishment Technologies," *Experimental Economics*, 2005, 8, 2, 107-115.

2. Development of related research. Expenditure of RefGov has concentrated on the experimentation analysis of judicial decisions. A new methodology has been developed and preliminary results funding presented in an international conference. A new working paper is expected in the Fall of 2006.

3. Previous research on these topics has continued, resulting in the publication of several working papers:

ARRUÑADA, Benito, and Nuno GAROUPA, "The Choice of Titling System in Land," *Journal of Law and Economics*, 48(2), 2005, 709-727.

GAROUPA, Nuno, "Forfeiture of Illegal Gain: An Economic Perspective," 2005, with R. BOWLES and M. FAURE, *Oxford Journal of Legal Studies*, vol. 25 (2), pages 275-295.

GÓMEZ, Fernando, "Competition, Inefficiencies, and Dominance in Corporate Law: A Comment on Bar-Gill, Barzua, and Bebchuk, 'The Market for Corporate Law'", 162 *Journal of Institutional and Theoretical Economics* (2006), pp. 161-167.

GÓMEZ, Fernando, "The Unfair Commercial Practices Directive: a Law and Economics Perspective," *European Review of Contract Law*, 2(1), February 2006, 4-34.

4. Two international conferences have been organized:

4a) Ninth Annual Conference of the Intl. Society of New Institutional Economics, ISNIE, at University Pompeu Fabra, Sept 2005: several sessions were dedicated to the topics of the Work Package.

4b) Comparative Law and Economics Forum (CLEF) 13th Annual Meeting, Universitat Pompeu Fabra, Barcelona 10-11 June 2006: Fully focused on topics related to the Work Package.

Deliverables IFM:

D31: A final report will present a survey of the literature and the results of the three studies. (EconomiX/U. Paris X – U.Siena – UPF/Barc)

D32: Report on the proceedings of the final seminar/conference in law and economics on the economics of public/private regulations (EconomiX/U. Paris X – U.Siena – UPF/Barc)

**Milestones:**

- 1° “International Workshop on Behaviors, Contractual Practices and the legal Environment” (EconomiX/U. Paris X – U.Siena – UPF/Barc)
- 2° A set of four academic papers: 1 issue from each of the three studies, one transversal paper based on a survey of the literature
- 3° An intermediate workshop as a collective monitoring of the research
- 4° Final conference (month 18)

Workpackage 17	CG1	Start date or starting event:	Month 0
<p><u>Objectives:</u></p> <p>To study the evolution of corporate governance codes.</p>			
<p><u>Progress towards objectives:</u></p> <p>The CBR/Camb, U.Bristol, CPDR/UCL, U.Liège, EconomiX/U.Paris X, and CEU/Budapest teams have each started to carry out literature reviews and documentary research relating to (1) the evolution of corporate governance codes and other relevant norms in their respective countries, (2) their links to legal debates about the nature of the company interest and the addressees of directors' duties, and (3) the status of the shareholder value norm in law and practice in those countries. The work covers both theoretical analysis and case studies.</p> <p>The predominant paradigm in corporate governance is that of agency theory, which, among other things, advocates the use of incentive structures to reduce agency costs which arise from the separation of ownership and control between shareholders and managers. In some versions, the relevant incentives derive from formal laws or contract terms; in others, a wider range of social norms, practices and routines is brought into the picture. The literature also varies in the degree to which it is assumed that incentive structures can be designed ex ante, and how far they are subject to a process of emergence or evolutionary selection, the direction of which can only be identified ex post. In each case, however, it is being assumed that agents will respond to incentive structures, once they are in place, in a more or less predictable way. An assumption of this kind unites the various approaches which come under the heading of 'new institutionalism', including transaction cost economics, evolutionary game theory and sociological institutionalism. The predominant approach has been criticized by Cobbaut (Louvain-la-Neuve), drawing on the work of the CPDR group in Louvain-la-Neuve, as offering a 'mentalist' perspective, in which substantive rationality on the part of the individual actor is assumed (as in the assumption of perfect information and perfect capacity to act, in neoclassical economic theory); corresponding to this is a concept of the norm as a 'constraint', within which agents pursue their well being as far as they can ('optimisation'). This line of thinking treats institutional features (norms) as if they were natural facts. By contrast, an 'action-based' or pragmatic conception departs from the assumption of perfect rationality in favour of learning as the basis for decision making, and replaces 'constraint' with 'context' as the basis for a theory of the norm. Norms are seen not as direct prohibitions, but as means of empowering actors; norms endow actors with the capacity to act. Institutional features do not predetermine outcomes, but may influence them. Actors have different perceptions of their situations, and must arrive at a shared understanding through a process of mutual adjustment of those perceptions. Normative structures will be more or less successful depending on how far they can generate a learning process of this kind. This type of 'collective learning' is not an entirely spontaneous process, but depends on the right conditions being put in place through public action, and through an articulation of the 'public interest'.</p> <p>Evidence for the limits of the existing paradigm as a basis for public policy is available from the presentations so far made to the sub-network. Rebérioux (Paris-X), building on his work Aglietta, argues that the predominant interpretation of the rise of shareholder primacy is that it is a means of reducing managerial power. Shareholders are empowered to act to control managers on the basis of information they get from three sources: external monitors, the</p>			



gatekeepers, such as credit rating agencies and auditors; the board of directors, in particular the independent directors; and the flow of information generated through the capital market, by, among other things, hostile takeovers. However, an alternative interpretation is that the rise of shareholder power has coincided with a decline in the accountability of managers. This is evident in the multiplication of accounting irregularities and abuses of executive pay, in particular of share options (which, paradoxically, were meant to align shareholders and manager interests, but which are now described in terms of 'rent extraction' even in the mainstream literature: Bebchuk and Fried, 2005). Board members are either insufficiently independent or insufficiently informed to prevent this, and the gatekeepers have failed in their role. Weak control of managers, coupled with intense competition for capital among firms, has led to endemic short-termism.

Work by Villiers (Bristol) shows that disclosure is a key element of corporate law, and has been explained as assisting in decision making, increasing shareholder voting capacity, and aiding corporate democracy. However, the current UK disclosure regime reflects a set of widely held assumptions about the 'agency relationship' between shareholders and managers. Thus the purpose of disclosure rules is to facilitate accountability to shareholders, and not to other stakeholder groups. A debate about the role of other stakeholders in the disclosure process is beginning as a result of the legislative reforms introducing the 'operating and financial review' (which have since been repealed in order to reduce the 'regulatory burden' on companies, although elements of the OFR may return via European accounting rules). However, it continues to be the case that reporting on social issues is largely voluntary and discretionary, in contrast to the more mandatory, and highly complex, rules governing financial disclosure. Failures to comply with information and consultation laws arising from employment law are often condoned. A further problem is that even financial disclosure is often ineffective. Shareholders often find little of direct value in the annual report, and have few voice-related options as opposed to exit-related ones. The role of auditing firms and other gatekeepers is problematic in this regard.

The objection which is normally made to 'stakeholder' approaches to corporate governance is that they would impede efficient decision making, by giving managers confusing objectives. The notion of 'enlightened shareholder value' which is now becoming entrenched in UK company law seeks to deal with this issue by adopting a purely instrumental conception of the stakeholder interest: it is appropriate for managers to consider the interests of a wide range of corporate stakeholders only in so far as this is done in order to return value to shareholders. Moore (Bristol) argues in his work that this does not mark a significant departure from the agency model. He poses the question of whether an approach to corporate governance based on the insights of a 'learning' or 'pragmatic' perspective offer any better alternative.

Work by Elms (CEU) looks at the development of corporate governance codes made under the auspices of the Budapest stock exchange after it reopened in 1990. At first it was a very small operation and still has only around 50 issuers (by contrast, in its Polish equivalent, there are over 200). Stock market capitalization in Hungary is only around 20% of GDP. Just three companies make up most of the market capitalization of listed firms. Bank-led financing on the German model is the norm. Basic company law is a mix of German and US influences, with a version of the German 2-tier board. It is not mandatory for companies to allow proxy voting, and in practice it is often not observed. It is not unknown for companies to change the site of the AGM at the last minute. The Corporate Governance guidelines are based on the OECD model and respect the 'comply or explain' principle. One of the issues to come out of this account is whether, in the context of a small-scale stock market in a system where companies are largely reliant on bank finance,

the code is just window dressing, or is really making a difference to corporate governance practice and to the viability of the listed company sector.

Deviations:

None: the work has proceeded according to schedule, with each team working on the material relevant to the country in question, although the workshop envisaged for Bristol in April 2006 has been postponed to the autumn of 2006.

Deliverables CG:

D33: Report on the evolution of corporate governance codes (CBR/Camb). This is due in December 2006; a meeting is due to be held in Cambridge, bringing together the different groups. This will probably be held in January 2007 or, subject to the commitments of team members, at some later point early in the new year.

Milestones:

1° Workshop, Cambridge, June 2005 (CBR/Camb). Please see the workshop programme and workshop report in the annexe

2° Workshop, Bristol, planned in April 2006 (U.Bristol). In order to allow a longer gap between this and the first meeting in Cambridge in June 2005, enabling the teams to make further progress on the work this has been postponed to the autumn 2006

3° Conference, Cambridge, planned for the new year 2007 (CBR/Camb)

Workpackage 18	CG2	Start date or starting event:	Month 0
<p><u>Objectives:</u></p> <p>To study the impact of financialisation on employment and performance.</p>			
<p><u>Progress towards objectives:</u></p> <p>The CBR/Camb and Economix (ex-Forum)/U. Paris X teams are studying the impact of financialisation in Britain and France through an econometric study of the link between financial markets and the employment relationship, using data from the UK's WERS (Workplace Employee Relations Survey) and the French REPONSE (Relations PrOfessionnelles et NégociationS d'Entreprise). The two surveys contain similar information on ownership structure, labour management and worker involvement (REPONSE was modeled on WERS), and can be compared at different points in time. The two groups have had two meetings in Paris at which a common methodology was developed (this included discussion of the construction of composite variables making comparison across the two datasets possible and refinement of theoretical questions and hypotheses); the analysis was then carried out and first results reported at conferences in September 2006 (paper jointly written by Conway, Deakin, Konzelmann and Wilkinson from Cambridge (and associates) and Rebérioux and Petit from Paris). The results are of considerable interests as they demonstrate that corporate governance form does influence human resource management practices and outcomes in both countries. They show that listed companies are more likely to engage in training and formal consultation than other forms (non-listed companies, cooperatives, mutuals, charities and public interest companies) but less likely to engage with employees over organizational change in a substantive sense and, in the UK, less likely to make commitments of job security in return for employee loyalty and commitment. The analysis also shows that French listed companies are becoming more like their UK counterparts in terms of their approach to HRM, but that convergence is by no means complete. These results are preliminary and will be further refined in the coming months.</p> <p>Autenne (Louvain-la-Neuve), in her complementary account of employee share ownership and pension fund regulation the US and France, argues that features of US pensions law reflect mainstream finance theory: the exclusive benefit rule; the power of trustees to override the contrary wishes of the beneficiaries; the power of the employer to appoint trustees; and the use of pension fund surpluses to further corporate mergers and acquisitions. In practice, there are serious conflicts of interest between the concerns of workers as employees and as beneficiaries. By contrast, there are elements of a reflexive conception of pensions regulation in French law: these include norms designed to enhance collaboration between workers, trustees and corporate management; and a guiding conception of the public interest based on inter-generational solidarity. This paper is forthcoming in the <i>Journal of Corporate Law Studies</i>.</p>			
<p><u>Deviations:</u></p> <p>None: the work has proceeded according to schedule, with substantial progress being made on the WERS and REPONSE datasets, and on the case studies.</p>			

Workpackage 19	CG3	Start date or starting event:	
<p><u>Objectives:</u></p> <p>To study the impact of changes in corporate governance codes and related rules on relations at enterprise level.</p>			
<p><u>Progress towards objectives:</u></p> <p>The CBR/Camb, Economix/U.Paris X, U.Liège and CPDR/UCL teams are carrying out a series of case studies, looking at the ways in which changes in corporate governance rules and shifting patterns of ownership and control are affecting the structure of particular enterprises.</p> <p>Chane-Alune (Liège), in her doctoral work, discusses the recent evolution of IFRS accounting standards, charting the shift away from historical cost accounting to the 'fair value' accounting method. 'Fair value' is defined as 'the amount for which an asset could be exchanged or a liability settled between knowledgeable, willing parties in an arm's length transaction'. Her empirical study of the debates leading up to the adoption of the fair value approach by international accounting standards bodies argues that the justifications offered for this attach particular importance to the market as a privileged locus for exchange and to price as a measure of value. They are also linked to shareholder value-based metrics, such as 'economic value added'. Chane-Alune therefore argues that this move is an affirmation of the agency model of the firm and of the efficient capital market hypothesis (the claim that, thanks to the efficient 'microstructure' of financial markets, all available information is embodied in market prices, without significant or enduring bias).</p> <p>A 'pragmatist' paradigm for corporate governance can be defined as one which provides a space in which the relevant parties can construct the 'collective knowledge' or shared assumptions which are needed for effective solution to coordination problems to emerge. This would be in contrast to an approach in which it is assumed that incentive structures are fully 'state-contingent', that is, they can exhaustively identify the likely responses of actors to potential coordination failures in relevant states of the world. Sanyahi (Louvain-la-Neuve) illustrates the difference in approaches in an account of Belgian insolvency law which, he suggests, is failing because of the excessively rigid role accorded to the court-appointed officer, the <i>commissaire de sursis</i>; rather than mediating between the different parties involved in financial distress, in order to broker bilateral solutions, the <i>commissaire de sursis</i> too frequently sees his role as an external expert, imposing a solution.</p> <p>A transversal thematic, still to be deepened and refined, emerged from the discussion of the various presentations (especially 3, 4 and 5). It can be synthesized with the concept of 'financialization of the economy', to be understood both as a set of structural problematics (the impact of the ways financial markets are presently operating) and as a set of 'naturalized' mental references (the emblematic example being the concept of 'value' in use in the accounting standard-setting process). Other facets of this transversal thematic will become apparent in the presentation of the above-mentioned research about the EU action plans. Moreover, this transversal dimension has to be extended to the sub-themes CG2 and, to some extent, CG1.</p> <p>Tadjeddine (Paris-X) offers a country-based study which also questions the viability of the</p>			



agency model. She suggests that although there has been considerable legal change aimed at improving financial market operations in France since the early 1980s, and an expansion of asset management, French industry remains dominated by SMEs which use bank loans and leasing to finance their activities, and only a few access external finance through IPOs. In the case of large listed firms, the market does not effectively control management, thanks among other things to cross-shareholdings, and some large firms, such as Michelin, avoid going to the stock market to raise finance if they can avoid it. Thus corporate governance is much more diverse than most accounts allow for. There is, at the same time, a significant problem in France, of lack of access to external finance on the part of medium sized firms.

Deakin and Hobbs (Cambridge) study corporate social responsibility in the UK. CSR has been a focus for a series of policy initiatives in Britain since the late 1990s. These include the establishment of a government ministry with responsibility for promoting CSR; a series of DTI publications encouraging a debate on the subject; the Kingsmill review on pay equity, which advocated the use of CSR-type mechanisms to reduce discrimination at work; and a number of proposals for changes to company law and accounting practice which would have embodied the principle of CSR, including, most prominently, the 'operating and financial review' (OFR), an auditing standard aimed at creating a market for information in the way listed companies dealt with CSR-related issues. So far, however, the concrete results of this process have been minimal. The mechanisms proposed by the Kingsmill review, which are voluntary, have had little or no impact on corporate practice and minimal response from the listed company sector at which it was aimed. In late 2005, the long-standing government commitment to legislate on the OFR was revoked in a speech by the Chancellor of the Exchequer Gordon Brown, apparently in an attempt to persuade the main employers' organization, the CBI, that the government was doing all it could to reduce 'red tape'.

Deviations:

None: the work has proceeded according to schedule, with each team reporting work on the enterprise-based case studies at the Louvain-la-Neuve workshop.

Deliverables CG:

D35: Report on the impact of corporate governance changes on enterprise-level relations (CPDR/UCL) December 2006

Milestones:

Seminar, Louvain, February 2006 (CPDR/UCL). See the programme and the report on the seminar in annex. <http://refgov.cpdr.ucl.ac.be/?go=all>

Conference, Cambridge, new year 2007 (CBR/Camb)

Workpackage 20	CG4	Start date or starting event: Month 0
<p><u>Objectives:</u></p> <p>To study the interaction between mechanisms of corporate governance and inter-firm network relations.</p>		
<p><u>Progress towards objectives:</u></p> <p>Different governance patterns are being studied in respect of firstly, contractual or inter-firm linkages (mainly: subcontracting networks, franchising, licensing agreements, strategic alliances, contractual consortia, etc.); secondly, particular corporate forms (corporate joint ventures, corporate networks, corporate groups, interlocking directorships); and thirdly, self-regulatory mechanisms (ethical standards, codes of conduct, charters).</p> <p>In the work of the Trento/EUI group (Iamiceli, Ristori, Lucarelli, Cafaggi) a central issue is the definition of a network in both an economic or sociological sense and a legal sense. A network in an economic or sociological sense can be defined as a set of stable relationships among autonomous enterprises, involving elements of both cooperation and competition, leading to the sharing of critical resources leading to inter-dependence, resources which are costly to acquire in the market, or otherwise scarce. How far is there a corresponding legal notion of the network? Sociological accounts stress the informality of networks, but from the legal perspective, some degree of formality, perhaps combined with informal elements, would be expected. The legal literature has identified a number of network types: productive/innovative/financial/public or collective interest-based/contractual vs organisational. There is an open-ended typology. The concept of an industrial district add to the notion of network the idea of the specialization of firms by sector and by geographic locality. The Trento/EUI group has been conducting empirical research in several sectors – footwear and sportswear, leather, wine, jewellery, furniture, mechanical/electronic – in Veneto (North-East Italy) and Tuscany (Central Italy). The aim has been to observe two types of networks: networks of SMEs; and mixed networks (involving banks and local authorities). The dimension is local (smaller than a province; e.g.: study of footwear in Montebelluna). Focus has been on: What kinds of networks exist (e.g. models of subcontracting – what is the stability of the relationship; what are the specific investments made by each partner)? How do they work in terms of access to finance and access to innovation? How does the law impact on networks (e.g. imposition of formality; protection of industrial property; legal corporate forms – interlocking directorates, corporate societies; types of safeguards of critical resources, etc.)? What is the notion of public interest (e.g. in relation with aspects such as innovation, consumer protection, etc.)? Is the network a good form to pursue the public interest?</p> <p>The Cambridge group (Deakin, Lourenço Pratten) has focused on the development of inter-firm contracting and network relations in television production and broadcasting in Britain over the last decade. For the past decade, British television programme production has been the subject of an institutional experiment in the use of regulatory change to promote market liberalisation. Competition was intensified in the sector by parallel reforms: one, instigated by legislation, required terrestrial broadcasting companies to outsource a fixed proportion of their programming to external producers; the other, brought largely about by administrative action, led to the creation of an ‘internal market’ inside the BBC, the principal custodian of the values of public service broadcasting. These developments took place</p>		

against a background of technological changes (including the use of the spectrum for digital broadcasting) which provided opportunities for new entrants and upset the previous 'duopoly' of the BBC and its main commercial sector rivals, the ITV companies. At the same time, partly out of respect for the public service broadcasting ideal, complete marketisation, involving universal pay per view and the unbundling of production from broadcasting, was resisted. In complementary work, Deakin has examined antecedents of the network form in the pre-industrial guilds in England.

This work has been presented at workshops in Cambridge and Florence and several publications are forthcoming from this work.

The project teams have also been involved in preparing a common questionnaire for empirical research on networks, and in identifying the sectors for study (which are likely to include the media sector and wine industry). The empirical stage of the work will be launched early in 2007.

Deviations:

None: the work has proceeded according to schedule. A very useful meeting was held in Florence in December 2005. We expect to finalise questionnaires in the autumn of 2006 and begin interviewing early in 2007.

Deliverables CG:

D36: Report on corporate governance and inter-firm relations (EUI/Flo – U.Trento) December 2006

Milestones:

Seminar, Florence, December 2005 (EUI/Flo – U.Trento) see
<http://refgov.cpdr.ucl.ac.be/?go=all>

Conference, Cambridge, new year 2007 (CBR/Camb)



Workpackage 21	FR1	Start date or starting event:	Month 0
<p><u>Objectives:</u></p> <p>While the initial objective was to study the relationship between the legal infrastructure of the internal market (economic freedoms and competition law) and the ability for the Member States of the EU to ensure an adequate protection of fundamental rights within their jurisdiction, this objective has been slightly redefined – and broadened in order to explore also the relationship between the other integration project of the EU – the establishment between the Member States of an area of freedom, security and justice – and the fundamental rights policy of the Union. The intention of this WP has been, thus, to highlight the position of fundamental rights in the general process of European integration, in particular in order to identify the conditions under which the promotion of fundamental rights may contribute to that integration, and where it may instead constitute an obstacle ; and on that basis, which coordinating mechanisms could ensure the most adequate complementarity between fundamental rights protection and European integration.</p>			
<p><u>Progress towards objectives:</u></p> <p>Prof. G. de Burca (EUI/Flo), prof. O. De Schutter (CPDR/UCL), and prof. R. Lawson (U.Leiden) studied the impact of the process of European integration on the protection of fundamental rights at the level of the Member States. This included:</p> <p>1° an analysis of the status of fundamental rights in the case-law of the European Court of Justice, especially when they are seen to conflict with the requirements of the free movement of persons, the free provision of services, the free movement of goods or of capital, or when they are considered to distort competition between the member States</p> <p>2° an analysis of the impact of free movement within the EU in the case-law of the European Court of Human Rights;</p> <p>3° an analysis of the notion of externalities, both negative and positive, in the field of fundamental rights (the extent to which initiatives taken by one State influences developments in other States, either limiting their capacity to act or instead facilitating the choices in those States, which share with the former State a common area)</p> <p>4° the tools which presently exist to meet this phenomenon of externalities (analysis of the competences of the EU in the field of fundamental rights). The main lesson emerging from these initial studies and from the seminar at which they were discussed was that, while there are clear advantages both in the definition of common standards in the area of fundamental rights throughout the EU and in privileging instead experimentation at the national level, in order to take into account the specificity of local contexts and needs, and thereby to improve collective learning, the potential of these advantages remains largely unfulfilled. This deficiency may be attributed : first, to the absence of a reflexive approach to the issue of distribution of competences in this area ; second, to an instrumentalization of the principle of subsidiarity, which is essentially used to justify the result of deal-making but has failed to provide effective and reliable guidelines as to how the non-exclusive competences of the Union or the Community to realize fundamental rights should be exercised ; and third, to the absence of any institutional mechanism systematically monitoring fundamental rights in the EU Member States in order to ensure that they learn from one another and in order to identify the need for a initiative at the level of the Union or the Community.</p>			
<p><u>Deviations:</u></p>			

Our inquiries into the role of fundamental rights in the establishment of the internal market and in the creation of an area of freedom, security and justice, led us to identify as one key question for the research the role of the mechanism of mutual recognition as a means to reconcile a diversity of protections (ensured at the level of each Member State) with the establishment of a common legal space. This in turn is part of a broader question, which is the relationship of European private international law – which may be seen as a tool to manage externalities resulting from the coexistence of different legal systems in the EU – to the protection of the fundamental rights. We therefore commissioned a paper on this relationship to Veerle Van den Eeckhout (Leiden).

Deliverables FR1:

D37: Three working papers and a Synthesis report on the decentralized implementation of fundamental rights in a shared area of freedom, security and justice.

The role of the European Court of Justice in balancing economic freedoms and fundamental rights, Working paper by G. de Burca, EUI - Florence

The Monitoring of Fundamental Rights in the Union as a contribution to the European legal space (I): The added value of a systematic and regular monitoring of the situation of fundamental rights in the Member States for the evaluation of the implementation of Union laws and policies, Working paper by O. De Schutter and Valérie Van Goethem

The Monitoring of Fundamental Rights in the Union as a contribution to the European legal space (III): the Role of the European Court of Human Rights, Working paper by R. Lawson Universiteit Leiden

Milestones:

A seminar on the decentralized implementation of fundamental rights in a shared area of freedom, security and justice was held in New York on 4 November 2005 (Month 6).

June 2005 – October 2005: preparation of the working papers to be discussed at the seminar and in anticipation of the consolidated report

See Agenda at <http://refgov.cpdr.ucl.ac.be/?go=all>

Workpackage 22	FR2	Start date or starting event:	Month 5
<p><u>Objectives:</u></p> <p>The objective of this workpackage was to identify and critically examine the tools of European Governance which already contribute to collective learning and open coordination of the policies by the Member States in the field of fundamental rights.</p>			
<p><u>Description of work:</u></p> <p>The CPDR/UCL, BIM/Wien and U.Leiden teams described the existing framework for the coordination of the initiatives of EU Member States in the field of fundamental rights. Their focus was on three questions, corresponding to three working papers which were presented and discussed at the seminar closing this part of the research. The first question was the contribution of existing monitoring mechanisms, both at European and international level, to collective learning: the purpose was here to examine human rights monitoring as an enterprise oriented towards the production and sharing of knowledge, facilitating mutual learning and exchange of good practices. The second question concerned the tools we have at our disposal in order to ensure the comparability of national experiences in the field, on the precise identification of which are “best practices”, on the use of statistical data and indicators (which such data are available at an European level to ensure comparability? which are the differences between Member States with respect to the collection of data on fundamental rights issues? which are the international or European norms regulating the collection of such data ?). A third question concerned the institutional framework within different Member States of fundamental rights policy (e.g., the organisation of national independent institutions for the protection of human rights, the role of NGOs...). The results was discussed and coordinated at a one-day seminar which was held in Brussels under the direction of Olivier De Schutter CPDR/UCLouvain. The seminar was particularly useful in highlighting the limits of the currently available methodologies of comparison – a theme which was also explored on the basis of the previous work of the CPDR on indicators in the European Employment Strategy under the 5th Framework Programme –. It also examined in depth the emerging networks of national actors seeking to contribute to the promotion and protection of fundamental rights at national level (especially national human rights institutions, and non-governmental organizations, but also ombudsman institutions), and asked, on the basis of a mapping of these networks, whether their further institutionalization could facilitate cross-country comparisons and mutual learning without a need to rank performances of different States along common metrics, not to risk instrumentalization of the data provided by national governments on their achievements.</p>			
<p><u>Deviations:</u></p> <p>A working paper on the private international law aspects of fundamental rights protection was explicitly included, for the reasons referred to above, although this paper was not anticipated in the initial workprogramme. Moreover one working paper, focusing on the evolution of the constitutional and legislative framework for the implementation of social rights in the Union, was prepared by O. De Schutter as a complement to the working paper prepared by G. de Burca for the first seminar (the role of the European Court of Justice in balancing economic freedoms and fundamental rights): this followed from the recognition that the study of the role of the Court could hardly be dissociated from a broader study on the changes in the constitutional architecture of the EU, in which the</p>			

economic objectives of the EC were progressively balanced by social objectives.

Deliverables FR2:

D38: Four working papers and a Synthesis report on the existing institutional framework for the development of an improved form of coordination of fundamental rights policies pursued at the level of each Member State.

Working paper 1: Monitoring the Protection of Human Rights in the European Union: An Evaluation of Mechanisms and Tool, M. Nowak, V. Wagner

Working paper 2 : The national institutions for the promotion and the protection of human rights in the EU Member States, Olivier De Schutter

Working paper 3: How to Rule the Rule of Law? On Courts, Ombudsmen and The Governance of Fundamental Rights, Rick Lawson

Working paper 4 : The Promotion of Fundamental Rights by the Union as a contribution to the European legal space (II) : the Balance between Economic and Social objectives in the European Economic Constitution, Olivier De Schutter

Working paper 5: Settling Choice of Law Issues in the Union and its Interaction with Human Rights. The importance of private international law for the project: on the strategic use of private international law,

Working paper 6: par Veerle van den Eeckhout

Milestones:

September 2005 – March 2006: exchanges between the authors of the report both in preparation of the seminar and for the preparation of the consolidated report.

March 2006: presentation of the initial results of the research at a Seminar in Brussels, after which the consolidated report can be finalized: Seminar on the existing institutional framework for the development of an improved form of coordination of fundamental rights policies pursued at the level of each Member State.

See agenda at <http://refgov.cpdr.ucl.ac.be/?go=all>

Workpackage 23	FR3	Start date or starting event:	Month 8
<p><u>Objectives:</u></p> <p>To synthesize the initial findings about the relationship between implementation of fundamental rights by the Member States and the constitutional structure of the Union, the current mechanisms through which this relationship is mediated, and the theoretical framework which could help us identify the mechanisms through which such implementation could be improved.</p>			
<p><u>Description of work:</u></p> <p>The findings of WP21 FR and WP22 FR have been synthesized <i>into a report delivered to the Theory of the Norm Unit in order for that research team both to develop the general hypothesis on the basis of the findings from the sub-network, in particular concerning the difficulties raised by the implementation in institutional devices of the hypothesis of reflexive governance, and in order for that research team to identify further questions which the sub-network may have neglected.</i> . That report, as well as the other working papers and reports presented at the two seminars held on M5 and on M8, have been presented and put into discussion in the context of an Open Conference held at Louvain with external participants.</p>			
<p><u>Deviations:</u></p>			
<p><u>Deliverables FR3:</u></p> <p>The working papers presented and discussed at the conference were the final versions of papers initially prepared for the first two seminars. They will again be revised for their final publication in book form. In addition, one report sought to relate the contributions on the protection and promotion of fundamental rights in the Union to a broader theoretical framework (see the Working paper : "A Fundamental Rights policy in the Public Interest : The Decentralized Implementation of Fundamental Rights in a single Area", Olivier De Schutter)</p> <p>D39A Fundamental Rights policy in the Public Interest : The Decentralized Implementation of Fundamental Rights in a single Area, by O. De Schutter.</p> <ul style="list-style-type: none"> - The Promotion of Fundamental Rights by the Union as a contribution to the European legal space (I) : Mutual Recognition and Mutual Trust in the Establishment of the Area of Freedom, Security and Justice, by O. De Schutter. - The Promotion of Fundamental Rights by the Union as a contribution to the European legal space (II) : the Balance between Economic and Social objectives in the European Economic Constitution, by O. De Schutter. - The Promotion of Fundamental Rights by the Union as a contribution to the European legal space (III) : the Role of European Private International Law, by V. Van den Eeckhout. - The Monitoring of Fundamental Rights in the Union as a contribution to the European 			

legal space (I): The added value of a systematic and regular monitoring of the situation of fundamental rights in the Member States for the evaluation of the implementation of Union laws and policies, by O. De Schutter and V. Van Goethem.

- The Monitoring of Fundamental Rights in the Union as a contribution to the European legal space (II): The role of national actors – Ombudspersons and national human rights institutions, by O. De Schutter and R. Lawson.

- The Monitoring of Fundamental Rights in the Union as a Contribution to the European Legal Space (III): The role of the European Court of Human Rights, by R. Lawson.

- The Monitoring of Fundamental Rights in the Union as a contribution to the European legal space (IV): The Role of the European Court of Justice in balancing economic freedoms and fundamental rights, by G. de Burca

- The Monitoring of Fundamental Rights in the Union as a contribution to the European legal space (V): Monitoring the Protection of Human Rights in the Union: an evaluation of mechanisms and tools, by M. Nowak and V. Wagner

Milestones:

The Conference was held in Brussels on 24 May 2006. All the researchers involved in the sub-network took part in this conference, one of the main objectives of which, indeed, was to ensure an adequate link between the first phase of the research, in which only a limited number of researchers were involved, and the second phase, where a wider range are implicated in order to explore the hypothesis of the research in difference substantive fields. Moreover, external experts contributed to the proceedings, and younger researchers took part. The event provided the members of the REFGOV fundamental rights sub-network with an opportunity to have an exchange with academics who, although not part of this research, were asked to comment on its development and to offer contributions based on their work in a diversity of fields.

Agenda available at <http://refgov.cpdr.ucl.ac.be/?go=all>

Workpackage 24	TNU1	Start date or starting event:	Month 0
<p><u>Objectives:</u></p> <p>The purpose of the seminar 1 (June 2005) (coordinator: CPDR/UCL) is to explore and develop the most recent developments in <i>the theory of the norm</i> and their connection to theory of action. (incorporationist thesis), more particularly to show how the current debates in theory of law were narrowly linked to the developments in theory of governance.</p>			
<p><u>Progress towards objectives:</u></p> <p>The WP1 is related to the Component 1 (Theory of the Norm) of the research of the Theory of the Norm Unit. It consisted of one seminar and one report. Thanks to their reinterpretation of the current conventionality thesis in Theory of the Norm, authors like Jules Coleman (The Practice of Principle, Oxford UP, Oxford) attempt to redefine the conditions of the norms while surpassing the naturalist and classical pragmatist approaches of normativity. For them, “a norm must be capable of guiding conduct either motivationally or epistemically” (Coleman, 2001: 135). For Coleman, this practical difference thesis allows the determination of the conditions of “the attractiveness of law” (192) from the standpoint of social recognition. The seminar examined this theory of cooperative action and its added value to the game theory perspective on cooperative action; they will also question it in an epistemological perspective.</p> <p>A set of preliminary papers were prepared by the different team participating in the seminar and communicated to the participants beforehand.</p> <p>The seminar was deliberately initiated from the important role played by the ‘pragmatist turn’ in philosophy of law as a necessary development of H.L.A. Hart’s theses on the rule of social recognition. It questioned a twofold limitation of this ‘turn’ such as it is understood from the perspective of the pragmatist positivism and thus based on the thesis defining the rule of recognition as a ‘social fact’. The seminar discussed the limitations of the ‘pragmatist turn’ (prepared beforehand by J. Lenoble’s paper) : the first of these limitations lies in the restriction of the requirement for social cooperation to the group of officials instituted by the legal system only; the second limitation concerns the concept of the cooperative device itself, which limits the “collective conditions of learning” to the sole components of the action that is jointly planned. The idea defended is that these two limitations have consequences on the conception of the judgment of application both in theory of law and in theory of governance, once the requirement the pragmatist turn is recognized.</p> <p>This raised comments and questions (from the American partners) to elucidate the criticism of “mentalism” which underlies the position of the Centre for Philosophy of Law, in other words: is the reference to ‘officials’ criticized mainly because of the mentalist conception of rules officials themselves hold as practitioners?; the second question related to the danger of a <i>regressio ad infinitum</i> if we meant, beyond the ‘social fact thesis’, to question the conditions for social cooperation, because the choice of the model for a shared cooperative action only aimed, to explain the social fact of the commitment, as a practitioner, to a planned action.</p> <p>The next debates attempted to clarify the question. It specified the foundations of the criticism of mentalism in Putnam’s theory and its consequences for an ‘internalist option’ in theory of action and they also clarified the significance of the question of the conditions</p>			

of possibility of a planned action if such a question remained internal to the process of realization of the planned actions.

The German participants reminded the limitations of the formal positivist stance on Law with further comments on this stance belonging itself to a 'formalist' conception of the action of norms and remaining riveted to a theory of judgment which favored a teleological representation of the action over a more inferential conception of social learning processes. The opposition between a restrictive and a broader conception of the operation of application could be highlighted. In the first case, as in Günther's theory, the pattern of application is shaped by the idea of the practical completion of the validity of a specific norm, validity which, in this view, depends on the regulating representation of the coherent system of all valid norms. In the second case, the application pattern takes into account the operation of self-limitation which is constituent of the judgment of application, that is, the selection of possibilities that every judgment instantly gives itself to determine its scope of applicability.

The scientific debates made it possible to demonstrate more rigorously that an "inferential" conception of the governance of systems of rules was necessary and that the sole reference to a limited group of actors within this system was insufficient to generate a cooperative adhesion to its social acceptance.

It was agreed to consider as settled the requirement for radicalization of the 'pragmatist turn' i.e. that such a radicalization requires enlarging the range of actors to be considered, but another issue should be deepened in further discussions: is the 'detour' by the conditions of the cooperative action the most fruitful way to achieve such a radicalization.

Two questions remain open

1/ May we understand the rule of recognition as "not given" without entering in a "regressio ad infinitum", especially if "not given" means, from the point of view of an extended approach, a reconstruction including the criteria of the SCA?

2/ May we reach a normative point of view when the rational process is limited to elaborating the inherent requirements of a coherent concept of Law? And do we need such a point of view for a foundation of Law as a coherent social practice?

The teams involved: the Centre for Philosophy of Law – UCLouvain, the Johann Wolfgang Goethe Universität –Frankfurt, the University of Catania, the University of Cambridge

Deliverables TNU:

D40: A Scientific publication on the results of Seminar 1 is being prepared, a preliminary version is presented in Deliverable 40 (December 2006)

Milestones TNU:

Seminar was held on the theory of the Norm with outside scientists from the United States, Canada, France, Brussels, June 2005

see at

<http://refgov.cpdr.ucl.ac.be/?go=all>

Workpackage 25	TNU2	Start date or starting event:	Month 0
<p><u>Objectives:</u></p> <p>The purpose of this seminar on theory of governance (October 2006-coordinator: CPDR/UCL) is to explore and develop the theory of governance in connection with the theory of learning (democratic experimentalism) and to question theories of learning that do not take into account the underlying notion of reflexivity.</p>			
<p><u>Progress towards objectives:</u></p> <p>This WP1 is related to the Component 2 (Theory of Governance) of the research of the Theory of the Norm Unit. It consists of one seminar and one publication.</p> <p>This second research has completed a first stage towards its objective of both setting up an interaction between the most advanced approaches to governance in the different material fields that the REFGOV project (SGI, GPS, IFM, CG, FR) studies, and setting up an interaction between them and the recent reflections in theory of action related to public interest governance. Indeed, the hypothesis guiding the proposed research is that our governance devices today need to integrate, beyond the incentives already well pointed out by the theory of incentive contracts or by the recent new institutionalist and evolutionist approaches : reflexive incentives: both these incentives are required to ensure that public and private are involved in collective learning processes normatively oriented towards the solution of collective action problems in the pursuit of the public interest.</p> <p>The team of TNU (Prof. J. Lenoble and M. Maesschalck – CPDR - who are in charge of the TNU) has synthesized the references and proposes a synthesis report which, although first focused on the thematic research on Services of General Interest, addresses the issue across the five thematic sub-networks of the projects. It demonstrates that reflection on governance is nowadays directly dependent on a theory of action, that is, on a grasp of the operations by which an intentional action is carried out. Indeed, this approach to the question of the public interest, which frames the question in terms of a theory of action, also accounts for the recent use being made of the term “governance” to designate what has traditionally been called “regulation” or “government”. The use of the term “governance” quite simply reflects the surmounting of the dual attitude mentioned above: one branch of this attitude reflects on the question of the public interest in terms of the spontaneous harmonization of various private interests while the other supposes that the requirements of the public interest are satisfied by virtue of the fact that action has been imposed or produced by an authority (the State or its agents) believed to represent or incarnate this interest. In the process of surmounting this dual attitude, the question of sole recourse to the market or forms of governance by hierarchical control becomes problematic. As R. Mayntz rightly points out, “[T]oday the term governance is most often used to indicate a mode of governing that is distinct from the hierarchical control model characterizing the interventionist state.”³ “Governance”, she goes on, adopting a formulation characteristic of neo-institutionalist economists, “is the</p>			

³ *Ibid.*



type of regulation typical of the cooperative state, where state and non-state actors participate in mixed public/private policy networks.” Undoubtedly this formulation indicates very clearly that what is sought nowadays in the way of a form of governance for collective action cannot be reduced either to market self-regulation alone, or to traditional command-and-control forms of regulation. However, it should be handled with care, because it could imply the resolution of many questions that are in fact still unresolved, as is made clear by the current state of discussion on the theory of governance

The intention is to adopt a progressive procedure that will not directly address the question of the conditions for governance in the public interest in the comparatively abstract terms of theory of action. Rather, the procedure we mean to follow will take the internal dynamics of current discussion on theory of governance as its point of departure and show how the encounter between the opposing positions makes it possible to expose the “blind spot” that affects them all. What is at issue in this procedure is thus not a critique of existing approaches, but a test of the hypothesis that existing approaches are affected by a limitation consisting of an inadequacy in how they deal with the theory of collective action.

In conducting this critique, we will be less concerned to describe the content of concrete propositions developed under these approaches. The concern will rather be above all to examine how they conceive of the factors that condition the possibility that the operation of selection that determines any collective action will satisfy, to the extent possible, the normative expectations of its members. In other words, what we are addressing is the theoretical framework necessarily (and very often implicitly) presupposed by the various approaches to governance when it comes to the “normative nature” they ascribe to the governance mechanisms they advance. By normative nature is understood the capacity of such mechanisms to best satisfy the collective (or public) interest of the actors involved. In effect, if we reconstruct the internal dynamic of contemporary research into governance theory, we observe an increasing will to extend and strengthen institutional mechanisms (i.e., incentives). This strengthening is itself no more than a result of an increasingly broad attention to the conditions needed for the success of the learning operation required for the selection performed by collective action to maximize satisfaction of the normative expectation of its members.

Our own hypothesis is that, in spite of the gains represented by the various categories of incentives suggested by the different successive stages of contemporary research on governance theory, these stages still require a deepening of the analysis of the conditions for success of the learning operation. If we adopt, as our guiding thread through present-day research, researchers’ willingness to delve deeper and deeper into the black box of the learning operation that influences a governance system’s capability for maximizing satisfaction of “the public interest”, our project will consist of reconstructing this dynamic and attempting to shed light on the persisting opacity in researchers’ implicit approach to collective action and to the learning operation that conditions it. In other words, we will be shining a light into researchers’ own persisting black box.

From this perspective, it appears to us necessary for three successive stages to be differentiated in governance theory. We have chosen to emphasize three theoretical approaches. The first is represented by the efforts of neo-institutionalists, following R. Coase and O. Williamson, to nuance the rational choice theory approach advanced by so called neoclassical economics (Section 1). The second is especially clearly represented in the recent work of certain jurists and political scientists, and it is based on the wish to make possible a “relational and collaborative approach to governance through dialogue” (Section 2). The third consists of an “experimentalist” approach developed by certain

⁴ I.e., required if the collective action is to fulfill the intentionality that drives it.



authors, in particular C. Sabel, and is based on a wish to develop a “pragmatist” approach to collective action (Section 3).

As has already been indicated, and as will be more fully demonstrated below, these approaches amount to stages within a single research dynamic. The dynamic in question plays out an increasing will to deepen our understanding of the learning operation that influences the capacity for a collective action to choose behaviors that will maximize fulfillment of the normative expectations of its members. As will be seen, this deepening in turn takes the form of a decreasing tendency to assume that the ability of actors to carry out necessary adjustments and learning are a given. Correlative to this, the deepening in question implies a progressive extension of the institutional devices that must be set up to make possible the learning necessary to the success of the operations of choice that will determine collective action.

The argument presented in the three preceding sections consisted of demonstrating how what call the neo-institutionalist dynamic has driven current approaches in governance theory. The most significant aspect of this dynamic consists of how it conceives the collective learning operation necessary for the transformation and extension of actors’ representations required for any collective action.⁴ Every approach to the institutional design required for governance of a collective action to ensure, to the extent possible, satisfaction of its members’ normative expectations (that is, to ensure it constitutes public interest governance) is a function of the way the conditions of success for this learning operation are conceived. We have differentiated three approaches found at the heart of the institutionalist dynamic. The first led neo-institutionalist economists to resort, in a highly behaviorist fashion, to public mechanisms to compensate for the deficiencies of decentralized forms of governance. The second and the third constitute efforts to react to that first venture. They lead either to the approach we have termed relational and collaborative or to the experimentalist approach developed as part of the pragmatist turn. These three approaches embody three very different ways of envisaging the coupling of the extension of representations with collective learning. Yet they can also be interpreted as three stages of a process in constant progress, a process leading to an ever deepening understanding of the conditions necessary for the success of this learning operation, and to growing recognition of the necessity for the internalization of these conditions. This progression implies a simultaneous extension of these conditions, because the requirement for internalization entails displacing the question of conditions. That is, the question of the conditions for learning becomes, as well, the question of the conditions required for the actors to be capable of learning; and it must ultimately arrive at the requirement for actors’ *self-capacitation*, that is, the requirement that actors organize *themselves* to learn how to learn. It is true that this ultimate condition has not yet emerged from the three current stages of the neo-institutionalist dynamic. Indeed, it points to their internal limitation. However, as we will see, at the same time it constitutes the step further they require and thus, in a sense, their logical fulfillment.

What, then, is the dynamic internal to the three successive approaches we have differentiated in discussing the representation/learning coupling? The first stage consists of producing this coupling from the outside, as the consequence of the shock triggered by an external factor. The second stage consists of internalizing the coupling by acting on the conditions for bringing together the actors involved (extension of the interaction to include all the stakeholders, empowerment of the actors, or respect for the conditions of rational argument) in such a manner as to give rise to a kind of internal extension of what is possible. The third stage deepens this process of internalization by asking the question of what conditions are required in order to acquire *the capacity to learn*. It seeks, in effect, to internalize the shock that should provoke the actors involved to acquire the adaptive



capacities needed to transform their representations.

The idea that there could exist a more radical version of such an internal process remains outside the scope of this approach, because of the mentalist nature of the rule for learning it relies on. If no rule of this kind were assumed at the outset, but were rather considered to need to be acquired directly through the pragmatic process, then the action itself would incorporate *in itself* an effective transformation of the capacities for cognitive framing of the action. It is, indeed, the manner of producing such a cognitive framework within a given setting that should be transformed by this action. We would then have *reflexivity in a fourth sense*, not hitherto explored and yet constantly sought for: the reflexivity of the self-transformation of the capacities for the cognitive framing of action, by means of a process internal to collective action itself and supported by internal conditions for its fulfillment.

To understand the *condition for reflexivity* that we suggest be taken into account, it is necessary to place it in the perspective of the gains made during the three preceding stages we differentiated in our reconstruction of the neo-institutionalist dynamic. These gains already make it possible to grasp the conditions for recourse to learning within governance mechanisms. Recourse to learning requires elicitation of those reflexive capacities of social groups that enable them to respond to their perceived need to adjust their practices.

Neo-institutionalist economists have shown the need, in order to achieve this objective associated with the ways of using learning mechanisms, to diversify existing incentive frameworks and multiply them, specifically by taking action on property rights, incomplete contracts, rules for interaction, and so on (stage 1 of the neo-institutionalist dynamic).

For their part, jurists and political scientists have stressed the need to extend the range of ways of participating, with a view to taking into account the interests of the maximum number of actors involved (extending the range of actors to all the various stakeholders). At the same time, they have joined to this extension of the range of those involved, empowerment mechanisms such as constraints on argumentation, cognitive resources, financing conditions, and so on (stage 2 of the neo-institutionalist dynamic).

Last, the experimentalist path that has emerged from the pragmatist turn in the social sciences has shown the value of recourse to specific pragmatic mechanisms for eliciting a collective problem-solving dynamic that allows for internalization of the shock of interaction within the learning process. This is a matter essentially of benchmarking, simultaneous engineering or co-design, error detection methods, and so on. Further, this problem-solving dynamic is articulated with the taking into account of the investigative conditions within a *collective action process*. Such a taking into account endows the problem solving with a kind of internal teleology that leads to surpassing the sole immediate goal of learning, and arrives at the simultaneous acquisition of the capacity to learn how to learn. In this pragmatist vein, D. Schön proposes a way of incorporating these two dimensions into the attitude of the reflective practitioner that brings to the fore the conditions for vigilance “in the course of action on action” by means of a displacement of attention, or “double vision” (stage 3 of the neo-institutionalist dynamic).

All these institutional incentives aim to produce effects at two distinct levels of action. On one hand, they aim to act on actors’ capacity for adjustment, by identifying pragmatic mechanisms that are assumed to potentiate collective action (we therefore refer to them as “actions”). On the other hand, as if the authors in question wished to ensure that these mechanisms incorporate a teleology which is not guaranteed solely by an incentive action for the actors involved, these incentives also aim to strengthen the action of the initial mechanisms and ensure the desired results (we therefore refer to them

as “actions on actions”).

Actions on actions Actions	Multiplication of incentive frameworks	Empowerment	Experimentation (Genetic attention)
Diversification of incentive frameworks			
Extension of range of included stakeholders			
Experimentalist mechanisms (Selective attention)			

These two levels of action, however, even if they are assumed to provide a kind of self-correcting virtue (action on action), do not address the inadequacy that results from the fact that these institutional mechanisms have not been designed with attention paid to the internal learning conditions that must accompany their own construction. Indeed, the proposed institutional incentives, whether they be actions intended to stimulate actors' capacity for adjustment or incentives intended to better ensure that the use made of the first incentives is in line with the intended effect, share the same inadequacy. They presuppose that collective action has a self-reflexive property: that, through a process of double vision (reflection on action during action), reason achieves attention to possible displacement *and* attention to this way of paying attention. The result is a failure to attend to the internal conditions of collective action needed in order to learn how to learn. Even the principle of double vision fails to account, on its own, for how it is possible to learn to prioritize attention to this kind of vision on one hand and learn how to use it collectively on the other. And that is what our own hypothesis on reflexivity aims to develop. This new approach to learning makes it possible to stop presupposing that somehow there exist pre-given rules and capacities always already available and proposes instead a conception of learning as an inferential teleological process that constructs its rules and capacities for transformation as a function of its reflexivity and the broadening of its range of possibilities.

From our reflexive perspective, the absence of attention is an indication of a dual problem that requires a specific coming to awareness and accounts for the fact that our proposal leads to the complementing of neo-institutionalist incentives on two levels: on one hand, the level of the attention needed for the effective transformation of accustomed behaviors to be organized (that is, the transformation of the cognitive frameworks that determine the use actors will make of the various incentive mechanisms); on the other hand, the level of the attention needed in order for collective use to be made of this specific position vis-à-vis the tested learning mechanisms.

Following this dual approach, it is necessary first to take account of the fact that any institutional intervention derives its point from the behavior that it seeks to engender, and that it cannot be implemented without provision being made at the outset for a mechanism for assessing the adjustments it elicits in customary behaviors (transformations of existing perceptions and efforts at adjustment). We therefore believe



that it is necessary to be able to determine, at the institutional level, upon a mechanism to assess behaviors related to how actors take ownership of the learning processes and adapt them to existing perceptions of constraints.

Next, it is necessary to be able to assess, in relation to the actors themselves, whether the choice of this institutional solution enables them to perform the transformations of the behaviors and representations linked to the problems identified. To enable this shared learning of how to construct a specific position respecting the selection of solutions, it is necessary to pay specific attention to actors' internalization of the conditions for the transformation of accustomed behavior made possible by the learning process.

In contrast to D. Schön, for whom this internalization depends on a twofold, selective and generative, attention (see above, Section 3), we propose a dual test that allows for the *desemanticization* of D. Schön's proposition, with a view to effectively taking into account the pragmatic conditions for learning how to learn. With this test, we intend to ensure that the learning processes put in place do not rely on the assumed effects of rules for behavior that guide toward best cooperative practices and the role adjustments they would entail. By idealizing the rule for experimentation that makes possible a gradual advance to a cooperative optimum, Schön semanticizes his conception of learning. It thus becomes impossible to grasp under what conditions the transformation of positions within a new framework for interaction truly allows for avoiding a repetition of blockages and failures that have already been identified. Nor does this conception allow for an identification of the difficulties that may arise during the necessary reconstruction of the positions that contributed to this blockage.

The issue for our test, then, consists of assessing the limitations of the new frameworks tested from a dual perspective internal to the learning process itself, that is, carried out by the actors involved in these processes. Under one perspective, it's a matter of assessing the risks of repeating the blockages already identified as having been produced by the positioning of others actors on whom one remains dependent in terms of interaction. From another perspective, it's a matter of assessing the difficulties specific to a particular actor positioning, in order to reconstruct the kinds of position it identifies as needing to be surpassed.

This dual test should be conducted by the actors involved in the learning process in such a way as to pragmatically extend their commitment to a specific position vis-à-vis their learning, that is, in such a way as to enable them to become themselves actors in their learning, by assessing the internal limitations of its experimental framework and thus taking on the necessary task of that framework's decompletion as a process of collective action.

Our proposal for a radical pragmatization of learning processes thus consists of putting forward a twofold assessment, institutional and actantial, of the processes under way. The first, institutional, assessment is a mechanism for vigilance over the limitations associated with implementation of the process in given usage cultures with their own capacities for the adjustment and transformation of the goals of learning. The second, actantial, adjustment consists of the requirement for a test by the actors involved, enabling them to identify the internal limitations of the cooperative framework being tried out: limitations in relation to both the difficulties in transforming blockages engendered by adverse positionings and the difficulties in reconstructing their own positionings, which contributed to these blockages. This dual test should enable the actors to transform their own involvement in the experimental framework into a self-testing of the framework's limitations with respect to its own indeterminacy as regards results, as well as with respect to the correlative requirement for the actors involved to make the transition to a

position specifically appropriate to the direction taken by the learning process.

Deviations:

Deliverables TNU:

D41: Report on the proceedings resulting from the Seminar on the theory of governance (Octobre 2006, CPDR/UCL)

D2: SGI -TNU, Working paper REFGOV SGI-TNU -1

Milestones TNU:

Seminar on the Theory of Governance to discuss and confront the results of the synthesis report on the theoretical frameworks will take place in Brussels, October 2006

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