



Fundamental Rights and Climate Change

Exploring New Perspectives and Corresponding Remedies

EDITED BY

Alicja Sikora-Kalèda · Inga Kawka

Krakow Jean Monnet
Research Papers

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INTRODUCTION

*The environment is where we all meet;
where we all have a mutual interest;
it is the one thing all of us share.*

Lady Bird Johnson

The monograph outlines the growing importance of fundamental rights in the European Union, particularly in the context of environmental protection and the fight against climate change. These rights have become a cornerstone in shaping policies that address ecological challenges while balancing economic and social aspects. The European Green Deal (EUGD), a landmark initiative, embodies the EU's commitment to transitioning into a climate-neutral, modern economy by 2050. This ambitious goal requires comprehensive legislative action and coherence in implementing policies across various sectors, ensuring that all measures align with and uphold fundamental rights as enshrined in the EU legal framework.

This monograph is the culmination of scholarly work inspired by discussions from the conference titled 'Fundamental Rights and Climate Change in EU Law and Beyond – Mapping Fundamental Rights, Nature's Rights, and Corresponding Legal Remedies,' organized in September 2023 as part of the Jean Monnet Module project, 'Sustainability and Climate Change in EU Law.' This academic event, hosted by the Chair of European Law at the Jagiellonian University, brought together experts from diverse fields to discuss and exchange perspectives on sustainability and the legal frameworks within the EU. The insights shared during the conference laid the foundation for the analyses presented in this book, highlighting the complex interplay between fundamental rights, environmental challenges, and legislative coherence.

The chapters of this book reflect a collective scholarly effort to explore diverse aspects of fundamental rights and their intersections with environmental law within the EU framework. The opening chapter, authored by Alicja Sikora-Kalèda investigates the limits of human rights as instruments to advocate for global climate action. It examines how climate litigation impacts human rights and evaluates the potential evolution of environmental rights in EU law. Ilona Przybojewska contributes with an analysis of how poor environmental conditions can lead to state liability, referencing a notable 2021 Polish Supreme Court resolution. Her work probes the extent to which environmental issues can be recognized as affecting personal rights and the broader implications of this recognition.

This monograph aims to serve as a comprehensive resource for legal practitioners, scholars, and policymakers, encouraging further dialogue on the integration of environmental and human rights within the EU legal system.

Alicja Sikora-Kalèda
Inga Kawka

ANETA SUCHOŃ¹

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
ON SOIL MONITORING AND RESILIENCE
(SOIL MONITORING DIRECTIVE) OF 5 JULY 2023
IN THE CONTEXT OF THE RIGHT TO HEALTH,
FOOD AND INFORMATION CONCERNING
THE ENVIRONMENT

ABSTRACT: The objectives of this chapter are: firstly, to determine whether the regulatory framework contained in the draft Soil Monitoring Directive of 5 July 2023, in particular, with regard to healthy soils, can contribute to human health, food and soil information (also of global relevance under the Charter of Fundamental Rights); and secondly, to identify selected legal instruments under the CAP 2023–2027 and other soil health regulations. Reference will also be made to case law. At the same time, soils, which are important for human health and life, need to be taken into account in other EU policies, e.g. agriculture, energy, regional policy. First, comments on the importance of healthy soils, FAO studies, and EU initiatives on soils are presented. The section that follows presents selected elements from the draft Directive such as Soil Health Monitoring, Soil Health Assessment, Soil Health Certification, Sustainable Soil Management, Identification of potentially contaminated sites, and EU funding. It is pointed out that the draft Directive provides for access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of soil health assessments, of measures

¹ Prof. UAM dr hab. Aneta Suchoń, Department of Agricultural, Food and Environmental Law of the Faculty of Law and Administration of Adam Mickiewicz's University in Poznań, <https://orcid.org/0000-0002-5410-7853>.

taken under this Directive and of any failure of competent authorities to act. In the conclusion, the author provides a positive assessment of the draft (Soil Monitoring Directive) of 5 July 2023. At the same time, some elements may cause problems, for example, in relation to land ownership and data sharing on private land. An important step will therefore be to transpose the principles of the Soil Monitoring Directive into national legislation and to take into account other EU and national legislation.

KEYWORDS: soil, draft Soil Monitoring Directive, right to health, food, agricultural land

1. Introduction

Soil, which is the natural formation of the outer layer of the earth's crust, is used for a variety of purposes, such as agriculture, forestry, renewable energy, housing or economic activities. Healthy soils are an indispensable basis for our economy, society and environment.² They are a necessary means for agricultural activities, food safety and security,³ and soil pollution can harm human health.⁴ For example, airborne dust produced by wind erosion of the land causes or exacerbates respiratory and cardiovascular diseases and can contribute to the development of cancer. Exemplifying soil contaminants are elements, e.g. cadmium, chromium, mercury, lead, manganese, zinc (Zn) and radionuclides (23), oil-derived substances, organochlorine compounds (OCPs), and pesticides covering various groups of substances (88,23).⁵ The Stockholm Convention on Persistent Organic Pollutants, passed in Stockholm on 22 May 2001,⁶ emphasises that "...persistent organic pollutants have toxic properties, resist degradation, bioaccumulate and are transported via air, water and migratory species

² P. Panagos et al., *How the EU Soil Observatory Is Providing Solid Science for Healthy Soils*, "European Journal of Soil Science", vol. 75, no. 3.

³ P.M. Kopittke et al., *Healthy Soil for Healthy Humans and a Healthy Planet*, "Critical Reviews in Environmental Science and Technology" 2023, vol. 54, no. 3, pp. 210-221.

⁴ Draft of Directive on Soil Monitoring and Resilience (Soil Monitoring Law), Prambula point no 21, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0416> (17.10.2024); Food and Agriculture Organization, *Overview of Land Degradation Neutrality (LDN) in Europe and Central Asia*, Rome 2022, <https://www.fao.org/documents/card/en/c/cb7986en> (17.10.2024); A. Klimkowicz-Pawlas, *Środowiskowe i zdrowotne skutki zanieczyszczenia gleb oraz metody przeciwdziałania*, "Studia i Raporty IUNG-PIB" 2021, vol. 66, no. 20, pp. 91-116; E.C. Brevik, L. Pereg, J.J. Steffan, L.C. Burgess, *Soil Ecosystem Services and Human Health*, "Current Opinion in Environmental Science & Health" 2018, vol. 5, pp. 87-92; E.C. Brevik et al., *Soil and Human Health: Current Status and Future Needs*, "Air, Soil and Water Research" 2020, vol. 13, pp. 1-23.

⁵ A. Klimkowicz-Pawlas, *Środowiskowe i zdrowotne skutki...*

⁶ OJ 2009, item 14.76.

across international boundaries and are deposited far from their release sites, where they then accumulate in terrestrial and aquatic ecosystems.”

Degradation of agricultural land affects its fertility, yields, and pest resistance, and also the nutritional quality of food. With 95 per cent of our food produced to ensure food security and the world’s population continuing to grow, it is crucial to maintain the health of natural resources.⁷ It is correct to say that *food security starts with the soil*,⁸ which was the keynote of the Global Forum for Food and Agriculture 2022 (GFFA 2022), held from 24–28 January in Berlin.⁹

The right to health, the right to food is linked to the right to life.¹⁰ A person without water and food combined can survive between 8 and 21 days, and the length of time depends on various factors, such as the age and health of the person.¹¹ According to the United Nations Food and Agriculture Organisation (FAO), more than 828 million people suffer from hunger and 3.1 billion cannot afford a healthy diet.¹² In 2020 this was 720 and 811 million people in the world¹³ in 2022. This is 122 million more people than before the COVID-19 pandemic.¹⁴ The right to food is recognised in the 1948 Universal Declaration of Human Rights (Article 25) as part of the right to an adequate standard of living. Issues related to the right to food are included, for

⁷ P.M. Kopittke et al., *Healthy Soil...*

⁸ M. Rutkowski, *Bezpieczeństwo żywnościowe zaczyna się od gleby*, <https://ksow.pl/aktualnosc/bezpieczenstwo-zywnosciowe-zaczyna-sie-od-gleby> (08.04.2024); I. Łuczyk, *Land Grabbing and Food Security in Developing Countries*, “Zagadnienia Ekonomiki Rolnej” 2022, vol. 373, no. 4, pp. 22–45.

⁹ European Commission, *Global Forum for Food and Agriculture 2022 – Communiqué – Sustainable Land Use: Food Security Starts with the Soil*, https://knowledge4policy.ec.europa.eu/news/global-forum-food-agriculture-2022-%E2%80%93-communicu%C3%A9-sustainable-land-use-food-security-starts-soil_en (19.09.2024).

¹⁰ A. Mokrzycka, *Prawo do ochrony zdrowia. Konstytucyjny priorytet czy źródło dylematów w ochronie zdrowia?*, Kraków 2014.

¹¹ N. Silver, *How Long Can You Live without Food?*, “Healthline” 2024, <https://www.healthline.com/health/food-nutrition/how-long-can-you-live-without-food> (02.03.2024).

¹² Food and Agriculture Organization, *Right to Food*, <https://www.fao.org/policy-support/policy-themes/right-to-food/en/> (02.03.2024); Polska Akcja Humanitarna, *Prawo do żywności*, https://www.pah.org.pl/app/uploads/2017/06/2017_dlaszko_l_prawo_do_zywnosci.pdf (02.03.2024); FAO: *870 milionów ludzi głoduje, 2 miliardy niedożywionych*, “Money.pl”, 2013, https://www.money.pl/archiwum/wiadomosci_agencyjne/pap/arttykul/fao;870;million;people;are;starving;2;billion;undernourished,109,0,1319277.html (09.03.2024); FAO, IFAD, UNICEF, WFP, WHO, *The State of Food Security and Nutrition in the World 2023: Urbanization, Agrifood Systems Transformation and Healthy Diets across the Rural–Urban Continuum*, Rome 2023; Food and Agriculture Organization, *The State of Food and Agriculture 2021: Making Agrifood Systems More Resilient to Shocks and Stresses*, Rome 2021.

¹³ FAO, IFAD, UNICEF, WFP, WHO, *The State of Food Security and Nutrition in the World 2021: Transforming Food Systems for Food Security, Improved Nutrition and Affordable Healthy Diets for All*, Rome 2021.

¹⁴ FAO, IFAD, UNICEF, WFP, WHO, *The State of Food Security and Nutrition in the World 2023...*

example, in the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 19 December 1966,¹⁵ and in the Convention for the Protection of Human Rights and Fundamental Values.¹⁶ According to Article 2 of the Charter of Fundamental Rights of the European Union (hereinafter the “Charter”), everyone has the right to life.¹⁷ The right to life is also emphasised, for example, in Article 3 of the Universal Declaration of Human Rights, which indicates that: “Everyone has the right to life, liberty and security of person”. According to Article 6 of the International Covenant on Civil and Political Rights, “Every human being has the inherent right to life. This right shall be protected by law.”¹⁸ In turn, the *2030 Agenda for Sustainable Development* indicates that the Right to Food protects the right of all people to be free from hunger and food insecurity. It is also worth pointing out that some constitutions, for example that of Switzerland, refer to agricultural land. Article 104a states that in order to ensure the adequate supply of food to the population, the Swiss Federal Government shall create the conditions for safeguarding the basis of agricultural production, especially arable land.¹⁹

Climate change is also affecting the state of agricultural land, with this being subject to such effects as desertification due to drought, erosion, compaction, decline in organic matter, pollution, loss of biodiversity.²⁰ Its capacity to store and cycle carbon, nutrients and water is also diminishing. Growing concerns about the state of the world’s soils led the UN General Assembly to declare 2015 as the International Year of Soils.²¹ The FAO also adopted a revision of the World Soil Charter, and World Soil Day is celebrated on 5 December each year.²² Soil degradation adversely affects other elements of the environment. Article 37 of the Charter states that: “A high level of environmental protection and the improvement of the quality of the environ-

¹⁵ Journal of Laws 1977, No. 38, item 169.

¹⁶ See also M.Z. Wiśniewska, A. Kowalska, *Kultura bezpieczeństwa żywności w prawie Unii Europejskiej. Czy polski system kontroli żywności sprosta wyzwaniu?*, “Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2022, vol. 84, no. 2.

¹⁷ *Charter of Fundamental Rights of the European Union (2012/C 326/02)*, “Official Journal of the European Union” 2012, C 326/391.

¹⁸ United Nations, *International Covenant on Civil and Political Rights*, 1967, https://treaties.un.org/doc/treaties/1976/03/19760323%2006-17%20am/ch_iv_04.pdf (19.09.2024).

¹⁹ Schweizerische Eidgenossenschaft, *Bundesverfassung der Schweizerischen Eidgenossenschaft*, <https://www.fedlex.admin.ch/eli/cc/1999/404/de> (17.09.2024).

²⁰ European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Soil Strategy 2030: Reaping the Benefits of Healthy Soils for People, Food, Nature and Climate*, Brussels 2021, <https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX:52021DC0699> (17.10.2024).

²¹ World Soil Day (WSD) – a holiday on 5 December.

²² Food and Agriculture Organization, *Soils, Where Food Begins: Outcome Document of the Global Symposium on Soils for Nutrition 26–29 July 2022*, Rome 2023.

ment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.”²³

The European Union’s Soil Strategy 2030 announced that the Commission will present a legislative proposal on soil health to meet the objectives of the Soil Strategy and to achieve healthy soils across the European Union (hereinafter the “EU” or “Union”) by 2050. Realising the importance of soils and the functions they perform, the European Commission has prepared a proposal in the form of the Directive of the European Parliament and of the Council on soil monitoring and resilience (Soil Monitoring Directive) of 5 July 2023.²⁴ The proposed legislation aims to regulate soil health at EU level, while providing Member States with a wide range of flexibility on how to achieve the objectives. Currently, there is no specific EU legislation on soils and the proposed directive contains new concepts and obligations. Such obligations regarding the monitoring of soils will be addressed mainly to public authorities (register, certificates) and those on the quality of land to owners and possessors. Maintaining or increasing soil fertility in the long term contributes to stable or even higher yields from crops, feed and biomass, contributing to our economy’s shift away from fossil fuels and the soil’s ability to retain water helps to both prevent and respond to risks from natural disasters. The Draft Soil Monitoring Directive was approved by the Environment Council at its 4032nd meeting on 17 June 2024.²⁵

The aims of this chapter are as follows: firstly, to determine whether the regulatory framework contained in the draft *Soil Monitoring Directive 2023*, in particular regarding healthy soils, can contribute to the protecting and fulfilling of the right to health,²⁶ food and information on soil counteracting or adapting to climate change; secondly, to identify selected legal instruments under the CAP on soil health. Court judgments are also referred to.

²³ In its resolution of 28 April 2021 on soil protection, the European Parliament stressed the importance of protecting soils and promoting healthy soils in the Union, not forgetting that degradation continues despite limited and uneven action in some Member States. The European Parliament called on the Commission, in full respect of the principle of subsidiarity, to develop an EU-wide common framework for the protection and sustainable use of soil, taking into account all major threats to soil. The negative impact of climate change on soil health should also be pointed out.

²⁴ European Commission, *Proposal for a Directive of the European Parliament and of the Council on Soil Monitoring and Resilience (Soil Monitoring Law)*, Brussels 2023, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0416> (17.10.2024). Proposal on Soil Monitoring and Resilience (Soil Monitoring Law)

²⁵ Council of the European Union, *Proposal for a Directive of the European Parliament and of the Council on Soil Monitoring and Resilience (Soil Monitoring Law)*, Brussels 2024, <https://data.consilium.europa.eu/doc/document/ST-11299-2024-INIT/en/pdf> (19.09.2024).

²⁶ Z. Nampewo, J.H. Mike, J. Wolff, *Respecting, Protecting and Fulfilling the Human Right to Health*, “International Journal for Equity in Health” 2022, vol. 21, <https://doi.org/10.1186/s12939-022-01634-3> (19.09.2024).

The Draft Soil Monitoring Directive 2023 was prepared by DG Environment (DG ENVI). However, the protection of soils, which are essential for human health and life, must also be integrated into other EU policies, such as agriculture, energy, and regional development.

The European Parliament adopted the Commission's proposal for a Soil Monitoring Directive on 10 April 2023 by 336 votes to 242, with 33 abstentions. Following the vote, rapporteur Martin HOJSÍK (Renew, SK) said: "We are finally close to having a common European framework to protect our soils from degradation. There is no life on this planet without healthy soils. Farmers' livelihoods and the food on our tables depend on this non-renewable resource. It is therefore our responsibility to adopt the first EU-wide legislation to monitor and improve soil health". The Parliament has already adopted its position, doing so at the first reading.²⁷

The matter will be taken forward by the new Parliament after the European elections on 6–9 June 2024. The Council adopted its position on 17 June 2024. It clarifies the administrative structure relevant to the soil monitoring framework, adds flexibility for soil measurements and sets minimum quality requirements for laboratories analysing soil samples.²⁸

2. Comments on the importance of healthy soils, EU initiatives for soils and the draft directive's objectives

As mentioned previously, according to the FAO publication, soils have eleven key functions, including: purifying water and reducing pollution levels, participating in the cycling of elements, providing a habitat for living organisms, reducing the risk of flooding, being a source of medicinal substances and genetic resources, being a priority element of the natural environment, and being a determinant of the survival and well-being of humankind.²⁹

²⁷ *Healthy Soils*, <https://www.europarl.europa.eu/legislative-train/spotlight-JD%2023-24/file-healthy-soils> (19.09.2024); European Parliament, *European Parliament Legislative Resolution of 10 April 2024 on the Proposal for a Directive of the European Parliament and of the Council on Soil Monitoring and Resilience (Soil Monitoring Law) (COM(2023)0416 – C9-0234/2023 – 2023/0232(COD))*, https://www.europarl.europa.eu/doceo/document/TA-9-2024-0204_EN.html (19.09.2024).

²⁸ *Healthy...*

²⁹ Food and Agriculture Organization for the United Nations, *Soil Functions*, <http://www.fao.org/resources/infographics/infographics-details/en/c/284478/> (17.10.2024); N. Harari et al., *Promoting Sustainable Land Management through Evidence-Based Decision Support: A Guide with Country Insights*, Rome 2023 (17.10.2024).

The United Nations Convention to Combat Desertification in Countries Affected by Severe Drought and/or Desertification, especially in Africa, drawn up in Paris on 17 June 1994 provides for an international framework to address desertification and mitigate the effects of drought. It emphasises the need to improve land productivity and the restoration, conservation and stable management of land and water resources, which will lead to improved living conditions.³⁰

The EU has taken action in the context of international conventions to address soils affected by desertification³¹ (UN Convention to Combat Desertification),³² to contribute to climate change mitigation (UN Framework Convention on Climate Change) and to make soils an important habitat for biodiversity (Convention on Biological Diversity).³³ Restoring, maintaining and improving soil health is the goal of the new global biodiversity framework. Issues concerning soils or, more broadly, the land surface, are addressed in the European Green Deal.³⁴ For example, in its Resolution of 20 October 2021 on a farm-to-table strategy for a fair, healthy and environmentally friendly food system,³⁵ the European Parliament emphasised that “healthy soil is a prerequisite for safe food, feed and fibre production; calls on the Commission and the Member States, therefore, to prevent further soil degradation in the EU; stresses that agricultural land is an essential natural resource, the good condition of which is of key importance for the implementation of the farm-to-table strategy; (...) recognises the vital importance of soil organic matter and biodiversity and the services and goods it provides.”³⁶

³⁰ United Nations, *Convention*, <https://www.unccd.int/convention/overview#> (09.09.2024).

³¹ “Desertification” refers to land degradation in arid, semi-arid and intermittently dry areas resulting from various factors, including climate variability and human activities.

³² United Nations Convention to Combat Desertification in Countries Affected by Severe Drought and/or Desertification, especially in Africa, OJ. EU 1998 There are 197 Parties to the Convention, of which 196 are country Parties and the European Union see more *Healthy land is central to the wellbeing of the planet's ecosystems and biodiversity; it feeds us, shelters us, and provides the backbone to a thriving global economy*, <https://www.unccd.int/convention/overview> (9.09.2024)

³³ United Nations, *Convention on Biological Diversity and Its Protocols*, <https://www.un.org/ldc-portal/content/convention-biological-diversity-and-its-protocols#> (09.09.2024).

³⁴ European Commission, *Communication from the Commission: The European Green Deal*, Brussels 2019, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019DC0640> (17.10.2024).

³⁵ European Commission, *A Farm to Fork Strategy for a Fair, Healthy and Environmentally Friendly Food System*, [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2020/2260\(INI\)](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2020/2260(INI)) (09.09.2024).

³⁶ *European Parliament Legislative Resolution of 7 June 2021 on the Proposal for a Regulation of the European Parliament and of the Council on Sustainable Use of Plant Protection Products*, <https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX:52021IP0425> (15.03.2024).

This differentiated importance of soils is also indicated in various Resolutions and Communications of the European Union. Moreover, the importance of soil health has also been recognised at the global level.

On 12 May 2021, the European Commission adopted the EU Action Plan: “Towards zero pollution of air, water and soil” – an important outcome of the European Green Deal.³⁷ According to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions *An EU Biodiversity Strategy 2030 Bringing nature back into our lives*.³⁸ “Soil is an extremely important non-renewable resource that is vital for human health and the health of the economy, as well as for the production of food and new medicines. In the EU, soil degradation has serious environmental and economic consequences (...).”³⁹

In its Communication *EU Soil Strategy 2030 Benefits of Healthy Soils for People, Food, Nature and Climate*⁴⁰ the European Commission points out that soil is probably the most undervalued element in nature. Soil and the range of organisms that live in it provide (...) biomass, fibre and raw materials, regulate cycles of water, carbon and nutrients and make life on land possible. It has rightly been pointed out that “the EU has so far not been able to develop an appropriate legal framework that provides soil with the same level of protection as water, the marine environment and air.”⁴¹

The aims of the draft of the *Soil Monitoring Directive* are firstly, to put in place a robust and coherent soil monitoring framework for all soils across the EU; secondly, to continuously improve soil health in the European Union with a view to achieving and maintaining healthy soils by 2050, to reduce soil pollution to levels that are no longer considered harmful to human health and the environment; and thirdly, to enhance disaster resilience and food security. These could provide a range of ecosystem services at a scale sufficient to meet environmental, social and economic needs, and prevent the impacts of climate change and biodiversity loss.

³⁷ COM (2021) 400 final.

³⁸ European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Biodiversity Strategy for 2030: Bringing Nature Back into Our Lives*, Brussels 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52020DC0380> (02.08.2024).

³⁹ *Ibidem*, p. 8

⁴⁰ European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Soil Strategy 2030: The benefits of healthy soils for people, food, nature and climate*, 17 November 2021, SWD(2021) 323 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0323> (02.08.2024).

⁴¹ *Ibidem*.

The draft of the *Soil Monitoring Directive* provides for the establishment of measures on soil health monitoring and assessment, sustainable soil management, and contaminated land (Art. 1.2. of the draft). Each of these issues is relevant to human health and the right to food. The draft indicates that ‘soil health’ means the physical, chemical and biological state of the soil that determines its ability to function as an essential living system and to provide ecosystem services. In addition, ‘sustainable soil management’ refers to soil management practices that maintain or improve the ecosystem services provided by the soil without compromising the functions that make these services possible or harming other environmental properties. Finally, ‘soil remediation’ means a remediation activity that reduces, isolates or immobilises the concentration of contaminants in soils. It should be pointed out that, according to Article 14 of Draft, potentially contaminated sites located in areas used for the abstraction of water intended for human consumption shall be prioritised for soil investigations.

Taking into account the remarks submitted on the draft, an extended version of the draft *Soil Monitoring Directive* has been prepared. At the time of printing this article, the final version had not yet been agreed.

3. Soil health monitoring

According to Art. 6 of the Draft *Soil Monitoring Directive*, Member States establish a monitoring framework based on the soil districts, to ensure that regular and accurate monitoring of soil health is carried out in accordance with this Article and Annexes. The soil districts are based on such elements as soil indicators and soil health criteria, and soil sampling points. The monitoring framework shall be based on the following e.g. the soil descriptors and soil health criteria, the soil sampling points *and sampling depth* to be determined in accordance with Article 8(2); the land take and soil sealing indicators referred to in Article 7(1).

The Commission and the European Environment Agency (EEA) are to use existing data and satellite products provided under the Copernicus component of the EU space programme established by Regulation (EU) 2021/696 to explore and develop soil remote sensing products with a view to supporting Member States in monitoring relevant soil indicators. On the basis of existing data and within two years of the draft *Soil Monitoring Directive* entering into force, the Commission and the EEA shall establish a digital soil health data portal. It shall provide access in a georeferenced spatial format at least to data on soil health. Member States may adapt the soil indicators and soil health criteria in accordance with the specifications. (Art. 6 draft of

the Soil Monitoring Directive). The draft of the Soil Monitoring Directive stipulates that Member States shall ensure that the first soil measurements are taken and new soil measurements are performed at least every five years (propose change six year). In addition, they shall ensure that the value of soil take-up and soil sealing rates are updated at least once a year.

4. Soil health assessment

According to the draft of the Soil Monitoring Directive and resilience, the data collected from the monitoring will then be used to assess the health of the soils for each soil indicator. Member States shall ensure that soil health assessments are carried out at least every five years (proposed change six years) *For the assessment of the soil ecological status*, Member States shall also take into account the data collected in the context of soil investigations referred to in Article 14.

On the basis of the assessment of the health of the soil carried out in accordance with this article, the competent authority, where appropriate in cooperation with local, regional and national authorities, shall identify in each soil district those areas with unhealthy soils, and inform the public thereof in accordance with Article 19. A positive assessment should be made of public access to information, the condition of the soil and possible adverse effects on human health and the environment. This should be in line with the activities not only at the European Union level but also the world level in terms of access and public participation in decision-making The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, signed in Aarhus on 25 June 1998, states that “Recognising that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations”.

5. Certification of soil health

The draft of the Soil Monitoring Directive also provides for Member States to establish a voluntary soil health certification mechanism for landowners and land managers. The Commission may adopt implementing acts to harmonise the format for soil health certification. Countries in the EU shall provide soil health and assessment data to relevant landowners and land managers upon request, in particular, to sup-

port the development of advisory services. The European Commission is to prepare implementing acts to establish formats or methods for making the data available or collecting the data, or for including the data in the digital soil health data portal. These implementing acts shall be adopted in accordance with the examination procedure referred to in Article 20 of the draft of the Soil Monitoring Directive.

6. Sustainable soil management

According to the draft of the Soil Monitoring Directive, Member States shall introduce at least several measures, taking into account the type, use and condition of the soil: firstly, the definition of sustainable soil management practices consistent with the principles of sustainable soil management as listed in Annex III. These practices are to be progressively implemented on all managed soils; secondly, the implementation of regeneration practices on unhealthy soils in the Member States. These are to be prepared on the basis of the results of soil assessments carried out in accordance with Article 9 on regeneration practices; thirdly, the identification of soil management practices and other practices that adversely affect soil health, which soil managers should avoid. In identifying practices and measures, Member States shall take into account the programmes, plans, objectives and measures listed in Annex IV, as well as the latest existing scientific knowledge, including the results of the Horizon Europe Healthy Soils Pact mission.

Member States shall ensure that the process of developing the identified practices is open, inclusive and effective and that the members of the public concerned, in particular, landowners and land managers, are involved in developing these practices and have the opportunity to participate at an early stage and in an effective manner.

Another important provision of the draft directive specifies that Member States shall ensure that soil managers, landowners and competent authorities have easy access to impartial and independent advice on sustainable soil management, training activities and capacity building (Art. 10). Member States shall also introduce the following measures: a) promoting awareness of the multiple medium- and long-term benefits of sustainable soil management and of the need for sustainable soil management; b) promoting research into and implementing holistic soil management approaches; c) making available regularly updated maps of available funding instruments and measures to support the implementation of sustainable soil management. Member States shall regularly evaluate the effectiveness of the measures introduced pursuant to Article 9 and, where appropriate, review and revise such measures, taking into account soil health monitoring and assessment.

European Union countries shall ensure that the following principles are respected when land is taken over, e.g. avoiding or limiting, as far as is technically and economically feasible, the loss of the soil's capacity to provide multiple ecosystem services, including food production, by limiting the area affected by the land takeover as far as possible, selecting areas where the loss of ecosystem services would be minimised and carrying out the land takeover in a way that reduces negative impacts on the soil; compensating, as far as possible, for the loss of the soil's capacity to provide multiple ecosystem services.

7. Contaminated sites and risks to human health and the environment; Identification of potentially contaminated sites

According to Article 12 of the draft Soil Monitoring Directive,⁴² countries in the EU shall manage the risks to human health and the environment posed by potentially contaminated sites and maintain such sites at an acceptable level, taking into account the environmental, social and economic effects of soil contamination. The draft⁴³ provides that four years after the date of entry into force of the Directive, Member States shall establish a risk-based approach for identifying potentially contaminated sites, investigating potentially contaminated sites, and managing contaminated sites. The public shall be given early and effective opportunities to participate in the establishment and concrete application of the risk-based approach set out in this Article. On the basis of the soil health assessment carried out in accordance with this Article, the competent authority, where appropriate in cooperation with local, regional and national authorities, shall identify areas with unhealthy soils in each soil district. Member States shall establish a voluntary soil health certification mechanism for landowners and land managers.

Member States shall systematically and proactively identify all sites where, on the basis of evidence gathered by any available means, soil contamination is suspected ('potentially contaminated sites'). In identifying potentially contaminated sites, countries shall take into account the following criteria, e.g. the existence of active or inactive activities giving rise to a risk of potential contamination; the occurrence of a potentially contaminating accident, disaster, accident or spill; any other event likely to cause soil contamination; Member States shall establish an inventory of the activities posing a risk of potential contamination. These activities may be further

⁴² *Ibidem.*

⁴³ *Ibidem.*

classified according to the risk they pose as regards causing soil contamination based on scientific evidence. They shall ensure that all potentially contaminated sites are identified and duly entered in a register. In turn, potentially contaminated sites shall be soil tested. States shall establish rules on the timing, content, form and priority of the soil investigation. Four years after the entry into force of the Directive, Member States shall establish a register of contaminated and potentially contaminated sites, which is to be regularly reviewed and updated, and shall be made available in an on-line georeferenced spatial database.

8. EU funding

Given the priority of establishing soil monitoring and sustainable soil management and regeneration, the implementation of the draft Soil Monitoring Directive is to be supported by existing Union financial programmes in accordance with their rules and conditions. The Commission shall ensure that soil health data made available through the digital soil health data portal referred to in Article 6 is made accessible to the public in accordance with Regulation (EU) 2018/172580 of the European Parliament and of the Council and Regulation (EC) No 1367/2006 of the European Parliament and of the Council 81. Member States shall ensure that the information is made available to the public in accordance with Directive 2003/4/EC, Directive 2007/2/EC and Directive (EU) 2019/102482 of the European Parliament and of the Council.

9. Access to justice

In order to properly implement the provisions of the draft Soil Monitoring Directive, it is necessary for Member States to introduce it into their national legal systems. It is also of vital importance to ensure the right to an effective remedy before a court in respect of any failure to act on the part of the competent authorities. It is worth referring to Article 47 of the Charter, which states that all persons whose rights and freedoms guaranteed by the law of the Union have been violated has the right to an effective remedy and to a fair trial. All persons are also entitled to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. They shall also be permitted to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. By contrast, according to Article 22, draft Soil Monitoring Directive Member States shall ensure

that, in accordance with national law, members of the public who have a sufficient interest or who claim that there has been an infringement of the law have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of the soil health assessment of measures introduced pursuant to this Directive and of any failure to act on the part of the competent authorities.

The question is whether a claim can be brought against the person who caused the soil contamination, for example, by affecting the health of a third party? Another example is unhealthy food resulting from contaminated soil. Currently, regulations exist in the national legislation of the Member States. It should also be pointed out that, as a rule, land is owned by a private person, although it may also be owned by the State or by municipalities. In Poland, there are three laws that apply to land. These are the provisions of the Act of 27 April 2001 on Environmental Protection Law,⁴⁴ the Act of 3 February 1995 on the Protection of Agricultural and Forestry Land⁴⁵ and the Act of 13 April 2007 on Prevention and Remedy of Environmental Damage.⁴⁶

According to Article 322 of the Polish Environmental Protection Law, the provisions of the Civil Code apply to liability for damage caused by an environmental impact, unless the law provides otherwise. Art. 323 of the same act states that anyone who, by a wrongful impact on the environment, directly endangers the environment or has caused damage to it may demand that the entity responsible for such endangerment or infringement restore the lawful state and take preventive measures, in particular, by constructing installations or equipment to prevent such endangerment or infringement; when this is impossible or excessively difficult, it may demand that the activity causing the endangerment or infringement be discontinued.⁴⁷ It is also worth mentioning the general rules of the Civil Code. Under Article 415 of the Civil Code, anyone whose fault causes damage to another person is obliged to make good the damage.

Reference should also be made to the case law on the right to clean air and the environment. As mentioned above, contaminated soil can also have a negative impact

⁴⁴ Journal of Laws 2024, item 54, 834, 1089, 1222.

⁴⁵ Journal of Laws 2024, item 82.

⁴⁶ Journal of Laws 2020, item 187.

⁴⁷ Judgement of the Constitutional Court of 13 May 2009, Kp 2/09, in which the Court, analysing the provisions contained in Articles 68(4), 74, 86, as well as 31(3), ruled that “The first of the provisions in question obliges state authorities to prevent the negative effects of environmental degradation. The second stipulates that the protection of the environment is a duty of the state authorities, whose policy is to ensure the environmental security of present and future generations (as well as to support citizens in their efforts to protect the environment).”

on air quality. The Supreme Court – Civil Chamber, in its ruling of 28 May 2021, III CZP 27/20, stated that “the right to live in a clean environment is not a personal good. Protected as personal goods (Article 23 of the Civil Code in conjunction with Article 24 of the Civil Code and Article 448 of the Civil Code) are health, freedom, privacy, the violation (threat) of which may be caused by the violation of air quality standards established by law.”⁴⁸As an aside worth noting, the German Federal Constitutional Court, in its Order of 24 March 2021. – 1 BvR 2656/18, ruled that “The protection of life and physical integrity under the first sentence of Article 2, paragraph 2, sentence 2 of the Basic Law encompasses protection against the infringement of constitutionally guaranteed interests caused by environmental pollution, irrespective of who or what circumstances cause this. The duty of protection under the first sentence of Article 2, paragraph 2, sentence 2 of the Basic Law also includes the duty to protect life and health from the dangers of climate change. Furthermore, it can form the basis for an objective obligation to protect future generations. Article 20a of the Basic Law obliges the state to take climate action. This includes the objective of achieving climate neutrality.”

In the explanatory memorandum, the Constitutional Court emphasised, for example, that a particular challenge for Germany is soil drainage, which has a significant impact on agriculture. Soil moisture is of key importance for the level of water supply to plants. The increasing incidence of dryness and drought observed in Germany is considered particularly challenging. The related soil drainage is particularly important for agriculture. If the soil moisture level falls below 30% to 40% of the ‘useful field capacity’ (*nutzbare Feldkapazität* – nFK), there is a sharp decline in photosynthesis and plant growth. In addition, soils play an important role in flood prevention, especially when adapting to the expected increase in heavy rainfall.⁴⁹

10. Draft Soil Monitoring Directive and LULUCF

It should be emphasised that land also affects other elements of the environment and that land can be used for different purposes. Therefore, the draft *Soil Monitoring Directive* under discussion is important for achieving the objectives of other pieces

⁴⁸ Uchwała SN z 28.05.2021 r., III CZP 27/20, OSNC 2021, nr 11, poz. 72.

⁴⁹ Federal Constitutional Court of Germany, *Decision of March 24, 2021, 1 BvR 2656/18*, https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2021/03/rs20210324_1bvr265618en.htm (02.08.2024).

of legislation. For example, Regulation no. 2018/841⁵⁰ (hereinafter the “LULUCF Regulation”) contains provisions on such aspects as Member States’ commitments in the area of land use, land use change and forestry that contribute to the achievement of the Paris Agreement objectives, and the EU’s greenhouse gas emission reduction target for 2021–2025.⁵¹ The LULUCF Regulation sets an overall EU net removal target for land use, land use change and forestry of 310 million tonnes of CO₂ equivalent by 2030. The appropriate use of land, in particular, but also of trees will lead to a progressive increase in removals and a reduction in emissions. The explanatory memorandum to the draft Soil Monitoring Directive emphasises, inter alia, that the proposal is fully complementary and synergistic with the LULUCF Regulation.⁵² Between 2026 and 2029, each Member State will have a binding national target to gradually increase GHG removals. The LULUCF Regulation also requires Member States to set up monitoring systems for soil carbon stocks in order to better implement nature-based mitigation measures in soils. The proposed Soil Health Directive and the revised LULUCF Regulation are key to ensuring that soils have the capacity to absorb and store carbon. The explanatory memorandum indicates that appropriate certification of healthy soils will increase the value of carbon removal certificates and provide greater social and market recognition for sustainable management of soils and associated food and non-food products.

11. Selected legal instruments under Common Agricultural Policy, particularly 2023–2027 concerning agricultural land

Agricultural land is an essential component of farms, necessary for food production. As a rule, therefore, the national laws of the Member States contain regulations for their protection. However, these are not sufficient. There is less and less agricultural land and the agricultural land itself is of poor quality, having become degraded and devastated. There is a change in the increasing importance attached to sustainable use of agricultural land and improving its quality.⁵³ It should also be noted that ag-

⁵⁰ Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the Inclusion of Greenhouse Gas Emissions and Removals from Land Use, Land Use Change and Forestry in the 2030 climate and Energy Framework, and Amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU, “Official Journal of the European Union” 2018, L 156/1, pp. 1–25.

⁵¹ R. Bujalski, *Redukcja emisji CO₂ w sektorze użytkowania gruntów i leśnictwie*, LEX/el, 2023.

⁵² Regulation (EU) 2018/841..., p. 1.

⁵³ J. Augier et al., *Evaluation Support Study on the Impact of the CAP on the Sustainable Management of Soil: Final Report*, Brussels 2020, <https://www.ecologic.eu/sites/default/files/publica->

gricultural activities are recognised in the context of a Public Good contributing to the satisfaction of human needs. The EU Regulation of 2 December 2021⁵⁴ indicates that ‘agricultural activity’ is defined as an activity that makes it possible to contribute to the provision of private and public goods through one or more of the following activities: the production of agricultural products including activities such as animal husbandry or cultivation, or maintaining agricultural land in a state which makes it suitable for grazing or cultivation, without undertaking preparatory actions going beyond the use of normal agricultural methods and normal agricultural equipment.

When using EU funds, agricultural producers are obliged to fulfil obligations related to environmental protection, which, as a rule, has a positive impact on the condition of agricultural land.⁵⁵ For example, the previously valid Act of 5 February 2015 on payments under direct support schemes⁵⁶ in Article 9 indicated that the farmer is obliged under Article 43(1) of Regulation no. 1307/2013 to respect practices, agricultural practices beneficial for the climate and the environment, or equivalent practices. These farmers’ obligations were also important for improving agricultural land. Agricultural practices beneficial for land, the climate and the environment include: a) crop diversification; b) maintenance of existing permanent grassland; and c) maintenance of an ecological focus area on agricultural land. In turn, in the Regulation of the Minister and Rural Development of 18 March 2015 on the detailed conditions and procedure for granting financial aid under the measure ‘Agri-environmental and climatic action’ covered by the Rural Development Programme 2014-2020, one of the packages included Protection of soils and waters. Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) pays even greater attention to the issue of soils. Article 6 indicates that the general objectives shall be achieved,

tion/2022/3591-Evaluation-Support-Study-on-The-Impact-of-The-CAP-on-Sustainable-Management-of-The-Soil-web.pdf (15.03.2024); *Halt and Reverse Soil Degradation in Europe: A Priority for the European Green Deal*, Bruxelles 2021, https://mcusercontent.com/d128a627b717db2380ccf7e90/files/bed006bc-2d8d-407e-a07b-fe47ad148fb2/Soil_position_paper_21_04_21.pdf (19.03.2024).

⁵⁴ *Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 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) and Repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013*, “Official Journal of the European Union” 2021, L 435/1, pp. 1-186.

⁵⁵ A. Suchoń, *Different Land Uses and Regulations on the Territory – Case of Poland*, “CEDR Journal of Rural Law” 2021, no. 2.

⁵⁶ Journal of Laws 2022, item 1775, 2727.

for example, by pursuing such specific objectives as promoting the sustainable development and efficient management of natural resources like water, soil and air, including by reducing dependence on chemicals; contributing to halting and reversing the loss of biodiversity; enhancing ecosystem services; and protecting habitats and landscapes. In the preamble to this legislation, Paragraph 51 highlights that information on nutrient management with a particular focus on nitrogen and phosphate (nutrients can present particular environmental challenges and therefore deserve special attention) should be provided to individual farmers through a specific Electronic Nutrient Management Sustainability Tool provided by Member States.

Regulation (EU) 2021/2115 of the European Parliament in question, e.g. Article 13 et seq. emphasizes: firstly, that Member States shall ensure that all agricultural land, including land which is no longer used for production purposes, is maintained in good agricultural and environmental condition; secondly, that Member States shall, at national or regional level, set minimum standards for farmers and other beneficiaries for each GAEC standard; thirdly, when setting their standards, Member States shall take into account, where appropriate, the specific characteristics of the areas concerned (e.g. soil and climatic conditions, existing farming systems such as agricultural practices, farm size and structure, land use and the specificity of outermost regions). The framework of GAEC standards is intended to contribute to climate change mitigation and adaptation.

The EU legislators' increased concern about climate and environmental action is also evident through the introduction of climate, environment and animal welfare schemes. These schemes include: the protection or improvement of water quality and reduction of pressure on water resources; prevention of soil degradation, soil restoration, improvement of soil fertility and nutrient management [and soil biota]; protection of biodiversity, preservation or restoration of habitats or species, including the conservation and creation of landscape elements or non-productive areas; measures for the sustainable and reduced use of pesticides, in particular, pesticides that pose a risk to human health or the environment. In Regulation (EU) 2021/2115 of the European Parliament Article 70 on environmental, climate-related and other management commitments, Member States shall include agri-environmental and climate commitments among the interventions provided for in their CAP strategic plans and may include other management commitments in those plans. Payments for these commitments shall be granted under the conditions set out in this Article and further specified in the CAP strategic plans. Member States shall only grant payments to farmers or other beneficiaries who undertake, on a voluntary basis, management commitments which are considered beneficial to achieve one or more of the specific objectives set out in Article 6(1) and (2).

According to the law of 8 February 2023 on the Strategic Plan for the Common Agricultural Policy 2023-2027,⁵⁷ payments for carbon-intensive crops and nutrient management are granted if the farmer implements practices to increase soil carbon sequestration and improve nutrient management. The development of afforestation of agricultural land with EU funds is also important. The amount of this land is increasing every year. The latest Regulation of the Minister of Agriculture and Rural Development of 17 April 2023 on the detailed conditions and modalities for granting and paying financial support for investments in forestry or afforestation and in the form of an afforestation premium. Afforestation⁵⁸ or agroforestry systems under the Strategic Plan for the Common Agricultural Policy 2023-2027 expand the possibilities for financial intervention. This includes not only afforestation of agricultural land, but also the creation of mid-field afforestation, the creation of agroforestry systems, and enhancement of biodiversity in private forests. The paper will also discuss the processing of agricultural products, the circular economy and short supply chains. In addition, the paper highlights the importance of agricultural producer association in achieving neutrality.

12. Conclusion

In conclusion, the EU proposal for a Soil Monitoring Directive is to be assessed positively. The need for a single European soil protection regime has long been the subject of discussion and debate. Soil protection cannot only be local, regional or national.⁵⁹ The draft of the Soil Monitoring Directive focuses not only on agricultural land, but also on other land used, for example, for forestry or housing. Soil contamination can

⁵⁷ Journal of Laws 2023 item. 412.

⁵⁸ Afforestation is the conversion of long-term non-forested land into forests and refers to the establishment of forests where there were none before, or where forests have been lost for a long time (50 years according to the UNFCCC). Reforestation refers to the replanting of trees on recently deforested land (i.e. the conversion of recently non-forested land into forests). See more Afforestation and reforestation as adaptation opportunity, Climate ADAPT, *Afforestation and Reforestation as Adaptation Opportunity*, https://climate-adapt.eea.europa.eu/en/metadata/adaptation-options/afforestation-and-reforestation-as-adaptation-opportunity?set_language=en (02.08.2024); Ch. Reyer, M. Guericke, P.L. Ibisch, *Climate Change Mitigation via Afforestation, Reforestation and Deforestation Avoidance: And What about Adaptation to Environmental Change?*, "New Forests" 2009, vol. 38, pp. 15-34.

⁵⁹ European Commission, *Healthy Soils – Soil Protection, Sustainable Soil Management in the EU and Their Restoration*, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13350-Zdrowie-gleby-ochrona-gleb-zrownowazone-gospodarowanie-glebami-w-UE-i-ich-odbudowa/feedback_pl?p_id=28624022 (19.03.2024).

adversely affect human health and life, for example, by aggravating respiratory and cardiovascular diseases and contributing to the development of cancer. The provisions of the Directive can contribute to the realisation of the right to information on elements of the environment, health, food safety and food security (values also relevant under the Charter of Fundamental Rights). On a positive note, there is a growing interest on the part of the European Commission in developing a comprehensive legal framework for soil protection that provides the same level of protection for soil as for other key elements of the natural ecosystem, such as water or air.⁶⁰ The links between soil and climate are complex. Climate change affects soil, and changing soil conditions affect climate. Above all, it is important to monitor the conservation of biodiversity. The proposal for the Draft Soil Monitoring Directive is in line with the 2030 Agenda for Sustainable Development, the Charter of Fundamental Rights of the European Union, the Universal Declaration of Human Rights or the International Covenant on Civil and Political Rights. Every human being has the right to life, and life requires food, health and adequately protected elements of the environment (including land).

There is no doubt that the largest number of national regulations in the EU today concern the protection of agricultural soils. Such regulations are not only important for agriculture, which has a basic function of food production that guarantees the sustainability of food security in the EU, but also contribute to better environmental conditions, which are essential for the health and life of humans and animals. For many years, agricultural producers have had numerous obligations in relation to agricultural land under the Pillar I and Pillar II financial schemes of the Common Agricultural Policy. It is important to highlight the obligations arising from the basic payment. The trend towards imposing more obligations on owners of agricultural land benefiting from EU programmes should also be noted. Particular attention should be paid to agri-environmental and climate change programmes or organic farming. More and more duties are linked to environmental protection. However, it is rightly pointed out that the introduction of new instruments should not impose many additional obligations on farmers, especially an increased bureaucratic burden.⁶¹

In conclusion, the new soil regulations contained in the Directive of the European Parliament and of the Council on Soil Monitoring and Resilience Draft Soil

⁶⁰ European Commission, *Carbon Farming Coalition*, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13350-Zdrowie-gleby-ochrona-gleb-zrownowazone-gospodarowanie-glebami-w-UE-i-ich-odbudowa/F2928259_pl (19.03.2024).

⁶¹ European Commission, *CLA – Agricoltori Italiani*, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13350-Zdrowie-gleby-ochrona-gleb-zrownowazone-gospodarowanie-glebami-w-UE-i-ich-odbudowa/F2927833_pl (19.03.2024).

Monitoring Directive will contribute to improving soil health and it is to be hoped that they will be adopted by the EU legislator. At the same time, some elements may raise problems connected with land ownership and data sharing on private land, for example. An important step will therefore be to implement the principles of the Draft Soil Monitoring Directive in national legislation and to take into account other EU and national legislation.

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For many years legal thought and practice focused on the general concept of environmental rights as a legal tool meant to enforce the human right to a healthy and sustainable environment. Whilst there is an undeniable link between human rights and climate change, as illustrated notably by the global phenomenon of the climate change litigation, this monograph focuses on the growing role of potential, sectoral fundamental rights and tailored remedies available in the EU legal order in absence of a substantive fundamental right to a healthy environment in EU law. Against the background of the European Green Deal and its ambitious climate-neutrality goal by 2050, the book echoes the sustainability-based approach and its limits.

Contributors analyse two interrelated perspectives. On the one hand, authors explore the procedural dimension by discussing the climate litigation and the limits of the concept of human environmental rights, state liability for loss and damage caused to individuals as a result of breaches of EU law, national remedies available in case of bad condition of the environment as well as the limits of the public interest litigation and challenges related to climate claims against private actors in national law. On the other hand, contributors discuss substantive aspects from a global perspective of food insecurity, soil monitoring and resilience as well as digitalisation, green skills and climate-induced migration. With insights from leading experts, this work highlights the evolving tensions and expectations within the EU legal framework.

Essential for legal practitioners, policymakers, academics, and students of law and administration, this book offers a comprehensive exploration of the intersection between sustainability, climate action, and the protection of fundamental rights in EU law.



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