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The unintended consequences of the Common Agricultural Policy for local communities – reading EU law and politics in Ikaria, Greece

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1) Introduction

This chapter discusses the unintended consequences for local communities of major EU-wide policies. It focuses on agriculture-related policies, namely on the Common Agricultural Policy (CAP), with a secondary focus on animal welfare and food safety legislation. A case study of the Greek island of Ikaria is used to explore this theme. More specifically, the case examines the impacts from the implementation of these policies on the livelihoods of traditional goat pastoralists and their relationship with other inhabitants of Ikaria, as well as on the delicate ecosystem of the island. The effects of progressive reforms of the CAP and the introduction of stringent food safety and accompanying animal welfare rules illustrate the ways in which the law and politics of the EU intertwine and translate into unintended consequences such as environmental degradation and the erosion of traditional practices, leading to loss of community cohesion.

The chapter first gives a brief introduction to the CAP and reviews some of the key scholarly debates around this policy and its unintended consequences. In particular, it notes the debates around multi-level governance and expert policy networks as well as calls to increase effective participation in designing and implementing the CAP. The case of Ikaria and its traditional goat pastoralism is then introduced to illustrate the array and complexity of unintended consequences that may flow from locally-insensitive policy implementation, including examples where the core objectives of policies are directly contradicted. A third section outlines where international law may provide innovative approaches to the issue of unintended consequences. Indeed, various sources in international law have noted the tendencies towards the protection of powerful economic interests in agriculture and trade rules in particular, and that this often comes at the expense of smallholder farmers and agricultural workers, including pastoralists. Emphasizing how scale and socio-economic context affect the development and implementation of EU-wide policies, the chapter draws inspiration from principles and concepts that occur at the intersection of international environmental and human rights law that seek to address these imbalances. It is suggested that applying these international concepts in a more contextual manner, with a deliberate focus on smallholders and participatory approaches in the development of the post-2020 CAP and related policies, could result in fewer unintended and more successful outcomes.

2) The debate on the role of the EU in the context of agriculture

The origins of the CAP stretch back to the very beginning of the European construction and the creation of the European Economic Community in 1957. Indeed, it was central to securing France's participation in the project, alongside Euratom, and can thus be considered a fundamental part of European integration.¹ Its aim was a collective effort to increase and to modernize agricultural production among the six original member

¹ See e.g. D Dinan *Ever Closer Union* (Palgrave Macmillan 2010), ch 1.

states. In reality, France in particular was home to a large proportion of agricultural workers and small-scale farms. With the memory of post-war food shortages still fresh in many European countries, food security was a priority area. The CAP's aim as far as production was concerned was ultimately the creation of a single market for agricultural products, achieved by replacing existing national protective measures such as quotas and tariffs with common measures.²

At first the overall objective was to increase agricultural productivity, and thus to ensure a fair standard of living for the agricultural community, to stabilise markets, to assure the availability of supplies, and to ensure that supplies reached consumers at reasonable prices.³ The unintended consequences of the instruments used to fulfil these goals, in particular guaranteed prices which led to the infamous 'wine lakes' and 'butter mountains' of the 1980s, are well known. Subsequent waves of reform, including the major MacSharry reform package in 1992, which signalled the beginning of a decisive move away from price supports,⁴ and the 2003 Fischler reform package, which heralded further moves to serve objectives beyond increased production through so-called 'cross-compliance',⁵ have seen environmental protection come to gain prominence under the CAP in more recent years. This is supported by the environmental integration principle;⁶ though the latter has been interpreted as a crutch used to emphasise environmental concerns in order to legitimise existing practices.⁷ Yet, CAP measures nowadays must take into account "the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions".⁸ Thus, tensions between harmonisation to protect the internal market and foster integration, and the local nature of agriculture, including agroecological management and social aspects, are at the very core of the CAP.⁹ As are distributive questions of authority, fuelled by the subsidiarity principle that demands that the EU only acts if and insofar as an objective cannot be sufficiently achieved by Member States, at national, regional or local level.¹⁰

² B Jack, *Agriculture and Eu Environmental Law* (Ashgate 2009), p 1. Note, however, that while the CAP appeared to be a uniform policy from the moment of its inception, in reality it functioned "as a Community umbrella with considerable room for diverse national policies", see F Snyder, 'Cap' in Erik Jones et al (eds), *The Oxford Handbook of the European Union* (Oxford University Press 2013).

³ Article 33 TEC. These objectives have never been changed: see likewise Article 39(1) TFEU. On their interpretation see also J A McMahon, 'The Common Agricultural Policy: From Quantity to Quality?(European Union)' (2002) 53 Northern Ireland Legal Quarterly 9.

⁴ See, for example, with regard to cereals, Council Regulation (EEC) No 1765/92 establishing a support system for producers of certain arable crops [1992] OJ L 181/12; Council Regulation (EEC) No 1766/92 on the common organization of the market in cereals [1992] OJ L 181/21.

⁵ See notably Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers [2003] OJ L 270/1/

⁶ Article 11 TFEU. See, for example, European Commission, 'Indicators for the Integration of Environmental Concerns into the Common Agricultural Policy' COM(2000) 20 final.

⁷ C Daugbjerg and A Swinbank, 'Three Decades of Policy Layering and Politically Sustainable Reform in the European Union's Agricultural Policy' (2016) 29 Governance 265 and G Alons, 'Environmental Policy Integration in the Eu's Common Agricultural Policy: Greening or Greenwashing?' (2017) 24 Journal of European Public Policy 1604.

⁸ Article 39(2)(a) TFEU.

⁹ For an historical perspective on tensions between EU and national competences, and tendencies to divergence rather than integration under the CAP, see U Koester, 'The Role of the Cap in the Process of European Integration' (1984) 11 European Review of Agricultural Economics 129.

¹⁰ Article 5(3) TEU.

The EU has primarily sought to address these tensions through centralised production policies to ensure the functioning of the internal market, which also condition the payment of EU subsidies on adherence to various statutory requirements (Pillar I),¹¹ and decentralised rural development policies that seek to embed socioeconomic and ecological diversity (Pillar II).¹² The centre of gravity of decision-making under the pillars is also reflected in their funding structures, with direct payments being financed through the EU's general budget, and rural development programs being co-funded by Member States and the EU. Member States do have some leeway to allocate subsidies to better serve national or regional interests,¹³ and their discretionary rural development plans are informed by requirements and funding under the EU framework.¹⁴ The EU's CAP is reviewed on a cyclical basis, through the ordinary legislative procedure, with further details stipulated in delegated acts adopted by the Commission. Although the CAP provides a wide framework for the regulation of agriculture in the EU, it must be noted that the EU institutions primarily legislate on agricultural topics that intersect with internal market and overarching environmental concerns, as informed by the objectives set out in Article 39 TFEU, and that the regulation of other matters primarily related to the circumstances in individual Member States are often left to the realm of national law makers. It should also be noted, however, that some aspects of agriculture and food production are regulated by the EU beyond the direct scope of the CAP, for example, through risk regulations on pesticides and genetically modified organisms,¹⁵ other food safety and hygiene regulations, and those on quality foods.¹⁶

The CAP has, however, attracted much criticism. From an environmental perspective, it has failed to effectively address soil degradation, water scarcity and climate change.¹⁷ It has also failed to effectively address a host of other negative environmental impacts, including, for example, the continuous loss of habitats or farmland biodiversity, such as birds and insects, including pollinators.¹⁸ From a socio-economic perspective, the

¹¹ Currently: Regulation 1306/2013 on the Financing, Management and Monitoring of the Common Agricultural Policy and Repealing Council Regulations (Eec) No 352/78, (Ec) No 165/94, (Ec) No 2799/98, (Ec) No 814/2000, (Ec) No 1290/2005 and (Ec) No 485/2008 [2013] OJ L 347/549 and Regulation 1307/2013 Establishing Rules for Direct Payments to Farmers under Support Schemes within the Framework of the Common Agricultural Policy and Repealing Council Regulation (Ec) No 637/2008 and Council Regulation (Ec) No 73/2009 [2013] OJ L 347/608.

¹² Currently: Regulation 1305/2013 on Support for Rural Development by the European Agricultural Fund for Rural Development (Eafrd) and Repealing Council Regulation (Ec) No 1698/2005 [2013] OJ L 347/487.

¹³ Articles 52-55 Regulation 1307/2013.

¹⁴ See in this regard, for example, A Isoni, 'The Common Agriculture Policy (Cap): Achievements and Future Prospects' in M Monteduro et al (eds), *Law and Agroecology a Transdisciplinary Dialogue* (Springer-Verlag 2015), pp 157-159, who also raises questions about the ability of Regulation 1305/2013 to provide for true integration and cohesion between national RDPs, as "the fear is that the only real points of contact between the policies will occur by means of the programmes adopted on domestic and regional levels."

¹⁵ For example, Regulation 1107/2009 concerning the placing of plant protection products on the market [2009] OJ L 309/1 and Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms [2001] OJ L 106/1.

¹⁶ For example, Regulation 2018/848 on organic production and labelling of organic products [2018] OJ L 150/1 and Regulation 1151/2012 on quality schemes for agricultural products and foodstuffs [2012] OJ L 343/1.

¹⁷ See, for example, G Pe'er et al, *Is the Cap Fit for Purpose? An Evidence-Based Fitness-Check Assessment* (German Centre for Integrative Biodiversity Research, 2017), p 101.

¹⁸ European Commission, 'The Mid-Term Review of the Eu Biodiversity Strategy to 2020' COM/2015/0478 final and P Barkham, 'Europe Faces 'Biodiversity Oblivion' after Collapse in French Birds, Experts Warn' (*The Guardian* 2018)

CAP has been held to exacerbate inequality, for example, due to the unequal allocation of pay that favours large farms over smallholders, or the cementing of existing gender inequalities.¹⁹ It also tends to be more supportive of capital-intensive farming on fertile, readily-available land, thus adding to the decline of traditional farming practices that are more labour intensive in marginal areas.²⁰

The CAP's contribution to environmental and socio-economic problems related to agriculture can be considered to be threefold. Firstly, policies may simply be ineffective. For example, mandatory greening payments, which account for 30% of the CAP 2014-2020 budget for Pillar I, have been argued to add a layer of complexity to the CAP without enhancing its environmental performance.²¹ In particular, the crop diversification requirement was only expected to result in a 1% change of agricultural land use due to low ambition, broad exemptions and an overall lack of consideration of available knowledge (including farmers' knowledge).²² Secondly, implementation may raise issues, for example, with regard to national agri-environment-climate schemes under Pillar II.²³ Such problems may stem from a lack of national capacity, for example to identify applications for funding that could make positive environmental or social contributions.²⁴ Thirdly, a policy may prove to be inherently conflicted when the pursuit of a single objective is compromised by unintended impacts, or the pursuit of one of the CAP's goals unintentionally undermines another. The CAP's negative environmental and social impacts, which stem from such unintended consequences, is the focus of this Chapter.²⁵ Many examples exist. For example, decoupling direct

<<https://www.theguardian.com/environment/2018/mar/21/europe-faces-biodiversity-oblivion-after-collapse-in-french-bird-populations>> accessed April 2019.

¹⁹ A Matthews, *Appendix 1: Why Further Reform? In Cap - Thinking out of the Box* (Rise Foundation, 2017), putting forward that 80% of direct payments go to just 20% of farmer beneficiaries. See also, D Harvey, 'What Does the History of the Common Agricultural Policy Tell Us?' in Joseph A McMahon and Michael N Cardwell (eds), *Research Handbook on Eu Agriculture Law* (Edward Elgar 2015), p 30. On the reconfirmation and continuation of gender inequality through the CAP: E Prügl, 'The Common Agricultural Policy and Gender Equality' in Gabriele Abels and Joyce Marie Mushaben (eds), *Gendering the European Union* (Palgrave Macmillan 2012), 127-145.

²⁰ Pe'er et al 2017, p 65

²¹ *Greening: A More Complex Income Support Scheme, Not yet Environmentally Effective* (European Court of Auditors, 2017). See also, A Gocht et al, 'Eu-Wide Economic and Environmental Impacts of Cap Greening with High Spatial and Farm-Type Detail' (2017) 68 *Journal of Agricultural Economics* 651.

²² K Louhichi et al, 'Does the Crop Diversification Measure Impact Eu Farmers' Decisions? An Assessment Using an Individual Farm Model for Cap Analysis (Ifm-Cap)' (2017) 66 *Land Use Policy* 250; G Pe'er et al, 'Agriculture Policy. Eu Agricultural Reform Fails on Biodiversity' (2014) 344 *Science* (New York, NY) 1090.

²³ Pe'er et al 2017, p 208. Another issue of implementation is lack of adherence to cross-compliance requirements, which has been ascribed to lack of deterrents or penalties, see M Ballesteros et al, *Evaluation Study to Support the Fitness Check of the Birds and Habitats Directives* (Milieu Ltd, IIEP and ICF, 2016), p 434 which states that sometimes the penalty for cross-compliance infringements, which is merely up to 5% of the farmer's annual payment entitlement, is "too low to be a deterrent against non-compliance".

²⁴ See, for example, A L Yang et al, 'Multilevel Governance, Decentralization and Environmental Prioritization: How Is It Working in Rural Development Policy in Scotland?' (2015) 25 *Environmental Policy and Governance* 399. On the impacts of limited national resources and expertise on the level of ambition of agri-environmental schemes more generally see also: D Baldock, 'Twisted Together: European Agriculture, Environment and the Common Agricultural Policy' in Joseph A. McMahon and Michael Cardwell (eds), *Research Handbook on Eu Agriculture Law* (Edward Elgar Publishing 2015), p 145.

²⁵ With regard to the issue of conflicting objectives, see notably O D Schutter et al, *Towards a Common Food Policy for the European Union. The Policy Reform and Realignment That Is Required*

payments from the production of specific products was expected to reduce intensification²⁶ (in addition to ensuring consistency with the rules of the World Trade Organization). Yet, instead of achieving more diverse and equitable agriculture, it has led to inflated land rents that limit access to land and impact small-scale tenant farmers most severely.²⁷ Equally, environmental objectives have been compromised by productivist or socio-economic aims. For example, in some cases, subsidies to maintain production levels in less favoured areas²⁸ have been linked to the intensification of agricultural practices in environmentally sensitive regions.²⁹

The underlying reasons for the CAP's negative environmental and social impacts are not mutually exclusive. Complex interactions may, in fact, worsen problems.³⁰ A perceived imbalance in power between the EU and its Member States is often put forward in the periodic reviews of the CAP as a possible explanation for why EU policies fail to meet their multiple objectives and, notably, lead to unintended impacts on the ground. Subsequent reforms since 2003 have been interpreted as progressively giving Member States possibilities to better tailor CAP support in accordance with their needs; "a transformation of the CAP from a policy differentiated by products to a policy differentiated by country".³¹ The current proposals for the CAP post-2020 take this a step further. Under the slogan of 'simplification and subsidiarity' they suggest more leeway for Member States to decide on the disbursement of payments through the formulation of strategic plans that must be approved by the Commission before implementation.³² Notwithstanding the fact that the achievement of the goal "to enhance environmental and climate performance" is likely to be undermined by a series of shortcomings, including overall funding cuts and a loss of enforcement options,³³ the focus on decentralisation in the post-2020 proposals may also be based on too narrow an interpretation of multi-level governance.

Multi-level governance, a concept developed by Liesbet Hooghe and Gary Marks in the early 1990s to both describe and theorise moves to decentralise and allow for better

to Build Sustainable Food Systems in Europe (iPES Food, 2019), p 6. It must be noted that while in this context we presume that unintended consequences are undesirable, there may be instances in which unforeseen impacts are considered positive. On scholarship on the unintended consequences of policy more generally, see: A Čavoški, 'The Unintended Consequences of Eu Law and Policy on Air Pollution' (2017) 26 RECIEL 255, p 256.

²⁶ Jack 2009, p 62.

²⁷ P Ciaian et al, 'The Impact of the 2013 Reform of the Common Agricultural Policy on Land Capitalization in the European Union' (2013) 36 Applied Economic Perspectives and Policy 643

²⁸ Replaced now by schemes for Areas facing Natural Constraints (ANC).

²⁹ Whether such schemes have positive or negative environmental impacts has been held to be very much dependent on national contexts, see 35 case studies in R Oppermaun et al, *High Nature Value Farming in Europe* (Verlag Regionalkultur, 2012).

³⁰ For example, the CAP's focus on ineffective greening measures has led to decreased funding for and thus poor implementation of agri-environment schemes: Pe'er et al 2017.

³¹ *Implementation of the First Pillar of the Cap 2014-2020 in the Eu Member States* (European Parliament, 2015), p 16.

³² European Commission, 'Proposal for a Regulation Establishing Rules on Support for Strategic Plans to Be Drawn up by Member States under the Common Agricultural Policy (Cap Strategic Plans) and Financed by the European Agricultural Guarantee Fund (Eagf) and by the European Agricultural Fund for Rural Development (Eafrd)' COM(2018) 392 final.

³³ European Court of Auditors Opinion No 7/2018 Concerning Commission Proposals for Regulations Relating to the Common Agricultural Policy for the Post-2020 Period [2019] OJ L C/41/1 and K Hart and F Bas-Defossez, *Cap 2021-27: Proposals for Increasing Its Environmental and Climate Ambition* (Institute for European Environmental Policy, 2018).

local ‘tailoring’ of EU policies, has gained traction among EU policymakers.³⁴ Rather than the devolution of authority, or the (re)allocation of authority between the EU and Member States, multi-level governance has been interpreted by the European Committee of the Regions to mean the coordination of “action by the European Union, the Member States and local and regional authorities, based on partnership and aimed at drawing up and implementing EU policies”.³⁵ More broadly, it is considered in the literature as an encompassing analytical framework that recognises and advocates for the important role of non-governmental or non-state ‘expert’ actors, whether exercised by formal and institutionalised structures or, more often, through fluid, networked governance approaches. Multi-level governance approaches not only note that power in the EU is dispersed across different levels and actors, but see this as the best way of organizing: it is more efficient at dealing with diverse interests, and it fosters competition between power centers, which boosts their efficiency.³⁶ Multi-level governance thus contains both descriptive and normative potential for reflecting on the CAP. First, it can guide legal scholars to consider the varying political dynamics at work in different types of CAP governance at the local, national and European levels, and indeed the pressures to reform from the global level and the WTO in particular. Indeed, the interplay between different areas of compliance within the CAP make it an ideal candidate for exploring types of governance and their impacts – as illustrated by the case study outlined here. Second, in a more normative vein, where the unintended environmental or socio-economic impacts of CAP policies can be attributed to insensitivity to local knowledge or opportunities for bottom-up strategies, proposals for reform in line with multi-level governance appear attractive. Reform in this direction could explore the CAP’s potential to be more inclusive of diverse actors - both in implementation and, perhaps more importantly, in policy formulation.

Nevertheless, although it may be easier to listen to stakeholders at decentralised levels, decentralisation does not always guarantee effective and inclusive multi-level governance,³⁷ nor does centralisation necessarily inhibit it. Sometimes there may be reasons beyond the internal market why overarching, central, but inclusive agri-environmental and food policies may work better in certain circumstances. For example, this could be to ensure high levels of protection across the EU, notably when dealing with transboundary issues, to share administrative burdens and to facilitate access to (pooled) resources like technical expertise.³⁸ Despite broad opportunities for public involvement in the negotiations for a CAP post-2020, concerns have been raised regarding the representativeness of participants, bias in some of the questions and the strong influence of agricultural and agro-food lobby groups that prevent proper

³⁴ See L Hooghe (ed) *Cohesion policy and European integration. Building multi-level governance* (Oxford: Clarendon Press, 1996); L Hooghe and G Marks, *Multi-level governance and European integration* (Lanham, MD: Rowman & Littlefield, 2001); G Marks and L Hooghe, ‘Contrasting Visions of Multi-Level Governance’ in Ian Bache and Matthew Flinders (eds), *Multi-Level Governance: Interdisciplinary Perspectives* (Oxford University Press 2004).

³⁵ European Union - Committee of the Regions, ‘White Paper on Multilevel Governance’ CONST-IV-020, p 7.

³⁶ See e.g. Hooghe 1996.

³⁷ Yang et al 2015; see also M Dower et al, *Local Food Systems in Europe. Case Studies from Five Countries and What They Imply for Policy and Practice* (FAAN, 2010), p 38 on the fact that flexibility under EU law to allow for accommodation of local circumstances and needs is sometimes denied by the Member States through overly restrictive interpretations of exemptions.

³⁸ For an overview of scholarship that discusses this topic, see Yang et al 2015, 402. On the wider food regime see also, M Dobbs, ‘Attaining Subsidiarity-Based Multilevel Governance of Genetically Modified Cultivation?’ (2016) 28 *Journal of Environmental Law* 245.

acknowledgement of local concerns and circumstances.³⁹ These are in line with core critiques of the multi-level governance literature, which underline the loss of democratic accountability and legitimacy that may accompany the dispersal of power across networks of elite experts, and note that multi-level governance approaches pay little attention to inclusivity. Without attention to power imbalances amongst different ‘expert’ groups, those that dispose of more resources or are perceived as holding more relevant technical knowledge are argued to be likely to gain more influence.⁴⁰ Indeed, the CAP’s inability to take effective account of the circumstances surrounding smallholder farmers or pastoralists, or of the knowledge that follows from their experiences with previous CAP rounds despite opportunities for engagement, calls into question whether more fundamental understandings of the role of law and policy in society, which favour bigger players, impede the adoption of inclusive and holistic approaches.

The CAP is part of a wider legal regime on agriculture and food production, including product authorization and marketing, labelling, food safety and environmental standards. One could think of potential examples of indirect and unforeseen negative impacts of such regulations, although, due to the often-localised nature of impacts, data is not always readily available or accessible. In particular, a disconnect has been observed between EU and national policy levels and local food systems that are based on ideas of social cooperation and close geographical and social relations between producers and consumers. Concerns have been raised, for example, regarding the effects of disproportionate costs of EU hygiene regulations on small-scale, locally-oriented enterprises and on traditional food processing methods,⁴¹ and of administrative burdens of territorial and quality branding that may make such labels inaccessible for small farmers with limited resources.⁴² These observations are particularly relevant for the Ikaria case study explored in this chapter, which contributes to the scholarship on the unintended impacts of top-down, EU agricultural and food policies and regulation on local communities.⁴³ Although the effective integration of environmental and food safety standards in the CAP could allow for better aligned objectives, debates on measures for integration such as cross-compliance⁴⁴ have so far failed to provide a

³⁹ Pe’er et al 2017, p 37. 1423 position papers were submitted as part of the online consultation ‘Modernising and Simplifying the Common Agricultural Policy’. An example of seemingly successful inclusion of local concerns under CAP 2014-2020 was the exemption of small-scale mixed farms from the three-crop rule, after concerns had been voiced about such farmers not being able to meet the condition if they were to only grow fodder for their animals. Nonetheless, the example also highlights the complexity of unintended consequences under the CAP as broadly interpreted exemptions have been held responsible for the erosion of the environmental value of the greening measure, see above.

⁴⁰ For an overview see M Eilstrup-Sangiovanni, *Debates on European Integration: a Reader* (Palgrave Macmillan 2006), Part IV, introduction, pp 327-341.

⁴¹ Dower et al 2010, p 38.

⁴² Ibid, p 40. Beyond the EU’s borders, questions have been posed regarding, for instance, the impacts of the new EU Organic Regulation on small farmers in the Caribbean. See S Corbalán, *(Letter) Re: New Eu Organic Rules: How to Avoid Negative Impacts on Small Farmers in the Caribbean?* (Fair Trade Advocacy Office, 2018).

⁴³ Note that, similarly to narratives in CAP reforms, decentralisation has also been forwarded in other areas of the regulatory regime on food, such as the authorisation of GMOs, to address the fact that centralised procedures have failed to effectively integrate national diversity. See M Geelhoed, ‘Divided in Diversity: Reforming the Eu’s Gmo Regime’ (2016) 18 *Cambridge Yearbook of European Legal Studies* 20.

⁴⁴ Cross-compliance is a mechanism that links direct payments to compliance by farmers with basic standards concerning the environment, food safety, animal and plant health and animal welfare, as well as the requirement of maintaining land in good agricultural and environmental condition: Council

forum for a more bottom-up approach that builds upon local experiences and knowledge.⁴⁵ A recent proposal for a Common Food Policy put forward by the International Panel of Experts on Sustainable Food Systems (iPES-Food), for example, primarily seeks to end conflicting objectives under the CAP. The proposal is based on bottom-up, participatory and agro-ecological approaches to allow policy “to listen more closely and respond more readily to the concerns and aspirations of citizens”.⁴⁶ The initiative holds potential for a more inclusive and holistic EU regulatory regime, yet its bold ambitions are not reflected in the Commission’s proposals for a CAP post-2020.

2) Reading EU law and politics in Ikaria, Greece

To illustrate our discussion of the potential unintended consequences of EU-wide policies we draw on a case study of the experiences of traditional goat pastoralists from the Greek island of Ikaria. The information presented here is based on two visits to Ikaria by some of the authors in 2014 and 2017. These visits included meetings and interviews with traditional pastoralists, as well as a range of other local actors, including local authorities, environmental NGOs and veterinarians. One of the authors has been engaged in wide-ranging research in Ikaria for a number of years and is a director of local NGO “The Documentation, Research and Action Center of Ikaria.” The role of EU-wide policy in traditional pastoralists’ impaired access to land and markets, conflicts with other social groups, and environmental degradation emerges clearly from our research. As a result, Ikarian pastoralists are concerned for the future of their occupation.

Ikaria is located in the northeast Aegean island group. The island, covering 255 square kilometres, consists of a sparsely populated, narrow and steep mountainous terrain. Most of its villages are located in the mountains, while the administrative capital and one of the two entrepôts, Ayios Kyrikos, is located at the south-eastern end of the island. The second, Eydilos, is located on the north coast, midway along an 80 kilometre, poorly maintained road network that connects the administrative capital and the northwest end of the island. Ikaria’s economy remains relatively traditional compared to more touristic Greek islands, and pastoralism is a key traditional occupation. In recent years the island has gained some notoriety as a ‘blue zone’ – a location where residents live an exceptionally long time. This has attracted researchers’ and media attention to the healthy way of life on the island, attributed not only to diet but also to culture.⁴⁷ In fact, Ikaria has a long-standing culture of common fields, tied to traditional land-use rights and household economy.⁴⁸ It also has a unique culture of self-organization, solidarity and strong community ties expressed politically in its communist tradition, as well as through everyday activities and periodic community-based saints’ day celebrations (*paniyries*).

Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003.

⁴⁵ On the issue of conflicting objectives and results from cross-compliance see: Jack 2009, p 61.

⁴⁶ iPES Food 2019, p 109.

⁴⁷ See e.g. Marissa Tefada, ‘The Greek island with the key to longevity’, BBC. <http://www.bbc.com/travel/story/20171116-the-greek-island-with-the-key-to-longevity> accessed 1 June 2018.

⁴⁸ For an ethnographic account of a “culture of common fields” see R Behar, *The Presence of the Past in a Spanish Village* (Princeton University Press 1986).

The role of pastoralists has long been central to life on the island. They were the suppliers of an important source of nutrition – goat meat, and to a lesser extent goat’s milk and cheese. In Ikaria, a portion of the goat population is locally bred from a semi-wild population descended from animals brought to the island many decades ago from both Europe and the Middle East. This breed, locally called *raska* (*wild*), has adapted to local conditions, producing herds that have not been exposed to various illnesses through imported livestock. Since no natural predators are present in Ikaria, goats roamed freely rather than being housed in barns, and followed a natural diet. The importance of goat meat is also indicated by the central role it plays in *paniyiries*, which are significant cultural celebrations, inextricably tied to the island’s ecological and civic commons,⁴⁹ and a vital source of community-driven development and inter-community cohesion.⁵⁰

In the past, challenges presented by the co-existence of livestock and agriculture were resolved through communal management. A system of walls and gates was built and maintained on the land belonging to each village, which allowed goats to move about freely without damaging crops. With the construction of roads, this system has collapsed to a large extent. The role of field guards (or agricultural field officers – community and later state employees) was underlined as crucial for the functioning of this system. However, the figure of the field guard has declined in the more recent past and the position was abolished entirely in 2011. Historically, pastoralists gained access to land for grazing through agreements reached at village level, resulting in the customary acceptance of access to land owned under different property regimes: community/municipal land (private land owned by the administrative communities or municipalities of the island) and privately owned land collectively held by villages or families. Land was thus considered to be accessible on the basis of collective agreements. Pastoralists were also respected for their knowledge of the land, and in particular of water sources. They would identify and keep these clear. They were also invaluable for guiding fire fighters during forest fires, and for grazing goats in areas where clearing debris was key to preventing these. Over-grazing was avoided as pastoralists moved flocks to higher ground in the hotter months, using the communal pasturelands above the mountain villages, and to lower grazing land during the colder ones. A common vertical stone fence divided private land below and around mountain villages, and the grazing was rotated every second year, alternating between common pasturelands and privately/family owned sowing land. In addition, after the harvest and before the new sowing season, the status and use of land shifted from privately owned to common pasturelands, as land previously sowed was opened up for grazing the herds of the villagers, thus enhancing soil fertility. This brief sketch of how pastoralists’ work

⁴⁹ The monetary earnings from *paniyiries*, as well as festivals organized in Athens, the USA and Australia by Ikarians of the diasporas resident in those countries, have financed (and continue to do so) “common-good purposes” since the end of the 19th century. Among the most notable of these purposes are the building of schools (1870s-1930s), the Panician Hospital (1950s), the construction of roads and water systems (1950s-1980s), communal (village) buildings (1980s-present), and an elderly care home (1990s). See: M. Bareli, “Ta Ikariotika *paniyiria* tou Mesopoleμου: Opseis tou dorou kai praktikes ton Koinon [The middle-war Ikarian *paniyiries*: Facets of the gift and practices of the commons]” in Y Zaimakis (ed.), *Ereynitikes Diadromes stis Koinonikes Epistimes [Research Routes in the Social Sciences]* (University of Crete, Laboratory of Social Analysis and Applied Social Research, 2018).

⁵⁰ Bareli-Gaglia 2010, ‘The Ikarian *paniyiri*, the commons and the gift’, paper presented at the 72nd Annual Meeting of the Society for Applied Anthropology – Bays, Boundaries and Borders. Baltimore (2012).

unfolded in the past underlines a sense of their vital contributions to Ikaria's social and political fabric, and was used as a clear point of contrast for their analyses of the present.

The situation pastoralists described as a contrast to this, dating from around the millennium, was instead one where the balances struck on social and environmental issues, including access to land and local markets, had ceased. The reasons identified were complex and related to the local and national government, as well as other local and national actors. However, a clear source identified as impacting detrimentally on the situation of traditional pastoralists was EU policy, which will form the focus of this discussion.

The central problem met with in Ikaria in recent years was traced to the scale of the goat population, which was too high. Over-grazing was named as one of the main causes of degradation in the island's delicate ecosystem, including damage to biodiversity and natural flood defences.⁵¹ Pastoralists were unable to deal with this problem using traditional methods for a number of reasons. These included: the abandonment of sowing for the production of wheat for household needs and animal feed during the 1970s; the opening up of roads and the subsequent partial collapse of the system of stone fences around cultivated land and villages; and the change of land use near the coasts, which has been given over to the construction of tourism infrastructure since the 1980s and has impeded pastoralists from moving their flocks between the lowlands and the highlands. In addition, pastoralists have pointed to EU rules making it impossible for them to sell goat meat, which has led to an increased population of goats on the island.⁵²

The overall situation in 2015 was generally described as follows. There was consensus that an initial increase in the goat population had occurred as a result of the availability of direct payments through the CAP. This initial increase fed into subsequent increases attributed to a number of factors – the lack of natural predators for one, but also and perhaps most importantly the limited possibilities for the legal slaughter and subsequent sale of goat meat. Regulations on the slaughter of animals in 2015 were in line with EU law, which provide that animals must be killed in slaughterhouses that comply with stringent rules.⁵³ While there had been derogations for traditional slaughter methods

⁵¹ Other causes identified both by national and local actors were the clearing of forests for agricultural and building purposes, as well as the opening up of roads, which is acknowledged to accelerate soil erosion and desertification (by 30-200 times). See for example Greek National Committee for Combating Desertification, 2000, "First National Report on the Implementation of the UN Convention to Combat Desertification" (March 2000) and the Citizens' Initiative for the Persevation of Pramneios Mountain (2012), "Mia anaphora gia tin Enimerosi-Syzitisi me thema "H energeia stin Ikaria" [Report on the Public Discussion "Energy at Ikaria", held by a political party and a citizens' association on January 21, 2012, at the Town City Hall of Ayios Kyrikos], <https://savepramnos.wordpress.com/2012/01/24/report>, accessed 14 May 2019.

⁵² Interviews conducted with local pastoralists, 2014.

⁵³ See Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing, *OJ L 303*, 18.11.2009. EU food safety legislation applicable to slaughterhouses is based on Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on hygiene of foodstuffs and Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin. Those Regulations emphasise the responsibility of food business operators to ensure food safety. Slaughterhouses are also subject to a pre-approval procedure whereby the construction, layout and equipment are examined by the competent authority to ensure that they comply with the corresponding

that allowed meat to be sold at the paniyiries of Ikaria,⁵⁴ this was not a feasible outlet for all of the meat despite the great number of festivals and the growth of those held during summer due to an increased tourist flow since the end of the 1990s. EU rules for slaughter proved challenging for pastoralists because there is no slaughterhouse on the island, and rules for the safe transport of animals⁵⁵ carry prohibitive expenses. These factors stoked issues emanating from goat over-population. Partly as a result of this, friction between pastoralists and other groups on the island had begun to emerge, particularly around access to community land given the concerns about over-grazing, as well as State claims on that land.⁵⁶ In 2017, pastoralists continued to experience difficulties in directly accessing the market to sell their meat. These difficulties were linked to new and stricter applications of EU rules related to the CAP against the backdrop of increased EU intervention following Greece's sovereign debt crisis. At the same time, the problem of goat over-population persisted despite the slight decrease caused by the limited capacity of the pastoralists to buy animal feed from the market, which was also linked to EU policies and the CAP.

A closer look at the CAP, and related EU food safety and animal welfare policies, helps shed light to better understand this situation. The CAP is seen as key in driving the over-population problem by encouraging many residents on the island to acquire animals. The aforementioned MacSharry reform of 1992, which shifted the CAP away from price support and towards direct payments linked (in this case) to numbers of animals owned is a central element. An unintended consequence of the reform in the Ikarian context was that residents, not limited to professional farmers or pastoralists, acquired animals. As the CAP was reformed further, notably with the 2003 Fischler reform and the progressive move towards decoupling and cross-compliance, animals were then simply let loose, thereby adding more stress for the island's natural environment. Pastoralists were also badly informed about how subsidy allocations had

technical rules on food safety. Animal welfare concerns should be better integrated into slaughterhouses, their construction and layout, as well as the equipment used therein.

⁵⁴ According to preambular paragraph 15 of the Regulation 1099/2009, the legislative or administrative provisions and customs of the Member States relating, in particular, to religious rites, cultural traditions and regional heritage are to be respected. Cultural events are therefore excluded from the scope of the regulation, where compliance with animal welfare requirements would adversely affect the very nature of the event concerned.

⁵⁵ Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97, *OJ L 3*, 5.1.2005.

⁵⁶ From the inter-war period on the Greek state has labelled most of the island's communal land as "diakatexomena" (cross-owned). However, communal pastures above the mountain villages as well as forests and pasturelands traditionally held in common by nearby villages have been governed by the administrative Communities and, since the 2014 administrative reform ("Kallikratis"), by the Municipality of Ikaria. In 2015, a new Greek Law (No. 4351/164.4.12.2015) provided that all grazing land in Greece was to be conceded to the regional administration, according to the country's division into 13 Administrative Peripheries. For Ikaria this meant that decisions concerning the island's pastures would be made by the Periphery of the Northern Aegean based on the island of Lesbos. This law is one among other administrative decisions that contest the Municipality's absolute right to tenure, raising indirect or direct claims on communal land as public. In response, the Municipality of Ikaria is promoting an amendment to be incorporated in the national forest law, according to which community/municipal land will be recognized as such. See, "Abstract of record no. 13/2016 regular meeting of the Municipal Council of the Municipality of Ikaria. Discussion and decision on the conclusions for the acknowledgment of forests and forested land", No. 162/2016 and "Petition by the Municipality of Ikaria for Resolving the Tenure Problem for Part of the Forests and Forested Land of the Island by Addition of a Legal Adjustment in a Draft Law", No. 1.520/3-4-2018.

changed over time in 2015. With ‘decoupling’, payments on the basis of animal numbers were converted to single farm payments, calculated on the basis of subsidies in the years 2000-2002. Yet little information had been given to pastoralists, who remained unsure about payments, and recounted various situations where they had fallen foul of rules they had been unaware of. This translated into a general feeling of suspicion and exclusion vis-à-vis the EU.

In 2017 this situation was becoming critical. Moves to tighten checks to ensure CAP cross-compliance amongst Greek recipients, pursued by the Greek government in their implementation of EU regulations,⁵⁷ were felt keenly in Ikaria, where once again its particular location and circumstances made compliance challenging. Rules about adequate barns for the housing of livestock had long been in place, but the pastoral traditions and circumstances in Ikaria meant that barns had never been in general use, and rules went unapplied for the simple reason that there were no barns to bring into line. Over time, these rules have been supplemented through cross-compliance initiatives, for example with environmental rules about drainage and waste disposal, and welfare measures on size, which meant that many pastoralists risked losing their subsidies. As mentioned, pastoralists in Ikaria have not traditionally housed their animals, since the island is free of natural predators and systems were in place to protect agricultural land. A dedicated committee had been created to attempt to head off this problem. Another issue surrounded the small size of many traditional pastoralists’ flocks and EU rules about animal identification. Here, the costs of tagging animals in some way were often prohibitive for small flocks. Local actors thus remained pessimistic about the real possibilities of bringing traditional pastoralists into line with complex EU cross-compliance rules in time.

The second area of EU policy with clear ramifications for pastoralists is food safety (and by extension animal welfare). One fundamental obstacle to reducing the goat population in 2015 was the island’s lack of a slaughterhouse. Local opposition to the construction of a slaughterhouse was certainly a factor, but the need for it (traditional slaughter methods had been used in the past) can be traced to EU legislation. Legislation in this area flowed from various food safety scares and crises in the 1990s – such as BSE and foot and mouth – and provides that all animals must be slaughtered in approved abattoirs, with meat produced marked with approved stamps. Since there was (and is) no slaughterhouse on the island, goats from Ikaria must be transported to Athens for slaughter. This is where animal welfare regulations intervene, and create prohibitive costs (again due to comparatively small flock sizes as well as the fact that no specially equipped animal transport vehicle is owned on the island). EU policy, intended to help and sustain farmers and consumers, promote animal welfare and protect the environment, has thus created a variety of unintended consequences in Ikaria. These have created tensions among local actors, but have also gone against the very goals of the policies. Goat over-population has damaged ecosystems, and pastoralists argue that transport to far-off slaughterhouses does little to promote animal welfare. As local knowledge has it, animals which are transported alive become so agitated that

⁵⁷ Interviews conducted with local veterinary officers, 2017. Cross-compliance was enforced through electronic data processing of all beneficiaries on the basis of Greek implementing legislation. See Joint Ministerial Decision 2827/129859 of 27.11.2015 on the procedure and way of approval of direct payments under EU Regulation 1307/2013 of special support measures in small Aegean islands, under EU regulation 229/2013, and on amending Joint Ministerial Decision 282966/2007.

their gallbladders often burst, causing enormous suffering as well as a notable decrease in the quality of meat. Thus, instead of promoting animal welfare, EU policy has impacts that contradict this aim, ending up bringing about the opposite outcome.

4) The perspectives of international environmental and human rights law

Law making and policy implementation do not take place in a vacuum, but in particular socio-economic contexts. If law occupies a position between the demands of the powerful and the ideals of justice,⁵⁸ when it comes to implementation, its results and unintended consequences are expected to differ depending on this context. This is particularly true in the case of complex regulatory systems such as the EU. In the case of the EU, multi-level governance (which may also imply aspects of polycentricism) emphasizes the dispersion of decision making and related implementation from the local to the European level and vice versa.⁵⁹ This means that authority for law making and implementation is shifting from national governments to European institutions, but also down to subnational local authorities, a point often under-explored both in legal scholarship and more generally.

When analyzing the unintended consequences of the implementation of EU law, it is necessary to consider complex governance structures and start by exploring a series of fundamental questions not only about possible shortcomings in implementation but also about the nature of law. When national or local trajectories with regard to implementation diverge, is it national or local circumstances only that explain such divergence? In other words, are the unintended consequences of EU policies described above simply a result of local particularities? Or are they an inherent, structural component of policies designed to serve a specific model of development?

Historically, in both national and supra-national contexts, the powerful and affluent have a stronger impact on the design of laws and policies than the poor and vulnerable. The final outcome therefore often mirrors the former's economic realities and arguably tends to safeguard their interests.⁶⁰ The extent and the degree to which law, including EU and international law, represents an idealized reflection of common values and the pursuit of the rule of law or is merely an articulation of power and politics have long been the focus of legal theorists.⁶¹ Bodies of law at the heart of the Ikarian case study, including rules on trade and access to markets, and regulations and policies related to agricultural development, have been criticized on more specific grounds as serving the interests of the powerful. In matters of international trade, formally equal rules have been shown to have favourable effects for superior economies and for the economically powerful actors within each economy.⁶² Development policies have historically been

⁵⁸ N Krisch 'International Law in Times of Hegemony: Unequal Power and the Shaping of the International Legal Order' (2005) 16 *European Journal of International Law* 369.

⁵⁹ References to other chapters in the handbook here..

⁶⁰ See B S Chimni 'An Outline of a Marxist Course on Public International Law' (2004) 17 *Leiden Journal of International Law* 1; T Pogge 'The Role of International Law in Reproducing Massive Poverty' in Samantha Besson and John Tasioulas (eds) *The Philosophy of International Law* (Oxford University Press 2010) p. 417.

⁶¹ See Krisch 2005; R Stenberg and J Zasloff 'Power and International Law' (2006) 100 *American Journal of International Law* 64; M Koskenniemi 'The Politics of International Law' (1999) 1 *European Journal of International Law* 1; and M Koskenniemi 'The Politics of International Law - 20 Years Later' (2009) 20 *European Journal of International Law* 7.

⁶² Krisch 2005, p. 384-385.

biased against agriculture in favour of other sectors,⁶³ while international agricultural policies have focused on large-scale farming, not taking into account the different realities in developing countries and the needs of smallholders.⁶⁴ Similarly, EU policies, including the CAP and food safety regulations, reflect these general tendencies, which disadvantage smallholders, as presented above.

Notwithstanding this generally hostile legal framework, the contribution of smallholders to global food security has been recognized in several fora. According to the Food and Agriculture Organization of the UN (FAO), smallholders and family farmers, including artisan fisher folk, pastoralists, and food-producing landless and indigenous peoples, account for 70% of global food production.⁶⁵ They are responsible for a large amount of agricultural production, particularly but not exclusively in developing countries, although they usually have limited access to modern technologies and receive limited support from the public sector. Their contribution to sustainable development, food security and nutrition was particularly highlighted by the FAO in and after 2014 – the International Year of Family Farming - which was used as an occasion to leverage political support in favour of smallholders and encourage the creation of an enabling legal and policy environment at the international and domestic levels.

Although policy guidance on smallholders remains limited, there are elements in both international legally binding and soft law instruments which can be used to legitimize policies supporting smallholders, and serve to empower them. These instruments come from the fields of human rights, sustainable development, and environmental protection.

The UN Committee on Food Security has adopted a series of instruments that enjoy a high degree of political acceptance, despite their soft law nature.⁶⁶ These include the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security,⁶⁷ the policy recommendations on investing in smallholder agriculture for food security and nutrition,⁶⁸ and the policy recommendations on connecting smallholders to markets.⁶⁹

The Guidelines on Tenure repeatedly call for policies to focus on the needs of smallholders given their importance for food security, for instance in the context of market operations of tenure transactions,⁷⁰ transactions in tenure rights,⁷¹ and participatory processes for the recognition of informal tenure, including the provision

⁶³ IFAD and UNEP, *Smallholders, food security and the environment* (2013 IFAD).

⁶⁴ B Vorley, L Cotula, and M-K Chan, *Tipping the balance: Policies to shape agricultural investments and markets in favour of small-scale farmers* (International Institute for Environment and Development and Oxfam International 2012).

⁶⁵ Committee on World Food Security (CFS), *CFS High-Level Forum on Connecting Smallholders to Markets: Background Document* (25 June 2015), available at: <http://www.fao.org/3/a-mr300e.pdf>.

⁶⁶ As soft law has a variety of interpretations, and quite a lot of chapters in the book use soft law in quite different ways, I'll insert a footnote here to reference other chapters

⁶⁷ Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, available at: <http://www.fao.org/3/i2801e/i2801e.pdf>.

⁶⁸ Policy recommendations on investing in smallholder agriculture for food security and nutrition, available at: <http://www.fao.org/3/a-av034e.pdf>.

⁶⁹ Policy recommendations on connecting smallholders to markets, available at: <http://www.fao.org/3/a-bq853e.pdf>.

⁷⁰ Guideline 11.8.

⁷¹ Guideline 12.3.

of technical and legal support.⁷² The policy recommendations on investing in smallholder agriculture call for enabling smallholders' access to productive assets and local, national and regional markets, including through the promotion of cooperatives and public support, to enable them to participate in the value chains of their choice, increase their negotiating capacity, and ensure legal and fair business practices. The policy recommendations on connecting smallholders to markets call for enhancing smallholders' organization, to enable them to integrate into food value chains,⁷³ promote their inclusive participation in local food systems,⁷⁴ develop smallholder-targeted infrastructure.⁷⁵ Importantly, they also recognize the environmental, social, and economic value of the food they produce and acknowledge their key role in the sustainable use and management of natural resources.⁷⁶

The need for special policies and strategies targeted at small-scale and traditional farmers, including livestock producers, with an emphasis on human capacity development and the removal of constraints to agricultural production, marketing and distribution is also provided for in the 2004 Guidelines on the right to food.⁷⁷ Secure and equal access to land, other productive resources and inputs, knowledge, financial services, markets and opportunities for value addition and non-farm employment are also considered necessary for the achievement of the 2030 Sustainable Development Goal (SDG) Target of doubling the agricultural productivity and incomes of small-scale food producers, including pastoralists.⁷⁸ The recently adopted UN Declaration on the Rights of Peasants and Other People Working in Rural Areas calls for greater protection of the human rights of peasants and other people working in rural areas,⁷⁹ and for a coherent interpretation and application of existing international human rights norms and standards. The Declaration confirms a series of rights of peasants, including, importantly, the right to natural resource use,⁸⁰ collective organization,⁸¹ information,⁸² and participation in decision-making.⁸³

The role of traditional knowledge and customary use of biological resources as mechanisms to protect biological diversity are recognized by the Convention on Biological Diversity (CBD),⁸⁴ to which all EU Member States and the EU are parties. Pastoralism is gradually being recognised in international law for its potential positive environmental outcomes, when practiced effectively and whilst preserving local knowledge and institutions. An emerging body of international law and policy recognizes that pastoralism can contribute to conservation and sustainable use of

⁷² Guideline 10.3.

⁷³ Recommendation 7.

⁷⁴ Recommendation 8.

⁷⁵ Recommendation 11.

⁷⁶ Recommendation 12.

⁷⁷ Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security, adopted by the 127th session of the FAO Council (November 2004): Guideline 3(7).

⁷⁸ Transforming our world: the 2030 Agenda for Sustainable Development, UN General Assembly Resolution A/70/L.1 (18 September 2015), SDG Target 2(3).

⁷⁹ United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (Human Rights Council, adopted 28 September 2018) A/HRC/RES/39/12.

⁸⁰ Article 5.

⁸¹ Article 9.

⁸² Article 11.

⁸³ Article 10.

⁸⁴ Articles 8(j) and 10(c).

natural and domestic biodiversity but existing pastoralist systems are under great threat from adverse policies and subsidies. Suitable policies, social services, and finance, and protection of land rights and common property systems should be enacted to empower pastoralists, and recognize them as key stakeholders and decision makers to achieve sustainable livestock production.⁸⁵

These international developments on smallholder farmers represent a context-specific reading of more general international obligations at the intersection of international human rights law and international biodiversity law. As such, they should be reflected in EU agricultural policy and law, both as a matter of international law (good faith implementation) and as a matter of EU law.⁸⁶ In particular, as clarified in the 2017 report of the UN Special Rapporteur on Human Rights and the Environment,⁸⁷ smallholder farmers are considered amongst those most vulnerable from biodiversity loss, because they are uniquely dependent on biological resources for their material and cultural needs.⁸⁸ When the use of the lands, territories, and resources that they traditionally own, occupy or use is at stake, including areas to which they have enjoyed access for their subsistence and traditional activities, even without any formal recognition of property rights or delimitation and demarcation of boundaries,⁸⁹ a series of interconnected obligations are triggered. These obligations include smallholder farmers' full and effective participation in decision-making, including legislative or administrative measures that may affect them directly.⁹⁰ In addition, traditional communities' knowledge and practices⁹¹ should be respected and protected, including by "fairly and equitably shar[ing] the benefits from activities relating to their lands, territories or resources"⁹², and states should assist in traditional communities' efforts to preserve the productive capacity of their lands, territories, and resources.⁹³ These notions are encapsulated in the ecosystem approach, which is the primary framework of action under the CBD and which provides "a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way".⁹⁴

Crucially, though there is limited international guidance that addresses smallholder farmers specifically, the EU and its Member States would still be able to draw upon international law to inform such a law-making exercise, as they are already bound by general international obligations in the areas of biodiversity and human rights law that are relevant for the CAP and other agriculture-related rules. Although international biodiversity treaties do not employ human rights terminology, and their obligations are quite general, they have been increasingly recognized as providing helpful guidance for

⁸⁵ Cancun Statement promoting sustainable pastoralism and livestock production for the conservation of biodiversity in grasslands and rangelands, endorsed by several international organizations including UN Environment Programme and FAO, on 14 December 2016.

⁸⁶ Art 216(2) TFEU.

⁸⁷ J H Knox (Special Rapporteur on Human Rights and the Environment), *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, U.N. Doc. A/HRC/34/49 (January 19 2017).

⁸⁸ *Ibid* 22–25, 49–64.

⁸⁹ *Ibid* 53, 48.

⁹⁰ *Ibid* 50.

⁹¹ *Ibid* 52.

⁹² Knox 2017, 18.

⁹³ *Ibid*. See E Morgera, 'Dawn of a New Day? The Evolving Relationship between the Convention on Biological Diversity and International Human Rights Law' (2018) 54 Wake Forest Law Review 691.

⁹⁴ Conference of the Parties to the Convention on Biological Diversity, 'Ecosystem Approach' (2000) UNEP/CBD/COP/5/23, par 1.

the interpretation and implementation of international human rights standards.⁹⁵ In other words, these obligations, and the soft law guidance adopted by CBD Parties to implement them through the ecosystem approach,⁹⁶ recognize humans as an integral part of ecosystems. Accordingly, they call for decentralized decision-making and respect for the traditional knowledge of farmers that could serve to rebalance any bias in the responsiveness of the law to the interests of more powerful actors and respond to the negative experiences of smallholder farmers and pastoralists arising from the unintended consequences of EU policies. Moreover, the implementation of these obligations and guidance, notably regarding the ecosystem approach, would help answer calls for “a new agroecological paradigm under the CAP,”⁹⁷ which integrates local, traditional and farmers’ knowledge on the functioning of ecosystems, including its social and economic dimensions.

5) Conclusions

The Ikarian case study illustrates a series of questions regarding law, development and implementation in complex regulatory systems such as the EU, as well as a host of unintended consequences regarding livelihoods, social cohesion and environmental sustainability, experienced in very practical terms by the pastoralists and the island’s society at large. The issue of negative unintended consequences flowing from the application of international policies without sufficient local knowledge and adaptation is well documented in literature on environmental governance.⁹⁸ While this literature underlines that more participatory approaches in the implementation and formation of policy at all levels is crucial to overcoming the problem of unintended damage⁹⁹, legal literature can provide clear suggestions in terms of the existing principles upon which these approaches should be based.

Relevant bodies of law, including the CAP and other EU rules on food and agriculture, have been criticized as serving the interests of the economically powerful and large-scale actors while disadvantaging smallholders and neglecting their specific needs. The CAP, and law-making related to it, is politically very salient, with member states including France and Germany subject to strong national lobbies in the sector that are subsequently brought to bear at the EU level both via member states and directly by lobbies themselves. Yet existing international obligations and soft law guidance on decentralized and inclusive decision-making, respect for traditional knowledge, and fair and equitable benefit-sharing with local/traditional communities that are dependent on biodiversity, such as smallholder farmers, already provide a basis to review current EU policies in order to prevent the unintended consequences discussed in this chapter. The EU’s international obligations, therefore, are already aligned with the need, identified in the literature, to ‘an approach to addressing environmental problems that relies on

⁹⁵ E Morgera, ‘Under the radar: fair and equitable benefit-sharing and the human rights of indigenous peoples and local communities connected to natural resources’ (2019) 23 *International Journal of Human Rights* 1098.

⁹⁶ E Morgera, ‘The Ecosystem Approach and the Precautionary Principle’ in Elisa Morgera and Jona Razzaque (eds) *Encyclopedia of Environmental Law: Biodiversity and Nature Protection Law* (Edward Elgar, 2017) 70-80.

⁹⁷ iPES Food 2019, p 51.

⁹⁸ See, for example, chapters in F Nelson (ed) *Community Rights, Conservation and Contested Land: The politics of natural resource governance in Africa* (Earthscan 2010).

⁹⁹ Ibid; J S Dryzek and H Stevenson ‘Global Democracy and Earth System Governance’ (2011) 70 *Ecological Economics* 1865.

dispersed experimentation in regulation... and communal or voluntary management ...’ that recognize and value the traditional knowledge and practices of smallholder farmers and pastoralists.¹⁰⁰

In the context of the CAP, and notably the upcoming reform for a CAP post-2020, this means that piecemeal solutions to address specific problems related to unintended consequences of EU policies are not sufficient. Nor will it be adequate to simply reallocate further authority to Member States, which seems to be the primary idea behind the European Commission’s current proposals. Without proper consideration of the structures that are required to implement effective and inclusive national policies, these will be unlikely to resolve the question of unintended consequences, for the simple reason that they do not reflect the complexity of multi-level governance at work in the CAP. What is needed is a more transparent approach which recognizes the normative principles and associated power relations and distributions of authority that underpin law and policy, in order to adopt comprehensive reforms which allow for better integration of smallholder farmers and pastoralists’ experiences and knowledge – be it at EU or Member State level. Such an approach would specifically entail addressing the inherent tensions between market integration and the local nature of agriculture, including agroecological, social and cultural aspects. It would also involve the development of specific policies to support traditional food production and small-scale producers, potentially balancing issues of scale, geography and livelihoods against stringent standards related to food safety, consumer protection and animal welfare by providing reasoned exemptions to general rules. Reform proposals could explore the CAP’s potential to be more inclusive of local voices and diversity, aiming to add value to European agricultural production and develop a more inclusive regulatory regime. Though the shape that this participatory approach might take is beyond the scope of this chapter, the principles that already exist in international environmental and human rights law provide a clear basis upon which such an approach can be built. It is certain that participation will have to be sensitive to existing power imbalances between smaller-scale farmers and pastoralists and larger industrial actors. In this vein, the literature on environmental governance, as well as participation in international processes more broadly, has underlined the potential of civil society groups to amplify the voices of these groups, as long as such groups are truly representative of the concerns they hold.¹⁰¹

¹⁰⁰ H Stevenson, *Global Environmental Politics: Problems, Policy and Practice* (Cambridge University Press 2017), p. 309.

¹⁰¹ E.g. Dryzek and Stevenson 2011; S Slaughter ‘The G20 and Global Justice: The Potential of Transnational Deliberative Democratic Theory’ (2017) 31 *Global Society* 460.