

Regulating local food

Lessons from Poland and Sweden

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The EU policy in general, and the strategy for the Baltic Sea region¹ in particular, emphasizes ecological concerns and envisions sustainable production as a key for preserving the Baltic Sea for future generations. Although this goal is broadly accepted in the region, economic and social differences have caused the regional states to adopt and promote different strategies in order to achieve this aim. However, in the implementation of this strategy, as well as in the implementation of other EU policies, it has been noted that the objective of sustainability might require different policy prioritizations in different EU Member States. Regulation of food production and consumption is a particularly interesting topic in this context. The Nordic countries – characterized by wealthy and ecologically concerned consumers – have increasingly sought to promote sustainability on the consumer side through labeling of ecological alternatives and encouraging local procurement. The Baltic countries and Poland, in contrast, have recently underscored how already existing local small-scale production serves the overall aim of sustainability and might work as a model for the region.

In both approaches, an important function is assigned to the idea of “local”. In recent years, the concept of local food systems (LFS) has received growing attention from social activists, politicians, and researchers.² Although researchers in sociology, geography, and anthropology have been trying to understand the meaning and the implications of the local food phenomenon, legal scholars have given it very little consideration.³ By building on the existing research in the humanities, this article aims to provide an understanding of the role of law and regulation in facilitating or limiting the “local” path to sustainability. This article focuses on the example of a recent

local initiative in a southern region of Poland and juxtaposes it with Swedish experiences of a different application of the “local” concept, and shows ways of utilizing the discourse of proximity in two different legal systems in the Baltic region. The objective of this work is to first analyze the nature and source of the regulatory constraints on the development of localized food strategies in the two states, and more generally in the EU, and then assess the suitability of the two strategies in their associated legal and empirical contexts.

Localizing food production

Ideas of local food, now taken up by policy makers and public authorities at the national as well as transnational level, are not new. They originate largely from social-movement activism. In the 1970s, European and North American discourses of “small is beautiful” developed an orientation towards re-localization of food production and consumption.⁴ Local food was envisaged as an alternative to the disconnected relationship between producers and consumers offered by conventional globalized food systems.

A significant variety of ideological food movements have developed since that time. Although they are all based on a similar set of values, they vary in accordance with which value they choose to emphasize. These range from physical proximity and shortened value chains, community and direct relationships between the producer and consumer, to the quality connected with the specificity of the place of origin, or *terroir*.⁵

Interestingly, most LFS are based on a down-chain perspective of production and define food as local before the link to the consumer has ever been established. Hence, consumers are, in a way, constructed

as un-localized passive recipients rather than as contributors to the process of localization and the meaning of local food.⁶ More recent, progressive LFS movements have expanded their sets of values to include objectives such as community food security and local resilience and stress the importance of socio-cultural embeddedness.⁷

In the EU, the LFS movement took the form of a quality shift and became entrenched in the EU agricultural product quality policy.⁸ Here, quality is attributed to features such as geographical and climatic specificity, traditional farming and production practices, and specific local trust and knowledge. Three major protection schemes have been developed: protected designation of origin (PDO), protected geographical indication (PGI), and traditional specialty guaranteed (TSG). The policy’s value background is presented in the preamble to the Regulation: “Citizens and consumers in the Union increasingly demand quality as well as traditional products. They are also concerned to maintain the diversity of the agricultural production in the Union. This generates a demand for agricultural products or foodstuffs with identifiable specific characteristics, in particular those linked to their geographical origin.” It is important to notice that the reference to locality is indirect through the combination of “specific characteristics” and “geographical origin”. One explanation for this construction is the attempt to avoid recreating political divisions between the Member States and to reduce room for the occurrence of discrimination and protectionism. Hence, place of origin is created not through reference to its political belonging but instead as a “socio-natural construct”.⁹

Although the quality policy is the most widely known example of the EU’s integration of the LFS objectives, the notion and value of “local” have slipped into the EU regulation through other paths. In those

cases, local is seen as an exception to the general rule and is applied under strict conditions. However, these examples are likely to be the true application of LFS concerns in that they clearly refer to the original objectives of the movement and explicitly serve the objectives of sustainability. The following section highlights some examples of such alternative uses of the concept of localization within the EU regulatory system.

Alternative approaches to LFS in the EU

The first alternative way to embrace the concept of “local” in EU regulation emerged primarily in the context of enlargement. In this context, “local” was used to refer to the restricted dispatch market for products originating in the acceding states that did not fully conform to the Single Market rules. Although the original aim of “local” was to signify a limitation, from the perspective of many new Member States, the rule was interpreted more as one that created an opportunity. This was especially the case with regard to small-scale producers, who under this exception were allowed to continue their production irrespective of the fact that they were not able to live up to all of the strict production standards. This specific interpretation and the consequences of this mechanism in the case of Poland will be presented in the following discussion.

In the wake of Poland’s accession to the EU, ac-

knowledge of the existing discrepancies between the EU requirements and the Polish rural reality propelled development of a number of contingency options to facilitate survival of the most disadvantaged participants of the agro-food sector. Transitory measures for adjustment were agreed upon that included, on the one hand, a reduced level of direct payments for Polish farmers and, on the other, extended time for some of them to adjust to the EU rules (e.g., hygiene and sanitary standards). This made it possible for Polish farmers to continue infrastructural upgrading after the date of accession on the condition that they sell their products exclusively on the local market. Moreover, a number of mechanisms to relax some of the stringent EU requirements were created to target small-scale producers. The two most significant of those exceptional provisions are described below.

Direct supply

Regulation 852/2004 on the hygiene of foodstuffs¹⁰ lays down detailed and very stringent hygiene rules for food business operators with the aim of guaranteeing food safety throughout the EU. It recognizes, however, that in the case of the direct supply of small quantities of primary products by the food business operator producing them to the final consumer or to a local retail establishment, it is appropriate to protect public health through national law, particularly because of the close relationship between the producer and the consumer. Despite the overarching objective of unification of conditions for all participants in the Single Market, the Regulation leaves room for diversity. This provides an opportunity for national lawmakers to establish locally applicable conditions that would achieve the same effect of guaranteeing food safety and public health, but would be more adjusted to local conditions and limitations. At the same time, it indirectly provides a window of opportunity for those local food

producers who would not be able to live up to the EU requirements but who can, by available means and knowledge and in accordance with national legislation, guarantee the safety of their products.

Therefore, direct supply is largely based on LFS ideas, and in particular on the significance of trust and shared values in the direct relationship between producer and consumer. Hence, it is based on the assumption that in the short value chain of direct supply, the consumer’s knowledge of and personal relationship with the producer makes the need for state certification redundant, and the traditional knowledge of the producer, with minor intervention by public regulation, is sufficient to guarantee public health. An important challenge for the national legislator, however, is to provide rules defining and limiting the application of the direct supply mechanism that would be suitable in their local context and guarantee a minimum level of health protection. In Poland, an order of the Minister of

Health¹¹ described direct supply as “exercised directly by producers of primary products, who supply small quantities of foodstuffs to final consumers or to local retail establishments selling to final consumers”. Furthermore, it limits the amount, by specifying “small quantities”, as well as the type of foodstuffs that can be considered under this mechanism. Finally, the order specifies the definition of the local market in which direct supply can take place. The local market is defined as the territory of the voivodeship (provinces in Poland) where primary production takes place and/or neighboring voivodeships.

Marginal, localized, and restricted activity

Regulation 853/2004 on specific hygiene rules for food of animal origin¹² constitutes an important element of the large package of hygiene rules adopted in the EU in 2004, which also contained the aforementioned regulation on the general hygiene of foodstuffs. It lays down specific rules for various sectors of production of food of animal origin. Although its overarching aim is to establish a uniform level of protection throughout the entire Single Market and to guarantee the safety of all food products of animal origin circulating in the EU, it does allow for Member States to have some discretion in extending or limiting the application of the requirements under national law. Limiting application of the Regulation is only acceptable when existing requirements are sufficient to achieve food hygiene objectives and when the supply of food of animal origin from one retail establishment to another establishment is a marginal, localized, and restricted (MLR) activity. Regulation 853/2004 prescribes the conditions for such supply: it should be only a small part of the establishment’s business, the establishments supplied should be situated in the supplier’s immediate vicinity, and the supply should concern only certain types of products or establishments. Specification of those conditions is left to the Member States through national legislation.

IN POLAND, AN ORDER of the Minister of Agriculture and Rural Development¹³ provided detailed conditions for classifying activity as marginal, local, and restricted, including the type and area of production, as well as the specification of the amount of products in various categories, and it specified minimal veterinary requirements for those activities. In terms of special limitation, the requirement for the distance between production and sale was even stricter than in the case of direct supply. It was required that the place of production and the place of product sales, either directly to consumers or through retailers selling directly to consumers, should be located within the same voivodeship or in the territory of neighboring poviats (basic administrative units) belonging to different voivodeships. This is largely dictated by the organization of the Veterinary Inspection whose participation in food safety control is essential in the case of foodstuffs of animal origin.

Just as in the case of direct supply, the ideas of LFS seem obvious here as well. There is direct contact between the producer and the consumer in the short food chain with confidence and trust between them as well as trust in traditional knowledge and limited



state intervention. This justifies an exception from the general rules.

It could largely be due to the similarities with the LFS set of convictions that these two mechanisms have received increased attention among social activists. They have perceived the regulatory exceptions as a window of opportunity to promote their objectives through the enabling legal instruments. They are working towards achieving the double aim of supporting the disadvantaged local farmers and supporting more sustainable agricultural development. With significant support from public authorities at both the national and regional level and additional external funding, the movement has evolved in a southern province of Poland into a concrete project that is discussed in the following section.

Small-scale local production in the Małopolska province

Recently developed by one of Poland's southern provinces, the "Local Małopolska Product" project builds directly on the legacy of Poland's EU accession negotiations and the exception mechanisms described in the previous section. Inventively over-interpreting the exceptions allows for a broader application to accommodate current local concerns. The project's main objective is to respond to the very specific situation of the local agriculture and food production in this region, which is unique even by Polish standards. Through accepting their limitations and amplifying their strengths, the project aims to help regional farmers and food producers make the most of the available regulatory options and promote sustainable progress in rural areas.

In 2012, the voivodeship of Małopolska conducted a study on the economic aspects of agriculture in the region.¹⁴ Results of that study, together with a strategic development plan, served as a basis for the project. In light of the study, Małopolska can be seen as a case in point of the agrarian map of Poland. In this region, 62% of the land is used for agriculture, which is close to the national average. What is exceptional, however, is the number and size of agricultural holdings. Of the 283,000 holdings, 99.99% are owned by individual farmers, 78.1% of the farms produce agricultural commodities, and 56.7% engage in mixed animal and plant production. This degree of fragmentation of the agricultural land translates directly to the size of holdings in Małopolska. The average size of a holding that qualifies for direct payments is 3.8 ha, while the average size of a farming unit in general is 2.3 ha. Moreover, Małopolska has the largest number of the smallest holdings (less than 1 ha) in Poland, which accounts for 42.8% of the holdings in the region. It is clear that this structure, along with the stagnating atmosphere in the region, creates unfavorable conditions for economic performance in agriculture. According to the experts from the Institute of Agricultural Economics and Food Management, agricultural holdings under 8 ESU¹⁵ should be considered uncompetitive in the EU internal market. In 2007, 86% of the holdings in Małopolska were below 2 ESU.

The "Local Małopolska Product" project aims to facilitate wider use of available regulatory options by regional producers through addressing specific features of the local production and by enhancing knowledge

and support of local consumers. The project is based on cooperation between public institutions, NGOs, farmers, and entrepreneurs to increase the supply and demand of local quality products. It is deeply grounded in the concept of traditional farming, which is characterized by small, low-capacity farms managed almost entirely by a family-based workforce. Such farming units are inherited within families suggesting the transfer of not only the land and the production capital, but also of tradition in terms of production and processing methods as well as the cultural aspects of rural work and lifestyle. From a practical perspective, the project is implemented by the Polish Environmental Partnership Foundation in cooperation with the local governance bodies with financial support by the Swiss-Polish Cooperation Program, which contributes the lion's share of the total budget of the project.

With an intention of promoting local entrepreneurship and working toward balanced and sustainable development of the underdeveloped rural areas of Małopolska, the project is pursuing a number of concrete objectives and activities. First, its goal is to develop a model for local Małopolska products. This will facilitate the development of supply and demand for agricultural goods from the least developed parts of the region through assistance with production organization and entrepreneurial schemes, as well as with strengthening of the brand of quality for local goods. Second, the project aims to create an economic education center that will implement and further develop the model as well as encourage the exchange of knowledge and experiences among regional partners. Third, the project has created a local brand center to develop a system of certification, marketing, and sales of locally produced foodstuffs with references to their association with regional nature, culture, and landscape. This quality certification is a basis for an integrated strategy for promotion, marketing, and organization of sales. It should also promote intersectoral cooperation within the region and encourage cooperative entrepreneurial initiatives. Finally, the project facilitates local producers' access to consumers by organizing awareness-raising campaigns, distribution chains, and local product fairs.

AN IMPORTANT PART of the project is devoted to influencing favorable development of the applicable regulatory framework. Considering the traditional local knowledge and sentiments of the local actors, the project initiates and participates in discussions at the regional and governmental level that aim to improve the regulations for local production. The idea is to make the available legal mechanisms, such as direct supply or marginal, local, and restricted pro-



Local production in the Małopolska area.

duction, easier for local entrepreneurs to implement so as to encourage their wider use. This is especially important for the smallest farmers, whose production capacity would not allow for economically viable participation in the market in accordance with the general rules. The project tries to improve the difficult regulatory conditions in two ways. It works to raise awareness and understanding of the existing rules and their application among local producers. Simultaneously, the project develops proposals for regulatory reforms that are more favorable to local food production and presents them to the policymakers.¹⁶ The proposals are supported with a solid impact assessment of the suggested measures and an explanation of how they respond to the concerns of local producers. The proposals also consider the concerns of the region as a whole, such as environmental benefits as well as economic gains (e.g., from development of tourism).

Sustainability through targeting consumption

Yet another approach to applying the concept of "local" in pursuing sustainability policy goals has developed in the context of regional public procurement of foodstuffs by a number of Swedish communes. Although referring to "local" as well, they build on a slightly different emphasis of the LFS values in promoting a shortened value chain. The idea is, on the one hand, to support local food production, especially organic food production, and to work toward a more balanced distribution of production between regions. On the other hand, the idea is to reduce environmental impact of transport by purchasing locally produced goods. There is also an educational element to it. By purchasing local and, by consequence, seasonally grown products for public schools and daycare centers, pupils will learn more about the natural food cycle and presence of various types of agricultural goods. Finally, there is an overarching goal of promoting more sustainable consumption patterns in local communities by encouraging more balanced and less meat-intensive consumption, at least in publicly provided establishments.

Local Swedish authorities have a high level of autonomy in terms of both policymaking as well as resource management. Every year, around 20% of Sweden's GDP is spent on public procurement. In 2004, out of 40 billion euros spent on public procurement countrywide, 25 billion euros was spent by the local authorities.¹⁷ As far as foodstuffs are concerned, public sector purchase of food and catering corresponds to approximately 4% of the total consumption of food in Sweden as measured by the market value.¹⁸ This constitutes a significant purchasing power, which could potentially have an impact on sustainable policy development. The ideas of Green Public Procurement have been practiced in Sweden and other Nordic countries since the end of the 1980s. A survey conducted in 2005 showed that 47% of all public purchase contracts in the Nordic countries included some environmental criteria, and in the case of Sweden the figure was as high as 60%.¹⁹ Swedish local authorities are, however, not totally free in the way they design their purchase policies and contracts because in all of their activities they are obliged to follow the existing regulatory obligation and limitations.

THE SWEDISH PUBLIC PROCUREMENT ACT (LOU, from the Swedish, *Lagen om Offentlig Upphandling*) provides the legal framework for public purchasing by Swedish authorities.²⁰ The LOU implements applicable EU law in the area, in particular Directive 2004/18 on public procurement procedures for works, goods, and services.²¹ It should also be consistent with the entirety of EU internal market regulation. Hence, all the aforementioned elements constitute a framework within which Swedish local authorities exercise their power of public purchase. And it is in relation to this framework that controversies have arisen with regard to the right of local authorities to include the requirement for food to be locally produced in their procurement specifications. In the light of the laws, such requirement can be interpreted as favoring Swedish producers vis-à-vis those from other Member States, thereby constituting a barrier to free trade in the internal

market. There is an ongoing debate among lawyers in Sweden as to what extent such a requirement can be justified.²² There are also pending remedy cases before Swedish courts.

The ongoing discussion seems to suggest that there is no agreed definition of "local food" or "locally produced (*närödlad*) food" accepted by all stakeholders in Sweden. Even some researchers suggest the existence of confusion or misunderstanding between Swedish actors about the interpretation of "local".²³ In the majority of cases, and in the dominating discourse, the understanding of "local" seems to be of purely geographical character. This initially appears to correspond to the shortened value chain ideas of the LFS movement, but after careful consideration, there appear to be considerable differences between the implications of proximity in the two contexts. Although the Swedish interpretation recognizes the environmental benefits of proximity as a result of shorter geographical distance between the producer and the consumer and, consequently, shorter transport of products, it does not carry the element of a closer relationship between the producer and the consumer, which implies the element of trust and knowledge sharing. This element seems to be lost due to the presence of the public authorities that undertake the procurement and subsequent distribution of the products to the public catering establishments such as hospitals and schools. It appears that agreeing on a certain definition of "local" would be particularly important in the Swedish case, not merely because it is in fact used by the state institutions in the process of spending public resources. Not only would it contribute to better understanding and support for the initiative, but it would also increase the transparency of the application of existing rules and procedures by the local authorities. Moreover, it might be important for those local authorities to motivate their preference for locally produced food and explain which of its particular characteristics they wish to promote with their public purchase choices.²⁴ Possible motivations could include the willingness to stimulate local business development,

the move toward local self-sufficiency, environmental concerns about transport and carbon footprint, and the health benefits of fresh seasonal food. Such additional qualification, on top of the special proximity argument, would significantly strengthen the position of local authorities in relation to the law.

Conclusions: when is "local" legal?

This final section concentrates on the position of law and regulation in the process of localization or re-localization of food systems. It highlights the role of law as enabling or, alternatively, as blocking regional sustainability policies based on the references to "local" that were characterized above.

In Sweden, in contrast to the Polish case, the application of "local" for regional needs turned out not only to be controversial, but was even considered as something that breached the existing legislation at the national and EU level. It is interesting, therefore, to speculate as to why the mechanisms applied by Poland and Sweden have been assessed differently and have been met with different degrees of acceptance. From the regulatory perspective, there are a number of interesting differences between the Polish and the Swedish strategies that might be relevant to this observed outcome.

THE FIRST IMPORTANT difference is that the Polish initiative seeks to extend the national application of an existing exemption legalized by the EU system. In contrast, the Swedish authorities are trying to create and justify an exemption from the general rule of the free movement of goods in the internal market. There is a fundamental difference between navigating within existing margins of diversity and invoking new ones. Moreover, the burden of proof in the two cases is completely different.

The second important difference is in the emphasis on the private, as opposed to the public, sphere of activity. As the analyzed initiatives show, Poland's scenarios for agricultural sustainability are built largely on private consumption. Sweden, on the contrary, relies on public purchase in its strategic development. This does not mean that private consumption is underrated, and there are many campaigns and projects directed to private consumers. Those, however, are mostly developed and managed by producers' organizations or special interest groups.²⁵ The focus of the public activity remains on public procurement, which is supposed to support regional sustainable development plans with targeted strategic public purchases that take environmental and social concerns into consideration.²⁶ This, in consequence, translates to a difference in focus, between private resources in the Polish case and public spending in the Swedish one, where the latter is typically an object of more stringent control and requirements.

The third difference between the Swedish and Polish strategies, closely related to the previous one, is the focus on production versus the focus on consumption. Supporting local producers by facilitating their upgrades and strengthening their presence on the local market can be claimed to leave less room for suspicion than state support through strategic public



Farmers'
Market in
Stockholm.

purchase. There is arguably less room for questions of possible discriminatory effect and protectionism when localization relates to the production process, which is inevitably linked to the location in question, rather than to the process of purchasing local products as an administratively imposed condition for a supply contract.

Fourthly, through this perspective, Swedish mechanisms can be seen as a process of top-down localization where regional authorities engage in stimulating the development of regional local systems through strategic public procurement design.²⁷ The Polish instrument, on the other hand, is attempting to promote local entrepreneurship through the existing localized network by strengthening the pre-established linkages and supporting their further development. This is not merely a matter of policy choice but also of an existing agro-food situation of the locality in question, which is fundamentally different in the two places. Farms in Sweden are getting fewer, bigger, and regionally more concentrated. Today there are some 71,000 farms, while in 1970 there were more than twice as many. Still, production remains the same. The average size of a Swedish farm today is some 37 ha, which is double the size of an average farming unit 40 years ago.²⁸ In this context, differentiated policy approaches are required and justifiable. If the policies are more suited to the local circumstances, they have a better chance of becoming more efficient in achieving the sustainability objective.

In conclusion, a more general observation about the role of law in the localization of food systems can be made. In the contemporary globalized economy, local political decisions about how to achieve regional sustainability goals are increasingly dependent on the transnational regulatory framework. As the cases presented in this article illustrate, the ultimate standard against which the sustainability concerns of two Baltic region states are assessed are the laws establishing the Single Market within the EU. ❌



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