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Bringing Evaluation into the Policy Cycle

CAP Cross Compliance and the Defining and Re-defining of Objectives and Indicators

Emanuela Bozzini and Jo Hunt*

This contribution seeks to overcome the isolation of evaluation studies from the broader field of public policy analysis. Using as a case study the hybrid regulatory tool of cross compliance under the Common Agricultural Policy, the article charts the ongoing incorporation of ex ante and ex post evaluation processes over a ten year period, during which three major legislative reforms were undertaken. Anchoring its approach in the public policy work of Kingdon, the article emphasises the significance of the plurality of actors involved in the evaluation processes, the importance of timing, as well as the challenge to models of policy processes based on assumptions of rational linearity. In particular, the article demonstrates how the dis-ordering which may be observed in the stages of the policy process may equally be seen in the stages of policy appraisal. A particular focus is placed on the way in which objectives and indicators are defined and re-defined over time. The case study demonstrates that through policy appraisal, policy makers may learn what is, and what is not capable of being measured, which feeds back into the re-setting of objectives.

I. Introduction

Over the last decade or so, and led by the agendas of good governance and smart regulation, with their concerns with policy accountability and policy effectiveness, the European Commission has introduced systems for policy evaluation across the Common Agricultural Policy.¹ This contribution charts the ongoing incorporation of evaluation processes into one particular area of the CAP, exploring the range of evaluation exercises, both *ex ante* and *ex post*, conducted during successive policy cycles, over a ten year period. From a theoretical point of view, the article seeks to contribute to overcoming the isolation of evaluation studies from the broader field of public policy

analysis. As Hoerner and Stephenson observe 'there is an abundance of evaluation reports and documents, from academic and commercial sources, but little abstract thinking about evaluation as a stage in the policy cycle'.²

It might be argued that the field of evaluation studies – both *ex ante* and *ex post* – appears only weakly connected with theoretical frameworks developed to explain other analytical stages of policy processes, like agenda setting, alternative formulation and decision-making. Policy studies scholars appear seldom to take explicitly into account evaluation activities.³ Meanwhile, scholars of evaluation have been mainly interested in assessing predominant approaches and epistemological assumptions underpinning ex-

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1 For an overview, see Dylan Bradley, Janet Dwyer and Berkeley Hill, 'The Evaluation of Rural Development Policy', 9 *Eurochoices* (2010), pp. 15-20; Berkeley Hill, 'Understanding the Assessment (Evaluation) of the CAP and Rural Policy' in Berkeley Hill, *Understanding the Common Agricultural Policy*, (Oxford: Earthscan, 2012). Evaluation practices have taken longer to incorporate into the larger and longer established of the two pillars of the CAP (centred on the system of financial support to farmers which grew from the original commodity regimes) than in the co-funded

second pillar, on Rural Development policy. From 2014, a Common Monitoring and Evaluation Framework will apply across the CAP.

2 Julian Hoerner and Paul Stephenson, 'Theoretical Perspectives on Approaches to Policy Evaluation in the EU: The Case of Cohesion Policy', 90 *Public Administration* (2012), pp. 699-715.

3 A notable exception is Hill, *Understanding the CAP*, *supra* note 1; compare with Isabelle Garzon, *Reforming the Common Agricultural Policy: History of a Paradigm Change* (Houndsmill: Palgrave MacMillan, 2007); Arlindo Cunha and Alan Swinbank, *An Inside View of the CAP Reform Process* (Oxford: OUP, 2011).

isting evaluation systems.⁴ They have stressed the continuing dominance of the so-called positivist, linear model of policy-making, which posits that ‘more ‘rational’ policy making can be achieved by applying analytical tools’⁵ and assessed the gaps between such model of evaluation and actual practices. Shedding light on biases and distortions in real evaluation processes, such approaches may describe a system that falls short of expectations. Accounts adopting a more post-positivist approach meanwhile may seek to expose the political nature of policy appraisal.⁶ In this article we contribute to this stream of literature highlighting some of the shortcomings of CAP evaluation system. In addition, we also contend that evaluation can be studied as any other stage in policy processes, making reference to hypotheses developed in the context of policy studies.

We propose three well-established ideas developed in the context of public policy theories and apply them to our case study. First, we follow Kingdon in considering that political institutions are not unitary actors who express unambiguous and coherent policy preferences.⁷ Accordingly we draw attention to the multiplicity of actors which may be involved in conducting policy evaluations. We observe that the multifaceted nature of the agency brings complexity into evaluation activities, to be detected in competing evaluating criteria, priorities, methods, as well as in alternative interpretations of available evidence.

Second, we propose to adapt Kingdon’s suggestion that solutions are not necessarily developed in response to emerging policy problems⁸. Rather actors in the policy arena continuously discuss and refine ‘solutions’ that therefore appear to be ‘in search of a problem’. Kingdon’s conception clearly departs from the linear model of policy-making, which foresees a clear sequence of logical steps from the emergence of a policy problem, the definition of goals and alternative course of action, to the final selection of the best policy solution on the basis of solid evidence. We suggest that within the evaluation process, coherent, linear steps progressing from *ex ante* to *ex post* evaluation, with the appropriate identification of goals and indicators by which to measure the achievement of those goals, may similarly be disordered. *Ex ante* and *ex post* evaluation activities may develop in parallel and largely independently from each other. In this light we might expect only weak connections between their elements, and not neces-

sarily in the expected order. This is may be particularly so when the obligation to evaluate is being introduced into a policy area where interventions are already established, rather than where there is a *tabula rasa*.

Third, we accept the view that timing is of central importance for the understanding of policy dynamics. Kingdon stresses that only ideas whose time has come⁹ will enter the policy agenda, and that if actors are not ready to push for their preferred policy solution they will miss the opportunity. Similarly, we posit that only timely evaluations – which have resonance with the prevailing policy concerns – will have an impact on the broader policy processes.

In the following section we will analyse our case study in the light of these insights.

From an empirical point of view the article aims at providing original evidence on the characteristics of CAP evaluation, a topic that has been largely neglected by scholars working on CAP reforms. We focus on a specific policy instrument: cross compliance.

This hybrid instrument connects spending under the CAP to regulatory compliance by farmers with a set of standards, drawn primarily from environmental protection policy. Initially introduced as a voluntary agri-environment tool in the 1990s, cross compliance became compulsory for farmers’ receipt of direct income payments from 2005, and now applies across all payments under the CAP. It has however been criticised as being too blunt, limited and undifferentiated a tool to make a significant difference, either in relation to addressing environmental problems, or effectively supporting farmers in financial need.¹⁰

4 Hill, *ibid.*, (this work explicitly connects the CAP and the policy process); Hoerner and Stephenson, ‘Theoretical Perspectives on Approaches to Policy Evaluation’, *supra* note 2.

5 John Turnpenny, Camilla Adelle and Andrew Jordan, ‘Policy Appraisal’ in Eduardo Araral et al, *Routledge Handbook of Public Policy* (Oxford and New York: Routledge, 2013), pp. 244 et sqq., at p. 247.

6 *Ibid.*, at pp. 248-249.

7 John Kingdon, *Agendas, Alternatives, and Public Policies*, 2nd ed. (New York: Longman, 2010).

8 *Ibid.*

9 *Ibid.*

10 Jorge Nunez Ferrer and Eleni Kaditi, *The EU added value of agricultural expenditure – from market to multifunctionality – gathering criticism and success stories of the CAP* (Brussels; European Parliament, 2007).

In this study we trace the decade of policy evaluation, covering 2003-2013. This decade sees three major legislative reforms to the underpinning CAP legislation, adopted in turn in 2003, 2009 and 2013. Tracing the respective policy cycles, we examine the range of prospective and retrospective evaluation exercises conducted under each, and expose possible connections between them. The case study draws on evaluations conducted by the Commission, external evaluators, as well as the Court of Auditors. With policy being operationalised at the Member State and sub-state level, the process of review of the effectiveness of the interventions will be a multileveled pursuit. We do not include the many separate national level reviews however, limiting ourselves to EU level documentation.¹¹ Additionally, given that spending is linked to the operation of the cross compliance system, there will necessarily be financial and compliance auditing requirements, attesting the regularity and legality of operations, with a chain of review which leads from member state to Commission, to Court of Auditors. Audit has a heritage distinct from that of legislative evaluation¹² though the distance between them should not be overstated.¹³ We share the view advanced by Stephenson¹⁴ in this number that the Court of Auditor's 'value for money' performance auditing, which focuses on the economy, efficiency and effectiveness of a spending policy may be seen as a species of policy evaluation. For this reason, we have included relevant Special Reports from the Court of Auditors in our selection of documents.

The period under study demonstrates a progressively more focused and substantial effort by the Commission in its impact assessments, whilst exter-

nal, *ex post* reports are in turn more robust and evidence based. The whole process of evaluation, both *ex ante* and *ex post*, however, is shown to be challenged by the original policy design which failed to define with clarity the policy objectives of cross compliance. This rendered problematic the determination of appropriate indicators necessary for effective evaluation to take place. The case study charts the process of defining and re-defining these objectives and indicators. It demonstrates how findings from earlier evaluations were fed back into their definition, and highlights that in this process, it is not simply that indicators are set in the light of objectives, but that those objectives may be re-defined in the light of findings from the indicators.

II. 2003 CAP Legislation: Introducing Compulsory cross Compliance System – first Attempts at *ex ante* Evaluation

The debate on cross compliance appeared on the EU's agricultural agenda in the late '80s, as part of the push towards better integrating environmental concerns into sectoral policies. As first introduced into the EU in the CAP regulations adopted in 1992, cross compliance was optional, tied to payments additional to the main subsidies EU farmers received. Such additional payments were available in return for respect for good farming practices and the notion of good environmental condition, both defined at member state level. The key reforms of 2003 however, marked a critical shift in the way subsidies to farming were determined, 'decoupling' payments from levels of production, and replacing the multiple schemes under which payments could be claimed with a Single Farm Payment (SFP). Cross compliance was seen as being a necessary accompaniment to this shift, demanding compulsory legislative compliance by farmers if their SFP was to be forthcoming.

Regulation 1782/2003¹⁵ provided a list of 19 Statutory Management Requirements (SMR) that from 2005 onwards farmers had to implement in their daily activities.¹⁶ It should be stressed that none of the SMRs introduced, as a matter of EU law, any new substantive legislative obligations: all SMRs refer to already existing legislation, including the Birds Directive, the Habitat Directive, the Nitrates Directive, and regulations on food safety, and on animal welfare. The Regulation also required farmers to main-

11 Which, of course, will necessarily draw directly on national experiences.

12 On the history of audit in the EU, see *inter alia* Carol Harlow, *Accountability in the EU* (Oxford, OUP, 2000), Chapter 5; Brigid Laffan, 'Auditing and Accountability in the EU', *10 Journal of European Public Policy* (2003) pp. 762-777.

13 Eg, Frans Leeuw, 'Auditing and Evaluation: Bridging a Gap, Worlds to Meet?', *71 New Directions for Evaluation* (1996), pp. 51-60.

14 Paul Stephenson, 'Reconciling audit and evaluation? The shift to performance and effectiveness at the European Court of Auditors', this issue.

15 Regulation 1782/2003 establishing common rules for establishing direct support schemes under the CAP and establishing certain support schemes for farmers, OJ 2003 L 270/1.

16 *Ibid.*, Annex III. The Food Safety and Animal Welfare requirements were phased in, during 2006 and 2007.

tain all land in Good Agricultural and Environmental Conditions (GAEC) according to criteria fleshed out at national level, and to maintain areas of permanent pasture. These GAEC represented a new requirement and were introduced to prevent the negative impacts of potential land abandonment due to reduced CAP support.

Since SMRs were already supposed to be in operation, criticism was inevitably made that European farmers were being paid to observe pre-existing laws. However, cross compliance was presented as a means to respond to deficits at ground level in the application and implementation of this sectoral legislation, particularly environmental legislation, which the Commission highlights in its 2002 Mid Term Review Communication as having seen uneven implementation across the Member States.¹⁷ The 'main purpose of cross compliance' according to the Commission is to support the implementation of legislation.¹⁸ Additionally, cross compliance reflects the emphasis placed during this period on the need for a 'multifunctional' model of agriculture, in which other policy sectors – primarily environmental – are effectively integrated into the CAP.¹⁹ The Regulation's preamble stated that cross compliance rules 'should serve to incorporate in the common market organisations basic standards for the environment, food safety, animal health and welfare and good agricultural and environmental condition'.²⁰ The potential added value rests on three main innovations. First, the efforts to specify a range of concrete actions to be undertaken at the farm level in order to identify practices that contribute to main EU policy goals on environment, food safety, and animal welfare. Second, the establishment of a monitoring system to control the adoption of good farming practices and – third – the creation of a financial risk for farmers who do not meet these requirements. Taken as a whole, cross compliance and the connected Single Farm Payment (SFP) were intended to mark a simpler, less complex system of farm subsidy than the system being replaced. The Mid Term Review stresses the complexities of previous regime, and remarks that 'simpler conditions on payments [...] would enable farmers to spend more time on making their business successful and meeting their statutory requirements. It would also allow Member States to concentrate on checking environmental, food safety and animal health and welfare requirements'.²¹

To operate successfully, it might be expected that even a 'simplified' system based on cross compliance would generate substantial administrative and practical challenges. The very definition of requirements to be adopted at farm level under the SMR and GAEC would not be a straightforward exercise, especially as farming methods, land-use patterns and environmental conditions are very different across Europe and within countries, so that concrete practices linked to SMRs and GAEC could vary substantially. From an administrative point of view, a variety of national, and possibly regional and local authorities would be involved in SMR implementation, necessitating both vertical and horizontal institutional coordination. Finally, for controls to be effective on-farm inspections must be carried out, which in turn requires the identification of dedicated authorities, the definition of very specific conditions to be checked and the definition of criteria for the reduction of subsidies that have to be modulated according to the severity, extent, permanence, repetition and intentionality of infringements.²²

Given the complexity of the system, and its financial consequences for farming, a careful *ex ante* evaluation of its advantages and disadvantages might have been expected – indeed, demanded.²³ However, a specific assessment of the likely impacts of the new cross compliance system was not carried out before the 2003 legislation was adopted. In the context of the broader Mid Term Review, the Commission's DG Agri commissioned a number of reports to assess the likely impacts of the move to a decoupled system of support, using a range of economic modelling tools. The economic, social, environmental, and administrative implications of cross compliance received marginal or no attention. Overall it was as-

17 Commission Communication Mid Term Review of the CAP, COM(2002)394 final, at p.8.

18 *Ibid.*, at p. 21.

19 Michael Cardwell, *The European Model of Agriculture*, (Oxford: OUP, 2004).

20 Regulation 1782/2003, at para. 2.

21 *Supra* note 17, COM(2002) 394 at p. 10.

22 Regulation 1782/2003, Article 7(1).

23 Council Regulation 1605/2002 on the Financial Regulation applicable to the general budget, requires the economy, efficiency and effectiveness of spending policies to be assessed, and *ex ante* and *ex post* evaluations to be conducted, OJ 2002 L 248/1, at para. 11.

sumed that 'the implementation of cross compliance conditions related to the enforcement of 'good farming practices'... would only have a marginal impact on market balances as they are assumed to generate no additional production costs against the Agenda 2000 situation'.²⁴

In short, to the extent that any *ex ante* assessment of the compulsory introduction of cross compliance could be said to have taken place, it was characterised by a very light touch, with little clear evidence base. The assessment focuses narrowly on costs for farmers, and neglects the impact on the national administrations asked to put cross compliance into place. Finally, the objectives for cross compliance are not clearly stated, reflecting something of a lack of agreement as to what these should be.²⁵ The main 2003 legislation outlines in its preamble the objective of policy integration, and the environmental benefits of the GAEC, though other policy objectives exist, including policy simplification, and support for policy implementation, as well as ensuring a level playing field for farmers in relation to the quality related measures they are subject to, and providing a justification for the continuation of CAP subsidies.²⁶ In any event, it is certainly not made clear how the achievement of these objectives, and the effectiveness of the policy might be measured going forward. The perception of cross compliance as itself a considerable simplification of the existing regime perhaps explains why the Commission did not embark on a particularly intensive *ex ante* assessment or detailing of the envisaged regime. Additionally, it may have been expected that much could be determined during extensive discussions among the Commission and member states during a 'phasing-in' period. As seen

in the next section, both these expectations proved overoptimistic.

III. 2003 CAP Legislation: First Round of (multiple) *ex post* Evaluations – Too much, too soon?

Under Regulation 1782/2003, the Commission was required, by the end of 2007, 'to submit a report on the application of the system of cross compliance accompanied, if necessary, by appropriate proposals notably with the view of amending the list of statutory management requirements'.²⁷ Accordingly, in March 2007 the Commission submitted a first *ex post* assessment report,²⁸ though it declared that it was not yet in a position to consider a reform to scope the regime, and would instead focus on 'proposing immediate solutions to the problems identified so far' in respect to the administration of the system. In terms of evaluation procedures, the Commission started in 2006 to collect evidence from a variety of sources: including comitology committees, external reviewers, and audits with Member States. Notably, the Commission report identifies two objectives for cross compliance, neither of which were specified in the original legislation. The first is to contribute to the development of sustainable agriculture, and the second is to make CAP more compatible with the expectations of society.²⁹ Neither of these objectives is explicitly engaged with in terms of identifying and connecting relevant indicators as part of the *ex post* review. Instead the report focuses on the operation to date of member state's management and control systems, and, particularly, their perceived burdens, particularly as they are felt by farmers. Remarking on the resistance of farmers to cross compliance, the Commission declares 'every effort should be made to improve its acceptance by all actors, for the benefit of all',³⁰ and draws on (partial) data on controls, checks and reductions presented for 2005 and 2006, to outline a range of matters that could be streamlined and simplified.³¹

This first Commission report did not focus on the effects of cross compliance in terms of whether farming practices had been impacted by the new obligations. Nor did it consider the question of whether rates of compliance with sectoral legislation had been affected. This question was however raised in the first external *ex post* reviews of the 2003 legislation. This

24 European Commission, CAP Mid Term Review Proposals, Impact Analyses, February 2003, at p. 36, see http://ec.europa.eu/agriculture/policy-perspectives/impact-assessment/mid-term-review/rep_en.pdf.

25 Meri Juntti, 'Riding the Green Wave in the European agriculture sector? A discourse analysis of the new cross compliance mechanism', CSERGE Working Paper EDM 06-15, ceserge.ac.uk.

26 *Ibid.*

27 Regulation 1782/2003, Article 8.

28 Report from Commission to Council on the application of the system of cross compliance, COM(2007)147.

29 *Ibid.*, at para 1.

30 *Ibid.*

31 This report led to a minor legislative revision in 2008, Council Regulation 146/2008, inter alia allowing for exclusion of 'minor infringements'.

major report, presented in July 2007, was commissioned by DG Agri to Alliance Environnement³² and undertaken during 2006-2007.³³ Drawing on individual experts' reports from each of the Member States, the report acknowledges that it has been 'subject to comment by the European Commission Steering Group overseeing this evaluation and revisions incorporated'.³⁴ The report establishes an intervention logic for the cross compliance regime, 'in order to guide the evaluation'³⁵ and then specifies appropriate objectives, inputs and impacts against which evaluation can take place. The report outlines first a set of 'needs' to which cross compliance responds, specifically integrating environmental objectives, supporting sustainable agriculture, minimising the possible negative effects of decoupling, and supporting farmers' respect for EU law.³⁶ These are then translated into three 'general objectives': first enhancing respect for legislation, second avoiding land abandonment and ensuring GAEC and third, maintaining permanent pasture.³⁷ Asking 'to what extent does cross compliance contribute to raising levels of compliance?' the evaluator says 'comparison with checks made before 2005 should be carried out. Unfortunately, the data from previous checks is not available in a form which would allow meaningful comparison to be made [...] in most cases, data are not available at all'.³⁸ As with the Commission report, the timing of the evaluation was seen as rather problematic, in that given the relatively early stage in the policy's existence, certain information on implementation could not be obtained at the time of preparing the report.³⁹

The second external report came from the Court of Auditors, which published in November 2008 a comprehensive report on the overall effectiveness of the cross compliance policy, based on audits carried out in 7 countries.⁴⁰ The report is highly critical, with the cross compliance system being seen as unnecessarily complex, and as yet not operating effectively. The Court highlights from the start the weaknesses in the definition of policy objectives, which it stresses are unclear, and not presented in a 'SMART'⁴¹ manner, and without appropriate performance indicators or baseline levels to enable effective monitoring to take place. Due to this 'lack of clear objectives and monitoring data, evaluations are difficult to carry out. Consequently, accountability for results and impacts is problematic'.⁴² The Court also criticises the process behind the selection of the SMR and GAEC included under cross compliance, which it suggested should

have been supported by studies 'assessing action needed as well as potential difficulties'.⁴³

Aside from the critique of policy objectives and indicators, the *ex post* reviews share a number of common themes. These centre on the complexity of the system, and also the wide variation in Member State practice in respect to the systems' application and operation. This includes the variability in the definition of farm level requirements and standards by Member States, with many (especially those relating to the GAEC) at that time remaining as yet undefined. Also, concerns were expressed over the system of on-farm controls, in relation to their organisation, timing and frequency, as well as the sanctioning system, where wide variability in the levels of sanctions imposed were found. A wide range of recommendations were put forward as a result of the first round of *ex post* evaluations. The main lesson learned by the Commission was that a simplification of the system was needed. Of course, the Commission was an apt pupil in the simplification lesson, as, starting with the 2005 Communication 'Simplification and Better Regulation for the Common Agricultural Policy'⁴⁴ the simplification agenda has taken on a powerful presence in CAP governance.⁴⁵

32 A Partnership between the Institute for European Environmental Policy (UK) and Oréade-Brèche Sarl (France).

33 Alliance Environnement, Evaluation of the Application of Cross Compliance as Foreseen Under Regulation 1782/2003, Prepared for DG Agri, July 2007.

34 *Ibid.*, Part I, Descriptive Report, p. 4.

35 *Ibid.*, Part II, Replies to Evaluation Questions, p. 4.

36 *Ibid.*, at p. 5.

37 *Ibid.*

38 *Ibid.*, at p. 64.

39 *Ibid.*, Part I, at p. 4.

40 Court of Auditors Special Report No 8/2008, *Is Cross Compliance an Effective Policy?*, The Commission's reply to the Court's concerns draws on certain findings from the AE report, for example, to demonstrate that clear objectives were identifiable.

41 The Commission's failure to follow the requirements of the Financial Regulation and a range of DG Budget guidance documents are highlighted in this regard, Court of Auditors Report, p. 35.

42 Court of Auditors Report, at para. 84.

43 *Ibid.*, at para. 16.

44 COM(2005)509.

45 See for example, October 2006, Rolling Simplification Action Plan; November 2007 Evaluations of administrative burdens; COM(2009) 128, A simplified CAP for Europe – A success for all; and SEC(2009) 1601, the list of 39 simplification suggestions made by delegations to Council, 'about one third of the 39 proposals concerned the matter of cross compliance', at p. 7.

IV. 2009 CAP Legislation: Second cycle of *ex ante* Evaluations: 'Assumptions, Arguments and Preferences'

The envisaged reconsideration of the scope of application of cross compliance which was originally foreseen under the 2003 Regulation became part of a more general 'Health Check' of the CAP which commenced in 2008, and which sought to continue the process of policy simplification. This resulted in a major legislative reform of the CAP through Regulation 73/2009.⁴⁶ The 2009 CAP revision was accompanied by a formal Impact Assessment of likely environmental, social, economic and administrative impacts of reform. In terms of procedure, the IA was jointly carried out by 15 DGs and Commission services under the lead of DG Agriculture. The process included stakeholders' meetings and an online consultation open to the general public which received 85 replies. The IA report had to be resubmitted twice to take into account of comments by the IA Board. The eight page section of the IA dealing with cross compliance follows a template of background, policy definition, objectives, policy options and analysis of their impacts.⁴⁷

The reconsideration of the scope centered on an update of the SMR, in order to take into account both new regulations dating after 2003, as well as new challenges to environment and agriculture which had been prioritised, specifically climate change, bioenergy, biodiversity and water management. Referring to the Alliance Environnement report, the Commission reports that 'cross compliance has been evaluated as making a significant contribution to ensuring compliance with obligations as well as contributing to increasing farmers' awareness about obligations'.⁴⁸ It should be noted however that this perhaps

overstates the findings the AE report made on the impact on compliance, though it did find awareness raising. The IA also highlights concerns about unwarranted administrative burdens created by measures which may be considered irrelevant to meeting the goals of cross compliance.⁴⁹ These goals, or objectives are those presented by the Commission in its 2007 Report – promoting sustainable agriculture, and enhancing CAPs role in meeting society's expectations.⁵⁰ The Commission asserts that it will screen the measures included under cross compliance in order to examine their contribution to these objectives.

Three options are presented. The first, Option 0 is to maintain the status quo, i.e. the current list of SMRs and GAEC, in order to collect more detailed data on their potential costs and benefits; Option 1 foresees a better targeting of the existing scope of cross compliance, meaning the deletion of requirements that proved not directly linked to farm activities, or that bear excessive administrative costs; finally Option 2 is the broadening of the scope of cross compliance, including in the list of SMRs provisions related to climate change mitigation and water management. The evaluation conducted is defined 'qualitative', though in reality it does not employ a specific method, and does not make any explicit use of qualitative appraisal tools such as checklists or impact tables.⁵¹ Oddly, the Commission explains that its analysis of the options will not consider economic or employment impacts as these are not assumed to be affected.⁵² Each option is evaluated for its potential advantages and disadvantages, inductively derived from past experience and common sense. For example, the disadvantages foreseen in broadening the scope of cross compliance by an extension of the list of requirements are a) to increase the administrative burden; b) to provoke negative reactions on the part of farmers who might feel overloaded and have negative impact on incomes. None of these potential negative effects are explained in detail or supported by either quantitative or qualitative evidence. Indeed the Commission had to admit the difficulties encountered in performing the *ex ante* assessment and made clear that 'many of the following advantages and disadvantages are part of a public debate based more on assumptions, arguments and preferences, than on concrete evidence'.⁵³

Notably, 2008 also marks the first year that DG AGRI's internal Annual Management Plan⁵⁴ contains a set of objectives and indicators for cross compliance. The specific objectives now appear clearly es-

46 Council Regulation establishing common rules for direct support schemes under CAP, OJ 2009 L30/16.

47 SEC(2008)1885, 20.5.2008, Section c.2.

48 SEC(2008)1885, at p. 36.

49 The Commission additionally cites its clearance of accounts procedure as a source of information.

50 COM(2007)147.

51 Nilsson et al, 'The Use and Non-Use of Policy Appraisal Tools in Public Policy Making' 41 *Policy Choices* (2008), pp. 335 et sqq.

52 SEC(2008)1885, at para 5.

53 IA 2, SEC(2008)1886.

54 On file with authors.

tablished as promoting sustainable agriculture and meeting society's expectations. The first edition of the Plan specified one, somewhat unpromising indicator: the opinions of farmers on cross compliance. A mid-year update adds to this, the opinion of the public; the number of farmers informed; the ratio of permanent pasture, and the number of hectares concerned by cross compliance.

V. 2009 CAP Legislation: Second Round of *ex post* Evaluations – Does cross Compliance Increase Compliance?

Unlike the Regulation adopted in 2003, the 2009 Regulation did not contain a direction to the Commission to conduct a review of cross compliance, nor was any further comprehensive review of the system akin to the AE evaluation foreseen. Day to day management opportunities exist for information to be gained about the operation of cross compliance however. Under the Commission's clearance of accounts procedures, Member States' control and sanctioning activities are audited, and claw-back of monies made if found wanting. As noted above, from 2008, objectives and indicators for cross compliance have been presented in DG Agri's Annual Management Plans, though markedly, the first indicator specified in 2008, on farmers' perceptions, did not reappear in any future years' Management Plan. Whilst results for some indicators are provided annually (such as the percentage of CAP payments covered by cross compliance), some are provided with much less frequency, such as the public's (very positive) opinion of cross compliance.⁵⁵ What is certainly not being measured under these indicators is whether compulsory cross compliance has resulted in increased rates of compliance with legislation.

Despite the absence of a dedicated *ex post* evaluation on the 2009 cross compliance system, two external evaluations are conducted during the second legislative cycle which connect explicitly with cross compliance. The first is a mid-term evaluation of the Farm Advisory Service,⁵⁶ the service set up to 'help farmers to become more aware of material flows and on-farm processes relating to the environment, food safety, animal health and welfare'.⁵⁷ The evaluation cautioned about the difficulties of evaluating a system still in its infancy, the lack of documentation, and the 'variable perceptions' held of the scope and objectives of the

FAS.⁵⁸ Nonetheless, drawing on country reports, interviews, case studies and postal surveys of farmers, the evaluation assessed that the available data showed that the FAS had created a favourable framework for awareness raising amongst farmers. The evaluation was more reticent in answering the question whether the FAS supported the implementation of cross compliance. In the report, it is explained that the initial approach to answering this question had been to consider comparing 'cross compliance penalties and their evolution since the implementation of the FAS'.⁵⁹ Conducting a comparison between compliance rates had already proved difficult for the AE evaluation in 2007, due to a lack of baseline information, whilst here, ADE explained that following 'an internal discussion with DG Agri' such an approach was considered 'irrelevant' and unable to appreciate the role of the FAS in compliance. The problem was seen to be due to the nature of controls on cross compliance. Low levels of breaches may not be the result of increased compliance, but, 'could be the result of difficulties in carrying out controls related to more complex rules'-and similarly, easily controlled rules could give rise to a preponderance of breaches. In the same vein, in 2011, the Institute of European and Environmental Policy presented the evaluation 'Assessing Biodiversity and Habitat Preservation',⁶⁰ which sought inter alia to assess the contribution made here by cross compliance.⁶¹ IEEP reported that such evidence as exists suggests that awareness of legal obligations has been raised by the threat of loss of payments for non-compliance, as well as through the work of the FAS, but 'it remains unclear whether or not overall compliance with regulations also increased'.⁶²

55 Special Eurobarometer, 'European Agriculture and the CAP', 2007, next scheduled for 2014; approval ratings of over 80 % apply to cross compliance for food quality (86 %), animal welfare (84 %) and environmental protection (83 %).

56 Evaluation of the Implementation of the Farm Advisory Service, conducted by ADE (Belgium), in collaboration with ADAS, Agrotec and Evaluators.eu, December 2009.

57 Regulation 73/2009. OJ 2009 L 30/16; A Commission Report followed the external report, COM(2010)665 final.

58 Evaluation of the FAS, *Supra* note 56, Final Report, Evaluation Part.

59 *Ibid.*, at p.48.

60 Jana Polakova et al, *Addressing Biodiversity and Habitat Preservation through measures applied under the CAP*, Prepared for DG Agri, Contract No.30-CE-0388497/00-44 (IEEP; London, 2011).

61 In particular, through the inclusion of the Birds and Habitats Directives, and relevant GAEC.

62 *Supra* note 59, at p.84.

The tangential focus of this second cycle of *ex post* reviews does not lend itself to enabling the most pressing concerns highlighted in the first round to be reconsidered, however. Further, as these evaluations demonstrate, there are accepted limitations to what can be shown about cross compliance and its operation and impact on farming, not least whether it has resulted in higher levels of legislative implementation and compliance, despite this being the primary reason foreseen by the Commission for the policy's introduction in 2003.

VI. 2013 CAP Legislation: Third Round of *ex ante* Evaluations – Improved Impact Assessments, Objectives Redefined

The idea of cross compliance relies on the threat of financial penalties through reductions to the Single Farm Payment. No assessment has ever been made of the level of penalties which are effective to influence farmer behaviour, nor of the point at which the leverage of the Single Farm Payment is lost. With the levels of subsidies falling with each reform of the CAP, the long term viability of cross compliance is open to question. In fact, the possible cessation of direct subsidies altogether was placed on the agenda in 2010, with the launch of a public debate on future of CAP, 'CAP towards 2020'.⁶³ In the event, the policy route chosen did not present such a radical change, but would see direct payments continue in the form of a minimum income support payment, subject to cross compliance, with the enhancement of environmental performance through a 'greening' element.

The proposals for the 'CAP Towards 2020' legislative package, presented in 2011 would finally be adopted in 2013.⁶⁴ The proposals are accompanied

by much fuller IA than had previously been presented.⁶⁵ A synthesis of the retrospective evaluations of existing instruments is presented,⁶⁶ to demonstrate that they are 'generally effective, efficient and pertinent to their objectives, but there is a need for better targeting'.⁶⁷ On cross compliance specifically, the Commission claims that results show 'the cross compliance mechanism contributes to the environmental concerns in agriculture',⁶⁸ whilst the FAS had 'contributed to awareness raising, a better understanding of cross compliance requirements, a reduced risk of penalties and improved farming practices among beneficiary farmers'.⁶⁹ Simplification is addressed separately, and, drawing on both AE and Court of Auditors reports, the Commission reports on how it has reduced the 'irritation factor' for farmers, and worked with member states to clarify farm level obligations. Prospectively, the IA considers the re-defining of the scope of cross compliance, and of the appropriate SMR and GAEC for inclusion.⁷⁰ The process adopted by the Commission in this assessment goes some way to address the criticisms the Court of Auditors 2008 report made in relation to the lack of a clear rationale behind the choice of measures included. A more systematic approach is deployed to consider the appropriate scope. In determining which obligations the system should focus on, the Commission stresses that these should be 'the most important provisions'⁷¹ relevant to farming activities, acknowledging the extra burden cross compliance brings in respect to the administration of existing sectoral legislation. A series of criteria is then outlined for the inclusion of measures under the cross compliance framework – including their relevance, being of a high priority; having a direct link with agricultural activity/land; relating only to the actions or omissions directly attributable to individual farmers; controllable at reasonable cost and quantifiable, and not creating undue discrepancies between concerned farmers, beyond what is required to take into account local needs'.⁷² A series of existing and prospective SMR is then assessed against these criteria, with a number of recommendations made for exclusion from the list. In some cases, this relates to the issue of controllability, and farmers needing to be caught 'red handed' (for example, the killing of wild birds), whilst for another, it is the compliance cost where 'very few or no infringement cases are found' (hormone ban). Whilst there may be questions about the coherence of the assessments made, it certainly

63 COM(2010)672.

64 Regulation 1306/2013.

65 Main Report, SEC(2011)1153 final/2.

66 *Ibid.*, Annex 11B.

67 *Ibid.*, at p. 5.

68 *Ibid.*, at p. 6.

69 *Ibid.*, at p. 6.

70 SEC(2011)1153 final/2, Annex 2E on cross compliance.

71 *Ibid.*, at p. 2.

72 *Ibid.*, at p. 2.

presents a more systematic thinking through of the issue than seen in previous impact assessments on the matter.

Overall, the Impact Assessment presents two options in respect to cross compliance, the first being a streamlining through a reduction of SMR, whilst upgrading agri-environmental opportunities operating above the baseline, through a system of compulsory 'greening' requirements. The second is to increase the scope of cross compliance, with the inclusion of *inter alia* the Water Framework Directive. The Commission's proposal attempted to incorporate elements of each, though the legislation finally adopted⁷³ was some way from the Commission's proposal. Notably, there is no extension in scope, the new measures are not introduced into the SMR framework, the compromise being that they will be advised on under the FAS, and kept under review. In a climate of increased focus on productivity and competition in agriculture, and continued emphasis on simplification, the realistic prospects for future inclusion are limited.⁷⁴

The specific objectives for cross compliance are also subtly redefined during this legislative period. In the Impact Assessment, the Commission states that the purpose of cross compliance 'is two-fold: first, to raise farmers' awareness of their legal obligations [...] and secondly to meet society's expectations'.⁷⁵ The Regulation as adopted retains these two elements and links them to a general objective of promoting sustainable agriculture.⁷⁶ The specification of this 'awareness raising' objective is new during this legislative cycle, and it should be noted that this objective has been successfully and effectively demonstrated through various of the *ex post* evaluations conducted on cross compliance and the operation of the Farm Advisory System. In this way, we see a process of refinement of policy objectives in line with demonstrable evaluation results.

VII. Discussion and Conclusions

This case study of a decade of policy evaluation in respect to cross compliance has followed the processes of *ex ante* and *ex post* evaluation around three major legislative reforms, and has drawn out connections between them. We argue that – in line with our theoretical propositions – the effective connection between *ex ante* and *ex post* evaluations is potential-

ly compromised by a number of factors which are highlighted by the cross compliance case study. These in turn are: the significance of appraisals being conducted by a multiplicity of actors, (and consequent inconsistencies among reports drafted by different actors); the absence of linearity, and a dis-ordering in the stages of determining *ex ante* and *ex post* appraisal criteria (exacerbated through an initial lack of clarity in respect to policy objectives, which further more changed over time; and related, the absence of appropriate indicators); and the importance of the timing of evaluation studies in the policy cycle. Finally, we point to a rather ad hoc approach to *ex post* assessment, and a lack of consistency in the matters being evaluated.

In more detail, first, it has been seen that external *ex post* review has tended to be significantly more robust in terms of the evidence base, whilst the Commission's *ex ante* reports have tended towards being more light touch and anecdotal, although there is some improvement in Commission practice over the three rounds. *Ex ante* evaluations have become more systematized, following a standard model, and have explicitly drawn on findings of previous *ex post* reviews.⁷⁷ Still, relevant differences have been detected among reports in all rounds of evaluations, suggesting that criteria, methods and interpretations of the achievements cross compliance are only partially shared among actors.

Second, in respect to policy objectives, the cross compliance instrument was launched without a clear and accepted agreement over its specific objectives, and such objectives as were stated subsequently changed over time, making a comprehensive assessment of expected and achieved results difficult. In 2003, cross compliance is presented variously as being designed to bring about sectoral policy integration, and to respond to an implementation deficit in (particularly, though not exclusively) environmental

73 Regulation 1306/2013, on the financing, management and monitoring of the CAP OJ 2013 L 347/549. Following the move to co-legislation in this area, the impact of the relevant EP Committee is notable.

74 The 'greening' dimension, and with it the prospects for enhanced contributions to environmental sustainability was also undermined in the final version.

75 SEC(2011)1153 final/2, Annex 2E, at p.1.

76 Regulation 1306/2013, preamble, at para. 54.

77 As is now an expectation: see Commission Communication on Regulatory Fitness, COM(2012) 746.

legislation. Whilst there may be close connections between these objectives, ultimately, the effectiveness of cross compliance in meeting each of these objectives may be assessed in different ways. By 2009, the objectives of cross compliance are cast as contributing to sustainable development and ensuring CAP meets society's expectations. Finally, in 2013, sustainable development is presented as the global objective, accompanied by the more specific objectives of raising farmer awareness and meeting society's expectations. As policy evaluation becomes more institutionalised within the EU order, policy makers are increasingly aware of the accountability obligations which will need to be met. As a consequence, the objectives and expected outcomes might be defined in a more 'measurable' way, and, in the case of cross compliance, with these being redefined in light of what has been measured – a dis-ordering of the expected, rational approach.

Third, no operational indicators for the original objectives from the first legislative cycle were specified, which created critical difficulties for the process of policy evaluation. In its 2007 report, Alliance Environnement had sought to proceed on the basis that rates of compliance with mandatory standards would be an appropriate output and result indicator, but with no baseline information, it faced considerable difficulties putting that into practice. When, after five years of operation, the Commission first specified indicators in the 2008 Management Plan, it listed first, farmer opinion, which is undoubtedly rather limited a tool to tell whether the policy was working effectively. Whilst further indicators were subsequently developed, to include for example public opinion, the indicator of rates of compliance has never appeared amongst them. Whilst the setting of indicators might be considered a rather dry technical act, the choice of what will and what will not be measured can also carry considerable political significance.

Fourth, the case study illustrates the significance of timing in policy evaluation. Both the AE 'mid-term' reports on cross compliance, and the ADE evaluation on the Farm Advisory Service were presented with

caveats about the lack of available data, and the usefulness of what data there was, given that the instruments under review were in their earliest infancy. Similarly, the Commission declared it was unable to conduct the review on scope as foreseen for late 2007. Questions should be asked about when such mid-term evaluations are able to be undertaken effectively, so as to provide material which can be usefully feed into the policy cycle. Additionally, the case study reminds us that policy making is an ongoing and iterative process – whilst there was some criticism at the time from commentators that the 2008 Court of Auditors report came too late to be fed into the 2008 Health Check negotiations, it was drawn on subsequently in the IA for the post 2013 CAP regime.

Finally, the policy evaluation cycle around cross compliance has been complicated by the variety of reviews being undertaken. Whilst the first legislative cycle was accompanied by a dedicated *ex post* external and Commission review, the process of *ex post* evaluation during the second cycle was through reviews commissioned in respect of related instruments and policy concerns. As such, they did not provide effective opportunities for an ongoing and consistent re-assessment of the matters that had emerged as being most problematic under the first cycle. This rather ad hoc approach to evaluation is set to be overcome, in principle, through the adoption of a Common Monitoring and Evaluation Framework, which will apply across the CAP.⁷⁸

In conclusion, we argue that policy evaluations studies would benefit from a more firmly connection with the broader field of policy studies. As noted in the introduction, public policy analysis provides strong theoretical arguments to explain the complex nature of policy processes. In this light, the shortcomings that we observe in the evaluation cycle of cross compliance are not to be interpreted as deficiencies of the system, to be overcome by perfecting the rationality of the process. Rather incoherence and some lack of clarity are essential characteristics of all stages of policy processes, including evaluation. The task for scholars is therefore to achieve a better understanding of the role of *ex ante* and *ex post* evaluation in a system where conflicting actors, inconsistent interpretations, and ad hoc solutions are inherent, unavoidable characteristics.

78 Regulation 1306/2013, Article 110.