

# **The internal market, services of general interest and the third sector**

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This paper is based on research conducted during the Third Sector European Policy (TSEP) project. However, this is only an unfinished draft, so if you wish to use our material, please use the final version of the working paper, which will appear on the project's website ([www.lse.ac.uk/collections/TSEP/](http://www.lse.ac.uk/collections/TSEP/)) in a few months. Here you will also find our other working papers. If you have comments on this draft paper, please address them to Taco Brandsen ([t.brandsen@uvt.nl](mailto:t.brandsen@uvt.nl)).

# 1 Introduction

The third sector has historically been one of the major providers of public services in Europe. From the second half of the 20<sup>th</sup> century onwards, it has in many countries co-operated closely with public authorities, who have become their major funders. Many associations and foundations are now also developing commercial activities that are also supplied by enterprises from the for-profit sector. Potentially, this mix of tasks and resources has many advantages. However, it also means that they have become players in the debate about the European internal market. Their ties with state and market raise questions about fairness of competition, the specific benefits of different types of provision, and the nature of particular services. Public services are at the heart of European societies. The question is to what extent market principles will govern the provision of these services.

This is a complex debate, which must not be mistaken for a simple choice between public provision and the market. First, there is the question which particular combination of coordinating mechanisms gets the job done best. There is less of a taboo on applying the market mechanism in this area than there was some decades ago, and some countries have already gone far in introducing competition in service provision. Some say that the nature of particular services is incompatible with market provision, while others believe this could improve the price-quality ratio while still meeting public requirements. Second, there is the question who decides on this. The European Union (EU) is a possibly unique system of multi-level governance, without a uniform distribution of powers and responsibilities. Public services have in that sense become ambiguous: they are not traditionally part of the EU's area of competence, but now they are touched by generic market regulation, which is ruled by European institutions.

Two recent initiatives have brought this debate to the forefront. First, there has been the discussion about so-called Services of General Interest (SGI), launched by the European Commission (EC) in order to implement article 16 of the Amsterdam Treaty, "acknowledging the place occupied by services of general interest in the shared values of the Union and their role in promoting social and territorial cohesion". The question was whether there should be a general legal framework for such services, which would also deal with the issue of market compatibility. About simultaneously, a proposal for a directive on services in internal market (the "Bolkestein directive") was published in January 2004 (DG internal market) with the objective of increasing competitiveness. It proposes that organisations working in other countries would only have to comply with the regulation from their country of origin, not with that of the country of destination. The two initiatives have become intertwined in the debate, although in this paper we will mainly focus on the former.

The authors have participated in the Third Sector European Project, an international research project with the aim was to assess how third sector organisations were involved in the policy process, both at the national and the European level. The paper gives a first overview of our empirical evidence, based on a comparison of the SGI debate in five countries (France, Germany, Netherlands, Sweden, UK). Some of the research is still in progress and there are some gaps, but we have a reasonable picture

of what has transpired. We will try to embed this in the more general debate about the construction of the European internal market.

In the second paragraph, we will describe our theoretical perspective and methodology. We will make use of theoretical building blocks from both economic sociology and political science to conceptualise the third sector as one of the players in the construction of the European internal market. In paragraph three, we will outline the general debate on SGI. Paragraph four will focus more specifically on the public consultation that followed the publication of the Green Paper on SGI in 2003. In paragraph five, we will analyse and explain the response rate and the nature of the responses. Our conclusions will be summarised in paragraph six.

## 2 Market construction and the third sector

### 2.1 The construction of a market

The European internal market has gradually taken shape since the Treaty of Rome, through a combination of dismantling barriers (negative integration) and harmonisation (positive integration). A dominant theoretical approach in research on this subject has been a legal one. Partly, this can be explained as the result of the dominant role of the European Court of Justice (ECJ), which has been a major driver of policy change. However, it is also related to the dominance of economic theory in the analysis of markets. This, regrettably, allows little scope for conceptualising the role of actors like third sector organisations in the development of the market.

We will therefore turn to a specific branch of economic sociology, which focuses on the interaction between rule structures and markets. On the basis of empirical research, Fligstein & Sweet have analysed the development of the European internal market as an evolution toward a coherent institutional arrangement in which the orientations and activities of social actors are embedded (Fligstein & Sweet, 2002).<sup>1</sup> From such a perspective, the market is not the natural state of affairs, but a social construction that arises from the interaction of actors and institutional arrangements. Rules are not imposed on the market, but an essential part of it. Its specific evolution is the result of interplay between market rules (both formal and informal), and the actions and views of organisational actors. When actors have an interest in changing the rules (e.g. so they can gain access to a lucrative market) they challenge them through legal political means. If this succeeds, a new set of rules will emerge, which will in turn affect the interests and interactions of the actors involved.

Fligstein and Sweet's article accordingly explains European (market) integration as the result of firms and individuals exploiting opportunities offered by the Treaty of Rome through the legal system, and in interaction with governments. National regulations were challenged by businesses, which lobbied their national governments and the EC, and filed cases with national and European courts. This interpretation contradicts –at least theoretically– Scharpf's view that positive integration (regulation or intervention) and negative integration (removing barriers within the market) are governed by separate logics and that the internal market has therefore developed without corresponding governmental capacity (Scharpf, 1996). The perspective adopted by Fligstein & Sweet allows us to examine the third sector's role in this process, although for such a purpose it needs both a wider scope and a more specific theory of the policy process.

In terms of scope, the issue of public services goes even beyond market construction. Essentially, this is a debate about the relation between markets and welfare states in European societies. As the EU moves towards closer integration, the question becomes more urgent which relational and/or integrating principles can be agreed upon. One of the greatest potential sources of conflict is the effect of market

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<sup>1</sup> Note that we do not use their term 'field', as in this context it has another meaning than the term 'policy field' used in this paper.

liberalisation on the basic framework of national welfare systems, e.g. in preferred relationships with certain (types of) providers. The economic paradigm driving liberalisation favours the removal of restrictions on (what is regarded as) market indicators like prices, wages and quality. Where such restrictions remain, they should be similar across the entire market so that actors can compete on equal terms, without historical advantages (a 'level playing field'). Contemporary welfare systems, by contrast, tend to be based on notions of rights and social order (we will explore this more elaborately in later versions of the paper). In terms of economic sociology (e.g. Polanyi's work), the conflict centres around the position of market coordination in society, and how far it is allowed to govern social action.

In the European context, the conflict has been held at bay by separating by defining the internal market as a European issue, and social policy as subsidiary. They have to a large extent been institutionally separated. However, they increasingly touch. The question is what concepts and instruments will be used to resolve the tension, and what role different actors will play in this. This is about legal rules and courts, as well as about politicking in both formal and informal arenas.

To give an example, one contentious area has been public broadcasting, where mixed financing came under fire (e.g. in Portugal). This led to political negotiations between the EC and the Member States, the result of which was that public broadcasting was exempted from strict application of competition rules. In the "Protocol on the system of public broadcasting", an annex to the Amsterdam Treaty, the Commission highlights that public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism. This annex was added at the last minute under pressure from Member States (Belgium and Germany) in particular. While this process was driven by the threat of a court ruling, one must clearly also examine the policy process to understand the final outcome. The situation might have been different if the annex had not been backed by people like Jean-Luc Dehaene and Helmut Kohl. What is also interesting to note is that public broadcasting is exempted on the basis of a positive justification, on the basis of specific characteristics of this type of service (as opposed to being "non-economic").

The discussion on SGI is basically similar, but broader and more complex. It concerns a wide variety of services, conceptualised and organised differently across Member States. For instance, the German idea of "Daseinsvorsorge" with its concept of subsidiarity in the fields of health and social care may contrast with the UK understanding of service provision, in which there is no clear principle of tiered responsibility. Nor is it clear to which side the actors involved would lean. On the one hand, a general framework might be regarded as protection of existing arrangements against encroaching market regulation. On the other hand, its conceptual implications regarding the classification of services and multi-level governance may be resented. One could not even have predicted whether the third sector would really take an interest in the issue. Whatever the considerations are, they influence the third sector's role as a player in the construction of the internal market.

To understand this, we need more precise theoretical tools to analyse the policy process. The approach taken by Fligstein & Sweet is one of broad brushstrokes, very suitable for a cross-cutting analysis spanning fifty years. It is less appropriate for a

detailed examination of market construction that looks at the development of a specific policy process. For this, we will use the heuristic framework used in the TSEP project, which is based on the Advocacy Coalition Framework (ACF) by Paul Sabatier. The terminology we use is described in the glossary in the appendix.

The assumption underlying our analysis is that the third sector policy space is comprised of sub-national, national and European dimensions, and involves both 'vertical' and 'horizontal', cross-cutting components (Kendall, 2003). It is clear that subnational public authorities are the primary reference point for most third sector organisations in Europe. National and federal public authorities are the next most important, and European institutions are perceived as of high significance only within a small number of vertical fields (particularly environmental policy and overseas development & relief), but are of little or no perceived relevance to the vast majority. However, the relation between the multiple levels is constantly shifting, and SGI is one area in which it is contested. It will be interesting to see how the third sector picks up on this.

## 2.2 Methodology

At the time of writing, we were still collecting information, but we have now nearly concluded our research. The information specifically needed for this paper was gathered through:

- European Commission publications, particularly the Green and White paper on Services of General Interest, and the document summarising the results of the popular consultation.
- Written statements from organisations during the public consultation following the Green Paper.
- Websites of European platform and service organisations.
- Presentations by Stefan Wilbert (DG Competition) at the TSEP meeting in Tilburg on 25 May 2004; and by Mathias Maucher (Monitoring Unit of the Observatory for the Development of Social Services in Europe at the Institute of Social Work and Social Education, Frankfurt am Main) at the TSEP meeting in Berlin on 2 April 2005.
- Interviews carried out specifically on this topic for the TSEP project in France, Germany, the Netherlands, Sweden and the UK.<sup>2</sup>

In addition, we have made use of other material gathered in the course of the TSEP project in the period 2002-2005, through well over 200 interviews, attendance at meetings and extensive documentation analysis (see the appendix). The project focused on the role of the third sector in the policy process, both at the national and the European level. The empirical evidence has been recorded in a series of working papers accessible at the project website <http://www.lse.ac.uk/collections/TSEP/>.

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<sup>2</sup> We would specifically like to thank Chris Lange and Johan Vamstad for their research into this topic. Some of their work has been used directly for this paper, but it has been agreed that within the TSEP project we do not reference internal documents. For information on our methodology, please consult the appendix.

### 3 The evolution of the debate

#### 3.1 The course of events

In this paragraph, we will describe the discussion on Services of General Interest with firm strides. One must distinguish between its general and the specific background. Not all (or indeed, most) relevant discussions on the underlying issue are fought under this label and at this level. Most are in fact settled in relation to specific policy fields. It is therefore only a small element in a very broad and fragmented discussion. Two developments can be said to form its general background. First, there is the role of the third sector at the European level, as recorded by the TSEP project. Second, there is the development of the internal market, which includes not only SGI, but also the discussion on the Services Directive. We will in this paper focus on the former.

The specific background is a long-standing debate between the Council, the EP and the Commission. This was preceded and accompanied by a number of communications by the Commission (“Services of general interest in Europe”, OJ C 281, 26.9.1996; “Services of general interest in Europe”, OJ C 17, 19.1.2001), clarifying the application of competition and internal market rules in relation to public services. However, the debate shifted with the Treaty of Amsterdam, which can be regarded as the starting-point of the SGI discussion. It was recognised that much uncertainty remained and that a more structured discussion was needed. This was initially pushed primarily by the DG Competition (it started on an issue of state aid). Later, the DG Employment also became involved.

First, we will sketch the broad outline of the specific debate. It would go too far to map this in its entirety, but we can sketch the basic outline, with a specific focus on the role of the third sector. The steps in the debate are the following:

- The Commission issued two Communications on SGI in 1996 and 2000 in order to clarify its policy on such services, and to increase legal certainty.
- As requested by the European Council of Nice, the Commission submitted a report to the Laeken Council in 2001, regarding concerns about the economic viability of public service operators,
- In 1997, the Treaty of Amsterdam introduced Article 16; 2000, recognising SGEI; European Council of Nice proclaimed Art. 36 of the Charter of Fundamental Rights, recognising and securing citizens’ access to SGEI.
- The European Parliament passed a resolution in 2001, which called on Commission to define common principles for SGI and to present a proposal for a framework directive. There were similar requests from the Council. The EP endorsed the role of civil society and of the third pillar.
- A Green Paper on SGI was published (2003). Green Papers precede legislative measures and are intended to launch public consultation process, but do not contain specific proposals for future Community action.
- All interested parties, including third sector, called upon to contribute and voice opinions. In March 2004, summary of contributions in Commission Staff Working Paper (281 contributions by the third sector, regional/local authorities, industry, academic organisations; e.g. Caritas Österreich,

Consumers' Association, European Telecommunications Network Operators. The countries from which most responses came were Belgium, France, Germany, and Austria.

- Simultaneously: transmission of Green Paper to the European Council, the European Parliament, the Committee of Regions (CoR) and the European Economic and Social Committee (EESC) during November 2003 –January 2004.
- Publication of the White Paper on SGI (2004). White Papers equally intended to launch debate but do contain proposals for Community action
- Following the public consultation launched by the Commission's Green Paper on Services of general interest (PDF) (May 2003), the White paper on services of general interest published in May 2004 announced a more systematic approach in the field of social and health services of general interest. This systematic approach was set out by a Communication, followed by another consultation round, the results of which came available in early 2005. A new communication will be prepared by the Commission, regarding which instrument will safeguard the specific character of these services.
- The issue was also extensively discussed in the Convention, and came back in article III-6: *“Without prejudice to Articles III-55, III-56 and III-136, and given the place occupied by services of general economic interest as services to which all in the Union attribute value as well as their role in promoting social and territorial cohesion, the Union and the Member States, each within their respective powers and within the scope of application of the Constitution, shall take care that such services operate on the basis of principles and conditions, in particular economic and financial, which enable them to fulfil their missions. European laws shall define these principles and conditions.”*

### 3.2 Three issues

To clarify the meaning of this debate, we will discuss it on the basis of three issues:

1. Definition: is there a common concept for SGI?
2. The relationship between EU competence and subsidiarity: do SGI require a Community legal framework, overriding competition law and internal market rules, and national legislation?
3. The relationship between maintaining high-quality services (fundamental rights, social and territorial cohesion, European model of society) and enforcing competition law: does liberalisation hamper social objectives?

#### *Concept*

In the White Paper on Services of General Interest, services of general interest are not really defined, but defined as an elaboration of SGEI. SGI cover both ‘market’ and ‘non-market’ services ranging from the fields of health care, and education to network industries such as energy or telecommunications. There is no authoritative definition based on European law. The debate centres on Commission publications. SGI include both economic and non-economic services of general interest, and the term (which is not in the Treaty) in fact derives from the former (which is, Articles 16, 86(2) Treaty;

II-36 Charter of Fundamental Rights, III-6 Draft Constitution), and this is what the Green Paper mainly focuses on.

The line between SGI and SGEI remains blurred. It is quite important in effect, though: *“The distinction between services of an economic nature and services of a non-economic nature is important because they are not subject to the same rules of the Treaty. For instance, provisions such as the principle of non-discrimination and the principle of free movement of persons apply with regard to the access to all kind of services. The public procurement rules apply to the goods, services or works acquired by public entities with a view to providing both services of economic and non-economic nature. However, the freedom to provide services, the right of establishment, the competition and State aid rules of the Treaty only apply to economic activities. Also, Article 16 of the Treaty and Article 36 of the Charter of Fundamental Rights refer only to services of general economic interest”* (GP, p. 14).

SGEI are defined as “services of an economic nature which the Member States or the Community subject to specific public service obligations by virtue of a general interest criterion” (Green Paper, p. 7). The Green Paper notes that *“any activity consisting in offering goods and services on a given market is an economic activity”* (p. 14). However, that is hardly a clarification, since the definition of a market is in itself contested (and in this paper, based on the market failure principle). In the Herzog report of the European Parliament it is noted that *“the framework directive will have to clarify the concept of services of general economic interest, as used in the Treaties without providing definitions of either services of general interest or services of general economic interest. The Commission and the Court of Justice interpret the concept controversially, prioritising market criteria or the presumption of a potential market. The report distinguishes between services clearly to be excluded from internal market rules and from competition (services discharged as essential functions of Member States, and social security and social inclusion), and other services. The latter are often 'mixed', both social and economic or, indeed, environmental, and are often those for which towns and regions claim enhanced administrative freedom. In that connection the report proposes specific provisions, and not the implementation, pure and simple, of the rules of the market and competition”* (p. 17).

The Green Paper recognises the legal uncertainty and asks whether criteria for distinguishing services should be included within a general (“horizontal”) framework. The EP was initially sympathetic to this, but support faded over time. As we will describe below, the third sector and subnational public authorities generally spoke out against it. The Commission picked up this mood and let go the idea of a generic framework, though not for good.

Besides this declaration of intent, the White Paper included guiding principles for policies on services. Special emphasis is laid on the citizen’s right of universal access to these services, and on the necessity to guarantee safety and quality. This largely replicated the Green Paper, but the Commission added the criterion of “respecting diversity of services and situations”, noting that *‘[the consultation] stressed that the personal nature of many social and health services leads to requirements that are significantly different from those in the network industries. As regards broadcasting, the importance of public service broadcasting for the democratic, social and cultural*

*needs of each society must be taken into consideration. The Commission supports these views'* (p. 10). It went on to note that the proposed Directive on services in the internal market only covers SGEI, not non-economic services; and that the proposed Directive neither requires Member States to open up SGEI to competition nor determines their financing or organisation. Clearly, the two discussions had at this point become intertwined.

Another addition in the White Paper was the need to gain a decisive level of legal certainty, especially regarding state aid, public procurement and concessions, and social and health services. On the latter, the White Paper makes an elaborate comment: *"The Green Paper on services of general interest raised a considerable interest from interested parties in the area of social services, including health services, long term care, social security, employment services, and social housing. [...] Their provision, development and modernisation is fully in line with the achievement of the objectives set at the Lisbon European Council of March 2000, and in particular with the goal of achieving a positive link between economic, social and employment policies. [...] While in principle the definition of the missions and objectives of social and health services is a competence of the Member States, Community rules may have an impact on the instruments for their delivery and financing"* (p. 16). It proposed a more systematic approach and recognition of their specific characteristics.

Accordingly, after the White Paper, there started a special trajectory for social services ("social services of general interest"), which were thought distinguishable in terms of objectives, functions, roles and regulation. However, it was unclear whether they should have a special framework, a special place within an SGI framework, partial exemption from such a framework, or no special status at all. It was a question of building arguments on the basis of their special characteristics, such as their role in social inclusion, user involvement, and value-based orientation.

### *Subsidiarity*

The Green Paper recognised the complexity of governance in this area. *"The Treaty does not mention the functioning of services of general interest as a Community objective and does not assign specific positive powers to the Community in the area of services of general interest"* (p. 9). It mentioned three relevant legal articles (p. 9):

- *"Article 16 confers responsibility upon the Community and the Member States to ensure, each within their respective sphere of competencies, that their policies enable services of general economic interest to fulfil their missions. It spells out a principle of the Treaty although it does not provide the Community with specific means of action"*.
- *"Article 86(2) implicitly recognises the right of the Member States to assign specific public service obligations to economic operators. It sets out a fundamental principle ensuring that services of general economic interest can continue to be provided and developed in the common market. Providers of services of general interest are exempted from application of the Treaty rules only to the extent that this is strictly necessary to allow them to fulfil their general interest mission."*

*Therefore, in the event of conflict, the fulfilment of a public service mission can effectively prevail over the application of Community rules, including internal market and competition rules, subject to the conditions foreseen in Article 86 (2)12.”*

- *“According to the Charter of Fundamental Rights of the European Union, the Union recognises and respects access to services of general economic interest, in order to promote the social and territorial cohesion of the Union”.*

This text interprets the Treaty from the perspective that internal market rules prevail unless there is an exemption. That leads the debate to questions of how specific cases are dealt with and what constitutes an exemption. Three types of services were distinguished:

- 1 Large network industries (post, electricity, gas, transport). For these, there already existed a comprehensive regulatory framework.
2. Other SGEI (waste management, water, public broadcasting).
3. Non-economic services and services without effect on trade.

The question could be defined as whether sectoral legislation (such as for the first type of service) should be replaced by a general framework, to ensure coherent implementation of art. 16 of the Treaty. That the legal situation can be quite ambiguous shows the following quote: *“Services of general interest linked to the function of welfare and social protection are clearly a matter of national, regional and local responsibilities. Nevertheless, there is a recognised role for the Community in promoting co-operation and co-ordination in these areas. A particular concern for the Commission is promoting the co-operation by Member States in matters related to the modernisation of social protection systems”* (p. 10).

The Green Paper asked several questions on the issue of subsidiarity, each on the subject of what to organise at the European level. To a certain extent, these questions are answered in the later White Paper. This confirmed the significance of SGI as *“one of the pillars of the European model of society”* (p. 4), but rejected the idea of a framework directive, mentioning the broad consensus in the public consultation. However, it also mentioned article III-6 of the Convention, which would *“provide an additional legal basis for Community action in the field of services of general economic interest, within the powers of the Union and within the scope of application of the Constitution”* (p. 6). Accordingly, it expressed the Commission’s intention to re-examine the subject if/when the Constitutional Treaty would be adopted. In other words, the situation remains somewhat ambiguous.

### *Quality-competition*

A basic underlying question from the Commission’s perspective was how SGI should be provided. The Green Paper went to some lengths to argue that opening markets does not necessarily reduce employment and the quality of services, mentioning the successful example of telecommunications. The theoretical perspective behind the Green Paper is clearly revealed in passages such as the following: *“The market usually ensures optimum allocation of resources for the benefit of society at large. However, some services of general interest are not fully satisfied by markets alone*

*because their market price is too high for consumers with low purchasing power or because the cost of providing these services could not be covered by market price. Therefore, it has always been the core responsibility of public authorities to ensure that such basic collective and qualitative needs are satisfied and that services of general interest are preserved wherever market forces cannot achieve this” (pp. 7-8) and “[the] development from self-provision towards the provision through separate entities has made the organisation, the cost and financing of these services more transparent” (GP, p. 8).*

The argument is very much in favour of market provision, which is not surprising, given that the document was produced by the DG Competition. Nevertheless, Member States still have the right to exclude certain fields from the free market criterion. In the White Paper, this is confirmed by the Commission’s recognition of the special characteristics of social and health services, and the trajectory for those services afterwards.

On the whole, one could argue that a generic solution for the SGI issue was rejected, but not decisively. This hardly creates the legal certainty that was hoped for. An interesting development is that some of the services were taken on a special trajectory. What this means is unclear. On the one hand, it means that these services are accepted as having special characteristics. On the other hand, it also implies an acceptance of the concept that market rules apply everywhere, except when activities are accepted as a special case.

## **4 The public consultation in detail**

### **4.1 Introduction**

It raises the interesting question why the third sector took the particular view that it did. The opinion of the subnational public authorities is easier to understand. A general framework would take decision-making power upwards, whereas the principle of subsidiarity leaves it as low down as possible. If we assume that authorities wish to control activities in which they are involved, then it is natural that local and regional policymakers would speak out against an initiative that threatens their control. But the third sector's position is more complex. On the one hand, a framework could be regarded as a bulwark against the threat of market regulation and as an instrument that will offer legal certainty. On the other hand, it implies an acknowledgement that this is a European matter, and acceptance of certain concepts (e.g. the distinction economic/non-economic) and lines of reasoning. It is difficult to say a priori where opinion will lean, and why.

To understand this, we will take a closer look at the results of the public consultation. This took place after the publication of the Green Paper (2003) and fed into the White Paper (2004). Of course, one should not overestimate its significance. Undoubtedly there was also an informal process at work behind the scenes, and the consultation was only one type of input in the formation of the White Paper, and perhaps not the most significant one (although the Commission followed the main recommendations coming out of it). In the process of constructing the European internal market, the public consultation on SGI was perhaps, to borrow T.E. Lawrence's words, no more than « a sideshow of a sideshow ». But this is not primarily a study about power and influence. What ultimately matters to us is not what created the White Paper, but what position the third sector chose to take in the process. This is interesting in that it reveals the different concepts and strategies at work in this discussion.

We have gathered evidence for five countries: France, Germany, the Netherlands, Sweden and the UK. This sample is interesting in two respects. First, it combines both countries with a high response rate (France, Germany) and a low one (the Netherlands, Sweden and the UK). In addition, it combines national systems in which the issue of market compatibility was relevant in varying degrees, as we will discuss in more detail in paragraph five. At this stage, unfortunately, some of the research is still in progress on the Dutch and French cases. We will have the full data by autumn 2005. However, there is sufficient evidence for an analysis of the policy process.

### **4.2 General background**

The public consultation period took place directly after the publication of the Green Paper. Thirty questions on the issues discussed in the previous paragraph were raised in the Green Paper and distributed both through Member States and through a special website, to be handed in by 15 September 2003. These were two types of procedures, in theory. One was that a department of government approached actors within its country and sends a single response of its own, reflecting the commonalities in the

responses it received. Another is that national actors send their responses to the Commission directly. In a number of countries, the two were mixed up.

The responses were then compiled into a report, published on 29 March 2004. The comments were sorted in five major categories according to type of sender. The categories were: public authorities (50), associations (161), undertakings and individual organisations (43), academic organisations (4) and individuals (15). We will here focus primarily on the first two types.

The response rate was quite low - with 281 contributions made in total.<sup>3</sup> The countries of origin were predominantly Belgium (74), France (67), Germany (45), and Austria (25). By contrast, there were few from the UK (18), Italy (13), Spain (9), Netherlands (4), and Sweden (4). These responses came from a mixture of sectors: beside traditional service providing third sector organisations, industrial and academic institutions, and sub-national public authorities made written contributions.

The report of the Commission on the outcome of the public consultation did not assign opinions to individual groups. However, the findings can be summarised as follows:

- There was consensus on the significance of SGI, but no consensus on the relationship between market principles and SGI.
- Some reactions argued for Treaty changes allowing greater exemptions for services from market regulation; other judged that the present arrangements were adequate.
- There was a consensus that no further powers should be transferred to the EU level, but a number of groups stressed the necessity of an EU legal framework to protect non-economic SGI as part of the European Social Model.
- There was a need for a clarification of the distinction economic/non-economic, though few seem to question it, according to the report.
- While businesses regarded the distinction as adequately phrased, many other organisations regard the definition of non-economic as too narrow.
- A number of organisations, especially in health and social services, desired clarification of the position of non-profit organisations delivering services. Others contested this and argue that it is the nature of the service, not of the provider, that should matter.
- There was no consensus on the need for more general public service obligations, other than presently defined. However, there was consensus that public service obligations should not be harmonised at the European level.

This overall trend is interesting in itself, but it bypasses the differences between countries, both in response rate, the types of commentators and the types of comments. We will now dissect the responses by investigating three separate aspects:

1. What was the procedure?
2. Which organisations commented?
3. What were their comments?

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<sup>3</sup> Of these, 273 were allowed to be published by their authors.

### 4.3 The procedure

In *Germany*, the procedure was quite intensive and structured. The Ministry of Health and Social Affairs (*BMGS*) was the coordinating ministry for the questionnaire. It worked in close cooperation with the Ministry of Family, Senior Citizens, Women and Youth (*BMFSFJ*), which usually is the main interlocutor of the Non-statutory Welfare. The experts of the central associations interviewed were more than content with their involvement: According to several interviewees (DRK, Parity, Diaconia, German Association) the EU-experts of the Non-statutory Welfare Associations were already involved in *formulating* the questions, which the German Government suggested the European Commission to ask in the questionnaire. After the Commission had sent the questionnaire to the Member States' governments, the German Ministry of Health and Social Affairs forwarded it to other Ministries involved as well as to the German Association for Public and Private Welfare. "In Germany it [the involvement of the central associations is self-evident, because they play a huge role in the welfare system" (interview with official). The German Association in turn forwarded the questionnaire to the EU-experts of the six central associations of Non-statutory Welfare. They then formulated their common opinion in the expert working group 'Europe' (*Europaausschuss*) of the Consortium of Non-statutory Welfare and passed it on to the German Association. The Observatory for the Development of Social Services in Europe was also asked to give its opinion, but only to the specific questions of (1) the national definition of social SGI and (2) the differences as to other services (interview Observatory). The German Association then formulated the common position paper and forwarded it to the Ministry of Health and Social Affairs, which then answered the questionnaire very much according to the answers suggested by the EU-experts of Non-statutory Welfare ("almost 100% identical" as the interviewee of DRK said). All EU-experts interviewed agreed on their excellent involvement in the process; the AWO EU-expert even described the conduct of the government as "exemplary".

In other countries we investigated, the procedure was far less intensive. In the Netherlands, the Ministry of Economic Affairs was in charge of it, and mainly discussed it with representatives of regional and local authorities. They sent in separate responses and influenced the national government's response, which was presented by the Permanent Representative in Brussels. In the *United Kingdom*, the Joint International Unit (JIU) of the Department of Work and Pensions and Department for Education & Skills consulted all government departments with an interest, using the usual cross-Whitehall networks. The response was co-ordinated by DTI and forwarded by the UK's Permanent representation in Brussels. It was therefore an intra-central government procedure, which did not formally and explicitly directly elicit the views or perspectives of sub-national tiers of government, for-profit, or third sector organisations, or others.

The case of *Sweden* is an odd mixture. It had as few comments as the Netherlands (4), but on close inspection this is a grand deception. One comment came from the Ministry of Foreign Affairs and was written by a civil servant named Anna Block-Mazoyer. An interview with her reveals a possible explanation why so few Swedish comments were sent to the European Commission. The Ministry of Foreign Affairs conducted their own rounds of consultations, with all or most of the most relevant Swedish organizations and authorities in the field. The Ministry's consultations were

performed according to a very well established Swedish practice called *remiss*. This is a standard operation for a wide range of political issues in Sweden where the relevant branch of government send out a call for comments to a selected group of stakeholders. The Ministry of Foreign Affairs apparently considered the green paper consultation as one of these political issues and send out a call for comment to 75 organizations, authorities, public enterprises, and universities and so on. This group answered the Ministry's request to a high degree, only a few of the stakeholders failed to respond. The high response rate could be explained by the fact that this is, as mentioned, a standard procedure in Swedish public administration. The Ministry of Foreign Affairs wrote a comment to the commission that was supposed to be a fair summary of all the 75 Swedish stakeholders, as is the usual practice in Sweden. This could explain why so few of the Swedish organizations send comments directly to the commission; they simply contributed with comments to the Swedish Ministry of Foreign Affairs, just like they always contribute with comments to Swedish ministries. Maybe they didn't consider it necessary to send them directly to the commission, maybe they thought the request from the ministry meant they weren't supposed to send comments directly and maybe the Swedish stakeholders simply didn't know about the possibility to contact the commission in Brussels directly. Mrs. Block-Mazoyer suggested that it was the latter, that the stakeholders lack proper information, especially since the consultations were performed in the summertime when the ordinary staff at many stakeholders' offices were replaced with vacation substitutes.

The Swedish comment to the Commission was never subject to approval by any political body at the Ministry, and was in fact completely a product of one single civil servant. Furthermore, it was not a senior civil servant or a seasoned political expert of any sort. In fact, it was her very first assignment at her then new job. This is not to suggest that her work is not good, but it suggests that the Green Paper was not considered a top priority.

#### **4.4 The commentators**

So who submitted the comments? The number of contributions from the third sector seems to have been quite limited, especially if these are not taken to include social partners.

Of 43 *German* contributions, six came under the headline of public authorities, 26 under the headline of associations, eight under the headline of undertakings and other organisations, none under the headline of academic institutions, and two under the headline of individuals.

- Public authorities: besides the official statement of the national Government in a joint paper with the governments of the federal states (Federal Council) and the Parliament, one contribution was from the federal state government of Baden-Württemberg, one from the joint office for European Affairs of the three federal states Bavaria, Saxony, and Baden-Württemberg (all three with a CDU or CSU-government) and one from the mayor of Stuttgart, the capital of Baden-Württemberg.
- Associations: of the 27 German contributions 20 are from umbrella organizations of the energy and water supply industry, telecommunication,

health insurance companies, trade union, associations of communal enterprises etc. Those that belong to the third sector include the position paper of the German Association, the one of the EU representative of Parity (for Parity at the national level) and of Parity of the federal state of Baden-Württemberg, as well as – curiously – the statement of ET Welfare. Other contributions that may be regarded as from the third sector are those of the Association of European Schools, the Council of Culture and the Working Group ‘Water‘ of the Federal Association of Citizens‘ Initiatives on Environmental Protection also turned in a position paper. The statement listed under Undertakings and named “Protestant Church of Germany“ is a common position paper by the Catholic bishops and the Protestant Council (both the highest ranking committees in the two major churches in Germany) speaking also on behalf of their welfare organizations Caritas and Diaconia. The main stakeholders of the third sector – understood in a narrow sense – were the central associations of Non-statutory Welfare (Caritas, Diaconia, German Red Cross, Workers‘ Welfare Associations, Parity, the very small Jewish Agency), the Consortium of Non-statutory Welfare and the German Association for Public and Private Welfare. A position paper published by the German Association is thus a common position paper of the local authority actors (*Kommunen*) and the Non-statutory Welfare actors (*Freie Wohlfahrtspflege*) directed to the national ministries and to the public.

In the *Netherlands*, there were only four Dutch comments on the Green Paper, and (unlike the Swedes) only four commentators. The issues were not widely debated, to put it mildly. All organisations acted on their own initiative.

- One response was by Permanent Representation of the Netherlands to the European Union, which represents the governments‘ viewpoint.
- The second was the Association of Dutch Municipalities (*Vereniging Nederlandse Gemeenten*), the representative of the local authorities. Although an association in form, it must be regarded as a public authority. It coordinated its response with the third actor, which was the Association of the Provinces of the Netherlands (*Interprovinciaal Overleg*). It represents the middle layer between the national and local government, and has a similar structure. The two responses are very similar indeed.
- Finally, the Netherlands Institute for Care and Welfare (*Nederlands Instituut voor Zorg en Welzijn*, NIZW) was the only Dutch third sector organisation to respond. It is an institute funding research and support activities in social services.

Like the Dutch, the *Swedes* had only four official commentators, in all likelihood due to the joint operation of two types of procedures.

- One of the Swedish stakeholders was the Ministry of Foreign Affairs. Sweden was the only member country that had a comment issued by the Ministry of Foreign Affairs.
- Another Swedish stakeholder was the Swedish Federation of County Councils (SFCC) and the Swedish Association of Local Authorities (SALA), two organizations that are practically merged since a few years and which therefore issued a joint comment. This stakeholder is an interest organization

for public authorities, which positions it on “two chairs”, it is in one sense a third sector organization but with the intent to further the interest of the Swedish local and regional authorities.

- A more typical third sector stakeholder from Sweden was the Union of Service and Communication Employees (SEKO). This, third, stakeholder is the only one among the Swedish stakeholders that clearly qualify as a national third sector organization in the consultations process on the green and white paper on the services of general interest.
- The fourth comment was in the “individual” category, from a Mr Sven Grahn, an ambitious young law student at Lund University who was writing a thesis on the subject for his law degree at the time of the consultation process. Mr Grahn had mainly an interest in the legal significance of the two terms “Service of General Interest” and “Service of General Economic Interest” and he largely limited his comments to this issue.

As noted, the comment by the Ministry actually represents the views of many. The end result is of the Ministry’s procedure was that the bulk of the 75 Swedish stakeholders had their views filtered through a single civil servant at the Ministry of Foreign Affairs, while their counterparts in other member nations commented directly to the commission. It is somewhat ironic that a single law student, on his own initiative, had a comment submitted to the commission’s official archives, while large Swedish interest groups, voluntary organizations, public enterprises and so on, had not. The list of approached entities includes several third sector organisations, but only a few of them actually submitted replies to the Ministry of Foreign Affairs. The third sector organisations that submitted comments were the Central Labour Organisation (LO), the Confederation of Swedish Enterprise (Svenskt näringsliv), the Church of Sweden (Svenska Kyrkan) and the Union of Service and Communication Employees (SEKO)

The *United Kingdom*, finally, brought forth the following commentators, despite the government’s relaxed attitude towards the consultation process:

- Public authorities: the UK’s Permanent Representative in Brussels, the Office of Water Services, the Convention of Scottish Local Authorities, and the Local Government International Bureau.
- Associations included the Trade Union Confederation, the Association of Electricity Producers, the National Consumer Council and Watervoice, a consumer organisation for customers of water providers.
- Undertakings who submitted were Strathclyde Passenger Transport, the Confederation of British Business, the Chartered Society of Physiotherapy, the Royal College of Nursing, and the Royal National Institute of the Blind.
- The UK had as many individual contributions as Sweden. Mr Richard Seebom, a retired British official who spent three years as a lobbyist for the Quaker Council for European Affairs, commented on several issues with an admirable knowledge of the subject. He also noted that even he found out about the consultation very late, and few people were likely to respond.

One can conclude that the exact size of the third sector contribution is difficult to determine, because many are on the edge of what is usually thought of as the third sector. Actors related to network industries are highly represented, which is not surprising, given that it is in this area of services that the European Commission has

been most active. However, there are also a fair number of comments from organisations in welfare and care services.

#### 4.5 The nature of the comments

So what did they say? We will largely focus on the third sector contributions, although we will also mention some others if they show striking similarities or differences.

The response by the German Free Welfare Associations clearly shows signs of their national agenda. As definition criteria of their services, they have – over the last years – increasingly emphasized the inclusion of volunteers, their ethical values, and their advocacy role. Also, their role as actors of civil society has been placed more and more into the foreground of their arguments. They therefore attribute the following characteristics to social SGI (Mohr/DRK, internal paper, 1.2.2005, own translation):

- contribution to the common/public good and to solidarity in society,
- civic added value,
- pluralism and value orientation (humanitarian, philosophical and religious objectives),
- additional services and activities (not by public funding),
- person-centred services,
- independence from state, and
- conditional preference in regard to providing and funding of social services.

Except for the last two points, this understanding was exactly mirrored in the government's answer to the questionnaire.

On the issue of subsidiarity, the Welfare Associations completely agree with the government's position as laid out in the statement to the Green Paper, on which they had had considerable influence, especially that “the definition, design, organisation and funding of services of general interest in the context of existing sector specific regulations [is] the task of the Member States and its sub-national entities. This may neither be questioned by secondary law nor by changes of the EC-Treaty.“ (Bundesregierung 2004: 2). The Commission's competences should be restricted to ‘economic’ SGI only and to those industries, which – on account of their size – are of EU-wide relevance. “Possible additional regularisations have to be discussed taking the specificities of the sector concerned into consideration. In these individual cases the Community has to prove that the sector fulfils the preconditions, that Community competence exists, and that the proposed measures are compatible with the principle of subsidiarity“. (ibid.) In its own position paper to the Green Paper the Workers' Welfare Association favours a “regulated competition. ... But decisions should be taken – according to the principle of subsidiarity – by the political level closest to the citizens.“ (AWO 2003: 12, own translation)

The national legal framework governing the Welfare Associations is derived from the law governing non-profit status (*Gemeinnützigkeitsrecht*) and the law relating to donations (*Spendenrecht*). In a policy document, it is argued that their tax privileges are justified because of their special task to “offer their services under conditions that are bearable for the person needing help at a personal and/or economic level.“ (Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege 2004: 8). The same has to

apply to European competition rules “according to which aids distorting competition ... are banned in principle, unless funds are given in accordance with a previously defined Public mission they are entrusted with“. (ibid.) Although these tax benefits advantage non-profits to a certain degree, they also restrict their entrepreneurial possibilities. The Associations do not insist on their services being qualified as non-economic but they want Community rules to “respect their special characteristics within the meaning of a ‘civic social enterprise‘“ (ibid.: 9) – notwithstanding their activities being qualified as ‘economic‘ or ‘non-economic‘ according to EC-criteria.

In *the Netherlands*, the only third sector organisation to respond (NIZW) was critical of the distinction between economic and non-economic services, which it claims “does not respond to the reality of social services’. They defend the right of national and subnational authorities to impose additional quality standards and delivery conditions, on the grounds of market scale and the scale of provision. Interestingly, they emphasize the need for analysis of the added value of non-profit service providers. They propose to undertake an inventory of social services and providers in the Netherlands for which special conditions may apply.

It is worth noting that this opinion on subsidiarity is also voiced in other Dutch responses. The associations of municipalities and provinces naturally stress the significance of the subsidiarity principle. They reject a notion of multiple types of subsidiarity and claim that national, regional and local authorities should be entitled to define, finance and organise services of general interest. Therefore they see no need for a general Communitarian framework and argue that local and regional services should collectively be exempted from competition regulation, since they are not distortive of European trade, and that the Commission would better use its means for issues of European interest. The official government view implicitly incorporates the views of subnational authorities and does not deviate from their responses on subsidiarity and state aid. Sometimes the wording is very similar.

The government of the *United Kingdom* states that it “remains unconvinced” of the need for a European cross-cutting framework on SGI. This scepticism echoes in the responses from other public authorities. The Convention of Scottish Local Authorities also complains strongly about the terminology: “[The] difference in approach to the terminology used probably reveals a difference in the values between local government and the authors of the green paper. While welcoming the opportunity to clarify what is being proposed, we tend to reach different conclusions from those being suggested by the tone of the questions. However, for those planning, delivering and receiving public services, the debate around SGIs is unsettling. It leads to uncertainty over exactly what is being proposed, and anxiety over the continuity and quality standards of current services. We feel that the Commission should be explicit about the term ‘public services’ and use it in this context.” The Mayor of London criticises the distinction between economic and non-economic services. The Local Government Association, by accident or design, appears to have submitted its response to a national consultation on the General Agreement on Trade in Services (GATS).

Most associations are equally dismissive of the plan for a generic framework. The Association of Energy Producers states that it is “strongly opposed to any additional EU powers relating to services of general economic interest”. The Trade Union

Conference states that it endorses the policy adopted by its European counterpart, but in addition stresses the potentially harmful effects of liberalisation. An interesting exception is Watervoice, the association of water consumers, which actually speaks in favour of a general framework. In the UK, it appears to be quite alone in this.

In *Sweden*, the third sector organisations were a minority among the opinions the Ministry of Foreign Affairs had to take into consideration. The list of participating parties provided by the ministry contains 75 names of invited participants and 59 that actually provided comments. As seen from the complete presentation of the third sector organisations above, these were just a fraction of the total, in spite of the fact that a very liberal definition of third sector was applied. It is therefore not surprising if the views of the third sector organisations do not shine through in the writing directed by the Ministry of Foreign Affairs to the commission on the 15<sup>th</sup> of September 2003. The third sector organisations were not only few but they failed to submit their comments more often than other participants. This limited number of comments submitted directly to the Commission makes any theories of a general trend among the Swedish comments circumstantial at best.

The two central labour market organisations represent opposing interests in their sector, the employees and the employers. It is therefore somewhat surprising that their comments on the green book are relatively similar. Both organisations are generally opposed to an expansion of the EU competence in the issue area. The Confederation of Swedish Enterprises sees the principle of subsidiarity as a universal guideline for matters of competence, the organisation call for a strict application of subsidiarity. The Central Labour Organisation considers the provision of high quality, low cost, safe and evenly distributed services as being a priority over European legislation on internal market and competition. The responsibility to provide such services belongs to the member states but the LO sees it as in the role of the EU to see to it that they do. It is unclear from the writing how this role of the EU should be performed with regard to legal or political controls. Indications are, however, that the role of the EU is minor and secondary to that of the member state. The member state should have control over financing and form of provision and work with the goal of providing such services as described above. The European Union should have direct competence only over a few services of general economic interest and no services of general interest. The two organisations agree that there is no need for further legislation on the European level in the issue area. The wording is the strongest in the comment from the Confederation of Swedish Enterprise, they “totally reject” the notion of a new legal framework for services of general interest. The two differ in how they look at the need for further specification of the terms services of general interest and services of general economic interest. The LO dedicates an entire segment to the issue of “conceptual confusion”, where they call for clearer distinctions between services of general economic interest and services of general interest. The Confederation of Swedish Enterprise sees no such need, since “the market decides if a service is economic or not economic and all services can, in principle, be economic at a certain market price”.

The Union of Service and Communication Employees (SEKO) submitted a comment to the Ministry of Foreign Affairs identical to the one submitted directly to the commission. The SEKO comment, also refers to the LO comment issued to the

Ministry of Foreign Affairs, which indicates that SEKO worked with its mother organisation in the consultation process.

The Church of Sweden's contribution to the consultation process is generally more positive to the green book than the labour market organisations. The comment states that the church is "positively inclined towards the basic intentions in the document" (author's translation). The church's comment expresses support for a European framework that will help secure all Europeans access to high quality services of general interest, not the least in the newer membership countries. The Church of Sweden thereby applies a European, rather than Swedish, perspective to the question of services of general interest. The Church of Sweden is just now, since the last five years, trying to find its role as a third sector actor, after being a state institution for 550 years. It is therefore an interesting finding that the church chooses a policy of internationalisation and Europeanization in this area, since it might be a first indication of how this large third sector organisation will act in this and similar issues in the future.

It is difficult to distinguish a specific third sector view, as there seemed to be broad agreement in the comments on the Green Paper. With the exception of the Church of Sweden, commentators favour national regulations over European regulation. They oppose a European institution for regulation and they fail to see how the greatest threats to high quality services of general interest, lack of competent staff and funding, could be addressed at a European level (Lindholm and Wetterberg 2003). SEKO describes experiences with the deregulation of postal services, telecommunications, railroads and the energy sector in Sweden. These experiences are described as genuinely negative, which is presented as a contrast towards the Commission's views, as presented in the green paper (Ruden and Carlsson 2003). The third sector comments submitted to the commission are, in other words, suspicious towards the Europeanization of the issue area in itself.

The agreement continues when moving on to questions of defining the concept service of general interest. Both SALA and SEKO seem to think that there is some confusion surrounding the term SGI and they both bring up specifically the commissions failure to clarify this in the green paper. It is a common understanding, in fact, that the Green Paper further confuses the concept by mixing up services of general interest (SGI) and services of general economic interest (SGEI). SALA even claims that the green book, in the then present form, did not constitute a serious basis for a debate, due to the lack of distinction between SGI and SGEI (Lindholm and Wetterberg 2003). The SEKO issued almost exactly the same complaints on inadequacies and lack of clarity as the ones the Central Labour Organisation (LO) sent to the Ministry of Foreign Affairs, which is not surprising when considering that SEKO is an organisation subordinate to the Central Labour Organisation (Ruden and Carlsson 2003; Lundby-Wedin and Nyberg 2003).

On the whole, the responses seem to reject the plan for a general framework for SGI at the European level. This was acknowledged and accepted by the Commission in the White Paper. What is more surprising is the number of objections to the concepts used in the Green Paper. Many third sector organisations have criticised the distinction between economic and non-economic services. This is not reflected in the Commission's report on the public consultation, which notes that "in general,

contributors consider the distinction made in Community law between economic and non-economic services to be important and relevant. Only a few contributions argue that this distinction is outdated or unnecessary and no longer appropriate”.

## 5 Analysis

At this point, we have only just started our analysis. Some of the data are still lacking. However, we feel confident that we can provide a preliminary explanation of what we have found. The public consultation following the Green Paper was a small, but revealing element in the debate on the future of the European internal market. The theory we suggested in paragraph two suggested that actors try to influence new and existing market rules, because they have an interest in their consequences. The analysis by Fligstein & Sweet (2002) mainly discusses business trying to open up markets. However, there will also be actors interested in keeping the market mechanism away or at least in check, and generally speaking the third sector can be said to belong to the latter category. Its service provision often depends on highly specific arrangements that are vulnerable to generic market regulation.

Accordingly, one could examine country differences on that basis. In some Member States, the issue of market compatibility will be higher on the agenda than in the other. If the theory is correct, this should be reflected in the number and nature of the responses. However, there is a snag. One should not forget that actors will base their actions upon their *perceived* interests. Even if market compatibility is regarded as a significant issue, it may not be regarded as a European issue. Research conducted in the course of the Third Sector European Policy project has highlighted striking differences in Euroconsciousness between national third sector policy communities. If this is a significant explanatory factor, then the number and nature of the responses is more likely to be determined by national traditions and procedures than by the issue at hand. Let us test these two explanations against our results.

Germany had relatively high response rates among the third sector. The responses showed a clear rejection of the idea of a general framework for SGI. The welfare associations Caritas, Diaconia, Parity, Workers' Welfare Association, German Red Cross, and the (very small) Welfare Association of the Jews in Germany basically form Germany's policy community in the welfare domain. They look back on a long tradition of cooperation with each other in their umbrella organisation, the Consortium of Non-statutory (or: Free) Welfare (*Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege*) as well as with state agencies at the local level, the level of the federal states (*Länder*), and the national level – here particularly in the German Association of Public and Private Welfare (*Deutscher Verein für öffentliche und private Fürsorge*). The formerly strong corporatist relationship with the state, however, has undergone severe changes since the late 1980ies. The corporatist arrangement has since been in the process of dissolving and market-like instruments have been implemented in the system of social service delivery – albeit in various degrees, with the field of care for the elderly being the most 'economised' one yet.

It is hard to identify in retrospect how much of this economisation (or even marketisation) in Germany has been encouraged by European regulation. But it is certainly not wrong to assume that the European influence accelerated the debates and developments in Germany. The debate in Germany in regard to services of general interest (SGI), the questionnaire on *social* SGI and the directive on services in the Common Market has to be seen in the process of the overall relationship between the European political development and the German policy community in the welfare

domain, and a mutual feedback process has been going on since the beginning. German non-statutory welfare organisations, particularly the central (or peak) associations at the national level, began to acknowledge 'Europe' as a new and essential political level in the early 1990s. Three temporal phases can be headlined as follows:

- 1<sup>st</sup> phase from late 1980s to mid 1990s: waking-up and defending the status quo,
- 2<sup>nd</sup> phase from mid 1990s to about 2000: calming down and adapting to the situation,
- 3<sup>rd</sup> phase from about 2000 to the present (summer 2005): closing ranks and deepening collaboration in European affairs.

The first two phases will be traced along the Commission's activities, which gave the initial impulse as well as most of the subsequent impulses for the non-statutory welfare to deal with European issues. Another impulse, but one closely related to the European activities, was a study published in 1991 by the Prognos-Institute and financed by the Bank für Sozialwirtschaft (the bank of which the central associations in the welfare domain are major stakeholders) entitled: "Independent welfare in a future Europe". In part one of the study: "Challenges and Chances of the European Common Market", the study prognosticates an influx of service providers from other Member States, massive changes in the charity law and the law for associations as well as the erosion of the subsidiarity principle in its 'traditional' German understanding, i.e. a preferential status ("conditional preference") of the welfare organisations for the provision of social services compared to municipal/local authority providers (and commercial providers of which only few existed until the mid 1990ties in a few very specific areas of social services like homes for the elderly). The Prognos study came to the result that the German welfare organisations were not "sufficiently equipped" (Prognos 1991: 31) for the Common Market, which was about to come into existence in 1993.

The Commission's communication "Businesses in the 'Economie Sociale' sector: Europe's frontier-free market" (SEC(89) 2187 final) published in 1989, the Commission's proposal for a regulation on the Statute for a European Association, a European Cooperative Society and a European Mutual Society (COM(91) 273 final) in 1991 as well as the amended proposals of the latter generated strong reactions in the German welfare community. They came to realize that the European integration, particularly the Common Market, would not happen without affecting them. On the contrary, it was seen as a threat to the established German system and tradition of welfare production and to their strong political position in the social and political system – their fiscal privileges, their public status, the traditional corporatist arrangement with the state, and the principle of subsidiarity in the German meaning of 'conditional preference' of non-statutory welfare services (Kuper 1990, Loges 1994). The European Statute for Associations, for instance, was seen as the "acid test whether or not Europe will be build on the principle of subsidiarity as emphasized in the Maastricht Treaty" (Loges 1997: 181, own translation). They feared and expected the Common Market to quickly and radically economize all fields of social and health services and the Statute of a European Association to force open the protected social market in Germany to competitors from other EU-countries. This fear was nourished by academics and other experts (e.g. Schulte 1992, 1995, Eichhorn 1995) and

accelerated the process of internal economization in order ‘to get ready’ for the European market.

In the second half of the 1990’s, however, it became obvious that there would be no fast changes due to the European internal market, and the welfare organisations (more precisely: those few people who were occupied with European affairs) calmed down. Three main factors can be identified which contributed to this development (Lange 2001: 139):

1) The declaration on the “Operation with Charitable Associations“ (Declaration No 23) attached to the Maastricht Treaty recognizing the social NGOs and thus being a political success.

2) The obvious withdrawal of the European Commission from the objective to establish the ‘économie sociale’ at the European level.

3) A legal opinion by a well known German law expert (Ipsen 1996) about the relevance of aid by the state as well as free movement of services and European competencies for social services, which came to the conclusion that “for the time being“ (ebd.: 119) the welfare organisations had nothing to be afraid of.

The debate about the potential competencies of the Commission for social services has not ceased – especially in respect to the question of their activities being “economic“ or “non-economic“. After the Commission’s first communication on SGI in 1996 had not raised much interest among the German central associations, a lively discussion started after the publication of the second and revised edition in September 2000. Several conferences and expert workshops with (not only German) participants from academia as well as welfare associations – co-organised by the Observatory for the Development of Social Services in Europe with the German Association (1) or the Platform of Social NGOs (2 and 3) and financed by the Ministry of Family, Youth, Women and Senior Citizens – played an important role in shaping opinions. The main questions, e.g. whether or not social services belong to services of general interest to begin with, if they are economic or non-economic SGI, and whether or not they fall under European rulings (e.g. the rules on competition) are still at the core of the discussion. But the attitude of the policy community in the welfare domain has changed from a defensive one to a more cooperative one accepting the situation and adopting a policy of persuasive arguing.

This is reflected in the responses, which are numerous but dismissive of the Commission’s intentions. In a later version of the paper we will look more closely at the concepts used, because in this respect there appears to have been an interesting difference between the German and French positions. But in short, the issue of market compatibility was considered significant and was associated with the European Union.

The *Netherlands* throw a different light on the picture. Here, marketisation has progressed at an equal pace, with liberalisation in telecommunications, transport and energy, and the introduction of market elements in domiciliary care, social housing and health care. The latter especially has sparked debate on effective methods of governance, shown by recent reports from high-ranking advisory bodies on the topic. These have on the whole been favourable to non-profit service providers in recognising their specific role in society. The reports include a major report with background studies by the *Wetenschappelijke Raad voor het Regeringsbeleid* (Dutch

Scientific Council for Government Policy) on “social services” in December 2004, and a report of the *Sociaal-Economische Raad* (Wetenschappelijke Raad voor het Regeringsbeleid, 2004; Dijkstra e.a., 2004; Dutch Social and Economic Council) in February 2005 can be seen as a sign of a growing recognition of the specific role “social and non-profit organisations” play in delivering public services (Sociaal-Economische Raad, 2005). Furthermore, the scientific institute of the Christian Democratic Party has published a major report on social enterprises in January 2005 (CDA, 2005). All three reports indicate the need for some specific policies regarding these non-profit social enterprises (e.g. accountability, legal and statutory issues), but only the Christian-Democratic report suggests a generic framework. No such framework has yet been proposed by the government. The government’s reaction to the SGI consultation rejects the idea of a generic framework, and this would appear to correspond with the outcome of the national discussion. However, it has yet to be ascertained that the latter has fed into the government’s response. The SGI discussion was led by the Ministry of Economic Affairs, which has generally been more concerned with the network industries than with social services. Moreover, the term SGI is rarely, if ever used in the national debate.

In 2002, six branch organisations of private non-profits in higher education, health care and housing had created a network (*Netwerk Toekomst Maatschappelijke Onderneming*, NTMO) that championed “social entrepreneurship”. The drive behind this network is undoubtedly a political one. The associations lobby for deregulation, arguing that the kind of organisations they represent merit a special status. The focus of the network is on this cross-cutting identity rather than the specific services its members deliver, but they do emphasize the special nature of their services. It would be natural to assume that the European debate on SGI should affect them, and that they would have submitted a reaction. However, they have not, nor have any other major third sector organisations such as the Consumers Union. It is possible that these organisations have channelled their responses through their international umbrella networks (BEUC, CECODHAS etc.), but it is still remarkable that so few reactions came from the Netherlands as compared to Germany. One can only attribute this to the general lack of European consciousness in the Dutch third sector, and the lack of a generic third sector identity (Branden & Van de Donk, 2005). The fact that there is no government unit with a generic focus on the third sector will have added to the lack of awareness.

This, then, would suggest that the reaction of the third sector is connected to the nature of the national third sector policy community, rather than to the issue of market compatibility itself. An analysis of the results from the *United Kingdom* seems to lean in the same direction. In this country, there is an extremely contentious debate about the limits of markets and quasi-markets in relation to public services in the UK. To the extent this involves general principles and considerations which are not related to particular services or industries – i.e. arguments not specific to, say, health, education, or social housing but cutting across them – it is *implicitly* to do with ‘services of general interest’. However, (a) the expression itself is not explicitly used in the UK, and (b) the issue of market compatibility with public service responsibilities is essentially framed as a question of British domestic social policy, with no EU dimension explicit – even if it is implicit in the ‘technical’ process of domestic policy design (see below).

First, there is the view that a strong and ‘convincing’ argument has yet to be made that this is an appropriate domain for EU level intervention at all. Thus, when it comes to social policy relevant domains regarding public service delivery, there is a strongly ‘protective’ tendency, invoking the principle of subsidiarity to mark out the area as potentially off limits. In fact, this is a domain which *mixes* ‘market’ policies – which the British Government accepts are in scope – with ‘non-market’ policies – where the boundaries are fuzzy. But to the extent there are doubts, a tendency is to emphasise those attributes of the issue which make it more likely to be seen as a matter for essentially national policy frameworks. To an extent, this is, however, in tension with the British position which is more tolerant of market or quasi-market arrangements for ‘solidarity services’ than some other countries (as long as appropriate regulations are in place to protect standards). In other words, the ‘pro national’ instinct in matters social pushes the UK in one direction, while the liberal-market ‘pro supra national’ instinct in matters economic pulls this country in the opposite direction. A second reason for lack of engagement relates specifically for ‘services of general interest’, especially in the social sphere. While the act of responding to the questionnaire indicates that this does not block a willingness to countenance its discussion, it does make it more difficult for those involved to communicate with ease. A third and final reason for scepticism is the claim that there is no evidence or argument yet developed to suggest that ‘horizontal’ as opposed to ‘vertical’ policy engagement is appropriate. The former is seen as inherently involving a more complex and ill-defined framing of the problem, and not sitting easily with the actual existing problems encountered, or likely to be encountered, in policy shaping at the interface between the market and the state. Indeed such an effort is explicitly portrayed as likely to fall between the Scylla of being too general to have utility, and the Charybdis of being specific enough to necessitate costly adjustment of vertical policies.

However, this does not mean that the European market compatibility issue is irrelevant to the policy community. The UK Working Paper 5 notes that the current agenda for this community is heavily geared towards increasing the voluntary & community sector’s capacity to deliver public services, and that this is central to the government’s agenda with a degree of salience apparently unmatched in any other European country. There are significantly different positions between stakeholders concerning the appropriateness of this very high level of engagement with Government, at least as this is being developed through the existing range of policy instruments. However controversial, this policy is proceeding, and the officials who are moving it forward are having to do account for European competition and state aid provisions. For example, the intention of improving arrangements for financing the provision of public services by the third sector by ensuring flows are adequately planned, and at appropriate levels, has to be done in a way which does not tilt the ‘level playing field’ and appear to give inappropriate advantage to the third sector over for-profits. The language is of providing ‘opportunities’ for previously excluded providers from outside the sector to be involve in public service delivery. Guidance on how to support the sector without ‘unfairly’ advantaging it has been developed by the Treasury, for use by Government Departments, which finds it necessary to refer at various points to European legal requirements as part of the context for policy development.

The point is that, although the British formal, direct position in response to the Green Paper consultation is that there is not and should not be European level horizontal involvement across public services, in designing its own policies for enhancing the role of the third sector in public service delivery, it necessarily has to act in the context of EU policies - and comply with *de facto* European policies. These are present ‘in the background’ and indirectly at one remove from the policy community – but present nonetheless. European constraints and opportunities are necessarily an issue for officials seeking to clarify domestic third sector specific policy. In other words, the issue of market compatibility is of indirect, but undeniable relevance to the third sector. There may be a specific national angle to the issue, but that does not explain the lack of responses –quite the contrary.

One must therefore also consider more general factors, associated with British third sector detachment from the EU on issues which are not of obvious and immediate relevance to limit interest to a small circle of ‘technical’ specialists within the Government bureaucracy, which - only indirectly - overlaps with the third sector-specific community in one small corner of the Treasury. In the UK leg of the TSEP research (Kendall, 2005), a range of considerations was suggested as relevant for the relatively low levels of European horizontal engagement. While there *are* individuals and actors from the third sector with a horizontal agenda who engage with European issues, that paper noted that they are not central to the policy community, but that the UK public service agenda has been dominated by what are seen as essentially national questions. The factors include:

- Crowd out by hyper-active domestic policy
- Poor reputation or lack of awareness of Brussels-level European level institutions, with aggravated by perceptions of excessive bureaucracy in EU level implementation of European programmes. While obviously not directly relevant to SGI, these sentiments seem to produce a tendency to ‘switch off’ when European concerns are floated
- Perceptions – even amongst those who do have a European interest, that the 1990s efforts of CEDAG had not really led to tangible results – and so further investment of scarce resources could not be justified (cf also comments in TSEP Working Paper 11, the Statute paper re CEDAG).
- Lack of sustained and powerful alliance forming - or even investment in communication channels - between European specialist third sector bodies, such as the Third Sector European Network (an alliance for structural funds-financed third sector providers) and the English Anti-Poverty Network on the one hand - generalist horizontal third sector bodies within the third sector, such as NCVO, NACVS etc on the other (cf Working Paper 5). The differently specialised policy communities seem more or less ‘balkanised’, and financial, political and membership resources are heavily skewed towards the latter.
- Arguably, resonating with a more general British popular *and* Governmental stance on the EU institutions – despite the shift in rhetoric associated with New Labour – a ‘detached’ – or at least ‘semi-detached’ attitude, contrasting with the ‘categorical fusion’ (Garton Ash, 2000 – referenced in Working Paper 5) of France, Spain, and perhaps Italy. This often tends to make the UK more ‘reactive’, engaging, especially outside market-making policies, only once agendas have been set. Arguably, there is a tendency to respond perhaps even more so than other countries to Europe as something ‘other’ and/or

‘outside’ (although this attribute should not be seen as ‘exceptionalism’, given the current shifts in membership and attitudes towards the EU institutions, as exemplified in constitutional machinations and public opinion research)

These factors dispose the British third sector specific horizontal policy community – or at least the vast bulk of its members, and certainly its dominant actors – away from focusing on the European dimension of horizontal policy problems.

Like the UK, *Sweden* seems to confirm the idea that national third sector traditions with regard to Europe matter more than the actual issue. On first sight, it would appear to be the opposite. Only four contributions came from this country, one from the government, one from an overactive law student, and only two from organisations from the third sector (if broadly defined). Public services in Sweden have traditionally been largely provided by state agencies, with only a limited role for private for- or non-profits.

There have been some developments to open service provision up. The ongoing contraction of the Swedish welfare system has opened the field of welfare service to the entry of alternative service producers. The number of new welfare cooperatives has grown dramatically since the 1980’s. This group consist of newer organisations, which are engaged on a local scale and normally started by local groups. But other forms of social service producers and social enterprises have developed too, due to the restructuring of the public sector. In addition, the governments’ commission “Profit or Non-for-Profit in the Swedish Health System” has provided a basis for a discussion on needs and possible forms for a more durable arrangement as to where and under what conditions, private profit-making businesses should be able to participate in publicly financed health care and social services. In their report they present descriptions on the health care systems in some other European countries, but also in United States, Canada and New Zealand. In the report they also discuss the conditions for non profit-making care in Sweden. On the whole, though, the SGI discussion would seem to have far less relevance here than in the countries discussed above.

And yet, below the surface, the number of responses was quite high. The Swedish government statement represents no less than 75 responses, potentially enough to put Sweden top of the list. This is not exceptional when one considers that the Ministry of Foreign Affairs and all the organisations involved simply followed the usual procedure. Again, traditions within the national third sector policy community seem to have been a more significant influence than the issue itself.

## 6 Conclusion

In this paper, we have described the debate on Services of General Interest, with a particular focus on the role of the third sector. Third sector organisations are one type of party with a stake in the development of the European market, and the SGI debate was one way for them to clarify their position and exercise influence. Since the White Paper, it has effectively become tangled up with the debate on the Bolkestein directive. In addition, it has resulted in a special trajectory for social and health care services. Although the significance of these policy processes must not be overstated – their long-term effect is difficult to assess at this point- an analysis can reveal both the lines of contention (esp. at the conceptual level) and the relation of the third sector to this type of European debate.

The position of the third sector in the debate is relatively easy to pinpoint. As it turns out, the plan for a European framework has been firmly rejected. The third sector has in that respect shown itself in agreement with public authorities, who massively dismissed it and stressed the importance of subsidiarity. If there were dissenting voices, they did come from within the third sector, but they were few. There were also many criticisms of the concepts used in the debate, like the distinction economic/non-economic and the concept of “services of general interest” itself.

The differences in the types and numbers of responses to the public consultation proved more of a challenge. There was no clear link between the nature of the issue at the European level and the significance of similar issues in policy debates at the national level. National traditions in third sector policy communities, such as established consultation procedures and Euromindedness, appeared to be a more important variable in determining the response. This finding is not only interesting for third sector research, but also for studies of Europeanization.

But our work is not yet finished. In future versions of this paper, we will present a more thorough and systematic analysis of our empirical material. We also hope to add some more:

- More recent information on the European debate, including discussions on the Service Directive;
- Complete information on the British, Dutch and French cases;
- More information about discussions at the European level outside the public consultation.

In the meantime, we welcome any comments you might have.

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## Appendix 1: glossary

**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 inclusion 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 inclusion; and unemployment. These organisations are 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.<sup>4</sup>

**Industry-specific policies** Policies 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 levels. 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

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<sup>4</sup> 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.

plans; and peer review and joint monitoring of implementation in an iterative multi-year cycle. It increasingly supplements and even displaces the Community Method.

**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 who specialise at the EU level, and some who operate on multiple levels.

**Policy field** shorthand for vertical policy field.

**Policy mode** is a 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 inclusion 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 & 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 field.

**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, 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, the social partners, academics, the media, and 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.

## Appendix 2: policy cases methodology

This paper is based upon research conducted into one of a small number of ‘European core policy cases’ have selected for analysis in the TSEP network. 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 for analysis 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*. Second, an aspiration has also been 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 (cf Wolch, 1990; Evers, 1993; Salamon et al, 2001). 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 the policy actors involved 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 cases examined, and shows how each captures a different combination of policy mode, policy stage/third sector function, and meaning of ‘horizontality’.