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REFGOV

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Integrated Project

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

PART I

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

The REFGOV project is based on the premise that the current attempts to improve public law- and policy-making by enhancing both its legitimacy and its effectiveness are based, albeit implicitly, on different understandings of how diverse actors involved in the design and the implementation of rules or policies should be coordinated, in order to pursue the 'public interest'. How the public interest should be defined, through which procedures it should be developed, remains contested.

The departure point of the current attempts at improving governance in the EU is a need to overcome the dilemma between defining the public interest as the spontaneous result of each individual agent seeking to maximize his/her own, selfishly defined interest, or defining it, instead, as the decision adopted, authoritatively, according to established procedures which entrust one body to adopt such a decision which will be binding on all. It is clear that none of the branches of this alternative is satisfactory. The public interest must be defined independently of what results from the mechanisms of the market – i.e., from the free play of individual initiatives, pursued by maximizing, self-interested actors, without any attempt at organizing the collective action of the players –. But we cannot presume that the authority to whom certain powers have been attributed according to certain institutional procedures – however well such procedures are designed and, in particular, however democratic they may be –, in order for that authority to define what is in the public interest, possesses the knowledge it requires, both global and local, to perform this task effectively ; or that the decisions adopted by such an institutional authority will be legitimate solely by virtue of the processes through which it has been set up, and independently of its ability to delivered the desired outputs.

We therefore are searching for modes of decision-making which move beyond this dilemma. Such modes of decision-making require to organize the involvement of actors concerned by the rules and policies which will affect them in the design and the implementation of such rules and policies, in order to ensure that they will be both more legitimate (and perceived as legitimate by those in charge of implementing them) and more efficient (based on the knowledge possessed by those actors and, thus, better informed). The hypothesis explored in the REFGOV project is that collective learning, as an alternative to both markets and hierarchies, should be the central concern of governance mechanisms. By its emphasis on collective learning, REFGOV shares a core intuition of other, more classical contemporary theories of governance. The specific hypothesis of REFGOV, however, is that we should devise such mechanisms without falling into the trap of having to postulate an innate capacity of actors to effectively improve their understandings of the situations which they confront, but without, either, being content with external mechanisms promoting collective learning, while failing to address the need to build affirmatively the capacity of these actors to contribute to the design and implementation of the policies under study.

During the period covered by this activities report (June 2006-June 2007), important developments took place both at the level of the development of our research hypothesis and in the different material fields where the implications of the hypothesis are being explored. At the first level, the presentation by the theory of the norm unit (TNU) of the synthesis report on the theories of governance, "Beyond Neo-institutionalist and Pragmatist Approaches to Governance" represented an important milestone.¹ This report synthesizes and analyses the most advanced theories of governance, more particularly in the field of the provision of public goods. It explains why governance devices today need to integrate, in addition to the

¹ J. Lenoble and M. Maesschalck, "Beyond Neo-institutionalist and Pragmatist Approaches to Governance", D 2 of the REFGOV IP project and REFGOV Working paper series REFGOV-SGI/TNU-1, May 2006 available at <http://refgov.cpdf.ucl.ac.be/?go=publications>, referred to as "REFGOV synthesis report 1"



incentives already pointed out by the new institutionalist and evolutionist approaches, reflexive incentives 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.

In mapping the existing theories of governance, the report proposes a theoretical framework which leads it to distinguish between three broad theoretical approaches: the neo-institutional approach, which builds on the rational choice theory of neo-classical economics, thus remaining dependent on certain of its premises while seeking to move beyond this conception of rationality; the relational and collaborative approach which seeks to improve governance through dialogic and deliberative processes²; and the experimentalist approach which seeks to develop a “pragmatist” approach to collective action.³ The report highlights the contribution of each of these approaches to governance. In reviewing these, it evidences an increasing will to extend and strengthen institutional mechanisms. It also exhibits which issues each of these approaches are best at analysing and what sort of problems they are best at solving. But the report also highlights their limits and the unexamined presuppositions they share. The report concludes that in spite of the gains represented by the different categories of institutional devices (and incentives) suggested by the different approaches in contemporary theory of governance, we need to make one step further, and to deepen the research into the conditions required for a successful collective learning. This is what the fourth approach suggested in the analysis is calling for : the report draws the attention on the conditions for collective learning, on actor’s capacitation and on their abilities to learn how to learn.

At the second level of the research – that of the specific empirical fields of research –, we aimed at testing the hypothesis of reflexive governance in the areas of global public services, services of general interest, fundamental rights, corporate governance, and institutional frames for markets. « Testing » the hypothesis, in this context, does not mean that the hypothesis will be validated, or disproven, after being « applied » in a particular domain. Rather, the purpose of this empirical research is to enrich our hypothesis, refine it further, identify both whether governance in the EU develops in directions our hypothesis may contribute to explain and, if so, which problems this may give rise to and how such problems can be addressed. We adopt, in other terms, a pragmatist view of knowledge : the hypothesis according to which EU governance should become more procedural and less substantive, should be based on the need for collective learning rather than on a formalistic approach to problem-solving, and that this in turn requires that we develop tools to ensure that it becomes more ‘reflexive’, in not a hypothesis we seek to « verify » ; it is one, rather, we seek to explore, by clarifying its implications, how and where it might be improved, and especially which institutional translations it may call for.

With this aim in mind, guidelines have been prepared for the case studies either by the sub-network coordinators or by the researchers more involved in the theoretical and methodological issues. These guidelines derive directly from the theoretical framework of REFGOV and its latest explicitation in the report referred to above. The thematic researches in the five sub-networks will seek to exemplify, through their case studies, the influence exercised by the three classical approaches to governance identified in the theoretical frame (institutionalist, collaborative-relational, and experimentalist). Since all these new approaches to governance seek to move beyond both markets and hierarchies (command-and-control regulations) as a means to construct the public interest, the first step of our research is to

² See, e.g., J. Freeman, ‘Collaborative Governance in the Administrative State’, 45 *UCLA L. Rev.* 6 (1997).

³ See, e.g., Michael C. Dorf and Charles F. Sabel, ‘A Constitution of Democratic Experimentalism’, 98 *Colum. L. Rev.* 267 (1998); Charles F. Sabel and Joshua Cohen, ‘Directly-Deliberative Polyarchy’, 3 *European Law Journal* 313 (1997); Oliver Gerstenberg and Charles F. Sabel, ‘Directly-Deliberative Polyarchy: An Institutional Ideal for Europe?’, in Christian Joerges and Renaud Dehousse (eds), *Good Governance in Europe’s Integrated Market*, Oxford Univ. Press, 2002, pp. 289-342; Charles Sabel and Jonathan Zeitlin, ‘Learning from Difference : the New Architecture of Experimentalist Governance in the European Union’, unpublished draft, June 20th, 2006.



identify how these approaches have – or have not – influenced existing institutional devices, even before formulating, as a next step, institutional proposals inspired by the REFGOV hypothesis. Depending on the field concerned, certain theories of governance will have a more powerful explanatory power than others. Thus, the sub-network Institutional Frames for Market (IFM) refers to the neo-institutionalist approach, whereas the experimentalist approach is more relevant for the Fundamental Rights sub-network (FR); and all three classical contemporary theories of governance explain developments in the fields of Services of General interest (SGI), Global Public Services (GPS), and Corporate Governance (CG), although the relevance of each depends on the specific issues studied. In addition, in two of the sub-networks (in the Services of General Interest sub-network, by Prof. P. Vincent-Jones (University of Leeds); and in Global Public Services, by Prof. T. Dedeurwaerdere (CPDR/UCLouvain)), work has already commenced in order to develop through empirical research, operational devices which seek to translate into effective governance mechanisms the improvements of governance that the REFGOV hypothesis suggests to deepen the three *classical approaches*.

Within the next few months, we aim to take stock of these developments in the research and, building upon the first results in terms of draft institutional proposals from the different thematic sub-networks, propose a second REFGOV synthesis report. This second synthesis report will be the key document for the first cross-thematic seminar planned in September 2008. Below, we summarize the main developments during the period covered by this activities report, in each of the research groups cooperating in the REFGOV research programme.

1. Theory of the Norm Unit

The research of this sub-network is organised along two axes. First, evidencing in this regard the epistemological foundation of the theoretical work in the REFGOV project, it seeks to develop a the theory of the norm (WP24). This research was pursued, following the presentation of the first REFGOV synthesis report, in a less formal way through discussions and dissemination to wider forums. Prof. K. Guenther (JWG Frankfurt) has further developed his reflection in theory of the norm from the perspective of Habermassian formal pragmatics on internal relationships between substance and procedure in moral and legal discourses.⁴ He also studied the different kinds of responsibilities of decision makers, focusing on the contextual requirements that have to be met if a person shall be held accountable for a decision.⁵ The research deals with different procedures of attribution of responsibility, depending on different purposes of these procedures.

Second, this research group aims at proposing a theory of governance (WP25). The challenge here has been to work in close collaboration with the coordinators of the thematic sub-networks and researchers more involved in theoretical reflection, in order to ensure that the case studies explored will be well integrated within the theoretical framework proposed in the REFGOV Synthesis report 1. This integration is crucial to the success of the research. It has been advanced through discussion, seminars, work meetings and individual missions. Simultaneously, the theoretical reflection on governance has been pursued, the results were submitted to specialists in the theory of governance at a seminar organised in October 2006⁶. The leading American representatives of the recent pragmatist and experimentalist approach to governance Prof. C. Sabel, Prof. J. Zeitlin and Prof. W. Simon were the key invitees besides other international scientists and members of the REFGOV project. A report will be

⁴ K. Guenther, *Droits, État et théorie de la discussion* (in: *Raison Publique – Éthique, Politique & Société*, vol. 6/avril 2007: Les valeurs morales en politique, pp. 129-145)

⁵ K. Guenther, *Aufgaben- und Zurechnungsverantwortung*, (published in: Ludger Heidbrink, Alfred Hirsch (Eds.), *Verantwortung in der Zivilgesellschaft*, Frankfurt/New York (Campus) 2006, S. 295-330

⁶ See agenda of the seminar at <http://refgov.cpdr.ucl.ac.be/?go=all>).



presented in November 2007 with the latest development in their reflection on theory of governance.

2. Global Public Services and Common Goods

The research on reflexive governance in the field of global public goods is organised in three phases : (1) review of inadequacies (2) comparative institutional analysis of proposed improvements (3) reflexive insufficiencies of these improvements and in depth case study of a protocol of reflexive self-evaluation of institutional change. A fourth phase will consist in the synthesis accomplished over the different workpackages.

The REFGOV research in the field of global public goods is organised in three phases. During the first phase of the research, which was completed in June 2006, the inadequacies of current governance mechanisms were highlighted. The second phase of the research seeks to assess and compare the merits of any proposed improvements, as they are currently proposed. During a third phase, on the basis of its analysis of the insufficiencies of these improvements, the research will seek to advance a protocol of reflexive self-evaluation of institutional changes. The following paragraphs provide details especially on the second and third phases of the research, which are ongoing; the first phase, which has been completed, and the fourth phase, which is planned to develop between June 2008 and June 2010, are outlined only briefly.

2.1. First phase : Review of the inadequacies : WP 6 and WP7

The first phase was completed over the initial period of 12 months following the beginning of the REFGOV project. As explained in the first annual report, the main results was that neither “markets”, nor “hierarchies” could address the issue of building collective preferences in the field of global public goods. This preliminary review has pointed out the importance of organizing learning processes that generate changes in collective preferences and cognitive frames.

2.2. Second phase : Comparative institutional analysis of proposed improvement

The second phase has been launched one year ago. A first result of the comparative assessment accomplished in this second phase of the GPS research is that, although the literature on global public goods has hitherto focused on global mechanisms, local mechanisms deserve more emphasis both in the building of collective preferences on global public goods and the experimentation with institutional solutions (WP6-D19 and D20). In particular, all the inclusive and organised mechanisms, such as non profit service providers or communitarian management organisations are interesting tools, because they combine inclusive learning process on global issues with real decision making at the appropriate scale of the collective action.

The second phase is composed of two steps : first, the comparative institutional analysis of reflexive learning processes and, second, the analysis of the institutional propositions for alleviating the identified insufficiencies in the first phase. As explained in the first annual report, this second phase was initiated by the organisation of the Louvain-la-Neuve workshop on “Institutions for Providing Global Environmental Goods”, where an extensive set of case studies was presented (WP7 – Milestone/June2006).

(2.2.1.) Comparative case studies : WP7,WP8, WP9 and WP10

The results of the comparative case studies have been gathered in the double book chapter on “Institutional frameworks to govern global public goods” (WP 7 : Deliverable 19 and Deliverable 20). The aim was to be able to build relevant categories for further evaluation



and to make a first assessment of the contribution of the different mechanisms to framing and problem solving in the field of global public goods provision. To do this comparative assessment, the cases have been gathered along 4 dimensions, which are the geographical scope of the mechanism, the inclusiveness, centralization and the organisation of decision making. These 4 dimensions have allowed us to gather the case studies in 16 “ideal types” of governance mechanism.

Reflexive governance can be dealt with both at a narrow scale of interaction (local, regional or national) or at the global scale. In the literature on global public goods, the accent has been on the global mechanism. However, a striking result of the comparative assessment is that local mechanisms deserve more emphasis both in the building of collective preferences on global public goods and the experimentation with solution. In particular, all the inclusive and organised mechanisms, such as non profit service providers or communitarian management organisations are interesting tools, because they combine inclusive learning process on global issues with real decision making at the appropriate scale of the collective action.

This comparative institutional assessment of cases that are identified in the literature as led to the in depth study of three cases (WP8, WP9 and WP10), focusing on the inefficiency of a global market mechanism for the provision of a global public good such as biodiversity (WP10-D23) and the importance of local self-regulation (WP9-D22) and decentralized institutional learning (WP8-D21) both for building collective preferences and for institutional experimentation. The first case study (D23) shows the inefficiency of a global market mechanism for creating a market in biodiversity related resources, such as through a global intellectual property rights regime. Indeed, by focusing on a simplified model of integration of the different players in the exchange in biological resources – from local nature protection movement and indigenous communities in the first stages, to researchers and corporations in the later stages – it shows the importance for transferring property rights at the local level. The focus in this case study is on the traditional knowledge holders, but this analysis can be extended to the other local players such as the local communities, ex situ collections or nature conservation agencies. This result on the transfer of property (and hence decision) rights to the local level is still focused on abstract institutions and processes in a formal model. The next case studies analyse more in depth two reflexive processes that play a role in re-framing and decentralized institutional experimentation in the field of biodiversity. The first of these (D22) focuses on decentralized institutional experimentation in the field of agro biodiversity and elaborates 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. The second (D21) focuses on the institutional learning organized by the scientists in the field of biodiversity in institutions such as the international consultative group on agricultural resources (CGIAR) and the US National Cancer Institutes (NCI). It shows how new frames have been build and implemented through an explicit organisation of the learning processes, in response to a changing institutional environment. The case study examines examples of institutional solutions set up by scientists to take into account their responsibility as a junction between those different actors with different norms of behavior.

(2.2.2.) Institutional proposals : WP 26

This second step of the second phase was initiated through a call for papers at the 2007 Amsterdam conference on the *International Human Dimensions of Global Change* (WP 26 – Milestone/May 2007). The stream 7 of this conference gathered the papers on reflexive governance after selection of the submissions by an international review board.

Two further conferences that will take place in the next 6 months have been organised in order to build this analysis of institutional propositions. On 20-21 September 2007, the



Bioecon conference on “Institutions, social capital and knowledge for biodiversity conservation” will be held, following the international call of papers launched for the conference (WP26- Milestone/September 2007). On 4-8 February 2008, an International closed workshop is organized in Cargese (Corsica) on “Which Governance for Which Environment? Institutions, social preferences and knowledge for governing environmental issues”, High-level Workshop Cargese (WP26 – Milestone/February 2008). Accepted keynote speakers are Elinor Ostrom, Jean-Philippe Platteau, Charles Perrings, Oran Young, Lee Alston, Simon Graetcher and Denis Ellerman. The workshop will be organised by using the methodology of the Dahlem workshop in Germany, whose focus is on a constructed process of consensus building on the state of the literature amongst high level scholars.

2.3. Third phase : Public Interest Assessment protocol : WP 27

The third phase has been initiated through an in depth case study on Joint Forest Management in Flanders (WP27-D49(1)). This in depth case study will be combined with a literature review on the use of multi-criteria indicators in processes of self-evaluation in reflexive governance.

The use of indicators in the case of Joint Forest Management (JFM) in Flanders has shown its potential in building a reflexive interaction between decentralized institutional experimentation and centralized monitoring by governmental agencies. Indeed in the case of JFM, the use of indicators allows both a process of internal self-evaluation around feasible and evolving targets in the collective management organisation and a process of external evaluation by the government, leading to new incentives or adjustment of its policy. The methodology adopted by the JFM institution in Flanders is based on a process of gradual change in understanding by the different stakeholders, from a nature-centred approach of biodiversity to an ecosystem services (and hence human-centred) approach. Three components are key to this process as it is described in the vision document of the JFM groups. First, the project starts from the interests and needs of the forest owners, rather than their position and discourse in regards to nature conservation. Second, the JFM group organizes a learning process on the definition of the sustainability targets. Third, the design of the learning process itself is evaluated at regular intervals by the participants to adapt it to the local circumstances and stakes at hand.

2.4. Fourth Phase : synthesis (WP 32)

The results of the different phases will be synthesized in a final workpackage in the last two years of the network through (1) the publication of an edited volume at MIT Press on “Global Public Goods and Reflexive Governance”⁷; and (2) the organisation of a GPS stream at the final synthesis conference of the network.

3. Services of general interest

The REFGOV research on services of general interest developed into its second phase during the period June 2006-June 2007. During this period, one Common workshop and four group workshops were organised, based on working papers prepared beforehand. As planned in the workprogramme, two research lines were explored. Both were clarified in line with the theoretical framework offered in the first REFGOV synthesis report.

3.1. The reorganisation of the provision of public services

This research line aims to analyse the problems related to the recent reorganisation in the provision of public services. The objective is at least to suggest some institutional

⁷ An agreement has been obtained with MIT press to publish this volume in their “Politics, Science, and the Environment series”. A preliminary outline of this book project can be found in annex of this report.



improvements of the governance design, arising out from the reflexive governance hypothesis. With a view to ensuring a close integration with the theoretical framework developed within the Theory of the Norm research Unit, the November/December 2006 Common Workshop was devoted to the presentation of the first REFGOV Synthesis report prepared by that Unit. This presentation was made by Tony Prosser and Peter Vincent Jones, and was followed by an exchange with Jacques Lenoble. The common workshop aimed to prepare the implementation of the result proposed by this synthesis particularly for the sector group research. This resulted in the presentation, by Tony Prosser and Peter Vincent Jones, of *sector group guidelines* prepared in order to implement this approach by the sector/thematic groups.

The orientations discussed during the common workshop have been developed by three thematic studies (WP 2 - WP 3 - WP 4). The two first studies related respectively to energy and healthcare. The objectives during this second phase of the project were twofold. First, the researchers in charge of each of these studies sought to develop a set of interlocking case-studies on reflexiveness in different national energy and healthcare systems. Second, they sought to identify institutional proposals for the public services providing in the energy and healthcare fields. In addition, specific attention was paid to ensure an adequate coordination between both of these groups. The third thematic study was on the regulation of public bodies. These three studies are described in turn.

The **energy group** (WP 2) held two workshops, the first one in Paris in November/December 2006, and the second one in Bristol in June 2007. In the first, the discussion was centred on planning possible case studies. A set of theoretical guidelines had been prepared in advance for the energy and the healthcare studies, setting four different potential models of different concepts of social learning. It was agreed that, though this common set of theoretical guidelines would be used, it would be most helpful for the studies to examine different areas of practice in each national system, and the subject-matter for the case-studies was agreed between the participants. The workshop also facilitated the integration of the work with other themes within REFGOV. Thus, it was conducted jointly with the workshop of the healthcare group and had a joint session with the group drafting the historical study. It was also attended by a representative of the Institutional Frames for Markets sub-group to co-ordinate energy work in both sub-groups. In the second workshop, draft case studies at a well-developed stage of preparation were circulated in advance and discussed in detail.

Particular concerns were to locate the national experiences within the theoretical guidelines agreed for the previous workshop, and how to move to institutional recommendations at different levels of governance. Suggestions were made for such a more detailed set of institutional recommendations, to be developed before the next Paris workshop in October 2007. Once more, co-ordination was facilitated by the presence of the leader of the healthcare group. There was also a discussion of the potential role of stakeholders in the research; it was agreed that this could most usefully come later when the institutional proposals become clearer.

At the time of closing this report, case studies of energy infrastructure development and participation through the land-use planning system in the UK, of network access in Germany, and on price regulation in Hungary and the CEE countries have been developed in draft form. These have been analysed and comparative lessons sought, and suggestions made for improvement for the next stage, that of more detailed institutional proposals. A further study, of the implications for energy policy of Federal arrangements in Canada, will be available in time for the Paris workshop in October.

Members of this group have also contributed to the historical study, and are now developing more detailed institutional proposals based on the case-studies (see above).



The **healthcare group** (WP3) has held two workshops, the first one in Paris in November/December 2006, and the second one in Budapest in May 2007. At the first meeting, problems of selection of case studies have been considered in light of the significant change in focus of the healthcare research implied by the theoretical position set out in the Synthesis Report and the REFGOV Guidelines.

In the second workshop, each team presented papers justifying the selection of case studies in accordance with the varying economic, financial, and political conditions in the healthcare environments in the UK (England and Wales), France, and Hungary. In France, the major current problem is the control of healthcare expenditure. Hungary faces a similar problem : how to limit spending and reduce the budget deficit of the state insurance fund? In the UK, a cross-cutting concern is the nature and quality of patient and public involvement in commissioning processes. Both the UK and Hungary, in different ways, are experimenting with new modes of patient and stakeholder representation.

In total, seven case studies were planned. In England and Wales: (i) patient and public involvement in commissioning, (ii) the role of representative bodies, and (iii) economic regulation and the regulation of involvement; in France: (iv) medical conventions and (v) the "tarification à l'activité" (the fixing of prices for the different healthcare activities in the hospital); and in Hungary: (vi) reform of healthcare financing and (vii) citizen participation in law making and decision making. Each team has also presented draft papers on the historical documents research.

The group has succeeded in shifting the focus of research from general regulatory structures to specific case studies of aspects of healthcare governance. Whereas in the first year of the project, the research has been focused on the mapping of healthcare governance structures in the three countries, with an emphasis on contract and 'contract-like' mechanisms and on the institutional conditions that support relationality in regulatory relationships, now, the healthcare institutions and practices are analysed with reference to three main collective learning approaches such as differentiated in the synthesis report (institutional economic, collaborative and relational, and democratic experimentalist).

A number of interesting transnational comparisons have emerged. (1) The problem of control of healthcare expenditure in Hungary and France has been enriched through comparison with the experience of financial reform of the NHS in the UK in the 1990s, which is now being taken further in England with the current tariff-based Payment by Results reform. (2) Whereas in the French social insurance system choice seems to be part of the problem of economic inefficiency, in the English system of healthcare funded by general taxation and free at the point of delivery, patient choice is being used to reinforce and complement the incentives present in quasi-market organisation. (iii) In Hungary and Wales, despite major differences in the functions of representative bodies, voice operates as a mechanism influencing macro-level decision-making and the political process; by contrast in England, voice is directed at strengthening incentives and influencing micro-level decision-making by commissioners and service providers.

Members of this group are now developing more detailed institutional proposals based on the case studies. In addition, they have contributed to the historical study (see below, the second research line within the sub-network).

The **regulation of public bodies** (WP4) is the third thematic. This research has been essentially engaged on a comparison between controls applied in Australia and in the UK on the making of regulations, the provision higher education and provision of prison services. A draft presentation has been made during the November/December Common workshop. After this workshop and considering the discussion on the Theory of Norm Unit, this research has focused on the regulatory reform domain and has looked beyond the UK and Australia to other countries and to the international level, and especially the EU and the OECD.



In parallel to these three thematic studies, a fifth empirical study has been engaged on the reflexivity of **collective actors** (WP5) by Marc Maesschalck CPDR/UCL. After having in our first research step elaborated an hypothesis on the way trade unions, in Belgium, are identifying the issues and selecting the possibilities of alternatives to intervene in the debates on the liberalization of the electricity sector, we have identified two major questions resulting from communication and debates when this hypothesis was raised at the meetings of the Theory of the Norm Unit (among which October 2006 on theory of governance) and at a meeting with a union representative.

A first important question is whether the use of the term 'actor' is fully justified in this context, insofar as the use of this term suggests an active participation of the persons concerned in the reexamination of their assumptions. Even where we identify a transformation of the representation enabling the actors to redirect their own conception of their role in a process of collective decision-making, it remains uncertain whether actors are automatically involved in such transformations. It could even be more plausible that they just try to adapt themselves to a new situation without reforming their fundamental beliefs. Transformations of representations are perhaps only the 'a posteriori' result of a cooperative process of problem solving. Contrary to such a pragmatist conception, the reflexive conception of actors we propose posits that there is no 'a posteriori' consequence that can be expected unless specific conditions are fulfilled in a social learning process enabling actors to reorient their own practice.

That first question cannot be isolated from the second one resulting from the discussions with the Unions representatives. What kind of mechanism are we able to propose in order to implement such a collective process open to new kind of evaluation? Is it necessary to change the traditional reference to a principal agent in the negotiation? The option of the unions is clearly one of reforming the social contract supporting the economic activity, exactly as it would just infer at the same time a reform of the policy making of the social state. But, as Peter-Vincent Jones notes in his book about the *New Public Contracting*, our problem in the research is precisely that "these relational elements are necessary, but not sufficient, conditions of responsive regulation".⁸

These two questions are central and we have to answer them in order to achieve our program and its double objective. The crucial point to be clarified here is to know, on a theoretical basis and in a practical perspective, if it is possible to connect the requirement of an enlarged social dialogue with the requirement of some more responsive regulatory institutions? That intermediary requirement have to be satisfied before defining more precisely what could be proposed in the sector as a new mode of social dialogue supporting the key reform of the governance process.

3.2. The historical perspective (WP 1)

The objective of historical perspective workpackage is to prepare a historical survey on the different conceptions of public services in Europe, to make a comparative study to reconstruct the European historical perspective on public services. The historical perspective progress report was presented at the second Common work of the SGI sub-network in Paris in November/December 2006. This historical overarching report has been achieved on the basis of fourteen reports that were presented last year (Deliverable 3) by the different national teams gathering and analysing key texts on the conception of public interest. Taking into account these contributions, certain adaptations were proposed to the methodology of the historical perspective, as well as to the precise definition of its objectives. The purposes are to better link the historical perspective analysis with theoretical perspective of the sub-

⁸ Jacques Lenoble et Marc Maesschalck , " Au delà des approches néo-intentionnalistes et pragmatistes de la gouvernance" REFGOV TNU/SGI –1 version française, p 71



network, and to connect the justifications and the proposed changes in providing/regulating public services.

Three focuses has been determined for the historical perspective analysis taking into account the first fourteen reports produced by the SGI sub-network teams:

- Drawing up the main steps of changes in the governance of SGIs provision. The reports suggest the possibility to enlighten two turning points, a “managerial turning point”, efficiency oriented and a “decentralizing turning point”, either competition or citizen/customers oriented. Each team will be required to present these steps in their respective country.
- Analysing the justifications of changes. Both turning points are entrenched in arguments calling for justification of proposed changes. Therefore, it will be expected from each team to systematically enlighten the connection between the new prospects and their justifications.
- Identifying new proposals or changes in the design of devices. Seen from that angle, the historical perspective work will go further than foreseen until now. The extension would consist in including in the survey the proposed devices presented as necessary for the implementation of reform. These devices can consist of modes of organisation, new institutions, modes of representation, fiscal incentives, public subsidies, training programmes, statistical tools (for example, the request for new data including surveys and nomenclatures), etc.

To implement this new design of the historical perspective, an adaptation of the research methodology has been decided. The primary source of the work remains a selection of ten representative documents. Therefore, the drafting of new presentations of documents following the guidelines is no longer requested. Each team will write a single contribution. It will present the main steps of changes in the governance of SGIs provision, the justification of the changes corresponding to each step and the new proposals or changes in the design of devices linked to these justifications.

3.3. Synthesis and next steps

The fields studied by each team will no longer be the services of general interest as a whole, in order to better concentrate the efforts and to improve the consistency between the tasks carried out in the sub-network. The main fields will be Healthcare (Leeds, Paris) and Energy (Giessen, Bristol). Taking into account the specificity of the post-communist situation and the rather brief story of the SGI debates in this case, the Hungarian team will present a general historical analysis of the public services reform in Hungary. These contributions will be used by the historical group co-ordinators, in order to write a chapter of the sub-network final report and will also be published in a collective book published as by-product of the REFGOV Project.

Each team presented the progress of the historical perspective research at their respective workshop, in June 2007 for energy and May 2007 for healthcare workshop. For the energy field, detailed historical studies of the reflexivity and provisions of SGIs have been made in relation to the UK and Germany with a selection of relevant documents. The Hungarian will present their historical study at the next SGI common workshop in October 2007. As far as the Healthcare research is concerned, these presentations were made during the May workshop in Budapest. A detailed historical study has been made for UK. The French and Hungarian teams made oral presentations. The detailed presentations of results for the historical perspective research that being prepared and the draft lines for general synthesis on this historical perspective research will be presented and discussed with the whole SGI sub-network at the third Common workshop in Paris in the October 2007.



4. Fundamental Rights

The central hypothesis explored in the REFGOV project is that collective learning, as an alternative to both markets and hierarchies, should be the central concern of governance mechanisms, but that we should develop such mechanisms by effectively building the capacity of these actors to contribute to the design and implementation of the policies under study. This question is at the core of the REFGOV research in the area of fundamental rights. Rights are to be proclaimed and, once proclaimed, to be guaranteed by courts. We have now come to realise, however, that this is not enough. Rights are also to be implemented; policies must be adopted in order to fulfill them. In the multilevel governance system of the European Union, where the task of realising rights is shared between the European Union and the Member States, there is a great risk that where the adoption of legislation is impossible at European level for legal or political reasons, the implementation of rights at the level of the Member States will respond to the classic mechanisms of regulatory competition, made only slightly more acceptable by the existence of a common *acquis* of the EU Member States under international and European human rights law. The development of mechanisms organising a form of collective learning between the EU Member States allows us to think beyond hierarchies and markets. It proposes an answer based on deliberation about the reality of interdependencies between States. This is the hypothesis pursued by the Fundamental Rights sub-Unit of the REFGOV project.

Within the Fundamental Rights Sub-Unit, a first phase of the research sought to develop and further refine the working hypothesis of the project (June 2005-June 2006). This task was greatly facilitated, first, by the interaction with the Theory of the Norm Sub-Unit, and in particular by a number of discussions organized around the report « Beyond Neo-Institutionalist and Pragmatist Approaches to Governance » co-authored by J. Lenoble and M. Maesschalck in 2006⁹; second, by the confrontation of the approach adopted within REFGOV with other approaches to EU governance, including the 'experimentalist democracy' approach promoted by Ch. Sabel and J. Zeitlin, which led to one joint event held in November 2006 and shall result in a further joint seminar in October 2007; third, by the presentation of the REFGOV line of thought in a variety of settings, including – during the period covered by this report – at a conference delivered by O. De Schutter in November 2006 at the University of Cambridge (Centre for European Legal Studies) and in a course taught at the Human Rights Session of the EUI Academy of European Law in June 2007 (« The Fundamental Rights Agency of the EU : Learning by Monitoring »); fourth, by a number of events organized within the Fundamental Rights Sub-Unit, in particular the Open Conference of May 2005 where the results of the first phase of the research were summarized and presented for collective discussion.

The period covered by the current activities report (June 2006-June 2007) corresponds to the first half of the second phase of the research performed within the Fundamental Rights Sub-Unit, which is planned to develop over two years (June 2006-June 2008). The purpose of this phase of the research is to develop our hypothesis in four thematic fields : social rights, anti-discrimination law and policy, criminal law and data protection. The empirical research performed in each field is coordinated by one partner within the project, under the general supervision of prof. De Schutter (CPDR-UCL) : the coordinators are, respectively, prof. S. Deakin and C. Barnard from Cambridge University (social rights) ; prof. M. Nowak from BIM-Wien (anti-discrimination) ; prof. P. de Hert from the VUB (Brussels) (criminal law and procedure) ; and prof. S. Gutwirth, also from the VUB (data protection).

In order to facilitate the implementation of the second phase of the research, a set of guidelines was prepared by the coordinator, whose purpose was to provide a grid of analysis

⁹ Published in the REFGOV Working paper Series "REFGOV-SGI/TNU-1":
<http://refgov.cpd.r.ucl.ac.be/?go=publications>



of the developments documented in each of the fields under study. These guidelines, which are appended to this report (D69), first of all offer a summary overview of the debate on European governance, in order to locate more precisely the REFGOV hypothesis within the existing theories of governance. But the guidelines also have a more practical, and immediate, objective, which is to guide the research done in the areas of social rights, anti-discrimination law, criminal law and procedure, and data protection, in order to ensure that the empirical work done on these different fields will effectively contribute to enrich the central hypothesis itself.

Thus, the guidelines suggest to the researchers involved in these empirical studies that they should first seek to describe the current situation, i.e., how the law and policy of the European Union has hitherto developed, according to which understanding of the needs to be addressed, on the basis of which information, in consultation with which actors, and according to which procedures. Particular attention is given to consultations, impact assessments, ex post evaluations, and to the impact of international and European human rights law in the development of EU legislation and policy in the fields under study. The researchers are also encouraged by the guidelines to examine the scenarios which are currently being discussed about how, in each of these fields, the action of the Union could develop further. At this level, the purpose is to map the existing proposals, in particular as they have been put forward in the course of the constitutional debate of 2002-2004, but also – and perhaps especially – since the failure of the constitutional process. Here, the objective is to identify the positions of different stakeholders (the institutions, but also national and regional actors, civil society organisations, trade unions, political parties, as relevant) as to which needs remain unaddressed, where and how more work requires to be done. Finally, the research in each thematic field should put forward and examine the desirability and feasibility of certain policy proposals which might be based on the theory of reflexive governance as developed in this research project.

The following paragraphs describe the progress done the fundamental rights research team in the specific areas in which the reflexive governance hypothesis is being developed during this second phase of the research :

4.1. Fundamental social rights

Work package 28 has been considering the relationship between fundamental rights and reflexive governance in the context of EC social policy. Catherine Barnard and Simon Deakin of the CBR-Cambridge team have been carrying out research on flexible working and work-life balance policy in the United Kingdom, looking specifically at the issue of fixed-term employment, and considering how the current UK approach to implementing the Fixed Term Employment Directive is working. Antonio Lo Faro of the Catania team has been carrying out research on transnational collective bargaining, social dialogue and fundamental rights in EU social and labour law. Both teams have contributed to recent debates on the 'flexicurity' concept stemming from the European Commissions' Green Paper on the modernisation of labour law. While these different topics relate, respectively, to the implementation at national level of EC social legislation, and to the development of European social law itself, the questions raised at both these levels are studied in order to contribute to the development of the hypothesis of the REFGOV project. Specifically, the role of governments and the social partners in the development of EC social law and policy, how these actors argue their positions by referring to the public interest, and which procedural mechanisms might ensure that a richer justification may have to be provided in the future, have been central to the studies prepared under this WP.

4.2. Anti-discrimination Law

After the lead researcher (Prof. K. Waaldijk, University of Leiden) was obliged, for health reasons, to withdraw from the project, the Boltzmann Institute for Human Rights (Wien) (Prof.



Manfred Nowak) took over the research and completed the first steps of the research agenda for the successful completion of this case study. In order to identify answers to the questions raised in the guidelines distributed for this phase of the research, they identified important key players at EU as well as national level in the field of anti-discrimination who could be interviewed and/or be sent questionnaires. These key players include public servants, trade unionists, representatives from employers' organisations and non-governmental organisations. Up to the moment of reporting, interviews have been held with some of the key players in particular among the NGO's and trade unions. Research conclusions will be drawn in the final report to be issued at the end of second phase of the research on fundamental rights in the REFGOV project, in June 2008.

4.3. and 4.4. Data protection and Criminal procedure

The research into data protection and on criminal procedure, is being conducted by the Vrije Universiteit Brussel (VUB), under the supervision, respectively, of prof. P. de Hert and of prof. S. Gutwirth. The two teams, in particular, Gloria Gonzalez-Fuster and Pieter Paepe have collaborated and submitted the first part of their research (Deliverable 61-63a). Their aim in this initial research paper was to reflect on how the reflexive governance theory may help to improve governance in the third pillar. To address the question, their paper explores the application of the reflexive governance hypothesis in the fields of data protection and criminal law. This analysis of EU data protection governance, with special focus on its innovative governance mechanisms (such as the 'Art. 29 Working Party' and the European Data Protection Supervisor), inter-pillar tensions (notably the PNR and the 'data retention' case) and foreseeable developments (such as a Framework Decision on data protection and the Prüm Convention), leads the way to an assessment of the specificity of reflexivity in the third pillar, as well as to the issue of the possible deployment of reflexive mechanisms in EU criminal law. One of the interesting aspects of this paper is that it highlights usefully the limits of the EU pillar structure, and that it seeks to relate the debates on EU governance to this more classical, institutional discussion.

In addition, Olivier De Schutter (CPDR/UCL) has contributed to the debate on Criminal Procedure in the reflexive governance perspective his work on "The Role of Collective Learning in the Establishment of the Area of Freedom Security and Justice in the EU" (deliverable D63-b). This paper was presented by Violeta Moreno Lax at the CONNEX Seminar on 'EU Governance: Towards a New Architecture,' held in Madison on 20-21 April 2007. It will be further discussed in the context of the seminar co-organized by REFGOV and the EU Center of Excellence of the University of Wisconsin at Madison, with the Columbia University School of Law, on 25-27 October 2007 in Brussels.

4.5. Transversal issues

In addition to the thematic studies composing the second phase of the research (which should be completed by June 2008), a number of papers have been prepared under the framework of the REFGOV Fundamental Rights Sub-Unit, which seek to address transversal issues (Workpackage 33), of interest to all the empirical domains investigated. One of these papers seeks to explore whether the open method of coordination, as a non-hierarchical way of coordinating the approaches adopted towards certain common problems by the EU Member States, might inspire developments in the area of fundamental rights (D68 -Working Paper REFGOV-FR-13). Another of these papers reexamines the relationship between the Council of Europe and the European Union in the protection of human rights on the European continent, since it was felt that the tensions between the two organizations, especially until the Warsaw Summit of the Heads of State and governments of the Council of Europe Member States of May 2005, constituted one major obstacle to the transformation of the European Union into an organization truly dedicated to exercising its competences in order to contribute to the protection and promotion of fundamental rights (D 66 Working paper REFGOV – FR-11). A third paper examines the relationship between the hypothesis of



reflexive governance and the emergence of a European private international law, an issue which was underestimated in our initial planning of the research and whose importance only appeared during the course of the first phase thereof (D67 Working paper REFGOV-FR-4).

5. Corporate governance

The overall aim of the REFGOV subnetwork on corporate governance is to study the evolution of reflexive forms of corporate governance and to examine the impact of these regulations on corporate practice.

The first work package WP17 (CG1)¹⁰ has been looking in detail at the evolution of corporate governance codes and similar regulatory interventions in the area of corporate law. The outputs include work consisting of single-country studies (covering the UK, France, Belgium, Slovenia, Hungary), comparative analyses (US-UK, France-UK), and studies of transnational norms (EU company law). Each of the studies¹¹ provides evidence on the way in which a reflexive approach to regulation is having a considerable influence on corporate governance norms, while at the same time identifying cross-national differences. Problems with, and obstacles to, the reflexive approach are also identified. These include a tendency for transnational instruments to promote a 'one size fits all' approach based on the assumptions of the 'financial' model of the firm, in which managers are principally accountable to shareholders to the exclusion of other stakeholder groups. Drawing on this point of view, theoretical work has highlighted problems associated with the view of the law-economy relation implicit in the 'financial' or agency-based model of the firm and has drawn out the implications of a reflexive approach for the understanding of the differences between common law and civil law systems in their approach to corporate governance.

In the second work package WP18 (CG2)¹², the focus has been on case studies which examine the extent to which the 'financialisation' of economies is impacting on issues of labour relations and pension fund governance. The main output¹³ here in the year under review was an empirical analysis of the impact of corporate governance form on employment relations in Britain and France, based on analysis of the WERS and REPOSE surveys. For Britain, the empirical findings closely mirrored the prediction that listed companies are subject to a corporate governance constraint in matters of HRM practices and that this effect is least evident in the case public-interest firms, mutuals and cooperatives. French managers of listed companies are less constrained than their British counterparts in the implementation of high commitment work practices, but ultimately such firms are governed in the interests of shareholders and responding to worker voice is not a primary concern. By contrast, French stakeholder firms are more likely to engage with their employees than their listed or non-listed counterparts. The analysis also found differences in the degree to which corporate governance form influences managerial practices and outcomes in the two countries which throw light on the suggestion that cross-national differences in labour regulation play a mediating role in relation to corporate governance forms. The results for French listed companies suggested that they are better placed than their British counterparts to engage in certain high-commitment HRM practices, but that they are more constrained than French stakeholder-member/public interest firms in their capacity to provide for employee voice within the firm. It appears that a stock market listing in Britain has a negative effect on HRM practices and employment relations outcomes, compared to France. The results for stakeholder firms in Britain and in France are consistent with the theory developed in the course of the research, because in both countries stakeholder firms have higher levels of worker involvement and autonomy compared to other forms.

¹⁰ See D33; Report of workpackage 17

¹¹ See the individual studies REFGOV working paper series from REFGOV-WP-CG-9 onwards at <http://refgov.cpd.r.ucl.ac.be/?go=publications>

¹² See D34: Report of WP 18

¹³ See REFGOV-WP-CG-13 <http://refgov.cpd.r.ucl.ac.be/?go=publications>



Studies are also underway in WP18 (CG2) on an analysis of corporate governance properties of corporate groups (directed by Antoine Rebérioux) and of pension fund governance (directed by Alexia Autenne). Progress was made in identifying hypotheses for study and in planning the empirical phase of the work. Outputs will be reported in future years.

The third work package WP19 (CG 3)¹⁴ is concerned with the impact on the enterprise of changes in corporate governance norms. A major part of the work of CG3 is concerned with developing a theoretical framework which critically analyses the predominant agency-based model of corporate governance. This is based on an 'action-based' or pragmatic conception which 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 impositions or prohibitions, but as means of empowering actors; norms endow actors with the capacity to act, and to both efficiently and legitimately transform their context of action, including institutions. 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 procedural conditions being put in place, through public action and an articulation of the 'public interest' with respect to the external context, and, as far as internal context is concerned, through various processes analysed in the paper, which identifies the main pitfalls to be avoided and incentives to reflexivity to be incorporated in the norm-setting process, thereby providing the empirical researcher with a set of indicators for evaluating the reflexive potential of a governance system.

The empirical part of WP19 (CG3) consists of studies which have been carried out of the impact of international accounting norms, the effects of insolvency law rules, norms governing corporate social responsibility, the relationship between corporate governance rules and corporate financing patterns, and the implementation of the EU's financial action plan. The empirical work indicates potential disjunctions between the goals of regulation and their practical effects, stemming part from weak regulatory design.

The fourth work package WP20 (CG4)¹⁵ is concerned with the governance of network forms of inter-firm relations, and is focusing on the wine sector and the media sector in a number of countries. The main questions being addressed are: what is the theoretical justification for preferring network forms of governance to those based on vertical integration? and, how far do public-private partnerships capture the benefits of the network form? This issue will be principally addressed in WP20 (CG4) by a cross-national study of networks in the wine industry. The work is being led by the Trento-EUI and Cambridge teams. Additional teams have been recruited to work on the project, from France (University of Southern Brittany) and Portugal (New University of Lisbon) as well as a team from the University of Catania in Italy.

Although in the last decades the international wine industry has been characterised by the emergence of new wine producing countries, like Argentina, Australia, Chile, New Zealand, South Africa and the USA, Europe still remains the first wine producer in the world. The structure of the market has changed, however. While imports and exports have increased at the world level (also given to the emergence of the "new world wine countries"), Europe shows a continuing concentration and fall in the number of producers, while the importance of distribution channels for wine (especially supermarkets and discount stores) is increasing substantially. Within a change in levels of per-capita consumption (with a decrease in traditional wine countries and an increase in non-traditional wine countries), a general trend in favour of both production and consumption of quality wine is registered. Given these

¹⁴ See D35 Report of workpackage 19

¹⁵ See D36: Report of WP 20



changes, a key issue is: can we expect an evolution in the governance structure of the enterprises? In particular, how do changes in the production and distribution chain affect on capital restructuring strategies, formation of groups, joint ventures, strategic agreements among the firms? Can we observe the emergence of particular models of network forms of corporate governance as a result of these changes?

These are the main questions to be addressed in the empirical work. In the past year the main work of the group has been to develop a joint questionnaire for the empirical phase of the work, which will take place over the next 12 months. Initial contacts have been made and the first interviews have already been carried out. In addition, a smaller-scale empirical project comparing inter-firm relations in the broadcasting industry in Britain and Portugal is being carried out under the auspices of the Cambridge team.

Thus in the past year considerable progress has been made in each of the work packages. A conference will be held in Cambridge in December 2007, which will draw together the empirical findings from all four work packages and consider their significance for the theoretical framework, derived from the theory of reflexive governance, which the members of the subnetwork are using. Certain themes, spanning the different work packages can be identified, which are informing the overarching aims of the REFGOV network. One of these is the conflict between the global trend towards 'financialisation', associated with the rise of the shareholder value norm, and the goal of collective learning which is at the core of the concept of reflexive governance. At a regulatory level, notwithstanding the apparent success of the 'reflexive' model in influencing the evolution of corporate governance codes, there remain significant obstacles to effective regulatory learning, not least the tendency for corporate governance practices to be benchmarked against a 'one size fits all' approach which prioritises shareholder value. At workplace level, systems of human resource management based on a high level of trust and commitment are coming under pressure from performance-management systems based around shareholder value metrics. There is potential for corporate social responsibility to be used as a mechanism to promote a more holistic view of corporate governance, but this is currently constrained by countervailing forces towards short-termism in capital markets. The emergence of network forms offers a potential alternative to the hierarchical model of the firm around which prevailing theories of corporate governance have been constructed, but with implications for regulatory design which are still being worked out, and which may well differ from one country to another.

6. 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 focuses first on the complex processes by which governmental interventions and agreements between stakeholders combine to establish collective rules framing market activities. Second it analyzes the results of these processes both in terms of efficiency of the performance of markets, and in terms of their ability to take into account the interests of the various stakeholders in the society (i.e., the public interest).

The IFM project is organized into three phases:

- A short starting phase (May 2005-Feb 2006) was dedicated to analyzing the "state of the art" on the subject.
- For a longer interim phase (Feb 2006-June 2009) five parallel-applied research programs are carried out dealing with complementary issues.
- A concluding phase (July 2009-May 2010) will be aimed at collectively build a synthesis of these researches.

The objective of the firsts year was to launch both the surveys on the state of the art and the five parallel applied studies. The second year has been dedicated to the completion of the publication process resulting from the first phase, and to the development of the various



applied studies, resulting in an important number of publications and working papers in progress.

Before getting back to this, let us remind the revised schedule of the whole project as decided during the first year of performance.

Current Working Plan

First Phase

The first phase resulted on two syntheses-reports on the state of the art in economics, and especially in New Institutional Economics on:

- The analysis of the Institutional Frameworks enabling market to perform (jointly written by Eric Brousseau (U. Paris X) and Antonio Nicita (U. Siena)).
- The assessment of the current deregulation processes in network industries (jointly written by Eric Brousseau (U. Paris X) and Jean-Michel Glachant (U. Paris XI)).

A first draft of these reports were discussed in a kick-off workshop organized at the University of Paris X in February 2006. A revised draft was written in the summer 2006. Two publishable papers are expected in the fall 2007.

Second Phase

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

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

Every year, a specific workshop dedicated to Ref-Gov-IFM is 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 target to be high-quality scientific events dedicated to the production of a significant scientific publication.

The first meeting was organized in March 2007 at the University of Paris XI on "New Competitive Tools and Smart Regulators' Policy" and associated academics and industry specialist.¹⁶

The two next workshops are expected to be organized between Dec 2007-February 2008 by the University of Sienna, and between Dec 2008-February 2009 by the Pompeu-Fabra University in Barcelona.

Beside these workshops, the main output of the efforts carried out under the Ref-Gov project result in the publication of working papers aimed at being published in scientific journals and collective books.

Third Phase

In Sept 2009 and Dec 2009, respectively, Paris XI and Paris X will organize two workshops/conference 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, it was initially expected that the five teams would write synthesis reports highlighting theoretical advances and policy implications drawn from each of the five programs. It has been decided to replace these reports in a set of contributions to a major common publication and associated events on "Designing Markets: Politics, Law and Economics". Indeed the five initially planned reports would have resulted in a set of

¹⁶ See the agenda and presentations available through <http://refgov.cpdr.ucl.ac.be/>



contributions that would have been insufficiently articulated. It has therefore been decided to develop an effort toward combining several contributions in a project aimed at providing analytical tools to grasp how the design of markets result from a combination of political, legal and economic actions. IFM's members together with a set of invited scholars will be invited to contribute to the workshops and conferences organized around this issue.

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

Current Development in the framework of the Second Phase

- Creation and Governance of Competitive Mechanisms in Network industries¹⁷

[Coordinator: Adis/U.Paris XI / Teams Involved Adis/U.Paris XI, CE.El/Praha, U.Siena, EconomiX/U.Paris X].

Electricity and Energy

The Paris XI team developed its analysis of the governance of competitive changes in the electrical industry at the EU level, of the governance of competitive markets in the electrical industry, both at the retail and the wholesale level, and of the electricity transmission business in the context of competitive markets. A particular attention was paid to the analysis of the implementation of competition at the retail level, and the smallest and less connected electricity markets.

This was in line with the development carried out in Prague by CERGE, which focuses on the analysis of competition in transition countries. The other contributions by CERGE insist on the necessity of better assignation of residual claimant rights in network industries to avoid the domination of certain player on certain competition processes.

Local Public Services

The main objective of this part of the research is to provide theoretical and empirical studies concerning the way local public services are organized and for what performances. A particular emphasis is given to contractual, organizational and institutional choices. During the June 2006 – May 2007 period, many progresses occurred in the collection of data. This allowed the publication of several papers concerning water distribution in France, Local transportation in France, local transportation in London, and infrastructure provision all over the world.

- The Governance of Digital and Information Networks

[Coordinator: EconomiX/U.Paris X/ Participants: EconomiX/U.Paris X, UPF/Barc].

The main objective of this WP is to deepen the analysis of the regulation of digital networks by focussing on on-line communities to highlight the various patterns of self-regulations and self-governance. Besides deepening the research on those issues, a particular attention has been paid in 2006-2007 to the economics of digital platforms. Indeed, most on-line activities rely on intermediaries, which organize transactions, assembling of services (to result in turn-key services) and management of knowledge. Those platforms are influenced by regulation and are also essential drivers of self-regulations. These efforts led to the publication of a special issue of the *Review of Network Economics* on the "The Economics of Digital Business Models". The objective is to characterize these new forms of intermediation and to understand their underlying business models along three dimensions. The first dimension refers to the economics of matching and focuses on transaction costs and network externalities. The second one refers to the economics of assembling and focuses on assembling costs and users' preferences for alternative composite goods. The third dimension refers to the economics of knowledge management and examines how ITs can

¹⁷ See REFGOV WP-IFM-12 to 23 available at <http://refgov.cpdr.ucl.ac.be/?go=publications>



stimulate innovation by providing tools to manage and share information and knowledge generated by digital goods users

- Intellectual Property Rights, Incentives to Invent, to Accumulate Knowledge and to Circulate Intangibles

[Coordinator: U.Siena/ Teams Involved: U.Siena, EconomiX/U.Paris X]

This WP led to the publication of several papers illustrating various aspects of the complex impact of property rights systems on incentives to invent and efficiency in organizing innovation processes. Pagano's work on Cultural Globalization, Institutional Diversity and the Unequal Accumulation of Intellectual Capital analyzes how incentives to innovation depends not only on the design of intellectual property systems but also on the institutional environment and on the effects produced by globalization on it. Angelo Castaldo and Antonio Nicita analyze the case for mandatory access to intellectual property when it is defined as an essential facility by antitrust authorities. By analyzing the main European Antitrust cases involving intellectual property as an essential facility, they identify a test aimed at distinguishing essential facility based IPRs. Antonio Nicita and Giovanni Ramello applied the optional law theory to Copyright issues, after having analyzed the evolution of Copyright law and policies. They identify the conditions under which Copyright protection turns to be an exclusionary device enacted by dominant firm to preserve their market power, especially in network and media industries. Antonio Nicita, in his article "On Incomplete Property" addresses the issue of market efficiency and poorly defined property rights, with particular reference to intellectual property. Earle, Pagano and Lesi analyze the evolution of Information Technology and its correlation to organizational form of production in Transition Countries. Maria Alessandra Rossi surveys theoretical and empirical contributions to the economics of open source software development.

On the other aspect of this WP — the analysis of IP systems as an infrastructure allowing circulation of knowledge — EconomiX (U. of Paris X) is currently organizing an international consortium to carry out a survey on firms' licensing practices in order to shed lights on the impact of institutional environment on technology licensing agreements, and by extension on the capability to transfer knowledge and to organize markets for technologies. The development of such markets is essential to the performance of innovation systems. The core of an international consortium is established and partnerships are discussed with additional research teams and, before all, with business partners.

- The Collective Governance of Quality¹⁸

[Coordinator: U.Oviedo/Teams involved: U.Oviedo, Adis/U.Paris XI, UPF/Barc].

The objective is to analyze the provision of quality in business networks to assess how it is developed and managed. Particularly, the team tries 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. Preliminary results suggest that a) franchising self-regulation can be exported in many sectors (e.g. bus transportation); b) reaching high quality standards requires complex organizational forms based on combination of classical mechanisms of governance with additional safeguards, which yield hybrids forms such as Protected Denomination of Origin and Protected Geographical Indicators. The next step is to show that these preliminary results are also consistent in other industries and to get econometric evidences.

- Behaviours, Contractual Practices and the Legal Environment

[Coordinator: UPF/Barc / Teams Involved: U.Siena, EconomiX/U.Paris X, UPF/Barc].

¹⁸ See REFGOV WP-IFM-11 and 12 <http://refgov.cpdf.ucl.ac.be/?go=publications>



The main goal of this WP is to analyze the interaction between public and private orderings in the provision of institutional infrastructure on which interactions among economics agents are based with particular reference to the emergence of contrasted economic and legal norms and contrasted organization of the provision of these infrastructures of market exchange. The research has proceeded according to plan, with major advances focused on publishing results of different lines of research closely related to the RefGov project.

Three main domains have been investigated

- The organization of the judicial decision system
- The manufacturing of property rights
- The interaction of private and public enforcement



Section 2 – Workpackages - progress of the period

2.1. Workpackages Services of general interest

Work package 2 description – SGI

Workpackage 1 phase 2	SGI	Start date or starting event: Month ?
Participants Lead contractor 9 IIPLD		Other 2, 5, 25,26, 29, 30, 32
<p><u>Objectives:</u></p> <p><i>General objectives</i></p> <ul style="list-style-type: none"> - To collect the empirical materials for the historical perspective research on the conception of public services - To make a comparative study to reconstruct the European historical perspective on public services <p><i>Specific objectives</i></p> <ul style="list-style-type: none"> - To contribute to the improvement of the common analysis grid proposed by the Theory of Norm Unit - To propose a common grammar on the public services notions and conceptions - To work on the proposals for the Map of Excellence 		
<p><u>Progress :</u></p> <ul style="list-style-type: none"> - The historical perspective progress was presented at the second common work of the SGI-sub-network in November/December 2006. The synthesis report based on the fourteen reports has been achieved. Taking into account these contributions certain adaptations have been proposed as far as the methodology and goals of the historical perspective were concerned. - The drafting of new presentations of documents following the precedent guidelines will not be demanded anymore. A single contribution is requested from each team, meant to contribute to the historical perspective chapter of the sub-network final report, and to be published in a collective book published as by-product of the REFGOV Project. - A first presentation of this draft contribution has been made by each team during the Energy workshop in June 2007 and the Healthcare workshop in May 2007. - Selected and well-argued bibliography has been established by each team for the studied field. 		
<p><u>Deviation</u></p> <p>In order to better concentrate the efforts of each team and to improve consistency between the tasks carried out in the sub-network, the research field will be concentrated on two specific sectors (Healthcare and Energy). Therefore, each team will prepare a contribution in its specific research sector. Taking into account the specificity of the post-communist situation, the Hungarian team will write a more general analysis, presenting the context and the broad outlines of the debates on SGIs.</p>		
<p><u>Deliverable</u></p> <p>D 42: Contribution and a selected and well-argued bibliography establish by each team for the studied field (This deliverable will be finalised for the month 29. Some elements of the deliverable are already established and could be provide by the coordinator if necessary).</p>		

**Milestones and expected result :**

- Synthesis on the key documents obtained from the different teams in accordance with the guidelines.
- Discussion on the first Draft report on historical perspective (Common workshop (3) – held month 31).



Work package 2 description – SGI

Workpackage 2.2	SGI Energy	Start date or starting event:	Month 18
Participants	Lead contractor 25	2, 5, 29.	
<p><u>Objectives:</u></p> <ol style="list-style-type: none"> 1. To develop a set of interlocking case-studies on reflexiveness in different national energy systems 2. To co-ordinate the case-studies with other works in SGIs, in particular healthcare 3. To develop institutional proposals. 			
<p><u>Progress:</u></p> <p>The case studies have now been planned and three out of the four have been written in draft form; the fourth will be available for the October 2007 Workshop in Paris. The studies cover a range of different aspects of energy policy, but are united by a common set of models derived from theoretical work carried out elsewhere in the REFGOV project. They have been subject to detailed analysis and discussion by the members of the energy group, and fresh drafts will be made available for the October workshop.</p> <p>There has been extensive collaboration with other works on SGIs; the Paris workshop has included joint sessions with the healthcare group and the group conducting the historical analysis. The healthcare group was represented at the Bristol workshop. There has also been extensive informal contact and collaboration between the healthcare and energy groups.</p> <p>Some interim institutional proposals were discussed at the Bristol workshop in June 2007; detailed proposals will be put before the Paris workshop in October 2007 and finalised for deliverable 44.</p>			
<p><u>Deliverables:</u></p> <p>D 44; due month 33; (Draft papers have been already prepared and they will be deliver on time).</p>			
<p><u>Milestones</u></p> <p>Workshop in Paris held November-December 2006</p> <p>Workshop in Bristol held June 2007</p> <p>Draft reports circulated June 2007</p>			



Work package 3 description – SGI

Workpackage 3 .2	SG I- Health care	Start date	Month 18
Participants	Lead contractor 30	5, 9	
Objectives :			
<ol style="list-style-type: none"> 1. To develop case studies of reflexive governance in three different national healthcare systems; 2. To co-ordinate the case-studies with other works in SGIs, in particular energy; 3. To contribute to the historical study of reflexiveness and SGIs; 4. To develop institutional proposals. 			
Progress:			
<p>The case studies are being developed with a view to presentation at the Paris workshop in October 2007. The studies will cover a range of different aspects of healthcare policy, but are united by a common set of models derived from theoretical work carried out elsewhere in the REFGOV project. Institutional proposals will be presented in conjunction with the case-studies at the Paris workshop.</p>			
Deviations:			
<p>The only deviation is that stakeholders have not been invited to the workshops as it has been agreed that this will be more appropriate when more focused institutional proposals have been developed.</p>			
Deliverables SGI:			
<p>D 45: Sector Report on general outline of institutional proposals, due month 33; (Draft papers have been already prepared and they will be deliver on time).</p>			
Milestones			
<p>Workshop in Paris held November-December 2006 Workshop in Budapest May 2007</p>			



Work package 4 description – SGI

Workpackage 4	SGI	Start date	Month 0
Participants	11-32		
<p><u>Objectives:</u></p> <p>Main objectives: To carry out a survey of the literature on regulation of public bodies. Comparison of regulation mechanisms as stated in the literature in fields such as prisons and higher education, in Australia and in the UK.</p> <p>To undertake empirical work and to generate new empirical data comparing regulation of the public sector across the domains of higher education and prisons and across jurisdictions in Australia and the UK.</p>			
<p><u>Progress:</u></p> <p>A preliminary report entitled “Towards Reflexive Governance in the Regulation of Public Sector Bureaucracies” was prepared and presented to the Paris Common Workshop in November/December. It offers a theoretical frame on three domains (prisons, higher education and regulatory reform) and two countries (Australia and the UK). After the Common workshop and arising from the discussion of the synthesis presented by the Theory of Norm Unit, the research has been focused on the regulatory reform domain. The decision were taken to extend the research field and to look beyond the UK and Australia to other countries and to the international level, especially the EU and the OECD. This research will be presented to the third SGI Common Workshop in December.</p>			
<p><u>Deliverables SGI regulation of the Public sector:</u></p> <p>D 15 : Preliminary report on the collected primary delivered D 46 ..Report on outline institutional proposals. Month 33</p>			
<p><u>Milestones and expected result:</u></p> <p>Workshop SGI 3 in month 25 A preliminary report on the research will be completed in Month 18 and distributed to the other members of the project.</p>			



Work package 5 Description – SGI

Workpackage 5	SGI	Start date or starting event: CPDR/UCL	Month 8
<p><u>Objectives:</u></p> <p><i>Main objectives:</i> 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>The present report concerns the second step - starting on month 13 up to month 24 – on reconstructing the manner in which the Trade Union actors, in France and in Belgium, have perceived a possible role to play in the assessment of the changes taking place in the regulation of electricity production and distribution. This focus on trade Unions (as such collective actors) aims first to identify if a kind of learning process made possible a new position of the Unions in that situation 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, an implementation plan was delivered. The first part of that plan is now achieved. Its purpose was to reconstruct the way the Trade Union actors, in France and in Belgium, are identifying the issues and selecting the possibilities of alternatives to intervene in the debates on the liberalization of the electricity sector. We identified 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.</p> <p>On a more practical ground, we also better identified the relationship between the regional level of the unions intervention in the political decision-making and the more general ideas and principles elaborated at a national and 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). The national mediation stays till now the key institutional position for the unions. For example, the late congress of the CSC Énergie-Chimie in January 07 tried to develop a new conception of the social responsibility of the companies of their sector incorporating the social dialogue in order to elaborate social convention who are engaging a plan of sustainable development of their activities. Such a practice of social dialogue should open a way to a kind of new social contracting between employees and employer in order to cooperate in a mutual involvement to assess the social impact of the reorganization of the concerned sectors. This national level appears in that way as the only one now able to reduce the gap between two kinds of preoccupation we previously identified 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).</p> <p>We discussed that first step of our research during the first afternoon of the meeting organized by Theoretical Unit in Bruxelles in October 06. We also participated in meeting with the Unions representative of the sector in November 06 and January 07, especially to connect what we called,</p>			



in our previous report, the background culture and our research proposal.

Two major questions result from these meetings concerning two different level of the research process. The question of the American researcher was directly oriented to a presupposition concerning the way we understand the term actors in such a context. Perhaps are we right in looking for a transformation of the representation enabling the actors to redirecting their own conception of their role in a process of collective decision making, but it is not sure that actors are automatically involved in such transformations. It could even be more plausible that they just try to adapt themselves to a new situation without reforming their fundamental believes. Transformations of representation are perhaps only the a posteriori result of a cooperative process of problem solving. In opposite to such a pragmatist conception, the reflexive conception of actors we propose is asserting that there is no a posteriori consequence expectable if there is no specific condition taken into account in a social learning process enabling actor to reorienting their own practice. That first question cannot be isolated from the second one resulting form the discussions with the unions representative. What kind of mechanism are we able to propose in order to implement such a collective process open to new kind of evaluation? Is it necessary to change the traditional reference to a principal agent in the negotiation? The option of the unions is intuitively close to the second level of new-institutionalism we were investigating in our synthesis report of Mai 06. They are looking for new modes of collaborative relationship in order to incorporate in the social dialogue more mutual responsibility and more sensitivity to a “presentification” of the social consequences of the economic activities of their sector. Their perspective is clearly one of reforming the social contract supporting the economic activity, exactly as it would just infer at the same time a reform of the policy making of the social state. But, as Peter-Vincent Jones was underlying it in his book about the New Public Contracting, our problem research is precisely that “these relational elements are necessary, but not sufficient, conditions of responsive regulation”¹⁹.

These two questions are central and we have to answer them in order to achieve our program and its double objective: 1/ proposing a modality to enhance the reflexive capacity of the unions to play a role in new categories of regulatory relationships ; 2/ defining the institutional incentives for improving SGI governance in that sector. The crucial point to be clarified here is the relationship between the self-construction of their own capacity by the actors (as actors involved in collective leaning process enabling such a reflexivity) and the responsiveness of institutional arrangement making possible the experimentation of that self-construction of the actors capacities. Is it theoretically and practically possible to cross collective action and responsiveness or, more precisely, the requirement of an enlarged social dialogue and the requirement of some more responsive regulatory institutions?

That intermediary requirement have to be satisfied before defining more precisely what could be proposed in the sector as a new mode of social dialogue supporting the key reform of the governance process. In order to prepare that new step, we have organized our seminar of Mars-April 07 on that theme. Our purpose was to summarize the evolution of our research for the young researcher of our team, explaining especially the double role of the theoretical seminar and of the actors themselves in the practical translation of our synthesis report.

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

Deliverable SGI Collective actors:

D16: Month 8 Implementation plan - Delivered

¹⁹ J. Lenoble and M. Maesschalck, “Beyond Neo-institutionalist and Pragmatist Approaches to Governance”, D 2 of the REFGOV IP project and REFGOV Working paper series REFGOV-SGI/TNU-1, May 2006, p 65 , citing P. Vincent-Jones , “The New Public Contracting: Regulation, Responsiveness, Relationality” OXFORD? Oxford U.P.; 2006. <http://refgov.cpd.r.ucl.ac.be/?go=publications>,



2.2 Workpackages Global and Public Services

Work package 7 description – GPS

Workpackage 7	GPS2	Start date or starting event: Month 10	
Participant id		U. Oldenb 13	Economix/ U. Paris X

Objectives

To establish a common understanding of the insufficiencies and proposed ameliorations of strategies of environmental governance. Specifically, workpackage 7 (GPS 2) provides the opportunity to collectively consider the questions 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.

Description of work

A theoretical workshop was hosted by U. Oldenb based on the contributions of the reports prepared in workpackage 6. The workshop has considered the insufficiencies of current strategies of global environmental governance and attempted to develop, based on the reports and presentations by key academics, new strategies to overcome the insufficiencies. Based on the workshop and reports, a common scientific article is being prepared for publication in leading academic journals. It explores the strengths and limits of neo-institutional and ecological economics for the theories of global public services, it considers the establishment of new modes of governance within the field of environmental regimes and evaluates their contribution to the governance of the global commons.

Deviations

The establishment of the framework and the comparative analysis of the literature on case studies by University of Oldenburg and Paris X (D19 and D20) needed to be presented as a coherent whole. That's why we decided to submit the entire book length paper (47pages) to MIT Press as a single piece instead of two separate articles (cf. deliverables hereunder). In a later stage we will also extract a 8000 words short article to be submitted to *Ecological Economics*.

Deliverables and Milestones GPS

D19-20: Framework paper as a long book chapter of 47 pages prepared by U. Oldenburg, Economix/U. Paris X and the CPDR/UCL submitted to MIT Press for publication in the book "Global Public Goods and Reflexive Governance" to be published in the Series "Politics, Science and the Environment". Delivered as long book chapter.

Milestone/June 2006 : Louvain-la-Neuve workshop on "Institutions for Providing Global Environmental Goods". Delivered as web-based proceedings with abstracts and full paper contributions URL : <http://biogov.cpdr.ucl.ac.be/bioinst>



Work package 8 description – GPS

Workpackage 8	GPS3	Start date or starting event: Month 7	
Participant id		IDDRI/Paris 8	CPDR/UCL 1 as subnetwork coordinator

Objectives

In workpackage 8, is developing a case study in which the lessons and theoretical insights developed in the first two workpackages are contextualized and explored.

Description of work

This first case study concerns the role of institutional framework in the bio-genetic resources in the innovation chain

This case study is part of a set of three case studies, prepared in the context of the lessons learned in workshop hosted previously (WP7-Milestone/June 2006). The set of cases studies will also be presented at three common workshop organized by different network members (respectively University Amsterdam/May 2007 (accomplished) ; University College London/September 2007 and Paris X/February 2008), to evaluate the results of the case studies and expose the studies to the critique of the wider academic community (cf. WP 26)

This first case study is analyzing the role of institutional framework in the bio-genetic resources in the innovation chain. It considers the discussion on the recourse to contractual mechanisms and the possible contribution of institutional framing of such contractual mechanisms. In particular it has explored reflexive learning on these issues, by focusing on the role of an intermediary actor between the local communities and the companies, which is the science community. As is shown in this case study, institutional learning is organized by the scientists in the field of biodiversity in institutions such as the international consultative group on agricultural resources (CGIAR) and the US National Cancer Institutes (NCI). It shows how new frames have been build and implemented through an explicit organisation of the learning processes, in response to a changing institutional environment. The case study examines examples of institutional solutions set up by scientists to take into account their responsibility as a junction between those different actors with different norms of behavior.

Deliverables GPS

D21: Case study on the decentralized institutional learning on the role of different institutional frameworks in the governing the exchange of bio-genetic resources in the innovation chain. Delivered as a report prepared by IDDRI/Paris.

Milestones and expected result

This first case (jointly with the case studies of GPS4-WP9 and GPS5-WP10) study has contextualized the theoretical examination of reflexive governance of global public goods in the previous two workpackages GPS1-WP6 and GPS2-WP7, and will provide the foundation for the workshops on institutional propositions to be hosted during the next GPS workpackage GPS6-WP26.

15th June : GPS-Refgov subnetwork meeting at LLN steering meeting with Laurence Tubiana (IDDRI), Tim Swanson (UCLondon), Eric Brousseau (Paris X), Bernd Siebenhüner (Oldenburg), Tom Dedeurwaerdere (UCLouvain).



Work package 9 description – GPS

Workpackage 9	GPS4	Start date or starting event: Month 7	
Participant id	VU.Amst 27	CPDR/UCL	as subnetwork coordinator

Objectives

In workpackage 4, we are developing a second case study in which the lessons and theoretical insights developed in the first two workpackages are contextualized and explored.

Description of work

This second case study concerns the institutional framing of public-private partnerships for sustainability in the field of sustainable technologies including renewable energies and pesticides reduction. (Type II Partnerships)

This case study is part of a set of three case studies, prepared in the context of the lessons learned in workshop hosted previously (WP7-Milestone/June 2006). The set of cases studies will also be presented at three common workshops organized by different network members (respectively University Amsterdam/May 2007 (accomplished) ; University College London/September 2007 and Paris X/February 2008), to evaluate the results of the case studies and expose the studies to the critique of the wider academic community (cf. WP 26)

The case study has considered proposed improvements of environmental governance in the context of reduction of pesticides in the field of agro-biodiversity. The case studies consider the recourse to contractual mechanisms and the possible contribution of institutional framing of such contractual mechanisms. More specifically, it has focused 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.

Deliverables GPS

D22: Case study of the institutional framing of public-private partnerships for sustainability (Type II Partnerships) in the field of sustainable technologies for agrobiodiversity. Report delivered by VU.Amst.

Milestones and expected result

This first case (jointly with the case studies of GPS3-WP8 and GPS5-WP10) study has contextualized the theoretical examination of reflexive governance of global public goods in the previous two workpackages GPS1-WP6 and GPS2-WP7, and will provide the foundation for the workshops on institutional propositions to be hosted during the next GPS workpackage GPS6-WP26.

15th June : GPS-Refgov subnetwork steering meeting at LLN workshop 5pm-7pm. : Laurence Tubiana (IDDRI), Tim Swanson (UCLondon), Eric Brousseau (Paris X), Bernd Siebenhüner (Oldenburg), Tom Dedeurwaerdere (UCLouvain).



Work package 10 description – GPS

Workpackage 10	GPS5	Start date or starting event: Month 7		
Participant id		UCLond 24	Q MU/Lond 14	CPDR/UCL as subnetwork coordinator

Objectives

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.

Description of work

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 workshop hosted previously (WP7-Milestone/June 2006). The set of cases studies will also be presented at three common workshop organized by different network members (respectively University Amsterdam/May 2007 (accomplished); University College London/September 2007 and Paris X/February 2008), to evaluate the results of the case studies and expose the studies to the critique of the wider academic community (cf. WP 26)

This third case study (D23) shows the inefficiency of a global market mechanism for creating a market in biodiversity related resources, such as through a global intellectual property rights regime. Indeed, by focusing on a simplified model of integration of the different players in the exchange in biological resources – from local nature protection movement and indigenous communities in the first stages, to researchers and corporations in the later stages – it shows the importance for transferring property rights at the local level. The focus in this case study is on the traditional knowledge holders, but this analysis can be extended to the other local players such as the local communities, ex situ collections or nature conservation agencies.

Deliverables GPS

D23: Case study of the institutional framing of bioprospection contracts and provisions for access and benefit sharing. Delivered as a report prepared by the UCLond.

Milestones and expected result

This first case (jointly with the case studies of GPS3-WP8 and GPS4-WP9) study has contextualized the theoretical examination of reflexive governance of global public goods in the previous two workpackages GPS1-WP6 and GPS2-WP7, and will provide the foundation for the workshops on institutional propositions to be hosted during the next GPS workpackage GPS6-WP26.

15th June : GPS-Refgov subnetwork steering meeting at LLN workshop 5pm-7pm. Present : Laurence Tubiana (IDDRI), Tim Swanson (UCLondon), Eric Brousseau (Paris X), Bernd Siebenhüner (Oldenburg), Tom Dedeurwaerdere (UCLouvain).



Work package 26 description – GPS

Workpackage 26	GPS 6	Start date or starting event: Month 26	
Participant id		14-24-27-13- Amsterdam (workshop May 2007) UCLondon (workshop September 2007)	CPDR/UCL as sub-network coordinator

Objectives

In workpackage 6 and 7 we have developed the theoretical framework for institutional analysis of reflexive governance in the field of global public goods. In workpackage 8,9,10 we have developed 3 case studies in which the lessons and theoretical insights developed are contextualized and explored.

In this workpackage, we will synthesize the work carried out in these workpackages and confront them to a broader academic audience through two international call for papers, addressed to the political science, legal and economical theory research community. The results of these workshops will lead to a report on a comparative assessment of institutional frameworks for GPS governance to be submitted for the first cross thematic seminar. A final closed workshop with leading scholars in institutional analysis will be organized in Cargese (Corsica) in February 2008.

Description of work

The synthesis and critical discussion of the results of the first workpackages will be organized in two international conferences where a special call for paper on institutional design and reflexive governance will be organized. A first workshop has taken place in the framework of the international Amsterdam conference on “Earth Systems Governance” in May 2007. A second workshop will take place in Heidelberg in September 2007 and will be organized by UCLondon in the framework of the international meeting of the BIOECON network.

The results of the contribution of these different workshops will lead to a publication in an international journal and will be synthesized in the report on institutional frameworks.

Deviations The workshop organised by UCLondon will be held in Cambridge University (Kings College) and not in Heidelberg for logistical reasons.

A new workshop to prepare a publication as a result of the research on institutional propositions will be held in Cargese, high-level key-note speakers have been contacted and agreed upon participation (New GPS 26-Milestone/February 2008)

Accomplished Deliverables and Milestone in the June 2006-May2007 Period

Workshop on Markets, contracts and partnerships for the provision of environmental services, Heidelberg, September 2007 (organized by UCLondon).

Milestone/May 2007. Workshop on ‘The reflexive governance of global public goods’, Amsterdam, May 2007. Web based proceedings of the Stream 7 on reflexive governance at <http://www.2007amsterdamconference.org/>

Milestone/September 2008. The International Call for Papers has been launched and papers received 1st of May 2007. A selection of the best papers has been proposed for the conference by the international review panel.



Work package 27 description – GPS

Workpackage 27	GPS 7	Start date or starting event: Month 20	
Participant id		IDDDRI/Paris 8 Paris X (for the report)	CPDR/UCL as sub-network coordinator

Objectives

The objective of this third phase of the GPS research is to draw upon the insights of the institutional analysis done in component 1 (the first and second phase of the GPS research : WP6,7,8/9,10,26) to propose a specific institutional architecture for reflexive governance in a specific field of application of provision of environmental services (cf. description of the GPS network in the project proposal document). This architecture will be discussed at a workshop, in order to improve on its feasibility, practicality and saliency. In a later stage (final workshop M56) the possible generalization of this institutional framework will be discussed.

Description of work

This workpackage on institutional architecture for the provision of environmental services will use tools developed in component 1, with a special focus on public interest assessment protocols. For this, the architecture will be based on contemporary advances in reflexive assessment procedures, mainly the multi-criteria assessment methods for evaluation public choice. In a first stage, a report (M30, D49) will be prepared on an architecture for reflexive governance. This report will serve as the input for a workshop on “Institutional architecture for Reflexive Governance : Assessment, communication and advocacy”. In order to prepare this workpackage a preliminary report D49(1) has already be prepared, which has lead to the choice of the field of sustainable forestry as a particular advanced field for the use of indicators and assessment protocols.

Deviations : Normally this workpackage would only start in a later stage (month 30, with the report D49. However, because of the importance of this workpackage it has been decided to start earlier and separate the D49 in three reports : D49(1) on the forest prototype case study (M24); D49(2) on assessment protocols to be delivered to the cross-thematic ; D49(3) report to prepare the SIA case study at the Paris workshop (Milestone/March 2008, WP26).

Deliverables GPS

D: 49(1) Report on multi-criteria assessment and reflexive governance in the field of sustainable forestry. Report delivered.



2.3 Workpackages Institutional Frames for Markets

Work package 11 description – IFM

Workpackage 11 IFM1	Start date or starting event:	Month 0	Continued
Lead contractor ParisX/ Economix	22, 23, 3-31, 17, 19, 20		
<p>Objectives:</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>Progress towards objectives:</p> <p>Two syntheses-reports on the state of the art in economics, and especially in New Institutional Economics on:</p> <ul style="list-style-type: none"> - 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)). - The assessment of the current deregulation processes in network industries (jointly written by Eric Brousseau (U. of Paris X) and Jean-Michel Glachant (U. of Paris XI)). <p>Have been produced</p> <p>The publication of the Brousseau-Nicita working paper has been delayed because adjustments are needed to turn a survey of the literature into a publishable outcome</p> <p>The synthesis by Eric Brousseau and Jean-Michel Glachant is in press. It will be published as a chapter of a textbook in New Institutional Economics to be published by Cambridge University Press in 2008</p>			
<p>Deviations:</p> <p>D24 The publication of the synthesis working paper on IFM has been delayed due to discussion and need to adapt it to the format of a journal. The delivery of the definitive version is expected in the Fall 2007</p> <p>D25 The frontier between D25 and D26 has been reorganized because the topics were too close. Jean-Michel Glachant who was responsible for both is in the process of publishing two papers. One (D25) jointly written with E. Brousseau focuses on the general principles governing the regulation of network industries today, and explain the roots and consequences of the so-called “deregulation” process that occurred worldwide in all networks industries. The second (D26) jointly written with Y. Perez focuses on the building of institutional frameworks to govern reforms in network industries relates to WP 12.</p> <p>It has been decided to replace the initially planned five parallel surveys on the applied literature and five parallel reports related to WP 12-16 in a set of contributions to workshops on “Designing Markets: Politics, Law and Economics”. The initial parallel surveys and reports have been turning out in resulting in a set of contributions that were insufficiently articulated. It has been decided to develop an effort toward combining several contributions in a project aimed at providing analytical tools to grasp how the design of markets result from a combination of political, legal and economic actions. IFM’s members together with a set of invited scholars will be invited to contribute to a set of workshops and conferences organized around the topic.</p>			
<p>Deliverables IFM:</p> <p>D24: “Institutional Frames for Markets: the state of the art, theory, debates and new questions” (EconomiX/U. Paris X – U. Siena) final version to be delivered by Month 30</p> <p>D25 E. Brousseau and J.-M. Glachant entitled “Networks regulation in the new-economic context” forthcoming in E. Brousseau, C. Meadel, M. Marzouki (eds) “Governance, Regulation, Power on the Internet” to be published by Cambridge University Press in 2008 to be published on-line by Month 30</p>			
<p>Milestones: Common Workshops of the IFM network March 2007 Paris, December 2007 Siena, December 2008 Barcelona</p>			



Work package 12 description – IFM

Workpackage 12	IFM2.1	Start date or starting event:	Month 0
Lead contractor Paris Sud- ADIS 23 - U.Siena 17, EconomiX/U.Paris X-22, CERGE-EI 3-31-			
Objectives:			
General: 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 other stakeholders) thanks to a mix of assessment of practices and theoretical developments on the building of appropriate institutional tools to manage competition and regulation in network industries.			
Specific applications to			
1° the analysis of competitive reforms in the electricity industry			
2° the analysis of the institutional and regulatory environment of local public services			
Progress towards objectives:			
An important number of essays have been produced by the three teams. They are either to be published or in the process of being submitted to academic journals			
In addition a workshop on "New Competitive Tools and Smart Regulators' Policy" mixing academics and industry specialists was held at the University of Paris XI on March 10-11 th , 2007. A common publication of the papers given at this workshop is an option currently explored			
Publications resulting from WP 12			
Local Public services			
Accepted and Publishes papers			
<ul style="list-style-type: none"> • Athias L. and Saussier S 2007 "Un Partenariat Public Privé rigide ou flexible ? Théorie et application aux concessions routières à péage", <i>Revue Economique</i>, 58, 565-576, 2007 • Chong E., Fréddy Huet, "Enchères, concurrence par comparaison et collusion", <i>Revue Economique</i> 57(3): 582—592. • Chong, E., Huet F., Steiner, F. and Saussier S, 2006 "Public-Private Partnerships and Prices: Evidence From Water Distribution in France", <i>Review of Industrial Organization</i>, 29, #1-2, 149-169. This paper is in the top 10 of the most downloaded SSRN paper in the "CEPR Discussion Papers" 8 december 2006 • Chong, E., Huet, F. and Saussier S, 2006 "Auctions, Ex post Competition and Prices", <i>Annals of Public and Cooperative Economics</i>, 77 (4), 524-551. • Desrieux C. 2006 "Le rôle de l'autorité publique dans la gestion des services publics locaux", <i>Revue Economique</i>, 57(3): 582-592. • Glachant J.M. and Saussier S, 2006 "Public Private Partnerships", (Eds) of a special issue in the <i>Review of Industrial Organization</i>. • Roy W. and Yvrande A. 2007, "Ownership, Contractual Practices and Technical Efficiency: The Case of Urban Public Transport in France", <i>Journal of Transport Economics and Policy</i>, Vol. 41(2), pp. 257-282. • Staropoli C. and A. Yvrande-Billon, 2006, "Competitive tendering in local public services", (Eds) of a special issue of the <i>Annals of Public and Cooperative Economics</i>. • Yvrande A. 2006, "The Attribution Process of Delegation Contracts in the French Urban Public Transport Sector: Why Competitive Tendering is a Myth", <i>Annals of Public and Cooperative Economics</i>, Vol. 77(4). This paper obtained the <i>Michael Beesley Award of Excellence in Research</i> in September 2005 at the 9th <i>International Conference on Competition and Ownership in Land Passenger Transport</i> (Lisbon, Portugal). 			
Submitted papers and working papers			
<ul style="list-style-type: none"> • Amaral M., Saussier S., and Yvrande A. 2007 "Does Competition for the Field Improve Cost Efficiency? Evidence from the London Bus Tendering Model", working paper in progress. • Athias L. and Nunez A. 2007 "The More The Merrier? Number of Bidders, Information Dispersion, Renegotiation and Winner's Curse In Toll Road Concessions", avec Antonio Nunez, <i>Centre for Network Industries and Infrastructure (CNI) Working Paper N°2006-16 & ATOM Working Paper</i>. • Athias L. 2007, "Contracting for Public Private Partnerships : Availability Contracts or 			



Concession Contracts?”, working paper in progress.

- Athias L. and Nunez A. 2007, “Winner's Curse In Toll Road Concessions”, avec Antonio Nunez. Submitted to *Economics Letters*.
- Athias L. and Saussier S 2007, “Contractual Rigidity or Flexibility for Public Private Partnerships ? Theory and Evidence from Infrastructure Concession Contracts”, submitted to the *Journal of Industrial Economics*.
- Chong E, Huet F., 2007, “Yardstick competition, franchise bidding and collusive incentives”, ATOM & GRJM Working Paper.
- Chong E., Huet F., 2006, “Franchise bidding, investment incentives and transaction costs: the case of the water sector in France”, GRJM Working Paper.
- Desrieux C. 2006, Informal or formal agreements: Revisiting relational contracting in public-private partnerships, Submitted to *International Review of Applied Economics*.
- Desrieux C. 2006, *Les frontières entre secteur public et secteur privé dans les services publics locaux*, Submitted to *Gérer et Comprendre*.
- Desrieux C. 2006, *Owner or holder? A critical study of property rights in public services*. Submitted to *Journal of Institutional and Theoretical Economics (JITE)*

Reforms in the Electricity Industry

- Codognet, Marc-Kévin & Jean-Michel Glachant : “Weak Investment Incentives In New Gas Storage In The United Kingdom?”
- Dubois, Ute: « "Pablo Spiller Et Les Principes Du Design Institutionnel Des Réformes" »
- Dubois; Ute: « Adaptability Of Competitive Electricity Reforms : A Modular Analysis” »
- Haas, Reinhard, Jean-Michel Glachant, Hans Auer, Nenad Keseric, Yannick Perez : « Competition In The Continental European Electricity : Market: Despair Or Work In Progress? » »
- López González, Rodrigo: Electricity Distribution. Is Quality Really Regulated Or Just Given?
- Mravec, M. (2006) Understanding the Failure (so far) of the Liberalization of the Czech Market in Natural Gas: Some Models. CERGE-EI discussion Paper 169.
- Ortmann, A., Slobodyan, S., and S. Nordberg (2003) “(The Evolution of) Post-secondary Education: A Computational Model and Results.” CERGE-EI WP 208 and CERGE-EI DP 93.
- Perez, Yannick & Francisco Javier Ramos Real : “How To Make A European Integrated Market In Small And Isolated Electricity Systems? The Case Of Canary Islands”
- Petit F., Y. Phulpin, M. Saguan And Ph. Dessante : « A Contribution Of Experimental Economics Toward Characterization Of The Use Of Market Power In Oligopolistic Electricity Markets” »
- Rious, Vincent: « Quelle Place Pour La Concurrence Dans Le Développement Du Réseau ? » »
- Van Koten, S. (2006a) Legally separated cross-ownership between bidder and auctioneer: With an application on liberalization and regulation of the EU electricity markets. Mimeo, submitted to the CERGE-EI working paper series.
- Van Koten, S. (2006b) Bidding behavior when one bidder and the auctioneer are vertically integrated. Illustrated by the partial deregulation of the EU electricity markets. CERGE-EI Working Paper 313.
- Van Koten, S., and A. Ortmann (2007) The Unbundling Regime for Electricity Utilities in the EU: A Case of Legislative and Regulatory Capture? CERGE-EI Working Paper 328.

Deviations:

No major deviation: As pointed out by the list of publication, the teams involved in this sub-project are very active

Rather than targeting a specific report on the building of competitive framework in network industries, the contributor to the WP will intensively contribute to the transversal activity described in WP 11: the preparation of one major publication on “Designing Markets: Politics, Law and Economics

Deliverables IFM:



D26 "Institutional Economics and Network Industry Deregulation Policy", Jean-Michel Glachant et Yannick Perez, forthcoming in Brousseau, Glachant (eds) *New Institutional Economics: a Guidebook*, Cambridge University Press

Milestones:

Workshop on "New Competitive Tools and Smart Regulators' Policy" mixing academics and industry specialist was held at the University of Paris XI on march 10-11th, 2007



Work package 13 description – IFM

Workpackage 13 continued	IFM3	Start date or starting event: Month 0
Lead contractor Paris X -22		
<p><u>Objectives:</u> The objective of this project is to deepen the analysis of the regulation of digital networks by focusing 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. 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> Two major publications resulted from this line of research</p> <ul style="list-style-type: none"> - Eric Brousseau, Nicolas Curien (eds), "Internet and Digital Economics", Cambridge University Press, June 2007. Several papers address the issue of the regulation of digital network - Eric Brousseau, Thierry Penard (eds), "The Economics of Digital Business Models", Special issue of the Review of Network Economics, vol 6, # 2, June 2007. The issue is dedicated to these "platforms" that organize exchange, production and the accumulation of knowledge on digital networks and provide therefore governance services to the participants to the industry. <p>The contributions to the book "Governance, Regulations and Powers on the Internet" edited by Eric Brousseau (U. Paris X), Meryem Marzouki (CNRS) and Cecile Meadel (ENSMP) and to be published by Cambridge UP are under revision. The book gathers the contributions of a multidisciplinary and international team of scholars focussing on the regulation of digital networks. Further analyses on the structuring dynamics of alternative self-regulation regimes are in progress.</p>		
<p><u>Deviations:</u> No major deviation. As usual collective publications processes are longer than initially scheduled</p>		
<p><u>Deliverables IFM:</u> D28: Report on Self-regulated communities. A set of paper will present a typology of self-regulations, the most relevant stylized facts and some theoretical discussion on the processes of emergence, modes of performance and impact of alternative self-regulation regimes. (EconomiX/U. Paris X)</p>		
<p><u>Milestones:</u></p>		



Work package 14 description – IFM

Workpackage 14 continued	IFM4	Start date or starting event:	Month 0
Lead contractor: Uni-Oviedo 19		Other: 20-17-23	
<p>Objectives:</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 and other hybrid forms 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 were then:</p> <ol style="list-style-type: none"> 1° To study how private and public mechanisms of governance were designed to provide quality services. We also tried 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. 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. 			
<p>Progress towards objectives:</p> <p>At the beginning of the reporting period we had finished the initial bibliographic revision and the preliminary database on franchising. Then, we proceeded as follows:</p> <p>1. THE GOVERNANCE OF QUALITY</p> <ol style="list-style-type: none"> 1.1. <i>Bibliographic revision updating</i> 1.2. <i>Case processing</i> <ul style="list-style-type: none"> - Several European cases were studied to understand how quality is reached and governed along the vertical chain. 1.3. <i>Working papers.</i> <p>We are revisiting the paper “The Diversity of Products’ Quality Enforcement Devices and their Interactions” (Manuel González Díaz and Emmanuel Raynaud). Main results were discussed at the Workshop organized by IFM in March 07 in Paris.</p> <p>2. THE ANALYSIS OF FRANCHISE CONTRACTS</p>			



2.1. Bibliographic revision updating

2.2. Empirical work

a) Data sources and sample.

We enlarged and enriched our database integrating information on multifranchising for franchisees. 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 and yellow pages to identify which outlets belong to franchisees.
- We phoned all the firms in this list to determine whether they were multifranchisees or not and their number of establishments.

b) Integration of all data sources in the 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

We are working on a preliminary draft of the paper: López Bayón, Susana and Begoña López Fernández (2007): "Does it pay to become franchisee? Analysis of economic rents in restaurants", *Working Paper*, Universidad de Oviedo.

We have also started to work on the application of franchise contract knowledge to the design of concession contract in the bus transport industry.

Deviations:

The feasibility of testing test the existence of economic rents strongly depended on the availability of reliable information in our secondary sources of information that was not enough, so we will have to launch a survey that we are already designing, and that we will finish during the next 18-months planning.

Deliverables IFM:

Deliverable 29 has been finished and sent.

D29: Working paper about franchise contracts and quality devices.

Solís Rodríguez, Vanesa and Manuel González Díaz (2007): "¿Es la franquicia un medio de financiación?: Evidencia para el caso español", Fundación de las Cajas de Ahorros (FUNCAS), Documento de Trabajo Número 303.

Solís Rodríguez, Vanesa and Manuel González Díaz (2006): "La forma plural de la franquicia española: Estructura y evolución", *Working Paper*, Universidad de Oviedo

González Díaz, Manuel and Emmanuel Raynaud (2006): "The Collective Governance of Quality

The final versions of deliverables 50 to 53 will be finished and sent by November 07:

D50 Working paper about the governance of quality:

Fernández Barcala, Marta, Manuel González Díaz and Emmanuel Raynaud (2007): "The Governance of Quality: The Case of the Agrifood Brand Names", *Working Paper*, Universidad de Oviedo.

D51 Working paper about the determinants of multifranchising:

Sánchez Gómez, Roberto and Luis Vázquez (2007) "Multi-unit versus single unit franchising: Assessing why franchisors use different ownership strategies", *Working Paper*, Universidad de Salamanca

D52 Working paper about the financial conditions in franchise contracts:

We are revisiting and updating these papers: Vázquez, Luis (2005) "Up front franchise fees and ongoing variable payments as substitutes: An agency perspective" *Review of Industrial Organization*, 26: 445-460 and Solís Rodríguez, Vanesa and Manuel González Díaz (2006): "La forma plural de la franquicia española: Estructura y evolución", *Working Paper*, Universidad de Oviedo

D53 A draft about the use of rents as an incentive devices in franchising:

López Bayón, Susana y Begoña López Fernández (2007): "Does it pay to become franchisee? Analysis of economic rents in restaurants", *Working Paper*, Universidad de Oviedo.

Milestones:



We have accomplished all our milestones that allowed us to progress in the current research.

- Several European cases were selected to analyze how quality is reached and governed along the vertical chain. Additionally, primary information was collected and the database on franchising was enlarged and enriched with it. Nevertheless, we will have to launch a complementary survey to gather more detailed information about specific questions in the next 18 months planning as it was foreseen.
- We both processed the cases on quality and performed econometrical analysis about rents in franchising.
- We wrote the papers quoted before using that information on both topics and we presented them in several professional meetings. We obtained very useful feedback and participants encouraged us to continue these lines of research.



Work package 15 description– IFM

Workpackage 15	IFM5	Start date or starting event:	Month 0
Lead contractor U. Siena 17		Other: 22	
<p>Objectives:</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>Progress towards objectives:</p> <p>In 2006-2007 the Siena Unit has progressed on the great part of its objectives. The activities have advanced in several fronts well beyond the expected achievements in terms of deliverable publications related to the workpackage objective:</p> <p>A) Publication of several works related to the Work Package, mainly:</p> <ul style="list-style-type: none"> • F. Cafaggi, A. Nicita, U. Pagano (eds), 2007, Legal Orderings and Economic Institutions, Routledge, ISBN: 9780415329422, ISBN-10: 0415329426, Pub Date: 01/05/2007, Pages: 368 • Ugo Pagano (2007) "Cultural Globalization, Institutional Diversity and the Unequal Accumulation of Intellectual Capital" accepted for publication in Cambridge Journal of Economics, Cambridge University Press • Angelo Castaldo and Antonio Nicita (2007) "Essential Facility Access in Europe: Building a Test for Antitrust Policy," Review of Law & Economics: Vol. 3 : Iss. 1, Article 6. Available at: http://www.bepress.com/rle/vol3/iss1/art6 • Antonio Nicita and Giovanni Ramello (2007) "Property, Liability and Market Power: the Antitrust Side of Copyright", accepted for publication in Review of Law & Economics: Vol. 3: Iss. 3 2007 • Antonio Nicita (2007) "On Incomplete Property" in Property Rights Dynamics: A Law and Economics Perspective, Edited by Donatella Porrini, Giovanni Ramello, Series: The Economics of Legal Relationships, Routledge • Earle J., Pagano U., Lesi M. (2006) "Information Technology, Organizational Form, and Transition to the Market" in Journal of Economic Behavior and Organization vol. 60, pp. 471-489. • Maria Alessandra Rossi "Decoding the Open Source Puzzle: A Survey of Theoretical and Empirical Contributions", 2006, in J.Bitzer and P.Schroder (eds.), The Economics of Open Source Software Development, Elsevier <p><i>The above papers constituted several contribution to some core issue of the workpackage research. Pagano's work on Cultural Globalization, Institutional Diversity and the Unequal Accumulation of Intellectual Capital analyzes how incentives to innovation depends not only on the design of intellectual property but also on the institutional environment and on the effects produced by globalizaion phenomena on it. Angelo Castaldo and Antonio Nicita analyzes the case for mandatory access to intellectual property when it is defined as an essential facility by antitrust authorities. By analyzing the main European Antitrust cases involving intellectual property as an essential facility, they identify a test aimed at distinguishing essential facility based IPRs. Antonio Nicita and Giovanni Ramello applied the optional law theory to Copyright issues, after having analyzed the evolution of Copyright law and policies. They identify the conditions under which</i></p>			



Copyright protection turns to be an exclusionary device enacted by dominant firm to preserve their market power, especially in network and media industries. Antonio Nicita, in his article "On Incomplete Property" addresses the issue of market efficiency and poorly defined property rights, with particular reference to intellectual property. Earle J., Pagano U. and Lesi M. (2006) analyze the evolution of Information Technology and its correlation to organizational form of production in Transition Countries. Maria Alessandra Rossi surveys theoretical and empirical contributions to the economics of open source software development.

B) Working Papers related to the Work Package, mainly:

- M. D'Antoni and A. Rossi presented at the 2006 EALE conference in Madrid a paper titled "Private, Public And GPLed Innovations", the paper has been submitted to a refereed journal for publication
- Nicita and M. Vatiere presented 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 has been submitted to a refereed journal for publication
- Nicita, M. Rizzolli and M. A. Rossi (2007) "Towards a Theory of Incomplete Property Rights" American Law and Economic Association Annual Meetings
- Nicita, M. Alessandra Rossi (2007) presented a working paper at the European Network for Communication & Information Perspective Conference in Seville titled "Access to contents, exclusivity and anti-commons in new media markets", submitted to the journal Communications & Strategies
- L. Savorelli has produced a general survey reviewing academic and professional literature on historical analysis of the evolution of (public and private) IPRs frames in various industries

C) Database

EconomiX (U. of Paris X) has been organizing an international consortium that groups the Universities of Boconni (Italy), Gakushuin (Japan), Louvain (Belgium), Missouri-Columbia (USA) and Toronto (Canada), which groups several of the internationally recognized scholars on technology transfers and intellectual property issues. This consortium is working with the International Licensing Executive Society to manage a survey among its members worldwide. A workshop was held at the University of Toronto in June 2007

Deviations:

No significant deviation has occurred

The schedule of the survey on technology licensing agreements is depending upon of the business partners (LESI) which cooperation is unavoidable and complex to manage. The precise period when the survey will be launched is therefore uncertain

Deliverables IFM:

D30: A first edited volume reviews the academic and professional literature on historical analysis of the evolution of legal orderings and economist institutions for the definition and enforcement of (public and private) property rights, including intellectual property rights. The contributions outline the institutional complexity surrounding property rights and investigates the process of emergence and change of property rights in different institutional settings. In particular some key-contributions specifically address the compared analysis of alternative IPRs regimes: F. Cafaggi, A. Nicita, U. Pagano (eds), 2007, Legal Orderings and Economic Institutions, Routledge, ISBN: 9780415329422, ISBN-10: 0415329426, Pub Date: 01/05/2007, Pages: 368

D54 A report summarizing the results of selected published papers concerning the evolution of innovation and intellectual property in selected sectors.

Milestones:

The Siena Unit has organized two workshops and hosting international scholars to discuss and disseminate the research (26-28 March 2007; 23-25 May 2007)

Workshop on "Applied analyses on technology transfers and institutional frameworks for market for technologies", June 8-9th, 2007, Rotman School of Business, University of Toronto



Work package 16 description – IFM

Workpackage 16	IFM6	Start date or starting event:	Month 0
Lead contractor:UPF/Barc		Other : EconomiX/U. Paris X – U.Siena –	
<p>Objectives:</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 behavior 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-post 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>Progress towards objectives:</p> <p>The research has proceeded according to plan, with major advances focused on publishing results of different lines of research closely related to the RefGov project (see list below). A workshop on Comparative Law and Economics gathering academics and practitioners was held at the Pompeu Fabra University in June 2006 The activities have advanced in several fronts:</p> <p>I.- Cognitive constraints and solutions of judicial decisions</p> <p>a) Papers published</p> <ul style="list-style-type: none"> • ARRUÑADA, Benito, “Human Nature and Institutions,” in Jean-Michel Glachant and Eric Brousseau, eds., <i>New Institutional Economics: A Guidebook</i>, Cambridge University Press, Cambridge, in press, forthcoming, 2007. <p>b) Working Paper</p> <ul style="list-style-type: none"> • ARRUÑADA, Benito and Marco CASARI (2007), “How Enforcement Institutions Affect Markets,” <i>Universitat Pompeu Fabra, Economics and Business Working Paper Series 1031</i>, April (http://www.econ.upf.es/docs/papers/downloads/1031.pdf). <p>II.- The “manufacturing” of property rights</p> <p>a) Conveyancing</p> <ul style="list-style-type: none"> • ARRUÑADA, Benito, “Market and Institutional Determinants in the Regulation of Conveyancers,” <i>European Journal of Law and Economics</i>, in press (2007). <p>b) Labor law enforcement</p> <ul style="list-style-type: none"> • ANDONOVA, V. and H. ZULETA, “The Effect of Legal Enforcement on Human Resource Practices: A Case study in Rural Colombia”, <i>International Journal of Manpower</i>, forthcoming. <p>c) Paper on business formalization</p> <ul style="list-style-type: none"> • ARRUÑADA, Benito “Formalización empresarial y costes de transacción” (“Business Firm Formalization and Transaction Costs”), <i>Claves de la economía mundial</i>, 6th ed., 2006, 64-69. <p>III.- The interaction of private and public enforcement</p>			



- ANDONOVA, V. "Technology as a Remedy for Political Risks," in A New Generation in International Strategic Management, Stephen B. Tallmen, ed. Eduard Elgar Publishing, forthcoming.
- ANDONOVA, V. and A. LADRÓN, "Interacciones Tecnológicas y Efectos Red: Claves para Predecir el Impacto del VOIP sobre la Industria de las Telecomunicaciones," *Universia Business Review*, 2006, 12, pp.66-79.
- ARRUÑADA, Benito, and Xosé Henrique VÁZQUEZ, "When Your Contract Manufacturer Becomes Your Competitor," *Harvard Business Review*, 84(9), 2006, 135-145.
- Cafaggi, F. A. Nicita, U. Pagano (eds), 2007, *Legal Orderings and Economic Institutions*, Routledge, ISBN: 9780415329422, ISBN-10: 0415329426, Pub Date: 01/05/2007, Pages: 368
- CASARI, Marco, "Markets in equilibrium with firms out of equilibrium: a simulation study," *Journal of Economic Behavior and Organization*, forthcoming.
- CASARI, Marco, John HAM, and John KAGEL, "Selection bias, demographic effects and ability effects in common value auctions experiments," *American Economic Review*, forthcoming.
- FOSS, Kirsten, Nicolai FOSS and Xosé H. VÁZQUEZ (2006): "Tying the Manager's Hands": Constraining Opportunistic Managerial Intervention", *Cambridge Journal of Economics*, Vol. 30, No. 5, pp. 797-818.
- GAROUPA, N. & A. OGUS, 2006, "A Strategic Interpretation of Legal Transplants", *J. of Legal Studies*, vol. 35 (2), pp. 339-363.
- GAROUPA, Nuno, "A Strategic Interpretation of Legal Transplants," 2006, with A. Ogus, *Journal of Legal Studies*, vol. 35 (2).
- Nicita A. (Siena) and A. Castaldo (Siena). Angelo Castaldo and Antonio Nicita (2007) "Essential Facility Access in Europe: Building a Test for Antitrust Policy," *Review of Law & Economics*: Vol. 3 : Iss. 1, Article 6. Available at: <http://www.bepress.com/rle/vol3/iss1/art6>
- VÁZQUEZ, Xosé H. (2006): "An eclectic explanation of shopfloor control using efficiency and power theories", *Organization Studies*, Vol. 27, No. 10, pp. 1421-1446.

Deviations:

No Significant deviation

Deliverables IFM:

31 32 See the list of publications and working papers above

Milestones:

CLEF -Comparative Law and Economics Forum, 13th Annual Meeting, Pompeu Fabra University, Barcelona, 10-11 June 2006



2.4 Workpackages Corporate Governance

Work package 17 description – CG

Workpackage 17	CG1	Start date or starting event:	Month 0
<p><u>Objectives:</u></p> <p>The first work package (CG1) has been looking in detail at the evolution of corporate governance codes and similar regulatory interventions in the area of corporate law.</p>			
<p><u>Progress towards objectives:</u></p> <p>Outputs in the past year include work consisting of single-country studies (covering the UK, France, Belgium, Slovenia, Hungary), comparative analyses (US-UK, France-UK), and studies of transnational norms (EU company law). These include work by Charlotte Villiers and Marc Moore of the Bristol team on company law reform, the extended business review and shareholder value in the UK; Robert Cobbaut and Gifty Agboton on the Louvain-Liège team on the Lippens code in Belgium; and by Tristan Boyer of the Louvain team on whistleblowing and corporate governance rules in US and French law²⁰. In addition, during the year under review, John Armour of the Cambridge team completed work with David Skeel of the University of Pennsylvania on a comparison of the UK's takeover code with US takeover law²¹. Simon Deakin, also from Cambridge, completed a paper on EU-level company law²² and one on corporate governance reforms in Slovenia (with Nina Cankar and Marko Simoneti of the University of Ljubljana)²³.</p> <p>Work on Hungary, building on the earlier contribution of Heather Elms, has been carried out by the team at the CEU Budapest led by Peter Hardi. This consists of a thorough literature review of work in both English and Hungarian on corporate governance in Hungary and the rest of Eastern Europe between 1990 and 2006; a series of interviews with key figures of Hungarian business life, including senior managers and directors (CEO, CFO, COO or chairs/members of Boards of Directors) of blue chip companies on the Budapest Stock Exchange; senior managers of major multinational corporations in Hungary either private companies or companies traded in foreign stock exchanges); senior managers of key state owned enterprises; presidents or vice presidents of regulatory state agencies; senior managers of business and trade associations; leaders of the Budapest Stock Exchange and members of its Corporate Governance Committee; and leading legal experts who participated in the drafting of Hungary's company laws. The results of this work will be published in working paper form over the course of the next year.</p> <p>Each of the studies just referred to provides evidence on the way in which a reflexive approach to regulation is having a considerable influence on corporate governance norms, while at the same time identifying cross-national differences. Problems with, and obstacles to, the reflexive approach are also identified. These include a tendency for transnational instruments to promote a 'one size fits all' approach based on the assumptions of the 'financial' model of the firm, in which managers</p>			

²⁰ Tristan Boyer, "Approche Reflexive de la Gouvernance des situations de risque dans l'Entreprise. L'Emploi et le Droit d'Alerte", CPDR-UCLouvain (Belgium), REFGOV-WP-CG-9, 2007

²¹ John Armour University of Cambridge and David A. Skeel, University of Pennsylvania (USA), "Who writes the rules for hostile takeovers, and why? The peculiar divergence of US and UK takeover regulation", REFGOV-WP-CG-16, 2007

²² Simon Deakin, "Reflexive Governance and European Company Law", University of Cambridge REFGOV-WP-CG-19, 2007

²³ Nina Cankar and Marko Simonet and by Simon Deaking, University of Cambridge, University of Ljubljana, "The Reflexive Properties of corporate Governance Codes : The transplantation and reception of the 'Comply of Explain' approach in Slovenia.", REFGOV-WP-CG-15, 2007

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



are principally accountable to shareholders to the exclusion of other stakeholder groups. Drawing on this point of view, a theoretical paper by Simon Deakin (with Fabio Carvalho) highlights problems associated with the view of the law-economy relation implicit in the 'financial' or agency-based model of the firm and draws out the implications of a reflexive approach for the understanding of the differences between common law and civil law systems in their approach to corporate governance.

Deliverables CG:

D33: A report on the evolution of corporate governance codes was made in Month 20.

Milestones:

2° Workshop, Bristol, in December 2006 (U.Bristol).



Work package 18 description – CG

Workpackage 18	CG2	Start date or starting event:	Month 0
Lead contractor : Economix 22 others: 1-26			
<p><u>Objectives:</u></p> <p>In the second work package (CG2), the focus has been on case studies which examine the extent to which the ‘financialisation’ of economies is impacting on issues of labour relations and pension fund governance</p>			
<p><u>Progress towards objectives:</u></p> <p>The outputs here include an empirical analysis of the impact of corporate governance form on employment relations in Britain and France and a study of the regulation of employee share ownership schemes in France and the US.</p> <p>The empirical study comparing Britain and France has been carried out by Antoine Reberieux and Héloïse Petit of the Paris team, and by Sue Konzelmann, Neil Conway, Simon Deakin and Frank Wilkinson of the Cambridge team.²⁴ It involves a comparative study of the relationship between human resource management and corporate governance in Britain and France, using two datasets: the WERS and REPOSE surveys. The questionnaires on which the datasets are based are not identical but there are many similarities. Moreover, the conclusion of the fifth WERS survey, WERS2004, provides an opportunity for a direct comparison with the findings of the most recent wave of REPOSE which was carried out in 2004-5. To investigate the separate effects of corporate governance form on HRM practices and employment relations outcomes, the team conducted two sets of regression analysis. In the first model, corporate governance (and control variables) were used to predict HRM practices. Three category variables of corporate governance – based on the categories of listed companies, non-listed private-sector companies, and third category consisting of public-interest companies, cooperatives and mutuals (‘stakeholder-member/public interest firms’) – were used for the analysis. In Britain, a significant relationship between being a stakeholder/public interest firm and high commitment HRM practices was found. British stakeholder firms were significantly more likely than both listed and non-listed firms to provide for greater worker autonomy and engagement over workplace changes. In addition, being in a stakeholder firm was associated with a higher degree of organisational commitment on the part of employees. By contrast, listed companies in Britain were not significantly associated with any of the high-commitment HRM practices aside from team working. Thus in Britain, the empirical findings closely mirrored the prediction that listed companies are subject to a corporate governance constraint in matters of HRM practices and that this effect is least evident in the case of stakeholder/public interest firms.</p> <p>In France, on the other hand, the results present a somewhat different picture. Having a stock market listing was significantly associated with an intense use of high commitment HRM practices and with greater job satisfaction; but both these were also true of French stakeholder-member/public interest firms. On the other hand, being in a French listed company had no significant effect on worker engagement in either setting targets or, most tellingly, in relation to workplace change. This suggests that HRM practices in French listed firms have little effect on the strength of labour’s voice in corporate governance. Thus, while French managers of listed companies are less constrained than their British counterparts in the implementation of high</p>			

²⁴ Neil Conway, Frank Wilkinson & Sue Konzelmann, University of London, and Simon Deakin, University of Cambridge, and Héloïse Petit, University of Paris I, and Antoine Reberieux, University of Paris X, “Corporate Governance and employment relations in Britain and France : the impact of regulatory change”, REFGOV-WP-CG-13, 2007



commitment work practices, ultimately such firms are governed in the interests of shareholders and responding to worker voice is not a primary concern. By contrast, French stakeholder firms are more likely to engage with their employees than their listed or non-listed counterparts.

The analysis also found differences in the degree to which corporate governance form influences managerial practices and outcomes in the two countries which throw light on the suggestion that cross-national differences in labour regulation play a mediating role in relation to corporate governance forms. The results for French listed companies suggested that they are better placed than their British counterparts to engage in certain high-commitment HRM practices, but that they are more constrained than French stakeholder-member/public interest firms in their capacity to provide for employee voice within the firm. It appears that a stock market listing in Britain has a negative effect on HRM practices and employment relations outcomes, compared to France. The results for stakeholder firms in Britain and in France are consistent with the theory developed in the course of the research, because in both countries stakeholder firms have higher levels of worker involvement and autonomy compared to other forms.

This was the main empirical research output during the year in question. Studies are also underway on an analysis of corporate governance properties of corporate groups (directed by Antoine Reberioux) and of pension fund governance (directed by Alexia Autenne). Progress was made in identifying hypotheses for study and in planning the empirical phase of the work. Outputs will be reported in future years.²⁵

The preliminary conclusion from the work in CG2 is that 'financialisation' might be undermining the effectiveness of HRM practices and might weaken organizational commitment and/or job satisfaction. Since commitment and satisfaction are at the basis of reflexive governance, understood as a process in which the production of rules is driven by a process of collective learning, there is a potential conflict here with systems of governance based around the reflexive principle. At the same time, the work shows that the process of financialization, driven by the globalisation of securities markets, is not uniform across jurisdictions: the way it impacts labour is shaped by local (national) regulations, which mediate the relationships between stock markets and labour.

Deliverable:

D34: A report on the impact of financialisation on employment and performance was made in Month 20.

Milestones

A series of meetings has been held in Paris and Cambridge in the course of the past year in question to discuss the empirical research in this work package. Workshops were held in Paris in August 2006 and in Cambridge in January 2007. The empirical work comparing WERS and REPONSE was presented at the Bristol workshop of REGOV in December 2006

²⁵ Alexia Autenne, "The Governance of ESOPS in the United States: limits of and alternatives to the 'patrimonial' model" by, Center for Philosophy of Law (CPDR) UCLouvain, 2006 (Accepted for publication in the Journal of Corporate Law Studies)-REFGOV-WP-CG-4



Work package 19 description – CG

Workpackage 19	CG3	Start date or starting event:	
Lead contractor CPDR-UCL, others 4, 26, 21, 22			
<p><u>Objectives:</u> The third work package (CG 3) is concerned with the impact on the enterprise of changes in corporate governance norms.</p>			
<p><u>Progress towards objectives:</u> A major part of the work of CG3 is concerned with developing a theoretical framework which critically analyses the predominant agency-based model of corporate governance. Robert Cobbaut of the Louvain team has criticized the agency approach 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 – ‘optimisation’, in neoclassical economic theory). Corresponding to this is a concept of the norm as a ‘quasi-constraint’. This view, drawn once again from neoclassical economics but shared by the vast majority of ‘neo-institutionalist’ economists and social scientists, and which does not pay enough attention to the ‘reflexivity’ of the operation of judgment guiding the actions, is therefore dependent on a theory of the norm that fails to consider the relation between ‘application’ and ‘justification’ of a norm in sound epistemological terms. It restricts itself to defining ‘application’ as a purely inferential operation with respect to a rule: the justification of the rule is the sufficient condition of its applicability. This line of thinking is also treating institutional features as if they were natural facts.</p> <p>By contrast, Cobbaut has argued, 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 impositions or prohibitions, but as means of empowering actors; norms endow actors with the capacity to act, and to both efficiently and legitimately transform their context of action, including institutions. 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 procedural conditions being put in place, through public action and an articulation of the ‘public interest’ with respect to the external context, and, as far as internal context is concerned, through various processes analysed in the paper, which identifies the main pitfalls to be avoided and incentives to reflexivity to be incorporated in the norm-setting process, thereby providing the empirical researcher with a set of indicators for evaluating the reflexive potential of a governance system.</p> <p>The empirical part of CG3 consists of studies which have been carried out of the impact of international accounting norms (Elena Chane-Alune and Tristan Boyer of the Louvain-Liège grouping)²⁶, the effects of insolvency law rules (Ibrahim Sanyahi of the Louvain team)²⁷, norms governing corporate social responsibility (Simon Deakin from the Cambridge team), the relationship</p>			

²⁶ Elena Chane-Alune, HEC-Ecole de Gestion de l’Université de Liège (Belgium), “Accounting Standardization & Gouvernance Structure. A critical analysis of the international accounting standard-setting process”, preliminary version –2007 REFGOV-WP-CG-10

²⁷ Ibrahim Sanhayi, IAG-School of Management- UCLouvain (Belgium), “The problematic of financial distress of companies in Belgium : a contextual pragmatics approach”, preliminary version – 2007. REFGOV-WP-CG-11



between corporate governance rules and corporate financing patterns in France (Yamina Tadjedinne of the Paris team), and the implementation of the EU's financial action plan (Robert Cobbaut)²⁸. The empirical work indicates potential disjunctions between the goals of regulation and their practical effects, stemming part from weak regulatory design. The Cambridge team's study of CSR shows that the problems here can be interpreted in classical 'free-rider' terms: investors with a socially responsible agenda are deterred from seeing it through, because these activities involve high costs to them, whereas the benefits flow to other investors, or to 'society' in a general way. From a reflexive point of view, what is missing is effective public-legal encouragement for the kind of learning process which would embed CSR in the practice of firms. It is not sufficient to use accounting reforms to trigger information flows on CSR issues and let the so-called market microstructure underpinning the 'efficient capital market hypothesis' do the rest; instead what is needed is a more fundamental reappraisal of the use of capital market mechanisms as a instrument of public policy in the fields of corporate governance and CSR.

Deliverables CG:

D35: A report was made on the impact of corporate governance changes on enterprise-level relations in Month 20.

Milestones:

The last meeting was held at Louvain-la-Neuve in February 2006 and the next milestone for this project is the Cambridge conference in December 2007. Members of the project teams took part in the Bristol REFGOV workshop in December 2006.

²⁸ Robert Cobbaut, CPDR-UCLouvain (Belgium), "Market Efficiency, Rationality, Structure of Governance and Capital Market Regulation", 2007REFGOV-WP-CG-12



Work package 20 description – CG

Workpackage 20	CG4	Start date or starting event: Month 0
Lead contractor: U. Trento 18- EUI 06 , other U.Camb 26		
<p><u>Objectives:</u></p> <p>The fourth work package (CG4) is concerned with the governance of network forms of inter-firm relations, and is focusing on the wine sector and the media sector in a number of countries.</p>		
<p><u>Progress towards objectives:</u></p> <p>The main questions being addressed are: what is the theoretical justification for preferring network forms of governance to those based on vertical integration? and, how far do public-private partnerships capture the benefits of the network form? A core characteristic of networks appears to be their success in generating trust between discrete contracting parties which are able, nevertheless, to retain their autonomy. Thus the literature on network forms makes frequent reference to the emergence of stable, long-term economic relations on the basis of reciprocity, often without formal legal underpinnings. This informal aspect of network relations may however have a fragile basis, perhaps even representing a transitional phase within market economies, under threat from the encroachment of mass consumption markets and vertically integrated forms of production. As a consequence of the ‘delocalisation’ of production, networks are becoming increasingly transnational in character, suggesting that the informality associated with inter-personal dealings may be decreasing, and formal contractual mechanisms increasing, in relative importance. The generation of network capabilities, whether formal or informal, raises difficult questions for law, since the protection of the network’s knowledge against outsiders, and the erection of barriers to entry or exit, can be portrayed as collusion or restraint of trade; too strict an application of this rule in competition law would result in the loss of the positive externalities which networks can generate. The capacity of institutions and governance structures to generate a learning process, which is not entirely spontaneous but guided by public-institutional intervention, is thus a central issue.</p> <p>This issue will be principally addressed in CG4 by a cross-national study of networks in the wine industry. The work is being led by the Trento-EUI and Cambridge teams. Additional teams have been recruited to work on the project, from France (University of Southern Brittany) and Portugal (New University of Lisbon) as well as a team from the University of Catania in Italy. In the past year the main work of the group has been to develop a joint questionnaire for the empirical phase of the work, which will take place over the next 12 months. Initial contacts have been made and the first interviews have already been carried out.</p> <p>Although in the last decades the international wine industry has been characterised by the emergence of new wine producing countries, like Argentina, Australia, Chile, New Zealand, South Africa and the USA, Europe still remains the first wine producer in the world. The structure of the market has changed, however. While imports and exports have increased at the world level (also given to the emergence of the “new world wine countries”), Europe shows a continuing concentration and fall in the number of producers, while the importance of distribution channels for wine (especially supermarkets and discount stores) is increasing substantially. Within a change in levels of per-capita consumption (with a decrease in traditional wine countries and an increase in non-traditional wine countries), a general trend in favour of both production and consumption of quality wine is registered. Given these changes, a key issue is: can we expect an evolution in the governance structure of the enterprises? In particular, how do changes in the production and distribution chain affect on capital restructuring strategies, formation of groups, joint ventures, strategic agreements among the firms? Can we observe the emergence of peculiar models of networks as a result of these changes? These are the main questions to be addressed in the</p>		



empirical work. In addition, a smaller-scale empirical project comparing inter-firm relations in the broadcasting industry in Britain and Portugal is being carried out under the auspices of the Cambridge team (Simon Deakin, Stephen Pratten and Ana Lourenço).

Deliverables CG:

D36: a report on corporate governance and inter-firm relations was made in month 20.

Milestones:

Workshops to discuss both theoretical and empirical aspects of the work, and to agree on a common questionnaire and other aspects of the empirical work, and to integrate the new members of the project and into the team, were held in Paris in October 2006 and in Trento in April 2007.



2.5 Workpackages Fundamental Rights

Work package 28 description – FR

Workpackage 28	FR4	Start date or starting event: Month 13			
Participant id		CBR/Cam		U.Catania	

Objectives

This workpackage seeks to build on the results of the first phase of the REFGOV research in the field of fundamental rights, by testing the working hypothesis developed during the first phase in the field of fundamental social rights. Specifically, this workpackage explores on which understandings of the public interest and of the associated coordination processes the development of fundamental social rights, through legislation, social dialogue at EU level, or open cooperation mechanisms, has taken place ; and it asks which improvements could be made in the law- and policy-making processes on the basis of the insights of reflexive governance. With this aim in mind, this workpackage examines the existing traces of new modes of governance in the field under scrutiny, locating their strengths and insufficiencies, and exploring ways through which reliance on other methods of coordinating Member States' policies in the social field could produce beneficial effects – or which risks it could entail.

Description of work

The research under this workpackage was launched in June 2006 on the basis of the Guidelines for the Thematic Research in the 2nd Phase (June 2006-June 2008), proposed by the CPDR/UCL as the coordinator of the Fundamental Rights Sub-Network at the beginning of Phase II. In implementing these guidelines, the specific aims of Workpackage 28 in the period under review have been three-fold: to identify the existing forms of new modes of reflexive governance in the area of fundamental social rights; to locate their strengths and weaknesses; and to explore ways through which reliance on other methods of coordinating Member States' policies in the social field could produce beneficial effects – or what risks it could entail. To this end, Catherine Barnard and Simon Deakin of the CBR-Cambridge team have been carrying out research on flexible working and work-life balance policy in the UK, looking specifically at the issue of fixed-term employment, with particular reference to how the current UK approach to implementing the Fixed Term Employment Directive is operating (Barnard and Deakin, 2007a). Their research suggests that there are limits to the usefulness of the reflexive approach in the UK context. The legislation on fixed-term legislation in the UK makes specific provision for collective bargaining and other forms of workplace deliberation to modify the basic protections set out by statute through so called 'bargained statutory adjustments'. However, the absence of enterprise-level workforce representation in many workplaces and the weakness of unions in those workplaces where they are present, are making it difficult for 'bargained statutory adjustments' to take place as envisaged by the legislation. Antonio Lo Faro of the Catania team has been carrying out research on transnational collective bargaining, social dialogue and fundamental rights in EU social and labour law. His work illustrates the evolution of forms of transnational bargaining in the context of open methods of coordination (Lo Faro, 2006, 2007a, 2007c). Both the Cambridge and Catania teams have contributed to recent debates on 'flexicurity' stemming from the European Commissions' Green Paper on the modernisation of labour law (Barnard and Deakin, 2007b; Lo Faro, 2007b).

Outputs

Barnard, C. and Deakin, S. (2007a) 'Flexibility, inclusion and fundamental rights: atypical workers in the UK' paper presented for the workshop on temporary work, Cambridge, March 2007; forthcoming, REFGOV working paper; Deliverable no. 57. D 57



Barnard, C. and Deakin, S. (2007b) 'Memorandum by Dr. Catherine Barnard and Professor Simon Deakin', evidence to UK House of Lords European Union Committee, HL Paper 120, 2007, 113-115.

Lo Faro, A. (2006) 'Coordinamento aperto e diritti fondamentali: un rapporto difficile', in M. Barbera (ed.) *Nuove forme di regolazione: il metodo aperto di coordinamento delle politiche sociali* (Milan: Giuffrè).

Lo Faro, A. (2007a) 'Le Direttive in materia di crisi e ristrutturazioni di impresa', in S. Sciarra and B. Caruso (eds.) *Il lavoro subordinato*, Vol. 5 of G. Ajani and G. Benacchio (eds.) *Trattato di Diritto privato dell'Unione Europea* (Turin: Giappichelli).

Lo Faro, A. (2007b) co-author of 'Memorandum by Italian lawyers', evidence to UK House of Lords European Union Committee, HL Paper 120, 2007, 168-176.

Lo Faro, A. (2007c) 'La contrattazione collettiva transnazionale: prove di ripresa del dialogo sociale in Europa?', forthcoming, *Giornale di diritto del lavoro e di relazioni industriali*.

See table of dissemination - publication

Deliverables FR4

D57 "Flexibility, inclusion and fundamental rights : atypical workers in the UK" by C. Barnard and S. Deakin, University of Cambridge

58 Final report on the thematic application of the report month 35

Milestones and expected result

The main result of this workpackage will be its final report, due to be presented in month 35. One intermediate seminar will be organized between month 25 and month 32 with EU practitioners in collaboration with the CONNEX research project (<http://www.connex-network.org/>) whereby an opportunity will be created for the academic researchers to interact with EU public servants working in the field and for the RefGov hypothesis to be disseminated. In addition, a multistakeholder seminar specific to the research on fundamental social rights will be organized in Cambridge, in order to present the preliminary conclusions of this workpackage.



Work package 29 description – FR

Workpackage 29	FR5	Start date or starting event: Month 13		
Participant id				BIM/Wien

Objectives

This workpackage seeks to build on the results of the first phase of the REFGOV research in the field of fundamental rights, by testing the working hypothesis developed during the first phase in the field of antidiscrimination policy. Specifically, this workpackage explores the current tools which have been relied upon in order to implement an anti-discrimination policy at the EU level, especially following the insertion of Article 13 EC by the Treaty of Amsterdam, and how legislative initiatives were flanked by policy initiatives, the setting up of expert groups, the Equal programme aimed at dissemination, awareness-rising and the sharing of good practices ; and how, in this process, initiatives adopted at EU level had an impact on national and regional administrations, non-governmental organizations, and unions. The workpackage asks on which understandings of the public interest and of the associated coordination processes the development of anti-discrimination policy has taken place ; and it examines which improvements could be made in the law- and policy-making processes on the basis of the insights of reflexive governance.

Description of work

The research under this workpackage was launched in June 2006 on the basis of the Guidelines for the Thematic Research in the 2nd Phase (June 2006-June 2008), proposed by the CPDR/UCL as the coordinator of the Fundamental Rights Sub-Network at the beginning of Phase II. The preparation of these guidelines benefited from a number of exchanges between the coordinator (CPDR-UCL, prof. De Schutter) and BIM-Wien, both through email and in meetings, among which one which was held in the context of the AHRI/COST conference organised by the BIM in Vienna on 8-10 September 2006.

Although this workpackage was launched in June 2006, a significant delay was incurred on some components of the research programme due to the health problems of another lead researcher on this topic, prof. K. Waaldijk from Leiden University, who finally was obliged to retreat from the project. The BIM team identified important key players at EU as well as national level in the field of anti-discrimination who could be interviewed and/or be sent questionnaires. Their views and experiences were found to be crucial in assessing the (national and EU wide) mechanisms, procedures and peculiarities of the emergence and advancement of anti-discrimination policy and legal measures at EU level (these key players include public servants, trade unionists, representatives from employers' organisations and non-governmental organisations). Interviews have been conducted, during the period under review, with Anthony Williams, European Disability Forum, Kurt Krickler, Homosexual Initiative Vienna and Pascale Charhon, Director of ENAR in April and May 2007. Also Anton Pelinka, Institute of Conflict Research, Elisabeth Mitter, Austrian Trade Union and Roman Mesicek, RespACT have been consulted. In the beginning of 2007, the University of Leiden had to transfer its main research tasks to the BIM because Kees Waldijk had to cancel large parts of his duties following a serious accident. In order to cope with the increased workload, Katrin Wladasch joined the BIM team in April 2007. On 16 May 2007, a meeting took place with Violeta Moreno Lax from the CPDR/UCL team and the BIM team (Manfred Nowak, Barbara Liegl, Katrin Wladasch, Marta Hodasz) at the BIM. The BIM presented its draft concept and work plan. Violeta Moreno Lax reported from the other research teams within the fundamental rights sub-network. Important questions concerning the hypothesis of reflexive governance were discussed once again. It was agreed that the BIM team will attend a CONNEX-REFGOV conference in October 2007 in Brussels where there will be the opportunity to meet the other research teams within the sub-network as well as other key researchers and EU practitioners in the field.



C. Barnard, 'The Contribution of EU Anti-discrimination law to European integration: the Added Value of the EU level', paper presented at the REFGOV open conference of 25 May 2006, to appear in the book O. De Schutter (ed.), *EU Fundamental Rights Law in the Web of Governance*, Bruxelles, Bruylant, 2007

O. De Schutter, « Positive Action », chapter 7 of the casebook *Anti-discrimination Law*, lus Commune Casebooks for the Common Law of Europe, 2007 (ed. by M. Bell, D. Schiek and L. Waddington)

O. De Schutter, "Three Models of Equality and European Anti-Discrimination Law", *Northern Ireland Legal Quarterly*, vol. 57, n°1, 2006, pp. 1-56

Kees Waaldijk, with Matteo Bonini-Baraldi, *Sexual orientation discrimination in the European Union: national laws and the Employment Equality Directive*, The Hague: [T.M.C. Asser Press](#) 2006, 256 p. (distributed by [Cambridge University Press](#); see [press release](#); this book is partly based on the report [Combating sexual orientation discrimination in employment](#)).

Kees Waaldijk (with S.D. Burri e.a.) (red.), *Gelijke behandeling: oordelen en commentaar 2005* (Oordelenbundel Commissie Gelijke Behandeling), Nijmegen: Wolf Legal Publishing 2006, 475 p.

Kees Waaldijk, 'Seksuele gerichtheid en burgerlijke staat', in: S.D. Burri e.a. (red.), *Gelijke behandeling: oordelen en commentaar 2005* (Oordelenbundel Commissie Gelijke Behandeling), Nijmegen: Wolf Legal Publishing 2006, p. 83-92.

During the past 12 months the following research activities were completed:

- Extensive e-mail exchange with Olivier de Schutter and Kees Waldijk from the Leiden University on the content, dimension and clarification of the research guidelines.
- Research relevant literature, ECJ case law, ECtHR case law, relevant EU documents (decisions, regulations, directives, white papers, green papers, EC proposals, EP resolutions etc).
- Identification of important key players at EU as well as national level in the field of anti-discrimination who could be interviewed and/or be sent questionnaires.
- Interviews with Anthony Williams, European Disability Forum, Kurt Krickler, Homosexual Initiative Vienna and and Pascale Charhon, Director of ENAR.
- Consultations with Anton Pelinka, Institute of Conflict Research, Elisabeth Mitter, Austrian Trade Union and Roman Mesicek, RespACT.
- Meeting with Violeta Moreno Lax from CPDR/UCL and the BIM team (Manfred Nowak, Barbara Liegl, Katrin Wladasch, Marta Hodasz) in the premises of the BIM on 16.05.2007.

Deliverables FR6

D59 (not yet provided due to the late start after prof. Waaldijk's withdrawal)

D60 Final report on the thematic application of the report month 35

Milestones and expected result

The main result of this workpackage will be its final report, due to be presented in month 35. One intermediate seminar will be organized between month 25 and month 32 with EU practitioners in collaboration with the CONNEX research project (<http://www.connex-network.org/>) whereby an opportunity will be created for the academic researchers to interact with EU public servants working in the field and for the REFGOV hypothesis to be disseminated. In addition, a multistakeholder seminar specific to the research on EU anti-discrimination policy will be organized in Wien, in order to present the preliminary conclusions of this workpackage.



Work package 30 description – FR

Workpackage 30	FR6	Start date or starting event: Month 13		
Participant id	VU Brussel			

Objectives

This workpackage seeks to build on the results of the first phase of the REFGOV research in the field of fundamental rights, by testing the working hypothesis developed during the first phase in the field of data protection. Specifically, this workpackage explores the current tools which have been relied upon in order to contribute to data protection within the EU, and how legislative initiatives were flanked by policy initiatives, the setting up of expert groups, the cooperation between national independent data protection authorities, and between these authorities and the EU data protection supervisor, and the exchange of good practices between national administrations. The workpackage asks on which understandings of the public interest and of the associated coordination processes the development of this policy has taken place ; and it examines which improvements could be made in the law- and policy-making processes on the basis of the insights of reflexive governance.

Description of work

The research under this workpackage was launched in June 2006 on the basis of the Guidelines for the Thematic Research in the 2nd Phase (June 2006-June 2008), proposed by the CPDR/UCL as the coordinator of the Fundamental Rights Sub-Network at the beginning of Phase II. In implementing these guidelines, the research seeks to identify the potential, but also the limitations, of competing methods through which the EU data protection policy could develop in the future. The research into this specific field has been carried out in collaboration with the researchers involved in the Workpackage 31, also under the responsibility of the Vrije Universiteit Brussel.

The research (and the initial working paper which presents the first results of the research) firstly explored the hypothesis of reflexive governance on the basis of the work done in the theory of the Norm Unit of the REFGOV project by Jacques Lenoble and Marc Maesschalck, published in the REFGOV Working paper Series "REFGOV-SGI/TNU-1".²⁹ The researchers have sought to assess and highlight what distinguishes the reflexive governance perspective from other theories of governance and how it could be referred to in their analysis. Considering that it aims at identifying concrete paths of improvement for EU governance by pointing out mechanisms that contribute to the institutionalisation of internal and collective learning processes, the researches tried to assess how the reflexive governance theory may help to improve governance in the third pillar by exploring the application of the reflexive governance hypothesis in the fields of data protection (and criminal law).

In the course of this year the team (Gloria González Fuster under the direction of Prof. S. Gutwirth) carried out an in-depth analysis of EU data protection governance, with special focus on its innovative governance mechanisms (such as the 'Art. 29 Working Party' and the European Data Protection Supervisor) and its tensions and instabilities.

A description of the main specific actors of the field: The study examines how the EU data Protection regime is profoundly marked by the pillar division structuring the EU, i.e. by Directive

²⁹ <http://refgov.cpdr.ucl.ac.be/?go=publications>



95/46/EC ('the Data Protection Directive') and the different developments it has led to (directly or indirectly) in the first and third pillars. It identifies the main actors established by the Directive (and its subsequent instruments): national supervisory authorities - which are independent bodies with a monitoring duty-, the Article 29 Working Party - a derivative body composed of representatives of national Supervisory Authorities, of the Community supervisory Authorities and of the European Commission -, and also the European Data Protection Supervisor (the EDPS, which monitors the application of the data protection by Community institutions) and the DPOs (Data Protection Officers). The study analyses their monitoring or/and advisory role and their modes of functioning.

An illustration of its principal tensions and instabilities: instabilities in the field are mainly inter-pillar tensions, which have included two major conflicts, analysed by the research: the PNR ('Passenger Name Record') case and the 'data retention' case. The PNR case concerns the agreement between the EU and the US on data transfers, which was contested by the Parliament, in front of the European Court of Justice (ECJ) and finally annulled because of a problem of legal basis. Directive 2006/24/EC ('the Data Retention Directive'), foreseeing retention of data, for purposes of investigation, detection prosecution of crime and criminal offences has also been referred to the ECJ with arguments related to its legal basis.

A presentation of currently discussed proposals and foreseeable developments (such as a Framework Decision on data protection and the Prüm Convention) has concentrated on the analysis of the possible developments as to the pillar structure for data protection, as well as on the design of an efficient system of Supervisory authorities taking into account the reflexive governance requirements.

Finally, the researchers proposed a reflexive assessment of the data protection case study the wide context of the question of reflexive governance and EU's third pillar. This study led the way to an assessment of the specificity of reflexivity in the third pillar in data protection as well as to the issue of the possible deployment of reflexive mechanisms in EU criminal law (see next workpackage). The limits of the EU pillar structure have configured the background of the analysis.

Deliverables FR6

D61 – D63a Reflexive Governance in the Third Pillar: Analysis of Data Protection and Criminal Law Aspects, by Gloria González Fuster (IES VUB) and Pieter Paepe (IES VUB)

D62 Final report on the thematic application of the report: month 35

Milestones and expected result

The main result of this workpackage will be its final report, due to be presented in month 35. One intermediate seminar will be organized between month 25 and month 32 with EU practitioners in collaboration with the CONNEX research project (<http://www.connex-network.org/>) whereby an opportunity will be created for the academic researchers to interact with EU public servants working in the field and for the REFGOV hypothesis to be disseminated. In addition, a multistakeholder seminar specific to the research on EU data protection policy will be organized in Brussels, in order to present the preliminary conclusions of this workpackage.



Work package 31 description – FR

Workpackage 31	FR7	Start date or starting event: Month 13		
Participant id	CPDR/UCL		VU Brussel	

Objectives

This workpackage seeks to build on the results of the first phase of the REFGOV research in the field of fundamental rights, by testing the working hypothesis developed during the first phase in understanding the dynamics of the establishment of the European criminal area. This workpackage therefore explores the current tools which have been relied upon in order to contribute to the establishment of the European criminal area, what the respective roles have been of courts, the European legislator, and monitoring mechanisms (including in particular peer review mechanisms), and how legislative initiatives were flanked by other policy initiatives, including the setting up of expert groups. The workpackage asks on which understandings of the public interest and of the associated coordination processes the development of this policy has taken place ; and it examines which improvements could be made in the law- and policy-making processes on the basis of the insights of reflexive governance.

Description of work

The research under this workpackage was launched in June 2006 on the basis of the Guidelines for the Thematic Research in the 2nd Phase (June 2006-June 2008), proposed by the CPDR/UCL as the coordinator of the Fundamental Rights Sub-Network at the beginning of Phase II. The research hitherto sought to identify the different tools through which progress has been achieved in the establishment of the European criminal area. An attempt has been made to link those tools to the different theories of governance outlined in our theoretical framework, with a specific focus on the theories of governance which, like our own, have collective learning as their main concern.

During this initial phase, the research into this specific field was carried out in collaboration with the researchers involved in the Workpackage 30, also under the responsibility of the Vrije Universiteit Brussel. The research (and the initial working paper which presents the first results of the research) firstly explored the hypothesis of reflexive governance on the basis of the work done in the theory of the Norm Unit of the REFGOV project by Jacques Lenoble and Marc Maesschalck, published in the REFGOV Working paper Series “REFGOV-SGI/TNU-1”.³⁰ The researchers have sought to assess and highlight what distinguishes the reflexive governance perspective from other theories of governance and how it could be referred to in their analysis. Considering that it aims at identifying concrete paths of improvement for EU governance by pointing out mechanisms that contribute to the institutionalisation of internal and collective learning processes, the researches tried to assess how the reflexive governance theory may help to improve governance in the third pillar by exploring the application of the reflexive governance hypothesis in the fields of data protection and criminal law. Thus, taking the reflexive governance theory as a point of departure, the study aims at identifying concrete paths of improvement for EU governance by pointing out mechanisms that contribute to the institutionalisation of internal and collective learning processes. How the reflexive governance theory may help to improve governance in the third pillar constitutes the main focus of the research.

In the course of this year the team (Pieter Paepe, under the direction of Prof. De Hert), carried out an in-depth analysis of EU criminal law governance and the pillar division. The study first shows the institutional practices to cope with issues resorting to ‘two pillars’ and relevant to criminal law . It then examines the different mechanisms such as the obligation for member States often-included in “Framework Decisions” to report on the national implementation or on the transposition, peer evaluation such as implemented by the “Joint Action 97/827/JHA” (or the Council Decision

³⁰ <http://refgov.cpdr.ucl.ac.be/?go=publications>



2002/996/JHA), or stakeholders participation (European Crime Prevention Network -EUCPN) have a potential to stimulate learning. It concludes with the Commission's proposals for an evaluation mechanism.

This study leads the way to an assessment of the specificity of reflexivity in the third pillar in EU criminal law as well as to the issue of the possible deployment of reflexive mechanisms in the field of Data protection (see previous workpackage). The limits of the EU pillar structure configure the background of the analysis, part of the on-going research developed by the REFGOV project.

From the coordinating team CPDR/UCL, Olivier De Schutter has contributed to the debate on Criminal Procedure in the reflexive governance perspective his work on "The Role of Collective Learning in the Establishment of the Area of Freedom Security and Justice in the EU" (deliverable D63-b), which was presented by Violeta Moreno Lax at the CONNEX Seminar on 'EU Governance: Towards a New Architecture,' held in Madison on 20-21 April 2007.

Deliverables

D61 – D63a Reflexive Governance in the Third Pillar: Analysis of Data Protection and Criminal Law Aspects, by Gloria González Fuster (IES VUB) and Pieter Paepe (IES VUB)

D63-b "The Role of Collective Learning in the Establishment of the Area of Freedom, Security and justice in the EU" by Olivier De Schutter (CPDR/UCL), Working paper series REFGOV-FR-12
<http://refgov.cpdr.ucl.ac.be/?go=publications>

D64 Final report on the thematic application of the report month 35

Milestones and expected result

The main result of this workpackage will be its final report, due to be presented in month 35. One intermediate seminar will be organized between month 25 and month 32 with EU practitioners in collaboration with the CONNEX research project (<http://www.connex-network.org/>) whereby an opportunity will be created for the academic researchers to interact with EU public servants working in the field and for the REFGOV hypothesis to be disseminated. In addition, a multistakeholder seminar specific to the research on the establishment of the European criminal area will be organized in Brussels, in order to present the preliminary conclusions of this workpackage.



Work package 33 description – FR

Workpackage 33	FR7	Start date or starting event: Month 13		
Participant id	CPDR/UCL		VUbrussel	

Objectives

This workpackage was not initially anticipated in the workprogramme. We decided to introduce it for two reasons. First, in the course of the research, it became clear that one of the main challenges would be to ensure the full integration, within a robust theoretical framework, of the different empirical studies prepared within the ‘fundamental rights’ research group, on themes (fundamental social rights, anti-discrimination law, data protection, and criminal law) whose history, actors, techniques of regulation, and objectives are different, and who are studied by research communities between which almost no exchanges exist. In order to cement this integration, we not only developed the hypothesis of the REFGOV research, by emphasizing the need to relate discrete developments in regulatory techniques to competing theories of governance, focusing on those theories which reward collective learning, and seek thereby to overcoming the opposition between markets and hierarchies. This has been the objective of the work done in the theory of the Norm Unit of the REFGOV project by Jacques Lenoble and Marc Maesschalck, published in the REFGOV Working paper Series “REFGOV-SGI/TNU-1”. In addition, in order to ensure that the empirical studies would be harmonized, Guidelines for the Thematic Research in the 2nd Phase (June 2006-June 2008) were proposed by the CPDR/UCL as the coordinator of the Fundamental Rights Sub-Network at the beginning of Phase II. However, more needed to be done in order to build the bridge between a theory of governance developed at an epistemological and conceptual level, and empirical research. Therefore, one of the objectives of this workpackage is to establish such a link.

A second objective was to propose a limited set of studies on issues of a transversal nature, on themes whose importance might not have been seen at the conception phase of the research, but the preparation of which, we believe, can significantly contribute to the impact of the research among the research and policy communities.

Description of work

In accordance with the general objectives outlined above, three papers were prepared in addition to the thematic studies composing the second phase of the research (which should be completed by June 2008 :

1. One of these papers, corresponding to the first of the objectives outlined, seeks to explore whether the open method of coordination, as a non-hierarchical way of coordinating the approaches adopted towards certain common problems by the EU Member States, might inspire developments in the area of fundamental rights (D68 -Working Paper REFGOV-FR-13).

2. Two other papers respond to the second of the two objectives described above. One paper reexamines the relationship between the Council of Europe and the European Union in the protection of human rights on the European continent, since it was felt that the tensions between the two organizations, especially until the Warsaw Summit of the Heads of State and governments of the Council of Europe Member States of May 2005, constituted one major obstacle to the transformation of the European Union into an organization truly dedicated to exercising its competences in order to contribute to the protection and promotion of fundamental rights (D 66 Working paper REFGOV-FR-11). A second paper examines the relationship between the hypothesis of reflexive governance and the emergence of a European private international law, an issue which was underestimated in our initial planning of the research and whose importance only



appeared during the course of the first phase thereof (D67 Working paper REFGOV-FR-4).

Besides these two objectives, the REFGOV research was disseminated to scientific assemblies beyond the REFGOV project :

-Violeta Moreno Lax - CPDR-UCL, conference in Spain - Cuenca - 10-13 April 2007 : Presentation of the hypothesis REFGOV in the field of asylum policy

-Violeta Moreno Lax - CPDR-UC, Participation to the workshop CONNEX-REFGOV organized by J.Zeitlin et Ch. Sabel USA - Madison - 19 - 22 April 2007

-Violeta Moreno Lax - CPDR-UCL, conference in Ireland - Cork - 3 May 2007: Presentation of the hypothesis REFGOV in the field of asylum policy

Deliverables

D66 “The division of tasks between the Council of Europe and the European Union in the promotion of Human Rights in Europe: Conflict, Competition and Complementarity”, Olivier De Schutter, Working paper REFGOV-FR-11

D67 “The Role of European Private International Law”, V. Van den Eeckhout, Universiteit Leiden, Working paper REFGOV-FR-4

D68 “Fundamental rights and transformation of governance in the European Union” Olivier De Schutter, Working Paper REFGOV-FR-13

The three working papers are available at <http://refgov.cpdr.ucl.ac.be/?go=publications>

D69 “Guidelines”



2.5 Workpackages Theory of the Norm Unit

Work package 24 description – TNU

Workpackage 24	TNU1	Start date or starting event: Month 0
Partners	1. CPDR/UCL	16 U.Catania – 10 U-JWG- Frankfurt
<p><u>Objectives:</u> The purpose of this workpackage was 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. This on the theory of the norm issues represents epistemological reflection at the foundation of the research on theory of governance.</p>		
<p><u>Progress towards objectives:</u> According to draft research plan submitted last year report, no research formally organized was planned in this workpackage in the course of the second year. However the reflection has been pursued within the REFGOV participants to this workpackage and was disseminated beyond the REFGOV project.</p> <p>The pragmatist approach started last year on the recent development in theory of the norm, in social theory and in legal pragmatism in their attempts to overcome the insufficiencies of legal positivism through a pragmatist approach³¹, was the object of further reflection. Collaboration has been going on with Professor Andronico, university of Catania and with some Italian representatives of the research into these questions. It is also being further developed at the Centre de Philosophie du Droit – UCL through a research on the links between the theory of the norm (in its questioning the process of production of social norms) and the recent developments in political philosophy. On both sides, meetings have been planned in the course of year three :</p> <ul style="list-style-type: none"> ▪ The first one (which has already taken place in early July 2007.) organized by Prof. Alberto Andronico (University of Catania) in Sicily (in Catania and Ragusa)³², with the participation of prof. Jacques Lenoble. <p>The seminar meant to stimulate a dialogue about the relationship between legal positivism, social action theory and conceptual pragmatism. It dealt with a specific orientation of legal science, a sociological approach and an epistemological question. The aim was to have a general discussion both on theory and criticism of social regulation models and mechanisms. The starting point was the need, for whatever contemporary analysis of law, to take into account the most relevant orientations within social action theory and democratic governance. In particular, it seems clear that within a post-national context, it is necessary to understand the possibility conditions for the convention that originates law. Therefore, the necessity to make reference to the question of the reorganization of governance devices is epistemologically justified.</p> <ul style="list-style-type: none"> ▪ A second seminar is planned in September 2007 in Padua with the same core of Italian scientists, with the view to developing the work done in Sicily in July 2007. 		

³¹ Jacques Lenoble , “*the Requirements of the Pragmatist Turn and the Redefinition of the Concept of Law*”, Forthcoming article in “Philosophiques” , REFGOV Working paper series TNU -1 available at: <http://refgov.cpd.r.ucl.ac.be/?go=publications>

³² <http://refgov.cpd.r.ucl.ac.be/pdf/agendas/TNUagendaSeminar> 5-6July07.pdf



- A third seminar will take place in October 2007 under the direction of Prof. Marc Maesschalck on the theme “What tasks now for a philosophy of norms” and the issue of connection between the theory of the norm and political philosophy.

This work on a pragmatist approach was disseminated to scientists beyond the REFGOV project. Professor Marc Maesschalck (CPDR/UCL) made a presentation on “*Droits et capacitation des acteurs sociaux: La question politique de l'application des normes*» at the colloquium organized on the 14th and 15th of March 2007 at the University of Liège, on the theme “le conflit entre droit et politique” (projets interuniversitaires en philosophie du droit, Prof. Delruelle).

In the light of the reflection presented in the “pragmatist turn”, Professor K. Guenther (JWG Universität Frankfurt) has further, developed his reflection in theory of the norm from the perspective of Habermasian formal pragmatics. He worked more particularly, in an article “*Droits, État et théorie de la discussion* (in: *Raison Publique – Éthique, Politique & Société*)”³³, on internal relationships between substance and procedure in moral and legal discourses, in particular with the relationships as well as tensions between *discursive rationality and decision* on the one hand, and between *rational discourse and rational motivation* on the other. The core question is how learning processes in deliberative democracies are possible, when procedures of rational argumentation always have to be concluded by a particular decision, and whether the rational evaluation of reasons depends on the quality of the procedure or the intrinsic quality of the reason (or both). The answers he suggests are that (a) rational procedures exert a transformative effect on will-formation during a deliberative process – so that a decision can claim to be relatively reasonable, and (b) that the rationality of procedures grants the rationality of reasons as far as participants have no all-conclusive arguments (“knock down-arguments”) available. He also studied³⁴ the different kinds of responsibilities of decision makers. In particular, the contextual requirements that have to be met if a person shall be held responsible for a decision (e.g., availability of relevant knowledge, individual capabilities). The research deals with different procedures of attribution of responsibility, depending on different purposes of these procedures.

³³ K. Guenther, *Droits, État et théorie de la discussion* (in: *Raison Publique – Éthique, Politique & Société*, vol. 6/avril 2007: Les valeurs morales en politique, pp. 129-145)

³⁴ K. Guenther, *Aufgaben- und Zurechnungsverantwortung*, (published in: Ludger Heidbrink, Alfred Hirsch (Eds.), *Verantwortung in der Zivilgesellschaft*, Frankfurt/New York (Campus) 2006, S. 295-330)



Work package 25 description – TNU

Workpackage 25	TNU2	Start date or starting event:	Month 0
		CPDR/UCL –	
<p><u>Objectives:</u></p> <p>The purpose of this workpackage 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. More specifically, it aims to reconstruct the recent dynamics of the theory of governance in the different material fields that the REFGOV project is investigating, in order to highlight the added value of the recent emerging pragmatist and experimentalist theories of governance and, hence, to show the next step still required overcoming the remaining insufficiencies of such a pragmatist approach to governance.</p>			
<p><u>Progress towards objectives:</u></p> <p>The first stage towards its objective was completed with the synthesis report 1 ³⁵ (Working Papers series REFGOV-TNU-SGI –1) written by Prof. J. Lenoble and Prof. M. Maesschalck. This report 1 has synthesized and analysed the most recent theoretical references on governance issues, more particularly in the field of public services, and proposes a theoretical frame of analysis used by the different teams in the REFGOV project.</p> <p>The hypothesis guiding the research is that 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. This report investigates into the contemporary theoretical approaches to governance and into the theoretical framework that they necessarily (and very often implicitly) presuppose when it comes to the “normative nature” they ascribe to the governance mechanisms they advance, that is the capacity of such mechanisms to best satisfy the collective (or public) interest of the actors involved. The learning operation necessary for the selection performed by collective action to maximize the satisfaction of normative expectation of its members and the conditions for its success are at the core of the reflection since they influences a governance system’s capability for maximizing the satisfaction of the ‘public interest”. The guiding thread is through this analysis of the different approaches is therefore the willingness to delve deeper and deeper into “black box” of the learning operation. The report differentiates three successive theoretical approaches : the neo-institutionalist approach which seeks to nuance the rational choice theory of neoclassical economists (1), the “relational and collaborative” approach which is based on the wish to make possible a “relational and collaborative approach to governance through dialogue” (2) and, the “experimentalist” approach, developed by certain authors, in particular C. Sabel, which is based on a wish to develop a “pragmatist” approach to collective action (3). It highlights the gains of each of them and the increasing will to extend and strengthen institutional mechanisms (incentives), what sort of issues they are best at analysing and what sort of problems or insufficiencies each of them is best at solving. By the same token, the analysis highlights their limits and their shared unexamined presuppositions. The hypothesis is that, in spite of the gains represented by the various categories of institutional design and 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. This is</p>			

³⁵ J. Lenoble and M. Maesschalck, “Beyond Neo-institutionalist and Pragmatist Approaches to Governance”, D 2 of the REFGOV IP project and REFGOV Working paper series REFGOV-SGI/TNU-1, May 2006 available at <http://refgov.cpdr.ucl.ac.be/?go=publications>



what a fourth approach suggested by the report is calling for : place the attention on the conditions for collective learning to succeed or in other words for actor's self capacitation, allow actors to organize themselves to learn how to learn, which would ensure more complete reflexivity and more efficient and democratic governance.

The second stage was to circulate the report and the theoretical frame it proposes to all the teams in the different thematic sub-networks. In the different thematic sub-networks, guidelines which refer to the proposed theoretical frame have been prepared for the case studies either by the sub-network coordinators or by the researchers more involved in the theoretical and methodological issues.

- Most of the thematic researches in the five sub-networks will seek to exemplify, through their case studies, the three approaches identified in the theoretical frame. They will see which of the three approaches is (are), in their respective field, the most relevant to analyze what has already been done to cope with the insufficiencies of both the "command and control" or market-like mechanisms, which can be best used to improve on the attempts to improve governance already made, and to suggest, in a next step, "institutional proposals". The sub-network Institutional Frames for Market (IFM) refers to the neo-institutionalist approach whereas for the Fundamental Rights sub-network (FR) the "experimentalist" approach is more relevant. In the Services of General interest (SGI), the Global Public Services (GPS), and the Corporate Governance (CG) each of the three cited approaches are, depending upon the specific issues studied, appropriate for studying governance measures and putting forward institutional proposals.

- Beyond this use of the theoretical framework, a more specific work is being carried out by two sub-groups (in the SGI sub-network, Prof. P. Vincent-Jones and in GPS, Prof. T. Dedeurwaerdere) in order to develop through their empirical research, operational devices which would translate into effective operational governance mechanisms the improvements of governance that the theoretical reflection has suggested.

To ensure the interaction between the theoretical work and the thematic researches, exchanges between the Theory of the Norm Unit and the thematic sub-networks took place: meetings were held between Jacques Lenoble and Marc Maesschalck, sub-network coordinators and scientists, followed by more individual missions of Jacques Lenoble, to discuss the articulation of the reflection on theoretical frames to the specific thematic research going on in each sub-network and sub-group. Such meetings were organized with the SGI team : Peter Vincent-Jones, Tony Prosser, Jérôme Porta, Anne Sophie Ginon and P-A Adele, with the GPS sub-coordinator Tom Dedeurwaerdere, the FR coordinator, Olivier De Schutter, and the CG coordinator, Simon Deakin.

Besides, the theory of the norm unit has been going on developing the theoretical reflection on theory of governance not only through the interactive work with the thematic studies of the REFGOV project, but also and it is important by submitting the results of their reflection to the scrutiny of scientists specialised in theory of governance and equally involved in public interest governance and inviting scientists to discuss on the Synthesis report and the hypotheses it holds. This was the purpose of an international seminar organized in Brussels in October 2006. The leading American representatives of the recent pragmatist and experimentalist approach to governance Prof. C. Sabel, Prof. J. Zeitlin and Prof. W. Simon were the key invited participants besides other international scientific personalities and the members of the REFGOV project involved in the theoretical issues in the different sub-networks: sub-network coordinators (Prof. P. Vincent-Jones, Prof. Simon Deakin; Prof. J. Lenoble, Prof. M. Maesschalck, Prof. T. Dedeurwaerdere, Prof. De Schutter, Prof. A. Andronico among them), postdoctoral researchers and junior researchers from the REFGOV consortium.

The TNU team will in the coming months work on a two-step approach:



- In the light of the reflection still going on in theory of governance in theory of governance present the latest development in theory in a report in November 2007.
- On the basis of this report (November 2007) and of the first results in term of institutional proposals expected from the thematic research, organise a preparation session of the cross-thematic synthesis and seminar (pre-cross thematic seminar). – December 2007
- On the basis of the discussions and results of the preparation, propose a synthesis report 2. This second REFGOV synthesis report will be the key document for the first cross-thematic seminar planned in 2008 September.

Besides the dynamics of interaction between the theoretical reflection on governance frames and the thematics studies going on in the different sub-networks, the research conducted in theory of governance within this workpackage was presented in particular by Marc Maesschalck for further theoretical reflection beyond the REFGOV project. It was disseminated in the following events:

- Marc Maesschalck, presentation « Normes de gouvernance et enrôlement des acteurs sociaux, Quelle philosophie des normes aujourd'hui ? » at the colloquium « La philosophie des normes », organized by prof. Luc Vincenti and Saverio Ansaldi, Université Paul Valéry – Montpellier III., 7-8 December 2006
- Marc Maesschalck, presentation « Gouvernance et apprentissage social, De l'incitation à l'appropriation dans les modèles émergentistes et volontaristes » at a conference prof. F. Grison, CIRAD and UPV Montpellier, April 2007
- The research carried out in this workpackage is and will be studied and developed at a seminar organized by Marc Maesschalck: at the UCL/CPDR for PhD researchers and advanced students over 5 sessions from 20.03.07, 27.03.07 to end of May 2007.

Deliverables

D41: Report on the proceedings of the seminar on theory of governance (October 2006)
Completed

Milestones

- Seminar on the theory of governance to discuss the results of the synthesis report on theoretical frameworks, Brussels, October 2006

