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

Part 1 The REFGOV Research Project: Its General Framework, Hypotheses, Methodology, and Development.

If the scope of the studies conducted in REFGOV during its third year (June 2007 – May 2008) is to be grasped, those studies must be situated within the research project's general framework. To this end, two points must be recalled:

1. To build on the initial results of the REFGOV research project, it is necessary to specify the broad hypothesis governing the research project and the meaning we ascribe to the expression "reflexive governance", thereby defining the conditions a collective action must fulfil in order to ensure, to the extent possible, that its members' normative expectations are "maximised" (that is, in order to ensure what is generally called "governance in the public interest").
2. Then we should remind the method used to organise the broad investigation being conducted within REFGOV, guaranteeing consistency among the various subnetworks. This will enable us to give an account of the basic unity underlying all the studies being conducted within the various subnetworks, across differing disciplinary approaches and the various empirical fields dealt with in the case studies. Clarifying our methodological procedure will also enable us to recall the way we have organised the research project's "temporal dynamics". With this basis, we will give an account of the stages to which the studies conducted between June 2007 and May 2008 correspond and the stages that remain to be completed for the objectives we set for REFGOV to be fulfilled.



1. The specific nature of the REFGOV research project and the hypothesis of reflexive governance

The meaning we assign to the expression “reflexive governance” can only be understood if we first recall the project that underpins REFGOV. This project emerged out of an option and an insight. The option consists of how “governance of a collective action” is broached. The insight was that by reconstructing the different current investigations into theory of governance from the angle of their theoretical assumptions about the theory of collective action, we would arrive at an important theoretical result.

First, the option. No one doubts the issue designated by the term “governance” is currently dealt with in differing ways depending on the disciplinary instrument used (economic, legal, political-science, and so on) and the level at which a specific issue addressed is situated. Indeed, one is often struck by how difficult it is to integrate all this work into a cohesive inquiry, the issues under study being so diverse and situated at such divergent levels. (For instance, how are we to integrate economic analyses of reform in the management of common goods with political-scientific or legal analyses about multilevel governance or with analyses of new modes of governance inspired by the theories of deliberative democracy?) Thus under the umbrella of a single term – one that designates a common investigation into the question of governance – can be found an aggregation of studies that diverge significantly as regards the issues examined and the methodological approaches used. Besides this, however, even when the studies deal with similar issues, dialogue appears to be impossible. Often discipline-based approaches are developed in one sphere in ignorance of studies on governance taking other disciplinary approaches in other spheres. In other words, no interdisciplinary dialogue has been organised with respect to the theoretical models being deployed within the various disciplinary approaches to theory of governance. A salient example of this absence of interpenetration is the neo-institutionalist economic approach. It deploys a particular theory of learning but remains under informed about recent inquiry into theory of learning that uses current pragmatist approaches developed in the field of political science, especially in the context of research on organisational theory. This situation accounts for the present state of inquiry into the subject of governance. The option that underpins REFGOV is to seek to integrate these various current investigations into governance by displacing the angle of research. This displacement consists of re-examining the theoretical backdrop to these various current investigations and engaging with the different theoretical approaches to collective action these disciplined-based studies deploy, often no more than implicitly. Let us specify here what we understand by a theory of collective action: a theory of the conditions that the organisation (i.e., the governance or regulation) of collective action must fulfil so the action provides for the best possible fulfilment of its members’ normative expectations.

At this point it becomes pertinent to present the insight that governs the REFGOV research project. This insight – which has been strongly confirmed and elucidated by the advances made from the studies conducted during REFGOV’s first two years (June 2005 – December 2006) – is that by reconstructing the various current investigations into theory of governance from the angle of their theoretical assumptions about a theory of collective action, we will arrive at an important theoretical result. Today our findings on this score number three:¹

¹ To make clear the nature of these three theoretical findings and the scope of our own hypothesis, let us here recall the findings presented in *Synthesis Report 1*, whose essential purpose was to confirm the validity of the option and the insight that govern the REFGOV research project. It will thus be easier to understand both the methodological choices that underlie the way the research project is organised and the precise scope of the studies conducted between June 2007 and May 2008 within the various subnetworks the REFGOV network is comprised of. The research project’s first task was to reconstruct the various theories that make up the current landscape of recent inquiry into theory of governance. However, the purpose of this reconstruction was not solely to describe the current landscape of research. In the first instance, it was intended to shed light on the theoretical reasons for the current common will to expose the inadequacies of classical approaches to governance, whether based on the traditional command-and-control regulation model or on the model advanced by neo-classical



- An initial finding is that this reconstruction reveals that beyond their apparent differences, the various orientations present in the current landscape of social science research into theory of governance all share a single assumption. As will be seen below, it is at this level that we situate the “reflexive” dimension that must be a feature of any way of organising a collective action if the best possible fulfilment of its members’ expectations is to be ensured.
- A second finding is that this shared gain made by present-day research in the social sciences, because it often remains opaque and is insufficiently exposed to view by the various current orientations in theory of governance, is not the object of adequate “attention” by these investigations. While, then, an adequate reconstruction of current discussion on theory of governance reveals a shared coming to awareness of the need for “reflexive” organisation of governance, it also reveals a different approach to this “reflexivity”. In other words, nowadays any advance in research into theory of governance entails an elucidation of the question of the reflexive dimension the “success” of a collective action depends on.
- A third finding is that in reconstructing the various current approaches to theory of governance from the perspective of their conception of reflexivity, we observe that the differences among these approaches is less reflective of a deep-rooted divergence or antagonism than of a growing recognition of the need to progressively broaden the conditions to be put in place to ensure the success of this reflexive operation. That is, the four theoretical currents of which the essence of recent research into theory of governance is comprised are complementary and reflect an increasingly acute understanding of the precise nature of the conditions required for the success of this operation. As will be seen, the REFGOV research project, by drawing attention to this dimension, which is too often sidelined in current discussion on governance, has even made it possible to propose a deepening of the most recent findings about how this operation succeeds.

It is in light of this reconstruction that the meaning we assign to the term “reflexive governance” can be understood. This term does not in itself designate a specific and precise form of governance. Often the expression reflexive governance is used ambiguously. This ambiguity consists of correctly defining reflexive governance through recourse to the idea of learning, while at the same time letting it be understood that, so defined, it consists of a specific, determinate form of governance. This supposed form of governance would purportedly enable us to determine precisely what forms of institutional organisation a collective action should assume in order to best fulfil the “public interest”. Thus reflexive governance is often said by many authors who view themselves as its defenders to be a specific model of governance that “involves the establishment of institutions and processes which facilitate the actors within a domain for learning not only about policy options, but also about their own interests and preferences.”² While this definition is not inaccurate, it poses the risk of generating more indeterminacy than precision. For this reason, certain observations are called for.

First, in itself this definition reduces the reflexive dimension of a system of governance to the idea of learning. To put it another way, a form of governance would qualify as reflexive if it favoured the success of the learning operation required to satisfy the normative expectations of participants in a collective action. *By limiting itself to this consideration alone*, this definition of reflexive governance covers all of the four approaches to governance that comprise the bulk of current scholarly research on theory of governance. That is, not only the *collaborative-relational*, *pragmatist*, and the *genetic* approaches, but also the *neo-institutionalist* approach (see below on all four) share the feature of reasoning about the

economists as an alternative to it, which is based on a market theory supplemented as necessary by a theory of incentive contracts. In the second instance, the goal of the reconstruction was to account for the observable differences in ways of conceiving the institutional mechanisms that must “monitor” (frame) the capacity for action of participants in a collective action.

² C. Scott, How Reflexive is the Governance for Regulation?, First Draft Report Presented to the Second Common Workshop of the SGI Subnetwork of REFGOV.



conditions for “efficient” or legitimate governance in terms of a learning operation. Thus, for instance, the approach of neo-institutionalist economics has drawn attention to the inadequacy of neo-classical economics approaches, which resided in their interpretation of economic evolution in terms of natural selection. So even if the neo-institutionalist economics approach does not explicitly call its inquiry into the theory of governance “reflexive” and rarely deploys a theory of learning, it can indisputably be termed reflexive or referred to as an approach that aims, in contrast to approaches from neo-classical economics, to promote the learning operation of actors involved in a collective action. Clearly the same goes for the three approaches identified in *Synthesis Report 1* as working to broaden the neo-institutionalist economics approach. These two rely explicitly on the will to better understand the conditions needed for the success of the learning operation. The idea of reflexivity thus understood means simply that the transformation/adaptation of a given context effected by a given collectivity will not satisfy in the best possible way the actors’ expectations solely on the basis of this spontaneous display of their “natural” competencies. An adaptation of this kind would require the actor to conduct a “return” over her or his “accustomed competencies and behaviours” with the aim of acquiring new competencies. This operation of “reflexive return” would require specific institutional systems. Thus if we define the idea of reflexivity through the idea of learning, all the various recent approaches developed by scholarly research (as an alternative to both command-and-control regulation and sole recourse to the market) could be termed reflexive, regardless of the significant differences among them.

This option offers the advantage of not hiving off any one approach from the others within REFGOV. In fact, it corresponds to the strategy clearly adopted when the REFGOV network was constructed: At that time, researchers were grouped together according to their choice of one of the four approaches, without either privileging or disqualifying any of the four theoretical options.

Significant inconveniences are associated with this option, however. In particular, it prevents seeing what distinguishes these four approaches to governance from each other, once we go beyond their shared will to avoid the fallacious assumption of a process of natural selection guaranteeing the constant adjustment of our collective actions towards a “social optimum”. What distinguishes them is precisely their different ways of conceiving of the learning operation (and thus the reflexive operation that any learning operation entails). True, as has already been mentioned, many of these approaches do not undertake to develop an explicit theory of this learning operation. Indeed, this is the reason why, except when they are explicitly framed within an “integrating” mechanism such as that organised by REFGOV, several of these four approaches are unaware of each other. Scholarly discussion of the question of governance is being conducted today within various disciplines, and often these various disciplinary discussions are conducted without attention to research being done in neighbouring disciplines. What this means is that the four approaches identified in *Synthesis Report 1* are often unaware, not just of what they have in common (namely, that they take an approach to governance in terms of how actors’ learning is facilitated), but, *a fortiori*, of what differentiates them when it comes to their conception of the conditions for success of the learning operation. Consequently, in turning our attention to the differences in the way they conceive the conditions for success of a learning operation, we gain a further benefit.

The potential fruits of this investigation are not purely theoretical or academic. They are also practical and they relate to the construction of systems of governance. Bringing the four approaches together in order to examine them in relation to their conceptions of the learning operation reveals that they lie on a continuum. What emerges is that these four approaches reflect increasingly broad conceptions of the conditions that must be satisfied to ensure the success of the learning operation. When they are analysed through the lens of the learning operation, things unfold as though these four approaches reflected four successive stages of a single process of inquiry, with each successive stage working to deepen and broaden the understanding of the conditions necessary for the system of governance to enable actors to produce the best possible solution to the collective-action problem they are working to solve.



And indeed that is the reason why REF GOV's research is working on two levels. On one hand, various theme-based studies have been organised to allow for giving an account, in various concrete spheres, of the proposals for institutional design suggested by the four approaches differentiated in *Synthesis Report 1*, among which current studies on governance are distributed. At this level (as was observed above), none of the four approaches is privileged over the others. Each is viewed as contributing, within its thematic sphere, clarifications that are highly fruitful in addressing problems and inadequacies presented by present systems of governance. On the other hand, parallel to this first level, an integrating system has been set up to reveal the consistency of the four approaches. The issue here is to justify the idea of possible "progressive broadening" and to show how this idea is reflected in the institutional conditions that could be set up to ensure the success of the learning operation entailed by any governance in the public interest. In order to achieve this, our theoretical research is seeking to: 1) present the consequences for a theory of governance of an approach that takes seriously the underlying dynamic of current research and the deepened inquiry into the learning operation that is driving it; and 2) justify at the theoretical level the validity of this dynamic of "progressive broadening" and the search for integration. The concern at the heart of *Synthesis Report 1* was to lay down the bases for a system of integration, which will lead in time to the development of a protocol to assess a system of governance's "reflexive" capability to maximise fulfilment of the normative expectations held by participants in a collective action (a Public Interest Assessment Protocol, or PIA Protocol)³.

This is why it does not seem fruitful to limit the definition of "reflexive governance" (as is too often suggested) to "the establishment of institutions and processes which facilitate [the learning of] the actors"⁴. Any form of "reflexive governance" is a function of the explicit or implicit conception of the learning operation that underlies it. Any inquiry into "reflexive governance" must therefore include the question of the differences in conception of the learning operation that can today be observed in the four "reflexive governance" approaches differentiated in *Synthesis Report 1*.

Accordingly, it is helpful to recall the most distinctive features of the four current approaches to governance whose perspective on governance is a "reflexive", learning-theory-based one (see 1.1 below.) In so doing, we will be enabled (in 1.2 below) to clearly identify why it is possible to speak of the deepening and progressive "broadening" of the conception of the conditions for success of the learning operation that a system of governance will have to take into account, if the best possible fulfilment of the expectation of actors involved in a collective action is to be ensured.

1.1. Principal features of the four approaches to reflexive governance

The first clarification, then, relates to terminology. From among the various current disciplinary approaches, we have identified four approaches within theory of governance that, implicitly or explicitly, inquire into the question of the conditions for good governance in terms of collective learning.

- The first we labelled the neo-institutionalist economics approach. As we explained, this term should be understood in a broad sense, because it is intended to cover both research in transaction-cost economics, as emerging out of the work of O. Williamson and R. Coase, and research conducted within the frame of reference of evolutionary theory.
- The second we called the "collaborative-relational approach through dialogue". It could also be called deliberative, since it is distinguished by the idea that the conditions for success of the learning operation require an aggregative and deliberative shaping of the communicative competencies of the various stakeholders.

³ We will return below to this system of integration, when we provide details of the methodology of REF GOV research.

⁴ C. Scott, *How Reflexive is the Governance for Regulation?*, *op. cit.*, pp. 1-2.



- The third approach we called “pragmatist”. As its name suggests, it is distinguished by its inquiry into the conditions for success of the learning operation on the basis of an explicit reference to pragmatist thinkers, J. Dewey in particular. The pragmatist approach to governance cannot however be properly understood unless we differentiate between two profoundly different trends within it. Although both these trends work to broaden and deepen the presentation of the conditions for success of the learning operation developed by neo-institutionalist-economist and deliberative thinkers, they differ from each other in their understanding of this process of broadening and deepening. The first of these two trends is represented by the experimentalist approach (also known as “democratic experimentalism”) of C. Sabel *et al.* The second, which has concluded by identifying the inadequacies of the experimentalist approach and recommending it be broadened, was developed by D. Schön in collaboration with C. Argyris and M. Rein.
- The fourth approach is the one espoused by the researchers in charge of the Theory of the Norm Unit in the REFGOV network (and, more broadly, the one developed at the CPDR). We have often referred to it as the “reflexive” approach to governance⁵ to emphasise its basis in what is intended to be the broadest conception of the conditions for reflexive return required for the success of the learning operation. However, terming this approach reflexive runs the risk of ambiguity in two ways. First, as was seen above, the idea of reflexivity seems often to be related in current work in the social sciences exclusively to the idea of learning per se, without being extended to the scope or the precise nature of the conditions required for the success of learning. As well, even if we wished to reserve the term “reflexive governance” for an approach that specifies one particular conception of these conditions, the term would still court ambiguity, since it is already currently applied to several different approaches to governance. For example, G. Teubner’s systemic theory, C. Sabel’s experimentalist approach, and D. Schön’s and C. Argyris’s pragmatist theory all explicitly view themselves as theories of reflexive governance. That is, use of the word “reflexive” is affected by the same difficulty as is the word “procedural” in theory of law and theory of democracy: They are terms that come to be perceived at a given moment in the progress of scholarly research as reflecting a significant insight, but that are used with meanings so different that the very success of the terms risks giving rise to more ambiguity and imprecision than theoretical or practical advances. For this reason, we suggest the term “reflexive governance” be limited to denoting the overall process guiding current research in theory of governance, which covers all four approaches identified here. Accordingly, to designate the specific “reflexive” approach to governance developed at the CPDR, which is distinguished by the will to broaden and deepen the pragmatist trend (as expressed in both C. Sabel’s democratic experimentalism and D. Schön’s or C. Argyris’s work), we suggest the term “genetic”. The term “genetic” is intended to take account of two factors. On one hand, the set of conditions for production (that is, *engenderment*) of actors’ capacity to carry out the “reflexive” return required for the success of the learning operation; and on the other hand, the setting up of institutional conditions likely to guarantee effective implementation of the actors’ commitments.

Now for a brief second clarification. It consists of a concise overview of the factors that differentiate and distinguish the four approaches to governance from each other, which have to do with those approaches’ differing conceptions of the conditions for success of the learning operation required to ensure maximal fulfilment of the normative expectations of participants in a collective action.

⁵ In *Synthesis Report 1*, this approach is also sometimes called “pragmatic and internalist”. While accurate, this designation may prove hard to use because it is too closely linked to certain technical philosophical assumptions. That is, this designation is based on the idea that the fourth approach, while it shares with the deliberative and pragmatist approaches the will to broach the question of learning as the basis for a “pragmatic” approach to the conditions for success of the intentionality of an action, also aims to emphasise the inadequacy of the deliberative or pragmatist conceptions associated with the pragmatic turn.



1.2. Why speak of a “progressive broadening” of the conditions for success of learning?

The essential idea underlying this presentation of current discussion in theory of governance is twofold. First, current discussion rests on a shared conviction that any approach to the regulation of a collective action that assumes “natural selection” of the behaviours required to maximise fulfilment of the actors’ normative expectations leads to inadequacies in the arrangement of systems of governance. Thus a “selection” of this kind entails a learning operation. As well, this discussion results in four approaches that form a progression with respect to the breadth of the conditions required to ensure the success of the learning operation. Each successive stage, *without invalidating* the positive advances achieved by prior approaches, deems those advances insufficient and considers that supplementary conditions must be taken into account in designing systems of governance. What essential trait characterises each of these stages? That is, what is the “value added” that approaches two, three, and four aim to bring to the prior stage? Or, to put it in other words, what is the inadequacy that each of approaches two, three, and four views as having been overlooked by the approach that they seek to extend or go beyond?

We will limit ourselves to briefly and clearly reviewing those specific features of the first stage of the progression that can be observed in current research in theory of governance within the *neo-institutionalist economic* approach (see “a” below) and its ongoing broadening and deepening, first by means of the second, *deliberative* or *collaborative-relational*, approach (see “b” below), then by means of the third, *pragmatist* (see b and c1 below), approach in two successive forms, and finally by means of the genetic approach (see “c2” below).

a. The externalist broadening of the conditions for success in learning

The most characteristic feature of the neo-institutionalist economics approach is what we called in *Synthesis Report 1* its “externalist” conception of learning and what we could consequently call its “externalist” conception of governance. As was shown in that first report, this externalist conception is observable not just in the work of both transaction-cost economists and evolutionists, but also in the writings of those who, like D. North and E. Brousseau, have worked to synthesise the advances made by those two schools of economic thought. What does an “externalist conception of learning” mean, and what are its implications for systems of governance?

The basic idea is related precisely to the way these economists have sought to “go beyond” the inadequacies they detected in the theory of natural selection that underlay neo-classical economic theory, and in consequence in their ascription of excessively great virtues to the market mechanism alone. The reason natural selection cannot operate in human groupings is precisely because it is a function of a datum present at the outset. As L. Marengo and G. Dosi put it, “[A] selection mechanism can indeed, under certain conditions, select for the fittest structures, but only if the latter exist in the first place. Selection can account for the convergence of a population toward some given form, not for the emergence of such a form.”⁶ But the neo-institutionalists’ notion is precisely that this datum present at the outset is not assumed to be subject to transformation by the learning operation itself. Any selection operation, unless “incited from the outside”, is constrained by the same limitation. This second characteristic results in what might be called an *externalist* conception of learning. For the evolutionists and the neo-institutionalists,⁷ the only way to alter the nature of the datum present at the outset consists of deploying an external factor in order to “broaden” all the initial hypotheses (or, as Simon would put it, all the routines) that are to be tested by the learning operation, in view of choosing the one that seems most powerful to solve the problem that set the collective action in motion. Innovation – i.e., the broadening of the

⁶ L. Marengo & G. Dosi, Division of Labor, Organizational Coordination and Market Mechanisms in Collective Problem-Solving, *Journal of Economic Behaviour & Organization*, 58-2 (October 2005), 303-326, 306.

⁷ And in fact, this is the institutional form of the solution arrived at by theorists of evolutionary games and by R. Coater working in the law and economics framework. (On this, see *Synthesis Report 1*.)



existing representation by broadening the possibilities present at the outset – cannot emerge from the operation itself.

This “externalist” approach to learning also accounts for the approach to governance, that is, the approach to the institutional systems that must accompany the learning operation in order for the latter to result in “optimality”, or at least in the form of organisation of the collective action that satisfies the normative expectations of its members to the extent possible, i.e., governance in the public interest. A “broadening” of local actors’ representations is needed by means of an external mechanism that “imposes”, hierarchically so to speak, a collective representation. E. Brousseau⁸ is right to say that the evolutionists insufficiently define the form of organisation that must impose this “broadening” of decentralised local actors’ representations from outside and must ensure that learning will yield an optimum outcome overall. From this perspective, many current neo-institutionalist studies (such as those of E. Brousseau himself, including those cited in *Synthesis Report 1* that examine Internet governance and those currently being conducted by the Institutional Frames for Market Subnetwork of REFGOV) work to make explicit the nature of these external systems that, it is argued, must increasingly take the form of hybrid, public-private partnership, systems. What is important from our perspective, however, besides the advances yielded by this identification of the nature of these systems, is the externality that they embody. The idea is present therein that only an external system could “incite” the acquisition of the behaviours/competencies needed to allow for the most “efficient” possible operation. This broadening of the behaviours/competencies (that is, the broadening of the representations present at the outset from among which the actors select the solutions deemed the best possible) is assumed to have the role (and to be capable) of being incited from the outside by a monitoring mechanism.

b. The internal broadening of the conditions for success of learning

It is precisely as regards this “externalist” approach to learning – and in consequence to governance – that the second (deliberative), third (pragmatist), and fourth (genetic) approaches to governance are distinguished from the neo-institutionalist economic approach. What they have in common is a shared will to “internalise” the conditions for success of the learning operation. In contrast to the externalist approach, the transformation of behaviours/desired representations is viewed as resulting from the very organisation of the learning operation with respect to decentralised interaction. Granted, the form that the effort at internalisation takes varies, depending on whether the approach is collaborative-relational, pragmatist, or genetic. As has already been pointed out, the effort at internalisation is given greater and greater breadth, in the sense that the “internal organisational constraints” imposed on the manner of organising the form of cooperative action that is to be henceforward applied to decentralised action are progressively increased. The deliberative or collaborative-relational approach is characterised mainly by the will to organise the “aggregate of communicative competencies”. Concretely, the issue consists, essentially, of organising venues for cooperative deliberation by all the parties involved. It is in the increased number of these venues for participation and of the actors involved in deliberation that the conditions for transforming “routines” and “selecting” the best possible solutions for collective problems are expected to be found. Thus a twofold process characterises this initial effort at deepening the inquiry conducted by neo-institutionalist economists in the broad sense.

First, there is the perception that action on its own by an “external” system of supervision will prove inadequate to yield the hoped for results. This first idea is significant. After all, on what basis can we assume that those who will apply this external system will do so “in the same spirit” as that which prevailed when the external system was set up? Is it not the case that

⁸ As E. Brousseau remarks, the organisation continues to be the “black box” of evolutionist theory. (Néo-institutionnalisme et Evolutionnisme : Quelles Convergences?, in *Economies et Sociétés*, HS 35, 1/1999, 189-215, 194).



the familiar critique of the command-and-control approach is also relevant here? The work done by S. Deakin within the REFGOV Corporate Governance Subnetwork has made it possible to clearly reveal this first process, which underlies the justification for the proposal that the approach of neo-institutionalist economics be extended in a “more reflexive” direction. As S. Deakin shows, working on the basis of G. Teubner’s systemic theory of “reflexive law”, the usual law and economics approach deals too reductively with the complexity of the processes that drive the evolution of social behaviours. The autonomy of legal subsystems – for example, that of company law – makes it clear that a voluntarist introduction of a “shareholding approach to corporate governance”, at least into legal systems in societies with a European orientation, will not necessarily result in the effects claimed by those who support voluntarism in the name of economic logic. The reason is that the “interpretation” given to it will also depend on the traditional cohesiveness of legal entities. And these legal entities, at least in Europe, require one to take into account the more “integrative” dimension of the nature of the firm. What is in question here is not just the “cultural or ideological” dimension. “Culture” is embedded in the legal constraints that govern the way the legal system nowadays defines what is “legal” and “illegal”. Any new legal reform that may be sought will necessarily have to take into account the inevitable effort at the harmonisation of laws. If, then, we act on the basis of this necessary harmonisation, or congruence, would it not be more “efficient” to improve conditions favouring such congruence by means of appropriate systems? As F. Carvalho and S. Deakin⁹ have pointed out, congruence might require setting up systems that favour a fuller taking into account, within companies, of all its components (the stakeholding approach) and, in so doing, a fuller account of what we nowadays call corporate social responsibility.

It is based on this first process that we can come to understand the second distinctive feature of the “deliberative” project. Since any external system is at risk of producing effects solely as a function of the “frameworks” specific to its addressees, it is necessary precisely to “act” upon the way relations among these decentralised actors are organised. The “aggregating” shaping of “communicative competencies” among all the actors involved must be organised. It is on the basis of this deliberative involvement by all stakeholders that, thanks precisely to this communicative and deliberative system, one can look for the “broadening” of routines that the success of a learning operation requires and, in consequence, the selection of a normative solution that will maximise fulfilment of the normative expectations of all the actors. Recent reports by H. Adlard and T. Prosser¹⁰ on the evolution of energy governance in the UK and by members of the Leeds Team¹¹ on the evolution of governance in the health field in England and Wales illustrate well the institutional initiatives taken in these two sectors towards supplementing and extending the neo-institutionalist-economics-based reforms that accompanied the first steps towards liberalisation during the 1980s and 1990s. At the same time, these reports also make clear the problems and slowdowns that these “participatory” and “deliberative” “reflexive” systems appear to give rise to. In fact, both these reports show that the limitations of exclusive recourse to the mechanism of “aggregating communicative competencies” to ensure the success of a learning operation are becoming increasingly clear. Undoubtedly, as is recognised in the collaborative-relational approach to governance through dialogue, it is useful to take specific action on decentralised interaction. Thus this initial extension of the externalist approach is needed. But it proves in turn to be inadequate. H. Adlard and T. Prosser have proven that “the need for trust between actors, as social capital which could lubricate the wheels of these processes and speed them up (which is essential in the case of the urgent need to respond to the dual problems of energy security and climate change), remains in short supply.”¹² Similarly, the Leeds Team, writing on recent

⁹ F. Carvalho & S. Deakin, *System and Evolution in Corporate Governance*, FP6 Corporate Governance Workshop University of Bristol, 13 December 2006 (Draft Report, not for citation).

¹⁰ H. Adlard & T. Prosser, *REFGOV UK Energy Case Study: Security of Supply and Land-Use Planning*, Draft for Paris Workshop, 2007.

¹¹ *REFGOV Case Study: Patient and Public Involvement in Healthcare Governance – England and Wales*, Report for Paris Workshop, 2007 (written by the members of the Leeds Team of the Healthcare Subgroup of the SGI Subnetwork).

¹² *Ibid.*, p. 17.



changes in public policy in the field of health services in Wales, point out that the limitations of participatory procedures are becoming increasingly evident and that it is becoming clear that specific systems must be set up to reinforce actors' capabilities ("to achieve capacitation, the building of communicative competencies").¹³ However, as was stressed in *Synthesis Report 1*, this "attention" to the problem of actors' "capacity" needs to be properly understood. That is, it tends to be broached in very different ways depending on whether one takes the deliberative (collaborative-relational through dialogue), pragmatist, or genetic approach. The question of "actors' capacities" as a condition for the success of the learning operation is not articulated in the same way by the three approaches. It is necessary here to recapitulate three points in order to clarify the issues involved in this important question.

First, we should remember that there has recently appeared, within the deliberative approach,¹⁴ the will to break away from the belief that aggregating communicative competencies will on its own ensure respect for the conditions needed for governance capable of satisfying collective interests to the extent possible. Thus from within this approach there has emerged attention to questions of the "empowerment" of actors as a condition that must be imposed¹⁵ in relation to decentralised interaction and that goes beyond the sole condition of the aggregate shaping of communicative competencies. Similarly, concern to strengthen argumentative capabilities and the will to supply "sufficient opportunities for dissent and constructive counter-argument"¹⁶ is a part of inquiries being conducted in the same vein. But whatever the scope sometimes ascribed to conditions for empowerment,¹⁷ the question of actors' capacitation is never framed in the terms that authors writing in the second pragmatist tradition (D. Schön, C. Argyris, and M. Rein) would use, nor in the still more radical terms that would be used under the genetic approach to governance. This is because what distinguishes these latter two approaches is precisely the specific way they work to radicalise the question of the level at which actors' capacity is to be built.

Second, it should be noted that this question of building actors' capacity is in no way related to the broadening and deepening proposed by the first version of the third approach to governance, the one called "pragmatist". As has been pointed out, this third approach has taken two successive forms, with the second of these working to overcome the inadequacies that the first, referred to by C. Sabel *et al.* as democratic experimentalism, continued to be hampered by. The inadequacy that D. Schön, C. Argyris, and M. Rein have revealed within democratic experimentalism is precisely that this approach obscures the question of actors' capacitation. The broadening of the deliberative approach effected by democratic experimentalism in no way relates to the question of the enhancement of actors' capacities. It relates rather to another level. The advance from which theory of governance benefits under this first version of the pragmatist trend is the insight that, besides the deliberative shaping of the communicative competencies of the actors involved, it is also necessary that the "negotiation" be organised in an experimentalist manner. That is, it is necessary that actors be engaged in a process of joint inquiry in order to "allow themselves" to be taught by the

¹³ *Ibid.*, p. 32.

¹⁴ On this, see *Synthesis Report 1*, Section 2, §2, 3.

¹⁵ In this regard, see S. Burris, P. Drahos, & C. Shearing, Nodal Governance, 30 *Austl. J. Leg. Phil.* (2005), 30-58, although this article conceives of capacity building, in a highly classical manner, in terms of informational asymmetry.

¹⁶ *REFGOV Case Study. Patient and Public Involvement in Healthcare Governance – England and Wales, loc. cit.*, p. 29. Contrary to what the authors of the report would have us believe, in this perspective, in which "the focus shifts from building consensus to encouragement of social dialogue between different constituencies and conceptions of the general interest," there is no evolution from the "collaborative-relational mode of social learning towards democratic experimentalism." Rather, this kind of attention to the encouragement of social dialogue remains wholly within "deliberative" logic. As will be seen below, democratic experimentalism implies wholly different kinds of shift of attention.

¹⁷ In authors such as J. Innes and D. Booher, the emphasis goes beyond J. Habermas's formal approach and involves attending to the systems required to generate common trust among actors and ensure the emergence of "shared identities, shared meanings, new heuristics and innovation" (J. Innes & D. Booher, Collaborative policymaking: Governance through dialogue, in M. Hajer & H. Wagenaar, *Deliberative Policy Analysis: Understanding Governance in the Network Society*, Cambridge, Cambridge UP, 2003, 33-59, 39).



results of an experimental encounter between existing solutions and new problems requiring solution. In this sense, the process of “internalising the conditions for success of the learning operation” is strengthened and a new condition is revealed, consisting of organising decentralised interaction in such a way that it is ensured that actors engage in a joint process of inquiry. This “broadening” of the conditions for success of the learning operation is reflected, according to C. Sabel, in the requirement that three new conditions be fulfilled in building systems of governance: codesign (and thus collaboration among those who define policy and those responsible for implementing it), benchmarking, and monitoring.

Third, as was observed above, the distinctive feature of the second pragmatist trend (as expressed in the work of D. Schön, C. Argyris, and M. Rein) and the fourth (genetic) approach to governance, drawn from democratic experimentalism, is the will to pursue the inquiry already begun within the collaborative-relational approach through dialogue, i.e., the inquiry into the need to pay attention to enhancing actors’ capacities. Certainly, democratic experimentalism, with its requirement that a joint process of inquiry be organised, has already allowed for an advance over deliberative approaches. Its error, however, is that it overlooks the “obstacles” that may hinder the success of a learning operation when it is assumed that actors’ “spontaneous capabilities” suffice for the success of the “joint experiment”. Indeed, no inquiry into these capabilities has been initiated within the democratic experimentalist trend. In tandem with this, the second version of the pragmatist approach and the genetic version are working to broaden and radicalise the inquiries carried out by adherents of the “deliberative” approach into the question of the conditions for actors’ “capacitation”. This broadening and deepening has been carried out by the pragmatists by means of the “key” concept of “defensive strategies” that actors may deploy unconsciously and that would lead actors to restrict the field of their “representations” as compared with what is needed for the maximal fulfilment of the normative expectations held by participants in a collective action.

c. The genetic broadening of the conditions for success in learning

The genetic approach continues to deploy this “attention” to the question of “defensive strategies” as it works to better think through the conditions for going beyond them. This question had been no more than sketched out towards the end of *Synthesis Report 1*. The principal objective of the studies conducted by the Theory of the Norm Unit from June 2007 on was to deepen understanding of this point. The result was *Synthesis Report 2*, whose main orientations were discussed with the heads of REFGOV’s other subnetworks in late December 2007 (see below the description of the work of the TNU). The reasoning that led to the deepening process suggested by the genetic approach can be summed up under two main headings.

c.1. From the generative to the genetic

The first consideration relates to the problematic aspect that continues to taint the approach of D. Schön and C. Argyris.

It is to the great credit of D. Schön and C. Argyris that they discerned the inadequacy of traditional approaches to governance, in particular deliberative approaches, as regards this matter of actors’ capacity to form appropriate representations of the circumstances and of their own interests. They rightly saw that all the usual approaches to governance cancel out the difficulties specific to this operation. As was seen above, they revealed how often routines and defensive strategies prevent actors involved in a collective action from forming appropriate representations of new problems to be solved and from co-operatively taking part in the joint inquiry that the search for an appropriate solution entails. Such defensive strategies are clues to the existence of a “handicap” in one’s ability to suitably represent the problem to be solved: The actor remains the prisoner of what might be called a “repetition compulsion” that obstructs the self-adjustment process needed for the operation of representation to succeed. It could be said that this repetition compulsion – or defensive



strategy – points to the failure of the “subject formation” capacity, that is, the capacity to form one’s identity and be able to represent the interests at stake within a given situation. For this reason, D. Schön and C. Argyris understand very well that the operation by which one adopts an identity – that is, by which we “represent” ourselves, we represent our “interests” in a given context of action, and we “present ourselves as actors” capable of interacting with other actors in order to advance our own interests – does not occur “automatically” or “spontaneously”. Its “success” requires specific conditions to be present and consequently a specific form of “attention”. This specific attention thus constitutes a condition for the possibility of success of the choice of norm. This condition reflects the need to organise reflexivity – that is, actors’ return over their pre-existing frames. This “generative attention”, and the “capabilities” that, according to D. Schön, it is responsible for generating, will obviously feature the priority given to the “frames” that underlie our accustomed approaches to problems.

But at the same time, according D. Schön and C. Argyris, the mere incitement to the development of this generative attention is presented as automatically producing the attitudes and competencies required for a capacity to transform one’s “frames”. As the same authors write, it is sufficient, in a manner of speaking, to “encourage” the actors to take such a reflexive approach for the approach itself to develop, seemingly as the potentiation of a competency or capability that is already tacitly present in all the subjects and whose deployment merely requires that attention be paid to it. Thus the assumption is that, in some manner or another, there exist pre-given rules and capacities that are already available. This assumption is based on the belief, voiced by D. Schön, in the “existence of a widespread capacity for reciprocal reflection-in-action”.¹⁸ He seeks to provide an accounting of this operation in terms of metaphoric learning. However his analysis of the learning operation in the terms of metaphor reflects certain powerful assumptions. The frame each actor spontaneously deploys must be analysed as a “generative metaphor”¹⁹ that in a sense constitutes the actor’s rule of identity. Every actor has specific interests that define her or his own identity within the social group. But a feature of this rule of identity is that it has a dual function. Its character as a “rule” guarantees the outcome of a twofold operation.

On one hand, it allows the actor to assign to the specific context she or he is faced with the “meaning” that corresponds to her or his “own identity” and adopt a corresponding role. On the other hand and at the same time, it guarantees its own variation, that is, its own changing adjustment to the transformations associated with differing contexts. That is why it is called *generative*. It produces a rule for the interpretation and integration of the facts. Thus it makes possible the “representations” of specific situations and guarantees the possibility for assigning “meaning” to them. It defines how the facts will be selected that will in turn define the meaning to assign to the situation that must be solved (this is the first operation).

At the same time (and this is the second operation), this rule also guarantees the success of the learning/adjustment entailed by ongoing changes in the specific contexts that have elicited the problems to be solved. This rule of identity – inscribed in actors’ minds – ensures that, despite the constant newness of the problems to be solved, the actors will transpose the unaccustomed (the new) onto the known (the familiar). It is this that the idea of the generative metaphor points to: the rule guarantees social actors’ capacity to re-read metaphorically, as “analogues” of previous experiences, new situations needing solutions.

¹⁸ D. Schön, *The Reflective Practitioner: How Professionals Think in Action*, Aldershot, Ashgate Publishing Limited, 1996, p. 353.

¹⁹ “The metaphor which accounts for centrally important features of the story – which makes it understandable that certain elements of the situation are included in the story while others are omitted; that certain assumptions are taken as true although there is evidence that would appear to disconfirm them; and, especially, that the normative conclusions are found to follow so obviously from the facts” (D. Schön, *Generative metaphor: A perspective on problem-setting in social policy*, in *Metaphor and Thought*, A. Ortony (ed.), Cambridge (UK), Cambridge UP, 1993, pp. 137-163, p. 149).



This also helps in understanding why we refer to an “incitement” approach in connection with the theory of “reflective” learning developed by D. Schön, C. Argyris, and M. Rein. According to these pragmatist authors, it is in a sense “sufficient” to pay attention to the problem of reframing for the identity rule inscribed in the frame to be automatically deployed, and for the twofold operation the rule is thought to guarantee to take place – simply because attention has been focused on the necessary “adjustment” to the frames.

It is just this assumption of a rule stored in the minds of actors participating in a collective action, along with the incitement approach to governance associated with it, that must be challenged. It is on this score that, in our view, the pragmatist project – not just in the “Deweyan” and “experimentalist” version of which C. Sabel is the exponent, but also in the more “reflective” version developed by C. Argyris, D. Schön, and M. Rein – requires correcting and broadening: correcting, because the underlying assumption must be exposed; broadening because the exposure of this assumption entails, not a challenge to the organisation of governance proposed by the pragmatists, but supplementation and an indication of what it requires to reach completion.

By assuming the existence of a rule stored in the minds of each actor that guarantees each actor’s spontaneous ability to adjust the representation she or he holds of her or his interests in light of changes in context, D. Schön and C. Argyris distort their initial insight in a fundamental way. This insight, it should be recalled, is indeed that the operation by which one adopts an identity – that is, by which we “represent” ourselves, we represent our “interests” in a given context of action, and we “present ourselves as actors” capable of interacting with other actors in order to advance our own interests – does not occur “automatically” or “spontaneously”.

This is the point of the critique the “genetic” approach to governance levels against the pragmatist theory of reflexive learning. Our critique of the pragmatist approach consists of showing that it reproduces the behaviourist assumptions made by the approaches to governance it sought to go beyond. The setting up of incitement mechanisms (joint inquiry and the provision of devices and mechanisms to induce reflective attention to the need for going beyond defensive strategies co-operatively) is expected to produce the hoped for effects of shifting and cognitive transformation. The mechanism is understood to produce on its own the behaviour looked for. The assumption is that the mechanism to some extent operates from the outside, in the manner of an incitement that activates a pre-existing rule that guarantees the hoped for behavioural transformation. There exists a pragmatic inadequacy in this way of understanding the conditions for the possibility of satisfying the intentionality that governs any action by a subject. These conditions for possibility necessitate a self-capacitating operation that no incitement mechanism can assume, in a mentalist fashion, to be taken care of by a given capability or capacity stored in every actor’s mind.

c.2. The specific contribution of the genetic broadening

Here we will address the second component of the reasoning underlying the “genetic” approach advanced by the CPDR within REFGOV. To make up for the “pragmatic inadequacy”, then, the genetic approach proposes to broaden the conditions for success of the learning operation by organising a specific “pragmatic operation”, designed to lead the actor to construct the representation she or he has formed of the new identity that the change in context requires. Since this operation of adjusting identity representation does not occur automatically, it must of course be organised. In fact, it is twofold.

The first operation concerns the actor’s relationship with the “past”. The collective actor must reconstruct the *form* its *identity* takes on through its past actions, and this reconstruction will enable it, if needed, to adjust this form according to the changed context. We would argue that this reconstruction relates to the actor’s reconstruction of its relationship with “collective identity making.” Note the rich semantic ambiguity of the expression “collective identity



making”, which implies that a collective actor experiences itself in its *organic* capacity to be organised as a collective actor “representing and aggregating” the various members it is comprised of. But “collective identity making” also implies a “*modal or functional*” dimension, that is, a dimension related to the possibility of operating and representing itself as a collective actor in a context for action. The collective actor must experience itself through its capacity to represent itself, that is, to form an identity whose substantive representation can vary and adjust according to transformations occurring in the contexts for action. Thus what is at issue here is the first dimension of *the installation of the capacity to be an actor* (i.e., the operation of self-capacitation). This dimension works to construct this capacity to form an “image”, to be “reflected” in an image subject to variation. For this reason, we can speak, more precisely and rigorously, of a dimension of *reflectability*.

The second operation internal to this construction of “self-capacitation” concerns the relationship with the future. The question governing this second process is that of “ability-to”. What transformations must be carried out in the way the actor has given meaning to its identity? What means, what “ability-to”, must it adopt in order to ensure, in the new context that it is faced with, the realisation of this identity form “with no fixed contents”, which it defines as its own “collective identity making”? Under what conditions can it make this form effective in the context of the new constraints on action? Thus the current situation is re-examined in the light of the identity form that underpins it (retrospective relationship associated with reflectability), but also in the perspective of transformations necessary to ensure the realisation of this form in a new context for its application. This, then, is the second dimension of the *installation of the capacity to be an actor* (i.e., the operation of self-capacitation). As we have just seen, it concerns the relationship with the future and works to construct the capacity to adjust one’s “image” according to what is entailed by the fulfilment of the “identity form” one takes on as one’s *destiny*. For this reason, we may speak, precisely and rigorously, of a dimension of “*destinability*”.

It is only through this twofold operation that the modification of a representation that is associated with what “pragmatists” call “joint inquiry” can be rescued from the “unconscious repetition” that, through the “defensive strategies” that are its telltale signs, limits the shifts required to solve the problem the actors are faced with. It is because they overlook the need for this twofold operation of “self-capacitation” that D. Schön, C. Argyris, and M. Rein’s conception of the reflexivity at play in all learning is too narrow.

The method of reconstruction adopted thus accounts for two decisive advances in the conception of reflexive governance. The first consists of the revelation of the integrating focus that unites the four approaches to reflexive governance, namely the will, discernible in all four approaches, to broaden the conditions for success of learning operations such that, from the point of view of the expectations of the actors involved, their effectiveness as normative processes is ensured. The second advance consists of the identification of a specific issue. This issue has on one hand been obscured by the attention paid to the requirements for broadening the conditions for success in learning. But on the other hand, it could be detected only on the express condition of the exposure of this integrating focus of attention. This issue resides in the persisting indeterminacy of the nature of the role that reflexivity will be required to play within the collective action itself. Whereas the minimalist option consists of considering reflexivity as the property that makes it possible to assign features to mechanisms intended to highlight collective learning capabilities, the maximalist option consists of “dementing” the reflexivity approach. This approach’s genetic features are thereby isolated, and a specific kind of operation on collective capabilities can be discerned therein, a kind that allows for the articulation in practice of the possible return over trajectories of action already performed, taking the necessary perspective provided by new positionings. One finding from our reconstruction also showed that all the approaches that distinguish themselves from the minimalist option have no other choice than to progress towards the maximalist option in order to take stock of their conditions for fulfilment in a fully coherent fashion.



2. Review of the methodological organisation and planning of the research project: the scope of the studies conducted between June 2007 and May 2008

2.1. Methodological organisation of the research project.

The developments presented above will help in understanding the methodological choice that governs organisation of the REFGOV research project. The best way to specify this methodological choice is to use, as a point of departure, an observation made by reviewers of the REFGOV study report submitted in 2007. The reviewers rightly emphasised the difficulty of constructing any comparative conclusions on the basis of case studies on substantive issues as diverse as those analysed by the REFGOV network's subnetworks. This observation is extremely relevant, but it is precisely the case that the method that governs the organisation of the REFGOV research project was in no way intended to be comparative. It was intended, rather, to be integrative. What does this mean? As indicated above, our procedure consists of identifying and highlighting the integrating focus that allows for the reconstruction, in a progressive and broadening manner, of the kinds of institutional monitoring for the decentralised interaction advanced by the various current approaches to reflexive governance identified in the synthesis report. Thus, for instance, the idea is not, on the basis of the study on forest management organised by the Global Public Services (GPS) Subnetwork, to invalidate the neo-institutionalist economic approach. Rather, the idea is, by endorsing the institutional proposals for market monitoring suggested by the economic approach to governance,²⁰ to show that the performativeness of institutional solutions thus appropriately highlighted by the neo-institutionalist approach is itself reinforced by, and dependent on, complementary mechanisms designed to enhance the capabilities for success of the learning operation required for fulfilment of the normative objectives identified by economists.

In this perspective, the issue is less "comparability" than it is to give an account, based on empirical examples, of the various dimensions that each approach determines as required for a learning operation in the context of collective action to be successful. This is why we organised the work within REFGOV under a two-part system.

- First, we put in place a Theory of the Norm Unit, which essentially had two roles. One role, right from the start of the research project, was to rapidly draft a synthesis report with the purpose of presenting a reconstruction of the discussion of governance within current research in the social sciences and confirming the validity of the perspective displacement defined in the first part of the present report. The other role, flowing from *Synthesis Report 1*, was to deepen the investigation of the more specific question of the theory of learning that *Synthesis Report 1* had shown to be of crucial importance to advances in theory of social governance. As will be seen below, the Theory of the Norm Unit began to investigate this second question through its *Synthesis Report 2*, written between June 2007 and May 2008 and discussed with members of REFGOV during this same period. (On this, see below.)
- Then, five subnetwork units were set up to be in charge of developing case studies, whose merit was that they would give an account, by means of empirical studies, of the various kinds of institutional system the diverse current approaches in research on theory of governance have shown to determine the success of the learning operation required by all governance of collective action designed to ensure the best possible fulfilment of members' expectations. In setting up the subnetworks, the aim was less to ensure the substantive uniformity of the issues investigated by the empirical studies than it was to ensure adequate representation of the various approaches identified as contributing, each at a different level, to the progressive

²⁰ To compensate for the inadequacies resulting from forms of governance, whether command-and-control or marketing alone.



elucidation of the conditions for success of the reflexive learning operation specific to a “successful” collective action. Since the various approaches to governance that are increasingly highlighting the broadened form of reflexivity internal to any collective action are associated nowadays with multiple disciplinary approaches, the subnetworks were put together with a view to respecting multidisciplinaryness, while ensuring each approach could open up onto empirical fields that were sufficiently well developed to guarantee a full working out of the kinds of reflexive systems they are intended to reveal.

- Note once again that the integration of these various empirical studies was provided for by the theoretical framework defined above under the first heading of this report. The four kinds of system thus described are also integrated with one another when it comes to the organisation of the study, within a context that reflects the progressive broadening of the degrees of reflexivity that must be acted upon if we are to be sure that a collective action provides for the best possible fulfilment of its members’ normative expectations.

This integrative dimension of the organisation of the research project was clarified as far back as 2006 by the guidelines developed in preparation for *Synthesis Report 1*. Each subnetwork was charged with developing its case studies from a dual perspective: on one hand, that of giving an account of the inadequacies of prior approaches to governance that internal analysis of the case under study was working to remedy; on the other hand, on the basis of the preceding, to identify, among the four current “reflexive” approaches to governance, which one was being deployed to pinpoint the institutional system recommended for dealing with the observed inadequacy.

Without claiming to be able to describe all the case studies exhaustively here, we can briefly group the various case studies that were so organised according to the type of “reflexive” governance approach they deploy.

- Under the perspective of an externalist broadening of the conditions for success in learning are found the case studies analysed on the basis of a neo-institutionalist economic approach. Clearly, this includes those developed by the IFM subnetwork, which was dedicated to this purpose. However, within both the GPS Subnetwork and the Corporate Governance Subnetwork, several case studies were developed based on this approach, in the latter subnetwork mainly those conducted by F. Cafaggi on inter-firm relations.
- Under the perspective of an internalist broadening of the conditions for success in learning are found, first of all, case studies that give an account of the usefulness of supplementing the systems based on a neo-institutionalist economic approach and of broadening institutional systems by setting up a deliberative context for the actors’ interactions. These are the case studies organised within the SGI subnetwork (in both the field of energy and the field of health care) and the GPS and Corporate Governance subnetworks. (Note the significance assigned within this last subnetwork to the need to develop “a stakeholding approach to corporate governance”.)
- Still under the perspective of an internalist broadening of the conditions for success in learning, we next observe the development of case studies attesting to the usefulness of supplementing the systems devised under the two approaches (neo-institutionalist economic and relational-collaborative) in comparison with “experimentalist” systems (these last constituting a first version of a pragmatist approach to governance). The case studies in question were developed mainly within the Fundamental Rights Subnetwork and, somewhat more tangentially, within the GPS Subnetwork.
- Last, under the perspective of the genetic broadening of conditions for success in learning are found case studies intended to reveal the need to set up systems for actors’ capacitation. These are of three kinds. We are dealing here with case studies associated with either the second version of the pragmatist approach to



governance or the “genetic” approach suggested by the CPDR as a means of deepening the “generative” approach of D. Schön and C. Argyris.

- First, an initial study was organised exclusively to demonstrate the inadequacies flowing from a lack of attention to the need to organise actors’ capacity. This was the study dedicated to the recent reform in health care in France, which was completed last year by the SGI Subnetwork (see below).
- Next, two kinds of studies were organised in order to go a step further in investigating the question of “actors’ capacitation”. The issue addressed by these two kinds of studies was that of analysing various systems tried out in practice or proposed in the literature for organising such capacitation. On one hand, there is the case study that will be developed within the SGI Subnetwork, beginning in September 2008, by Peter Vincent-Jones in the context of the health care reform currently being undertaken in the United Kingdom. On the other hand, we have case studies developed within the GPS Subnetwork by Tom Dedeurwaerdere in the field of forest management in various European countries.
- Last, one case study was organised especially to give an account of the genetic approach to governance and the kind of system suitable for “engendering” actors’ “self-capacitation”. This case study was organised broadly within the SGI Subnetwork but under the responsibility of a member of the CPDR team in charge of the Theory of the Norm Unit. The study was on union players in the context of the liberalisation of Belgium’s electrical energy policy.

2.2. Organisation of the research project’s development.

The concrete organisation of the various stages of this research project and the positioning of the studies conducted between June 2007 and May 2008 within this organisation will be described in the context of developments within the Theory of the Norm Unit and each of the subnetworks. But certain general principles should be recalled here to help us understand how the general perspective and hypothesis described above have led to the consistent planning of the research project.

First, with respect to the Theory of the Norm Unit, work was organised in three stages. The first two years were devoted to drafting *Synthesis Report 1* and discussing it within REFGOV. The role of this report, as has been seen, was to reconstruct the state of current discussion in the social sciences and on that basis test the productiveness of the perspective displacement proposed by REFGOV in inquiring into the question of governance. The third year (June 2007- May 2008) was dedicated to the drafting of *Synthesis Report 2*. The aim of this report was to deepen examination of the issue of broadening the reflexive approach to learning proposed by the pragmatist approach of D. Schön and C. Argyris in the direction of a genetic approach and to illustrate this broadened approach with initial findings emerging from a study of the union movement in the context of the liberalisation of Belgium’s energy market. The upcoming third stage will consist not just in deepening this research into the union as actor but also of an inquiry, conducted in part in direct collaboration with C. Argyris in the USA, into the conditions that must be put in place in order for a system of intervention to help an actor generate the kind of self-capacitation that pragmatically determines the success of her, his, or its learning operation. (See above, 1.c.)

Here we should call two general observations about the case studies developed within the various subnetworks, in line with the guidelines developed in accordance with REFGOV’s general theoretical framework.

- First, the essential purpose of the first three years of research was to develop the case studies. In year four, besides definitively finalising these case



studies, we anticipate initiating a process of synthesis of the kinds of institutional systems specific to each of the approaches deployed by REF GOV in order to ensure the success of the learning operation on which the possibility for “public-interest governance” depends. To this end, each of the subnetworks will have to work on presenting a synthesis of its own proposals; further, each subnetwork head (and each head of the SGI Subnetwork’s subteams working on the energy study and the health care study) will participate in the start up of work on a collective synthesising text to be published by REF GOV when the research project is complete. The purpose of the cross-thematic seminars to be organised within REF GOV in the upcoming two years is to accompany the process of editing this collective text. The final conference set for May 2010 will present these results and provide a forum for discussing them with players in the field.

- Finally, the initiation of case studies more closely associated with inquiries into the kinds of systems required by specific attention to the problem of actors’ capacitation was more directly planned to date from year four, that is, from a point at which the drafting of the *Synthesis Report 2* was complete. This is why Peter Vincent-Jones’ study on health care in the United Kingdom and the European study on forest management, which was itself intended to lead to the construction of a Public Interest Assessment Protocol (PIA protocol), will be developed mainly during the upcoming, fourth, year. It was possible to begin the study on the union movement as actor in the context of the liberalisation of Belgium’s energy policy ahead of these others because it was directly organised by one of the authors of the *Synthesis Report 2*. (See below, WP 5.)



Part 2 Subnetworks' objectives and major achievements during the reporting period

1. 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 first phase was accomplished in WP6 and WP7 ; the case studies of the second phase accomplished through WP7, WP8, WP9 and WP10. In this report, we provide the results of the second component of the second phase (the synthesis of the institutional proposals for GPS governance) and the final in depth case study and protocol of the third phase.

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

Second phase : Comparative institutional analysis of proposed improvements

As recalled in the previous report, 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.

(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.

(2.2.) Institutional propositions : WP 26

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, as explained in the previous report, a striking result of the research accomplished in the GPS network 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.

The synthesis on the institutional propositions in WP26 builds upon these first results of the research program. 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 have been organised in order to build upon this analysis of institutional propositions :



(1) International call for papers at the September Bioecon conference on “Institutions, social capital and knowledge for biodiversity conservation”, 20th and 21st September 2007 (WP26-Milestone/September 2007).

(2) International closed workshop in Cargese (Corsica) on “Which Governance for Which Environment? Institutions, social preferences and knowledge for governing environmental issues”, High-level Workshop Cargese, 4-8th February 2008 (WP26 – Milestone/February 2008).

In this synthesis, we adopted an institutional diagnostic approach to map some of the governance implications of critical features of complexity of coupled social-ecological systems. The major focus of this synthesis was on global environmental governance, because of the nature of the case studies that were accomplished in this subnetwork, but we also showed the relevance for other areas of global governance when this was possible. An important lesson that we can draw from our synthesis is that the governance implications do not always follow directly from the features of the ecological systems in a parallel fashion. In particular, global problems need not always be addressed through global institutional arrangements, but in some cases decentralized polycentric networks are a better alternative. We showed that global institutional arrangements, which have been labelled Earth Systems Governance, are a preferred option in cases of global interdependencies and well-defined global risks. In cases of cumulative and disjointed local environmental problems, polycentric networks within coordination devices on a global scale are the preferred option. In other cases, we showed that a combination of both modes of governance is preferred, because of contrasted needs following from design, bargaining and/or compliance requirements. We also showed a second source of more complex combinations through the interaction between different critical features in concrete examples.

Polycentric governance systems aim to address multilevel governance issues in cases of cumulative, local and/or disjointed environmental problems. In the case of environmental goods with very low global interdependencies, multilevel governance takes the form of a decentralized network of organisations and communities associated to regional, national and international institutions whose main role is to provide for coordination functions when there are important economies of scale and to reduce information asymmetries between collective actors in the network.

A recent form of polycentric governance is what is now referred to as the “new environmental governance” (Gunningham 2008). This is an enterprise which recognizes that a shift is taking place in the role of the nation state to a much more decentralized and consensual approach which seeks to coordinate at multiple levels, and which is distinctively polycentric (*ibid* : 27). This approach in turn provides greater scope for non-state actors to assume administrative, regulatory, managerial and mediating functions previously undertaken by the state. In the United States examples of this approach can be found in Habitat Conservation Plans under the *Endangered Species Act* and in the Chesapeake Bay and San Francisco Bay Delta Programs. Within the European Union, the Water Framework Directive, an example of the Open Method of Coordination, is sometimes held up as an example of this approach. Other examples are the *Resource Management Act* in New Zealand, the *Flemish Forest Decree* in Belgium and Natural Resource Management in Australia.

The new regional natural resource management approach in Australia is a clear example of a possible governance framework for polycentric network governance. In this ambitious new governance experiment that is taking place, fifty six regional NRM bodies have been created (Gunningham 2008). These bodies have formal office holders and responsibility for undertaking consultation, planning and priority setting. Natural resource management is a clear case of cumulative local problems, where different regions/ecosystems raise very different environmental challenges. Accordingly, in the Australian approach, provision is made to enable each region to develop their own regional plan and regional investment strategy for addressing management challenges within parameters set nationally. Further,



because of the long-term time dimension, it is worthwhile to invest in costly social norms, instead of short term compliance. Here again, because of the heterogeneity of social norms on the global scale, local learning processes seem the most appropriate way forward. In the Australian case, the need for social learning is also clearly expressed through the focus on a collaborative partnership-based decision-making process. These features of decentralized planning and investment and local collaborative process of social learning are also key to other examples of new environmental governance, such as the case of the *Flemish Forest Decree* (Dedeurwaerdere 2008) or the EU Water Framework Directive. Even if new environmental governance is not an example of a fully decentralized governance framework, because of the importance of substantial state control, these experiments are nevertheless an ambitious effort to address complex, hitherto intractable natural resource management problems in a polycentric manner. As such it can be considered as a second best solution in situation where a more thorough decentralization is made difficult through the presence of a long history of state intervention in the field.

A more far reaching form of polycentric network governance can be found in cases where the history of state intervention is less prominent. A clear-cut example is the case of Ground Water Management in Los Angeles Metropolitan Area (Ostrom 2008). Here a water association composed of cities, industrial users and farmers was able to gradually build a local public economy around the allocation and management of groundwater rights. In a similar way as the cases of new environmental governance, this process also received some support from the government to facilitate the interaction amongst the different water producers, here through the appointment of a water master which played an important role in making reliable information available, and also lead to the establishment of new regional entity, the Water Replenishment District. However, an important difference with the new environmental management lies in the compliance measures. While in the latter case these are subject to performance indicators and other controls imposed by the State, in the case of the water association, compliance measures have been established in a process which involves both public sector, private-for-profit and civil society organisations.

Ultimately, much of our knowledge about the interaction between polycentric governance on the one hand and global earth system governance remains highly tentative, contingent and uncertain. However, we hope that our analysis has shown that an institutional diagnostic approach, while recognizing the presence of multiple explanations and the interaction of different dimensions, is able to make the problem of multilevel environmental governance more tractable and provide guidance for evaluating the conditions for organizing collective learning in more specific situations. A crucial issue to take this research program forward is to develop more empirical research which would allow specifying the conditions under which different forms of polycentric network governance and earth systems governance may succeed and whether such conditions can be affirmatively created. That's why, after this second phase on comparative institutional analysis, we focus in the third phase on an in depth case study, allowing to elucidate some of these conditions.

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)). In summary, 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.

Case studies have been started by the IDDRI on forest management policies in the Balkans. in partnership with the "Institut Agronomique Méditerranéen (IAMM)" de Montpellier, France.

Environmental conditionality is a cornerstone of the so-called "acquis communautaire" and as such a major driver of change in East European transition countries. However, in spite of



clear signs of convergence of the environmental legislation in new member countries and candidate countries, the effect of new legislation on effective changes in management practices has been very different from one country to another. To understand these differences, there is still a lack of analysis of the institutional dynamics that play a role in the compliance with and effectiveness of the new policies. This project aims at filling this gap, by a comparative case study into the impact of the governance devices on change of the beliefs of the actors in regards to multifunctional forestry and the building of trust in the new regulatory systems.

Our comparative case studies will be based on a simple set of common categories that can be applied to the analysis of very different types of governance devices. This is needed because of the high level of heterogeneity between the different governance situations in the different countries. By using a simple set of robust categories, we expect to be able to make a comparative analysis of different governance devices and evaluate how the governance choice influences the improvement and / or blocking of the transition towards sustainable forestry. The empirical study is based a review of the existing literature, of official documents and publications on forest policy and management in the three countries, as well as on qualitative interviews with actors from the Forest sector in the countries. Relevant actors for interviews are: representatives from political institutions and the administration in charge of forest management; stakeholders such as forest owners, representatives from forest owners associations, from the agricultural chamber, nature conservation groups, etc.; academics working on forest policy and management.

The next stage of this fourth component has thus been prepared through an international workshop (milestone/may 2008) and a report on multi-criteria assessment and reflexive governance based on this workshop (D49(2)). This report sets the stage for an international conference to be organised for the elaboration of an evaluation protocol of reflexive governance in the field of forest governance in the final stage of this third phase.

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” (2) organisation of a GPS stream at the final synthesis conference of the network.

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. All the papers have been reviewed by the editors of the volume and the final papers are expected for September 2008.

2. Fundamental Rights

The REFGOV project is based on the idea that collective learning, as an alternative to both markets and hierarchies, should be the central concern of governance mechanisms. Its view of what collective learning means, and which governance mechanisms are required, is however specific. Indeed, we build on the idea that learning can only successfully take place if the actors involved both are able to reconstruct, reflectively, their identity, on the basis of their past history ; and on that basis, to project themselves in the future, by asking what conditions should be created in order for them to have the ability to question their presuppositions. We refer to the first condition as the condition of *reflectability*, and it is orientated towards the past. We refer to the second condition as the condition of *destinability*, and it looks towards the future. An actor involved in processes will only effectively contribute to collective learning if he or she makes an effort in both directions, in order to arrive at shifting his/her perspective on the basis of the perspectives adopted by others. The capacity



of the actors to benefit from collective learning cannot be presumed; it must be affirmatively constructed, on the basis of this dual requirement.

The challenge is, of course, to draw the institutional implications – in the organisation of governance mechanisms – from this theoretical insight. It is this challenge which 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. But rights are also to be implemented; policies must be adopted in order to fulfill them. How are these policies to be adopted? According to which governance mechanisms should a deliberation be organized on those policies? Which tools provide an opportunity for the stakeholders involved to effectively learn from interactions with others, so that we move from bargaining on the basis of fixed interests, to truly deliberative mechanisms based on an attempt at collectively learning? These questions are answered, in the specific domain of fundamental rights, by taking into account both the risks and opportunities presented by the fact that in this domain, most issues are still largely addressed on a decentralized basis – i.e., at the level of the Member States, rather than through harmonization at EU level. The risk, then, is that each Member State seeks to pursue policies in this field on the basis only of its national interests, as defined on the basis of processes of deliberation at national level. But the opportunity is also that each actor involved in such processes – at both national and EU level – can seek to learn from the way similar issues are addressed in other Member States – not only as tools which he or she could use for his/her own purposes, but also as opportunities to question his/her presuppositions about what needs to be done (or how the problem is to be described) and how solutions can be identified. 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 2006²¹; 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 resulted in a further joint seminar on 25-27 October 2007; third, by the presentation of the REFGOV line of thought in a variety of settings; 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 2007-June 2008) corresponds to the second half of the second phase of the research performed within the Fundamental Rights Sub-Unit, which was 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

²¹ Published in the REFGOV Working paper Series "REFGOV-SGI/TNU-1":
<http://refgov.cpd.r.ucl.ac.be/?go=publications>



was prepared by the coordinator, whose purpose was to provide a grid of analysis of the developments documented in each of the fields under study.

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. It combined empirical studies with an examination of the development of the 'economic constitution' of the EC, as shaped in particular by the case-law of the European Court of Justice.

Empirical studies included an analysis of the law relating to employee status, agency work and labour market flexibility in the UK (Catherine Barnard and Simon Deakin (CBR, Cambridge)). Barnard and Deakin show that what began as an issue of the ineffectiveness of labour law, which might be remedied by appropriate legal reforms, has more recently become bound up with debates about the appropriate role of the law in regulating alternative forms of the work contract. Their empirical findings illustrate the need, in the current context, to approach with scepticism the idea that local experimentation with labour law, combined with peer evaluation mechanisms as in the OMC in employment, constitutes an adequate safeguard against the risks of a fragilisation of the status of employees in the EU Member States' legal systems. In a separate study, Barnard and Deakin provided an assessment, from the point of view reflexive law theory, of the ECJ's important recent judgments in the area where freedom of movement intersects with labour law (Viking, Laval and Rüffert).

These empirical studies were complemented by a larger study on the troublesome relationships between (national) social rights and (supranational) economic freedoms within a context of negative integration, conducted by Antonio Lo Faro (Univ. of Catania). The study shows why, though part of the common constitutional language, the concepts of "Proportionality" and "Fair balance" between social rights and economic freedoms might not be appropriate in order to assure legal certainty. In a separate paper, Lo Faro has scrutinized the recent developments in European contract law by assessing whether and to what extent such developments could have some effects on labour law. He concludes that the Common frame of Reference for European contract law is an obstacle to the prosecution of a fruitful and productive dialogue which in the last decade had been developing between labour law and civil law doctrine; and that this is due precisely to the absence of a fundamental rights perspective within the Common Frame of Reference, which in this regard strongly diverges from what in some national systems has been happening with regard to the so-called horizontal effects of fundamental rights in private 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

The research conducted at the Boltzmann Institute of Human Rights aimed at analysing the policy field of European anti-discrimination legislation and policies through the lenses of the hypothesis at the basis of the REFGOV research programme. It sought to map the main



actors of this policy area, to clarify their relevance and modes of interaction, the participation in formal and informal decision-making procedures. It paid particular attention to the implementation of European policies into national legislation, gaps and challenges and current developments. The methodology of the research included reflections on the underlying theory of governance, literature research/case law/media/legal research (including historical-teleological interpretation), policy analysis, qualitative interviews with stakeholders and concept building.

The empirical research conducted on the policy field of anti-discrimination leads the authors to conclude that this domain is characterised by a process based approach, determined by ongoing flexibility and change. While it does show aspects of mutual learning, learning here is *ad hoc* rather than systematic ; the result of accident rather than design ; and it is unconscious rather than deliberate : many actors are not aware of their roles and the potential they have in these processes. If the present structures are used as a basis for a more strategic approach including ongoing readiness for change, enabling stakeholders to test what works best, which paths should be taken and what should be left out, the policy field of anti-discrimination might serve as a model for a governance structure with a high degree of reflexivity and involvement of relevant stakeholders. European dialogue in the field of anti-discrimination was an essential element in triggering civil society dialogue in many Member States, where it opened a window of opportunity for more inclusive forms of governance.

4.3. Data protection

The research into data protection is being conducted by the Vrije Universiteit Brussel (VUB), under the supervision of prof. S. Gutwirth. During the period covered by this report on activities, this team completed an in-depth analysis of EU law and policy-making regarding the protection of personal data. The work first focused on continuing the exploration of how the 'reflexive governance' approach could be beneficial to improve the understanding of the field. An in-depth study of the institutional dimensions of such protection, particularly of independent supervisory authorities established in the field of data protection, constituted the departure point. In particular, the Working Party established under Art. 29 of the 1995 Data Protection Directive (Art. 29 W.P.) illustrates in its work a continuous, pragmatic and constructivist learning process by all the protagonists involved. It is by learning from the others, both externally and internally, by taking into account inputs from key players (such as European Commission and Parliament, the European Court of Human Rights, etc.), that questions are framed and answered in such way that they fit in the very complex cobweb that makes data protection exist as a dynamic fundamental right. This is no minor task since the Art. 29 W.P. has a double role to play as a 'watchdog' denouncing privacy threats and having a non neutral position in favour of privacy and data protection interests, and simultaneously, as an independent authority in charge of administrative tasks and searching for compromises and consensus. Such a double role can only be successfully played through a cautious step by step and case by case approach, in which listening to concerns and carefully articulating them is quintessential. The researchers also deplore that the Art. 29 W.P. has not widened the extent of its actions to the wider circle of stakeholders, including civil society movements and business representatives. They conclude that if the process of 'reflexive governance' refers to a never ending process of collective learning which *ideally* involves *all* the actors concerned of affected by the issue at stake, namely data protection, it must become a priority for the Art. 29 W.P. to seriously involve the stakeholders in its processes.

4.4. Criminal procedure

In this area, the VUB researchers involved in the REFGOV research seek to examine the construction of the European Criminal Area – as a component of the Area of freedom, security and justice –, using the lenses of the reflexive governance hypothesis. They aim therefore to map the governance techniques emerging in this area (in particular techniques



such as peer review or, more broadly, evaluation mechanisms ; impact assessments ; consultations in the preparatory phase of legislation). They then ask whether these developments could be linked to the emergence of a new way of defining the 'public interest' in this field, one which would recognize that the public interest is in permanent redefinition and that it can only be understood as the result of a joint construction of the problems to be addressed and of the solutions to be explored by the stakeholders involved in these processes. In this research, the main focus is on the EU's third pillar (Title VI of the EU Treaty), under which several mechanisms were identified through which the public interest involved in this area of freedom, security and justice can/could be constructed. A distinction has been drawn between pre- and post legislative instruments for identifying the public interest (though some instruments figure in both the pre- and the post-legislative phases). These instruments include, inter alia, impact assessments, specific instruments of so-called peer evaluation, reporting obligations, the use of comparative studies by experts, the collection of expertise through specifically designed groups etc.

4.5. Transversal issues

In addition to the thematic studies composing the second phase of the research (which are being completed in 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. While this workpackage was not initially anticipated in the workprogramme, it was decided to introduce it in order to better meet the challenge 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. The integration between the researches done in these domains is, at one level, theoretical : all the researchers are familiar with the REFGOV hypothesis about governance as a form of collective learning, and this largely guides their efforts. 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. The objective of this workpackage is to establish such a link. It offers to prepare a 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. In accordance with the general objectives outlined above, a number of papers were prepared during the period covered by this report on activities. These papers are described in detail hereunder. They address issues – such as mainstreaming minority rights in the EU, balancing fundamental rights in conflict, or integrating the EU to the international law of human rights – which are of interest to all material themes explored during the second phase of the research done within REFGOV on governance and fundamental rights.

3. Services of general interest

The REFGOV research on services of general interest developed into its third phase during the period June 2007-June 2008. During this period, one SGI 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

The first and main focus of research analyzes the transformation of public service provision from the assumption of reflexivity. This part of the work of the SGI sub- network is directly bounded with the research hypotheses developed by the Theory of Norm Unit.

The sub-network has adopted the assumption developed by the theory of Norm Unit. The polysemy of the idea of reflexivity can be reconstructed under the way to conceive the condition of collective learning. This assumption aims to reflect changes in the public services provisions better. Therefore, in accordance to this objective, the third phase of the research had the ambition to rework the teams' contributions with a renewed attention to the conditions of learning involved by the coordination mechanisms put in place for the public services provision. The research teams have applied the models of reflexive governance reconstructed by the Theory of Norm Unit in order to test their relevance in the different research areas (neo-institutional economics, collaborative/relational, democratic experimentalist, Schönian pragmatist, genetic).

Therefore, the Energy and Healthcare contributions have been up-dated to inform one of the five approaches proposed by the Theory of norm unit. Reworking their interpretations of the changes in the public services provision, the teams involved in these groups sought to reflect the conditions for successful collective learning. Different analyses have been developed in these groups in accordance with one of the five reflexivity models. Some researches within the sub-network have been aimed to demonstrate the usefulness of improvements of collective learning inspired by the economic and neo-institutional approach. Other studies have shown more specifically needs to deepen some institutional arrangements by setting up deliberative procedures. These works aim to analyse the necessary conditions for the establishment and success of such deliberations between actors involved in the public services provisions. Other studies have attempted to test the hypothesis developed by the genetic model, especially in the context of the Healthcare field.

This implementation of the theoretical assumptions is aimed to propose improvements of the institutional design in the public services governance. These institutional proposals will be discussed and refined in the next phase of the sub-network. Therefore, the choice had been taken to postpone their final presentation until this decisive common discussion.

The **energy group** (WP 2) :

Major Objectives

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 work in SGIs, in particular healthcare
3. To contribute to the historical study of reflexiveness and SGIs.
4. To develop institutional proposals.

Work Performed

The energy group held a workshop in Bristol in June 2007 to consider draft reports from the participants, based on the synthesis report circulated earlier giving a general theoretical orientation for the work, and on specific theoretical guidelines developed for the group. Further amendments were made to the reports which were then presented to a workshop in Paris in October 2008, held jointly with the healthcare group to facilitate coordination. More amendments were again made and the reports delivered as required by the timetable. The reports are now being further developed for presentation to the common workshop and in a further meeting of the energy and health groups in Brussels in September 2008. This has been assisted by the publication of the REFGOV synthesis report 2 in December 2007. The members of the energy group have also delivered reports on the sector to contribute to the historical study. Thus objectives 1-3 have now been substantially achieved and are included in the deliverables already made.



The case studies selected concern the relationship between security of energy supply and land use planning in the UK (an area where major institutional reform is currently being undertaken), network access regulation in Germany, price fixing in Hungary and the effects of a Federal system in Canada. They were based on a methodological framework given by the REFGOV synthesis report to ensure coherence with the work carried out in other networks. This provided models of different approaches to governance, and the case studies located developments in them, and in particular in the deliberative, or collaborative and relational, model, although some elements derived from other models were also detected. Some key issues for further analysis have emerged; notably, the varying potentialities for reflexivity at different levels of governance (in particular, where major policy issues are being decided); the dependence of reflexivity on trust and institutional arrangements to facilitate this; and the apparent regression from more reflexive to less reflexive modes of governance both on matters of policy and of regulation.

The work has already made a contribution to the overall theoretical orientation of the REFGOV project. Thus the second synthesis report for the project uses, at a theoretical level, findings from the UK report concerning both the attempts to develop institutions to broaden deliberative processes and the problems which are likely to arise in this. The German report contributes to this further by highlighting an apparent regression from an advanced structure of self-regulation based on dialogue to a system based on command and control; this raises important issues of the representation of the 'general interest' in reflexive arrangements and the necessary conditions for a 'learning government'. The Canadian study applies more explicitly theories of multi-level governance to developments in the energy markets and develops a hybrid governance model, showing substantial differences between regimes in different provinces. The Hungarian case-study points to the particularly difficult problems raised for institutional participation in economies in transition from a model based on command and control.

Although the discussions on the proposed institutional arrangements will entail further analysis of the lessons to be drawn from the work carried out, we can already set out three issues which they raise; the need for sensitivity to the location of reflexive arrangements within different levels of governance, the importance of developing clear conditions for the necessary social underpinnings of trust, and acknowledgement of limits to self-regulatory mechanisms for learning unless located within a clear hierarchical regulatory framework.

Next Steps

These themes will be further developed in the next stage of the research, and will be integrated into more detailed institutional proposals. The coordinator of the group will summarise these and will also contribute a synthesis of the work for a common publication. The proposals will be discussed in detail in the September workshop. Liaison with the healthcare group and with other work within REFGOV will continue. This will ensure the achievement of objective 4.

The healthcare group (WP3)

Objectives

1. To develop case studies of reflexive governance in different national healthcare systems;
2. To co-ordinate the case-studies with other work in SGIs, in particular energy;
3. To contribute to the historical study of reflexiveness and SGIs;
4. To develop institutional proposals.



Work performed in the period

Following consideration of the draft case studies at the fifth meeting of the healthcare sub-group in October 2007, the case studies of healthcare governance in the UK, France and Hungary were further revised in accordance with the clarification of the REFGOV theoretical framework provided in the second synthesis report of December 2007.

In total seven case studies of reflexive governance in the different national healthcare systems have been completed or are being further developed (*Table 1*). Each team has also presented draft papers on the historical documents research.

UK (England and Wales)	(i) Patient/public involvement in the commissioning of secondary care (ii) The role of representative bodies in PPI (iii) Economic regulation and the regulation of involvement
France	(iv) Medical conventions (v) <i>La tarification à l'activité</i> (tariff of activities)
Hungary	(vi) Reform of healthcare financing (vii) Citizen participation in law-making and decision-making.

Table 1 REFGOV healthcare case studies

Achievements

In REFGOV theory terms, the basic criterion of the adequacy of healthcare governance is the degree of reflexivity in the organisation of conditions of social learning in collective actions to resolve problems in the general interest. 'Reflexive governance' cannot result spontaneously from the expression of individual preferences, as is assumed by neo-classical economics, but requires instead the creation and maintenance of particular institutional conditions which are differently specified within four main 'approaches' to social learning – economic institutionalist, collaborative/relational, pragmatic, and genetic. In the healthcare context, we have found it useful to distinguish four corresponding 'levels' of analysis (respectively: *economic coordination; capacitation and communicative competence; experimentalism and joint inquiry; and capacitation and cognitive reframing*) reflecting the way in which each approach builds on lower-level conditions, adding increasing sophistication to the conceptualisation of the social learning operation (*Table 2*).

Reflexive Governance	REFGOV approaches	Analytical levels (Healthcare)
Conditions of success of learning operations	4. Genetic	Level 4: Capacitation and cognitive reframing
	3.2 Schönian pragmatist	
	3.1 Democratic experimentalist	Level 3: Experimentalism and joint inquiry
	2. Collaborative/relational	Level 2: Capacitation and communicative competence
	1. Neo-institutional economics	Level 1: Economic co-ordination

Table 2 Reflexive governance as social learning



The conceptualisation of reflexivity in these terms implies that the effective resolution of complex healthcare governance problems is dependent on the establishing of a range of different types of conditions of social learning, which should be considered cumulatively rather than in isolation. So for example, in order for social learning to occur at the economic level, it is necessary that interaction among local economic actors be structured in a manner (as through institutional design, regulation, or performance management) that provides appropriate incentives for the achievement of economically 'efficient' outcomes. However, complex healthcare governance problems (even those of an indisputably 'economic' nature) also have social and political dimensions. The issues are highly likely to be contested by a range of stakeholders making conflicting claims based on competing conceptions of the public interest. The attainment of efficiency can therefore be only a necessary, rather than a sufficient, condition of reflexivity. A purported 'resolution' at the economic level will be inadequate and incomplete to the extent that it fails to take account of the conditions at the other levels that are also required in order to achieve a solution that satisfies the normative expectations of participants in the collective action.

In addition to the appropriate structuring of economic interaction at level 1, therefore, fully reflexive governance is dependent on the building of capacities for effective cognitive reframing and collective identity-making (level 4); on the organisation of negotiation as a process of joint inquiry involving experimental encounters between existing solutions and new problems (level 3); and on both the empowerment of social actors to participate in and contribute to deliberative processes, and the creation and maintenance of appropriate fora of representation and negotiation (level 2). The case studies of healthcare governance in the four countries illustrate the difficulties of achieving such conditions of effective social learning in complex public services in practice. For example, while the importance of public deliberation in decision making is widely accepted throughout the EU (although with considerable variation in the nature of representative institutions and attention to the need for capacitation), the experimentalist and cognitive dimensions of social learning are more problematic and difficult to discern. Again, in reality the conditions of social learning may be less evenly and 'progressively' established than the theoretical model suggests, with elements of 'higher level' reflexive governance observable in circumstances where more basic conditions have yet to be properly secured.

Accordingly our case studies of healthcare governance address two main empirical questions. First, what evidence is there of the existence of conditions for successful learning at each level, or even of official recognition of the need for such conditions to be created and maintained? Second, where such conditions are found to exist, what evidence is there of social learning actually occurring? Our institutional proposals for improving the reflexivity of healthcare governance will ultimately depend on the answers to such questions.

The choice of level at which the case study analyses are undertaken reflects the varying economic, financial and political circumstances in the healthcare environments in the four countries.

(1) In **France** our research reveals how the fundamentally macro-economic problem of healthcare expenditure control is being addressed through social learning processes at the first two levels (economic coordination and deliberation), with some evidence of higher-level learning. Hence the case study on 'medical conventions' describes the radical transformation of this governance mechanism from its traditional function in determining the price of medical services through negotiation between the *Caisse de Sécurité Sociale* and the medical professional Trade Union, to one in which the principal actors are now required in their negotiations to take into account of the common good or general interest in containing healthcare expenditure. In light of the ineffectiveness of the system of sanctions which was previously applied to general practitioners who exceeded spending limits, patients have themselves been enrolled as a 'new actor' in this aspect of healthcare governance. The case study on *la tarification à l'activité* focuses on a more conventional problem of economic coordination in modern healthcare systems. It shows how the indexing of payments for hospital services according to actual activity and performance was introduced following acknowledgement of the failure of the previous system of annual global endowments to control hospital expenditure. Rather than using historic costings, the price of hospital



activities is now determined with reference to the national average costs of investigations, treatments, and pathologies. The reimbursement of hospital services according to a common 'currency' is based loosely on the system of Diagnostic Related Groups (DRGs) used in many other countries, and resembles the simpler HRG tariff system used in England.

(2) **Hungary** similarly faces a problem of how to limit spending and reduce the budget deficit of the state insurance fund, but in the very different context of post-communist transition and relatively weakly established economic and deliberative conditions of reflexive governance. The case study on reform of healthcare financing shows how the current system of citizen choice (enshrined in law) of general practitioner and some outpatient services funded by social insurance has resulted in increasing budget deficits of the National Health Fund (NHF). Inefficiencies associated with *per capita* payments to general practitioners on the basis of number of patients include the common practice of salary undervaluation by health professionals, the customary payment of additional gratuities for health services, and the existence of a significant black/grey economy. The case study on citizen participation illustrates the limited role of representative bodies in law making and decision making in Hungary at national and local levels. While the Minister of Health is required to consult with Patient Associations on draft proposals prior to initiating legislation on health issues, in practice, some one hundred national patient associations exert little influence on law-making due to lack of expertise, lack of finance, and weak legitimacy. Where consultation does occur, it has tended to be ritualistic in character and the views of citizens ignored. However, there is some evidence of stimulus to cognitive reframing in the role of the Office of Advocate of Patients' Rights, which since 2000 has represented patients and acted on their behalf, in spite of resistance by the medical profession and under-funding. This body has also been active in proposing improvements in healthcare governance and the reform of healthcare law.

(3) The **UK** (England and Wales) case studies focus on patient and public involvement (PPI) in healthcare governance, with particular attention to the role of various mechanisms (venues, fora, conduits) of negotiation and representation of patient and public interests, together with respective 'empowerment' strategies directed at building communicative competencies, strengthening argumentative capabilities and increasing opportunities for dissent and counter-argument in dialogic processes.

In **England**, radical organizational reform has entailed the replacement of Patient and Public Involvement Forums (PPIFs) by Local Involvement Networks (LINks). An implicit policy objective is to improve communication, deliberation and participation among key stakeholders with interests in the service in question. One criterion of success here is the quality of dialogue, and the building of some form of weak consensus among the network of significant actors as to the nature of governance problems and how to address them, in spite of the presence of conflicting interests. However, the problem of governance at this 'deliberative' level is not reducible to one of representation or the simple aggregation of communicative competencies. This case study illustrates the need *in addition* for the development of cognitive, institutional, and personal capacities among all stakeholders, especially consumers and users of services, in order that they may more effectively participate in and contribute to learning processes. While government papers acknowledge the importance of building capacity in voluntary and community organisations and among citizens, so that they can contribute effectively to the development of health and social care, there is little indication as to how this is to be achieved. Without such capacitation, LINks are unlikely to succeed where earlier representative bodies have failed in laying the organizational foundations of more effective social learning. In **Wales**, certain deliberative (collaborative/relational) conditions of social learning may be regarded as having been established to some degree through the creation of new fora for public engagement with NHS bodies, and the redefinition of the duties of CHCs, LHBs, and NHS Trusts. Many grassroots community engagement programmes are primarily about developing new deliberative mechanisms, as are initiatives within some NHS Trusts and LHBs to develop non-standard fora to engage with particular community or service user groups.

In both countries, it remains open to question how far the increased role of public and patients in representative and deliberative fora is being combined with novel forms of joint inquiry and investigation of the sort regarded as essential elements of reflexive governance



in the democratic experimentalist sense, or with initiatives that might be analyzed in terms of cognitive reframing. In **England**, the major legal *institutional* change accompanying the replacement of PPIFs by LINks is the reform of the 'section 11' duty to consult and involve patients and the public. The original Expert Panel and White Paper proposals for the 'regulation of involvement' may be interpreted as advocating a kind of meta-regulation – the regulation (by the new Care Quality Commission) of the regulatory role performed by the patient and public in the new system of regulation. This system of regulation includes incentives on commissioners (and providers) to consult, involve, and respond by showing in regular reports to regulators what they have done differently as a result; the performance of commissioners on this dimension being evaluated and assessed by the regulator as a component of their annual performance rating. One question here is whether the duties to involve, consult and report, as supervised and monitored by the new Care Quality Commission, can serve to promote reframing or re-representation, or even perform the function of 'terceisation' in the sense required by the genetic approach to social learning. At present this element of our analysis remains underdeveloped and implicit. A crucial issue for further research is how far the potential for social learning in this sense has been undermined by the Government's dilution in the legislation of the original White Paper proposals to extend the scope of the 'section 11' duty beyond commissioning bodies.

In **Wales**, where there are no such elaborate plans for the 'regulation of involvement', elements of a stimulus to higher-level learning (cognitive reframing) may be found in 'forward mapping'. This governance technique, long advocated by some students of the policy implementation process but rarely applied to date in real world situations, rests on the proposition that policy makers need to be more active in anticipating and supporting conditions for successful roll-out of policies, including matters such as identifying the actors who will be implicated, the local capacities required, and viable ways to offer support from a distance. In practice, against the background of the major organisational upheavals associated with devolution, the Welsh Assembly Government (WAG) had little opportunity to prepare actors and build capacities in advance in this sense. Local adaptation and learning appears to have followed implementation of PPI policies, rather than occurring in some prior phase of preparation for change. A more reflexive approach to implementation and 'forward mapping' may be one way in which the WAG government can support bottom-up community developments without throwing them off course.

The **regulation of public bodies** (WP4) is the third thematic.

Major Objectives

1. To develop a comparative understanding of the scope of reflexive governance in three major domains of public sector activity: regulation; provision of higher education; provision of higher education
2. To co-ordinate the case-studies with other work in SGIs, in particular healthcare and energy
3. To develop institutional proposals.

Work Performed

Theoretical foundations have been laid for understanding the nature for reflexive governance in the provision of public sector services using a template developed by the theoretical unit of the Reflexive Governance Programme, further developed in the Refgov Synthesis Report 2. A paper was presented at the SGI workshop in Paris in October 2007 which examined experience in better regulation across both supranational (OECD and EU) and national (UK and Australian) domains. Empirical work is ongoing and a report will be prepared for the cross-thematic seminar in September 2008. Progress on the empirical work has not been as good as projected because both of the extension of the project to include supranational initiatives and of difficulties with staffing. The supranational element has been added to the programme because of the scope for building on research on similar processes of OECD and EU governance, notably the Open Method of Coordination, which seek to harness more



reflexive governance methods. The incentive to use such methods appears to be greater at the supranational level, particular, was with the case of the OECD, there is very limited legal basis of initiatives.

Next Steps

The priority now is to develop the empirical and comparative work on better regulation with a view to presenting a new paper at the September Workshop. It is intended to produce similar reports on reflexive governance in higher education in February 2009 and prisons in May 2009. A final theoretical report on reflexive governance in the regulation of public bodies September 2009 will address institutional proposals for developing reflexive governance in light of the sectoral study findings.

collective actors (WP5) - the fifth empirical study is being engaged on the reflexivity of collective actors. In parallel to these three thematic studies,

This workpackage is at the heart of the REFGOV approach. This case study was specifically organised to give an account of the genetic approach to governance and the kind of system suitable for “engendering” collective actors’ “self-capacitation”.²² The study is on union players in the context of the liberalisation of Belgium’s electrical energy policy. The two first steps now completed sought to reconstruct trade unions’ position in the social debate, and then, to reconstruct the way the trade union actors, mainly in Belgium, were identifying the issues and selecting the possibilities of alternative ways to intervene in the debates on the liberalization of the electricity sector.

The third step of this case study is now under way. It means to reconstruct the manner in which the Trade Union actors have perceived the role they could play in the changes (and in their assessment of these changes) taking place in the regulation of electricity production and distribution and upon the findings, define the institutional incentives for improving SGI governance of electricity sector, taking especially into account the new private/public partnership situations where Unions have become a potential speaker for non market objectives such as universal access to energy or users satisfaction assessment.

To progress in the present the research, we had to clarify what was the relationship between the self-construction of their own capacity by the actors (as actors involved in collective learning process making such reflexivity possible) and the responsiveness of institutional arrangement making possible the experimentation of that self-construction of the actors’ capacities. The question was consequently to know if it was theoretically and practically possible to connect collective action and responsiveness or, more precisely, the requirement of an enlarged social dialogue and the requirement of some more responsive regulatory institutions. This was studied at seminars and answered in the *REFGOV Synthesis Report 2*²³ both at theoretical and empirical levels.

At a theoretical level, the Synthesis Report 2 demonstrates the central role played by shifting the attention from the pragmatist enabling process of the collective action to the blind process of identities transformation in the course of the collective action. We propose to consider the identity question as a positive condition to be taken into account by actors themselves in order to achieve their positioning in new frames of actions and to create new forms of action as well as new strategies of negotiation. The genetic approach, proposed in

²² The first part was organised broadly within the SGI Subnetwork but under the responsibility of a member of the CPDR team in charge of the Theory of the Norm Unit.

²³ See REFGOV Working papers series : TNU-SGI-2: J. LENOBLE, M. MAESSCHALCK, Synthesis Report 2: Reflexive Governance : some clarifications and an extension and deepening of the fourth (genetic) approach <http://refgov.cpdf.ucl.ac.be/?go=publications> - This part of the report was also discussed with the researchers of the philosophical team in a residential seminar the 13th December 07. This research and its relation with the general thesis on collective action was presented in an international seminar on governance in Namur the 11th December 07.



the Synthesis report 2 poses that a combination of an effect of backward looking and effect of forward looking in the development of identities is a necessary condition for the self-transformation of the actor's capacities of positioning themselves in a new situation. The two (past and future) aspects are closely linked in the genetic perspective because the reflexive perspective on the past is mobilized to prepare, in the present, a capacity of self-evaluation which consists in identifying the possible repetition of former behaviours failures in the new processes of positioning. Therefore, the genetic approach cumulates the benefits of existing reflexive approaches to social learning while situating these benefits within a process of collective action likely to have an impact on the identity and normative conditions of its self-transformation.

At an empirical level, we have applied this new genetic concept of learning to the field of union actors in the electricity sector in Belgium. Our purpose was to show what appears more clearly when such a concept is mobilized not only in a descriptive perspective, but also in order to determine new kinds of questions and self-evaluation of the actors positioning processes. We defended that it is theoretically and practically possible to combine the requirement of an enlarged social dialogue and the requirement of some more responsive regulatory institutions only and only if 1/ actors are trained to open the questions of the role played by their identity transformation and 2/ regulatory institutions are paying attention to these new requirements of identity transformation by making possible a redefinition of roles in the regulatory system.

Two tasks result from the intermediate conclusions in order 1/ to enhance the reflexive capacity of the unions to play a role in new categories of regulatory relationships and 2/ to define the institutional incentives for improving SGI governance in that sector. The first task (month 37-48) consists in initiating an interaction with the actors involved in the negotiation process in order to confront our intermediary conclusions with some internal and implicit self-evaluation. The major aspects to take into account here are the effective balance among constraints and ability of experimentation, the incorporation of some methodological scepticism in selecting the possible alternatives and the inference of the conditions of success for an efficient proposal. A second task (month 49-60) is the organization of a seminar more oriented to the policy proposals in order to determine more operationally which criteria of self-capacitation could be proposed to improve the public governance of the sector.

3.2. The historical perspective (WP 1)

The third step of the historical perspective's research is important for the research because it ends with the first scientific results of these last three years.

Major objectives:

- To establish a national/sector study on the empirical materials collected 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

Within the SGI sub-network, the Historical Perspective research is transversal. It is not the work of a single research groups, but all national teams are involved in the SGI sub-network. What was the original aim of this joint project to all national teams engaged in the SGI sub-network?

This aim was double: to probe the different conceptions of public services in Europe and draw up a comparative study to reconstruct a European history of public services governance. From a methodological point of view, this common research for the historical perspective should lead to the establishment of a set of common references for the national teams work.



The first phase consisted of a collection of bibliographic data provided by national teams based on a common analytical framework, previously discussed. There are not less than 14 national reports on key documents, pointing out the major stages in the evolution of the conception of public services within each of the States concerned. The first report prepared on the basis of this set of key texts collected and analyzed by each national team led to propose an adaptation of the method followed and a more precise definition of the objectives pursued through the historical perspective research without abandoning the original ambitions.

The proposal for an adaptation of the initial project was also designed to maintain the coherence of different work within the SGI sub-network in terms of theoretical perspective. The proposed adjustments have taken into account in the field of the historical perspective research the evolution of the reflection in the groups, particularly with the research held by the Healthcare and Energy groups, connected with the first synthesis report of the TNU.

The teams were asked to focus their attention on three aspects which emerged from the data already collected during the first phase of work: to highlight the main stages of transformation of governance in the provision of public service, to reflect the changing justifications for these stages and to identify new architectures in the provision of public services.

The choice of this new design of research for the historical perspective was accompanied by a change in the research method. Each team was given the task of writing a single contribution drawing the main stages of the evolution of the public services governance, their justifications and the design of new architectures provision of public service.

The domains of investigation have been redesigned so as to increase coherence with the work undertaken in each group.

The decision was to focus not globally on the public service but on a more specific category, public services network. Two domains were selected for this investigation: Healthcare (Leeds and Paris) and Energy (Giessen and Bristol). Given the specificity of the post communist and relatively recent debates on the reform of public services in Hungary, must be noted that the Hungarian team would present a more general study of these debates on the developments in Hungary. The contributions of each of the teams were ready as planned for the 3rd common workshop. For Healthcare: The Leeds team presented a paper on the health care in England since the 1980's and the Paris team presented a paper on the building of a policy for the Healthcare expenditure control in France. For Energy, the Giessen Team presented a paper devoted to the process of liberalization of the energy sector in Germany and the Bristol team presented a paper of Energy in the United Kingdom. A discussion on the analysis of the teams presentations took place during the third common workshop.

Based on these contributions and the discussion at the Common workshop, a deeper analysis was already prepared by the IIPeC- (ex-IIPLD) in prevision to the next Common workshop. This study will be communicated to other members of the network before the Common workshop in Louvain in September 2008. It will be amended in accordance with the discussion and remarks of the other members.

This latest study of the various papers submitted by teams did not purport to summarize the evolution of public services in Europe. In accordance with the original aim, it tries to highlight the complexity of some key concepts for the understanding of the public services often mobilized under the European debate on SGI: the evolution of public services critics schemes through the formulation requirements of efficiencies, the definition of institutional devices that can support these requirements while not abandoning the mission of public services. It aims to the historicity of the governances categories sought between state and market organization.



4. Corporate governance

The corporate governance subnetwork is studying corporate governance practices at a number of levels. The first is that of corporate governance codes and related norms in the company law field. The aim here is to look at the evolution of corporate governance norms at a transnational level (in particular that of the EU) and in particular systems. Documentary and archival work is being carried out to build up a detailed picture of recent trends, and legal indices are being constructed, providing measures of legal change which can be used in quantitative analysis to explore economic impacts at a macro level (mainly that of individual countries) (CG1). A particular focus is on the impact of corporate governance rules on employment relations, for the purpose of which establishment-level data for Britain and France (based on the WERS and REPOSE surveys respectively) are being analysed, and trends in pension fund governance studied (CG2). A series of enterprise-level case studies is providing evidence on how firms are responding to change in the regulatory framework of corporate governance (CG3). Sectoral studies of developments in contractual governance and their impact on competitiveness, in particular among small and medium-sized enterprises, are also being conducted (CG4).

The empirical work being carried out in the subnetwork feeds into a broader consideration of theoretical developments in the corporate governance field. Some of the critical questions currently facing corporate governance researchers were restated by Katharina Pistor in a presentation to the REFGOV workshop on corporate governance which was held in Cambridge in December 2007 (Pistor, 2007). Her presentation looked at the issue of how corporate governance norms should be conceptualised at a time when legal systems are in flux. There is too little theoretical guidance as to how law relates to its environment, or on whether law can be separated from its environment. There is difficulty disentangling cause and effect, the relevance of law as opposed to other variables, and drawing relevant policy conclusions. The central issues include an assessment of the degree to which national systems remain distinct, notwithstanding forces of convergence such as transnational standard-setting and regulatory competition, and what the sources of that variety might be; what the process and mechanisms of change within and across national systems are; and what the efficiency and welfare implications are of the different governance arrangements which can be empirically observed.

As part of the wider set of objectives of the REFGOV project, the work of the subnetwork is aiming to throw light on the success or failure of particular governance arrangements, and in this context the classifications developed by Jacques Lenoble and Marc Maesschalck (2008) are being applied. Since what they refer to as the 'economic-institutionalist approach' is by far the dominant one in contemporary corporate governance theory and has had a considerable impact on practice, much of the focus of the subnetwork's research is on that model and on its current operationalisation. This work does not consist solely of a critique of the dominant paradigms, such as the agency model of the firm and the legal origins hypothesis, but also considers the scope for synthesis between these approaches and those based on insights from systems theory, which include theories of reflexive law and governance (Carvalho and Deakin, 2008; Boyer, 2007; Cobbaut, 2007). The subnetwork is also concerned with using empirical research to identify alternative models to the shareholder-orientated approach, and in that context, with exploring the relevance of the 'collaborative-relational', 'pragmatist' and 'internalist/genetic' approaches to governance identified by Lenoble and Maesschalck (2008).

A major effort has been made to map trends in contemporary corporate governance at the level of codes and other regulatory instruments, and to put them into an historical perspective. There have been studies of developments in corporate governance and company law at transnational level, focusing on the EU directives and on the open method of coordination in the company law context (Deakin, 2008) and on international accounting standards (Boyer and Chane Alune, 2007). In addition there are numerous country-specific case studies, some historical and some more contemporary in their orientation, mostly



comparative in nature; these include studies of the British and American systems (Armour and Skeel, 2007; Armour and Gordon, 2008), France and Britain (Deakin and Reberioux, 2008; Conway et al., 2008), Germany and Britain (Sanderson and Seidl, 2008), Sweden and Switzerland (Schnyder, 2008), Belgium (Agboton, 2007, Cobbaut, 2007), Hungary (Büti and Hardi, 2007), and Slovenia (Cankar, Deakin and Simoneti, 2008). There have been studies of new developments in the content of governance codes, such as the appearance of disclosure rules for private equity portfolio companies (Moore, 2007) and regulations aimed at enhancing female participation at board level (Villiers, 2007). Recent changes to the laws on directors' duties and their implications for corporate social responsibility have been studied (Njoya, 2007), along with developments in pension fund governance (Autenne, 2008; Buchanan and Deakin, 2008). Work has also been carried out on developing legal indices capable of tracking legal changes in corporate governance codes in a sizeable sample of countries. This methodologically innovative work has provided new comparative insights into the dynamics of legal change and has enabled quantitative analysis to be carried out on the question of the relationship between legal reforms and economic outcomes (Armour et al., 2008).

Certain themes stand out from this work. There is substantial evidence of convergence in corporate governance codes and related aspect of corporate law at a *formal* level. Analysis of the legal indices just referred to shows that convergence is taking place around certain key features of the 'standard model' contained in, for example, the OECD corporate governance guidelines, and which stress the accountability of managers of large, listed companies to shareholders. Certain features of the so-called Anglo-American model, such as a prominent role for independent directors and an active market for corporate control supported by protection for minority shareholders during takeover bids, are becoming widely adopted elsewhere. Civil law systems have been slower to adapt to a model which is essentially common-law in origin, but they are now catching up with the common law world, suggesting that legal origin is not a significant barrier to *formal* convergence. However, time series and panel data analysis, using the legal datasets referred to above, have failed to show a significant correlation between the legal and normative changes just described, and relevant economic indicators such as the level of stock market activity and stock market capitalization as a percentage of GDP (Armour et al. 2008). These findings suggest, firstly, that changes to the formal law have had only a limited or partial economic impact, contrary to what might have been expected from a new-institutionalist economic perspective, and contrary to the legal origin claim that 'law matters' for financial development. The work also suggests that structures in place at national or sub-national level may well be resistant to pressures for convergence coming from the formal adoption of corporate governance norms which are derived from the 'standard' model.

The country-specific case studies reinforce the impression of continuing diversity across common law and civil law systems, and also within these 'legal families'. Work by Armour and Gordon (2008) serves as a corrective to the idea that there is a single 'Anglo-American' system of corporate governance, based on the primacy of shareholder interests over those of other stakeholders. Instead, it is shown that there are significant differences not just in regulatory style between the two systems (with the US system favouring direct legal regulation over the use of the 'soft law' or comply or explain approach in the UK) but also in ownership structure (with institutional ownership more important in the UK). Deakin and Singh (2008) show that the model of takeover regulation contained in the UK's City Code and to a lesser degree in US practice is specific to the contexts of those systems, and argue that it should not be transplanted into other systems for which it is not suited, in particular developing countries. In the mainland European context, Schnyder (2008) reports a significant increase in levels of legal minority shareholder protection and the weakening of instruments of insider-control in Switzerland at the beginning of the 1990s, but no comparable change in Sweden up until the early 2000s. He shows that political power relations become a valid explanatory variable only in conjunction with an analysis of how different political actors' (and their constituencies') preferences change over time (Schnyder, 2008). Hardi and Büti (2008) show how, through a study of the evolution of corporate



governance codes, recommendations and regulatory interventions in Hungary, a reflexive approach to regulation is having an influence on corporate governance norms in that system. Work by Conway et al. (2008), comparing the impact of corporate governance form at enterprise level in Britain and France, uses evidence from the WERS and REPOSE surveys to show that a stock exchange listing is helpful to the emergence of a high-performance workplace environment, at least in so far as it involves the use of formal HRM to achieve this goal. The effect of stock market listing is slightly different in Britain in that there is no positive correlation between listing and the use of practices aimed at enhancing performance via worker autonomy as there is in France. Studies of the 'comply or explain' principle in Germany (Sanderson and Seidl, 2007) and Slovenia (Cankar, Deakin and Simoneti, 2008) have assessed its potential to generate solutions through a process of learning.

We therefore have a growing body of empirical findings on the nature of convergence and divergence in contemporary corporate governance systems, and evidence on the extent to which changes in institutional structure are, or are not, driving change at enterprise and sectoral level. The work points to the limits of a strategy of transplanting norms taken from global standards (the OECD 'template') or from what is taken (often erroneously) to be 'Anglo-American practice' into systems for which they may not be suited. Shortcomings in the use of the 'comply or explain' approach to generate a learning process, because of the tendency for firm-level practices to cluster around a general conception of 'best practice' without regard for individual contexts or circumstances, have also been identified (Cankar et al., 2008), along with the importance of the sectoral context in understanding firms' explanations for deviating from core standards (Sanderson and Seidl, 2007). At the same time, there is evidence that a multi-stakeholder approach to governance can persist despite the presence of shareholder-orientated norms in national systems. In the British case, it is possible to observe companies in the utilities sector taking a long-term strategic view and investing in deliberative mechanisms for ensuring stakeholder participation and engagement (Deakin and Koukiadaki, 2008). This suggests that a strong orientation towards shareholder value at the level of the normative framework is not necessarily incompatible with the putting in place, at enterprise or sectoral level, of mechanisms for 'reflexive governance' based on collective learning. Sectoral studies in the wine (Cafaggi and Iamiceli, 2007; Turner, 2007) and broadcasting sectors (Deakin, Pratten and Louren o, 2008) also demonstrate the reflexive potential of industry-level norms. However, there is limited evidence of the reflexive approach taking hold at the level of EU and other transnational standards (Deakin, 2008; Cobbaut, 2007).

References for the Corporate sub-network : see list of outputs in Annexe 4 of this report with links to the REFGOV website and in the Plan for Dissemination .

5. Institutional Frames for Markets

The contribution of the IFM network to the Ref-Gov program of research is to contribute to going beyond the current approach of economics — including New-Institutional Economics and Evolutionary Economics — regarding the design of institutional frameworks. These current approaches see the process of institutional design as "mechanical" — institutions design being seen as a matter of selecting turnkey tools available on the shelves to address specific socio-economic issues — or as a non- controllable and myopic "biologic" process by which local innovations are adopted and selected through various processes that are beyond the control of agents, and rather, on the basis of the knowledge accumulated over the past years, and in this sense, we endorse an approach of governance in term of learning processes, we try to identify the logics (and their interplay) behind the design and evolutions of institutions: the economic quest for efficiency; the political fights for strength and rewarding positions; the legal constraints of security and stability. We claim that these interactions have to be better understood to build more relevant governance strategies.



The objective of the IFM sub-project in the RefGov project, therefore, 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 first 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. The third year has been dedicated to the deepening of the five parallel research programs. In addition, the scholars involved in IFM decided to reshape the last phase of the project, both to take into account the new research dynamics initiated within the IFM sub-network, and to better highlight how the deepening of the knowledge on the economic outcome of institutions and of the strategic games played around the design of institutional framework might contribute to advances in the theory of reflexive governance.

Before discussing the details of the advances performed during the third year of the project, we present the achievements of the current working plan and explain the logic of the main amendments to it.

1.1-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. of Paris X) and Antonio Nicita (U.of Siena)). A first working paper has been turned into a shorter publishable paper in the spring 2008. It points out the contribution of New-Institutional Economics on policy making and the research agenda resulting from the shortcoming of NIE from that perspective. It insists in particular on the complexity of strategic games at play within institutional frameworks among a vast number of diverse stakeholders able to manage several tools (negotiation, process of law making, enforcement mechanisms, etc.). It calls therefore for a better understanding of processes of institutional evolutions and for the implementation of step-by-step processes of reform where reforms should be permanently assessed to favour learning on actual impacts of alternative policy reforms in various contexts.
- 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)). This paper explains why and how the logic of regulations has been transformed in most network industries for the past 30 years. Due to technical changes and to the collapse of barriers to trade, the governance of networks has been becoming far more complex and subject to permanent changes due to permanent process of innovation fostered by competition. These are the main reasons for the failures of the traditional



command and control regulation. In the same time, pure competition is not sustainable in these industries characterized by sustainable monopolies (or oligopolies) and strong interdependencies. This is why the process of competition should be oversights by regulators organizing forums allowing the various stakeholders to defend their interest, while in the same time they are led/incited to provide information to the regulator. Such forums are the only way to guarantee a permanent learning by the regulators about issues and their solutions.

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. The production of publishable papers has been delayed, in particular due to the necessity to make progress in the understanding of the consequences of the acknowledgment of the dynamic and complex intrinsic character of institutional framework. This led to pay more attention to the necessity to design frameworks favouring information revelation and learning, in particular by enabling revelation and by systematizing assessment. This process of maturation largely explains why the launching of the publication phase of the resulting papers has been delayed. Both papers are expected to be published in 2009. It led to more obviously link the IFM analytical advances with the dynamic of other researches on reflexive governance in the course of the Ref-Gov project.

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. They are generally at the core of processes of collective publication.

In addition to these meetings, a specific workshop dedicated to Ref-Gov-IFM has been organized every year since the beginning of the project. It aims at gathering all the members of the IFM sub-network (and additional partners) on issues of interest for the whole IFM project. The third workshop was organized in May 2008 by the University of Siena. It came later than initially planned. This delay is partly explained by the necessity to reorganize the process of the IFM-workshops that tended to be too "closed", and partly inefficient in supporting a process of collective publication able to gather contributors beyond the limits of the Ref-Gov IFM sub-networks. It has therefore been decided during this third year of the project to reorganize the workshops according to a plan that was discussed in Roma in May and that is going to be implemented in 2009 and 2010. This plan is discussed below (third phase). It led to postpone and reshape the workshop initially forecasted in Barcelona late in 2008 or in the beginning of 2009.

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. Progresses made this year are highlighted in the next section

Third Phase

In line with the discussion developed above about the organization of yearly workshops, the finalization of the IFM project has been rescheduled. Instead of organizing in Sept 2009 and Dec 2009, respectively, two workshops dedicated to, first, institutional policy making, second to analytical advances on the economics of institutional frameworks, we decided to organize two workshops aimed at preparing significant collective publications, which will be disseminated in particular thanks to the final Ref-Gov conference to be held in the Spring 2010 in Brussels, and which will be jointly organized by the four Ref-Gov sub-networks and the central coordination of the project.

Indeed, since the steering committee of the Ref-Gov project decided to organize a major conference to conclude the research and disseminate its results, it was no longer relevant to perform that diffusion effort at the level of the IFM sub-network only. To the opposite, it opened the possibility to deepen the analytical process in course in the IFM sub-network by



allowing the organization of two high-level workshops to be held in the year 2009 and aimed at sustaining two processes of collective publication, which goals are described below.

In a nutshell, in line with the general dynamic of the Ref-Gov project, which seeks to develop a better understanding of the conditions in which actual reflexive governance could be managed, the IFM sub-network will deepen its analytical works in two directions

- First, to better understand the constraints to be taken into consideration when running an institutional policy aimed at providing economic and social agents with an institutional framework empowering them to allow efficient production and distribution of all kind of private and public goods, a collective volume (provisionally entitled “Manufacturing Markets: Politics, Law and Economics”) will be elaborated thanks to a wide group of scientists from the three relevant disciplines (economics, law and political sciences). The aim of this book will be to point out how institutional frameworks result from the interplay among three logics: the economic seek for efficiency; the political fights for strength and secure positions; the legal constraints of security and stability. It should be thus a significant advance in the perspective of the NIE, since it should develop the analysis (applied to various domains) of the constraints under which an institutional reforms to implement more efficient markets should be driven. Here, thanks to its systematic effort to analyze the process of institutional change, the IFM network will be directly contributing to the design and implementation of structural policies.
- Second, a major driver of the knowledge on institutions over the past years has been their “measure” and the systematic assessment of their relative performances. As a conclusion of a set of workshop involving most of the most prominent contributors to the development of these techniques and also representatives of organizations who use them, a last workshop will be organized in the fall 2009. The aim of this workshop will be to discuss the current state of development of the theory of institutions in parallel with the advances in their measure and in empirical methodologies, so as to establish an assessment of what has been achieved and to elaborate plans for future research. This is thus a major “reflexive” enterprise of the NIE community aimed at enriching the toolbox of the scientific community thanks to methodological propositions, which should contribute to progresses in the analysis of institutions and in the performance of institutional policies.

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 by contributions to the two major processes presented above. Indeed, most dissemination of the results of the five parallel research efforts of the second phase is already taking place thanks to the policy of publication of papers in recognized and widely diffused scientific journals.

1.2-Current Development in the framework of the Second Phase

1.2.1- Creation and Governance of Competitive Mechanisms in Network industries (WP12)

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

In the electricity area, the continuous investigation of the ongoing electricity reforms, both at the Member States level and at the European level, has been confirming that the heterogeneous nature of these reforms is rooted in the industrial and organizational characteristics of this activity as well as in contrast among national institutional environment.

The electricity industry is a set of tasks that can be separated and regrouped in different modules with more autonomy between the module and more dependence inside the modules. Interfaces between modules can be “market based” or “market friendly” or close to the former “command and control” regulatory framework. These modules interact in sequences of interdependent tasks among which the design of interfaces determines the so-called “market design”. Regulatory Authorities and Regulatory Deputies (like the



Transmission and Distribution System Operators) design rules and make day-to-day decisions to adapt the market design to industrial constraints. Policy makers (Parliaments, Governments and Competition Authorities) influence the governance structure of the market in function of their own agenda, and under strong pressures by market players and groups of interests.

This line of research is complemented by the contribution of CERGE (Prague), which focus on the analysis of the implementation of the deregulation of the European electricity and natural gas industries. Relying on a mix of case-studies, lab experience and econometric analysis, the team explore several questions such as the optimal degree of divestiture/unbundling of players given the characteristics of the institutional frameworks in each EU member-state; the optimal pricing procedures given the industrial capacities of the players, etc.

In the local services area, the incompleteness of “public procurement contract or public-private partnerships seems to be unavoidable and all variants of competitive public procurement or competitive public contracting end in the long run either in substantial “misalignment” of the private party or in a renegotiation initiated by the public authority. No perfect or robust public contracting scheme seems to be able to survive the test of time in the long run.

1.2.2-The Governance of Digital and Information Networks (WP13)

[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 and industries. Besides the on-going research on governance, regulation and power phenomena on the Internet (expected publication of a book in 2009), the research on digital intermediaries has been deepened, essentially by analyzing competition among platforms and the various strategies they can take. In 2007-2008 a special attention has been paid to the alternative regime of governance of intellectual property rights, given the fact that these regimes are key enablers or inhibitors of alternative business models and on-line self-organization phenomena. This later research is a joint program between this WP and the one on IPR.

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.

1.2.3-Intellectual Property Rights, Incentives to Invent, to Accumulate Knowledge and to Circulate Intangibles (WP15)

[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. On the same lines the paper by Antonio Nicita and Matteo Rizzolli analyze the interaction between property rules and liability rules in a setting in which



property rights are incomplete, suggesting some guiding criteria on the compared efficiency of property rules versus liability rules. Antonio Nicita and Massimiliano Vatiere published an article on the meaning of transaction costs when the cost of strategic competition is taken into account, showing how trade-off between overinvestment in specificity and contractual safeguards apply. On the same lines, the paper by Laura Magazzini, Fabio Pammolli e Massimo Riccaboni and Maria Alessandra Rossi, analyzes the role of patent disclosures in increasing R&D competition in pharmaceuticals. The paper by Antonio Nicita and Maria Alessandra Rossi analyzes the recent evolution of property rights fragmentation for audiovisual contents in Europe and the policy options faced by regulatory authorities at the European level to the development of new media industry. Similar regulatory issues are dealt with in the book of Antonio Nicita, Giovanni Ramello and Francesco Silva *The New Television: Economics, Rules and Market* published in Italian by Il Mulino in 2008.

The Unit has also produced a deliverable of an edited book by F. Cafaggi, A. Nicita and U. Pagano (Legal orderings and economic Institutions, Routledge), which actually concern not only the IFM but also the CG subnetworks.

The Siena Unit is now preparing another edited volume, to be published in 2008/2009 by Routledge, on "Competition, Innovation and IPRs (Editors A. Nicita, G. Ramello, F. Scherer). The book will gather 11 chapters written by distinguished scholars. By May 2008 about 9 chapters have been delivered.

1.2.4-The Collective Governance of Quality (WP14)

[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. In 2007-2008, the team performed two main activities:

- First, regarding how quality is governed, a working paper was written about how agrifood suppliers guarantee quality by relying on both private and public brand names.
- Second, the analysis of franchise contract made some progress:
 - First, the database developed in the frame of this project has been enriched thanks to a survey on non-financial contractual provisions and franchisee profiles. The survey targets all the franchisors operating in Spain. This work is in progress because the survey is complemented with personal interviews to improve the response rate.
 - Second, three papers about franchising were written during the period assessing different ownership strategies, analyzing financial aspects of contract and testing the presence and utility of rents in the franchisor-franchisee relationships.

1.2.5-Behaviours, Contractual Practices and the Legal Environment (WP16)

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

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

It is also complemented by contributions from the University Paris X on the functioning of antitrust authorities and on the interplay between public and self(private)-regulation and enforcement in various markets.



Also, at the initial initiative of the University of Paris X a set of workshops on “Measuring Law and Institutions” has been launched (Dec 2006; Dec 2007). The goal is to assess the current efforts to measure institutions and their (economic) performance and to propose advances to more efficiently analyze the way alternative settings result in observable outcomes, precisely to boost process of learning on institutional design.

6. Theory of the Norm Unit

6.1. Advances

The main focus of the theoretical study being conducted by the TNU is to support the integrating effort that underlies the work of the whole network by more precisely defining the scope of a shared perspective on reflexive governance (i.e., that of the broadened account of the conditions for learning) and the potential enriching contribution by the various responses formulated within this shared perspective (the four types of broadening identified). Further, from among the responses dealt with in the two synthesis reports, the TNU proposes to highlight the issues specific to the genetic approach, to the extent that it complements the neo-institutionalists’ externalist perspective in terms of the conditions for learning and to the extent that it radicalises the internalist (deliberative and pragmatist) perspective on these same conditions. The genetic approach specifically developed by the TNU seeks to address the limitations and inadequacies identified in the reflexive learning approach advanced by D. Schön, C. Argyris, and M. Rein by highlighting the need to broaden the conditions for success of the learning operation beyond those revealed by the reflexive-learning trend within the pragmatist approach. The specific contribution made by the genetic approach to the broadening of these conditions consists mainly of orienting study towards new facilitative systems within governance mechanisms. These new systems are intended to take effect on two levels: first, that of intervention with actors in view of transforming their relationship with their capability for positioning themselves in new normative contexts; second, that of adapting the design of these institutional systems in view of eliciting and framing this transformation of the actors.

6.2 Events

As will be presented more explicitly hereafter, from the perspective of what was contracted, the TNU has fulfilled its commitments associated with WP 24: The two seminars planned for Italy (Catania in July 2007 and Padua in October 2007) took place with J. Lenoble attending. Last year’s key activity for the TNU consisted of preparing for, organising, and processing feedback from the international colloquium on “Tâches actuelles et enjeux d’une philosophie des normes” (Current Tasks and Issues Raised by a Philosophy of Norms) held on 24, 25, and 26 October 2007 at Louvain-la-Neuve under M. Masesschalck’s organisation. As regards commitments related to WP 25, D 74 was delivered. This was *Synthesis Report 2* (which merged preliminary report D 73 with comments and responses by the various partners with whom the progress of the work had been discussed at the pre-cross-thematic seminar held on 19 December 2007). The conference with C. Sabel planned for May 2008 was cancelled. The state of progress of the TNU’s research gave rise instead to the plan to develop a collaboration with C. Argyris of Harvard University, currently the most authoritative representative of the second pragmatist approach to governance, the one consisting of a theory of reflective learning that deepens and goes beyond the experimentalist approach to governance (see below).

It should be noted that several processes have been set up for the dissemination and diffusion of the TNU study, both towards a more youthful audience, by means of seminars and working sessions organised to monitor the work of young researchers, and towards two venues in the wider academic world where there is interest in taking up the hypotheses on reflexive governance developed by REFGOV (Centro Studi Teoria e Critica Della



Regolazione Sociale at the University of Catania, Sicily – A. Andronico; and L. Lalonde and S. Bernatchez at the Faculty of Law at Université de Sherbrooke). The goal of collaborating with these two partners is to demonstrate the advances represented by the hypotheses being explored within REFGOV in comparison with traditional Continental philosophy of law (Catania) and with applied social philosophy as developed in the North American context (Sherbrooke). These two partners have thus been serving as venues where the displacement implemented in REFGOV can be taken up and tested by new research programs.



Section 2 – Workpackages - progress of the period

2.1. Workpackages - Services of General Interest

Work package 1 description – SGI

Workpackage 1 phase 2	SGI	Start date or starting event: Month ?
Participants		Lead contractor 9 IIPLD, 2, 5, 25,26, 29, 30,11-32
<p><u>Objectives:</u></p> <p><i>General objectives</i></p> <ul style="list-style-type: none"> - To establish a national/sector study on the empirical materials collected 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 complete the national/sector contributions on historical perspective in publishable form - To establish a synthesis of the national/sector contributions 		
<p><u>Progress :</u></p> <p>The planned deliverables were received one time. The contributions of each of the teams were ready as planned for the 3rd common workshop. For Healthcare: The Leeds team presented a paper on the health care in England since the 1980's and the Paris team presented a paper on the building of a policy for the Healthcare expenditure control in France. For Energy, the Giessen Team presented a paper devoted to the process of liberalisation of the energy sector in Germany and the Bristol team presented a paper of Energy in the United Kingdom. Given the specificity of the post communist and relatively recent debates on the reform of public services in Hungary, must be noted that the Hungarian team would present a more general study of these debates on the developments in Hungary.</p> <p>Based on these contributions and the discussion at the Common workshop, a deeper analysis was already prepared by the IIPLD in prevision to the next Common workshop.</p> <p>This study will be communicated to other members of the network before the Common workshop in Louvain in September 2008. At the upcoming seminar in September 2008, this common report will be submitted for discussion. It will then possibly be amended in the light of comments and critics made by each team working on this reception and reconstruction of its own study..</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 (delivered).</p> <p>D 43: "SGI provision historical perspective", analysis based on the contributions from each team. This study will be communicated to the other members of the network before the Common workshop in Louvain in September 2008 (month 40) and submitted for discussion. It will be made in light of the comments and critics made by each team.</p>		

**Milestones and expected result :**

- Discussion on the report on historical perspective (Common workshop (4) – to be held (Brussels month 40).
- Final version of the report on historical perspective will be established
- Preparation of the dissemination of the contributions (general and sector/national)



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>Objectives:</p> <ol style="list-style-type: none"> 1. To develop a set of interlocking case-studies on reflexivity in different national energy systems 2. To co-ordinate the case-studies with other work in SGIs, on particular healthcare 3. To develop institutional proposals. 			
<p>Progress:</p> <p>The planned deliverables were received on time. They take the form of four case-studies into the relationship between security of supply and land-use planning in the UK, network access regulation in Germany, price setting in Hungary and the role of the federal system in Canada. They were discussed in draft form at the June workshop of the energy group in Bristol, and the October workshop in Paris, held jointly with the healthcare group and the group undertaking the historical analysis, thus ensuing coordination with them. Important findings include the different potentialities for reflexivity at different levels of governance (in particular, where major policy issues are being decided); the dependence of reflexivity on trust and institutional arrangements to facilitate this; and the apparent regression from more reflexive to less reflexive modes of governance both on matters of policy and of regulation.</p> <p>These findings are being further developed to include institutional proposals for the September workshops, after which the reports will be finalised to include these and a synthesis of the proposals prepared. A synthesis will also be prepared for the common publication.</p>			
<p>Deliverables:</p> <p>D 44 1-2-3-4 individual case studies – UK- Germany-Canada-Hungary delivered. The following are available in the REFGOV working papers series at http://refgov.cpd.r.ucl.ac.be/?go=publications</p> <p>D 44-1 UK REFGOV-SGI-1</p> <p>D 44-2 Germany REFGOV-SGI-3</p> <p>D 44-3 Canada REFGOV-SGI-4</p> <p>D 44 final : Further reports including more detailed institutional proposals will be drafted for the September workshop.</p> <p>The deliverables required for the historical study were also duly made on time.</p>			
<p>Milestones</p> <p>Completion of reports on each of the case studies.</p> <p>Workshops in Bristol in June 2007 and Paris in October 2007.</p>			



Work package 3 description – SGI

Workpackage 3 .2	SG I- Health care	Start date	Month 18
Participants	Lead contractor 30	5, 9	
<p><u>Objectives :</u></p> <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 develop institutional proposals. 			
<p><u>Progress:</u></p> <p>Further revisions of the case studies will be presented in conjunction with institutional proposals at the workshop in Brussels September 2008. The studies will cover a range of different aspects of healthcare governance, informed by common REFGOV theoretical guidelines as developed and adapted in the healthcare context (see Achievements, above).</p>			
<p><u>Deliverables SGI:</u></p> <p>We remain on schedule to meet D 45: Sectoral (healthcare) Report on the General Outline of Institutional Proposals, Contributions are on schedule to be made to deliverable D 43, the historical study,</p> <p>D 45: Sector Report on general outline of institutional proposals ; (Draft papers have been already prepared and they will be delivered on time). D 45 -1-2-3 individual case studies from each team – England and Wales, Hungary and France delivered. available as working papers http://refgov.cpdr.ucl.ac.be/?go=publications</p> <p>D45-1 England and Wales REFGOV-SGI-7 (latest version) D45-2 Hungary REFGOV-SGI-6 D45-3 France REFGOV-SGI-8 (in French will be available in English in September 2008)</p>			
<p><u>Milestones</u></p> <p>- Presentation of national case studies at the fifth meeting of the healthcare sub-group, held in combination with the fourth common SGI workshop in Paris in October 2007.</p>			



Work package 4 description – SGI

Workpackage 4	SGI	Start date	Month 12-60
Participants	32	12	
<p><u>Objectives:</u></p> <ol style="list-style-type: none"> 1. To develop a comparative understanding of the scope of reflexive governance in three major domains of public sector activity: regulation; provision of higher education; provision of higher education 2. To co-ordinate the case-studies with other work in SGIs, in particular healthcare and energy 3. To develop institutional proposals. 4. 			
<p><u>Progress:</u></p> <p>Theoretical foundations have been laid for understanding the nature for reflexive governance in the provision of public sector services using a template developed by the theoretical unit of the Reflexive Governance Programme, further developed in the Refgov Synthesis Report 2. A paper was presented at the SGI workshop in Paris in October 2007 which examined experience in better regulation across both supranational (OECD and EU) and national (UK and Australian) domains. Empirical work is ongoing and a report will be prepared for the cross-thematic seminar in September 2008. Progress on the empirical work has not been as good as projected because both of the extension of the project to include supranational initiatives and of difficulties with staffing. The supranational element has been added to the programme because of the scope for building on research on similar processes of OECD and EU governance, notably the Open Method of Coordination, which seek to harness more reflexive governance methods. The incentive to use such methods appears to be greater at the supranational level, particular, was with the case of the OECD, there is very limited legal basis of initiatives.</p> <p><i>Dissemination activities - Meetings and publications</i></p> <p>A public lecture, 'Regulating Everything', was given to inaugurate the Chair in EU Regulation and Governance at University College Dublin (available at http://www.ucd.ie/law/doc/ColinScott%20lecture.doc), addressing the themes of the research and evaluating the Better Regulation programme in Ireland against the criteria of reflexive governance and meta-regulation</p> <ul style="list-style-type: none"> -Colin Scott facilitated a workshop on Better Regulation for senior officials of the Government of Nova Scotia, May 2008 -Colin Scott 'Legitimacy in Regulatory Governance' Invited Seminar Presentation, University of Buffalo School of Law and Baldy Centre for Law and Social Policy, November 2007 -Colin Scott 'Rethinking Regulation: Governance Beyond the Regulatory State' Invited Lecture Presentation at University of Wisconsin Madison School of Law Sponsored by The Wisconsin Project on Governance and Regulation (WISGAR) The Center for World Affairs and the Global Economy (WAGE) The European Union Center of Excellence, and The Global Legal Studies Center, November 2007 <p>Publications are listed in the appendix – Mainly :</p> <ul style="list-style-type: none"> -'Reflexive Governance, Meta-Regulation and Corporate Social Responsibility: The Heineken Effect' in Nina Boeger and Charlotte Villiers (eds) <i>Perspectives on Corporate Social Responsibility</i> (Cheltenham, Edward Elgar, 2008, forthcoming) -'Regulating Private Legislation' in Fabrizio Cafaggi and Horatia Muir-Watt (eds) <i>Making European</i> 			



Private Law: Governance Design (Cheltenham: Elgar, 2008)

-'New-ish Governance and the Legitimacy of the EU' (July 2007). CLPE Research Paper No. 17
Available at SSRN: <http://ssrn.com/abstract=1003824> (a revised and refereed version to appear in
the *European Law Journal*)

"How Reflexive is the Governance of Regulation?", Colin Scott, REFGOV- SGI – 5
<http://refgov.cpd.r.ucl.ac.be/?go=publications>

Deliverables SGI regulation of the Public sector:

D 46 Sector Report on the general outline of institutional proposals will be discussed at the SGI
common workshop – (Month 44)

Milestones and expected result:

Common Workshop SGI 3 in month 29
Workshop SGI 3 in month 29



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> The objective of this research is 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> <hr/> <p><u>Progress towards objectives:</u></p> <p>The present report concerns the third step - starting on month 25 up to month 36 – which was to reconstruct (identify and understand) the manner in which the Trade Union actors, in France and in Belgium, have perceived the role they could play in the changes (and in their assessment of these changes) taking place in the regulation of electricity production and distribution. This focus on trade Unions (as collective actors) aims first to identify whether some learning process is enabling the Unions to take on a new position in such a situation and, second, to define the institutional incentives for improving the SGI governance which such an analysis of this reconstruction would lead to.</p> <p>According to the general implementation plan of the project as proposed in the Technical Annex, this case study was to be carried out along a three step implementation plan. The two first steps were completed in month 24. They were meant first to understand (reconstruct) identify the collective actors' position in the social debate, and then, to reconstruct the way the Trade Union actors, in France and in Belgium, were identifying the issues and selecting the possibilities of alternatives to intervene in the debates on the liberalization of the electricity sector. The third step (and second part) is now on the way. It consists in defining the institutional incentives for improving SGI governance of electricity sector, taking especially into account the new requisite of private/public partnership situations where Unions have become a potential speaker for non market requisites such as universal access to energy or users satisfaction assessment.</p> <p>To progress in the second part of the research, we had to answer two major questions raised by one of the American scientists participating in the meeting organized in Brussels in October 2006 by the Theory of the Norm Unit²⁴ The question was directly pointing at a presupposition concerning the way we understand the term actors in such a context. The crucial point to be clarified here was the relationship between the self-construction of their own capacity by the actors (as actors involved in collective learning process making such reflexivity possible) and the responsiveness of institutional arrangement making possible the experimentation of that self-construction of the actors' capacities. The question was consequently to know if it was theoretically and practically possible to combine collective action and responsiveness or, more precisely, the requirement of an enlarged social dialogue and the requirement of some more responsive regulatory institutions.</p> <p>This first requirement had 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 realize that new step, we organized our multi- session seminar through March-April 07 on that theme and we prepared our intermediary report of month 30 to introduce it at the REFGOV Cross thematic of the 18th December 2007 as an applied part of the REFGOV Synthesis Report 2²⁵.</p>			

²⁴ REFGOV deliverable D41 report of this seminar – submitted with annual report 2

²⁵ See REFGOV Working papers series : TNU-SGI-2: J. LENOBLE, M. MAESSCHALCK, Synthesis Report 2: Reflexive Governance : some clarifications and an extension and deepening of the fourth (genetic) approach <http://refgov.cpd.ucl.ac.be/?go=publications> - This part of the report was also discussed with the researchers of the philosophical team in a residential seminar the 13th December 07. This research and its relation with the



The Synthesis report 2 answers indeed to the questions raised by our American colleagues both at a theoretical level and at an empirical level. *At a theoretical level*, the report succeeds in defining the benefit realized by the displacement we had proposed in the REFGOV Synthesis report 1²⁶ in regard to the pragmatist construction of the learning process. The Synthesis Report 2 demonstrates the central role played by shifting the attention from the pragmatist enabling process of the collective action to the blind process of identities transformation in the course of the collective action. We propose to consider the identity question as a positive condition to be taken into account by actors themselves in order to achieve their positioning in new frames of actions and to create new forms of action as well as new strategies of negotiation. The genetic approach, proposed in the Synthesis report 2, combines an effect of backward looking and an effect of forward looking and poses this combination as a necessary condition for the self-transformation of the actor's capacities of positioning themselves in a new situation. The two aspects are closely linked in the genetic perspective because the reflexive perspective on the past is mobilized to prepare, in the present, a capacity of self-evaluation which consists in identifying the possible repetition of former behaviours failures in the new processes of positioning. Therefore, the genetic approach cumulates the benefits of existing reflexive approaches to social learning while situating these benefits within a process of collective action likely to have an impact on the identity and normative conditions of its self-transformation. *At an empirical level*, we have applied this new genetic concept of learning to the field of union actors in the electricity sector in Belgium. Our purpose was to show what appears more clearly when such a concept is mobilized not only in a descriptive perspective, but also in order to determine new kinds of questions and self-evaluation of the actors positioning processes. We defended that it is theoretically and practically possible to combine the requirement of an enlarged social dialogue and the requirement of some more responsive regulatory institutions only and only if 1/ actors are trained to open the questions of the role played by their identity transformation and 2/ regulatory institutions are paying attention to these new requirements of identity transformation by making possible a redefinition of roles in the regulatory system.

To produce this repositioning, the genetic approach analysis shows that labour organisations resort to critical operations that concern not just their future role but also their past role. Whereas the citizen-user's interests were **subordinate** to action by the traditional public-service union, what is now in question is **linking** the protection of the interests of the citizen-consumers of these services with the interests of workers in the liberalised service sectors. Thus the challenge consists of **translating** key issues of energy policy, universal service, and free market choice into work organisation issues that transform the labour organisation into an obligatory conduit through which the decision-making process must pass²⁷. It is then possible, using the genetic approach, to better define what is at issue in this "terceisation" process, from the perspective both of labour organisations and of the sector's regulation as a whole. For labour organisations, the issue is not in the first instance one of entrenching a new collective identity making, as if, for example, it were necessary for labour organisations' research departments to adopt the performance indicators of universal service and develop proposals for policy recommendations to labour leaders. Rather, the issue, as the genetic approach makes it clear, is the restructuring of these organisations' collective identity, i.e., their way of making collective identity in line with the learning made possible by the terceisation²⁸ of their social position. A question essential to the public governance of the sector is consequently how and under what conditions to organise new ways of negotiating within the sector

general thesis on collective action was presented in an international seminar on governance in Namur the 11th December 07.

²⁶ REFGOV working paper series TNU-SGI-1: J. LENOBLE, M. MAESSCHALCK, Synthesis Report 1: Beyond neo-institutionalist & pragmatist approaches to governance. May 2006 <http://refgov.cpd.r.ucl.ac.be/?go=publications>

²⁷ Within the labour organisations in question, this effort at identity and teleological shifting in order to bring users' interests on board is characterised, first in internal communications (in particular in the form of information campaigns that adopt the user's perspective on market liberalisation); and then in the internal building of collective bargaining positions, by its incorporation of priorities related to users' interests into its reasons for action and into the content of activist interventions.

²⁸ See the concept of terceisation in REFGOV Working papers series : TNU-SGI-2: J. LENOBLE, M. MAESSCHALCK- Op.cit., p18 <http://refgov.cpd.r.ucl.ac.be/?go=publications> -



in order to incorporate the normative potential of this repositioning of collective action. Indeed, the idea of the culture of codetermination, according to which users' interests' were subordinated to those of the sector's economic development, persists within the present order of things, in the form of the belief that the sector's evolution towards greater profitability and international competitiveness within a liberalised marketplace will ultimately benefit the individual consumer. In the same way, the idea that the impact of the sector's segmentation (and the issues of labour-relations restructuring that it brings in its wake) can be separated from public interest's stakes (such as green energy and safety of supply) in these activities also constitutes a way of obstructing open discussion of businesses' social responsibility in the context of requirements for public and universal service. Dispersing labour's forces along this fault line amounts to a failure of normative potential detrimental to the discovery of new solutions.

Two tasks result from these intermediate conclusions in order 1/ to enhance the reflexive capacity of the unions to play a role in new categories of regulatory relationships and 2/ to define the institutional incentives for improving SGI governance in that sector. The first task (month 37-48) consists in initiating an interaction with the actors involved in the negotiation process in order to confront our intermediary conclusions with some internal and implicit self-evaluation. The major aspects to take into account here are the effective balance among constraints and ability of experimentation, the incorporation of some methodological scepticism in selecting the possible alternatives and the inference of the conditions of success for an efficient proposal. A second task (month 49-60) is the organization of a seminar more oriented to the policy proposals in order to determine more operationally which criteria of self-capacitation could be proposed to improve the public governance of the sector.

In order to accomplish the first task, we already organized a work seminar (09 January 2008.- Louvain-la-Neuve) with the young researchers cooperating with the theoretical unit. Our purpose was to summarize the evolution of our research and its two next tasks, explaining especially the evaluative scope of the new interaction with the actors at that stage of the research. We also presented the present status of our research, at the seminar dedicated to the doctoral training of all the young researchers involved in the CPDR networks. (Louvain-la-Neuve - session of 18 April 2008)

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

Deliverable SGI Collective actors:

D 47 case study on Trade Unions as collective actors – delivered
Included in the Synthesis report 2 (section 3) – Working paper REFGOV-SGI/TNU – 2 available at <http://refgov.cpd.r.ucl.ac.be//?go=publications>

Milestones SGI Collective actors :

- Presentation of the case study at the cross thematic seminar Brussels, 18 December 2007
- Work seminar 9 January 2008 with the young researchers cooperating with the theoretical unit.
- Seminar presenting this research to all the young researchers involved in the CPDR networks 18 April 2008,



2.2 Workpackages Global and Public Services

Work package 26 description – GPS

Workpackage 26	GPS 6	Start date or starting event: Month 26	
Participant id	24-27-13-30 Amsterdam (workshop May 2007) UCLondon (workshop September 2007) Paris X (workshop February 2008)	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 Cambridge 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.

Deliverables and Milestones GPS

D 48 Report on institutional proposals for the cross thematic seminar : delivered

Milestone/May 2007 Stream on the “reflexive governance of global public goods”, delivered.

Milestone/Septembre 2007 Workshop on “Institutions, social capital and knowledge for biodiversity conservation : delivered, cf. web-based proceedings at http://www.bioecon.ucl.ac.uk/09past_9.htm

Milestone/February 2008 Final closed workshop of WP26 on “Which governance for which environment”, delivered, <http://economix.u-paris10.fr/fr/activites/ws/?id=53>



Work package 27 description – GPS

Workpackage 27	GPS 7	Start date or starting event: Month 20	
Participant id	IDDRI/Paris 8 Paris X (for the report)	CPDR/UCL	as sub-network coordinator
<p>Objectives</p> <p>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.</p>			
<p>Description of work</p> <p>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. Three reports have been planned on architecture for reflexive governance. A first report has examined a prototype of reflexive assessment in an advanced field of governance, by studying the case of Joint Forest Management in Flanders (D49(1)delivered). A second report has provided a literature review on assessment protocols to be delivered to the cross-thematic (D49(2)). A third report (D49(3)) will serve as the input for a workshop on “Institutional architecture for Reflexive Governance : Assessment, communication and advocacy”.</p> <p>More precisely and in practice the work has been carried out by the IDDRI who has designed and started a case study on forest management policies in the Balkans. A post-doctoral researcher , Sabine Weiland, has been engaged to do the research under the supervision of B. Martimort – Asso and Raphael Billé in partnership with Francois Lerin of the “Institut Agronomique Méditerranéen (IAMM)” de Montpellier, France. The case study is more important than initially anticipated and required a re-adjustment.</p> <p>Environmental conditionality is a cornerstone of the so-called “acquis communautaire” and as such a major driver of change in East European transition countries. However, in spite of clear signs of convergence of the environmental legislation in new member countries and candidate countries, the effect of new legislation on effective changes in management practices has been very different from one country to another. To understand these differences, there is still a lack of analysis of the institutional dynamics that play a role in the compliance with and effectiveness of the new policies. This project aims at filling this gap, by a comparative case study into the impact of the governance devices on change of the beliefs of the actors in regards to multifunctional forestry and the building of trust in the new regulatory systems.</p> <p>Our comparative case studies will be based on a simple set of common categories that can be applied to the analysis of very different types of governance devices. This is needed because of the high level of heterogeneity between the different governance situations in the different countries. By using a simple set of robust categories, we expect to be able to make a comparative analysis of different governance devices and evaluate how the governance choice influences the improvement and / or blocking of the transition towards sustainable forestry.</p> <p>We will use the following categories:</p>			



- (1) economic: transaction cost characteristics of the governance device
- (2) reflexive: the capacity of the governance device to generate reflexive learning, in particular learning from "nature centred approach" to "multifunctional forestry"
- (3) social: the capacity of the governance device to generate trust in the new regulations.

Status of research:

The empirical study is based a review of the existing literature, of official documents and publications on forest policy and management in the three countries, as well as on qualitative interviews with actors from the Forest sector in the countries. Relevant actors for interviews are: representatives from political institutions and the administration in charge of forest management; stakeholders such as forest owners, representatives from forest owners associations, from the agricultural chamber, nature conservation groups, etc.; academics working on forest policy and management.

A first round of 14 interviews with Slovenian and Croatian political actors and academics were conducted in February 2008. A second research stay in Albania and again in Croatia took place in March 2008. Altogether, a number of 34 interviews were conducted. The field research was conducted in collaboration with Francois Lerin from the Institut Agronomique Méditerranéen (IAMM) in Montpellier, France.

The evaluation of the empirical material and the writing down of the project report started in April. A first paper, entitled "Environmental Governance through Reflexivity? Forest Policy and Forest Management on the Balkans" was presented at the workshop "Environmental Capacity and Development in Transition States and Emerging Democracies" at the European Consortium for Political Research - ECPR Joint Sessions of Workshops, 11 – 16 April 2008, in Rennes, France.

This paper is available at Working paper series : REFGOV-GPS -5
<http://refgov.cpdr.ucl.ac.be//?go=publications>

A second paper that focuses on conceptional issues of reflexive governance was started recently. This paper is meant to improve and strengthen the theoretical framework of the empirical study on the Balkans. The results will be presented at multi-stakeholders events see Draft planning for next 18 months.

- 22th to 26th June IUFRO conference on "Small-scale rural forest use and management: global policies vs local knowledge", in Gérardmer, France (near Nancy).
- 6th to 11th July: IRSA conference, Seoul, Korea
- 27th to 29th August: RGS conference, London -

Deliverables GPS

D49(1) Preliminary report on prototype of public interest assessment protocol in the field of sustainable forestry : delivered in year 2 now in Working paper series : REFGOV-GPS – 6
<http://refgov.cpdr.ucl.ac.be//?go=publications>

D49(2) Report review on literature on multi-criteria assessment and reflexive governance (month 30) : delivered

D49(3) Report to prepare the international conference on "Institutional Architecture for Reflexive Governance. Lessons from EU governance" (May 2009)

Milestone/May 2008 Preparatory workshop on "Institutional Architecture for Reflexive Governance" : delivered (cf. details in annex 3)

**Milestones and expected result**

The expected result of this workpackage is a proposition of a protocol for public interest assessment, in the specific field of the provision of environmental services. Through the discussion at the international workshop, we expect to obtain practical, “field” information on the feasibility, practicality and usefulness of this protocol. In a later stage (final workshop, month 56), we expect to discuss the generalization of this protocol to the broader field of GPS governance.



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><u>Objectives:</u></p> <p>1° To provide the participants to the sub-network with an up-to-date synthesis on the applied and theoretical literature on the public vs. private regulation of competitive activities so as to guarantee consistencies among the applied researches</p> <p>2° To disseminate these results in the Ref-Gov network and beyond</p> <p>3° To synthesize the results of the applied researches carried out by the sub-network so as to provide the members of the sub-network and the theoretical unit with a synthesis of what has been achieved and understood, and to identify the question to be dealt with in the second phase of the program.</p>				
<p><u>Progress towards objectives:</u></p> <p>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 Sienna)). - 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 Brousseau and 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 2009</p>				
<p><u>Deviations:</u></p> <p>D24 The publication of the synthesis working paper on IFM has been delayed due to discussions that led to focus on the process of institutional reform in a context of uncertainty an incomplete knowledge about the joint performance of various institutional tools. The delivery of the definitive version is expected in the summer 2008</p> <p>D25 The final version of this paper has recently been approved by the editors of the collective volume. It is now more oriented toward the analysis of the consequences of the complexity and of the permanent innovation in network industries The delivery of the definitive version is expected in the summer 2008.</p>				
<p><u>Deliverables IFM:</u></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 38</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 2009 to be published on-line by Month 38</p>				
<p><u>Milestones:</u> Common Workshop of the IFM network in May 2008 in Roma</p>				



Work package 12 description – IFM

Workpackage 12	IFM2.1	Start date or starting event: Month 0
<p><u>Objectives:</u></p> <p>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.</p> <p>Specific applications to</p> <p>1° the analysis of competitive reforms in the electricity industry</p> <p>2° the analysis of the institutional and regulatory environment of local public services</p>		
<p><u>Progress towards objectives:</u></p> <p>The four teams have produced an important number of essays. They are either to be published or in the process of being submitted to academic journals</p> <p><i>Electricity and Energy</i></p> <p>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.</p> <p>This was in line with the development carried out in Prague by CERGE, which focuses on the potential consequences of insufficient unbundling in electricity markets. 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.</p> <p><i>Local Public Services</i></p> <p>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 2007 – May 2008 period, many progresses occurred in the exploitation 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.</p>		
<p><u>Deviations:</u></p> <p>No major deviation: As pointed out by the list of publication, the teams involved in this sub-project are very active</p>		
<p><u>Deliverables IFM:</u></p> <p>See the list of publications see papers available at http://refgov.cpd.r.ucl.ac.be/?go=publications</p> <p>D26 Series B 10 working papers electricity network available on the REFGOV website as working papers REFGOV-IFM 29 to 40 – (see list attached)</p> <p>D27 series B 7 working papers on local utilities available on the REFGOV website as working papers REFGOV-IFM 21 to 47 – (see list attached)</p>		
<p><u>Milestones:</u></p> <p>Many presentations of the ref-gov related researches in various settings</p>		



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></p> <p>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.</p> <p>While the open-source software communities have been extensively analyzed, other types of communities are less investigated. The additional goal of this project is to address that lack of knowledge</p>		
<p><u>Progress towards objectives:</u></p> <p>The final versions of 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 due for the Summer . The book gathers the contributions of a multidisciplinary and international team of scholars focussing on the regulation of digital networks.</p> <p>Further analyses on the economics and strategies of digital platforms are to be developed</p>		
<p><u>Deviations:</u></p> <p>No major deviation. As usual collective publications processes are longer than initially scheduled. Moreover, the report on Self-regulated communities (D 28) has been turned into a paper on the economics of alternative regime of governance of Intellectual Property Rights. Indeed, this broader viewpoint seemed more appropriate to analyze the economics of regulation in digital industries than the approach of digital communities</p>		
<p><u>Deliverables IFM:</u></p> <p>D28: WP: Eric Brousseau, Maria Alessandra Rossi, “ Intellectual Property Regimes: a comparative Institutional Framework” Delivered</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><u>Objectives:</u></p> <p>Specific objectives for this period were:</p> <ol style="list-style-type: none"> 1. To examine the role of economic rents as an incentive device and to study possible complementarities with the residual claim incentives in franchise networks. 2. Given that our preliminary results suggested that very complex mechanisms of governance are needed to obtain top quality products (i.e. agri food sector), we wanted to assess econometrically how organizational forms in hotel industry influence top quality. 3. To apply the knowledge about franchise contract to the design of concession contracts in the bus transport industry. 			
<p><u>Progress towards objectives:</u></p> <p>Our unit has progressed towards above objectives in the period reported. The activities have advanced in terms of deliverable publications and primary data collection related to the workpackage objectives.</p> <p>We also have designed and started out the survey about franchise contracts in Spain. As a result, we have collected an important number of answers but work is still in progress. Particularly we have finished the postal survey and we are conducting complementary personal interviews to improve the response rate.</p>			
<p><u>Deviations:</u></p> <p>No major deviation during the period.</p>			
<p><u>Deliverables IFM:</u></p> <p>The final versions of deliverables 50 to 53 have been finished and delivered (November 07):</p> <p>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”, <i>Working Paper</i>, Universidad de Oviedo.</p> <p>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”, <i>Working Paper</i>, Universidad de Salamanca</p> <p>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” <i>Review of Industrial Organization</i>, 26: 445-460 and Solís Rodríguez, Vanesa and Manuel González Díaz (2006): “La forma plural de la franquicia española: Estructura y evolución”, <i>Working Paper</i>, Universidad de Oviedo</p> <p>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”, <i>Working Paper</i>, Universidad de Oviedo.</p> <p>Further work will be done on</p> <ul style="list-style-type: none"> • economic rents and multi-unit franchising. • the different forms of governance in hotel sector • the application of franchise contract knowledge to the design of concession contract in the 			



bus transport industry.

D50-51-52-53 are available at <http://refgov.cpdr.ucl.ac.be/?go=publications>
as Working papers REFGOV-IFM-25-26-27-28

Milestones:

We have accomplished all the milestones that allowed us to advance the current research.

- The feasibility of the first objective strongly depended on the availability of reliable information in our secondary sources of information. It was also needed to carry out a survey that will extend no longer than this 18-months planning.
- Papers quoted above were presented in several academic meetings obtaining very useful feedback to progress in the research (June 07, June 08).
- Most important professional franchise fairs including Barcelona and Madrid Fair were visited to learn industry insider information and to meet franchise owners face-to-face.



Work package 15 description – IFM

Workpackage 15	IFM5	Start date or starting event:	Month 0
Lead contractor U. Siena 17		Other: 22	
<p><u>Objectives:</u></p> <p>1° To assess legal and economic aspects of the law and economics of property rights with reference to New Institutional Economics approach, with particular emphasis on the relationship between contractual agreements and market dynamics</p> <p>2° 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. This includes analysis of foundations of incomplete contracts and of economic approach to property rights.</p> <p>3° To analyze incentives to innovate according to alternative regimes devoted at the protection of intellectual property concerning patents, trademarks and copyright</p> <p>4° To study the application of competition policy and to assess possible trade-offs between competition law and property rights, with specific reference to IPRs and to the application of the essential facility doctrine</p> <p>5° To apply the compared analysis of alternative IPRs regimes to specific sectors such as that of multimedia products, the software or the biotechnology sector, with special emphasis on Open Source Projects</p>			
<p><u>Progress towards objectives:</u></p> <p>In 2007-2008 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><u>Publications:</u></p> <p>1) Antonio Nicita and Matteo Rizzolli Property Rules, Liability Rules and Externalities, published in 2008 in <i>Journal of Public Finance and Public Choice</i> (the paper has been accepted and published in 2008, while the Journal being late in its programming has the date of 2006) - This work also cover the participation to Siena Unit to WPack 16</p> <p>2) Antonio Nicita and Maria Alessandra Rossi “Access to Audio-visual Contents, Exclusivity and Anticommons in New Media Markets” Forthcoming in <i>Communications & Strategies</i>, No. 71 – 3rd quarter 2008</p> <p>3) Antonio Nicita and Massimiliano Vatiero “The Contract and the Market: Towards a Broader Notion of Transaction” published in <i>Studi e Note di Economia</i>, 1 2007 - This work also cover the participation to Siena Unit to WPack 16</p> <p>4) Antonio Nicita and Ugo Pagano “Law and Economics in Retrospect” forthcoming in E. Brousseau & J-M. Glachant “New Institutional Economic: A Guidebook”, 2008, Cambridge University Press - This work also cover the participation to Siena Unit to WPack 16</p> <p>5) Laura Magazzini, Fabio Pammolli e Massimo Riccaboni e Maria Alessandra Rossi, “Patent disclosures and R&D competition in pharmaceuticals” forthcoming <i>Economics of Innovation and New Technologies</i>.</p> <p><u>Working papers</u></p> <p>a) Antonio Nicita “Consumers Winback as Exclusionary Conduct: Some Insights for Antitrust Law” <i>ALEA Working Papers</i> n. , 2008 Berkeley Press (also published in REFGOV website) - This work also cover the participation to Siena Unit to WPack 12</p> <p>b) Antonio Nicita, Matteo Rizzolli, and Maria Alessandra Rossi</p>			



“ **IP Law and Antitrust Law Complementarity when Property Rights are Incomplete**”, *Quaderni del Dipartimento di Economia Politica* n. 509, Università di Siena (also published in REFGOV website)

c) Antonio Nicita, Giovanni Ramello and Francesco Silva “**The New Television: Economics, Rules and Market**” published in Italian for the publisher Il Mulino, 2008

Deviations:

No significant deviation has occurred.

After the book published last year which was a deliverable D30. The Unit is now preparing another edited volume, (D30b) to be published in 2008/2009 by Routledge, on “Competition, Innovation and IPRs (Editors A. Nicita, G. Ramello, F. Scherer). By May 2008 about 9 chapters out of 11 have been delivered.

The Unit has also produced working papers covering the same lines of research. – (see dissemination plan)

Finally 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.

Deliverables IFM:

D30 b The second book in preparation and working papers (see publications above)

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 in 9-10 May 2008 a workshop on “MANUFACTURING MARKET INSTITUTIONS” with participants from IFM Units and external speakers.



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><u>Objectives:</u></p> <p>1° To assess the theoretical framework concerning the interaction between public and private orderings with particular reference to the emergence of economic and legal norms and to the comparison between most European Legal systems (in Italy, France, Spain and Germany) and the Common Law systems (US, UK)</p> <p>2° To analyze the specialization advantages and costs of the decentralization of rule making to courts, describing the essence of the common and civil law, and stating our hypothesis concerning their structures and evolution, also in a context of endogenous preferences. To test the consistency of our hypothesis on economic behaviour and institutional performance by reviewing the relevant historical evidence and the alternative explanations provided in recent comparative performance of legal systems and by adopting the experimental methodology. To examine the policy implications, emphasizing the importance of local circumstances for designing these institutions</p> <p>3° To analyze the efficiency of private orderings in a context of dynamic competition, with reference to the trade-off between contract enforcement and ex-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 behaviours of public and private agents and more generally the debate on efficiency of common law and civil law</p>			
<p><u>Progress towards objectives:</u></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).</p> <p>Due to the presence of two post-doc in EconomiX and to the hiring of a young assistant professor in the economics of competition policy, several papers, either on the organization of competition authorities or on the interplay between public and self-regulations have been produced. These efforts allow deepening the analysis of the regulation of competition and of the governance of externalities.</p>			
<p><u>Deviations:</u> No Significant deviation</p>			
<p><u>Deliverables IFM:</u></p> <p>D32 See publications in the dissemination plan and working papers (link hereafter) : http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=60143</p>			
<p><u>Milestones:</u> Three Ref Gov related events were organized by the U. Paris X (see http://economix.u-paris10.fr/fr/activites/ws/archives.php)</p> <ul style="list-style-type: none"> • 14-15/12/07; Measuring Law and Institutions : 2nd Workshop • 10/03/08 Journée « économie des systèmes juridiques » • 5/05/08: Workshop Theories of the Firm and Contracting Issues 			



2.4 Workpackages Corporate Governance

Work package 17 description – CG

Workpackage 17	CG1	Start date or starting event:	Month 1
Participants : U.Bristol, CBR/Camb, CPDR/UCL, U.Liège, Economix/U.Paris X, and CEU/Buda U.			
Objectives: To study the evolution of corporate governance codes.			
Progress towards objectives: This Work Package is analyzing the evolution of corporate governance codes and related aspects of company law and financial market regulation. A variety of methods is being used, including archival and historical work and case studies of the operation of codes in practice, in addition to doctrinal legal work. All the teams in the CG subnetwork are contributing to this project. In the year under review, substantial further progress has been made on two fronts: deepening the empirical knowledge base of corporate governance codes and practices; and identifying a number of methodological and theoretical themes related to and coming out of the empirical work. The empirical work is addressing the evolution of corporate governance norms at three levels: at the transnational level of the EU as a whole (Deakin, 2008; Cobbaut, 2007); through individual country studies of CG codes in operation (on the US and Britain (Armour and Gordon, 2008; Deakin and Singh, 2008); Switzerland and Sweden (Schnyder, 2008); Germany and Britain (Sanderson and Seidl, 2007); Hungary (Büti and Hardi, 2007); Slovenia (Cankar, Deakin and Simoneti, 2008); and through comparative studies which are tracing the impact of changes in corporate governance codes and company law over time (Armour et al., 2008). In addition, particular aspects of emerging forms of corporate governance have been studied, including norms on private equity (Moore, 2007), CSR (Njoya, 2007) and female participation on the board (Villiers, 2007). Theoretical themes have been addressed by Carvalho and Deakin (2008), Boyer (2007) and Cobbaut (2007) as well as by Pistor (2007) as an invited keynote speaker to the workshop held in Cambridge in December 2008. Some of the emerging findings have already been referred to (see above, general description of the work of the subnetwork). They include the contrast between a high level of formal convergence at the level of norms, and the persistence of diversity at the level of practices; the lack of a close fit between regulatory change and expected economic outcomes; and the limited degree to which reflexive mechanisms of collective learning can be observed, both at national and transnational level.			
Deliverables CG: D56 includes contributions D56-1 to D56-4 show in each CG workpackage D56-b : Guidelines – mentioned in this workpackage but relevant to other CG workpackages D56.1: Contribution to synthesis report on corporate governance work, outline institutional proposals Month 28: this was done. The following papers are available at http://refgov.cpdr.ucl.ac.be//?go=publications - Deakin, S. 2008 'Reflexive governance and European company law' - WP REFGOV- CG-19 – revised version under review, <i>European Law Journal</i> . - Cobbaut, R. 2007 'Market efficiency, rationality, governance structures and capital market regulation',. WP REFGOV- CG-12 – revised version - Cankar, N., Deakin, S. and Simoneti, M. 2007 'The reflexive properties of corporate governance codes: the transplantation and reception of the 'comply or explain', to be submitted to the <i>Journal of Law and Society</i> . WP REFGOV- CG-15 – revised version - Carvalho and Deakin 2008, System and Evolution in Corporate Governance - WP-REFGOV-CG-29 - Deakin and Singh, 2008 'The stock market, the market for corporate control and the theory of the firm: legal and economic perspectives and implications for public policy', WP REFGOV- CG-28			

**Milestones:**

2° Conference, Cambridge, December 2007 (CBR/Camb): this was done.

<http://refgov.cpd.r.ucl.ac.be/pdf/agendas/CG-Conf.Cambr.12-13Dec07.draftAgenda.pdf>

3° Workshop for the CG 1 Month between month 33 and 37: a workshop will be held later in 2008 (a delay was considered desirable so as to allow the project teams to carry out further work following the Cambridge conference in December 2007).



Work package 18 description – CG

Workpackage 18	CG2	Start date or starting event:	Month 1
Participants : Economix /Paris X, CBR/Camb, CPDR/UCL			
<u>Objectives:</u>			
To study the impact of financialisation on employment and performance.			
<u>Progress towards objectives:</u>			
<p>In the year under review, further research has been carried out on the links between the structure of ownership of equity capital and labour management practices in Britain and France (Conway et al., 2008; Deakin and Reberieux, 2007; Konzelmann, 2007; Pendleton and Deakin, 2007). The research involves a comparison of the British Workplace Employment Relations Survey (WERS 2004) and the French Relations Professionnelles et Négociations d'Entreprise survey (REPONSE). The statistical analysis shows that in both countries, a stock market listing is associated with an intensive use of high commitment HRM practices, such as team working and performance related pay, although not with worker engagement on workplace changes or target setting. The effect of stock market listing is slightly different in Britain in that there is no positive correlation between listing and the use of practices aimed at enhancing performance via worker autonomy as there is in France. The results for France are somewhat more compatible with the idea of partnership between shareholders and a core of stable employees. In Britain, there is less positive evidence of partnership, but the claim that shareholder pressure operates as a constraint on the capacity of managers to enter into partnership-type arrangements with workers is not clearly borne out. The main contribution of the CPDR team in the CG2 group has been to study pension fund governance in Belgian Law (Autenne, 2008). In respect of Belgian law, despite recent reforms intended to favour greater shareholder activism, the model in effect prompts a state of passivity toward the targeted firms, while also encouraging fund managers to maintain a degree of opaqueness in their activities. While some of these characteristics may be justified on the grounds of investment horizons, requirements of diversification, distaste for risk and/or the activism-related costs, they nonetheless hinder the development of SRI strategies, for example. The conclusion of this work is that there remains a lack of clarity regarding the legal qualifications of the rights and obligations of the various pension fund stakeholders, which could give rise to various problems involving conflicts of interests, as it is shown, for instance, through the debate on socially responsible investment (SRI).</p>			
<u>Deliverables CG:</u>			
D56.2: Contribution to synthesis report on corporate governance work outline institutional proposals month 28: this was done.			
The following documents are available at http://refgov.cpdr.ucl.ac.be/?go=publications			
<ul style="list-style-type: none"> - Autenne, A. (2008) 'La qualification juridique de la relation triangulaire qu'entretiennent les parties prenantes à un régime de retraite organisé via un fonds de pension d'entreprise – éléments de réflexion à l'occasion de l'entrée en vigueur de la loi du 27 octobre 2006 relative au contrôle des institutions de retraite professionnelle'. <i>Revue Pratique des Sociétés</i>, pp. 1-43 WP REFGOV- CG-22 - Conway, N., Deakin, S., Konzelmann, S., Petit, H., Reberieux, A. and Wilkinson, F. (2008) 'The influence of stock market listing on human resource management: evidence for France and Britain' under review, <i>British Journal of Industrial Relations</i>. WP REFGOV- CG-13 – revised version 			

**Milestones:**

Conference, Cambridge, December 2007 (CBR/Camb): this was held.

Workshop on the impact of financialisation, in Paris or Bristol Month 34: a workshop will be held later in 2008 or early in 2009 (a delay was considered desirable so as to allow the project teams to carry out further work following the Cambridge conference in December 2007).



Work package 19 description – CG

Workpackage 19	CG3	Start date or starting event:	Month 1
Participants : CBR/Camb, CPDR/UCL, Economix /Paris X, U. Liège			
<p><u>Objectives:</u></p> <p>To study the impact of changes in corporate governance codes and related rules on relations at enterprise level.</p>			
<p><u>Progress towards objectives:</u></p> <p>In the year under review there has been substantial further progress on the case studies of change at enterprise level, and on the theoretical implications of this work. A study on the impact of international accounting norms has been undertaken by Boyer and Chane-Alune of the CPDR team on the incorporation into IFRS of the needs for non-financial information. It will be complemented by the end of the first semester of 2009 with a survey article on the concept of 'fair value' written by Boyer and Cobbaut. Work on insolvency at the CPDR was interrupted during this period for professional reasons affecting the individual researcher concerned. This Ph.D. thesis project will be re-started in July 2008 and is planned to come to an end in the second semester of 2009. Researchers at Economix (Tadjeddine and Dorbec) have been studying the hypothesis that French SMEs have a particularly difficult time accessing outside finance. Most of the work performed up to now to test this 'size-dependency' hypothesis has consisted of extracting a subsample of firms and groups from INSEE's LIFI (<i>Liaisons Financières</i>) surveys for the 3 years 1995, 2000 and 2003 and recording the main economic characteristics of the firms in the sample. The next and two steps to be performed up to June 2009 will consist of extracting financial data from the Banque de France data base and analyzing the complete dataset. The CBR team have carried out a number of interviews with private equity firms and trade unions on the impact of restructuring carried out following leveraged buy-outs and related forms of private-equity based ownership. They have also been undertaking interviews with fund managers and in the City of London with a view to finding out how far considerations based on SRI influence investment decisions. This is related to work they have done on the extent to which norms and codes of conduct relating to corporate social responsibility are influencing human resource strategies in firms, and, more specifically, how far they are leading firms to adopt policies aimed at promoting gender equity and diversity. They have written up part of their results in a paper which considers how effective a 'reflexive' strategy to anti-discrimination law is likely to be, with reference to the UK government's recent discrimination law review (Deakin and McLaughlin, 2008). The CBR team have also completed a paper charting how utility regulation and changes in corporate ownership have influenced the approach taken by BAA (the owner of several British airports) to a major project, namely the construction of Heathrow Terminal 5. The case study shows how, notwithstanding pressures for accountability to shareholders stemming from BAA's privatisation and conversion to listed company status in the 1980s, the company was able to pursue a far-sighted strategy in the construction of Terminal 5 (T5), sharing risk with its main contractors and encouraging a 'partnership' approach in labour relations between trade unions and the construction and engineering firms who were responsible for delivering the T5 project (Deakin and Koukiadaki, 2008). The empirical work of the project teams has been complemented by theoretical studies by Boyer (2007) and Cobbaut (2007).</p>			
<p><u>Deliverables CG:</u></p> <p>D56.3: Contribution to synthesis report on corporate governance work, outline institutional proposals Month 28: this was done.</p>			



The following documents are available at <http://refgov.cpdr.ucl.ac.be/?go=publications>

- **Boyer and Chane-Alune** 2007 “Les IFRS et les besoins en informations non financières”, WP REFGOV- CG-24
- **Deakin and McLaughlin**, 2008 ‘The regulation of women’s pay: from individual rights to reflexive law’, forthcoming in: J. Scott, S. Dex & H. Joshi (eds), *Women and Employment: Changing Lives and New Challenges*, Routledge (London), 2008. WP REFGOV- CG-27
- **Deakin and Koukiadaki** 2008 ‘Building Trust? Governance Processes and Employee Voice in the Construction of Heathrow Terminal 5’ WP-REFGOV-CG-26

Milestones:

Conference, Cambridge, December 2007 (CBR/Camb) : this was held.

Workshop on enterprise-based studies Louvain-la-Neuve, Month 36: a workshop will be held later in 2008 or early in 2009 (a delay was considered desirable so as to allow the project teams to carry out further work following the Cambridge conference in December 2007).



Work package 20 description – CG

Workpackage 20	CG4	Start date or starting event: Month 1
Participants : EUI/Florence (06), U. Trento (18), CBR/Cam (26)		
<p><u>Objectives:</u></p> <p>To study the interaction between mechanisms of corporate governance and inter-firm network relations.</p>		
<p><u>Progress towards objectives:</u></p> <p>The study of wine production is well advanced. A general questionnaire for use in each of the countries has been developed and individual country studies have also been carried out by way of background research. The team based in Trento has carried out a substantial part of the work planned for the case studies in Trentino and in the province of Verona, conducting several openly structured interviews with enterprises (33), entrepreneurial associations (13), professionals (1), banks (2). Some of the enterprises selected for the two case studies (32 out of 60) have also been interviewed with a closed questionnaire. The team based in Catania has worked on the case-study of the 'Etna bianco rosso e rosato d.o.c.' area. This team has investigated the main characteristics of the productive chain in the wine sector; collected some economic data about the relevance of the selected area, compared with the whole region (Sicily); collected general information about the relevant enterprises; and selected a number of enterprises (17) which represent a sizable sample for the case study area. For France, up to May 2008 a preliminary background study of the Loire region has been undertaken and interviews have been conducted, either with openly structured aide memoires or with a closed questionnaire. Open interviews have also been conducted with five institutional public and private actors, such as Interloire, Syndicat de défense des producteurs d'AOC Touraine, the Agricultural Chamber (wine branch), and ITVV (Public Research Institute). In addition, a preliminary study for a background report on the wine industry in Hungary has been carried out by the team at the CEU. This has looked at the general market context of Hungarian wines, the main aspects of Hungarian wine regulation, the organisation of wine production, the structure of the production. Work has also begun on a study of wine production in the Douro valley region of Portugal. Over the past year the Cambridge team has made substantial progress on the completion of the empirical part of the study into the English wine industry. For this study, 35 loosely structured interviews were carried out. The results have been analysed in terms of network theory, with specific reference to the concept of networks of learning (Turner, 2007). The findings highlight the importance of network modes of different types, which can be characterised as follows: 'communitarian', based on learning through informal communication between firms and other actors in the industry; 'distaniciated', involving the building up of ties with overseas producers, mainly from the Champagne region of France; 'organisational', whereby firms enter into long-term contracts with a series of local suppliers; and 'redundant', which describes firms which have largely become self-reliant, preferring to source grapes from their own vineyards. The CBR has also made progress on the media industry side of the network research. Eight loosely-structured interviews have been carried out in the UK with independent producers, commissioners and others involved in the broadcast media in the UK. The intention is to write a paper on recent UK developments, with a comparison of similar trends in Portugal, building on earlier work (Deakin, Pratten and Lourenço, 2008)).</p>		
<p><u>Deliverables CG:</u></p> <p>D56.4: Contribution to synthesis report on corporate governance work, outline institutional proposals month 28: this was done.</p>		



D56.4-b :Interfirms networks a comparative analysis – F Cafaggi and P. Iamiceli

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

- **Cafaggi F. & Iamiceli. P.**, ‘Le reti vitivinicolo tra crescita e coesione: la sfida europea ?’
REFGOV-CG-20
- **Cafaggi. F.**, “Contractual Networks and the Small Business Act”, EUI Working papers, Law 2008/15. REFGOV-CG-21

Milestones:

Conference, Cambridge, (CBR/CBR) December 2007: this was held. In addition, a project meeting was held in Trento in June 2008.



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

During the period under review, WP28 sought 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 the coordination of Member States' policies could be improved in order to produce beneficial effects – and what risks were entailed in this development.

Description of work

The research under this WP was launched in June 2006. Taking as departure point 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 this phase of the research, this WP combined empirical studies with an examination of the development of the 'economic constitution' of the EC, as shaped in particular by the case-law of the European Court of Justice.

1) Flexibilisation of the labour market in the United Kingdom

Catherine Barnard and Simon Deakin (CBR, Cambridge) conducted an analysis of the law relating to employee status, agency work and labour market flexibility in the UK, which was presented at the Law and Society Association Conference in Berlin in July 2007, and is forthcoming in the journal *Lavoro e Diritto*. This paper shows how what began as an issue of the ineffectiveness of labour law, which might be remedied by appropriate legal reforms, has more recently become bound up with debates about the appropriate role of the law in regulating alternative forms of the work contract. In the EU's 2006 Green Paper and its Communication of 2007, the British approach of modulating labour protection according to the status of the individual as an 'employee' or 'worker' was validated, on the grounds of its role in enhancing labour market flexibility. The British approach, in encouraging employers to regard core parts of labour law as, in some sense, optional, has its origins in a certain common law view of the narrow construction of protective labour legislation, which stands in contrast to the more systematic classification of labour contracts found in the civilian systems. Nor does British labour law have a strong conception of labour law as a mandatory floor of rights inserted into the employment relationship of the kind which is to be found in continental systems. The paper argues that these 'structural' features may help to account for the failure of the reforms initiated in the late 1990s to deal with the perennial problem of employment status in British labour law, but another factor has been the political context, in which the goal of a 'flexible labour market' has come to dominate labour law discourse. These empirical findings illustrate the need, in the current context, to approach with scepticism the idea that local experimentation with labour law, combined with peer evaluation mechanisms as in the OMC in employment, constitutes an adequate safeguard against the risks of a fragilisation of the status of employees in the EU Member States' legal systems.

2) The contribution of the case-law of the European Court of Justice : the lessons from the Viking, Laval and Ruffert judgments



Barnard and Deakin provided an assessment, from the point of view reflexive law theory, of the ECJ's important recent judgments in the area where freedom of movement intersects with labour law (Viking, Laval and Rüffert). Each of them gave presentations on this theme to a conference organized by Barnard in Cambridge in February 2008. Their papers will be written up in coming months with a view to publication in the *Cambridge Yearbook of European Legal Studies*.

3) Economic freedoms vs. social rights in the internal market

Both the empirical findings referred to above under 1) and the analysis of the case-law of the ECJ under 2) were complemented by a larger study on the troublesome relationships between (national) social rights and (supranational) economic freedoms within a context of negative integration. This study was conducted by Antonio Lo Faro (Univ. of Catania). Leaving from the examination of the well-known *Viking* and *Laval* cases, the paper prepared by LoFaro examines to what extent national models of social regulation "survive" the full achievement of the economic freedoms in a single - and enlarged - market governed by the mutual recognition principle. It is maintained that, though part of the common constitutional language, the concepts of "Proportionality" and "Fair balance" between social rights and economic freedoms might not be appropriate in order to assure legal certainty. The essay has been published on a monographic issue of the journal *Lavoro e diritto*, entirely devoted to the cross-border provision of services and labour law in the internal market.

4) The relevance of the Common frame of Reference for European contract law

Under a different perspective, Lo Faro has scrutinized the recent developments in European contract law by assessing whether and to what extent such developments could have some effects on labour law. Two conclusions emerge. First, the Common frame of Reference for European contract law - recently released - is an obstacle to the prosecution of a fruitful and productive dialogue which in the last decade had been developing between labour law and civil law doctrine. And second, this is due precisely to the absence of a fundamental rights perspective within the Common Frame of Reference, which in this regard strongly diverges from what in some national systems has been happening with regard to the so-called horizontal effects of fundamental rights in private law. The essay will be published on the journal *Giornale di diritto del lavoro e relazioni industriali* (n. 2/2008).

Outputs

Barnard, C. and Deakin, S. (2007) 'Redefining the employment relationship: flexibility or security? The UK experience in a comparative perspective' paper presented to the Annual Conference of the Law and Society Association, Berlin, July.

Barnard, C. and Deakin, S. (2008) 'Redefining the employment relationship: flexibility or security? Recent UK developments' forthcoming (in Italian translation), *Lavoro e Diritto*.

Deakin, S. (2008) 'The economic policy implications of *Viking/Laval*'. Presentation to CELS conference, Cambridge, February.

Lo Faro A. (2008), 'Diritti sociali e libertà economiche del mercato interno: considerazioni minime in margine ai casi *Laval* e *Viking*', in *Lavoro e diritto*, n. 1, p. 63

Lo Faro A. (2008), "Is a decent wage part of a decent job? Answers from an enlarged Europe, forthcoming in E. Ales, (ed), *Labour Relations in Europe. Selected Topics*, Intersententia.

Lo Faro A. (2008), 'Le Direttive comunitarie in materia di crisi e ristrutturazioni di impresa', forthcoming in *Trattato di Diritto privato dell'Unione Europea*, diretto da G. Ajani e G. Benacchio, Vol. V, *Il lavoro subordinato*, a cura di S. Sciarra - B. Caruso, Giappichelli

A workshop will be held later in 2008 (presumably on September 19th), drawing together the work of the researchers involved in WP28 and considering the general theme of the relationship



between economic integration and fundamental social rights in Europe. This will provide an opportunity to hold a discussion including a variety of stakeholders on the conclusions reached by the research in this WP. The final report shall be closed after this consultation. The report will seek, in particular, to describe the current balance between economic freedoms (freedom to provide services and free movement of goods, as well as freedom of establishment and free movement of capital) and social rights (mainly ensured by national legislation), and in that context, provide an empirical assessment of the different approaches which have been taken to both the risks and opportunities presented by the current framework, ranging from democratic experimentalism and the promotion of decentralized approaches to reflexive law approaches.

Deliverables

See output listed above

Available at <http://refgov.cpdr.ucl.ac.be//?qo=publications>

D57.2 Deakin, S. (2008) 'The economic policy implications of *Viking/Laval*'. Presentation to CELS conference, Cambridge, February. REFGOV-FR-18

D 58 Final report : This final report shall be made available after the final workshop, held in September 2008, which will provide an opportunity for a multi-stakeholder consultation on the results of the research achieved under this WP.

Milestones and expected result

The main result of this workpackage will be its final report, based on the multistakeholder seminar specific to the research on fundamental social rights organized in Cambridge, in September 2008 in order to present the provisional conclusions.



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-raising 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 conducted at the the Boltzmann Institute of Human Rights was launched in June 2006 on the basis of the Guidelines for the Thematic Research in the 2nd Phase (June 2006-June 2008). It aimed at analysing the policy field of European anti-discrimination legislation and policies through the lenses of the hypothesis at the basis of the REFGOV research programme. It sought to map the main actors of this policy area, to clarify their relevance and modes of interaction, the participation in formal and informal decision-making procedures. It paid particular attention to the implementation of European policies into national legislation, gaps and challenges and current developments. The methodology of the research included reflections on the underlying theory of governance, literature research/case law/media/legal research (including historical-teleological interpretation), policy analysis, qualitative interviews with stakeholders and concept building.

Preliminary findings

There is a multitude of actors relevant for decisions in European Union anti-discrimination policies – formal ones and informal ones –, who are involved in formal decision making procedures and via informal channels. Decision-making has been characterized very much by coincidence and by individuals caring about the topic ; and there has been a strong element of path-dependency in the development of policies in this field. This is valid for all EU institutions as well as for NGOs, NGO networks or Member States' initiatives.

Besides, decision-making has been characterized by reciprocity between the actors, which can be illustrated by the development of the topics focussed on in the framework of the Community Action Programme to combat Discrimination. Permanent formal and informal exchange between the different actors has led to an ever-changing approach towards concepts of discrimination, relevance and methods of awareness raising and training, developments of strategies to fight discrimination, creating openness to promoting equality, etc.

By forming a legal framework gaps in implementation became visible, which influenced the initial approach towards methods and measures of implementation. Among other things it highlighted the fact that structural discrimination and discrimination mechanisms in society are still in place and difficult to overcome and that new strategies had to be developed to combat them. On the other hand the recognition of the relevance of structural discrimination has changed the approach insofar as combating discrimination and fighting for equality is more and more connected with aspects of social inclusion and poverty reduction. This development brings about new challenges as these policy fields are not covered by Art. 13 TEC as they do not fall under the competence of the



European Union. New methods and possibilities of reflexive governance and mutual learning, e.g. within the Open Method of Coordination, will have to be developed.

Given these findings the policy field of anti-discrimination can be qualified as characterised by a process based approach, determined by ongoing flexibility and change. It does show aspects of mutual learning. Many actors are not aware of their roles and the potential they have in these processes. However, decision making is characterised by a high level of coincidence and governance structures have developed more in an organic than a strategic way. If the present structures are used as a basis for a more strategic approach including ongoing readiness for change, enabling stakeholders to test what works best, which paths should be taken and what should be left out, the policy field of anti-discrimination might serve as a model for a governance structure with a high degree of reflexivity and involvement of relevant stakeholders. European dialogue in the field of anti-discrimination was an essential element in triggering civil society dialogue in many Member States, where it opened a window of opportunity for more inclusive forms of governance.

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

The BIM research team consisting of Marta Hodasz, Barbara Liegl and Katrin Wladasch continued to research relevant literature on anti-discrimination legislation and policies, ECJ case law, ECtHR case law, relevant EU documents (decisions, regulations, directives, white papers, green papers, EC proposals, EP resolutions etc) and on governance theories, questions of accountability and subsidiarity. The main focus during the first half of the third year's working period was on the identification of relevant stakeholders in European anti-discrimination policies. Interviews with representatives of European NGOs, independent bodies and independent experts, the European Commission and social partners were conducted between June and December 2007. Attempts to involve representatives of the European Parliament were not successful. The team travelled to Brussels in October 2008 to conduct interviews with Brussels based stakeholders and to attend the CONNEX-REFGOV Seminar "EU Governance towards a new architecture" on 26 October 2007. The conference gave new input for the theoretical part of the research whilst the interviews helped to develop a very practice-orientated picture of European anti-discrimination policies.

On 21 April 2008, the Final Seminar was organised in Wien. It was given the title "**EU Anti-Discrimination Policies – Review and Future Prospects from a Governance Point of View**" and aimed at presenting the findings of the research team to stakeholders of anti-discrimination issues and to an interested public and at benefiting from exchanging experiences between practitioners and scientists. The seminar was supplemented by a panel discussion on the topic "**How Democratic are EU Anti-Discrimination Policies?**". The Programme and Conclusions of the Seminar can be found in a separate report on the seminar provided to the project management.

Since January 2008, most of our efforts were dedicated to the drafting of the final report on "Reflexive Governance in the Public Interest – Anti-Discrimination Policies" bringing together findings from research, interviews with stakeholders and from the final seminar and analysing these findings under the hypothesis of reflexive governance.

Activities:

- Research relevant literature on anti-discrimination legislation and policies, ECJ case law, ECtHR case law, relevant EU documents (decisions, regulations, directives, white papers, green papers, EC proposals, EP resolutions etc).
- Research relevant literature on governance theories, questions of accountability and subsidiarity questions
- Identification of important key players at EU as well as national level in the field of anti-discrimination
- Interviews with



- Carlotta Besozzi, Director EDF, 24th October 2007
- Gesa Böckermann, European Commission DG V, Action against Discrimination, Civil Society, 24th October 2007
- Pascale Carhon, Diector ENAR, 22nd May 2007, Telephone interview
- Isabelle Chopin, Executive Director Migration Policy Group, 23rd October 2007
- Ralf Drachenberg, Social Affairs Advisor, Union Européenne de l'artisanat et des petites et moyennes entreprises (UEAPME), 23.10.2007
- Deidre Hodson, European Commission, Anti-Discrimination and Civil Society, Policy Unit, 23.10.2007
- Caspar Einem, Member of the working groups „Legal Personality“ and „Social Europe“ of the European Convention, 27.09.2007
- Helmut Graupner, Member of ILGA, 02.10.2007
- Ivan Ivanov, Director of the European Roma Information Office, 24.10.2007
- Fiona Kinsman, European Commission, Anti-Discrimination and Civil Society, Legal Unit, 24.10.2007
- Kurt Krickler, founding Board Member ILGA Europe, Board Member HOSI Wien and Klagsverband, 8.5.2007, Telephone Interview
- Ingrid Nikoly-Leitner, Board Member Equinet, Director Ombud for Equal Treatment (National Equality Body) Austria, 29.2.2008
- Bernard Lonnoy, Human Resources and Equality for Gays and Lesbians in the European Institutions (EGALITE), 23.10.2007
- Anne-Sophie Parent, Director European Older Persons Platform, 23rd October 2007
- Fernando Peireira, European Commission DG V, Action against Discrimination, Legal Unit, 24th October 2007.
- Anton Pelinka, Member of the Jean Kahn Commission and Member of the EUMC Management Board, 02.07.2007
- Patricia Prendiville, Director ILGA Europe, 11th September 2007, Telephone Interview
- Roshan di Puppo, Director Platform of European Social NGOs, 16th October 2007, Telephone Interview
- Dieter Schindlauer, LegalNet, Country Expert for Austria, 20th February 2008, Telephone Interview
- Jeanne Schmitt, Senior advisor, Social Affairs BusinessEurope, 24.10.2007
- Adam Tyson, European Commission, 24th October 2007
- Anthony Williams, EDF Board Member, EU Office of OEAR, 27th April 2007

Deliverables FR6

D59 Preparation of report : - background paper final seminar and for draft report - delivered

D60 Final version of report on the thematic application - September 2008

Milestones and expected result

- Attendance of the CONNEX-REFGOV Seminar “EU Governance towards a new architecture” on 26 October 2007.
- Organisation of a Working Seminar on “**EU Anti-Discrimination Policies – Review and Future Prospects from a Governance Point of View**” on 21 April 2008
- Organisation of a penal discussion on the topic “**How Democratic are EU Anti-Discrimination Policies?** On 21 April 2008
- Drafting the Final Report “**Reflexive Governance in the Public Interest-Anti-Discrimination**”



Work package 30 description – FR

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

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 improve 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 WP was launched in June 2006 taking as departure point 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 this phase of the research. The research into this specific field has been carried out in collaboration with the researchers involved in the WP 31, also also from the Vrije Universiteit Brussel.

In the course of this year the team refined its understanding of the 'reflexive governance' approach. It elaborated a perspective relevant for the field studied. And it completed an in-depth analysis of EU law and policy-making regarding the protection of personal data.

The work first focused on continuing the exploration of how the 'reflexive governance' approach could be beneficial to improve the understanding of the field. The team had first explored the hypothesis of 'reflexive governance' on the basis of the work done in the theory of the Norm Unit of the REFGOV project (see previous periodic activity report). This work was complemented with a review of other interpretations, notably the so-called 'democratic experimentalist' approach, on the one hand, and the *foucauldian* analysis of 'gouvernementalité', on the other hand (various events were attended/organized on these issues).

At the same time, progress was consolidated in the mapping of the field. The mapping was initially structured following the already mentioned Guidelines. While in the previous period consideration had mainly be given to third pillar issues (see previous periodic activity report), in this period the research aimed at obtaining the whole picture of EU law and policy-making regarding data protection. A major synthesising effort was provided prior to the final workshop, for which a specific background note was prepared.

The workshop gathered representatives from EU institutions, data protection authorities, civil society and academia. It was a great opportunity the dissemination of results, as well as for the collection of feedback and new input before the completion of the final report. Moreover, it was instrumental in defining key conclusions of the research.

The main findings and related open questions resulting from the research on EU law- and decision-making regarding the protection of personal data can be divided in two main themes: (a) the issue of representation regarding the protection of personal data and (b) the role of EU institutions in the



integration of data protection concerns in the EU decision-making process. They are documented in greater detail in the final report. The main findings were presented at the seminar organised at the VUB on the 16th of May 2008.

Concerning dissemination efforts, it needs also to be noted that during the period covered by this report notable efforts were provided for the preparation of a contribution now already published as a chapter in a collective publication (see Gloria Gonzalez Fuster and Pieter Paepe, "Reflexive Governance and the EU Third Pillar: Analysis of Data Protection and Criminal Law Aspects" in Elspeth Guild and Florian Geyer (eds.), *Security versus Justice? Police and Judicial Cooperation in the European Union*, Ashgate, pp. 129-150.) .

Moreover, a presentation was given in the framework of the IES Research Colloquium, based on a paper distributed on-line.

Activities

August 21, 2007: Presentation of the paper by Gloria Gonzalez Fuster and Pieter Paepe, *Reflexive Governance in the Public Interest (REFGOV): Thematic applications in the fields of data protection and criminal law* at the IES Research Colloquium, at IES (VUB), Brussels.

September 4, 2007: Internal meeting at the VUB between the research team working on data protection and the research team working on criminal law. Assessment of answers provided to the Guidelines for the Second Phase.

October 25-26, 2007: Attendance and active contribution to debates at the REFGOV/EUROGOV seminar *EU Governance: Towards a New Architecture?* (Brussels).

January 14, 2008: Internal meeting at VUB between the research team working on data protection and the research team working on criminal law. Presentation by G. González Fuster on the notion of 'governance' as in 'reflexive governance'. Open discussion.

January 17, 2008: Meeting at the IES with Anne Meuwese (Universiteit Leiden) and discussion on her research on impact assessments and EU governance.

January 28, 2008: Meeting at VUB for a discussion of the notions of 'reflexive governance' and 'gouvernementalité' as developed by Michel Foucault. Presentation by Nathalie Trussart (ULB). Key discussant: Laurent de Sutter (LSTS/VUB). Active participation of the research team working on data protection and the research team working on criminal law.

April 25, 2008: Internal meeting at the VUB between the research team working on data protection and the research team working on criminal law. Discussion of progress on draft reports and preparation of workshop.

May 5, 2008: Internal meeting at the VUB. Preparation of workshop.

March 26, 2008: Meeting on 'governance' at IES together with IES researchers working for the ASCEE, a EC funded project on project dealing with innovative approaches for the promotion of sustainable consumption. Presentation of the REFGOV approach by G. González Fuster.

Deliverables FR6

D62 Final report on the thematic application of the report: delivered REFGOV- FR-19

D62-64 -1 Seminar 16-05-2008 report (in common with WP 31) and background paper.

**Milestones and expected result**

- The main result of this work-package is its final report, delivered in June.
- A seminar was organized in October 2007 with EU practitioners in collaboration with the CONNEX research project (<http://www.connex-network.org/>) whereby an opportunity was created for the academic researchers to interact with EU public servants working in the field and for the REFGOV hypothesis to be disseminated.
- **May 16, 2008:** “Data Protection and Criminal Law in the European Union (EU): Towards ‘Reflexive Governance?’” multi-stakeholder workshop, with the preliminary conclusions of this work-package.



Work package 31 description – FR

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

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

Work on this WP was launched in June 2006, taking as departure point 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 this phase of the research. The research into this specific field has been carried out in collaboration with the researchers involved in the WP 30, also also from the Vrije Universiteit Brussel. In particular, joint seminars and publications were prepared, in collaboration between the two teams.

This WP sought to examine the construction of the European Criminal Area – as a component of the Area of freedom, security and justice –, using the lenses of the reflexive governance hypothesis. It aimed therefore to map the governance techniques emerging in this area (in particular techniques such as peer review or, more broadly, evaluation mechanisms ; impact assessments ; consultations in the preparatory phase of legislation). It then asked whether these developments could be linked to the emergence of a new way of defining the ‘public interest’ in this field, one which would recognize that the public interest is in permanent redefinition and that it can only be understood as the result of a joint construction of the problems to be addressed and of the solutions to be explored by the stakeholders involved in these processes.

The main research in this WP was conducted within the VUB by Pieter Paepe, under the direction of Prof. De Hert. That work developed on two levels. The first level was conceptual. On the basis of the work done by the theory of the Norm Unit of the REFGOV project under the auspices of Jacques Lenoble and Marc Maesschalck, the criminal law research team and the team dealing with data protection have searched to contrast the reflexive governance hypothesis with the Foucauldian concept of ‘gouvernementalité’. Several meetings were organized to compare the concepts of reflexive governance and gouvernementalité, with a view to come to a better understanding of the theoretical foundations of the reflexive governance hypothesis. This should, ultimately, also benefit to the end report on the application of this hypothesis in the EU criminal law domain. At a second level, the research focused on the EU’s third pillar (Title VI of the EU Treaty) and identified several mechanisms through which the public interest involved in this area of freedom, security and justice can/could be constructed. A distinction has been drawn between pre- and post legislative instruments for identifying the public interest (though some instruments figure in both the pre- and the post-legislative phases). These instruments include, inter alia, impact assessments, specific instruments of so-called peer evaluation, reporting obligations, the use of comparative studies by experts, the collection of expertise through specifically designed groups etc. The work on evaluation processes – an emerging but potentially very significant theme in this area – was prepared through two papers of O. De Schutter. One of these papers is already published (‘The role of fundamental rights evaluation in the establishment of the area of freedom,



security and justice', in Maik Martin (ed.), *Crime, Rights and the EU. The future of police and judicial cooperation*, Justice, London, 2008, pp. 44-88). The other paper shall appear in a collection of essays on experimentalist governance in the EU (O. De Schutter, 'The Role of Evaluation in Experimentalist Governance: Learning by Monitoring in the establishment of the Area of Freedom, Security and Justice', in Charles F. Sabel and Jonathan Zeitlin (eds), *Experimentalist Governance in the EU*, Oxford University Press, Oxford (under preparation)).

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). This paper was presented by Violeta Moreno Lax at the CONNEX Seminar on 'EU Governance: Towards a New Architecture,' held at the University of Wisconsin in Madison on 20-21 April 2007, which O. De Schutter was unable to attend.

The research under this WP has been presented during a workshop, organized at the VUB on 16 May 2008. The first session of this workgroup was devoted to the presentation of the main results of our research and a discussion between the invited participants (which included Bart De Schutter (IES), François Kirsten (University of Utrecht), Caroline Morgan (European Commission), Yves Pouillet (FUNDP, University of Namur), Piet Hein van Kempen (University of Nijmegen), Roger Smith (Justice), Maartje De Schutter (Liga voor de Mensenrechten), Martin Wasmeier (European Commission), Yves Moïny (OLAF), Sergio Carrera (CEPS), Jürgen Schurr (Redress), Kees Groenendijk (Meijers Committee), Serge Gutwirth (VUB), Paul De Hert (VUB) and Violeta Moreno Lax (UCL)). The second part of the workshop invited the representatives of civil society organizations to present their experiences of dealing with and helping to construct the public interest in the area of freedom, security and justice.

Prior to the workshop a specific background note was distributed among the participants. The results of the discussions between the participants will be incorporated in the final report, expected to be delivered end of August 2008.

Activities

List of meetings organized within the REFGOV framework – Criminal law

21 August 2007: Gloria Gonzalez Fuster & Pieter Paepe, "Reflexive Governance in the Public Interest (REFGOV): Thematic applications in the fields of data protection and criminal law", IES Research Colloquium.

25-26 October 2007: Attendance and active contribution to debates at the REFGOV/EUROGOV seminar *EU Governance: Towards a New Architecture?* (Brussels).

14 January 2008: Internal meeting at VUB between the research team working on data protection and the research team working on criminal law. Presentation by G. González Fuster on the notion of 'governance' as in 'reflexive governance'. Open discussion

17 January 2008: Organization of meeting with Anne Meuwese, who came to discuss her Ph.D. research about impact assessments (defended on 6 February 2008 at the University of Leiden).

28 January 2008: 'gouvernementalité' meeting. This meeting aimed to contrast the reflexive governance hypothesis with the work of Michel Foucault on the notion of 'gouvernementalité'. (presentation by Nathalie Trussart).

25 April 2008: internal meeting with Paul De Hert, Serge Gutwirth and Gloria Gonzalez Fuster to discuss progress of the research and the texts written so far.

5 May 2008: Internal meeting at the VUB. Preparation of workshop.

16 May 2008: REFGOV workshop organized at the IES (for a description, see **D62- 64-1** : the seminar report)

List of publications 2007-2008

Pieter Paepe, book review of 'La confiance mutuelle dans l'espace pénal européen/Mutual trust in the European Criminal Area', *Panopticon*, 2007/4, 70-74.



Gloria Gonzalez Fuster and Pieter Paepe, "Reflexive governance and the EU 3rd pillar: analysis of data protection and criminal law aspects", in E. Guild and F. Geyer (eds.), *Security versus Justice? Police and Judicial Cooperation in the European Union*, Aldershot, Ashgate, 2008, 129-150 (note : this publication was already listed under WP30, since this was a joint effort of researchers from both WPs).

Olivier De Schutter, 'The role of fundamental rights evaluation in the establishment of the area of freedom, security and justice', in Maik Martin (ed.), *Crime, Rights and the EU. The future of police and judicial cooperation*, Justice, London, 2008, pp. 44-88

Olivier De Schutter and Julie Ringelheim, "Ethnic Profiling: A Rising Challenge for European Human Rights Law", *Modern Law Review*, 2008, vol. 71, No. 3, pp. 358-384

Olivier De Schutter, 'The Role of Evaluation in Experimentalist Governance: Learning by Monitoring in the establishment of the Area of Freedom, Security and Justice', in Charles F. Sabel and Jonathan Zeitlin (eds), *Experimentalist Governance in the EU*, Oxford University Press, Oxford (under preparation)

Deliverables

D64 Final report on criminal law thematic research (current still undergoing revisions, but included as work-in-progress as an appendix to this activity report)

D62- 64-1 Seminar 16-05-2008 report (in common with WP 31) and background paper.

D75 Olivier De Schutter, 'The role of fundamental rights evaluation in the establishment of the area of freedom, security and justice', in Maik Martin (ed.), *Crime, Rights and the EU. The future of police and judicial cooperation*, Justice, London, 2008, pp. 44-88- available as working paper REFGOV-FR-21

D76 Olivier De Schutter and Julie Ringelheim, "Ethnic Profiling: A Rising Challenge for European Human Rights Law", *Modern Law Review*, 2008, vol. 71, No. 3, pp. 358-384 - available as working paper REFGOV-FR-22

D75-D76 available as working paper Working paper series REFGOV-FR-
<http://refgov.cpd.r.ucl.ac.be/?go=publications>

D77 Olivier De Schutter, 'The Role of Evaluation in Experimentalist Governance: Learning by Monitoring in the establishment of the Area of Freedom, Security and Justice', in Charles F. Sabel and Jonathan Zeitlin (eds), *Experimentalist Governance in the EU*, Oxford University Press, Oxford (under preparation) see copy of the chapter -

Milestones and expected result

- The main result of this work-package is its final report (available in draft form in July 2008 and still to undergo final revisions at the time of the completion of this activities report).

- A seminar was organized on 25-27 October 2007 with EU practitioners in collaboration with the CONNEX research project (<http://www.connex-network.org/>) whereby an opportunity was created for the academic researchers to interact with EU public servants working in the field and for the REFGOV hypothesis to be disseminated.

- **May 16, 2008:** "Data Protection and Criminal Law in the European Union (EU): Towards 'Reflexive Governance?'" multi-stakeholder workshop, workshop, with the preliminary conclusions of this work-package.



Work package 33 description – FR

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

Objectives

This workpackage was not initially anticipated in the workprogramme. We decided to introduce it in order to better meet the challenge 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 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 this phase, in June 2006. 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. The objective of this workpackage is to establish such a link. It offers to prepare a 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, a number of papers were prepared during the period covered by this report on activities. These papers are in addition to the thematic studies developed during the second phase of the research (June 2006-June 2008). They examine transversal issues, of interest to all the research teams working under the ‘Fundamental Rights’ segment of the REFGOV research :

1. The paper ‘Rights in Conflict: the European Court of Human Rights as a Pragmatic Institution’, initially presented by Olivier De Schutter at the University of Ghent on 15-16 December 2006 and now published in a volume resulting from this conference (Eva Brems (ed.), *Conflicts Between Fundamental Rights*, Intersentia, Antwerp-Oxford-Portland, 2008, pp. 169-216), was prepared by Olivier De Schutter and Françoise Tulkens, the Belgian judge at the European Court of Human Rights. It aims to identify what a pragmatist approach to legal adjudication, based on the idea that adjudication can be understood as a learning process, can contribute to the question of conflicts between fundamental rights, and whether this may constitute an improvement in comparison to the different techniques developed in order to solve this issue. While the case-law of the European Court of Human Rights is taken as a departure point, the lessons can be extended beyond this specific jurisdiction. Fundamental rights are usually thought of as rules, which prescribe certain arrangements and exclude others ; and it is the role of courts, in the traditional view, to expound their significance by applying predefined rules to the facts submitted to them. The authors show that this view, characteristic of the formalistic conception of law, breaks down most clearly in contexts where one set of facts calls for the application of different rules which are not hierarchically ordered. Such situations oblige us to examine the virtues of a pragmatic conception of legal adjudication, and to explore the procedural implications of such a conception, in which the



principles guiding the judicial reasoning are permanently reinvented in the course of their implementation. The paper offers such an examination, by studying the different approaches which have been adopted towards situations where fundamental rights conflict with one another. It first sets aside the situations where, because of its source, the 'conflict between rights' is in fact more imaginary than real, and can be addressed through classical, hierarchical methods (section II). It then examines where such classical methods fail, whether we seek to rely on the usual 'necessity' test generally applied to the restrictions imposed on the rights and freedoms recognized in the Convention, on the metaphor of the 'balancing of rights', or on the doctrine of the 'margin of appreciation' (section III). It then explores the procedural solution, based on a pragmatic understanding of legal adjudication (section IV). Taking as its departure point the idea of 'practical concordance' developed in German constitutional law, it illustrates both the promises and the limitations of this approach. The alternative it offers proposes to examine how the background creating the conflict between rights may have to be affirmatively transformed in order to avoid a repetition of the conflict, and how the failure by the State to thus remove the source of the conflict may engage its international responsibility.

2. The paper on 'The Framework Convention on the Protection of National Minorities and the Law of the European Union', authored by Olivier De Schutter (CPDR-UCL), has now been published in an edited collection (Olivier De Schutter, 'The Framework Convention on the Protection of National Minorities and the Law of the European Union', Olivier De Schutter, in A. Verstichel, A. Alen, B. De Witte and P. Lemmens (eds.), *The Framework Convention for the Protection of National Minorities: a Useful Pan-European Instrument?*, Intersentia, Antwerp-Oxford-Portland, 2008, pp. 231-272). It constitutes an attempt to show how the rights of minorities could be mainstreamed in the EU law- and policy-making. It also seeks to contribute to a debate concerning the relationship between the fight against discrimination in the EU, and the protection and promotion of minority rights. Whereas the EU has spectacularly occupied the field of antidiscrimination in the recent years, in some respects even overshadowing the efforts made by the Council of Europe in this field, it has been reluctant to address the question of minority rights, some Member States taking the view that the latter route was unnecessary if a strong antidiscrimination agenda was pursued. Yet, enlargement of the EU has brought the question of minority rights to the forefront of the political debate. Whether the EU should develop a specific policy aiming at the integration of minorities, which tools it has at its disposal to do so, and how this would affect the relationships between the European Union and the Council of Europe, are among the questions this paper seeks to address. The lessons, particularly about the idea of mainstreaming fundamental rights in the EU and about the relationship between mainstreaming and the principle of conferral in the exercise by the EU of its competences, are relevant far beyond the area of the rights of minorities.

3. The paper prepared by Olivier De Schutter with Israel de Jesus Butler (Univ. of Lancaster), and now accepted for publication in the *Yearbook of European Law*, discusses the relationship of the EU to international human rights standards. It argues that the EU should either accede to existing international human rights treaties, concluded under the framework of the United Nations or the Council of Europe, or should be monitored by the expert bodies established under these instruments. First, it highlights the need for external international supervision of the Union by explaining the current shortcomings of human rights protection at the internal level. It argues that the failure of the European Union to recognize its obligations under the international law of human rights leads to an interpretation of human rights which is narrower than that already accepted by its Member States and third states; that it creates difficulties for the uniform application of EU law; and that it may result, finally, in a lowering of the level of protection for individuals. Second, the paper explores the different techniques by which the Union could strengthen its links to the human rights standards developed within the Union Nations or the Council of Europe. It examines the possibility of accession by the European Union to international or European human rights instruments. It also reviews alternatives to accession, namely supervision of the European Union by the relevant monitoring bodies established under those instruments even in the absence of formal membership of those treaties. Overall, by examining how the Union could comply with international human rights law despite lacking a general competence to protect and promote human rights, the paper offers a contribution which the different teams of the REFGOV Sub-Unit on fundamental rights may seek inspiration from.



4. A fourth paper discusses the establishment of the Fundamental Rights Agency of the EU, as one of the major actors for the future promotion and protection of fundamental rights in the EU. This paper originated in a course taught by Olivier De Schutter at the European University Institute in Florence (Academy of European Law), and it will be published in the Collected Courses of the Institute ('The EU Fundamental Rights Agency: Genesis and Potential', Olivier De Schutter, in Kevin Boyle (ed.), Collected Courses of the Academy of European Law (European University Institute, Florence), Oxford University Press, Oxford, 2008). It proposes a detailed examination of what inspired the establishment of the Fundamental Rights Agency and which potential this agency represents for the launch of an active fundamental rights policy of the EU.

5. Finally, a fifth paper, by Veerle van den Eeckhout (Leiden), builds further on the article "Promoting Human Rights within the Union: the Role of European Private International Law", presented last year under this WP of the REFGOV research programme. Like the four other contributions, this study cuts across different thematic areas, including in particular fundamental social rights and company law, but also family law and civil liability. Van den Eeckhout examines the risks and opportunities presented by the 'decentralized' character of private international law (PIL) rules in the EU (i.e., the fact that those rules are set by States with only partial harmonization at EU level). She asks whether there is a need for a central European regulator in the regulation of PIL issues. Should regulation of PIL issues at European level be welcomed, if one wants to avoid the risks of unregulated regulatory competition and if one wants to increase the level of human rights protection within the Union? In an attempt to answer this question, the article analyzes – seen from this perspective - the manner in which European authorities intervened in PIL so far, and discusses current developments and possible future actions. The analysis of the European interference in PIL in the article covers the promulgation of pure PIL-rules at European level ; the European regulation of PIL-issues which occasionally occur in regulating other areas of law ; and the control of national PIL-legislation by the European Court of Justice. To that end, the author examines a number of case studies, in which either PIL issues were regulated at EU level, or the settlement of PIL issues were left to the Member States: international labour law, including transnational posting of workers; international tort law, with particular emphasis on international environmental pollution and international defamation; international family law, including international family law in interaction with other branches of law; international company law; international contract law, with particular attention to consumer contracts and the project to create a European Civil Code. She concludes that European interference in PIL shows a "double face". The potential for European regulation of PIL issues in terms of promoting human rights and stimulating Member States to implement "the best law", is high and attractive. But at the same time, it is important to be warned against creating dynamics of race to the bottom and reduction of the level of protection of weaker parties, precisely as a result of European interference in PIL issues. Consciousness of these opportunities and risks is necessary if one is discussing ways of avoiding unregulated competition and ways of encouraging the exchange of best practices.

Deliverables

D 78 "Rights in Conflict: the European Court of Human Rights as a Pragmatic Institution", Olivier De Schutter and Françoise Tulkens, available as working paper REFGOV- FR-14

D79 "The Framework Convention on the Protection of National Minorities and the Law of the European Union", Olivier De Schutter, as working paper REFGOV- FR-15

D80 "Binding the EU to International Human Rights Law", Israel de Jesús Butler and Olivier De Schutter, available as working paper REFGOV- FR-16

D81 "The EU Fundamental Rights Agency: Genesis and Potential", Olivier De Schutter, in Kevin Boyle (ed.), Collected Courses of the Academy of European Law (European University Institute, Florence), Oxford University Press, Oxford, 2008, as working paper REFGOV-23



D82 “Competing norms and European private international law :Sequel to “Promoting Human Rights within the Union: the Role of European Private International Law”, Veerle van den Eeckhout, as working paper REFGOV- FR -20

See Working papers at <http://refgov.cpd.r.ucl.ac.be/?go=publications>



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></p> <p>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 (the incorporationist thesis) and more particularly to show how current discussion in theory of law is closely linked to developments in theory of governance.</p> <p>This work on issues in theory of the norm constitutes an epistemological reflection at the foundational level of research on theory of governance.</p>		
<p><u>Progress towards objectives:</u></p> <p>For the purpose of dissemination, various events were organized between June 2007 and May 2008. Two took place in Italy: first an important seminar in Ragusa and second, as follow up to the first one, a seminar in Padua. A third seminar took place in Louvain-la-Neuve, Belgium.</p> <ul style="list-style-type: none"> - The Ragusa seminar, organised by A. Andronico of the University of Catania, Sicily, took place in July 2007. J. Lenoble attended. The questions and issues identified during the seminar were subsequently discussed in greater depth by the same participants at the Padua seminar, held in September and October 2007. - The Padua seminar was organised with a view to developing a specific dissemination policy for the theoretical hypothesis developed by the TNU as part of the REFGOV research project. The dissemination policy was based on the desire of two research centres in legal philosophy to develop studies oriented toward the theoretical hypothesis constructed by REFGOV's TNU. The research centres in question are the Centro Studi Teoria e Critica della Regolazione Sociale (University of Catania, Italy) and the research team in legal philosophy at Université de Sherbrooke (Sherbrooke, Quebec, Canada). <p>The Padua seminar was organised by D. Canale and G. Tuzet of the University of Padua. Their aim was to discuss certain epistemological issues in theory of the norm related to their studies in legal pragmatism, as well as the theoretical research on reflexive governance being conducted by REFGOV's TNU. The seminar mainly focused on epistemological issues related to D.Canale's paper, using R. Brandom's pragmatism to elucidate the question of the norm ("Legal Inferentialism: Toward a Pragmatics of Semantic Content in Legal Interpretation") and on J. Lenoble's paper on "The Requirements of the Pragmatist Turn and the Redefinition of the Concept of Law". On the same occasion, there was also discussion of the issue of the connection between legal theory and the theory of governance that should result from the "overcoming" of the epistemological inadequacies of a pragmatist approach to the norm.</p> <p>Certain sectors of the academic world proved interested in engaging with current discussion in theory of law on the basis of recent developments in theory of governance, specifically from the perspective of hypotheses on reflexive governance developed in REFGOV. Thus two research venues are currently being established in connection with hypotheses developed in REFGOV: Centro Studi Teoria e Critica della Regolazione Sociale (A.</p>		



Andronico of the University of Catania) and the research team on philosophy of law in the Faculty of Law at Université de Sherbrooke, Quebec, Canada (L. Lalonde and S. Bernatchez. With a view to the dissemination of our research, J. Lenoble is actively involved in dialogue with the researchers at these two venues and took part in the first seminar organised by A. Andronico in Ragusa in July 2007 and in a scientific mission with L. Lalonde and S. Bernatchez in May 2008.

- M. Maesschalck organised a major international colloquium in Louvain-la-Neuve as a site for engagement between the TNU's hypotheses and the various philosophical theories of the learning of norms. Under the theme "Tâches actuelles et enjeux d'une philosophie des normes" (Current Tasks and Issues Raised by a Philosophy of Norms), it was held on 24, 25, and 26 October 2007. The colloquium's purpose was philosophical discussion of research perspectives (like our own) that seek to combine the pragmatist turn in the humanities and social sciences with an epistemology of collective action. A major initial problematic emerged from the intersection of various papers on the issue of pragmatism and normative identities. The colloquium also provided significant space for the exploration of the issue in fields of intervention. This was focused mainly on North America. The fields in question were the ethics of research, professional ethics (in medicine and engineering), environmental ethics, new forms of collective action in civil society, and legal mediation procedures of the New Public Law Litigation type. The new philosophy of norms was also placed in dialogue with the disciplines of social psychology and cultural anthropology. Several members of the philosophy cell presented papers. The research hypotheses that underpin the TNU's theoretical advances were thus given a very broad forum for discussion. The proceedings of the colloquium will be published. M. Maesschalck has already published a working paper that provides an overview of the state of progress of research and highlights the value of the genetic approach in engaging with current discussion in the philosophy of norms from the perspective of reflexive governance. (See M. Maesschalck, "Quelle philosophie des normes aujourd'hui? Gouvernance et apprentissage social", in *Les Carnets du Centre de Philosophie du Droit*, n° 138, 2008.)

Professor Günther (University JWG Frankfurt) and his collaborator, Camil Ungureanu, have worked to prepare materials for a discursive theory of political learning processes which relates to the "Synthesis Report" of Jacques Lenoble. They started to write a paper based on these materials, where they will integrate Dewey's theory of democratic experimentalism and current theories of reflexive management in organisations (Argyris/Schön) into a discursive theory of justification. Camil Ungureanu has also intensively worked on the edition of a two-volume book about critical debates on Habermas' Legal Theory, which will be published in 2008, after he has finished his dissertation at the EUJ in Florence.

Professor K. Günther, had his article "Droits, Etat et Theorie des la Discussion" (published in *Raison Publique*, 6/2007, p. 129-145) translated into English in 2008 (see Working Paper REFGOV-TNU-3 at <http://refgov.cpdr.ucl.ac.be/?go=publications>). This article will be published in the collected volume: Christian Joerges/ Klaus Guenther/Camil Ungureanu (Eds.), *Critical Debates on Habermas' Legal Theory*, Avebury: Ashgate 2008 (forthcoming). A modified version of this article will be published in German in: W. Brügger/U. Neumann (Eds.), *Rechtsphilosophie im 21. Jahrhundert*, Frankfurt/Main: Suhrkamp, 2008 (forthcoming).

Prof. K. Günther also worked on the issue of deficits in democratic legislation concerning security laws against terrorism. Legislation in this field is characterised by a violation of the principle of impartiality, because the public and the legislative bodies decide about laws from which they know that they will never be applied to them, but only to suspects of a certain kind and to minorities. An article on this issue "Freedom and Security" was published in German: "Weltbürger zwischen Freiheit und Sicherheit", in: Manfred Zuleeg (Ed.), *Europa als Raum der Freiheit, der Sicherheit und des Rechts*, Baden-Baden: Nomos-Verlag, 2007. This article was also translated into English and into Japanese (see Working Paper REFGOV-TNU-4 (in German) at <http://refgov.cpdr.ucl.ac.be/?go=publications>).

**Milestones**

- Ragusa seminar, July 2007
- Padua seminar, October 2007
- International colloquium, "Tâches actuelles et enjeux d'une philosophie des normes", Louvain-la-Neuve, 24, 25, and 26 October 2007.



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>Two “deliverables” were contracted for: D 73 and D 74. The objective of these two deliverables was to deepen the findings of <i>Synthesis Report 1</i> in two respects. On one hand, reflection bore on a deeper assessment of the inadequacies identified in the pragmatist approach to reflexive learning advanced by D. Schön, C. Argyris, and M. Rein (second version of the pragmatist approach). On the other hand, based on the preceding, an effort was made to give an in-depth account of the approach developed by the TNU, called the genetic approach, in its work to make a contribution to a broadened understanding of the conditions for success of the learning operation. This contribution consists of organising a specific “pragmatic operation” designed to lead the collective actor to adjust its identity representation as the context changes. An initial report was submitted for discussion by partners at the pre-cross-thematic seminar on 19 December 2007. When discussion was over, the TNU produced <i>Synthesis Report 2</i> (D 74, which merged D 73 and comments and responses by partners).</p> <p><i>Synthesis Report 2</i> gave rise to several activities for disseminating findings, in particular with young researchers in mind. On one hand, a broad discussion of the report was conducted during two separate working days with all the researchers in the CPDR philosophy cell. On the first of these days, held on 13 December 2007, the philosophy team essentially discussed two key points: inquiry bore first on the meaning of the <i>integrating, progressive</i> dynamic that, according to the synthesis report, structures the intended reconstruction of current research in theory of governance. It also related to the need for the progressive broadening of the conditions to be set up to ensure public interest governance. Next, an effort was made for the inquiry to give an account of the nature of the broadening proposed by the “genetic” approach for the conditions for success of the learning operation. On the second working day, held on 9 January 2008, inquiry centred mainly on Section 3 of <i>Synthesis Report 2</i>, specifically on the application of the genetic approach to an analysis of action by the union movement in the context of the liberalisation of Belgium’s electricity sector. Apart from this, M. Maesschalck, L. Blésin, A. Loute, and Y. Jouhari together oversaw the Seminar in the Philosophy of the Humanities and Social Sciences (FILO 2940 – Institut Supérieur de Philosophie/UCL). This year, the theme of the seminar was “Le tournant pragmatiste en théorie de l’action collective” (The Pragmatist Turn in Theory of Collective Action). It took place from February to May 2008. Its goal was to introduce participants to philosophical issues in the renewal of theories of collective action in current social sciences and humanities. This seminar is an integral part of the programme of study and has been approved for doctoral candidates in the form of supervised research supervision. It has also been approved for students in the Erasmus Mundus programme. The seminar closed with a day of doctoral-level study held on 23 May 2008, on the theme “Critique sociale et théorie de l’action” (Social Critique and Theory of Action) organised by L. Blésin and Y. Jouhari.</p>			



As further support for the effort to integrate young researchers, L. Blésin and A. Loute also organised internal working sessions for researchers in all the CPDR's cells, thus allowing them to familiarise themselves with the TNU's hypotheses as they relate to their own field of research and enabling them to form interdisciplinary contacts in a shared context of inquiry. During the sessions, researchers were invited to discuss issues arising in their respective research work by applying the theme "Apprentissage et normativité" (Learning and Normativity).

A working meeting with C. Sabel was planned for May. In the end this meeting was cancelled. The TNU had decided to invest more heavily in discussion with C. Argyris, in light of the turn taken by the greater deepening of investigation reported on in *Synthesis Report 2*, that of insight into the possibility of developing a genetic approach based on taking into account, and providing an account of, the limitations, not of C. Sabel's democratic-experimentalist approach (trend 1 of the pragmatist approach), but rather of what we have identified as trend 2 of the pragmatist approach, the theory of reflexive learning developed by D. Schön, C. Argyris, and M. Rein,. An initial working meeting between C. Argyris and J. Lenoble was held in May 2008 in Cambridge, MA. Two further working sessions have already been planned: a second meeting between C. Argyris and J. Lenoble in September 2008 and a seminar to be organised by M. Maesschalck and J. Lenoble at the end of 2009 either in Belgium or the USA.

Deliverables

D73-74 Synthesis report 2 delivered see working paper REFGOV-TNU-SGI - 2 available in French and in English at <http://refgov.cpdr.ucl.ac.be/?go=publications>

Milestones

- Presentation of the second *REFGOV Synthesis Report 2*, to project partners and discussion at the work meeting of the 18 December 2007 in Brussels



Work package 35 description – CTS

Workpackage 35	CTS	Start date or starting event:	Month 42
Lead contractor : 1 CPDR UCL other 9, 22, 23, 25 , 26, 30			
<p><u>Objectives:</u></p> <p>The purpose of this workpackage ensure the organization of the cross-thematic activities which put together the research results developed across the five thematic fields investigated in the REFGOV project</p>			
<p><u>Progress towards objectives:</u></p> <p>Organisation of the different steps leading to the first cross-thematic seminar.</p> <p>Besides a number of contact, a meeting “pre cross thematic seminar” was convened in Brussels in December 2007 by the coordinator with the leaders of each subnetwork and academics scientists in charge of major sub-groups²⁹. S. Deakin; E. Brousseau, J. Porta, O. De Schutter, T. Dedeurwaerdere, J. M. Glachant, T. Prosser, P. Vincent-Jones, R. Cobbaut, M. Maesschalck, J. Lenoble, A. Liesse.</p> <p>1. The first point was devoted to the REFGOV approach and two case studies at heart of the REFGOV project were discussed :</p> <ul style="list-style-type: none"> - The Theory of the Norm Unit presented the “Synthesis report 2” (J. Lenoble and M. Maesschalck) developing the theoretical work in theory of governance and the application of the theoretical approach it proposes to a field case study : the trade unions actors and the shift in their position in the electricity sector in Belgium. - The Global Public Services (T. Dedeurwaerdere) presented the study on « Joint Forest Management » in depth case study of a protocol of reflexive self-evaluation of institutional change that has been put in place in Joint Forest Management Institutions in Flanders (JFM) (Workpackage27 – D49(1)). In summary, this study concerns 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. <p>The progress of the research in the different subnetworks was discussed. Two subnetworks - Global Public Services (T. Dedeurwaerdere) and Fundamental Rights (Olivier De Schutter) presented the manner the research had been organised and the steps already completed in their respective thematic subnetwork.</p> <p>2. The second part of the seminar dealt with the next cross thematic activities and more specifically with the plans for the first cross thematic seminar in 2008 September. It was agreed that it would focus on the core publication of the REFGOV project. This common publication will consist of contributions both from the theory of the norm unit and from each subnetwork and those of the sub-groups involved in the development of the theoretical research in connection with their own empirical investigations. It was also agreed that each contributor would present an abstract drafting his/her subnetwork (or group) chapter outlines for the first cross thematic seminar –</p>			

²⁹ S. Deakin (CG-FR) ; E. Brousseau (IFM-GPS) J. Porta (SGI), O. De Schutter (FR), T. Dedeurwaerdere (GPS), J. M. Glachant (IFM), T. Prosser (SGI), P. Vincent-Jones (SGI), R. Cobbaut (CG), M. Maesschalck (TNU-SGI), J. Lenoble (general coordinator-TNU), A. Liesse (administrative coordinator)



September 2008..

The meeting concluded on the following planning for next cross thematic activities over 2008-2009-2010 :

- Cross-thematic seminar 1 (September 2008)
- Institutional proposals expected from the different subnetworks (Spring 2009) and discussions with stakeholders
- Cross-thematic seminar 2 (September 2009)
- Final Conference (Spring 2010)

Milestones CTS:

- Preparatory meeting (pre-cross thematic seminar) December 18 2007 in Brussels
- First REFGOV cross-thematic seminar, month 40 (September 2008)



Section 3 – Tables

Workpackages and deliverables concerned by this annual report appear in clear; future workpackages and deliverables appear in grey



3.1 Workpackages Table

Work package No	Work package title	Lead contractor No	Person-month	Start month	End month	Deliverable
WP1.3-SGI phase 3	Comparative study to reconstruct the historical perspective of 'Public Services' in Europe	9		18	60	D 42 Delivered D 43 (end 2008)
WP2.2 –SGI phase 2	Governance of Services of general interest in the Energy Field - phase 2	25		18	60	D44-1, D44-2, D44-3, D44-4 Delivered D 44
WP3.2-SGI phase 2	Governance of Services of general Interest in the Health Care Field – phase 2	30		18	60	D45-1, D45-2, D45-3 Delivered D 45
WP4-SGI	Regulation of Public Sector	11 -32		0	60	D 46
WP5-SGI	Collective actors	1-9		8	60	D 47 Delivered
<i>WP6-WP7- WP8-WP9- WP10-GPS</i>	<i>Workpackages Global Public Goods and Services Completed</i> <i>Next WP on this theme: WP26-27-32</i>					
WP11-IFM	Transversal activities	22		0	8	D24-D25
WP12.1-IFM	Creation and governance of competitive mechanisms in the Network industries	23		0	60	D26b Delivered (12 working papers)
WP12.2-IFM	Assessment of alternative arrangements for local services of economic general interest	23		0	60	D27b Delivered (7 working papers)
WP13-IFM	Self-Regulated-e-Communities	22		0	60	D28 Delivered
WP14-IFM	Collective governance of quality in business networks - Analysis of franchise contracts	19		0	60	D50-D51-D52-D53 Delivered
WP15-IFM	Intellectual Property Rights, incentives to invent, to accumulate knowledge and to circulate Intangibles	17		0	60	D30- Delivered D30b D54-
WP16-IFM	Behaviors, contractual practices and the legal environment	20		0	60	D32 Delivered D55



Work package No	Work package title	Lead contractor No	Person-month	Start month	End month	Deliverable
WP17-CG	Corporate Governance all four WP					56 Delivered See list of CG working papers
WP17-CG	Phase 2 Evolution of corporate governance codes and norms	26		0	60	D56.1. (in 56) Delivered D56-b Delivered
WP18-CG	Phase 2 :Impact of financialisation on employment and performance	22		0	60	D56.2. (in 56) Delivered
WP19-CG	Phase 2 : Enterprise level case studies of impact of corporate governance norms	1		0	60	D56.3(in 56) Delivered
WP20-CG	Phase 2 : Corporate governance and network relations	6-18		0	60	D56.4(in 56) Delivered D56-4b Delivered
<i>WP21-WP22-WP23 FR</i>	<i>Workpackages first phase Fundamental Rights completed See Next FR Workpackages FR 28- 29-30-31-33-34</i>			0	5	
WP24-TNU	Component 1: Theory of the Norm	1		0	60	
WP25-TNU	Component 2: Theory of Governance	1		0	60	D73-74 Delivered
WP26-GPS	Report on “institutional frameworks case-studies” Conferences	14-24-27-13-		26	60	D48 Delivered
WP27-GPS	Institutional architecture	8		20	60	D49.1 D49.2 Delivered 49.3



Work package No	Work package title	Lead contractor No	Person-month	Start month	End month	Deliverable
WP28-FR	Fundamental social rights	26		13	36	D57-2 Delivered D58 (after the Cambridge meeting-)
WP29-FR	Anti discrimination law	12-7		13	36	D59 Delivered D60 September 2008
WP30-FR	Data protection	28		13	36	D62 – D62-1 Delivered
WP31-FR	Criminal procedure	28-1		13	36	D64- D64-1 Delivered D75, D76, D77 Delivered
WP32-GPS	Synthesis WP for Institutional design Proposals	1		30	60	D-65
WP33-FR	Transversal Issues WP of phase 2 Fundamental Rights	1		13	36	D78, D 79, D80, D81, D82 Delivered
WP34-FR	Synthesis WP phase 3 Fundamental Rights	1		36	60	D70-D71- D72
WP35-CTS	Cross-thematic seminar	1		42	60	D83 Common Publication (in 2010)



3.2 Deliverables Table

Del. nr.	Deliverable name	WP nr.	Forecast delivery date (project month)	Actual delivery date (project month)	Lead participant
SGI					
D42-SGI Phase 2	Reports from each team, including justification of selection of documents, and presentations	WP 1.2	29	30	9
D43-SGI Phase 2	1 st draft report on "SGI provision historical perspective"	WP 1.2	30	Final month 40	9
D44-SGI Phase 2	Sector report : institutional proposals energy group final	WP 2.2	45		25
D44-1	UK energy case study : security of supply and land use planning	WP 2.2	30-33	30	25
D44-2	Germany energy case study Changes in energy network access regulation in Germany	WP 2.2	30-33	33	29
D44-3	Canada energy case study : electricity markets reforms and governance models	WP 2.2	30-33	33	2
D44-4	Hungary energy case study :Price regulation in Hungary and EEC countries	WP 2.2	30-33	33	5
D45-SGI Phase 2	Sector report : Healthcare group institutional proposals	WP 3.2	45		30
D45-1	Patient and public involvement in healthcare governance England and Wales	WP 3.2	30-33	33	30
D45-2	France : la maîtrise des soins de santé	WP 3.2	30-33	33	9
D45-3	Healthcare in Hungary	WP 3.2	30-33	33	5
D46-SGI	Report on outline institutional proposals	WP 4	30		32
D47-SGI	Interim report on Collective Actors	WP 5	30	30	1



Del. nr.	Deliverable name	WP nr.	Forecast delivery date (project month)	Actual delivery date (project month)	Lead participant
GPS					
D48 - GPS	Report on institutional proposals for the cross thematic seminar	WP 26	30	30	13 – 30 (ex14) -24 - 8 - 27
D49(1) - GPS	Building Resilience through dynamic institutional efficiency. The Case of forest biodiversity Is now forthcoming publication	WP 27	24	25	1
D49(2) - GPS	Review of literature	WP 27	35	36	8
D49(3) - GPS	Report on SIA from Louvain	WP27	48		8-1
D65-GPS	Synthesis Workpackage for Institutional Proposals Design.	WP 32	42-48		1
IFM					
D24-IFM	Preliminary report on “Institutional Frames for Markets : The state of the art, theory, debates and new empirical questions”	WP11	Postponed to 40		22
D25-IFM	Networks regulation in the new-economic context.	WP11	Postponed to 40		22-17
D26 b - IFM Set of 12 empirical studies	Electricity networks : transmission issues, retail issues, implementation of competition at retail level- small and less connected markets	WP12	Year 3	Year 3	23
D27b –IFM Set of 7 empirical studies	Local utilities services : studies into various contractual schemes -public private partnership, contractual flexibility, horizontal integration - auction	WP 12	Year 3	Year 3	23
D28-IFM	Intellectual Property regimes including private institutions such as open source and creative commons communities, collective copyrights organizations and patent pools	WP13	30	34	22 -17
D30 followed	<i>See Academic publications in Description of Workpackage 15</i>	WP15	Year 3	Year 3	20-17-22
D32-IFM	<i>See Academic publications in Description of Workpackage 16 .</i>	WP16	Year 3	Year 3	20-17-22
D50 – IFM	The Governance of Quality : The Case of Agrifood Brand Names	WP 14	30	30	19



Del. nr.	Deliverable name	WP nr.	Forecast delivery date (project month)	Actual delivery date (project month)	Lead participant
D51 – IFM	Multi-unit versus single unit franchising : Assessing why franchisors use different ownership strategies.	WP 14	30	30	19
D52 – IFM	Up front franchise fees and ongoing variable payments as substitutes : an agency perspective.	WP 14	30	30	19
D53 - IFM	Does it pay to become franchisee ?	WP 14	30	30	19
D54 – IFM	A report summarizing the results of selected published papers concerning the evolution of innovation and intellectual property in selected sectors.	WP 15	40		17
D55 - IFM	<i>Academic publications – Synthesis presentation of WP16.</i>	WP 16	40		20
CG					
D56 CG	Corporate Governance report Includes contributions CG 56-1 to 56-4 – See list of papers written in connection with these workpackages	WP 17 to 20	Year 3	Year 3 from month 26 to month 36	26
D56-b CG	Corporate Governance-Guidelines	WP 17 to 20	24	25	26
D56.1–CG Phase 2	Contribution to synthesis report on corporate governance work. Outline institutional proposals and papers concerned	WP 17	28	28-36	26
D56.2–CG Phase 2	Contribution to synthesis report on corporate governance work. Outline institutional proposals and papers concerned	WP 18	28	28-36	22
D56.3–CG Phase 2	Contribution to synthesis report on corporate governance work. Outline institutional proposals and papers concerned	WP 19	28	25-36	1
D56.4-CG Phase 2 D56.4-b	Contribution to synthesis report on corporate governance work. Outline institutional proposals and papers concerned	WP 20	28	28-36	6-18



Del. nr.	Deliverable name	WP nr.	Forecast delivery date (project month)	Actual delivery date (project month)	Lead participant
FR					
D 57 - FR	Flexibility, inclusion and fundamental rights : atypical workers in the UK	WP 28	23	23	26
D 57-b - FR	Regulatory Competition in Europe after Laval	WP 28	35	35	
D 58 - FR	Final report on the thematic application of the report	WP 28	35		26
D 59 - FR	Intermediary progress report	WP 40	23	30-35	12-7
D 60 - FR	Final report on the thematic application of the report	WP 40	35		12-7
D 62 – FR D 62-1 FR	Final report on the thematic application of the report: Data Protection in the EU: Towards 'Reflexive Governance'?	WP 30	35	36	28
D 64 – FR D 64-1 FR	Final report on EU Criminal Law within the EU's third pillar application draft – and seminar background paper	WP 31	35	36	28-1
D 70 - FR	Draft recommendations for open consultation	WP 34	37		1
D 71 - FR	Final set of recommendations	WP 34	43		1
D 72 - FR	Public presentation of the Final set of recommendations	WP 34	50		1
D 75 - FR	The Role of Evaluation in Experimentalist Governance: Learning by Monitoring in the establishment of the Area of Freedom, Security and Justice	WP 31	36	33	1
D 76 - FR	Ethnic Profiling : a Rising Challenge for European Human Rights Law	WP 31	36	36	1
D 77 - FR	The role of Evaluation in Experimentalist Governance : learning by monitoring in the establishment of the Area of freedom, Security and Justice' published	WP 31	36	36	1



Del. nr.	Deliverable name	WP nr.	Forecast delivery date (project month)	Actual delivery date (project month)	Lead participant
D 78 - FR	Rights in Conflict: the European Court of Human Rights as a Pragmatic Institution	WP 33	36	36	1
D 79 - FR	The Framework Convention on the Protection of National Minorities and the Law of the European Union	WP 33	36	36	1
D 80 - FR	Binding the EU to International Human Rights Law	WP 33	36	36	1
D 81 - FR	The EU Fundamental Rights Agency: Genesis and Potential	WP 33	36	36	1
D 82 - FR	Competing norms and European private international law	WP 33	36	36	7
TNU					
D73- D74-TNU	REFGOV Synthesis Report 2	WP 25	35-37	32	1



Annexes

Annexe 1 : Global Public Services : Overview of the proposed edited volume in the “Politics, Science, and the Environment” series, MIT Press

TITLE : Reflexive Governance for Global Public Goods
Eric Brousseau, Tom Dedeurwaerdere, Bernd Siebenhüner (eds.)

STATUS on 13th of February 2008

Introduction

Eric Brousseau, Tom Dedeurwaerdere, Bernd Siebenhüner

Part I. New perspectives on global public goods in a multi-level governance framework

Chapter 1. [Rethinking public goods and global public goods.](#)

INGE KAUL

United Nations Development Programme

Chapter 2. [The New face of development assistance : public goods and changing ethics](#)

TODD SANDLER and DANIEL G ARCE

University of Texas at Dallas

Chapter 3. [Managing Global Risks Through "Proportionate" Precaution: Collective Preferences and State Sovereignty in the Balance](#)

OLIVIER GODARD

Polytechnique Paris, France

Part II. Institutional responses to incomplete information and changing social preferences

Chapter 4. [Knowledge matters: Institutional Frameworks to Govern the Provision of Global Public Goods](#)

Eric Brousseau, Tom Dedeurwaerdere and Bernd Siebenhüner

Université de Paris X, Université catholique de Louvain and Oldenburg University

Chapter 5. [Reflexive Governance and multi-level decision-making in agricultural policy – conceptual reflections and empirical evidence](#)

PETER FEINDT

University of Hamburg, Germany

Chapter 6. [Regulatory Reform and Reflexive Regulation: Beyond Command and Control](#)

NEIL GUNNINGHAM

Australian National University

Chapter 7. [Governance of the R&D Sector for Bio-Technology: Intellectual Property Rights and Bio-Prospecting](#)

MARE SARR and TIM SWANSON

University College London



Chapter 8. [Institutions and changing social preferences](#)

SIGRID STAGL
University of Sussex

Chapter 9. [Crowding out and crowding in of intrinsic preferences.](#)

BRUNO FREY
University of Zurich

Part III. Building local knowledge and collective preferences to govern the provision of global environmental goods

Chapter 10. [Participatory governance and sustainability. Early findings of a meta-analysis of stakeholder involvement in environmental decision-making](#)

OLIVER FRITSCH AND JENS NEWIG

Chapter 11. [The provision of local and global public goods in managed forest landscapes. The institutional economics of reflexive learning processes.](#)

TOM DEDEURWAERDERE
Université catholique de Louvain, Louvain-la-Neuve, Belgium

Chapter 12. [Revising the UK's Biodiversity Action Plan: is change enforced, experiential or reflexive?](#)

ANNA LAWRENCE AND STAR MOLTENO
Environmental Change Institute, University of Oxford, United Kingdom

Chapter 13. [Sub-National Climate-Friendly Governance Initiatives in the Developing World: A Case Study of the State of São Paulo, Brazil](#)

KAMYLA BORGES DA CUNHA, ARNALDO CÉSAR WALTER, AND FERNANDO REI
Institute of Mechanical Engineering, State University of Campinas, Brazil

Chapter 14. [Reflexive Governance and the Importance of Individual Competencies – The Case of Adaptation to Climate Change in Germany](#)

TORSTEN GROTHMANN AND BERND SIEBENHÜNER
Carl von Ossietzky University Oldenburg, Germany



Annexe 2 : Global Public Services : Outline of a collective volume, based on the Cargese workshop

TITLE : Governing Global Environmental Commons : Institutions, Markets, Social Preferences and Political Games

Editeur Oxford, Cambridge, Princeton

STATUS :

We are currently contacting the authors, the following authors have already answered and accepted : Charles Perrings, Oran Young, Unai Pascual, Daan Van Soest, Graciella Chichilnisky, Tim Swanson, Denis Ellerman, Thierry Bréchet.

All topics are proposed and tentative / based on workshop papers and presentations. Hence they are tentative at this stage and reflect the scope of the issues we would like to address in the volume. We would like to have a finalized the outline for 15 april (with 3 or 4 lines explanation on the topic by each author).

Part 1: Global Issues: Environmental and governance challenges

- Perrings C. 'Environmental change and the governance of layered public good '
- Sgard J. Global Governance
- Young O. Navigating the sustainability challenge: the role of governance

Part 2: Addressing global issues by articulating local governance frameworks

- Ostrom E. 'Polycentric governance: multi-level governance systems involving governments, selforganized groups, and firms'
- Ellerman D. Cap and Trade Emission Permit market
- Alston L., Local games in institutional transitions. The example of Brasil.
- Swanson T Law and economics of global governance of environmental goods

Part 3: Designing institutions taking into account social preferences

- Pascual and Hiroe Ishihara, Social Capital and Environmental Governance: a socio-ecological critic
- Gaechter S. 'Combination of motivation and incentives in the provision of public good'
- VanSoest D. 'Experimental Economics'
- Vatn A. Crowding out and altruism

Part 4: Designing incentives mechanisms under the constraints of the socio-political game

- Libecap G. Governing common resources
- Faure M., Designing incentives regulations for the provision of public good



- Chichilnisky G., Quasi markets and externalities in the field of climate change and biodiversity
- Brechet T. Coalition among countries and emission permits



Annexe 3 : Global Public Services : Workshop 7th of May 2008, Fondation Universitaire, Bruxelles

Institutional Architecture for Reflexive Governance. Lessons from EU forest governance Report of the preparatory workshop for the conference

Organized by l'Institut des Relations Internationales et du Développement Durable (IDDRI) and Centre de Philosophie du Droit (CPDR).

Report Prepared by

Sabine Weiland (sabine.weiland@iddri.org), Benoit Martimort-Asso (benoit.martimort-asso@iddri.org), Tom Dedeurwaerdere (tom.dedeurwaerdere@cpdr.ucl.ac.be), François Lerin (lerin@iamm.fr)

Date of the International Conference

The exact date of the international conference will be determined in discussion with the International Union of Forest Research Organisations, who will be a partner in the organization of the conference. The tentative date is June 2009.

Abstract

In this international workshop, we will focus on the contribution of different public and private norms to effective and legitimate sustainable forest management and address the question of the learning capacities of public administrations and private initiatives in regards to different normative frameworks. The goal is to formulate policy recommendations for the establishment of learning structures between countries and within countries at the European level.

Proposed program

1. State of the art

State of the art of the emergence of public and private norms for sustainable forestry in Europe

- Private norms : FSC, labeling schemes proposed by large forest producer unions, etc.
- Public European norms : Natura 2000 for Forest ecosystems, ...
- International norms with impact on public and private norms in EU

State of the art of new / emerging issues which impact the transformation of forest management in Europe

- Biodiversity
- Climate change
- Globalization (emergence of large industrial actors operating both in Europe and worldwide)

2. Local realities and learning processes on the national and regional level

2.1. New EU member countries (since 2004 : 15 à 25) and candidate countries

2.2. EU of 15

Mediterranean forests

Boreal forests

European temporal forests



3. Implications for governance

- 3.1. Establishment of EU learning structures between countries and within countries
- 3.2. Learning by large private actors involved in and regulation of transnational private actors

Proposed Invited Keynotes (approximately 11)

1. State of the art (FSC, EU, international)

Margaret Shannon (Buffalo) : Learning process generated by FSC in Kazakhstan
Stéphane Gueneau (Ben Cashore or Steve Bass) : A critical appraisal of market driven approaches / FSC
Dijana Vuletić : FSC in Croatia

2. Local realities and learning processes on the national and regional level

a. New EU member (2004) and candidate member countries

Milan Šinco (Slovenia) : Close to nature paradigm in the Balcan area and its transformation (science based ; environmental science based approach to management)
Albania : Arsen Proko (can present the paper he is currently preparing for IDDR)

b. Other EU countries (15)

Central European Forests :

Wim Demayer : Joint Forest Management Organisations in Flanders

Karl Hogl (or Ralf Nordbeck): Implementation of International Norms through National Forest Strategies in Austria

Mediterranean Forests (Martine Chalvet)

Scandinavian Boreal Forests (Finlande : le cas de Metsahalitus)

3. Implications for governance

Gerard Buttoud and Irina Kouplevatskaya (Engref, France)



Annexe 4 : Corporate Governance : list of outputs

Publications referred to in the present report

Agboton Y., *Le rôle du Conseil d'administration dans le dispositif de Corporate Governance : le cas du Code Lippens*, Ph.D. thesis in Business administration, Université de Liège (Belgium), HEC – École de gestion, December 2007.

Armour, J. and Skeel, D. (2007) 'Who writes the rules for hostile takeovers, and why?—the peculiar divergence of US and UK takeover regulation', *Georgetown Law Journal*, 95: 1727-1794. WP REFGOV- CG-16 <http://refgov.cpd.ucl.ac.be/?go=publications>

Autenne, A. (2008) 'La qualification juridique de la relation triangulaire qu'entretiennent les parties prenantes à un régime de retraite organisé via un fonds de pension d'entreprise – éléments de réflexion à l'occasion de l'entrée en vigueur de la loi du 27 octobre 2006 relative au contrôle des institutions de retraite professionnelle'. *Revue Pratique des Sociétés*, pp. 1-43 also WP REFGOV- CG-22 <http://refgov.cpd.ucl.ac.be/?go=publications>

Boyer, T. (2007) 'Cross representations of law and economics in corporate governance', in: Masson & O'Connor (eds), *Representations of Justice*, Peter Lang, 2007.

Cafaggi, F. (2008) 'Contractual networks and the Small Business Act: towards European Principles?', European University Institute working papers series, 2008; forthcoming in *European- WP REFGOV- CG-21* <http://refgov.cpd.ucl.ac.be/?go=publications>

Cafaggi, F. and Iamiceli, P. (2007) 'I servizi alle Pmi: quale ruolo per le reti di imprese', *Economia e società regionale*, 40-66. also WP REFGOV- CG-18 <http://refgov.cpd.ucl.ac.be/?go=publications>

Deakin, S. (2008b) 'Legal origin, juridical form and industrialisation in historical perspective: the case of the employment relationship and the joint stock company' forthcoming, *Socio-Economic Review*. WP REFGOV- CG--- <http://refgov.cpd.ucl.ac.be/?go=publications>

Deakin, S. and McLaughlin, C. (2008) 'The regulation of women's pay: from individual rights to reflexive law', CBR Working Paper N° 350; forthcoming in: J. Scott, S. Dex & H. Joshi (eds), *Women and Employment: Changing Lives and New Challenges*, Routledge (London), 2008. also WP REFGOV- CG-27 <http://refgov.cpd.ucl.ac.be/?go=publications>

Deakin, S., Pratten, S. and Lourenço, A. (2008) 'No "third way" for economic organisation? Networks and quasi-markets in broadcasting' accepted for publication in *Industrial and Corporate Change*. WP REFGOV- CG-2 <http://refgov.cpd.ucl.ac.be/?go=publications>

Deakin, S. and Rebérioux, A. (2007) 'Corporate governance, labour relations and human resource management in Britain and France: convergence or divergence', forthcoming in Touffut J.P. (ed.), *Does Corporate Ownership Matter?* (Cheltenham: Edward Elgar).

Deakin, S. and Singh, A. (2008) 'The stock market, the market for corporate control and the theory of the firm: legal and economic perspectives and implications for public policy', in P.-O. Bjuggren and D. Mueller (eds.), *The Modern Firm, Corporate Governance and Investments*. Also WP REFGOV- CG-28 <http://refgov.cpd.ucl.ac.be/?go=publications>



Pendleton, A. and Deakin, S. (2007) 'Corporate governance and workplace employment relations: the potential of WERS 2004, *Industrial Relations Journal*, 38: 338-355.

Working Papers

Armour, J., Deakin, S., Sarkar, P., Siems, M. and Singh, A. (2008) 'Shareholder protection and stock market development: an empirical test of the legal origins hypothesis' CBR Working Paper No. 358 and ECGI-Law Working Paper No. 108/2008; under review, *Journal of Empirical Legal Studies*.

Also WP REFGOV- CG-23 <http://refgov.cpdr.ucl.ac.be/?go=publications>

Cankar, N., Deakin, S. and Simoneti, M. (2007) 'The reflexive properties of corporate governance codes: the transplantation and reception of the 'comply or explain', forthcoming, CBR WP series; to be submitted to the *Journal of Law and Society*.

WP REFGOV- CG-15 – revised version <http://refgov.cpdr.ucl.ac.be/?go=publications>

Cobbaut, R. (2007) 'Market efficiency, rationality, governance structures and capital market regulation', paper presented to REFGOV Conference, Cambridge, December. WP REFGOV- CG-12 – revised version <http://refgov.cpdr.ucl.ac.be/?go=publications>

Conway, N., Deakin, S., Konzelmann, S., Petit, H., Rebérioux, A. and Wilkinson, F. (2008) 'The influence of stock market listing on human resource management: evidence for France and Britain' forthcoming, CBR Working Paper series; under review, *British Journal of Industrial Relations*.

WP REFGOV- CG-13 – revised version <http://refgov.cpdr.ucl.ac.be/?go=publications>

Deakin, S. (2008) 'Reflexive governance and European company law' CBR Working Paper No. 346; under review, *European Law Journal*.

WP REFGOV- CG-19 – revised version <http://refgov.cpdr.ucl.ac.be/?go=publications>

Deakin, S. and Singh, A. (2008) 'The stock market, the market for corporate control and the theory of the firm: legal and economic perspectives and implications for public policy', forthcoming, CBR Working Paper series. Also

WP REFGOV- CG-28 <http://refgov.cpdr.ucl.ac.be/?go=publications>

Schnyder, G. (2008) 'Does social democracy matter? Corporate governance reforms in Switzerland and Sweden (1980 – 2005)', working paper, CBR, University of Cambridge.

Presentations

Armour, J. (2007) 'The Berle-Means corporation in the twenty-first century', paper presented to REFGOV Conference, Cambridge, December.

Boyer, T. (2008) 'Do shareholders really own the firm?', paper presented to REFGOV Conference, Cambridge, December.

Boyer T. & Chane-Alune E. (2007) "Les IFRS et les besoins en informations non financières", Paper presented to the conference 'Institutions financières, marché et éthique : regards croisés dans le cadre européen' at the Institut universitaire de Florence (Chaire Jean Monnet 'Intégration financière et bancaire européenne'), May 2007. Also a working paper WP REFGOV- CG-23 <http://refgov.cpdr.ucl.ac.be/?go=publications>



Buchanan, J. and Deakin, S. (2007) 'UK pension fund governance: in search of a new model?', paper presented to REFGOV Conference, Cambridge, December.

Büti, K. and Hardi, P. (2007) 'Transparent in the air, opaque on the ground – the case of corporate governance in Hungary', paper presented to REFGOV Conference, Cambridge, December.

Cafaggi, F. and Iamiceli, P. (2007) 'Inter-firm networks in the public interest? Some evidence from North-East Italy', presentation to CG Subnetwork Conference, Cambridge, December 2007.

Cobbaut, R. (2007) 'Market efficiency, rationality, governance structures and capital market regulation', paper presented to REFGOV Conference, Cambridge, see working paper-

Deakin, S. (2008) 'The corporation and society in historical perspective' and 'The diversity of contemporary corporate governance', Tanner lectures delivered at the Said Business School and Brasenose College, University of Oxford, February.

Deakin, S. and Rebérioux, A. (2007) 'Corporate governance, labour relations and human resource management in Britain and France: convergence or divergence'. Presentation to Cournot Centre Conference, Paris, 29-30 November 2007, and to workshop on corporate governance, Tokyo Centre, January 2008.

Konzelmann, S. (2007) 'Corporate governance and employment relations in Britain and France: the impact of regulatory change', paper presented to REFGOV Conference, Cambridge, December.

Lourenço, A. (2007) 'Assessing regulatory change in the independent television production industry'. Presentation to CG Sub-network Conference, Cambridge, December 2007.

Moore, M. (2007) 'Why corporate governance doesn't work: an Anglo-American perspective', lecture presented to the Iceland Bar Association, Reykjavik, November 2007

Moore, M. (2007) 'Throwing out the baby with the bathwater: the Walker Guidelines on disclosure and CSR in the UK private equity sector', paper presented to REFGOV Conference, Cambridge, December.

Moore, M. (2008) 'Leadership v. accountability in UK Corporate Governance', presented at University of Oxford Corporate Law Reading Group, May 2008.

Njoya, W. (2007) 'Reflexive governance in the EU: corporate social responsibility and the interpretation of directors' duties under s. 172 of the Companies Act 2006', paper presented to REFGOV Conference, Cambridge, December.

Pistor, K. (2007) 'Legal systems in flux: analytical and methodological challenges', paper presented to REFGOV Conference, Cambridge, December.

Schnyder, G. (2007) 'Horse, cow, sheep, or 'thing as such'? The cognitive origins of corporate governance in Switzerland, Germany, and the US, 1910s-1930s', paper presented to REFGOV Conference, Cambridge, December.

Sanderson, P. (2007) 'Corporate governance and "soft regulation" in Britain and Germany', paper presented to REFGOV Conference, Cambridge, December.



Siems, M. (2007) 'Shareholder protection and stock market development: an empirical test of the legal origins hypothesis', paper presented to REFGOV Conference, Cambridge, December.

Turner, S. (2007) 'Networks of learning within the English wine industry: communitarian, distanced, organisational, and redundant'. Presentation to CG Sub-network Conference, Cambridge, December 2007.

Villiers, C. (2007) 'Corporate governance: a Reason or a barrier to bringing women into the boardroom?', paper presented to REFGOV Conference, Cambridge, December.

Other - Press article

Cafaggi, F. and Iamiceli, P. (2008) 'Le reti nel settore vitivinicolo tra crescita e coesione: la sfida europea' *Destinato, in versione ridotta, al supplemento 28 marzo – 3 aprile de L'Informatore Agrario - Contributo realizzato nell'ambito del progetto "Reflexive Governance in the Public Interest"*