The Third Sector and the European Union Policy Process: An Initial Evaluation

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Introduction

When in 1957 the Treaty of Rome laid the groundwork for the development of a common European market, the six founding member states had more in mind than
economic unity. With the memories of the two World Wars still fresh, European leaders wanted to avoid the mistakes of the past by creating a social, political and economic community that would go beyond the institutional confines of individual nation states.

Of course, what is the European Union (EU) today, started as an economic entity, the European Economic Community (EEC), which was largely concerned with issues of free trade. Indeed, the Treaty of Rome explicitly excluded social policy, as that term is understood in the English policy discourse, from the area of responsibilities it allocated to the emerging European institutions; the most substantive and enduring "social" structure set in place by the Treaty, the European Social Fund (ESF), was at its inception an essentially narrowly economic programme (albeit with social consequences) designed to promote employment and increase workers' occupational and geographic mobility. Not until the 1970s did the EEC begin to take action in social policy matters when the Commission proposed a Social Action Program in the fields of employment and equal opportunity. Later, in the context of the Single European Act of 1985, steps were taken towards greater harmonisation of social legislation. However, only with the adoption of the Social Charter in October 1989 did the European Community (EC) fully enter the field of social policy, and declared "that the social dimension of the Community be given the same importance as the economic dimension" (Kleinmann and Piachaud, 1993, p. 1). The Social Charter aimed to build a broad social consensus among Member States based on three components: (i) generating employment with "equitable" wages and fair working conditions; (ii) maximizing well-being by improving social security, health care, social services, and education; and (iii) eradicating social discrimination based on factors such as race or sex.

Building on this precedent, the 1992 Treaty of Maastricht and the 1997 Treaty of Amsterdam and their attached protocols, referring explicitly to the goal of "economic and social cohesion", have made the social dimension more prominent still: social cohesion, albeit amorphously and ambiguously defined, is now established as one of the three overarching goals of the EU project, alongside European Monetary Union/the single currency and the single market (McAlevey and De Rynck, 1997). As part of the institutionalisation of the social agenda, the EU has established a "Social Dialogue" with representatives of employers and trade unions, as well as increasingly consulting subnational representatives from local and regional tiers of Member State governments. As we shall see, these discussions are increasingly being paralleled by a "Civil Dialogue" that aims at bringing the EU closer to the institutions of civil society, although this is currently embryonic and ad hoc compared to the
better established and institutionalised discourse with the "Social Partners."

The development of the European Union from a free trade zone to social, political and economic union, necessarily meant that the third sector would sooner or later enter the policy-making arena of Brussels. In fact, third sector organisations entered rather late, and they are among the last parts of economy and society to attract the EU's policy-making attention. At the beginning, and in accordance with the spirit of the Treaty of Rome, the third sector remained excluded from the list of EEC/EC competencies, it was not until the mid 1980s that the third sector per se received first mentions in official documents (with the key exception of international development agencies: see below). In particular, a resolution, commonly known as the Fontaine Report, became influential in putting the possibility of EU policy-making on the third sector on the agenda. The Report enthusiastically endorses an important - though largely unspecified role for the "nonprofit" sector in helping create the new Europe. In its closing paragraph, the Report calls on the Commission to see the "nonprofit" sector as an important ally in building the new Europe:

Europe needs inspiration to take a further step towards its destiny as a Community. Nonprofit organizations are an opportunity to be taken in this respect. Inertia must be overcome and this opportunity must be boldly seized.

In the 1990s, several initiatives were launched under the auspices of DG XXIII, a department in the Commission newly charged with attending to the third sector as part of its économie sociale brief, and/or were jointly developed by other EU institutions. Prominent among these are the European Association Statute, a work program to support the development of Europe's third sector at the European level, and a Communication on Associations and Foundations in Europe. However, none of these initiatives have progressed smoothly, instead being characterized by precisely the inertia which Fontaine feared. As we shall portray, they either ended up in political stalemate, as with the European Association Statute; have operated on a dubious legal basis after failing to achieve full endorsement by the Council of Ministers (DG XXIII's Work Programme); were seriously delayed and ultimately down-graded in their importance (the Communication, which had originally been planned as a higher status White Paper or Livre Blanc); or have remained little more than declarations of political will attached to the EU's Treaties - despite efforts to integrate them completely into the core of the latter, and thus provide a firm legal basis for supportive policies.
Why has this been the case? To understand the fate of recent policy initiatives and their ambivalent outcomes, it is useful to consider the position of the third sector in the context of EU policy-making in general. Our major working hypothesis at the highest level of generality is that what appears as a relatively subdued, underperforming, or cautious policy style of the EU concerning the third sector can only be understood by looking at the "big pictures." We need to explicate the constellation of interests, values and ideas among the parties involved in the context of European policy making more generally, focussing on the third sector not in isolation, but as a competitor for agenda and policy space with other topics. A subsidiary hypothesis is that while ultimately some form of general evaluation is helpful, we also expect considerable variation between particular issues and policy subfields, reflecting the complexity and diversity of EU institutions and the third sector alike.

**Four Propositions**

To help guide our analysis we use four largely contradictory propositions to conceptually mark out the possible range of European Union policy-making in this field. These propositions include two dimensions: first, the importance or *salience* key actors attach to a particular policy. The second dimension refers to the *overall style* that characterizes the policy-making process. This would include taking into account particular patterns of essentially political bargaining such as cooperation, conflict and compromise as well as the scope that institutional constraints allow for persuasion, argument and the exchange of ideas.

**Proposition 1: "Low Salience and Muddling-Through."** European Union policies on the third sector remain relatively uncoordinated and are generally regarded as a matter of low importance beyond the occasional lip-service being paid to their social and economic contributions. Policy-making resembles a low-key "muddling through" (Lindblom, 1959) with inconclusive outcomes for lack of interest, will or commitment among the actors that shape the Commission's agenda.

**Proposition 2: "Low Salience but Effective Co-ordination."** While European Union policies concerning the third sector remain a matter of low salience in day-to-day "high" politics, low visibility efforts are nevertheless being made to move the EU's interest in the sector forward. Cognisant of the political sensitivities involved and the diversity of the sector across Member States, and aware that the European-wide policy infrastructure (representative bodies, lobby groups, think tanks) for these organisations *qua* a third sector remains underdeveloped, EU policy initiatives are
cautious and low-key. This can involve creative interpretation of ambiguous EU regulations to carve out an institutional niche which otherwise would not exist; incremental adjustments to the regulations governing programmes already in operation to carve a more explicit niche for the third sector; the creative "coupling" of third sector-specific budgets to existing programmes; and fact-finding and constituency-building in preparation for more ambitious programs in the future.

Proposition 3: "High Salience and Politicking." European Union policies are becoming ever more important relative to Member States' national and local policies because of the increasingly high stakes that are involved in both political and economic terms. At the same time, the policy field has become more complex, as powerful interests at the Commission and in the representative bodies of the third sector at national and international levels are watchful of every step toward the formulation of Union-wide policy toward the sector. Policy-making is characterised by active "strategizing" among key players and includes a broad range of tactics like preventive stalling, deal-making, and bullying. No broad-based consensus seems to emerge among the major parties involved.

Proposition 4: "High Salience and Effective Co-ordination." European Union policies reflect a relatively well co-ordinated attempt by the Commission to provide an enabling policy environment, with the third sector emerging as a widely recognised and high-visibility actor in both policy design and policy implementation. The relevant Member States and the representative bodies of the third sector are appreciative of this interest, have reached a relatively broad consensus, and try to inform policy-making accordingly.

In the balance of this paper, we will first look (section I) at the policy-making process in the EU as it relates to the third sector at the highest level of generality: can we trace the recognition of a "third sector" by EU institutions? We also set our description in the context of a framework which seems reasonably well equipped to handle the phenomena and complexities at stake, suggesting both the range of participants with whom we should be concerned, and the nature of the policy process itself.

Armed with the four propositions spelt out above, and our model of participants and policy process as reference points, Section II then explores five particular "case study" policy initiatives in more detail. The paper concludes in Section III with an overall assessment of EU initiatives in this field, and tentatively uses the framework introduced in Section I to try to unravel why each case as proceeded so differently, and to explore some of the underlying issues involved.
SECTION I. The complexities of European Policy and the third sector; and an organising framework

In the opening chapter of "European Policy: Power and Policy Making", leading public policy scholar Jeremy Richardson (1996b) provides a useful overview of current understandings of the challenges facing students of the European policy process. Inter alia, he notes that decisions take place within a "complex and unique policy-making system" (pp. 3-4). Complexity stems in part from the multiplicity of national and international actors involved, and also in part from the sheer volume of proposals and legislation the EU generates.

The complexity of policy-making in the EU has deeper reasons as well. Importantly, the relative powers of EU institutions and the Member States are "ambiguous and poorly defined" (McCormick, 1996, p. 204). While the principal of subsidiarity in the Maastricht Treaty tried to clarify this division of labour, and listed specific "tasks" for the EU - sustainable development, high employment, improved standards of living, for example - McCormick points out that "these are very general goals, and little is said about who is responsible for achieving them, or how they will be achieved" (op cit., p. 203). Thus, in Richardson's words, "the EU political system cannot be said to be a stable one, as the basic constitutional architecture is still very much in dispute ... even the relationships between key institutions [including the Parliament, Council of Ministers, Commission] are in a considerable state of flux" (1996a, p. 4). Problems of policy co-ordination, particularly in issues that cut across fields of responsibilities that require priority setting, can be profound.

All these factors suggest that there may be underlying reasons for EU policy making to be an extremely complex, unstable and unpredictable activity in general, particularly concerning issues that cut across traditional bureaucratic divides. But when one turns to consider the policy process and the third sector in particular, there appear to be at least two further difficulties. First, within any particular Member State, it is now widely understood that "the sector" is incredibly diverse, heterogeneous and populated by organisations with hugely varied goals, structures and motivations (cf. Salamon and Anheier, 1997). How can an overarching policy be possible towards such a "loose and baggy monster" (Kendall and Knapp, 1995)?

Second, across Member States there is a lack of shared understanding as to what the concept actually means, and what it might embrace (see Salamon and Anheier, 1997). This has been reflected in a not inconsiderable degree of diversity and confusion in
the usage and vocabulary at the level of the Community's institutions. As we shall see below, terminology has varied both between different components of the Community, and even within them, so that "private, non-profit institutions serving households" (EUROSTAT), "NGOs" (DG, 1994, p. 27; DGVIII, 1995, p. 18), "non-profit sector" (Economic and Social Committee, 1986), "non-profit associations" (European Parliament, 1986) and "voluntary organisations" (DG, 1994, p. 57), "voluntary organisations and foundations" and "third sector" (Forward Studies Unit, 1998) are examples of terminology which are all used in European discourse focusing purely or primarily on (a version of) the third sector; while "third system" (European Commission, 1997), "social economy" or *economie sociale* (European Commission, 1987), and most recently CMAFs, i.e., cooperatives, mutuals, associations and foundations (DG XXIII, 1997b), are now used to refer to the sector within a broader universe. To add to the confusion, these terms and groupings are often used without, or with only partial, explanation or qualification.

Do these complications mean that it is impossible or fruitless to talk of European Union policy or policies towards "the third sector"? We would argue no, for three main reasons. First, at an analytical level, it is now well understood that individual Member States have, in various ways, historically and currently, treated organisations that fall between the market and the state, differently from those institutions. At the very least, some or all of these tend to benefit from both legal privileges and tax breaks of various kinds because of their sectoral identity, even if a unified "sector" is implicit rather than explicit. Moreover, many also directly receive massive injections of public funds driven by a range of priorities and objectives, and are policy actors deeply embedded in national implementation systems (Kendall and Knapp, 1996; Archambault, 1996; Salamon and Anheier, 1997; Barbetta, 1997). Furthermore, some Member States do have regulatory and grantmaking bodies which explicitly cut horizontally across policy fields or "industries", focussing on organisations by virtue of their sector alone. Overall, whether it is piecemeal, ad hoc and organically developed, or systematized, coherent and "rationalist" there is still implicitly or explicitly policy or policies that cover(s) a wide range of third sector organisations nationally. If it is accepted that sector-specific policies of one form or another, do, therefore, exist at the Member State level, then logically there is the possibility that an equivalent or near-equivalent institutional terrain can form a policy focus for European Union institutions.

Second, we do not need to take refuge in abstract theoretical possibilities to claim that in principle an analysis of this subject is meaningful: the institutions of the European Union have *already* begun to develop positions, take decisions and undertake actions...
which have as their focus some recognisable "sector or "system" per se. We touched on this development in our introduction, and Box 1 fleshes this out with a (non-exhaustive) chronology of some of the most obvious indications of such institutional recognition and acknowledgement. This provides *prime facie* evidence that, at least since the mid-1980s (and somewhat earlier in the case of international development organisations), the EU has departed from the *de facto* pure "leave it to Member States" option.

Finally, there is a new spate of evidence that has recently emerged concerning the pervasiveness of the voluntary sector across the European Union in economic terms. Reliable information had initially emerged overwhelmingly not as a result of fact finding by official supranational institutions or Member States, but primarily through the independent efforts of researchers and their predominantly third sector sponsors (Defourny and Monzon-Campos; Salamon and Anheier, 1994). It is also clear that the social and political role of these organisations at European level is gaining higher visibility at the European level. For example, Harvey (1995, p. 93) refers to "the late 1980s and early 1990s [as] a period of explosive growth in the international voluntary movement. About 20 sectors of voluntary organisations are now represented in Europe through over 100 international networks, federations, movements [etc.]". Many of these networks have Brussels offices and are partly or fully funded by the Commission.

**Box 1: Some significant events in development of EU "policy" towards the third sector**

1976 NGO-EU liaison committee set up by mutual agreement between DG-VIII and European international development and relief organisations

1984 Resolution of European on the "role and administration of association and the laws governing them", provides the impetus for the production of the Fontaine report (see 1987).

1986 Economic and Social Committee (ECOSOC) initiate conference making first European attempt to compile statistical inventory of the *économie sociale*. Attempts to include statistics on "non-profit sector" for each Member State (but the data are inaccurate and flawed)
1987 Fontaine report from the Parliament's Committee on Legal Affairs and Citizen's Rights proposes, inter alia, strengthening of institutional representation of associations in Community machinery, the development of a European Statute of Associations (ESA), and "development fund" for associations.

1989 "Social economy" unit established at DGXXIII.

1992 Commission publishes draft Regulation for ESA.

1992 Declaration 23 attached to the Maastricht Treaty calls for "co-operation between the European Community and [social welfare] charitable associations and foundations."

1993 Revised draft regulation for ESA produced.

1995/6 European Parliament's Committee on Institutional Affairs initiates 2 public hearings in run up to Amsterdam European Council, inviting nonprofits to speak on behalf of citizens.

1996 Draft ESA regulation referred to COREPER working group and features on Council of Ministers' agenda.

1996 DGV promotes idea of "civil dialogue" with NGOs at Social Policy Forum in run up to Amsterdam Treaty; second Social Policy Forum follows in June 1998.

1997 Declaration 38 attached to the Amsterdam Treaty singles out "voluntary service activities" which are "recognised for their contribution by voluntary service activities to developing social solidarity."

1997 DGXXIII and DGV jointly launch Communication "Promoting the role of Voluntary Organizations and Foundations in Europe" jointly with DGV, the first "Policy" paper to be produced by the Commission.
1998 ECOSOC produces own-initiative Opinion "Cooperation with charitable associations as economic and social partners" formally in response to the Communication

1998 COR produces own-initiative Opinion "The role of voluntary organisations a contribution to a European society" in response to the Communication

1998 European Parliament's Committee on Employment & Social Affairs and the Legal Affairs Committees table draft reports in response to the Communication

1998 Forward Studies Unit (reporting directly to the President of the European Commission) invites "national experts" and Commission bureaucrats to seminar on "economics of the third sector"

More broadly, ECAS (1997, pp. 5-8) identified over 160 budget lines in the EU budget from which voluntary organisations are the primary, or at least significant, recipients. Taken together, the very existence of these funding schemes amplifies our earlier point that the third sector is both "actor" and "object" of EU policy making. And focusing on the sector's advocacy role, the European Citizen's Action Service have recently argued that somewhere between 5% and 10% of the lobbying activity undertaken at the Commission level is for public purposes rather than by private businesses (ECAS, nd, p. 28; ECAS, 1997, p. 9). Such activities range from the pressure applied by environmental groups to instigate or shape regulations at the European level, through the client group-based networks in social services seeking the extension of their constituents' economic and social rights, to groups formed to lobby for the protection and extension of voluntary bodies' privileges in indirect taxation as EC competence extends in that direction (Gjems-Onstad, 1994, 1997). The European Commission itself has issued a Communication calling for "open and structured dialogue" with "interest groups", although admittedly not distinguishing between those representing business interests, subnational state interests and third sector interests (European Commission, 1992).

Effectively, then, the European Union appears to have moved from a "do nothing" policy for some thirty years between the 1957 Treaty of Rome and around the time of the 1986 Single European Act (with the notable exception of international development), towards a surge of explicit recognition of the sector per se during the course of the past decade. We observe a wide array of participants: the Commission;
the European Parliament, and some of its Committees; national politicians (at the Council of Ministers and during Treaty renegotiations), and national civil servants (through participation in a COREPER working group); "national experts" (for example, those invited to the Forward Studies Unit seminar); institutionally recognised interested parties (through ECOSOC and COR); and the third sector itself (as a sponsor of research, and participant in public hearings and fora).

How are we to structure and analyse such a complex process? To make our account manageable, in the remainder of the paper we focus in 2 ways. First, operationally, we consider only a small number of policies, initiatives or events. We will attend to:

The European Association Statute

Declaration 23, attached to the Maastricht Treaty

The 1997 Communication

The third sector as an actor in the allocation of the Structural Funds; and

The third sector as an actor in Development policy

This particular combination was chosen for four reasons. First, these represent important topics in the discourse of discussions of the third sector amongst practitioners and analysts alike, at least in the first four instances. Second, coverage of Development policy and the structural funds mean we include the two single most important sources of financial support from the EU for the third sector. Third, and relatedly, the "cases" each represent slightly different aspects of the policy process, ranging from agenda setting and "symbolic" policy making (The 1997 Communication and Declaration 23), through (potentially at least) legal decision making via regulation (ESA), to policy implementation (Development policy and the structural funds), and so potentially shed light on different aspects of the process. Fourth, these choices are pragmatic: in many cases, we were acquainted with some of the most important actors, and thus were in a position to secure access to valuable primary information.

Second, we find it useful to deploy Kingdon's "Policy Streams" approach (1995) in an attempt to make some initial sense of, and impose some structure upon, what seems a chaotic set of events and outcomes. This model was originally developed in an
attempt to understand and compare the agenda setting process at federal government level in the United States in the late 1970s in the fields of transport and health, and builds upon Cohen et al (1972)'s influential "garbage can" model of decisions in universities. Three properties characterise choices in this model:

*Problematic preferences*, whereby people and politicians have ill-defined and vague preferences, which they nevertheless act upon

*Unclear technology*, whereby actors do not have a clear view as to how they fit into the broader picture, and have only "fragmentary and rudimentary understandings of why they are doing what they are doing" (p. 84); and

*Fluid participation*, whereby participants drift in and out of decision making, with involvement varying enormously between subjects and over time.

The framework as elaborated by Kingdon can be briefly summarised. First it is recognised that the various *participants* which would include, in our terms, the various actors and institutional players discussed above, plus, importantly, the general public and the media can all potentially be sources of, or indirectly affect, policy agenda items and alternative policy proposals, or "solutions" to conditions which powerful actors sense are "problems" are therefore merit a policy response.

Second, the policy process is portrayed as involving three "streams": problems, politics and policies. According to Kingdon, these are largely independent of one another, and each develop according to their own dynamics and rules. But at some critical juncture the three streams are joined, and the greatest policy changes grow out of that coupling of problems, policy proposals and politics (p. 19)

The *problems stream* helps us grasp how and why states of affairs come to be considered problematic, and is said to involve such factors as the availability of systematic indicators, focussing events including crises and disasters, and feedback from the operations of current programs. Problems are seen as such were superior courses of action, yielding better performance and value congruence that the *status quo*, are thought to exist a possibility more likely to be apparent if comparisons can be made. The *policy stream* in treated as analogous to biological natural selection:
ideas float between communities of specialists, and those proposals which meet certain criteria including technical feasibility and budgetary workability - are the ones that survive. Finally, the politics stream is affected by swings in the national mood, turnover of elected officials and pressure from interest groups. According to Kingdon, the all-important coupling of these streams:

Is most likely when policy windows opportunities for pushing pet proposals or conceptions of problems are open windows are opened either by the appearance of compelling problems or by happenings in the political stream [while] alternatives are generated by the policy stream. Policy entrepreneurs, people who are willing to invest their resources in pushing their pet proposals are responsible not only for prompting important people to pay attention, but also for coupling solutions to problems and for coupling both problems and solutions to politics. the chances of items rising on a decision agenda - a list of items up for actual action are enhanced if all three streams are coupled together. Significant movement, in other words, is much more likely if problems, policy proposals and politics are all coupled into a package (p. 20)

We should, of course, be wary of transposing an approach developed to analyse the particular context of the US in the 1970s to a different time, a different place and a different set of institutions. However, in support of at least using this approach as a point of departure, it can be noted that it has been recognised by leading public scholars in Europe as being general enough to have potential for framing the study of agenda setting and related processes in EU institutions (Peters, 1996; Richardson, 1996a); moreover, it is not clear what alternative models would be more suitable. In the description of each "case" that comprises Section II, we will therefore at least use his labels and concepts to order our accounts, and provide a complementary lens to our four propositions in discussing the unfolding developments. In Section III, we will then attempt to pull the material together more analytically, deploying these tools in an explicit comparison across "cases" in a first attempt to explain the differences that emerge

SECTION II. The Contrasting Development of Five Third Sector relevant Policy Initiatives

Before we examine the five initiatives separately, we will tentatively sketch out the features of what appear to be the shared roots of at least two of them, the European Association Statute and the Communication. The origins are almost certainly to be found outside the European institutions themselves, and principally from a group of
low visibility French actors who were later to form CEDAG, which now operates as a pan-European umbrella group with some financial support from DG XXIII. In the early 1980s, these individuals appear to have lobbied French MEPs in particular and the wider socialist and Christian Democrat groups of which they were part, for some form of EC acknowledgment and recognition of the role of "associations".

Although the precise nature of their original goals and motives is unclear, their efforts are closely related to the European Parliament resolution of 1984, and the resulting Fontaine report in 1986. The report argued that a legal basis for Commission action in this field could be found, entitling it (through Article 7 of the Treaty of Rome) to intervene at Member State level to prevent associations' "discrimination on the grounds of nationality", and (under Articles 100 and 235 of the Treaty of Rome, and Article 100A and other articles of the Single European Act) to facilitate transnational activity in this field. A wide ranging array of provisions were proposed to promote the cross-border operations of associations, including (pp. 6-7):

- the automatic recognition in other Member States of associations recognised in their home country;
- the creation of an European Statute of Association for those organisations wishing to operate across Europe who found existing legislative alternatives inappropriate;
- the setting up of an "European fund for the development of associations;" and
- a "better representation" of the association sector at the level of Community institutions.

The report also made a general suggestion that "greater funds be made available, in the service of the community, to non-profit making associations which perform a service in the common interest by increasing their power to accept donations from individuals" (p. 7).

The European Association Statute

One of the most tangible and specific proposals contained in the Fontaine Report was the suggestion that a legal instrument be created to enable third sector bodies to operate with greater ease transnationally. After being proposed in the Fontaine Report,
the ESA is mentioned once more in a paper from the Commission in 1989 on the impact of the frontier free market on the économie sociale in general. Moreover, in the same year, a working paper on associations and their regulation at the EC level was produced by an intergroup of MEPs, chaired by Mrs. Fontaine.

Some three years later, in 1992, the draft legislation was officially submitted to the Council by the Commission (COM(91) 273). Importantly, the European Association Statute became part of a package which included equivalent regulations for cooperatives and mutuals, together with accompanying directives on worker participation. Amended versions were resubmitted in 1993 (COM(93) 252 final). These are voluminous documents, spelling out in great details proposals for internal decision making in the proposed EA. Overall, however, little progress was made, and the European Association Statute, together with the other parts of the package, remained stalled in the absence of decisive action.

Gjems-Onstad (1995) has outlined some of the factors that shaped this regulation's limited progress between 1992 and 1995. Two key points emerge from his account. First, he suggests that "it is obscure whether anybody, either outside or inside the official bureaucracy of Brussels, much cared about what happens to the proposals (p.4)" with the notable exceptions of CEDAG and presumably its allies in the Parliament. Significantly, he refers to official statements from the German government questioning the need for EU action in this regard.

We can add that thinking amongst civil servants in Britain one group of "hidden participants", to use Kingdon's terminology, was beginning to take shape, but in a way well captured by the notion of "problematic preferences". As one insider put it, the knowledge that there was activity at the European level "raised all kinds of vague fears about "Was the Commission going to come along with great big boots and spoil our nice back yard?" As it became clearer that the main issue in hand was the particular proposal for a transnational legal structure, British opinion in both the home civil service and amongst national experts working in the Commission began to coalesce in two ways: first, in sympathy with the German view that European action was unnecessary, since transnational third sector organisations could reasonably well operate simultaneously under national laws in each Member State; and second, that an adapted version of an alternative structure, the European Economic Interest Grouping, would form a better starting point for a tailored legal instrument that the existing draft of the ESA that by 1992 was starting to be circulated (see below).
Second, Gjems-Onstad pulls together the anecdotal evidence that was at that time available on attitudes towards the Statute within the Council of Ministers. While France and Spain were in favour, Gjems-Onstad remarks that:

"Denmark is supposed to be negative for reasons not yet clear; Germany is against the regulation because it wishes to reserve for German NPOs only the right to raise funds through the "church tax". The UK government in 1992 issued a consultation paper stating that it was not convinced of the need for any instrument. The British government [was] supposed to [have been] even more negative [by 1995 arguing that] a regulation dealing with associations is contrary to the principle of subsidiarity. The EU should not be involved when it is not necessary" (p. 4).

The French associations favoured the European Association Statute because it offered them a chance to overcome the limitations of existing legislation in France, in particular the restrictions on property ownership and the centralised system of public governance of third sector organisations (Archambault, 1996). As we will see, stakeholders in the German third sector, however, had grounds to oppose the European Association Statute not only because of the specifics of the "church tax", but on the grounds that their more general position would be jeopardised rather than enhanced, as is the case of France.

At the time of writing, Gjems-Onstad was optimistic that the French and Spanish presidency of the Council of Ministers might lead to swift action to enact the regulation (in 1995). However, nothing happened in that year, and it was not until the Italian presidency in 1996, perhaps in response to a concerted lobbying campaign by Italian third sector organisations that further action materialised. An expert working group at the Council (COREPER) was formed to examine the draft regulation, which met four times during the course of that year, and as a result the regulation featured explicitly on the agenda of a Council of Ministers meeting for the first time.

However, the policy-making style remained cautious, and the significance of this mention on the Council agenda should not be overestimated. In fact, reference to the existence of the expert working group was confined to a rather bland paragraph that "under the Italian presidency there has been work on a regulation for associations and further work will be conducted in the future". This statement was buried in documentation circulated to the Council in advance alongside many others, covering a wide variety of issues. As such, according to EU rules of procedures, the agenda was automatically approved as a matter of procedure without any debate or discussion.
Moreover,

While the European Association Statute had technically made it onto the Council of Ministers' agenda, it still faced major barriers. The matter was particularly complicated by different national positions concerning the Directive for workers' participation that accompanies this and the other two économie sociale statutes (as well as the proposed regulation for European (for-profit) companies). Broadly speaking, these positions reflected fundamental disagreements concerning the scope and purpose of "social" Europe. The UK government under Thatcher and Major had been hostile to this Directive, regarding it as inconsistent with the principal of subsidiarity, while the German government saw it as not going far enough in extending workers' rights as part of their broader vision of a federal-style Europe.

In fact, a compromise on the workers' Directive issue may now have been reached following the deliberations of the so called "Davignon group," and the UK's change of government, and with a more pro-European Labour administration in power in 1997. However, the most widely held view appears to be that this will not in itself open the way for the ESA to come to legal fruition in the immediate future. Even if the issue of worker participation and protection has been resolved, more obstacles are being set up for the European Association Statute, this time by members of the third sector community itself in at least one Member State: Germany.

While third sector organisations in most member states appear to have been either in favour or indifferent, in recent years, the German welfare associations have begun to lobby both the German government, EU representatives and allied associations in other countries. Whereas in the early 1990s, the German government saw no need for legislation action on behalf of the Commission, and regarded the European Association Statute as unnecessary, the welfare associations went further and claimed that the European Association Statute would do irreparable damage to the European third sector.

The reasons for the German attempts to block the European Association Statute are complex and reveal a great deal of the ambiguities that exist between representative bodies of the third sector at the national level, and the policy makers in Brussels. In a recent official policy statement, the Association of Free Welfare Organisations in Bonn issued the opinion that free welfare associations are voluntary, ideal associations, and not economic firms or entities at all. This reasoning is based on the 19th century civil law distinction between ideal associations and economic
associations. If they are able to convince the EU that they are *de jure*, if not *de facto*, non-economic in nature, the European Association Statute which treats third sector agencies as essentially economic entities - would then simply become inapplicable to the free welfare associations. We will see further below that their efforts to group around DGV (Social Policy and Employment) rather than DGXXIII, are based on their fear to be treated as "commercial" entities next to co-operatives and small and medium enterprises. In other words, the very coupling of matters economic with matters social under the banner *economie sociale* is perceived as threatening to this part of the German third sector.

There is one more reason for the attempts on behalf of the German welfare associations to redefine the "target group" of the European Association Statute: the wish to avoid the effects of the workers' participation Directive. In one way or another, its implementation would imply that trade unions or their equivalents could play a legally sanctioned role in the operations not only of large for-profit corporations, but also in third sector hospitals, social service providers and educational institutions. For the German welfare associations, and perhaps others as well, the Directive could lead to unwelcome developments that could introduce added uncertainty at a time when they are confronting tight public budgets and increased competition from commercial providers. In fact, many establishments run by the welfare organisations are exempted from unionisation under German law. Instead they are regarded as *Tendenzbetriebe*, organisations governed by ideological (religious, social, political) concerns; as such they are treated as if they were not characterised by the capital-labour conflict, which would be the case for "economic" enterprises. As a result, there are no unions in Catholic or Protestant third sector organisations in Germany, although some form of employee participation exists.

Thus, we find a certain degree of ambivalence in the German position, which seems to support and oppose the Directives and the European Association Statute at the same time and for very different reasons. In toto, the complexity of the issues involved helps account for the convoluted legislative history of the European Association Statute.

We can attempt to summarise some of this complexity using our descriptive propositions, and Kingdon's model. First, certainly at its instigation, the ESA project was characterised by problematic preferences, unclear technology and fluid participation. Given its rather obscure packaging and the lack of agreement that a "problem" existed, in many ways it is quite surprising that it managed to even get as far as a draft legal instrument, let alone to take the particular form of the ESA. There
were initially certainly no obvious "focussing events" in terms of the crises or indicators which Kingdon argued are so important in prompting interest from policy makers. Most activity proceeded relatively independently in the "policy stream", as first Commission civil servants, and subsequently national experts, quietly sought to take the matter forward. Attention within the "political stream" seems to have been confined primarily to small number of supporters within the European Parliament, and the net result was a situation akin to proposition one: low salience and muddling through. In this phase, even actors against the ESA, for example, because it was thought it could breach their interpretation of subsidiarity or was thought to be an unnecessary or inappropriate instrument, were not much bothered to concern themselves with it. Perhaps those who do give it a moment's thought reached, and still take the view that when the time arrives to make an authoritative decision in the Council of Ministers its prospects of success are remote.

However, a shift can be detected around the mid 1990s, as one particular set of stakeholders the German free welfare associations began to formulate a position which was proactively hostile. Panicked at least in part by the possibility that the resolution of the log-jam over the workers' participation Directive might clear the way for unprecedented "interference" in their hitherto low visibility world effectively, a "focussing" event in Kingdon's terminology - this particular subset of the German broader constituency started to regard this matter as one of extremely high salience for the first time. In the German case, therefore, we have clearly moved from a proposition 1 to a proposition 3 type of scenario. Moreover, because of the importance of the German position within European decision-making as a whole, it could be argued that the issue has now moved to this scenario at a Europe wide level. Particularly as the measure's French and Italian supporters upgrade their efforts to support the measure in response, we see that a "politicking" scenario has emerged.

The 1997 Communication

Whereas the ESA represents an example of policy-making where the stakes have recently shifted from low to high salience, the Communication tells a somewhat different and less dramatic story. Here we find a set of events and actions that seem still to resemble, overall, the scenario we described in Proposition 1: "low salience, muddling through." As we will see, while it is true that the salience of this case has grown significantly for some important groups of participants in the "policy stream", particularly at the European level, there appears as yet to have been no equivalent focussing event in the "problem stream" to induce the animated
strategizing by nationally based actors that has recently occurred with the ESA.

The 1997 Communication (European Commission, 1997) represents the first (and only) "policy paper" to be produced thus far concerning the third sector as such. The Commission now has a formal brief which specifically refers to the third sector, or at least a conceptual construct within which it is explicitly recognised: *L'conomie sociale* includes as we have already noted "associations and foundations" as well as co-operatives and mutual societies. To understand the genesis and development of the Communication, it therefore becomes important first of all to understand how the social economy unit is situated within the Commission, and the political and cultural pressures that led to its establishment in the first place.

The "social economy" unit was added to DGXXIII's portfolio in 1989 to sit alongside its existing ambit of enterprise policy and small and medium businesses (SMEs), distributive trades and tourism. Overall, DGXXIII is one of the Commission's smallest departments, and is one of the few to share its Commissioner with another DG: Its Greek socialist Commissioner, Christos Papoutsis, an economist, also works at the Euratom supply agency and also heads the department concerned with energy (DGXVIII). Moreover, There is no evidence that he has a substantive personal or other interest in the third sector. Within DGXXIII, the social economy unit accounts for only a tiny proportion of its activities: it represents 5% of its budget, and employs a total of 12 staff. This is less than a tenth of one per cent of the Commission's total staffing of around 20,000. It is therefore only a slight exaggeration to state the social economy unit is the smallest part of a DG located at the margins of EU politics and operations, headed by a Commissioner with little opportunity or inclination to attend to the third sector.

The "official" line on why the social economy unit was established is set out in Commission documentation. It was seen as part of the process surrounding the completion of the "single market" targeted for 1993 following the 1986 Single European Act. One role for the Unit was then to explore how the EC might take into account the "specificities" of the social economy in the context of European economic integration. The Communication from the Commission to the Council, Businesses in the *Economie Sociale*: Europe's frontier free market (SEC(89) 2187 final), which was theoretically to form one of the legal bases for DGXXIII's work program mentions in passing the role of "non-profit associations" in building a "social Europe", but states that this is outside its "scope of analysis" (p. 4). Practically all the discussion is focused on the technical and legal suitability of existing or proposed legal instruments as a basis for transnational economic operations, with most of the text relating to co-
References to the third sector's role other than as a transnational economic player, however, were to be given more expression in the document seeking a legal basis for DGXXIII's work program from 1994-96 in the aftermath of the Maastricht Treaty. The document states that "to maintain the diversity of the European economy, it is necessary to enable .... associations .... to survive ... in a competitive market while complying with - or promoting - their principles of solidarity"; and refers to their "capacity for innovation and experimentation" as special features (COM(93) 650 final, p.2).

This general and vague "official" language tells us relatively little of the actual activities planned to be undertaken, and actually undertaken, by that part of the Unit dealing with the third sector. One insider indicated to us that there was, in fact, no guidance other than to "keep an eye on" ESA. In addition, it was suggested that a White Paper should be drafted but with little or no instructions as to what it could or should contain. A first draft of the White Paper was produced by DGXXIII in late 1994. Asked to comment on the response to the drafting process within the Commission, a DGXXIII insider argued:

When it was being drafted, we couldn't get anyone's attention, nobody cared less, DGV couldn't have cared less ... so when the thing was finally put around nobody had anything to say about it ...[We] had no weight in the Commission.... and there was general apathy on the part of other cabinets. So the thing would be on the agenda, and nothing would be done to push it, and then it would fall off as something more urgent came along

In fact, it was an abbreviated and slightly redrafted version of the same document which was to appear as a Communication some three years later in June 1997. Box 2 sets out its key elements. A Communication carried less official weight than a Livre Blanc (which is usually a first step to major policy action). Why was the idea of a Livre Blanc abandoned in favour of the "weaker" Communication, and why the long delay?

The main official reason for the delay was to take account of the expanding EU membership in the document. But two other factors seem much more important. First, the continued indifference and apathy of most actors in the Commission. Second, the
delay was partly due to the emergence of DGV (Social Policy and employment) in a newly proactive mode, expressing far greater interest in the idea of a "third sector" than previously, and now insisting on having an input into the drafting process where beforehand it had indicated no such interest. In fact, the Communication was in the end launched as a joint initiative by both DGV and DGXXIII.

Box 2: The 1997 Communication "Promoting the Role of Voluntary Organisations and Foundations in Europe"

This contains 15 pages of main text, together with 3 annexes (67 pages). Annex 1 documents the results of a survey of organizations undertaken through national and Brussels-based umbrella groups, annex 2 provides an overview of the sector's legal and fiscal treatment across Europe, and annex 3 describes the legal, fiscal and accounting regime that applies in each Member State. The main text can be summarized as follows:

Primary Aims: "to illustrate the growing importance of the sector within the EU, to show what problems and challenges these organizations are facing and to open up a dialogue ...to improve their capacity to meet future needs and maximize their contribution to European integration ...[and] ...presents a series of measures which could be taken at Member State level but ...does not seek to impose on Member States specific solutions or action ...confirming to the principles of subsidiarity and proportionality there are some objectives which can be dealt with at Community level. These ideas are outlined [in the third section of the conclusion, see below]" (p. 1)

Four pages describe the voluntary sector's economic scope and scale, and political and social importance. The Paper (pp. 3-4) draws heavily on the Johns Hopkins project findings to illustrate the sector's economic role (contribution to GDP and paid employment). To illustrate social importance, the paper guesses at associational membership across the EU, and refers to their historic and current role in advocacy, and their provision of a "gene pool" from which social and other policies have grown. To illustrate political importance, the paper connects them with the "creation of a sense of European citizenship" and portrays them as "promoters of democracy" by also fostering "solidarity", facilitating information exchange and providing practical experience of democratic processes.
Two pages describe "the sector and the European institutions working together". This section notes the existence of contacts between a number of DGs and the voluntary sector prior to 1992, but states that these "took place on a completely ad hoc basis ... it was not until the [Maastricht] Treaty that the importance of links with this sector was first formally expressed with the creation of Declaration 23" (pp. 6-7). Later on in the section, considerable attention is given to describing the European Social Policy Forum established in 1996 as being the catalyst for "a new policy objective: the building over time of a strong civil dialogue" (p. 7) to coexist with existing dialogues with Member States' public authorities, and trade union and business representatives.

Three pages describe "problems and challenges facing the sector", ranges across a number of issues primarily relating to financial resources. This covers the Member State and EU level. At the former, the issues raised by reliance on public funding in a context in which these same funders do not have a "horizontal" overview of the sector's "needs" or "developments within it" (p. 9) is problematised; at the latter level, financial difficulties faced by associations attempting to operate transnationally are also referred to. This latter challenges section refers in passing (p. 11) to the ESA as a measure proposed by the Commission in response to the problems of legal recognition for organizations operating outside their home Member State.

A four page Conclusion is divided into suggestions at three levels. First, at Member State level the Commission urges Member States, inter alia, to develop data, a lack of which, it is argued, has "severely hampered policy making", to ensure that publicly funded organizations retain their "independence", "clarify" legal and fiscal frameworks and "ensure voluntary organizations are given adequate training". Second, the section "voluntary sector and foundations level" is just one paragraph urging diversification of funding, and encouragement of "relevant" training. Third, at European Community level, it is proposed that "civic dialogue" be progressed in part through the operation of the new "Consultative committee" for social economy organizations. Other than this, a European year for voluntary organizations is proposed, improving accessibility to European funding programs are suggested, and training for transnational management is mooted. Finally, picking up on an idea from the European Parliament, the possibility of an Observatory to "follow developments in this sector in the single market" is discussed.

Two reasons for DGV's apparent change of attitude and new found role as promoter of "civil dialogue" with the third sector seem particularly important. First, we noted the "mushrooming" of lobbying activity by the third sector in Section I, and this has
been particularly noticeable in the social policy arena. This had itself initially been facilitated by DGV through its policy (at least from the mid 1970s) of making available European funds to support an elaborate web of issue-specific and client-group networks (under the most general clause of the Treaty of Rome, i.e., Article 235). These groups lobbied for a wide range of purposes and issues such as equal opportunities, women's rights, anti-poverty measures and so on. Having cultivated these groups and networks since the mid 1970s, this arm of the Commission was unwittingly helping to lay foundations from which a European third sector could emerge around "social policy" in the Brussels of the late 1990s.

This helps explain why DGV should be interested, but is less obviously a reason for the change of heart we have described. The catalyst here appears to have come primarily from inside the Commission, through the European statecraft of a new Commissioner, from Ireland, Padraig Flynn - in Kingdon's terms, effectively a "policy entrepreneur". Flynn had come to DGV in 1993 at a time when the Commission's involvement in "social policy" was an extremely sensitive issue - most obviously because of the UK's hostility to aspects of the Social Charter, although other countries also voiced deep concerns less vocally. The ambitious new Commissioner was proactively on the lookout for "new ideas" which could command support across the EU in social domains, and thus keep the momentum going at a difficult time. The particular situation meant that this Commissioner faced considerable incentives to focus on the third sector, a state of affairs which could be sharply contrasted with that prevailing at DGXXIII.

Why was "civil dialogue" the "big idea", rather than any other possible organising concepts that could potentially have been promoted? We cannot provide a full answer here, but it is worth noting the vagueness and generality of this idea and the associated rhetoric of "closeness to the citizen" through promotion of the third sector. As such, it fitted with existing thinking about European citizenship (Comites des Sages, 1996), while at the same time being unlikely to be regarded as an obvious encroachment on Member States' control over social policy. This was crucial, because social policy is one of the most crucial instruments by which countries foster their populations' allegiance (Van Kersbergen, 1997).

Subsequently, following consultation around a Green Paper in 1993, the 1994 White Paper *European Social Policy: The Way Forward for the Union* argued for the initiation of a forum for debate and discussion on social policy issues. This subsequently lead to the first European Social Policy Forum in March 1996 attended by over 1,000 third sector organisations, with a second one following in June 1998.
Over this period, Flynn was increasingly joining forces to strongly promote the idea of civil dialogue with the third sector with key members of the European Parliament's Committee of Social and Employment Affairs, including British MEP Simon Hughes and Italian MEP Fiorella Ghilardotti. Our interviewees inside and outside the Commission also mentioned the personal interest in the third sector taken by Howell Jones, British Deputy Director of DGV, apparent, for example, from a speech made at the hearing on civil dialogue at the Committee of Social and Employment Affair's hearing on civil dialogue in March 1998. An insider also emphasised how this interest was exemplified by the Deputy Director's insistence on attending all or almost all of the numerous meetings that were taking place to discuss third sector related issues when it would have been easy not to attend personally or to delegate to more junior staff.

Clearly, as the actual process of moving from the 1994 Social Policy White Paper to the 1996 and 1998 Fora took off in DGV under Flynn and Jones' energetic leadership, it assumed a considerable momentum of its own. Their interest in and DGV's enthusiasm for the third sector continued in the negotiations leading up to the Treat of Amsterdam, at which DGV actively lobbied alongside NGOs for the inclusion of a reference to them within the body of the Treaty (Flynn, 1997a, 1997b)

Beyond the impetus provided by the enthusiasm of Jones, Flynn, Hughes and Ghilardotti (who tabled the largely positive response to the Communication tabled by the Committee on Employment & Social Affairs), other signs of interest have come in the form of opinions from ECOSOC and COR. Perhaps most significant has been the involvement of the Secretariat-General - the "nerve-centre" and "gatekeeper" of the Commission, with formal responsibility for co-ordinating the work of the various DGs (Christiansen, 1996, p. 85). With the Communication finally coming to fruition, for the first time the Secretariat-General has the third sector per se on its agenda. It is too early, however, to judge the impact of these developments. But caution is apposite. The Inter Service Group convened with the support of the Secretariat-General to hold meetings in order to discuss taking the agenda forward within the Commission has met, but thus far attendance at meetings appears to have been patchy, and involvement with relatively low ranking staff from Directorate Generales other than DGV and DGXXIII appear to have been the main departmental representatives

To return to our propositions, therefore, it seems that despite an upsurge in interest in some quarters of both the Commission and the European Parliament for the time being, we still have a Proposition one scenario. First, the Communication remained precisely that, rather than the higher-status Livre Blanc originally planned. Second, it
is too early to claim that the involvement of the Secretariat-General has significantly focussed interest more broadly across the Commission as a whole. As for the European Parliament, a third sector intergroup of MEPs does operate involving some 40 MEPs with an interest in co-operatives and mutuals as well as the third sector as defined here but with a "much lower" active core (Yeldham, 1997). There certainly appears to be no groundswell of interest by European politicians as yet, and the handful of MEPs we have identified constitute a small segment of opinion.

Third, there are relatively few signs of an animated reaction or commitment to the Communication's proposals from national politicians, civil servants or third sector organisations. It is not clear that many in the former two categories have formulated a position in response to the Communication per se at all. For its part, the reaction to the proposal from the third sector that has been forthcoming (primarily from the Brussels-based networks which depend heavily on the Commission for funding), while appearing to welcome the Communication as conferring recognition in some general sense and endorsing the idea of a third sector, has been generally muted. With the exception of promises to increase the efficiency with which European Social Fund monies are allocated, which would currently affect not insignificant numbers of third sector organisations in three Member States (see below), there are few concrete proposals from which clear economic, political or social benefits or costs can be anticipated.

In Kingdon's terms, we might suggest that the biggest actual and potential splash made by the Communication may be in its impact in the problem stream. The significance of the very acknowledgement of the existence (or even social construction) of a "third sector" in the Communication has represented, bringing into being a "problem stream" around the idea of a third sector, should not be underestimated. Albeit if largely drawing on research undertaken by others, the paper does start to present the types of comparative data which can move a state of affairs from being merely regarded as a condition to being seen as a problem and can therefore laying the groundwork for the possibility of policy action in the future. However, developments in this stream alone are not enough to produce major policy change, and it does not seem that a "policy window" can be said to have been opened.

This is not to say that a more comprehensive impact could follow on from the Communication in future. The patterns of participation in this case contrast markedly with the situation in the early 1990s in the sense that apparently active and committed "policy entrepreneurs" are now increasingly in place both at the Commission and in the European Parliament. Kingdon (1995, pp. 180 181)
emphasises how successful policy entrepreneurs are characterised by three main qualities: an authoritative decision making position; political connections; and "persistence and sheer tenacity". Clearly in possession of the first quality, if these actors cultivate the second and exhibit the third, it could be that they prove to be the catalyst for more major shifts in the years to come.

Declaration 23

If the proposed European Statute and the founding of the social economy unit at DG-XXIII can be understood as essentially French in origin, then the attachment of Declaration 23 to the Treaty of Maastricht was also, at least initially, the outcome of pressure from a single, but different Member State: Germany. The precise English wording of the Declaration is displayed in box 3. As a Declaration, this is annexed to the Treaty and is not part of it, and therefore does not actually constitute part of the corpus of European law. Nonetheless, as an expression of political will, it serves as an important reference point for future policy making in this field.

Box 3: Declaration 23 attached to the Maastricht Treaty

"The conference stresses the importance, in pursuing the objectives of Article 117 of the Treaty [of Rome], of cooperation between the [European Community] and charitable associations and foundations as institutions responsible for welfare establishments and services"

Article 117 is included in Chapter 1 on "Social Provision", which is included in Title VIII on "Social policy, education, vocational training and youth". The Article aims "... to promote improved working conditions and an improved standard of living for workers"

While the idea of an economie sociale and encouraging associations within it appear to have been rather abstract, vague and philosophical and therefore not easily understood as simply reflecting the immediate interests of particular individuals or organisations or traceable primarily to a clear sequence of events, the reverse seems to have been the case with Declaration 23. The proposal was instigated and lobbied for with considerable vigour by actors seeking to defend the privileged position of the six free welfare associations which are major providers of social services and health care in Germany (Anheier and Seibel, 1998). It can only be understood within the context
of these providers' perception that the economic element of European integration with its attendant free market logic threatened (and threatens) their special status; and the fact that key politicians, trade unions and churches were willing and able to ally themselves with these providers when the opportunity arose.

To begin, we have to take a step back to German unification in 1990. The starting point as far as the free welfare associations were concerned, was their success in securing a special mention for themselves in the Unity treaty. In essence, the Treaty reconfirmed their preferential position in the field of social and health policies. However, soon after this, a proposal was floated in Bonn to bring about market-like reforms in health care provision which sought to establish more of a level playing field for different providers of publicly funded care regardless of their sector of ownership. This threatened to erode traditional privileges in legislation enjoyed by the free welfare associations.

Within the governing coalition, these quasi-market reforms were supported by one partner, the Free Democrats and also by the Health Ministry, but opposed strongly by the Christian Democrat Chancellor, Helmut Kohl. The Chancellor fought a successful rearguard action by enlisting the support of other political parties, the trade unions and the churches, to keep market reform to a minimum. He then saw in the impending Maastricht Treaty an opportunity (suggested to him by lobbyists to the German delegation) to keep "commercialisation" trends in the health and social service areas in check. By implication, this policy elevated the German free welfare associations from a position of being threatened by "commercialisation" at home to one of support and protection under the Maastricht Treaty.

As it turned out, German unification was to lead directly, though in unexpected ways, to the existence of Declaration 23 for two reasons. First, parts of the initial wording for Declaration 23 were lifted straight from the Unity Treaty, with the reference to cooperation with the free welfare associations simply generalised to that shown in Box 3. Second, the German negotiators perceived that since the UK and France had been present at the negotiations of the Unity Treaty and accepted the privileging of the free welfare associations within it, it was thought that it would have been hard for them to argue against a similar clause in the context of Maastricht and the general emphasis on subsidiarity in it. In the event, the UK were neutral to the Declaration, and France positive. With both French and German support, an interviewee advised us, "the rest were politically easy".
Since its annexation to the 1992 Treaty under this German impetus, the Declaration has in fact been seen by the wider European lobbying community seeking recognition of the third sector as an important initial step, but falling short of the more ambitious goal of securing a reference to the sector within the body of the Treaty, and thus incorporated into the corpus of European law. However, we have already noted that efforts to secure such a reference at the time of the Amsterdam Treaty in 1997 - led by DGV from within the Commission, and involving (apparently separate) lobbying by ECAS and other voluntary sector lobbyists, failed (ECAS, 1997b; Flynn, 1997a, b).

For those parts of the third sector that found it difficult to identify with DGXXIII and the idea of "social economy," Declaration 23 had represented a victory. As one of our interviewers remarked: "The beauty of it all was that it happened without DGXXIII being involved, perhaps not even knowing about it. This is our policy, not theirs." In other words, the Commission and Europe's third sector are increasingly meeting each other on contested territory.

Declaration 23 also became impetus for the Economic and Social Council (ECOSOC) to proffer an "Opinion", albeit officially in response to the Communication rather than the Declaration (which is mentioned in passing in the Communication text). In referring to Declaration 23, the draft Opinion of 1997 appeared to be seeking to move the third sector away from the idea of economie sociale, an in one sense therefore away from the language of DGXXIII towards that favoured by DGV. The report also stressed volunteering and voluntarism as essential elements of the third sector, and emphasises its role in reducing youth unemployment and related problems.

The pronounced references to volunteering in the original ECOSOC draft fulfil two purposes. First, the presence of voluntarism serves to legitimise the "special role" and fundamentally non-commercial, idealistic character of voluntary associations that the German welfare associations emphasise. Second, such references are in line with current French interests. France is in the process of establishing an ambitious youth employment and training program with significant third sector participation. Such policies are also favoured by DGXXII (Youth) and its Commissioner Edith Cresson, the former French Prime Minister.

To conclude, whereas the Communication and the ESA have seemed plagued with inertia, delays and ambiguity, the situation that produced Declaration 23 and its reverberations provide an example of high-stake Realpolitik among an unlikely coalition of actors that is, a proposition 3 outcome without a long and drawn out
prelude. Driven by unforeseen events in the "political stream", a window of opportunity arose in an entirely unanticipated way and German policy entrepreneurs, by a combination of luck and judgement, were there to take advantage. Indeed, when compared to those other initiatives, Declaration 23 seems indicative of an entirely different facet of EU policy-making. In almost Byzantine ways, and as part of a high stakes gamble that involved German domestic politics, an at least tacit compromise between French, British and German interests, an unsuspecting Commission, and an eager ECOSOC, representatives of third sector social welfare organisations managed to make their marks on the Treaty of Maastricht, and have subsequently used it as an important symbol

**The European Social Fund**

While the interest of DGXXIII and DGV in the third sector that we have described above has been backed by relatively small quantities of finance in support of programs with problematic legal status, the two cases with which we complete this section involve enormous overall budgets, and represent massive financial commitments. The EU's provisional budget stood at 91.3 billion ECU in 1998, and around one third of this total is accounted for by the structural funds (see Heinelt and Smith, 1996), of which the European Social Fund (ESF) is a major element. In fact, the third sector receives just a tiny fraction of the multi-billion ECU structural fund budget probably less than one per cent. However, an apparently small proportion converts to a relatively significant slice for the recipients (concentrated in a small minority of Member States, as we describe below) when other European funding opportunities are so limited.

To understand the context for the third sector at all requires us first to take something of a diversion away from these organisations in order to outline the development of, and rationale behind, the funds more generally. We noted in the introduction to this paper that at its instigation in the Treaty of Rome, while dubbed a "social" fund, the ESF was essentially economically driven (with social consequences): It was designed, in conjunction with the other structural funds introduced and expanded during the 1960s and 1970s, to provide support and retraining for workers in strategic industries (including agriculture, coal and steel) and relatively impoverished subnational regions, and therefore did not represent "social policy", at least in the conventional English sense (Kleinmann and Piachaud, 1993).
While using the growing structural funds budget to address the increasingly pervasive problem of unemployment came to be an important priority during the 1980s, the "solution" to the problem was still framed in terms of providing support for key (private, for-profit) industrial fields, and regional policy. Even with the more general pursuit of "economic and social cohesion" explicitly on the agenda from the late 1980s onwards, a geographical approach was dominant. Examining the legislative provisions pursuant to the Maastricht Treaty, McAleavey and De Rynck (1997) observe:

Regional development enjoys a privileged role in EU cohesion policy. By extension, it may be deduced that human resource development, as supported by the ESF and which often targets specific groups in society, plays a secondary role only this regional emphasis was translated into the regulations governing the structural funds (op cit, p. 6).

This in turn reflected the specific way in which, to use Kingdon's terminology, the "problem stream" that constitutes "cohesion policy" has been constructed: the indicators and data with which EU policy makers were presented were themselves couched in regional terms. McAleavey and De Rynck note the resultant "bluntness" of the funds as a policy instrument, focussing on the perverse sub-regional (local) incentives that result, and lack of fine-tuning to sub-regional conditions.

However, they argue that despite this situation, dictated by "the intergovernmental logic of compensation and package deals" (in which Member States with net beneficiary regions have incentives to strongly defend these rules and procedures), actors in and around the Commission have begun to apply pressure for, and to a certain extent achieve, change. They focus particularly on the strategies being pursued by sub-regional, primarily urban, actors and their allies within the Commission. Caste in terms of our "streams" terminology, two developments are to be found in the "policy stream". First, policies have been elaborated adjacent to the structural funds themselves, and second the Commission has purposefully and systematically tailored the structural fund regulations to incorporate a local dimension; In addition, one set of developments has occurred within the "political stream"; a Communication seeking to create an "Urban Agenda" consonant with the aforementioned developments (European Commission, 1997c) was seized upon by the Dutch government during its presidency of the EU to put urban policy on the agenda of an informal Ministerial meeting for the first time. In addition, these authors note the greater mobilisation of local actors in Brussels, including various groups for specific cities, the Eurocities
umbrella group, and the establishment of COR.

How are these developments relevant for understanding the relationship between the third sector and the structural funds? Firstly, there are a limited parallel that can be drawn with the efforts of low visibility officials vis-à-vis the third sector. The third-sector specific programme to foster "civil dialogue", described in the previous section, could be seen as a (currently very small scale) example of an adjacent programme elaboration. A second (more tenuous) parallel is the new, albeit relatively small in quantitative terms, departure from the traditional geographical (regional) and industrial logic of the structural funds to occur in the early 1990s which has also come in large part from within the Commission itself: the 1988 introduction of the "Community Initiatives" (accounting for 3.8% of the ESF budget: European Commission, 1997c, p. 22), and in particular the Human Resource Initiatives. While this is not a third sector-specific programme, it is aimed at improving the job prospects of a number of its important constituencies, including, most significantly, the HORIZON programme for people with disabilities, migrants, people with alcohol and drugs problems, and some other, socially excluded categories. Third sector intermediaries in the UK and elsewhere, as well as the client-group specific transnational networks whose growth we highlighted in the previous section, proactively have certainly raised awareness of the availability of these programmes to their members (eg Davison, 1997). HORIZON and other Human Resource Initiative programmes accounted for a slightly increased share of the overall structural funds budget in the 1993 regulation revisions (European Commission, 1997c, p. 33).

However, in 2 fundamental ways, the third sector's experience has been very different from that of local actors. First, there have as yet been no takers in the political stream to mirror the way in which the Dutch presidency in the second half of 1997 was apparently used with some success to put urban/local issues on the Commission's agenda. Second, its identity has thus far not been institutionalised in any way in the structural programmes in which it participates. Neither the Community Initiatives programme referred to above, not in Member-State level mechanisms that account for over 90% of the structural funds budget, recognise the third sector as such in existing regulations. The principal of "partnership", formalised in the 1988 regulation revisions and now comprising one of four overriding implementation principles, has within it no mention of the third sector, but legally involves only the Commission itself, Member States, regional and local authorities.

In this context, the involvement of the third sector in the programme that has materialised has been the outcome of national level conditions and
negotiations. As it turned out, left to the discretion of individual Member States, the involvement has ranged from none at all in most cases to relatively significant involvement (from the perspective of third sector recipients, if not from that of the programme as a whole). In particular, a recent survey of 7 Member States found that the third sector was involved in the programme (as programme deliverer, or through representation on monitoring, administration or evaluation committees) in just 3 countries: the UK, Ireland and Germany (EAPN, 1998; see also Harvey, 1996). For example, in the UK case prior to the ongoing regulation revisions (discussed below), the National Council for Voluntary Organisations (NCVO) and other intermediary bodies, through negotiations with central government's Employment Department (now subsumed within the Department for Education and Employment), managed to secure a top slice of the UK's allocation, in part on the basis of their claim to have particular competence in undertaking innovatory schemes and training people with special needs.

It is possible however, that the situation may change. First, as they currently stand, the draft new regulations (to come into force in 2000) being developed in negotiations between Member States and the Commission make no explicit mention of the third sector as a "partner" a situation which would continue to leave to Member States' discretion the extent to which the third sector is involved. However, the regulations are not yet settled, and an insider advised us that it is possible that a strong intervention on behalf of the third sector, even at this late stage, could result in different and less ambiguous language being incorporated in the regulations although there would be intense opposition from individual Member States, who generally wish to keep the regulations as general as possible to maximise their own room for manoeuvre at the national level.

Second, an innovation in the draft new regulations does involve providing support specifically for "non-governmental organisations". The current draft of Article 4.3 relating to the ESF requires that "at least 1% of Fund appropriations shall be available [for] Global Grants, for the distribution by intermediary bodies of small grants with special access for non-governmental organisations" (Coyne, 1998). This "social risk capital" proposal, as it has informally become known, if adopted, would be the first time that Member States were required by European law to support the third sector. A Commission insider revealed that the idea behind the initiative the outcome of both internal dialogue within DGV (between the section dealing with the structural funds and the section dealing with civil dialogue, discussed in the previous section), and seminars on the topic of "social exclusion" conducted jointly with a
small number of foundations active at the European level.

To conclude our penultimate case, we can see that, at the present time, it fits what we described in section I as a proposition 3 scenario. Notwithstanding statements by the Commissioner at DGV made at the 1996 Social Policy Forum and more recently that he wishes to see more third sector involvement in the structural funds, the third sector's involvement in this massive programme has generally been a matter of low salience, happening far removed from the political stream, with most discussions conducted amongst small groups of low visibility actors. At the European level, these participants in no real sense could be said to work to sector-specific agendas at all until perhaps very recently. Rather, it has been at the level of a handful of Member States that some third sector representatives have secured involvement by direct negotiations with national authorities. However, more recently, there are signs that coordinated efforts by European civil servants, fuelled in part by dialogue with third sector representatives around the issue of "social exclusion", may bring about mandated third sector involvement in the ESF across the whole of eligible zones of the EU for the first time.

**Third sector organisations in Development Policy**

Our final case involves a policy field at some remove from all those discussed thus far. While we have seen that a number of actors have been involved across two or in some cases even three of those cases, Development policy in many ways represents a completely different world; and the place within it of the third sector is utterly unlike its positioning in the various *économie sociale* and social policy related initiatives that we have described.

As we noted in section I, this field is unique in the extent to which it involves a history of institutionalised joint working between DG VIII of the Commission and the third sector, a relationship which also extends to closeness to DG 1b, and to the relevant European Parliament committees (those dealing with Development and Foreign Affairs). Part of this relationship involves the flow of sector-specific funding which completely dwarves equivalent flows elsewhere: Between 1976, when the Liaison Committee referred to in box 1 was established, and the end of 1994, co-financing of third sector development agencies had totalled over 1 billion ECU, mostly in support of activities undertaken in sub-saharan Africa and Latin America (DG VIII, NGO co-financing decentralised cooperation unit, 1995, pp. 5 and 26). In 1995 alone, co-financing was worth some 174 million ECU, compared to only 35
million just 10 years earlier. Moreover, the third sector has not just been involved as what in other fields would be referred to as a "service provider" or "contractor": though the Liaison Committee, with its elaborate structure of national platforms involving some 800 European member agencies, it maintains a dialogue with the third sector concerning the content and design of development policy.

While finance was just one aspect of the relationship, it has, however, been a crucially important one in setting the tone. Indeed, the origins of the Liaison Committee itself were tied up with the creation of the first DGVIII funding scheme for the third sector; as an interviewee explained:

What has really conditioned our relationship with the Commission [over the past 20 years] has been the co-financing budget line. When the Commission wanted to have some mechanism for supporting European public action in the South, this budget line was created. When they had created it, they realised that they had to be able to talk to NGO leaders in Europe as to how it should be administered, and so on. But it was to some extent copied on what a lot of Member States were already doing at the time the Joint Funding Scheme in the UK, quite a lot of Member state governments had schemes like that. MEPs were also involved in the early discussions there was a group of officials and NGO leaders who had the idea that the European public was willing to support NGO action in the South. Wouldn't it be good if the Commission could show its backing for that by providing a co-funding scheme? And it started with a little budget line of 2 MECU, and now its 200 MECU

We were assured in interviews that at least as far as the Liaison Committee's directors were concerned, at the broadest level, the relationship that had evolved was one of genuine partnership, in a positive dialogic sense, as well as in financial decision making. Unlike the structural funds, for example, not only was the third sector legally recognised as a "partner", but the expression was felt have real meaning.

The Communication described as case 2 above had referred in passing to the existence of the Liaison Committee and some of the major Development funding programmes. Ask to reflect on the relevance of this exercise for his policy field, one leading Committee insider remarked:

In a sense we have developed a fairly good relationship with DGVIII over the years, structured, well established its got its ups and downs obviously and the level of the
relationship of other sectors to the other DGs with which they deal is really quite far behind us. There's a feeling of "we're all right jack", although perhaps that's a bit short sighted.

Three institutional developments are perhaps symptomatic of the comfortable style and close coordination that characterises this relationship. First, prompted by the Commission, the Liaison Committee through the so called *Elewijt process* developed a set of jointly agreed principles concerning values, structures, approach, the relationship of the development third sector to civil society in Europe, professionalism and accountability to various key constituencies. Second, as part of the *Elewijt process*, the harmonisation of budget control procedures crucially, involving a first draft of "what we would like to see" being produced by the Committee itself, rather than by Commission officials. Third, each "partner" in the relationship has reasonably clear view as to the purpose and rationale of their mutual links, a position summarised in box 4.

Box 4.

A Liaison Committee interviewee also commented on the nature of the relationship with the European Parliament's Development Committee:

We work with them very closely we have a Parliamentary liaison officer who attends all their meetings and is well known by MEPs. They are very supportive, and frequently invite us to make inputs, seek suggestions, advice, contacts. We have a good relations in drafting resolutions they will ask us for ideas from the NGOs so I would say that its pretty good.
Asked whether the current climate of fiscal retrenchment associated with EMU was influencing this extraordinarily close relationship, they remarked:

I don't think it's coming from there. I think the main pressure and its real is coming from the wish to be much tighter in financial control. And that is coming from European public opinion about fraud, in a general sense the idea that the European institutions waste their money...

To briefly summarise using the language of section I, the case of development agencies represents an extremely sharp contrast with cases one to four. It shares with the structural funds the existence of established co-ordination mechanisms, although because of the nature of the activities involved, this does not directly involve Member States. But it differs significantly in the extent to which the third sector (or "NGOs" to use the particular discourse current in development) per se is fully institutionalised in the full range of policy activities: framing and design; monitoring; eligibility for funding and implementation; and even evaluation. From the perspective of the third sector, there is an exceptionally mature "policy stream" in which it is fully integrated. This appears to have been considerably facilitated by the existence of models at the national level, which could be readily transferable to the European arena.

We also seem to discern a clear, mutual understanding of the "problems" that the relationship is seeking to tackle. Finally, for the first time, we find a situation in which the political stream, including at the level of high politics, is unambiguously supportive. Not only is the third sector able to apply pressure from within to push its views and protect its position, but for the first time we find integrated into the discourse frequent references to the European equivalent of "national mood". Notwithstanding some general recent sensitivities about this issue in the light of perceptions of Community-level inefficiency, the actors seem to believe that public opinion strongly supports their joint efforts at least in part because the co-financing schemes that the Commission provides are thought to typically be funded by fundraising from the public at large.

Taking into account the favourable alignment, from the third sector's point of view, of all three streams and the availability of "policy entrepreneurship" in the shape of combined efforts from European development third sector leaders, MEPs and the Commission itself as long ago as the mid 1970s it seems clear that we have a position which represents the scenario contained within proposition 4.
SECTION III. Policies, Issues and Fault Lines

At the most general level, our account of the development of these five initiatives appears to lend support to the notion that EU policy making towards the third sector exhibits *in extremis* some of the features which characterise the European policy process in general to which, following Richardson and his co-writers, we drew attention at the start of section 1. In general, there is considerable evidence that fluidity, ambiguity, instability and complexity all seem to be appropriate descriptions of the developments at stake. We can recall that another major thrust of the argument about the European policy process in general made by Richardson et al, is it sheer unpredictability or even chaotic character. If the erratic path of the *Communication* provides one example of this, then the strange coincidence of events in Germany that lead to the adoption of Declaration 23 provides an even more obvious one.

However, there do appear to be some patterns in the chain of events, which we can seek to draw out using our propositions, and the notion that analysis of policy, particularly at the agenda setting phase, can be structured using the idea that developments in three streams - problems, policy and politics need to be taken into account. First of all, Table 1 positions each of the initiatives we have studies in the context of our four propositions.

Table 1: Policies and Propositions

<table>
<thead>
<tr>
<th>Muddling through/politicking</th>
<th>Significant Coordination and support</th>
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<tbody>
<tr>
<td><strong>Low salience</strong></td>
<td><strong>Proposition one:</strong></td>
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<td></td>
<td>Genesis of DGXXIII-led</td>
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<td></td>
<td>Communication</td>
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<td></td>
<td>ESA (early 1990s)</td>
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<tr>
<td><strong>High salience</strong></td>
<td><strong>Proposition three:</strong></td>
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<td></td>
<td>European Social Fund</td>
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<td></td>
<td><strong>Proposition four:</strong></td>
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What, then, are some of the underlying reasons that are involved in the three cases we described in Part III? As we have seen, and others have shown in numerous other instances (Richardson, 1996a), policy-making in the EU is full of surprises. Policies connect in unexpected ways, and create virtual whirlpools of political action that can either lead to quick resolutions (Declaration 23) or to solid blockages lasting for years (European Association Statute). Basic "fault lines" in policy making may not be easily visible and may hide underneath seemingly innocuous titles and behind innocent names. In the balance of this part, we summarize what we see as some of the key issues and "fault lines" that seem to drive European policy making towards the nonprofit sector. We focus, firstly on what appear to be some of differences between different groups of participants, which to some extent may but across more than one of our cases. Here, we have in mind common themes across cases 1 to 4. We then seek to contrast the cases 1 to 4 with case 5, where the most obvious contrast is to be found.

*Conceptual cleavages*

One of the consistent issues in EU third sector policies is the fault line between active players as far as organising concepts and terminology are concerned. Most obviously, we can contrast *économie sociale* as understood and promoted in France, Belgium and perhaps Spain, which deliberately draws together the "economic" and the "social"; the German system which seeks to emphasise and reinforce a sharp distinction between them, and locates the third sector firmly in the "social" pigeon hole, in part on the basis of the logic of subsidiarity. As participants are keenly aware, the path chosen can potentially have major implications for how the third sector is ultimately treated in European law. The former construct sees the third sector as comprising primarily economic units comparable to enterprises, while the latter, in denying the economic character distinct characteristics and objectives so unique that they deserve a special status.
These concepts also have their ideological baggage, which also animates the debate. While *économie sociale* tends to connect the third sector to socialist traditions and "economistic" reasoning, the *subsidiarity* argument as applied to the third sector has a corporatist flavour and seeks to protect special ideologies and interests.

*Imported National scripts*

Certainly at the beginning of the processes we have examined, when the issues at stake were fuzzy and obscure, we found some evidence that national participants were falling back on "typical" policy stances, as already refined in other contexts. For example, we found a British style combining an, in principal, minimalist attitude to the EU, with a pragmatic approach based on questioning the functional utility of proposed measures. Examples would be the negative stance taken towards the ESA, and the finding that the topic uppermost on the minds of most British MEPs and MPs vis a vis the third sector and Europe has been the question of improving the procedures and rules for allocating the ESF in a more third sector friendly way.

In contrast, French, Italian and German politicians and third sector representatives have been relatively more active in considering how the third sector, ideologically and philosophically, fits in with their more general pro-European viewpoints. For example, the French focus on the *économie sociale* is congruent with their overall emphasis on *economic* integration, while the German concern with non-economic matters dovetails with their traditional emphasis on the *political* aspect of European integration. Generalisations it is possible to make, for example, in analysing the negotiations that occurred around the Treaty of Maastricht (Smith, 1996, p. 62).

*National level and European level influence*

In the European policy literature, one of the most discussed issues is the relative importance of Member States and supranational European institutions in determining the content and direction of policy. At its crudest, the battle lines are pitched between those who argue that in the final analysis, all substantive policy outcomes are simply the outcome of political bargaining between Member States, and the EU agencies enter the field as relatively passive instruments of implementation; at the other extreme, some have argued that the European institutions have established their own identities and constituencies and are able to heavily influence all aspects of the policy
process, but particularly agenda setting.

Our analysis of the case of policy towards the third sector would seem to provide support for an intermediate position, as spelt out at the highest level of generality, for example, by Pollak (1996). It is certainly true that the lack of interest at the Council of Ministers in the third sector has played an important role in slowing down the process of initiating some form of policy towards the third sector at the European level.

On the other hand, despite this lack of endorsement, we have found the beginnings of third sector specific policy entrepreneurship within the Commission, and in the European Parliament, as these actors have creatively exploited very narrow openings to begin to place the third sector higher on the European agenda. Thus far, these efforts have involved such activities as transnational network creation and mobilisation; the creation of new, albeit for now small, sector-specific budget lines; and attempts to "bend" existing structures and regulations so as to provide a place for the third sector where previously it did not exist. While the third sector policy window may not have fully opened, it seems that if and when it does, the low visibility groundwork of European officials is unlikely not to have a major impact on the shape which third sector policy assumes.

**Understanding the uniqueness of Development policy**

One of the most striking findings of this study has been the extent to which the third sector's experience in the realm of development policy is utterly different from all other cases that we have examined. An exploration of why this may be the case would require a separate paper in itself, but it is relatively easy to point to 4 prime *facie* differences.

First, unlike the other initiatives which fall within or close to the terrain of social policy where the division of labour between Member States and the European institutions is an extremely fraught and contested issue, there is a marked degree of agreement that Community level policies are both efficient and legitimate in the field of Development.

Second and relatedly, Development policy involves engagement with what appears to be a genuinely "European" mood in favour of joint action between the EU institutions,
Member States and (by implication at least, because of the signals provided by co-financing achievements) the third sector a state of affairs which cannot be said to exist in the case of social policy in general, let alone the specific role of the third sector within it.

Third, the institutional arrangements for the delivery of social policy, and support for the third sector within it, vary enormously between Member States, while in contrast, domestic development policies may have exhibited many more features in common. Therefore, selecting a model to transpose to the European level proved to be a relatively straightforward task, and has not been stymied by Member State's rivalry to see "their" approach adopted at European level.

Finally, in the case of the Development third sector, we have seen that as early as the 1970s, a critical mass of entrepreneurship within and between this sector and the European institutions appears to have existed. Collective action was made easier by the existence within the third sector of a small number of high profile, and (in the eyes of their constituents) legitimate organisations with whom it was relatively easy for the European institutions to do business. Such a leadership across the third sector as a whole, or embracing its "social policy" component, cannot be said to exist at present. It is too early to say at this point whether there is the capacity or will within the third sector for it to do so.

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