

Department of Social Policy

**The European Statute of Association:
Why an obscure but contested symbol
in a sea of indifference and scepticism?**

Jeremy Kendall and Laurent Fraise

June 2005



Number 11

Third Sector European Policy Working Papers

General introduction to TSEP Working Paper series

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This paper is part of the **TSEP Working Paper series**, and is based upon work conducted by the authors within the Third Sector European Policy (TSEP) network. The primary, overarching objective of the network is to describe and analyse the trajectory of 'horizontal' (industry cross-cutting) European policy towards the 'third sector', understood as a 'multi-level process' (see Appendix for a Glossary of terms).

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Individual members of the network share an expertise on the third sector in their countries, but come from diverse disciplinary backgrounds (including political science, sociology, and policy studies). Countries included are the Czech Republic, France, Germany, the Netherlands, Italy, Spain, Sweden, Switzerland and the UK.

The sample includes:

- Major geographical regions of the EU/larger as well as smaller countries
- Different types of national constitutional structures and welfare systems
- 7 established Member States, one new Member, and Switzerland

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Executive Summary

The proposal for a European Statute of association is a pioneering example of an attempt to find space for the third sector in European Union policy. It was first put forward some twenty years ago, but has failed to generate significant interest outside a small circle of promoters and objectors. The instrument has remained stalled in policy design procedures, and in 2005, it is far from clear that it will become part of the body of European law in the foreseeable future.

This paper seeks to develop an explanation for this state of affairs. Theoretically, it emphasises the enduring importance of the policy's origins as an initiative developed, framed and designed by French policy actors categorically fused with the European level. The initiative is associated with a particular political and ideological approach, which has succeeded in sustaining momentum in its country of origin, but simultaneously created hostility amongst powerful actors in a small number of other countries. At the same time, it has left the majority of potentially interested countries in a state of puzzlement or indifference.

Against this backdrop, the analysis stresses a small number of key features of the process which tend to constrain its resolution. First, the policy's promoters rely on its successful functioning as a symbol to mobilise support, but its economic character - including its bundling with other *économie sociale* Statutes - means that objectors and sceptics respectively reject and fail to empathise with it. This problem is bound up with its origins in a particular national tradition. Second, this difficulty is aggravated by its complex and necessarily legal-technical character, which impose limits on the extent to which its value and meaning can be straightforwardly communicated outside a charmed circle of experts. There is also considerable ambiguity concerning the extent to which it potentially directly or indirectly interacts with established domestic legal and regulatory frameworks, making the issue deeply political as well as technocratic in character.

Third, being processed by the community method - at least under the current system of 6 monthly rotating Presidencies of the Council - policy design has suffered from stop-go problems, with a marked lack of continuity in terms of actor and institutional attention. Crucially, these difficulties have been perpetuated by the structural weaknesses of pro-Statute policy entrepreneurship evident both within the Commission and the relevant third sector bodies themselves in Paris and Brussels, and in the underdeveloped nature of links between this level and national level structures.

Empirically, the argument is based upon research conducted at two levels. First, interview and documentary evidence gathered in Brussels in 1998/99, and research conducted in Brussels and Paris between 2002 and 2005 under the auspices of the Third Sector European Policy network. Second, evidence collated at the national level, also as part of TSEP, in the first half of 2003 - when the Statute was unexpectedly prioritised for processing during the Greek Presidency.

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Foreword

While studies of the third sector as an economic and social actor, and their significance within particular fields of policy have grown significantly in recent years, their links to broader policy processes are poorly understood. This paper is part of an effort to fill that gap, and is one in a series which seek to build our understanding of the nature of the third sector's relationship to the European policy process.

Putting together 'European public policy process' and the 'third sector' suggest an extraordinarily wide range of potential subject matter. Earlier papers in this series focused on the national situation in nine countries. This paper, however, has a different focus. It develops an analysis of a particular policy initiative, which in recent years has been processed at the national and European level and actually or potentially implicates the third sector in both - what the TSEP network has referred to as a 'core case' (see Appendix 1). It is important to note that the unit of analysis is the policy initiative relating to the third sector, the policy actors (*all* sectors) that cluster around it, and the institutional context that frames its development - and not the third sector itself, or individual third sector organisations. These 'core cases' necessarily involve actors from both domestic third sector policy communities or networks, and EU level actors and institutions, in jointly designing and/or implementing policy: in other words, in the EU policy analytic jargon, they involve 'multi level processes', although not necessarily multi-level governance (see Appendix 1).

In settling on 'core cases' for exploration, three considerations were taken into account. First, the cases were deliberately chosen to capture a reasonable amount of the diversity of the generic EU policy process. Reflecting the highly complex EU constitutional set up, the precise institutional configuration which the multi-level process involves varies considerably according to topical and issue area, so initiatives were chosen to pick up some of the main sources of variation in terms of *policy mode*, ranging across the Community Method, the Open Method of Co-ordination and other variants.

Second, we have also aspired to capture the extent to which the third sector is involved at *multiple stages* of the policy process; the link to the third sector literature here is that scholars have pointed to the third sector's 'polyvalence' and multiple functionality (see TSEP Working Paper 1).

Third, cases were chosen which seem to involve at least the theoretical opportunity for third sector engagement of a horizontal form. This could be either in the sense of involving policy actors in cross cutting domestic and/or European policy processes identified in step 1; or in the sense of engaging with third sector organisations from across a range of 'vertical' industries from within 'human' or 'social welfare' services (in US and UK language respectively), and even beyond it (such as environmental protection, or international development), or with needs and constituencies defined in terms of cross-cutting issues. Table 1 lists the EU-specific cases examined, and shows how each captures a different combination of policy mode, policy stage/third sector function, and meaning of 'horizontality'.

Table I: EU-specific ‘Closed cases’ examined in TSEP

<i>EU policy case</i>	<i>Policy mode/ year of initiation</i>	<i>Policy stage</i>	<i>Third sector ‘function’</i>	<i>Sense in which policy case is ‘horizontal’</i>
<i>European Statute of Association</i>	Traditional Community method, 1984	Agenda setting	Sector advocacy (for customised legal instrument)	Legal mechanism potentially relevant for organisations wishing to undertake economic and social activities across Member State borders
<i>National Action Plans for Employment: Orientation to ‘civil society’ and ‘social economy’ change over time (most recently Horizontal objective C in 2002, and Guideline 10 in 2003 respectively)</i>	Policy coordination and benchmarking: Open Method of Coordination, 1997	Implementation and evaluation	Advocacy through demonstration, service delivery	Third sector organisations from range of industries can be involved in national employment strategies
<i>National Action Plans for combating social exclusion: Objective 4 invites ‘mobilisation of NGOs’</i>	Policy coordination and benchmarking: Open Method of Coordination, Lisbon process, 2000	Implementation and evaluation	Advocacy through demonstration, service delivery, community building	Third sector actions, including social welfare services, culture, recreation and environmental protection, explicitly linked to social inclusion
<i>Local social capital element of Structural funds, esp ESF*: Piloting (Article 6) and mainstreaming (Article 4.2) with special access to NGOs</i>	Multi level Governance/Partnership, 1999 (pilot), 2000 (mainstreamed)	Design, Implementation and evaluation	Innovation, Service delivery, community building	Small community organisations often active across fields; some funded initiatives explicitly promoted as fostering ‘horizontal’ initiative; ‘Social capital’ concept not tied to particular industry
<i>Convention on the Future of Europe/Constitutional process</i>	Not identified as ‘mode’ in literature: Unique and unprecedented (2002)	Agenda setting	Sector advocacy (for constitutional recognition of socio-political role)	Constitutional design: draft (yet to be legitimised by national level processes) refers to the <i>generic</i> role ‘representative associations’ in ‘the democratic life of the union’; the extent to which ‘single market rules’ apply as a general principle; specifies ‘fundamental rights’ cutting across fields; and refers to EESC’s role regarding ‘civil society’

* European Social Fund

In addition, the process of preparing for, running and following through to the United Nations Year of Volunteering (2001) - as well as the medium term legacy it has bequeathed - has also been examined in all countries. This has been to explicitly bring an analytic spotlight on volunteering as an aspect of voluntarism, which is a key ingredient in at least some national and international third sector definitions; to form an impression of how UN and EU may compare as 'external shocks' (even if the connectedness of EU and domestic institutions of course implies that the EU is no longer purely 'external' to Member States); and to enable the inclusion of Switzerland in the multi-level core.

Appendix 2 to this paper provides more details on data sources. This paper is part of our first, tentative efforts to move towards a more systematic account of European third sectors' roles in contemporary policy processes, but we hope they will provide a platform for further work in the years to come.

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31 August 2005

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‘Europe needs inspiration to take a further step towards its destiny as a Community. Nonprofit organisations are an opportunity to be taken in this respect. Inertia must be overcome and this opportunity must be boldly seized’ (Fontaine report to the European Parliament, 1986: 7).

1. Introduction

In a paper published a decade ago in *Voluntas*, Ole Gjems-Onstad rhetorically posed the question of whether the idea of a European Association was a ‘symbol in need of friends’ (Gjems-Onstad, 1995). Over the intervening period, the proposed statute and accompanying regulation - which lay at the core of the Fontaine proposals put forward a decade before that - has still intermittently remained on the European policy agenda, as we will see, no longer subject to some more general corporate law making obstacles that were constraining it in the late 1990s. But despite this apparently more favourable environment, and the passage of time with its opportunities for progress, not only has the Statute failed to acquire support, on balance it has actually lost it, at both the Member State and EU levels.

Given the increasing frequency with which both Member State level and EU level institutions have tended to voice their support for the third sector over this time period - using not just the language of ‘association’, ‘third sector’ or ‘third system’, but increasingly ‘NGOs’ and ‘organised civil society’ (Kendall, 2005) - this state of affairs initially appears paradoxical. If increasingly politicians and officials articulate the need for the sector to operate on the European stage, why is this intent not converted into practice? After all, the design of an appropriate legal instrument or instruments seems to lie at the heart of the concerns about the policy environment expressed by national horizontal third sector policy actors (inside the State and in the sector itself) in those countries where a third sector-specific policy community or constituency seems to exist (see TSEP Working Papers 2 - 10).

This paper examines why this paradox has arisen, and offers a first attempt at theorising the key issues at stake. Drawing on exploratory research undertaken by one of the authors in the late 1997/98, and further investigations as part of the TSEP network in 2003 (see Appendices), it seeks to explicate

why the Statute had failed to gather sustained momentum at the EU level up to that point in time. It also examines why the dominant response from most potentially interested parties at the country level has been indifference or puzzlement, and considers the key exception to this general pattern: France.

2. Origins and background

The origins¹ of the Statute are to be found outside the European institutions themselves, and principally from a group of low visibility French actors who were later to form CEDAG, the *Comité Européen des Associations d'intérêt Général* (the European Council for Voluntary Organisations). 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'.

The French *domestic* policy environment at this time was conducive to both the idea of a new legal instrument for the sector, and for the projection of this idea from the French to the European stage. That is, what the Europeanisation literature refers to as policy 'uploading' was associated with activities of key French political figures, and their supporting administration (see Box 1).

¹ Kingdon (1995: 77) asserts that to make sense of the policy process 'the critical thing is not to understand where the seed comes from, but what makes the seed fertile' and notes that attempts to trace origins of policies can come up against the problem of infinite regress. We would qualify this observation by emphasizing that some acknowledgement of origins is important, because these can impose a durable imprint over time. This may be particularly important in the case of the ESA: a knowledgeable insider discussing this remarked 'to an extraordinary degree, what the Commission does, and particularly what it produces by way of draft legislation, is heavily conditional upon who does the first draft. The ESA is ... basically French'.

**Box 1: The French-European ‘second Left’ social economy policy nexus
in the late 1980s and early 1990s**

French support for the ESA was associated with the confluence, in the political Left, of an increasingly Brussels oriented activism, and growing support for ‘social economy’ oriented institution building at home. This social economy orientation was itself quite significantly associated with the political differentiation from the ‘statist’ old left of the ‘second left’ in the 1980s (Fraisie, 2005). Key actors associated with the second left in the political elite can be identified. Jacques Delors was appointed as President of the Commission, while Michel Rocard was Prime Minister at a key moment (1988-1991). Both politicians were committed to ‘building a social Europe’ with an increasing emphasis on the categorical fusion of France’s and Europe’s destiny (Garton Ash, 2000) while *simultaneously* being supporters of the general idea of ‘social economy’ and ‘third sector’ (see Delors, 2004). Domestic policy was witnessing the foundation of the *DIES* (*Interministerial Delegation for Social Economy*) within the public administration, while the third sector’s own *CNVA* (*National Council of Associative Life*) was increasingly drawn into discussions of both domestic and European policy issues (on the former, see Fraisie, 2005). CEDAG, the European Council of Voluntary Organisations, was founded in Paris at the same time that the social economy unit of DGXXIII was established under French leadership in Brussels. The unit relied heavily on DIES for advice on its agenda and priorities. Soon after, in the European Parliament, Marie-Claude Vayssade MEP, was taking forward the ESA agenda as proposed by Fontaine (see text) specifically in relation to the Statute, a process which saw the associations packaged alongside co-operatives and mutuals.

Although the precise nature of how these original goals and motives were first expressed in Brussels are unclear, we do know that these actors’ efforts were closely related to the European Parliament resolution of 1984, and the resulting report in 1986, written by a well known French politician, who was later to become president of the Parliament between 1999 and 2002, Nicole Fontaine². The report argued that a legal basis for Commission action in this field could be found in the European Treaties, entitling it to intervene at Member State level to prevent associations’ ‘discrimination on the grounds of nationality’, and to facilitate transnational activity in this field. This legal basis, according to the report, provided grounds for the creation of a European Statute of Association - a specific legal instrument for nonprofits to use to operate on the European stage analogous to the then still emerging European Company Statute for for-profit entities. But it was also argued that this should be part of a wider package of measures, including:

- the automatic recognition in other Member States of associations recognised in their home country;

² Mrs. N. Fontaine served as the rapporteur of the European Parliament’s Committee of Legal Affairs and Citizens’ Rights between June 1985 and November 1986, when she wrote the report, which was subsequently tabled in December 1986.

- the setting up of an 'European fund for the development of associations'; and
- a 'better representation' of the association sector at the Brussels level.

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'.

Thus, 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. Over the next three years, these aspirations were converted into action with the creation of a special unit within one of the Commission's Directorate Generale's - DGXXIII - to support the third sector in 1989. The unit was lead by Paul Ramadier, a socialist very close politically to Michel Rocard. However, the formulation which took shape between 1986 and 1989 was not that of associations alone as had been the language used by Fontaine, but as part of a wider notion of *economie sociale* situating associations alongside co-operatives and mutuals. This packaging was duplicated in the European Parliament, with French socialist MEP Marie-Claude Vayssade proposing a legislative package putting the three together (cf. Box 1).

In fact, this legislation was the most tangible output of the joint endeavours by the social economy unit and Vayssade at the Parliament. The package was officially submitted to the Council by the Commission (Commission of the European Communities, 1992), and revised and resubmitted the following year (Commission of the European Communities, 1993). The ESA had become part of a voluminous package with regulations, as well as accompanying directives on worker participation. These documents spelt out in great detail proposals for internal decision making.

Overall, however, little progress was made, and the ESA, together with the other parts of the package, remained stalled in the absence of decisive action. Gjems-Onstad suggests that, during this period, 'it is obscure whether anybody, either outside or inside the official bureaucracy of Brussels, much cared about what happens to the proposals' (1995: 4) with the notable exceptions of CEDAG and presumably its allies in the Parliament. Yet this seems to underplay the *opposition* to the measure that was beginning to coalesce. The earlier research by one of the authors in the late 1990s (Kendall and Anheier, 1999) suggested that some early signs of apprehension could already be detected nationally at this time, particularly in the case of Germany and the UK, although little of this material was made public. In a nutshell, official statements from the German government questioned the need and

appropriateness for EU action in this regard, partly by invoking the principle of subsidiarity; at the same time, fear of the statute as ‘too market-like’ seems to have been a catalyst for early concerns from within the domestic third sector on the part of the Free Welfare Associations, which have traditionally dominated the third sector social welfare domain architecture in that country (Appel et al, 2005). In Britain, awareness that ‘something was happening’ by the bureaucratic sub-units specialising in supporting and regulating the sector in that country³ generated vague fears that ‘the Commission [might] come along with great big boots and spoil our nice back yard’. This prompted the dispatch of an official as a ‘national expert’ to ‘keep an eye on things’ within the European Commission’s new unit. This official later observed that a vague wish to keep up with events was also characteristic of the few associations he encountered who were aware of the instrument - there was a ‘me too’ attitude which took the form ‘if (for-profit) companies can have a European statute, why not us as well?’⁴

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 nationals in the European 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, rather later, that an adapted version of an alternative structure, the European Economic Interest Grouping, would form a better starting point for a tailored legal instrument. Moreover, anecdotal evidence on attitudes towards the Statute within the Council of Ministers⁵ suggests that the UK government’s officials, like their German counterparts, began to use the idea of ‘subsidiarity’ as a rationale for opposing the measure from 1992 onwards (Gjems-Onstad, 1995: 4).

These sketchy impressions suggest that a relatively simple pattern prevailed in the 1990s: French enthusiasm, linked to initiation and ideational ownership - versus German (governmental and FWA) and British (official-led) opposition, associated with doubts about need, competence, and what we would now call ‘value added’ - was the dominant storyline. The only other country proactive at this time seems to have been Italy - whose support was to be expressed by its willingness to convene an

³ In the mid 1990s - as more recently (see section 3) - the main protagonists from the public sector have been the Charity Commission and what is now referred to as the ‘Active Community Unit’ in the Home Office.

⁴ Personal communication, 12th May 2005.

⁵ In describing the position of the Council of Ministers, we have to rely purely on ‘insider’ accounts and anecdote. As McCormick remarks ‘despite its powers, the Council is less well-known and more poorly understood than either the Commission or the Parliament. Its deliberations are secretive, there has been surprisingly little scholarly study of its structures and processes ...’ (1996: 124).

expert working group at the Council (COREPER) to take the matter forward under their 1996 Presidency. This enthusiasm seems to have at least been partly influenced by successful lobbying from ACLI, the *Associazioni Cristiane Lavoratori Italiani* (the Association of Christian Italian Workers). ACLI was temporarily holding that organisation's presidency at the time. However, this interest was not sustained, when the next Presidency of the EU, Ireland, chose to focus on the mutuals statute, to the exclusion of the association instrument.

What is clear is that the association statute was essentially dormant over the next few years. Initially, this was in part due to the perceived doubtful returns to any efforts in this regard, so long as the accompanying directive on workers' participation was more generally blocked⁶. However, this can not be the sole factor, because, as we noted, the next Presidency was willing to take forward the European Mutual Statute, despite this constraint. Latterly, when the blockage *was* cleared from 2001⁷, the Belgian, Spanish and Swedish Presidencies, setting the agenda in 2001-2002, chose to put the Association statute to one side and adopt an exclusive focus on the Co-operative instrument.

We will argue that other influences, undoubtedly included wider European level dynamics, were militating against effective Brussels policy entrepreneurship (see next section). In fact, the item was to be revived, unexpectedly, under the Greek Presidency in early 2003 (after a preliminary meeting under the Danish Presidency). According to interviews at the Brussels level, this country's interest may have had more to do with the national Government's wish to progress corporate legislation in general than a specific interest in the association sector as such. With for-profit legislation having come to fruition, and the European co-operative statute *almost* 'closed'⁸, this simply came to the top of the pile for possible action in the sphere of company legislation⁹.

⁶ This was 'more generally' in the sense that the controversial requirement of extending workers' involvement in governance was not seen as acceptable in the case of the for-profit European Company Statute for shareholding multi-national companies - so it was assumed the problem would also apply to any other efforts at corporate law making which also had a worker participation oriented element.

⁷ The workers' participation directive controversy was finally resolved in late 2001, with somewhat more diluted provision on information, consultation and, where appropriate, participation (i.e. the representation of employees in the management or supervisory body of the Society) than the legislation's enthusiastic supporters had wanted (Greenwood, 2003: chapter 5).

⁸ In fact, there are still problems with actually putting this on the statute books, despite its acceptance at the Council of Ministers, because the European Parliament was aggrieved at the institutional process chosen to process the legislation (the decision to go for unanimity in Council, and avoid co-decision). However, this seems to be an issue of temporary stalling rather than sustained blockage.

⁹ The process may also have been facilitated by the Greek nationality of the responsible official within the Commission, but this was naturally downplayed by the individual in question; we also know it was *not* the result of pressure from the relevant national-based affiliate of the third sector horizontal body promoting the statute - CEDAG - simply because it has no members in this country.

3. National Patterns: the picture emerging in the 2000s

Whatever the Greek Presidency's motives¹⁰, this timing allowed members of the TSEP network to examine how the statute's revival has been handled in 8 of the EU 25 countries¹¹, because, with revival, the bureaucratic process of expert review was re-instigated and relevant national actors could be identified and investigated. Did the four countries whose preliminary stances we have noted above persist with, or modify, their positions? With country level researchers *in situ*, there was an opportunity to deepen understanding of these national positions further. Equally important, how did the other four EU countries in the TSEP network - who had apparently not been active in the 1990s - respond? Were their views in line with any of the four existing reactions we were able to identify: or carve out distinctive positions?

To what extent, then, do the positions of governments on the ESA (European Statute of Associations) seem to be predictable, based on what we know about the horizontal policy architecture at national level? Discussing 'national positions' on the ESA is no simple task because, just as there are divergent views on domestic policies amongst national level third sector stakeholders there are also differences on European initiatives. However, it seems we can speak of dominant positions - based on dialogue and some form of consensus of opinion - between specialist departments of the administration and the main national third sector representatives in three Member States: France, Germany and Sweden. This situation is indeed partly a reflection of the national horizontal situation in each country. In France, for instance, as we have already stressed (section 2), the ESA has traditionally been viewed favourably¹², and has been an ongoing theme in the dialogue between the high level members of the associative sector's horizontal structures, and the social economy with a section of the administration, in particular the Interministerial Delegation for Social Economy (DIES). This demonstrates in part the progressive horizontal structuring of the associative sector and the social economy at national level since the 1980s (Fraisie, 2005). In Germany, the FWA seems to have continued to find support from the Ministry of Justice for its arguments against the Statute, persisting over a decade. While in Sweden - one of the few countries where the ESA gave rise to a formal consultative procedure in 2002 between the Ministries concerned (Justice, Industry,

¹⁰ It must be emphasised that, since Greece has not been part of the TSEP network, we have been unable to examine the impetus at the national level: this account is based solely on interviews in Brussels. The same qualification goes for our earlier observation concerning the Irish reluctance to prioritise the statute in 1996.

¹¹ During this Presidency, the accession states - including the Czech Republic within the TSEP network - became members of the EU.

¹² However, while this traditional view is still dominant amongst third sector specialists, dissenting voices were identifiable in 2002 (see below).

Employment and Communication) - the main third sector organisations were sceptical or even hostile towards the ESA proposal, a position in sympathy with the consulting Ministries themselves. This attitude seems to resonate with a long established caution of resistance to any policies which are perceived to have potential for inappropriate institutionalisation (Olsson et al, 2005).

In the other countries studied, the idea of identifying a single national position is problematic, either due to the absence of mobilisation and consultation of the other stakeholders (Spain, the Netherlands and Italy), and/or due to the apparently differing or changing positions as between different actors *within* the third sector community. Thus, there seems to have been a lack of consensus in the UK and Italy. We will return to this issue below, but for now we try to identify the underlying arguments that underpin the patterns of support, indifference or hostility we have observed.

We can try to categorise actors as *favourable*, *hostile* or *sceptical/indifferent* to the ESA. France - as far as specialists within the administration (DIES) and the representative bodies of both the associative sector (CNVA) and the social economy (the Europe CEGES group) during the course of the 1980s and 1990s are concerned - has been enthusiastic, and completely dominate the *favourable* discourse¹³. For these supporters, the ESA offers several advantages, including the development of cross-border activities; symbolic recognition; an EU legal basis for recognising the specificity (fiscal, legal) of the economic aspect of associational life, in a way which countervails the unadulterated 'market rules' that would otherwise apply; and as a step towards a 'Europe of citizens'.

The first four arguments represent the dominant opinion amongst third sector horizontal specialists in France - and have since been rehearsed by CEDAG at the European level (see section 4). One further argument in favour comes from within the third sector in the UK, expressed initially by the NCVO (in the 1990s) and then, by an ex-NCVO member via the Charity Law Association, in the 2000s. From this perspective, the ESA was seen as potentially supportive of cross border activity in general, but also specifically as a useful instrument for expanding European (cross border) fundraising.

The *hostile* arguments toward the ESA are of three kinds. First, subsidiarity which is the view that this is not a domain in which the EU institutions should be 'interfering', in keeping with the British Government's, and the German overall position of the late 1990s, already mentioned. The ESA is seen as potentially conflicting with the domestic legal tradition, either by suggesting the need for

¹³ CNVA is France's National Council of Associative Life, and CEGES is the Council of Social Economy Enterprises (see Fraisse, 2005). See in particular these bodies' 1989 and 2002 reports on the Statute.

revisions to internal governance - as with Germany - or undermining the national regulatory regime. The Active Community Unit, within the British State, has made this latter argument. Interestingly, even from the French side, the Ministry involved in the negotiations in 2002 - the Ministry of Justice - expressed concerns about the Statute's potential for inappropriate encroachment on that country's national legal regime, in particular, the 1901 Statute for Association. Swedish third sector horizontal actors have also expressed a general fear of competition between national and European laws of association.

Second, also to a degree representing continuity with the 1990s, the German and Italian governments have suggested that existing European legal instruments are sufficient to allow associations to conduct the envisaged activity: they emphasise that the 'value added' of the proposed Statute is unclear.

Third, there is also the Free Welfare Association's argument from the 1990s that the Statute is inappropriately 'economic' in character, by situating the third sector in the 'social economy', and not capturing the nature of the third sector in terms of its non-economic roles. This is less a specific criticism of particular aspects of the instrument, than a vague concern or anxiety about what it symbolises: the view that it is a *threatening* symbol of how Europe can shape the sector, rather than a symbol of opportunity as favoured in dominant French interpretations. As we shall see in section 4, this had indeed prompted German FWA lobbying on the Brussels stage in the 1990s in a conflict of competing symbols. Latterly, since 2000, even some commentators from within the French associational infrastructure have begun to doubt the appropriateness of the State as a symbol, in the context of broader concerns about services of general interest and the perceived 'neo liberal' flavour of the European constitution (Will et al, 2005). However, others active in the French debate have seen this new context as intensifying the need for such a symbol.

These are the views that animate. However, a fourth position in evidence is in fact neither support nor opposition, but a mixture of indifference and somewhat puzzled scepticism. In the remaining countries, there is little evidence of concern for a subject which is understood very little or not at all, and whose relevance is hard to perceive. This seems to be the situation of the main stakeholders of the third sector in Spain and the Netherlands, and to a lesser extent, and more impressionistically, Italy¹⁴. These countries are characterised by relatively weak horizontal institutionalisation, at least as

¹⁴ In Italy, the position seems have become less positive in recent years. According to third sector interviewees in this country, this may in part reflect the incumbent administration's relative lack of commitment to the third

measured by the depth of traditions of commitment to permanent, dedicated specialist horizontal agencies for the sector, within and outside the State. The lack of such enduring structures, unsurprisingly, is not a fertile territory for engaging actors in relation to intrinsically horizontal issues like the ESA.

4. Brussels dynamics

We saw in section 3 that national evidence of support for the statute outside France has been hard to find, tending to be trumped by opposition or indifference since 2000. To a large degree, this pattern has clearly built on the concerns and doubts which were already established in the 1990s. However, in theory, Brussels-based policy entrepreneurship could have countervailed this lack of enthusiasm, and generated a positive momentum, at this time and indeed beforehand. After all, in processing the for-profit statute initiated nearly a decade earlier in 1975, the Commission was ‘ahead of the game’, actually outweighing in terms of ‘boldness’ the most enthusiastic supporters of that measure (Germany) at the national level (Greenwood, 2003: 150). There is also the question of prioritisation within the social economy ‘package’ from 2001. In interview, Commission officials suggested that the handling of the statutes sequentially rather than simultaneously had been at the behest of the three relevant Presidencies, in order to make the process more manageable. However, this can at best be a partial explanation - because originally the Statutes *had* been handled together. Moreover, it does not explain why the Association statute has taken second place behind that which relates to Co-operatives: this could have been a random process, but seems unlikely. Putting together the evidence gleaned from both the national level and our interviews in Brussels, and interpreting this in the context of the developmental trajectory of EU processes in particular over the 1996-2003 period, a range of factors seem particularly noteworthy. The main actors have been the Commission and CEDAG, and we consider each in turn.

First, clearly the loss of Commission credibility and capacity associated with the 1999 resignations was a general disabling factor for any policy measures depending upon that institution’s leadership at this time. However, the component of the Commission with predominant responsibility for associations, Directorate Generale, DGXXIII with the social economy sub-unit, was particularly scarred. (During the late 1990s, the hegemony of this component of the Commission in third sector

sector more generally. But it may also be related to the third sector organisations themselves, who seem far less convinced now than in the late 1990s, when some elements were actively promoting the Statute in Brussels.

matters had been contested by the Directorate-Generale for Employment and Social Affairs. This had seen this policy space as providing an opportunity to promote its construct of ‘civil dialogue’ with social NGOs in the aftermath of the Social Policy fora of the mid 1990s. The outcome of this uneasy balance was reflected in the contents of the 1997 *Communication*, the Role of Associations and Foundations in Europe, which somewhat inelegantly bolted on material in relation to the latter on to an existing draft (see Kendall and Anheier, 1999.)

Under the old regime, DGXXIII had also housed the Commission’s tourism programme, where scandal and irregularities had been amongst the most conspicuous. The newly formed DG Enterprise, which putatively took on the baton when the Commission re-formed, had only a much smaller sub-unit with less than a third of the number of staff. Its abbreviated title - ‘Unit E3 Craft, Small Businesses, Co-operatives and Mutuals’ - does not even mention associations per se.

Second, this downgrading need not necessarily have undermined the Statute. There was a theoretical opportunity for the Association statute to progress, with the *Communication* absorbed into the Commission’s machinery, when the Secretariat-General putatively took a leadership role with the publication of its 2000 Discussion Paper (European Commission, 2000) building on the 1997 White Paper, where the latter had at least mentioned the statutes, albeit briefly. In addition, the Directorate General for Employment and Social Affairs was not caught in the scandal cross-fire to the same extent, and might have at least proved to be a supportive ally under the new regime. However, these opportunities within the Commission were missed for two reasons.

As the Commission’s ‘nerve centre’, the Secretariat-General was entirely preoccupied, in its policy framing in relation to what was increasingly being referred to as ‘organised civil society’, with ‘governance’ understood not as a question of legal structures for European level transactions, but in terms of NGOs as consultees in the policy process. As reflected most concretely in the deliberations in relation to the *Governance* White Paper and its supporting working groups, the leadership of the Commission at this crucial moment was above all choosing to promote measures it believed would most obviously and directly enhance its own legitimacy and effectiveness (European Commission, 2001; Armstrong, 2002; Magonette, 2003).

In addition, DG Employment and Social Affairs seems to have been uninterested in the Statute. This may have partly reflected the continued legacy of its difficult relationship with social economy actors persisting in spite the change of regime, but probably also reflected wider developments. On the one

hand, the Directorate Generale continued to develop its 'civic dialogue' agenda, being preoccupied with negotiations at the Brussels level to fit this process in smoothly alongside the better established 'social dialogue' with employers and trade unions (Obrasovic, 2003). Simultaneously, the ongoing rebalancing of policy modes was relevant (Wallace and Wallace, 2000). In the aftermath of Lisbon and enthusiasm for the Open Method of Co-ordination - as opposed to the Community Method being used to process the Statute - NGOs were being looked to as allies in implementation. The other main ways in which this part of the Commission's energies were focused on the sector were, at a low 'technical' level, indirectly in relation to the structural funds (with REGIO); and more obviously, linked to the Copenhagen criteria of good governance for the new member States, as part of 'organised civil society' to be encouraged as part of the strengthening of democracy. All these priorities - that is, overlaying social with civil dialogue, linking up increasingly via the OMC, engaging in relation to ESF implementation, and as part of the Enlargement agenda - seem to have meant there was simply no spare capacity.

If the Commission itself was tending towards disinterest - or at least alternative priorities - might the third sector itself have responded with autonomous leadership in Brussels? Here we return to CEDAG, whose foundation in Paris in 1989 we have noted. Since establishing a presence in Brussels in 1999 - to a significant degree as a reaction to the scandal-induced demise of DGXXIII described above, which had left no institution either inside or outside the Commission to champion the Statute - this organisation has almost entirely carried the burden of filling this on the Brussels stage. The Caritas infrastructure has indirectly supported the Statute. CEDAG's embeddedness within the structures of representation of the wider social economy could have been relevant, but the precise contribution of this resource has been unclear (see below). Moreover, outside confession-specific and social economy oriented structures, other horizontal third sector policy actors on the Brussels stage - such as the European Platform of Social NGOs, ECAS and the Permanent Forum on Civil Society - have not actively allied with CEDAG on the matter. Rather, they have sometimes been aware of, and sometimes reported supportively on, the progress of the Statute using intelligence supplied by CEDAG, but remained essentially passive. Another potentially relevant grouping, ET Welfare, has generally tended to exhibit ambivalence, to a large degree reflecting the Germanic flavour of its constituency (with the oppositional tendencies, to the Statute outlined in the previous section). (See Kendall and Will (2006) for more information on Brussels third sector horizontal policy actors in the content of the wider policy architecture.)¹⁵

¹⁵ A further organisation to take an interest in the Statute has been the European Foundation Centre. While this may have involved some support for CEDAG in relation to the European Statute of Association, most of the

Statute-oriented policy entrepreneurship in Brussels from within the third sector has, then, fallen entirely on the shoulders of CEDAG. This has been in terms of lobbying and active promotion via relevant media, but also through technical expertise and advice. When the Commission did need to take action - as with the unexpected revival of the Statute under the Greek Presidency - it was to CEDAG that it turned.

The revised draft of the Statute circulated to Member States for review in 2003 was the fruit of several days' joint effort between an official from DG Enterprise's Unit E3 and CEDAG's Secretary General. In 2002, they retrieved the latest (1996) drafts, and modified them in the light of the changes successfully made to worker participation directive, and the European Co-operative Statute regulation, during negotiations in 2001/2002.

In this particular sense, and at this particular moment, Commission dependency on CEDAG's expertise was apparent. However, over the period since 1999 as a whole, it is limits to the structural capacity of CEDAG which appear to be most in evidence. This is true in a number of respects. First, weak *economic resource capacity*. CEDAG has only one employee (less than other horizontal third sector bodies), and relies extensively on the voluntary effort of its Brussels-based Secretary General. This individual simultaneously has paid responsibilities to discharge towards Caritas, his full time employer, in relation to EU level and Belgian social policy, and so has limited resources to commit to either Statute-oriented lobbying or developing and supplying technical expertise. The contrast with the significant organisational resources available in the for-profit sector at this level for the for-profit European Companies Statute is striking (Greenwood, 2003).

Second, this policy entrepreneur has effectively had to act as a 'lone wolf' not only in the sense of a *lack of active external support* from other third sector horizontal bodies. It also has *low internal commitment levels*, likely to be a key factor in undermining its legitimacy from the perspective of public EU institutions, which, officially at least, attach great importance to the country coverage of membership organisations (Richardson, 1993). The organisation only has members in 11 of the EU25 (12 if an associate member is included)¹⁶. But there also seems to be passivity on the part of most individual CEDAG members, even the French constituency who dominate its ranks. We found

EFC's lobbying efforts and expertise have been directed into developing a separate Statute specifically for foundations.

¹⁶ According to information on its website at the time of writing (visit to <http://www.cedag-eu.org/structure/membres.php>, 22 April 2005) it does not have members in Ireland, Greece, Spain, and most of the new Member States (including the Czech Republic in the TSEP network) are not represented. See also Third Sector European Policy Network (2005).

evidence at the national level that behind this lack of interest was the view that the subject was both too complex to justify the investment in resources to understand it, and rather boring to boot. Possible metaphors here are of an insurance policy: signing up to keep informed in case something happens, but with low expectations that it actually will; or the ‘arm chair’ individual support of environmental NGOs, wherein members are passive because by subscribing they feel they have ‘contracted out’ involvement to the supra-national level (Jordan and Maloney, 1997). This view in the early 2000s contrasts with the situation in the mid 1990s - ironically perhaps, *before* the organisation was even based in Brussels - when an active core of not only French, but also British and Italian members were actively committed to the Statute (see section 6 below).

A third ingredient is in relation to CEDAG’s wider social economy affiliation. In theory, CEDAG should benefit from its affiliation within the European Standing Conference of Mutuals, Co-operative Societies, Associations and Foundations¹⁷. We have been unable to explore the extent to which associations have benefited from membership of this social economy family, and there may be political and economic ‘insider’ advantages of which we are unaware. Certainly the President and latterly Vice-President Anne David, who nurtured many of the French domestic horizontal structures identified earlier in this paper and active in promoting CEDAG from its Parisian birth onwards, continually pressed for the association agenda *within* these structures. However, despite intentions there are good reasons to be cautious about the extent to which CEP-CMAF may have been able or willing to support CEDAG. First, this grouping meets only three times a year. Our research was unable to find concrete and substantive evidence that CEDAG’s influence within the CEP-CMAF was mobilised to prioritise the Associations Statute. It is also worth noting that, whatever the informal machinations between ‘family’ members, given the economic dominance at the country level of associations over both co-operatives and mutuals in the vast majority of at least EU15 countries (CIRIEC, 2000) associations would, if anything, appear *under*-represented in governance terms.

Finally, and ultimately reflecting these weak structural conditions, CEDAG seems to have been unable to develop an appropriate and convincing argument concerning the ‘need’ for the Statute. This difficulty crystallised in the fourth meeting of the expert Company Law Working Group under the Greek Presidency. The initial meetings of these expert delegates from national level had been

¹⁷ The CMAF was originally formed around the time of the 1997 Communication with strong links to the Commission, but since 2000 appears to have been re-established as CEP-CMAF, and run on a more autonomous basis.

characterised by a somewhat surreal process of disbelief suspension, in which national representatives proceeded to read through the draft statute clause by clause, despite the majority not believing that the instrument was potentially justified. The Commission called in CEDAG in an attempt to shift this mood towards support. From CEDAG's perspective, this meeting was a success to the extent the number of countries registering a 'general reservation' fell from 8 to 2 (CEDAG, 2005). However, the organisation's mixture of political and technical claims-making in this meeting appears to have done little to secure such substantive commitment to the instrument, and may have even made matters worse. The arguments rehearsed in most respects were essentially those already identified as the dominant 'French line' in section 4 above (with a slight twist in one respect: the emphasis on border *areas* in relation to cross border transactions). However, an additional argument was made too: the notion that the Statute would foster 'convergence'. This could be interpreted as playing to the very fears in relation to subsidiarity that we identified earlier.

In a nutshell, not only had CEDAG failed to keep the Statute on the agenda for a sustained period. But when it did reappear unexpectedly, it proved unable to present a tactically appropriate argument, in terms of style and content, to an audience of national officials. Its reference to 'convergence', almost certainly touched a political 'raw nerve' in relation to the subsidiarity concerns which had long been an issue for Britain and Germany, but was now a concern more widely.

5. Understanding the overall picture: a theoretical interpretation

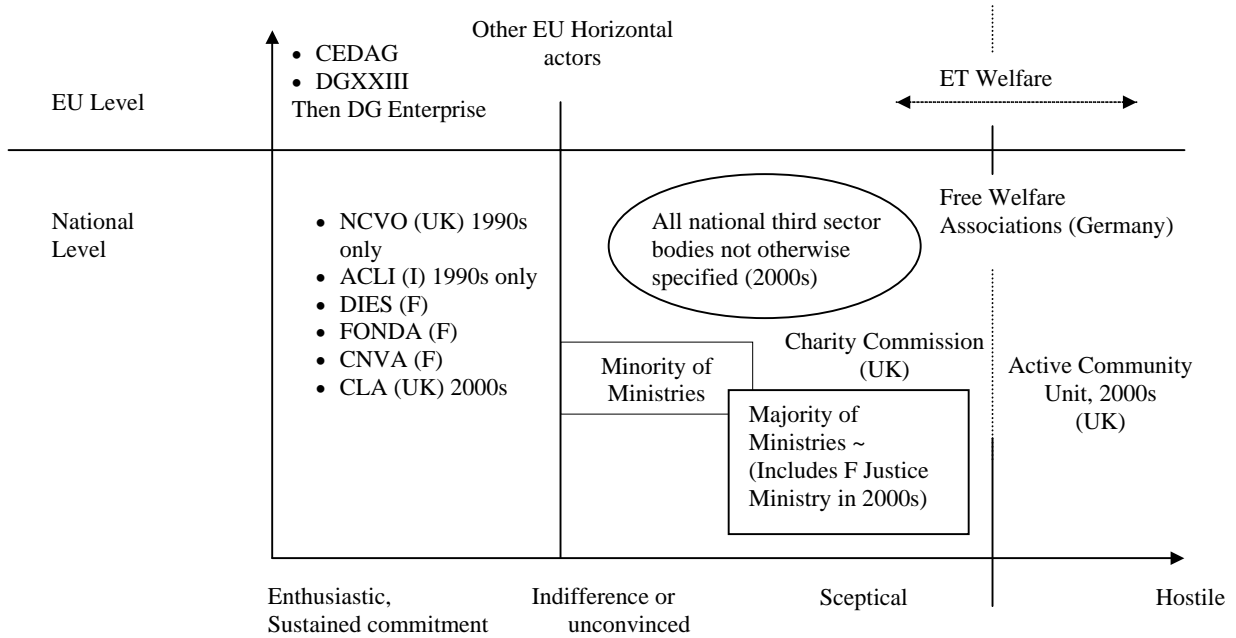
This section attempts to stand back from the descriptive narrative put forward in earlier sections to answer the key question emerging from this research: why has the dominant storyline in relation to the European Statute of Association been one of failure and frustration? Why has the Statute not proved to be the driving force to overcome the 'inertia' which Fontaine had hoped for some two decades earlier?

In answering these questions, it is useful first of all to recap on the sheer obscurity of this case: our research would suggest that only five or six third sector or public sector organisations across the whole of the EU have followed the measure with sustained commitment. If we add to this active core those who are aware in a reasonably coherent way of its existence, through passive membership of, third sector horizontal bodies other than CEDAG; through involuntary attention, when the process has been re-ignited and the Working Group machinery activated; or through other routes - including

academic research - it is unlikely that the total number of individuals and organisations at issue exceeds 500. Figure 1 tries to capture the main, relatively proactive organisational actors in this landscape, differentiating between levels of engagement (y axis) and positive or negative orientation towards the measure (x axis).

In seeking to understand this pattern, we can usefully distinguish between a small number of key attributes which seem to characterise this case, considered in turn.

Figure 1: Main stakeholders positions toward ESA and levels of engagement



~ Member State level Ministries involved in Presidency-initiated Working Groups (usually, Ministries of Justice)

< ----- > indicates ambivalent formal position at any point in time.

Note: The position of NCVO and ACLI has shifted rightwards over time

Issue attributes: Symbolic problems

The complexity of the issue and the consequent difficulty in either projecting it as a rallying symbol - or of mounting a convincing 'technical' argument for its adoption - seem to be at the root of the case. In terms of the former, as we make clear elsewhere in this paper, French third sector-specific specialist actors in particular have always seen it as a symbol of 'social Europe'. However, successful symbolic policy making requires successful manipulation of media (Edelman, 1988). This tends to require the use of simple and compelling imagery and story-lines. The nature of the subject matter as a legal instrument, hypothetically of interest in the future, and involving 'value added' which has proved unclear to bureaucrats - let alone a wider audience - may make it particularly hard to package and promote. This contrasts with evidence of some success in other areas of policy where third sector policy processes can be connected more readily with concrete actions, and the needs of vulnerable individuals which are more readily dramatised for media consumption. International 'Years' and 'Weeks' at both European and UN levels - in relation to disabled people, or volunteering, for example - seem to provide examples of third sector-relevant policies which are easier to promote in this way than a dry legal vehicle.

Of course, the other problem with policy based on symbolism is that, where actors *are* able to conceptualise and understand potential policies in such an abstract way, they must actually sign up to the agenda of the symbol's promoters. In the case of the Statute, our earlier discussion implies that some of the protagonists have included a handful of actors able to think in such rarefied terms, but this has included some who oppose the symbol, precisely because of what they believe it really represents. The key example here is Germany, reflecting the fundamental antagonism of the predominant actors in third sector policy space in the social welfare domain - the Free Welfare Associations - towards 'social economy'. Because such actors have tended to adhere to a belief that the Statute signifies a version of 'social Europe' - which makes too many concessions to the market, and is too 'economistic' in character - they have sought not only to abstain from its symbolic promotion, but have actively sought to put forward an alternative symbolic formulation. This was particularly true in the early 1990s, when the 'French symbol' of the then emergent Statute was deliberately countervailed by a different 'German symbol'. This was Declaration 23, associated with the 1992 Maastricht Treaty, with its reference to 'co-operation between the European Community and [social welfare] charitable associations and foundations' (Kendall and Anheier, 1999).

Issue attributes: technical and political problems

This case represents a relatively ‘pure’ case of (potential) horizontal third sector policy, not even tied *necessarily* with the social welfare domain (which tends to lie at the heart of horizontal institutions that do exist at the national level in most countries: see TSEP Working Papers 2 - 10). Thus, if horizontal structures are not well established, there is no very obvious specialist actor or set of actors who can be engaged with the topic. But even where they are in place, the issue is clearly perceived as very remote from the agendas of all but a few. Acting as ‘political organisations’, they may tend to attend to more pressing, immediate issues with concrete potential costs or benefits (Wilson, 1995).

A range of difficulties have been encountered in the process of drafting and processing a Statute of a more ‘technical’ nature. These have been to do with various legal problems raised in relation to individual Articles of association as the instrument has been ‘read’ in Council; but also to do with the more basic perceptions of a lack of need or demand. In other words, the joint efforts of the Commission and CEDAG to persuade law makers that there is ‘value added’ in terms of the available configuration of instruments already available have basically failed. Official consultations which have been conducted at Member State level by public officials have not evoked enthusiasm from many of the third sector horizontal constituents - let alone vertical actors - who would be most expected to have a stake in the issue. A rare exception was the case of the Charity Law Association in the UK.

However, on closer inspection, this interest turned out to be the re-presentation of the ‘exceptional’ interest originally put forward in the mid 1990s when this person had been based at NCVO, rather than invoked by a new level of perceived need on the part of the CLA as a whole. Strikingly, NCVO itself, in the new round of consultations at the British level (section 3), despite its theoretical well established awareness through CEDAG membership, and interest in the 1990s did *not* feel sufficiently interested to contribute to this exercise in Britain when consulted by the Charity Commission in 2003, hence, our representation of that organisation’s rightward drift over time in Figure 1. As already mentioned, this shift from enthusiasm to scepticism was also evident in Italy (see Box 2).

Box 2: Shifting national positions within CEDAG between the 1990s and 2000s

The mid 1990s was for CEDAG a 'golden age' of Anglo-French-Italian collaboration. In France, commitment has clearly been sustained. But in the British case, this enthusiastic support now only lives on in one individual within the CLA, as noted in the text, while in Italy it has lapsed entirely. There seem to have been both more individual reasons and more structural and organisational reasons for this brief interlude. As noted earlier, in the Italian case, this was linked to its holding of CEDAG's presidency. When that moment passed, so too did commitment to the Statute, with the policy perceived to be 'going nowhere'. As far as France and the UK were concerned, those directly involved, in our interviews, stressed personal chemistry and commitment, which allowed co-operation in spite of the different approaches of the nationals involved. Moreover, it is as well to note that political conditions in the UK at the time were difficult for individuals and organisations who saw themselves as centre or centre Left leaning, and there was a natural inclination to 'venue shop' at the EU level for a more hospitable environment for 'progressive' opportunities in social policy in the 1980s and early 1990s.

Since then, the 'New Labour' domestic policy agenda in Britain on the third sector has become hyper active, and NCVO and others have been heavily preoccupied with British domestic developments (Kendall, 2005). Like ACLI in Italy before it, NCVO had come increasingly to the view the policy was 'going nowhere' - as well as being 'boring...technical', as one interviewee put it. Finally, it is possibly also relevant that, as NCVO grew significantly during the 1990s and early 2000s, its structures became less fluid. Within NCVO, the components dealing with European and domestic policy specialisms - which had co-operated to support CEDAG in the mid 1990s - seem to have become relatively balkanised, limiting the scope for the fostering of a joint policy momentum.

An additional complexity which combined technical and political problems has been the issue of 'subsidiarity'. Arguably, the attempt to invoke the Statute as a pan-European symbol seems necessarily to put to one side the issue of the appropriate levels of competence for enforcing the proposed legislation, and thus already muddies the water. However, we have seen that British and German policy actors - particularly within the State and its regulatory apparatus - have long been concerned about this angle in a more practical sense. Yet the Commission, and the actual framing of the Statute, seems to suggest this is a non-issue, because its arrangements for cross border association would complement rather than supersede the national regulatory arrangements in place domestically.

The main problem here is that the Commission is correct to represent the relationship in this way formally, legalistically and in the short term; but the concerned oppositional actors whose beliefs were identified in section 3 have in mind longer term ramifications which tend to suggest a less comfortable (for them) and deterministic relationship between domestic and European arrangements. There is certainly the possibility that the overall reputation of the regulatory environment could be

affected by the introduction of an additional layer of legal activity and there is also the chance that an effective European regime could generate pressure for changes at the domestic level, which might otherwise not have been so constrained. The latter is seen as a positive advantage by European Commission officials, to the extent some domestic regimes are 'restrictive' and likely to benefit from 'learning by example' (Iokimides, 2000); but both adverse reputation effects, and any indirect pressure for change appear to be seen as threats by Member State level actors. This includes German, British opponents as pictured in Figure 1, and also third sector stakeholders in Sweden (although they have been less pro-active in expressing these concerns). This is because, in the absence of credible evidence, there is no conviction that there are positive lessons to be learned; and because the new regime would involve an indirect loss of control over the third sector's policy environment.

Policy mode problems

In many ways, the problems of processing third sector policy via the community method are so obvious that they almost escape attention. One key difficulty is the heavy reliance on Brussels level entrepreneurship. This may not be a problem if the component of the Commission charged with developing the agenda is in a position of strength, and/or the external Brussels level actors are well equipped in terms of resources and expertise. However, we have noted that these two conditions are conspicuous by their absence in this case, for all the detailed reasons we have identified in section 4. Significant demonstrable support has *not* been mobilised, and successful arguments in support have *not* been made in Brussels.

In addition, this weakness in policy entrepreneurship is of course perpetuated by the system of rotating Presidencies, which currently underpins it. This problem may be particularly acute when reliance on external expertise is placed heavily on a membership organisation which only has affiliates in a minority of Member States - and whose affiliates are relatively passive.

A final, obvious point is that this policy mode, unlike the Open Method of Co-ordination, is not in principal continuously open to the range of actors who happen to fall outside the immediate 'technocratic' circles that constitute COREPER and its working groups. At the same time - and given the other problems identified - it is perhaps unlikely that more interest would have been generated if a more transparent process was in evidence.

6. Conclusion

Perhaps the single most important feature of the European third sector policy process that the Statute case reviewed in this paper demonstrates is its fractured, yet simultaneously technocratic character. In order to understand the evolution of the European policy process, it shows that we need to examine how specialised national, domestic policy traditions play into it, and are reproduced within it. These traditions involve distinctive and contrasting languages, conceptualisations and attachments. The most prominent and sustained cleavage to date has been between carriers of rival German and French understandings, which to a large degree can be read as a symbolic clash played out amongst a relatively small and insulated group of specialist policy actors. This is not news (Kendall and Anheier, 1999), but we have been able to elaborate here on why these dynamics play out as they do, and why they have persisted, using national level evidence from those countries.

We have also been able to put their positions in a wider context. Of the other countries considered, the British position is one of the more interesting. It seems less unified and consistent as between actors and over time, with the observed shifts apparently reflecting political, organisational and personnel changes. With this in mind, it is interesting to reflect that, while the affinity between the ‘second Left’ and *économie sociale* in France was projected, with the support of the Delors Commission, onto the EU stage with the Statute as its symbol (Fraisie, 2005) the affinity between ‘New Labour’ and the ‘voluntary and community sector’ has seen no equivalent European uploading. This must ultimately be linked to the categorical fusion between matters French and European that took shape in the late 1980s and 1990s. It can be contrasted with the British habit of strongly differentiating domestic from EU level policies, at least in the case of the Party Political elite, and a reluctance to set the agenda outside national boundaries, at least outside the primarily economic sphere (Garton Ash, 2000; Siedentop, 2000).

However, competing national cultural, linguistic and symbolic propensities also exist in other policy areas, particularly outside narrowly defined economic life, and have not rendered policy inert. It must also be the case that the troubled trajectory of the Statute is a reflection of failures of policy entrepreneurship on the Brussels stage. The political, economic and ideational weakness of the actors active at this level - within and outside the public bodies - has done little to progress the agenda. Extreme resource constraints, coupled with enduring intra-Commission tensions and a lack of demonstrably sustained membership commitment within the relevant representative third sector bodies have stymied attempts to move forward. It is this combination of national and European level

factors which must in the end explain the Statute's failure so far to gather the momentum which Fontaine craved nearly twenty years ago.

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Appendix 1: Working Glossary

Version of 23 June 2005

Case refers to the TSEP unit of analysis in relation to public policy as a multi-level process: there are ‘closed cases’, being particular policy events/programmes chosen to capture a range of policy modes and stages in the policy process of relevance to the third sector in Europe; or ‘open cases’, which are more thematic and diffuse in character. The former include the European Statute of Association; Global grants for social capital; the Convention/Constitution; National Actions Plans for social exclusion and employment; and the United Nations Year of Volunteering; the latter include Services of General Interest; and the European Structural Funds and the third sector at the sub-national level.

Coalition refers to alliances of policy actors, who can be individuals or organisations, who come together to pursue shared values, concretely expressed in policy change or policy perpetuation goals. Understanding the functioning and roles of such coalitions in national, EU or multi-level contexts requires accounting for the nature of their values and goals; the economic, political and cultural resources they are able to mobilise, and the political opportunity structure within which they operate. In the TSEP network, research effort has been directed at describing and analysing coalitions formed and perpetuated by full or part time *specialist third sector-specific policy actors*.

Collective noun refers to the language used by domestic or EU level actors to group organisations sectorally at a level higher than *vertical policy fields*, and involving some implicit or explicit reference to ownership and control not reducible to either the market or the state. In some countries the collective noun and associated expressions involves a relatively stable or dominant language supported by formal or informal institutions and practices, while in others there is a more open field, with competing concepts and formulations, often fluidly co-existing and interacting with one another. Examples in Europe at the EU and national levels of expressions sometimes used in this way (and sometimes also used in other ways) include associations, [social] [action] NGOs, non-profit sector, nonprofits, organised civil society, popular movements, social economy, social enterprise, solidarity economy, third system, voluntary [and community] sector.

Community method has been described by the Commission as ‘a procedure leading to decisions or Act, involving balanced participation [at the EU institutional level] between Council, the European Parliament and the Commission’. It was the ‘classical’ or ‘traditional’ method of processing EU policy in the second half of the twentieth century, but in the twenty-first is increasingly supplemented or displaced by the *Open Method of Co-ordination* which rebalances control away from the EU institutional level, towards Member State level actors.

Cross-cutting is used as shorthand for third sector relevant cross-cutting, and refers to concepts/beliefs or policies/practices/actions which are not confined to within *vertical policy fields*, but which are (a) either held to be relevant or applied discretely but according to common principles within two or more vertical policy fields, especially in the social welfare domain; or (b) which are held to be relevant/applied as a matter of ‘generic’ policy. Policy development in relation to these processes typically involves *specialist third sector-specific policy actors* within and outside the State, forming relatively loosely coupled ‘policy networks’ and/or a more formally institutionalised and recognised ‘policy community’ nominally involving a core of shared values and beliefs expressed in political rhetoric and/or the technical codified discourse associated with specialist policy instruments. The result can be the creation and perpetuation of a policy space jointly recognised by these experts as constituting the subject matter of third sector policy (using some collective noun) which is not reducible to the policy contents of a particular vertical field.

Domain Used to specify the level of policy between vertical policy field and the macro system of policy and politics. In relation to the third sector, the domain which TSEP has demonstrated is of most (but not universal) relevance is the *social welfare domain*.

European problem set refers to the cluster of high salience European policy issues or problems with which the third sector has most consistently been linked by policy actors at European, national and sub-national levels. Included here are *governance*; *social exclusion*; and unemployment. Third sector organisations may be seen as ‘partners’ whose contributions can and should be mobilised as part of the process of problem management, or problem solving.

Governance has multiple and contested meanings; but at its broadest, it can be used to refer to institutionally ordered arrangements for shaping the processing of policy at the key stages of agenda setting, decision making, implementation and evaluation. It tends to be linked to steering or strategic - as opposed to tactical - processes; patterned as opposed to unstructured relationships and interactions; and to be associated with such values as accountability, transparency, and effectiveness. The ways in which the third sector is linked to governance varies significantly across contexts, but often considered in scope are issues both in relation to internal governance - the design and application of appropriate legal structures and micro-constitutional models in the light of third sector specificities such as voluntarism and non-profit-distribution; and issues in relation to external governance, including how the third sector can and should fit as an actor at each of the policy stages, wherein it is one policy actor amongst many.

Horizontal policy is synonymous with *cross cutting* policy. Note that there are ‘pure’ cases of horizontality, whereby policies or concepts are related to the entire third sector as defined in the relevant collective nouns. But we *also* include as ‘horizontal’ narrower-in-scope concepts or policies which cut across some but not all *vertical fields*. In particular, overarching social welfare regime policies and practices, social inclusion policies and community development policies can be considered in scope, even if not extending outside the *social welfare domain*, to the extent that they necessarily suggest, involve or imply, participation by the third sector and its stakeholders.¹

Industry-specific policies that are relevant to a particular *vertical field* only.

Mainstreaming is shorthand for *public policy* mainstreaming and refers to a situation in which the mainstreamed policy issue or problem (here, the third sector) is not only supported by technical institutions, but has high political and social visibility, and is seen by systemically powerful actors as of high generic public policy salience.

Multi-level process refers to how the European, national and subnational levels of public policy are inter-related. The extent to which this constitutes third sector policies is examined in the TSEP network by policy *cases*. Note that this is not synonymous with multi-level *governance* - which is typically used as a framing concept to claim that substantive power is situated at more than one level. The extent to which multi-level processes involve a reconfiguration towards multi level governance is treated as an open question for research.

Open Method of Coordination is based on mutual agreement of policy objectives by Member States; the development of common guidelines, indicators, and targets; benchmarking of performance and exchange of good practices, formulation of national action plans; and peer review and joint monitoring of implementation in an iterative multi-year cycle. It increasingly supplements and even displaces the *Community Method*.

¹ Note that other writers use this term differently, often including *intra-vertical* policy field *multi-sector* initiatives as horizontal, while we do not consider *per se* as the core subject matter of our network. However, indirectly such policies may lead indirectly to our notion of horizontality, through spillover effects or *ex post* political construction of policy, as noted elsewhere.

Path dependency Refers to how historical policy decisions create a ‘policy legacy’, which can have long term consequences for the possibilities of current and future policies

Policy is used in TSEP as shorthand for *public policy*.

Policy entrepreneurship refers to actions taken either to deliberately change, or to deliberately protect, public policies - here, third sector specific policies. Such efforts typically involve the formation of *coalitions* between individuals or organisations, or both and are heavily constrained by national political opportunity structures. In the TSEP network, research effort has been directed at describing and analysing the entrepreneurship of full or part time *specialist third sector-specific policy actors*. Most horizontal third sector policy entrepreneurship takes place at the national level or below, but there are some individuals and organisations that specialise at the EU level, and some who operate on multiple levels.

Policy field is shorthand for *vertical policy field*.

Policy mode is a helpful way of recognising and analysing the different types of broad policy approaches that jointly constitute the highly complex EU public policy process. Examples of distinctive modes are the *community method* (relevant to the third sector in the European Statute of Association case) and the *open method of co-ordination* (relevant to the third sector in the case of National Action Plans for *social exclusion* and employment).

Policy learning refers to the impetus for policy change which occurs when actors adopt strategies, or various forms of policy belief, in the light of experience; or policy changes due to new information and analysis, generated by *policy entrepreneurs*, perhaps operating as part of *coalitions*.

Public policy comprises two elements. Unless otherwise qualified, ‘policy’ refers to intended courses of action which are explicitly and proactively articulated by actors with significant levels of political authority, and reflected in patterned policy discourse, events and institutions. If past policy decisions continue to be relevant because (due to *path dependency*) they shape current administration practices, resource allocation and the distribution of power, but they are *not* actively sustained and pushed as a categorical, proactive policy, they can be described as ‘latent’, that is implicit, policy. ‘Public’ refers to institutions and events involving ‘that dimension of human activity which is regarded as requiring governmental or social regulation or intervention, or at least common action’ (Parsons, 1995).

Social exclusion has been defined by the European commission as ‘referring to the multiple and changing factors resulting in people being excluded from the normal exchanges, practices and rights of modern society. Poverty is one of the most obvious factors, but social exclusion also refers to housing, education, health and access to services’.

Social welfare domain This corresponds to the ‘welfare state regime’ policy space. It is a ‘meso level’ concept nested within, and developmentally bound up with, the prevailing generic national political and public policy system, while being broader than a single *vertical field*. Within it are the family of ‘human services’ or ‘social [welfare] services’ whose vertical components include ICNPO groups 4 (‘personal’ social services, or social care, and income maintenance), group 6 (development and housing, including employment & training), part of group 7 (advocacy, to the extent it is geared towards social welfare; and excluding political parties); group 3 (health) and group 2 (education and research). Many of these services are (jointly) implicated in tackling *social exclusion*. Note that this formulation is not limited to ‘service provision’ in the sense of ownership and management of establishments (as with provision of care homes, social housing) but inclusive also of social welfare oriented activities in addition to/separate from direct services, including social welfare oriented self-help and community based activities, advocacy

(campaigning on social policy issues, and individual clients' rights etc), involvement in social welfare and social policy design, monitoring etc.

Specialist third sector-specific policy actors are the carriers of purposive *third sector specific policy* who claim to hold relevant expertise and knowledge. They may be full time specialist individuals or organisations, but such actors are often part time, fulfilling this role separately and/or in conjunction with other contributions to the policy system (particularly in the social welfare domain). They operate within and outside the State, forming relatively loosely coupled 'policy networks' and/or a more formally institutionalised and recognised 'policy community', or 'policy communities'. At a minimum they share a language involving third sector collective nouns (otherwise they cannot be specialists); they may nominally claim to share a core of values and beliefs in relation to the third sector, expressed in political rhetoric and/or the technical codified discourse associated with the relevant specialist policy instruments. The result can be the creation and perpetuation of a policy space jointly recognised by these experts as constituting the subject matter of third sector policy (using some collective noun) which is not reducible to the policy contents of any particular vertical field².

Spill over effects Policy effects and actions designed to apply in one domain or field which have consequences once adopted - and thus implicitly or explicitly, shape policies in other domains or fields.

Third sector at the highest level of generality refers to organisations situated between the market and the state in terms of ownership and control. TSEP needed more specificity to initiate research into this construct as an object of policy: It was therefore provisionally taken to include those organisations which are self-governing and constitutionally independent of the state; do not involve the distribution of profits to shareholders; and benefit to a significant degree from voluntarism. This was an initial orienting working definition of the third sector - but in application, this has had to be sensitive to national conditions, since our unit of analysis has been the actual existing horizontal policy community or communities with its associated constructs. In other words, the specific 'indigenous' conceptualisation (or conceptualisations) deployed in practice was a question to be determined empirically, not *a priori* imposed. By referring to more than one collective noun, and the relative salience of each from the perspective of policy network or community members, we are also able to reflect differences within countries, where boundary disputes and the contest between competing definitions is itself part of the policy process (since notions putting the accent on 'civil society', 'voluntarism', and 'social economy' for example, typically co-exist).

Third sector [specific] policy is usually used either as shorthand for *horizontal* third sector policy; or to refer to the sum of horizontal cross cutting policies, policies which are partly horizontal and partly vertical. As used in this network, it is by definition concerned *only* with public policy that is horizontal to at least a certain extent. It thus can contain both 'deliberate' policy designed or constructed for the third sector, and policies which are more accidental, *ex post* constructed as third sector policies, and therefore seen as relevant by actors who style themselves as third sector stakeholders. Third sector specific policies are sustained by policy networks and/or policy communities, where the latter are characterised by specialisation, involving claims-making in relation to expertise. In these specialist networks and/or communities, the third sector is often - but not always - coupled to problems and issues associated with the social welfare domain,

² Policies may not be cross cutting *initially* if developed independently within vertical policy fields; but *become* cross cutting if *ex post* 'joined up' by significant policy actors coordinating across or (if powerful) able to authoritatively transcend vertical policy fields. These policies can then be viewed after, and only after, the formative, politically constructive event of 'joining up' by policy actors as jointly constituting a shared 'horizontal' policy; otherwise they are considered not to exist as 'horizontal', or only 'latent'.

particularly social exclusion and unemployment. The agendas of these policy networks or communities tend to include reference to the third sector's policy environment in terms of legal structures and wider governance arrangements; institutional processes for mediating third sector-public sector/State relations; arrangements for involvement across policy stages and policy modes; and the promotion of voluntarism, including volunteering.

Third sector stakeholders include actors who consciously have a significant role in third sector policy. It includes third sector organisations themselves, but also other actors including politicians, public officials, academics, the media, trade unions and (for-profit) business.

Vertical policy field Policies that are developed and apply essentially *within* a particular field or domain: here, horizontal institutions may differentiate between organisations but in the background or incidentally, rather than as the focal point of policy activity. To define 'field' boundaries, we follow the standard industrial classification adapted to account for the specificities of the third sector, as represented in the International Classification of Nonprofit Organisations (ICNPO). Policies which relate to a particular Group or subgroup of the ICNPO are considered 'vertical'; while those which relate to two or more fields may be considered horizontal, either 'narrower' or 'broader' according to the range of fields in scope. Empirically in Europe, relevant policies are often (but not always) closely linked to the *social welfare domain*.

Further Reading

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Appendix 2: Data Sources

Across all closed cases, at the national level some 174 primary data points were assembled so on average there were just under 30 sources of primary evidence per case. (The number varied significantly by case, reflecting, inter alia, variation in ease of access to informants (different processes are more or less open), intensity of actual policy activity, and the resources of the policy champion (see below).) Most of these data points were bi-lateral meetings with policy actors - either third sector bodies, policy makers within the public sector, or academics and other experts. Potentially relevant sources were identified using country-level Partners' familiarity both with the general third sector policy community or networks in their country, and by 'snowballing' from actors identified in earlier meetings. Relevant events and fora were also attended and observed, as deemed relevant by Partners. The evidence gathering at this level proceeded in stages. First initial descriptive information was collated. Second, basic common lines of questioning were pursued across all cases, as put forward by the TSEP co-ordinators. The conceptual background to these lines of questioning was an understanding of the policy process as likely to involve country-specific path dependencies, competing priorities between policy actors, and contested terminology and boundaries, but also the potential for policy learning and policy entrepreneurship (see Appendix 1). National researchers were therefore asked to identify the extent to which the case reproduced or deviated from established national patterns in terms of actors and processes, and why; and to explicate and explore any evidence in relation to either catalysed policy entrepreneurship, or learning processes.

Third, responsibility for cases were devolved to a 'policy champion' or champions, who took responsibility for developing and refining the line of enquiry and questioning, in the light of initial findings; the analytic policy literature specific to the case; and acting as lead author for subsequent papers. More details of this aspect are provided in the body of this paper.

At the EU (Brussels) level, our sources (relevant for all cases other than the UN IYV) have been an evolving mixture of (transcribed) textual data, meetings and observation, with some 70 data records assembled. The work on Brussels-based policy was assisted by the openness of many institutions, which has made it possible to meet many important informants and access a wide range of written sources such as policy documents, minutes and reports. Meetings were arranged with people who have taken formal and informal positions of leadership, or have long experience in this area within the Commission and other European institutions, in activist communities and among academic and professional commentators. These were only lightly structured, but were used to elicit in-depth accounts and commentary on the 'core' specific policy initiatives, as well as more general reflections on third sector policy activity over time. The researchers have also observed and participated in relevant events where possible.

Third Sector European Policy Working Paper Series

The background and motivation for the network's research efforts is set out in the first TSEP Working Paper. After this, a first group of critically examines the third sector's policy environment at the national level; a second set explores how a small number of specially selected European policy cases are processed at both the national and EU level; in addition, the more general topics of 'services of general interest' and ESF sub-national policy implementation are an additional focus of ongoing research in some countries under TSEP auspices.

- TSEP 1** **Third Sector European Policy: Organisations between market and state, the policy process and the EU**, Jeremy Kendall
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- TSEP 3** **The third sector and policy processes in Sweden: A centralised horizontal third sector policy community under strain**, Lars-Erik Olsson, Marie Nordfeldt, Ola Larsson and Jeremy Kendall
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Papers can be found at <http://www.lse.ac.uk/collections/TSEP/>.

Background to the Centre for Civil Society

The Centre for Civil Society (CCS) is a leading, international organisation for research, analysis, debate and learning about civil society. It is based within the Department of Social Policy at the London School of Economics. Established initially as the Centre for Voluntary Organisation, the Centre has for over 20 years pioneered the study of the voluntary sector in the UK, development NGOs and civil society organisations throughout the world. The CCS is distinguished by its interdisciplinary and reflective approach to understanding whether and how civil society contributes to processes of social, political and policy change and continuity. Its core staff, research associates and visiting fellows cover a range of disciplines, including social policy, anthropology, political science, development studies, law, sociology, international relations and economics.

Objectives

Through research, teaching and policy analysis, the Centre adds to knowledge about the types, roles and contributions of civil society and social economic institutions in Britain, Europe and other parts of the world.

The Centre's four major objectives are to:

- Improve understanding of civil society and social economy institutions;
- Inform policy-making at local, regional, national and international levels;
- Provide academic and professional education; and
- Create a vibrant intellectual community for the study of civil society/the social economy.

Research

Research is one of the Centre's core activities. It maintains a highly active and diversified research programme, ranging from basic theoretical approaches and empirical work to organisational and policy studies to historical analysis. Many research projects are inter-disciplinary and comparative. Examples of current and planned research projects include:

- Mapping civil society;
- The culture of giving in Britain;
- The European Union and the voluntary sector;
- Civil society and value changes in Britain;
- History of housing associations;
- Foundations in Europe;
- Studying small, local organisations; and
- NGOs and development.

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