

MICHAŁ ŚCIBURA

Uniwersytet Warszawski, Polska

e-mail: m.scibura2@uw.edu.pl

ORCID: 0000-0002-8090-0871

THE TOIL FOR SOIL: STATE OF POLISH AND EU SOIL CONSERVATION LAW IN ANTICIPATION OF THE SOIL MONITORING DIRECTIVE

ABSTRACT This article examines the current landscape of soil conservation law in Poland and the European Union, set against the pending Soil Monitoring Law – the first prospective EU legislation dedicated specifically to soil protection. Despite soil's vital role as a non-renewable resource supporting biodiversity, climate stability, and food security, recent data indicate that over 61% of EU soils are degraded, underscoring the urgent need for robust legal frameworks. In Poland, soil conservation measures can be assessed as relatively advanced. However, they are scattered across various legislative acts and integrate both public and private law instruments. Similar legal fragmentation exists in the European Union. By analysing the strengths and limitations of both Poland's and the EU's current legal systems and the anticipated impact of the Soil Monitoring Directive, the study advocates for deliberate and imperative legislation as a cornerstone of sustainable soil conservation in Europe.

KEYWORDS: soil protection, soil security, Soil Monitoring Law, food security, environmental protection, environmental damage, land contamination, agricultural and forest land, remediation

SŁOWA KLUCZOWE: ochrona gleb, bezpieczeństwo glebowe, Prawo o Monitorowaniu Gleb, bezpieczeństwo żywnościowe, ochrona środowiska, szkoda w środowisku, zanieczyszczenie powierzchni ziemi, grunty rolne i leśne, remediacja

Essentially, all life depends upon the soil...

Charles E. Kellogg¹

Soil, a non-renewable natural resource, is an indispensable constituent of the Earth's ecosystem, serving to ensure terrestrial biodiversity, climate stability and food

¹ Ch. E. Kellogg, *Soil and Society* [in:] U.S. Department of Agriculture, *Soils & Men. Yearbook of Agriculture*, U.S. Government Printing Office 1938, p. 863.

supply.² Its degradation poses a tremendous risk to the environment, the climate, and the ability to feed a growing human population.³ Against this background, it is staggering to observe the statistics indicating that at least 61% of European Union soils are currently in a degraded state, with this figure most likely being an underestimate of the actual extent of soil degradation.⁴ Although much of the public and scientific discourse on security currently focuses on areas such as energy, climate and mineral security, increasing attention should therefore be shifted to soil security.⁵

Sustainable soil conservation calls for comprehensive and deliberate legal regulations. The Soil Monitoring Law – a legislative proposal currently under consideration, which has the potential to become the first piece of legislation in the history of the European Union dedicated to soil – warrants reflection on the current state of Polish and European law in this area.

POLISH LEGAL SYSTEM FOR SOIL PROTECTION

The Polish law provides for a variety of soil conservation instruments, including both public and private law measures. Protective regulations are not, however, collated under a single umbrella act dedicated to soil, but rather spread across various legal acts.⁶ Aside from a certain amount of effort required to reconstruct legal norms from multiple sources, this structure can hardly be considered as undermining the effectiveness of said provisions, as they are grouped according to higher subject tiers in which soil issues materialise.

The Polish environmental protection system, which undoubtedly should involve the conservation of soil as an element of the natural environment,⁷ is based on a cor-

² B. W. Boer, H. Ginzky, I. L. Heuser, *International Soil Protection Law: History, Concepts and Latest Developments* [in:] H. Ginzky, I. L. Heuser, T. Qin, O. Ruppel, P. Wegerdt (eds.), *International Yearbook of Soil Law and Policy 2016*, Springer 2017, pp. 49-50.

³ C. J. Rhodes, “Soil erosion, climate change and global food security: challenges and strategies”, *Science Progress* 2014, 97(2), p. 98.

⁴ C. Arias-Navarro, R. Baritz, A. Jones (eds.), *The State of Soils in Europe*, Publications Office of the European Union 2024, p. 84.

⁵ L. Montanarella, P. Panagos, “Soil Security for the European Union”, *Soil Security* 2021, vol. 4, p. 1; A. Koch et al., “Soil Security: Solving the Global Soil Crisis”, *Global Policy* 2013, vol. 4, no. 4, p. 2; A. McBratney, D. J. Field, A. Koch, “The Dimensions of Soil Security”, *Geoderma* 2014, vol. 213, p. 203.

⁶ J. Kostecki, R. Fruzińska, “Ochrona gleb w świetle prawa krajowego i europejskiego”, *Zeszyty Naukowe. Inżynieria Środowiska* 2012, 146 (26), p. 9.

⁷ A. Mocek, W. Owczarzak, “Gleba jako naturalne środowisko przyrodnicze”, *Nauka. Przyroda. Technologie* 2010, vol. 4, iss. 6, p. 1.

nerstone piece of legislation – the **Environmental Protection Law**⁸ (“EPL”). Among the chapters of this act there are provisions concerning the protection of land surface. According to Article 101 of the EPL, the protection of land surface consists of rational management, preservation of environmental, economic, social and cultural functions (including food and biomass production as well as carbon storage), prevention of contamination with hazardous substances, remediation, preservation of the best possible soil condition, minimisation and mitigation of soil sealing impacts, and avoidance of adverse changes to the natural landform (including prevention of soil destruction and ensuring rational use of the topsoil layer). Under this principle, if it is determined that the intended activity will not ensure the proper achievement of the enumerated objectives, other ways of land use should be sought.⁹

Soil and land conditions are evaluated and observed as part of the state environmental monitoring (EPL, Art. 101b). This instrument should be associated primarily with Article 23 of the Environmental Protection Inspection Act¹⁰ and, as indicated therein, constitutes a system for measuring, assessing and forecasting the state of the environment. The evaluation of land contamination is based on the exceedance of permissible levels of hazardous substances in the soil or earth (EPL, Art. 101a). To avoid a purely mathematical approach, the evaluation also considers the impact of such substances on the functions performed by the land surface and on human health and the environment.¹¹ The procedure for evaluating land contamination is specified in detail in the 2016 Regulation of the Minister of Environment.¹²

The land surface is also subject to examination in the context of historical contamination. Under Article 101f sec. 1 of the EPL, on a site where, before 30 April 2007,¹³ activities were undertaken that were highly likely to cause historical contamination of the land surface, and where there exist indications of such

⁸ Act of 27 April 2001 – Environmental Protection Law (consolidated text: Journal of Laws of 2025, item 647, as amended).

⁹ K. Gruszecki, *Prawo ochrony środowiska. Komentarz, wyd. VII*, LEX/el. 2025, commentary to Art. 101.

¹⁰ K. Gruszecki, *Prawo...*, commentary to Art. 101b; Act of 20 July 1991 on the Environmental Protection Inspection (consolidated text: Journal of Laws of 2024, item 425).

¹¹ K. Gruszecki, *Prawo...*, commentary to Art. 101a.

¹² Regulation of the Minister of Environment of 1 September 2016 on the Procedure for Evaluating Land Contamination (Journal of Laws, item 1395, as amended).

¹³ On 30 April 2007, the Environmental Damage Prevention and Repair Act (“EDPRA”) came into force, regulating issues of present land contamination. Therefore, contamination that occurred before 30 April 2007 is considered historical contamination and is subject to the EPL, while contamination that occurred after that date is subject to the EDPRA. You will find more information about EDPRA regulations in the following part of the article. See also: J. Jerzmański, “Nowe zasady ochrony powierzchni ziemi”, *Acta Universitatis Carolinae – Iuridica* 2015, no. 2, p. 210.

a contamination, the Regional Director for Environmental Protection (“RDEP”) may, by way of an administrative decision, impose on the land occupier the obligation to perform soil and earth contamination surveys. Such surveys may also be performed independently by the RDEP in any other case (EPL, Art. 101g). Historical land contamination is recorded in a register maintained by the General Director for Environmental Protection (EPL, Art. 101c), while *poviat* starosts identify potential historical land contamination and maintain a list of such sites (EPL, Art. 101d). Anyone who has identified potential historical land contamination may report it to the starost (EPL, Art. 101e).¹⁴

Where historical contamination occurs, the occupier of the land is obliged to remediate it, unless they can prove that the contamination was caused by another entity after the date on which they took possession of the land (EPL, Art. 101h). Remediation, according to the EPL, means subjecting soil, earth and groundwater to measures aimed at removing or reducing the amount of substances causing risk,¹⁵ controlling them and limiting their spread, so that the contaminated area no longer poses a threat to human health or the environment (EPL, Art. 3 point 31b).¹⁶ Should it be impossible to initiate enforcement proceedings against the land occupier or other perpetrator, or should such proceedings prove ineffective, as well as in cases where immediate remediation is necessary due to a threat to human health or the risk of irreversible damage to the environment, a remediation will be undertaken by the RDEP (EPL, Art. 101i).

The EPL’s regulation of merely historical land contamination does not imply that soil damage occurring after 30 April 2007 managed to escape Polish legislation. More recent cases of contamination are regulated by another statute, the **Environmental Damage Prevention and Repair Act**¹⁷ (“EDPRA”), which introduces the concept of ‘environmental damage’ – a negative, measurable change in the condition or function of natural elements, assessed in relation to the initial condition, caused directly or indirectly by the activities of an entity using the environment, with regard

¹⁴ M. Górski, *Usuwanie odpadów*, Warszawa 2021, p. 174.

¹⁵ Remediation may rely on self-cleaning if it offers the highest environmental benefits (EPL, Art. 3 point 31b).

¹⁶ Remediation of historical land contamination is performed in accordance with an established remediation plan. An entity obliged to remediate historical land contamination is required to apply to the RDEP for a decision establishing such a plan. Where necessary, the RDEP consults sanitary authorities (regarding threats to human health and drinking water contamination), the starost (regarding agricultural land), as well as authorities competent for mining activities, forest lands, national parks and state waters (EPL, Art. 101i).

¹⁷ Act of 13 April 2007 on the prevention and repair of environmental damage (consolidated text: Journal of Laws of 2020, item 2187).

to, *inter alia*, land surface, i.e. soil or earth contamination (EDPRA, Art. 6 point 11). Liability for environmental damage under the EDPRA is particularly stringent and relates to the effect itself, thus being separated from fault (both *dolus* and *culpa*).¹⁸ Accordingly, even the slightest negligence (*culpa levissima*) gives rise to liability.¹⁹

In the event of an imminent threat of environmental (incl. soil) damage, the entity using the environment²⁰ is obliged to take immediate preventive measures, whereas if damage has already occurred, it shall take measures to limit it, prevent further damage and negative effects on human health or further impairment of the functions of natural elements, as well as undertake reparative measures (EDPRA, Art. 9). This requires applying to the RDEP for its approval of reparative measures.²¹ The RDEP decision specifies the condition to which the environment must be restored, the scope and method of reparative measures, as well as their start and end dates.²²

For the purposes of the EDPRA, reparative measures mean any measures, including restrictive or temporary ones, taken to repair or replace in an equivalent manner natural elements or their functions that have been damaged, as well as compensatory measures. They may include remediation, restoration of the natural landform, afforestation, tree planting or creating vegetation clusters, reintroduction of destroyed species, provided that they result in removing the threat to human health and restoring the natural balance in a given area (EDPRA, Art. 6 point 3).

Similar to the historical land contamination register, the General Director for Environmental Protection maintains a register of direct threats of environmental damage and environmental damage that has occurred within the country (EDPRA, Art. 26a).

Following P. Czepiel, another facet of the interaction between the EPL and the EDPRA must also be noted. Namely, violations of soil or earth quality standards, or changes in land use may be considered not only as environmental damage, but also as a negative impact on the environment, which is prohibited under Article 362 of

¹⁸ P. Korzeniowski, "Ryzyko szkody w środowisku", *Prawo i Środowisko* 2011/1, LEX.

¹⁹ T. Czech, "Wina jako przesłanka odpowiedzialności administracyjnoprawnej za szkodę w środowisku", *Przegląd Prawa Publicznego* 2009, no. 2, p. 33.

²⁰ Only entities conducting activities that pose a risk of environmental damage (EDPRA, Art. 2 sec. 1 point 1) or other activities that pose a direct threat of damage or cause environmental damage (EDPRA, Art. 2 sec. 1 point 2) are liable. See: B. Draniewicz, "Odpowiedzialność za szkodę w środowisku w ustawie o zapobieganiu szkodom w środowisku i ich naprawie – wybrane zagadnienia", *Monitor Prawniczy* 5/2008, p. 8.

²¹ P. Cwiek, *Szkoda w środowisku – procedura podejmowania działań naprawczych*, LEX/el. 2021.

²² W. Federczyk, A. Kosieradzka-Federczyk, *Ustawa o zapobieganiu szkodom w środowisku i ich naprawie. Komentarz*, LEX/el. 2013, commentary to Art. 13.

the EPL. However, the author rightly concluded that in such a situation of overlapping regulations, the provisions of EDPRA should apply as *leges speciales*.²³

Another piece of Polish legislation containing soil conservation standards, which *nota bene* is also of a specific nature when compared with the EPL,²⁴ is the **Agricultural and Forest Land Protection Act**²⁵ (“AFLA”). This statute primarily concerns soil protection through spatial planning instruments and restrictions on land use, and as such is closely correlated with Polish zoning laws.

Article 6 of the AFLA stipulates that the conversion of land to non-agricultural and non-forestry uses should primarily involve uncultivated land (wasteland²⁶) and, where none is available, other land with the lowest production potential. It is clear from this provision that agricultural lands of the highest classes should only be withheld from agricultural use in exceptional circumstances.²⁷ Echoing J. Bieluk and D. Łobos-Kotowska, it should be noted that preventing reductions in agricultural land area is of significant social importance. The AFLA regulations, therefore, ultimately aim to safeguard the right to healthy and safe food, as well as public goods such as rural landscapes, biodiversity, water quality and availability, soil functionality and climate stability.²⁸

To this end, the AFLA regulations, together with applicable zoning laws, provide for a certain regime governing changes in the use of land containing soils that are of the highest value. Land use changes involving agricultural land classified as class I-III farmland or forest land can only be implemented in the form of a local plan adopted by a municipal council and additionally require the consent of a relevant authority (in some cases as high-level as the minister responsible for rural development) (AFLA, Art. 7). For some developments, a local plan is mandatory even for lower

²³ P. Czepiel, “Problematyka prawna ochrony powierzchni ziemi jako medium środowiskowego, cz. II”, *Przegląd Ustawodawstwa Gospodarczego* 2011, no. 2, pp. 2-12; A. M. Kozińska, “Regulacje prawne dotyczące odpowiedzialności za szkody w środowisku oraz ich naprawy”, *Przegląd Prawa Ochrony Środowiska* 2009, no. 2, p. 95-120.

²⁴ K. Gruszecki, *Prawo...*, commentary to Art. 101.

²⁵ Act of 3 February 1995 on the protection of agricultural and forest land (consolidated text: Journal of Laws of 2024, item 82).

²⁶ Wasteland in the agricultural meaning, i.e. an area of land on which not much can grow; cf. *Wasteland*, Collins Dictionary, retrieved on 8 September 2025 from www.collinsdictionary.com/dictionary/english/wasteland.

²⁷ Judgment of the Supreme Administrative Court of 17 January 2019, sign II OSK 775/18, LEX no. 2628730; D. Danecka, W. Radecki, *Ochrona gruntów rolnych i leśnych. Komentarz, wyd. VI*, LEX/el. 2024, commentary to Art. 6.

²⁸ Cf. J. Bieluk, D. Łobos-Kotowska, *Ustawa o ochronie gruntów rolnych i leśnych. Komentarz*, Warszawa 2015, p. 2; judgment of the Voivodeship Administrative Court in Warsaw of 28 May 2021, sign. IV SA/Wa 229/21, LEX no. 3313242.

classes, e.g. class IV for certain renewable energy installations.²⁹ Unlike an administrative decision, the form of a local plan as a means of changing land use provides greater protection for valuable land, as it ensures the participation of the public and specialist environmental bodies and is less susceptible to manipulation.³⁰

According to Article 72 of the EPL, when establishing local plans, conditions shall be ensured to maintain ecological balance and rational management of environmental resources, in particular by providing programs for the rational use of land surface, including in areas where mineral deposits are exploited, and rational land management. The procedure for adopting a local plan also ensures that an environmental impact assessment is produced, which should evaluate the anticipated impact on the land surface.³¹

In addition to the formal change of use, it is often necessary to obtain a decision to exclude the land from production. If required, the exemption decision is a condition for issuing a building permit.³² This obligation largely depends on the type of soil found in a given area and accordingly serves as a special instrument for its protection. As such, an exemption decision is mandatory for agricultural land classified as classes I, II, III, IIIa, IIIb formed from mineral and organic soils, agricultural land classified as classes IV, IVa, IVb, V and VI formed from organic soils, and all forest land (AFLA, Art. 11). Additional obligations may be imposed, such as removing and preserving topsoil (humus) (AFLA, Art. 14).³³ Over the last 10 years, an average of 4 482 hectares of land per year has been excluded from agricultural production.³⁴

²⁹ Article 14 sec. 6a point 2 of the Act of 27 March 2003 on spatial planning and development (consolidated text: Journal of Laws of 2024, item 1130, as amended).

³⁰ M. Ścibura, *Ochrona gruntów rolnych i leśnych a lokalizacja instalacji odnawialnych źródeł energii w świetle nowelizacji ustawy o planowaniu i zagospodarowaniu przestrzennym* [in:] B. Jeżyńska, A. Niewiadomski (eds.), *Teoretyczna i funkcjonalna adaptacja zmian w prawie rolnym. Pakiet legislacyjny 2023*, Warszawa 2024, pp. 199-200.

³¹ Article 51 sec. 2 point 2 letter e) seventh index of the Act of 3 October 2008 on providing access to information on the environment and its protection, public participation in environmental protection and environmental impact assessments (consolidated text: Journal of Laws of 2024, item 1112, as amended) ("EIA Act").

³² P. Korzeniowski, "Cele i funkcje ochrony prawnej gruntów rolnych i leśnych", *Prawo i Środowisko* 2012, no. 3, LEX.

³³ Also confer judgment of the Voivodeship Administrative Court in Gliwice of 6 November 2006, sign II SA/GI 83/06, LEX no. 930677.

³⁴ According to own calculations based on data retrieved on 9 September 2025 from Statistics Poland, Local Data Bank, category K9 Environmental Protection, group G304 Land Surface and Soil Protection, subgroup P1985 Agricultural Area and Forest Land Excluded from Agricultural and Forest Production.

The AFLA also provides a legal framework for land reclamation (otherwise translated as land revegetation, rehabilitation or restoration), defined as providing or restoring degraded or devastated land with its utility or natural value, e.g., through proper landscaping, improving physical and chemical properties, or soil restoration (AFLA, Art. 4 point 18). Land reclamation is obligatory for persons who cause the loss or reduction of the utility value of land and it must be carried out at their expense (AFLA, Art. 20). In addition, owners of agricultural land and land reclaimed for agricultural purposes are obliged to prevent soil degradation (AFLA, Art. 15). Land rehabilitation is particularly important in mining.³⁵

The **Agricultural System Formation Act**³⁶ (“ASFA”), which governs the transfer of ownership of agricultural properties, also emerges as a clearly indirect but significant instrument for the legal protection of agricultural land and its soils. Its objectives include, primarily, ensuring that agricultural activities are performed by qualified persons and preventing excessive concentration of agricultural property (ASFA, Art. 1). According to D. Łobos-Kotowska and M. Stańko, over-concentration of agricultural land poses a direct threat to food security, as well as environment and soil quality.³⁷ Furthermore, T. Czech, who refers to the ASFA explanatory memorandum, points out that agricultural land is the most important means of food production and, as such, should be protected in terms of quality, i.e. by ensuring that the productive properties of the soil are not impaired and that lost properties are restored.³⁸

The **(Soil) Fertilisers and Fertilisation Act**³⁹ (“SFFA”) is also significant among the Polish soil conservation statutes. It regulates the sale and use of fertilisers, plant growth aids and digestates, as well as includes the prohibition of using fertilisers and digestates on certain soils. The SFFA also defines the tasks of the National Chemical and Agricultural Station and its 17 subordinate regional stations in the field of soil conservation, which feature analysing soils, plants, agricultural and forest crops, executing quality tests of fertilisers and plant growth aids, and performing expert assessments on soil fertility (SFFA, Art. 26-28). Laboratory chemical testing of soils for agricultural purposes in Poland has a history dating back over 150 years.⁴⁰

³⁵ D. Danecka, W. Radecki, *Ochrona...*, commentary to Art. 20.

³⁶ Act of 11 April 2003 on the formation of the agricultural system (consolidated text: Journal of Laws of 2024, item 423, as amended).

³⁷ D. Łobos-Kotowska, M. Stańko, *Ustawa o kształtowaniu ustroju rolnego. Komentarz, wyd. II*, LEX/el. 2023, commentary to Art. 1.

³⁸ T. Czech, *Kształtowanie ustroju rolnego. Komentarz, wyd. IV*, LEX/el. 2025, commentary to Art. 1.

³⁹ Act of 10 July 2007 on fertilisers and fertilisation (consolidated text: Journal of Laws of 2024, item 105).

⁴⁰ K. Boratyński, R. Czuba, “Rozwój i działalność stacji chemiczno-rolniczych w Polsce”, *Postępy Nauk Rolniczych* 1970, no. 5, p. 105.

Soil and land surface protection mechanisms also appear punctually in many **other legal contexts**. During the investment process, as part of the screening procedure aimed at determining the obligation to conduct an Environmental Impact Assessment, the competent authorities analyse the type and characteristics of the project, considering biodiversity and the use of natural resources, such as soil, water and land.⁴¹ Equivalent information must also be included in EIA Reports for projects and examined accordingly.⁴²

Waste legislation requires waste management to be done in a way that does not pose a threat to the soil.⁴³ Specifically, it prohibits the discharge of waste oils into soil⁴⁴ and the location of waste landfills on soils classified as classes I-III and on soils of organic origin.⁴⁵ For all waste landfills and projects such as waste-to-energy plants, special soil protection conditions apply.⁴⁶ Within the mining industry, mining waste management programs must be drawn up, with one of their objectives being to improve the utility value of land.⁴⁷

Under forest law, permanently sustainable forest management is guided by forest management plans, which aim to protect soils and other particularly vulnerable areas.⁴⁸ Forest owners are also obliged to maintain balance in forest ecosystems, especially to protect their soils and waters.⁴⁹ On a general basis, everyone is prohibited from polluting the soil and water of any forest, regardless of whether they are its owner or a third party.⁵⁰ This includes burning the top layer of soil and plant residues in forests, inner forest areas, and within 100 metres of the forest borders.⁵¹

⁴¹ Article 63 sec. 1 point 1 letter c) of the EIA Act.

⁴² Article 66 sec. 1 point 1 letter d) of the EIA Act.

⁴³ Article 16 of the Act of 14 December 2012 on waste (consolidated text: Journal of Laws of 2023, item 1587, as amended) ("Waste Act").

⁴⁴ Article 93 of the Waste Act.

⁴⁵ § 2 sec. 1 point 9 of the Regulation of the Minister of Environment of 30 April 2013 on waste landfills (consolidated text: Journal of Laws of 2022, item 1902).

⁴⁶ Article 124 sec. 2, Article 160 sec. 1 of the Waste Act.

⁴⁷ Article 8 sec. 2 point 1 letter d) of the Act of 10 July 2008 on Mining Waste (consolidated text: Journal of Laws of 2022, item 2336).

⁴⁸ Article 7 sec. 1 point 3 of the Act of 28 September 1991 on Forests (consolidated text: Journal of Laws of 2025, item 567) ("Forest Act").

⁴⁹ Article 9 sec. 1 point 3 of the Forest Act.

⁵⁰ Article 30 sec. 1 point 1 of the Forest Act; B. Rakoczy, *Ustawa o lasach. Komentarz*, Warszawa 2011, commentary to Art. 30.

⁵¹ Article 30 sec. 3 point 3 of the Forest Act.

SOIL CONSERVATION IN THE EUROPEAN UNION

Similarly to Poland, there is currently no integrated legal act concerning soil conservation in the European Union. However, certain community strategies have been passed, with the most recent titled “EU Soil Strategy for 2030. Reaping the benefits of healthy soils for people, food, nature and climate”⁵² adopted by the European Commission in 2021. This document recognises soil as a key solution for climate change mitigation and adaptation, as well as an important factor for human, animal and plant health. Accordingly, the main visions and objectives of the 2030 strategy include restoring degraded land and soil, reducing soil pollution to levels no longer considered harmful, providing food and biomass production as well as a basis for life and biodiversity, and reaching no net land take. As the strategy itself indicates, it interlinks with and relies on other European Union instruments such as the Fit for 55 package, Farm to Fork strategy, Common Agricultural Policy or the Taxonomy.

Another piece of currently relevant soft law is also the European Union Mission under Horizon Europe entitled “A Soil Deal for Europe”⁵³ with its main goal to establish a hundred Living Labs and Lighthouses to lead the transition towards healthy soils by 2030. In March 2023, the Mission, in cooperation with the Joint Research Centre of the European Commission, has launched the EU Soil Observatory Dashboard.⁵⁴ Among the initiatives funded by this Mission is the AI4SoilHealth, an innovative project aimed at implementing and improving soil health monitoring and modelling services using artificial intelligence (AI) technologies.⁵⁵

It is worth noting that the European Union has already made one attempt to adopt a specialized legal act focused exclusively on soil protection. In 2006, a proposal was put forward for a directive of the European Parliament and of the Council establishing a framework for the protection of soil and amending Directive 2004/35/EC.⁵⁶ A. Nowak categorised the solutions outlined in the directive proposal

⁵² *EU Soil Strategy for 2030. Reaping the benefits of healthy soils for people, food, nature and climate*, communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2021) 699 final, Brussels, 17 November 2021.

⁵³ European Commission, Directorate-General for Research and Innovation, *EU mission: A Soil Deal for Europe*, Publications Office of the European Union, 2025, retrieved on 17 September 2025 from <https://data.europa.eu/doi/10.2777/4948116>.

⁵⁴ *Ibidem*.

⁵⁵ T. Oberleitner, R. Skalský, J. Balkovič, C. Folberth, *AI4SoilHealth: Supporting Europe's Soil Deal using AI Technology and Predictive Services*, Mission Soil.at, Vienna 2024, retrieved on 17 September 2025 from <https://pure.iiasa.ac.at/id/eprint/20065>.

⁵⁶ Proposal for a Directive of the European Parliament and of the Council establishing a framework for the protection of soil and amending Directive 2004/35/EC, COM/2006/0232 final, COD 2006/0086, EUR-Lex document no. 52006PC0232.

into three groups: preventive measures, restorative mechanisms, and raising public awareness of soil health issues.⁵⁷ The author also spoke highly of the directive proponents, whom he considered to have adopted a comprehensive, wide-reaching and universal approach to soil protection.⁵⁸ This comprehensive character of the proposal was also acknowledged by S. Paleari, although she distinguished three other sets of measures: general precaution and prevention, identification of risk areas and contaminated sites, as well as operative measures for such areas.⁵⁹ Disappointingly, this proposal was withdrawn by the European Commission in 2014.⁶⁰

That being said, many current European Union laws indirectly address the issue of soil protection.⁶¹ Preliminary reference must be made to the general regulations at the **treaty level**. Article 3(3) of the Treaty on European Union⁶² establishes the Union's commitment to ensuring a high level of protection and improvement of the quality of the environment, whereas Article 191 of the Treaty on the Functioning of the European Union⁶³ further specifies that the Union's policy on the environment shall contribute to preserving, protecting and improving the quality of the environment, protecting human health, and prudent and rational utilisation of natural resources, as well as aim at a high level of protection taking into account the diversity of situations in various regions.

Within the European Union, environmental liability with regard to the prevention and remedying of environmental damage is regulated by **Directive 2004/35/EC**,⁶⁴ which introduces the definition of land damage and classifies it as a subtype of environmental damage. Annex II to this Directive specifies a common framework for choosing the most appropriate measures to ensure the remediation of land damage, underlining the need to consider the characteristics and function of the soil. Environmental protection is also enforced through criminal liability instruments

⁵⁷ A. Nowak, "Ochrona gleb w prawie wspólnotowym – w kontekście projektu 'Dyrektywy Parlamentu Europejskiego i Rady ustanawiającej ramy dla ochrony gleb oraz zmieniającej dyrektywę 2004/35/WE'", *Studia Iuridica* 2015, iss. 61, p. 288.

⁵⁸ *Ibidem*.

⁵⁹ S. Paleari, "Is the European Union protecting soil? A critical analysis of Community environmental policy and law", *Land Use Policy* 2017, p. 2.

⁶⁰ Withdrawal of obsolete Commission proposals (2014/C 153/03) (OJ C 153, 21.5.2014).

⁶¹ Z. Tóth, "Soil protection in the EU: the most important soil-related EU policies and legal sources", *Journal of Agricultural and Environmental Law* 22/2017, p. 202.

⁶² Consolidated version of the Treaty on European Union (OJ C 202, 7 June 2016, p. 13).

⁶³ Consolidated version of the Treaty on the Functioning of the European Union (OJ C 326/47, 26 October 2012).

⁶⁴ Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30 April 2004, p. 56).

in accordance with the **Directive 2024/1203**,⁶⁵ which stipulates that the Member States shall criminalise, where it is unlawful and intentional, the discharge, emission or introduction into soil of a quantity of materials or substances, energy or ionising radiation, which causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the quality of soil, or substantial damage to an ecosystem, animals or plants.

Soil health issues are also captured in the directive on integrated pollution prevention and control (“**IPPC Directive**”),⁶⁶ which defines soil as the top layer of the Earth’s crust situated between the bedrock and the surface, composed of mineral particles, organic matter, water, air and living organisms. According to Article 14 of the IPPC Directive, Member States shall ensure that permits for installations include appropriate requirements ensuring protection of the soil, as well as requirements for periodic monitoring of soil and regular maintenance and surveillance of measures taken to prevent emissions to soil. Soil protection is also addressed with respect to site closures (IPPC Directive, Art. 22).

Significant importance in protecting European Union soils is also attributed to the provisions of the **Common Agricultural Policy**,⁶⁷ which, *inter alia*, sets the standards for good agricultural and environmental condition of land. According to M. Raffelsiefen, five of these standards are directly aimed at soil protection (minimum soil cover, limiting soil erosion, maintenance of soil organic matter, crop diversification, and maintenance of permanent grassland including wetland and peatland), whereas others contribute to it indirectly.⁶⁸

Reflecting on the summary compiled by S. Paleari, soil protection instruments also appear in the EIA Directive, the Fourth Daughter Directive, the REACH Regulation, the Birds and Habitats Directives, as well as in relevant legislation on biocidal

⁶⁵ Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC (OJ L, 2024/1203, 30 April 2024).

⁶⁶ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial and livestock rearing emissions (integrated pollution prevention and control) (OJ L 334, 17 December 2010, p. 17).

⁶⁷ Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ L 347, 20 December 2013, p. 549).

⁶⁸ M. Raffelsiefen, *The EU Common Agricultural Policy and Its Contribution to the Protection and Sustainable Use of Soils: New Approaches for the Period 2021–2027* [in:] H. Ginzky, E. Dooley, I. L. Heuser, E. Kasimbazi, R. Kibugi, T. Markus, T. Qin, O. Ruppel (eds.), *International Yearbook of Soil Law and Policy 2019*, Springer 2021, p. 343.

products, fertilisers and pesticides, carbon storage, GMOs, landfills, mining waste, renewable energy and many others.⁶⁹

SOIL MONITORING DIRECTIVE AND ITS ROLE IN THE POLISH LEGAL SYSTEM

The state of *acquis communautaire* in the field of soil conservation may soon change fundamentally, with the Soil Monitoring Law currently in legislative works. In July 2025, the European Council reached a provisional deal with the European Parliament on the proposal for a directive of the European Parliament and of the Council on soil monitoring and resilience (Soil Monitoring Law)⁷⁰ (“SML Proposal”). If adopted, this directive will make history as the first comprehensive piece of European Union legislation to deal with soil protection issues.

SML Proposal is rooted in the consideration that soil is a vital, limited resource crucial for the economy, the environment and the society. It is also essential for ensuring food security and providing a physical platform for infrastructures and human activities, as well as a source of raw materials. However, estimations show that 60 to 70% of the soils in the European Union are degraded and continue to deteriorate. Therefore, its objective is to put in place a solid and coherent soil monitoring framework for all soils across the Union, to continuously improve soil health, maintain soils in a healthy condition as well as prevent and tackle all aspects of soil degradation, with the view to achieving healthy soils by 2050 (SML Proposal, Art. 1).

The definition of soil in the SML Proposal is based on the one adopted in the IPPC Directive, although it is not identical, as it also considers parent material, apart from bedrock, as a possible baseline for soil location. What deserves recognition is the introduction of additional uniform definitions relating to soil, such as soil biodiversity, soil health, soil resilience or soil investigation. In terms of general provisions, the draft also proposes the establishment in each Member State of soil districts for administrative purposes, as well as soil units (within the soil districts) for the purposes of monitoring and reporting of soil health (SML Proposal, Art. 4). To this end, Member States shall designate the competent authorities responsible at an appropriate level for performing the soil conservation duties (SML Proposal, Art. 5). In this regard, Polish law will certainly require several organisational adaptations, although it appears that existing entities such as RDEPs or Regional Chemical and Agricultural Stations could successfully assume the role of competent authorities.

⁶⁹ S. Paleari, *Is the European Union...*, pp. 4-5.

⁷⁰ Proposal for a Directive of the European Parliament and of the Council on soil monitoring and resilience (Soil Monitoring Law), 2023/0232 (COD).

Following the systematics adopted by the SML Proposal, its further material content can be divided into four thematic categories: (i) monitoring and assessment of soil health, (ii) soil resilience, (iii) management of contaminated sites, and (iv) financing, information to the public and reporting.

- I. If adopted, the new directive will oblige Member States to establish a monitoring framework at a level appropriate for the soil descriptors, soil sealing and soil removal indicators. On the soil unit level, the monitoring shall include soil health,⁷¹ whereas in soil districts soil sealing⁷² and soil removal⁷³ should be monitored (SML Proposal, Art. 6). When monitoring and assessing soil, Member States will be required to use newly introduced standards – soil descriptors, criteria for healthy soil condition, and soil sealing and soil removal indicators (SML Proposal, Art. 7), listed and explained in Annex I to the directive. Measurements and methodology, including the determination of sampling points and minimum criteria, are regulated in Annex II. The first soil measurements must be performed within five years from the date of entry into force of the directive and then every six years within one sampling campaign or as part of a continuous sampling scheme (SML Proposal, Art. 8 sec. 4-5). Said measurements shall be the basis for further assessment of soil health in all soil districts and for the identification of areas where individual criteria for healthy soil condition are not satisfied (SML Proposal, Art. 9). The Polish soil monitoring system, although already advanced, will have to be adapted to these new requirements, which should help to further structure and unify it to European standards.
- II. In terms of soil resilience,⁷⁴ encouragement, facilitation and support shall be provided for landowners and land managers to improve soil health and soil resilience, particularly by ensuring access to science-based advice and information, promoting awareness on the benefits of soil health and

⁷¹ Soil health means the physical, chemical and biological condition of the soil determining its capacity to function as a vital living system and to provide ecosystem services, i.e. direct or indirect contributions of ecosystems to the economic, social, cultural, environmental and other benefits that people derive from those ecosystems (SML Proposal, Art. 3 points 3 and 4).

⁷² Soil sealing means the covering of soil with completely or partially impermeable material (SML Proposal, Art. 3 point 17c).

⁷³ Soil removal means the temporary or long-term total or partial removal of soil in an area (SML Proposal, Art. 3 point 17).

⁷⁴ Soil resilience means the ability of soil to preserve its functions and maintain its capacity to provide ecosystem services (see footnote 71), and to withstand and recover from disturbances (SML Proposal, Art. 3 point 5).

resilience practices, demonstrating available funding, instruments and other supporting measures, or engaging with the public concerned (SML Proposal, Art. 10). Member States shall also realise land take mitigation principles through avoiding or reducing the loss of the capacity of the soil to provide multiple ecosystem services and striving to offset the loss that actually occurs (SML Proposal, Art. 11). While some of these objectives are certainly worth to be further reinforced in Polish law, they remain sufficiently generic that it can be reasonably assumed that, to a certain extent, appropriate legal measures already exist in Poland.

- III. The risks for human health and the environment of potentially contaminated sites and contaminated sites will have to be identified, managed, and kept to acceptable levels (SML Proposal, Art. 12). The role of Member States will be to introduce an appropriate approach to the systematic identification and investigation of potentially contaminated sites, as well as site-specific risk assessments and management of contaminated sites. With regard to such sites, the public should be informed and actively involved through consultation, and a corresponding public register should be established (SML Proposal, Art. 16). It should be stressed that in this area, the SML mostly delegates specific regulation to Member States, without introducing any measurable solutions itself. Altogether, therefore, no significant improvement in this regard is to be expected for the Polish soil protection system due to this new directive, as the objectives collated therein are already largely being achieved.
- IV. The implementation of the proposed directive is foreseen to be supported by the European Union financial programmes (SML Proposal, Art. 17). Member States will be required to report soil data to the Commission and the European Environment Agency, in some instances even through providing online access to relevant data (SML Proposal, Art. 18). Results generated by the soil monitoring and assessments, as well as a digital soil health data portal, will have to be made public (SML Proposal, Art. 19). These measures should be viewed positively, as they promote control and transparency in soil protection and soil data management.

In the overall evaluation, the first apparent concern is that, from the perspective of Poland's relatively advanced soil protection system, the amendments envisaged in the SML Proposal are not particularly novel and do not promise any fundamental change. Another issue, however, is that these solutions are objectively deficient. Experts cited by S. Ibbott indicate that the ambition of the European Union's first soil law is rather weak or even absent, as it will do no more than monitor the ongoing

soil degradation instead of reversing it, and “when monitoring is prioritised above action nothing is guaranteed”.⁷⁵ Other NGOs mention that the SML Proposal does not contain any binding protection measures or targets and, therefore, undermines any meaningful progress in achieving healthy soils.⁷⁶ As such, it should at most be seen as the very first step that “should be accompanied by well-defined roadmaps, ambitious and quantifiable measures”.⁷⁷ Monitoring alone will not suffice; the directive should go the extra mile and provide conclusive solutions for the protection of healthy soils and the restoration of degraded ones, including mandatory deadlines and time-bound targets.⁷⁸

CONCLUSION

In summary, while the SML Proposal marks a significant milestone for the European Union’s soil legislation, its current form remains cautious and preliminary. The directive lays a foundation for improved monitoring, transparency, and harmonisation across Member States, but lacks binding commitments and transformative measures. Therefore, in my opinion, it will contribute little to the Polish legal system, which already contains a variety of mechanisms in the most important areas of soil protection. With this in mind, I deem it appropriate to reaffirm the continued validity of the opinion voiced by J. Kostecki and R. Fruzińska way back in 2012, stating that “the Polish legislator steps ahead of European visions of soil protection”.⁷⁹ Hopefully, it stays on the course.

⁷⁵ S. Ibbott, *A weak deal for Europe’s soils*, European Environmental Bureau 2025, retrieved on 18 September 2025 from <https://eeb.org/a-weak-deal-for-europes-soils>.

⁷⁶ R. R. Valejo, H. Robrecht, G. Sahin, P. Defranceschi, *ICLEI Europe’s position on the Directive on Soil Monitoring and Resilience*, ICLEI Europe 2024, retrieved on 18 September 2025 from https://iclei-europe.org/fileadmin/templates/iclei-europe/lib/resources/tools/push_resource_file.php?uid=rW6eUUvj.

⁷⁷ Agroecology Europe, *Comments on the Proposal for a Directive of the European Parliament and of the Council on Soil Monitoring and Resilience (Soil Monitoring Law)*, 2023, retrieved on 18 September 2025 from www.agroecology-europe.org/wp-content/uploads/2023/10/AEEU-Comments-on-Soil-Monitoring-Law-October-2023.pdf.

⁷⁸ EurEau, *EurEau Position Paper on the Directive on Soil Monitoring and Resilience*, 2023, retrieved on 18 September 2025 from www.eureau.org/resources/position-papers/7468-eureau-position-paper-on-soil-monitoring/file; G. Kolpak, G. Lisi, E. Kearsey, *Proposal for a Directive on Soil Monitoring and Resilience (Soil Monitoring Law). Preliminary analysis and first recommendations*, ClientEarth 2023, retrieved on 18 September 2025 from www.clientearth.org/media/v3cbpbu1/proposal-for-a-directive-on-soil-monitoring-and-resilience-clientearth-preliminary-analysis-and-first-recommendations.pdf.

⁷⁹ J. Kostecki, R. Fruzińska, *Ochrona...*, p. 10.

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