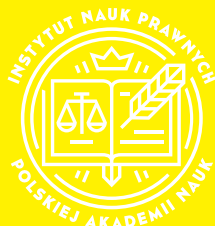


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Special issue

**Biodiversity at the crossroads – balancing between the people,
climate and the planet**

Inside:

- How to protect and rebuild biodiversity and ecosystems across the European Union? From a sectoral perspective to horizontal challenges – An overview of EU nature protection law
- Selected legal aspects of biodiversity, especially related to agriculture (CAP 2023–2027, Poland, Austria and Canada)
- Intra-environmental Conflicts in the Context of the Sustainable Energy Transition at the EU Level: Analyzing the Respective Legislative Developments (RED III Directive) and the Role of the Principles of EU Environmental Law
- Normative prerequisites and general interest for the preservation of biodiversity in the Republic of Serbia
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Wydawnictwo INP PAN
Warszawa 2026

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**Biodiversity at the crossroads – balancing between the people,
climate and the planet**

Guest Editor:

dr hab. Inga Kawka, prof. UJ (Jagiellonian University in Kraków)

dr hab. Alicja Sikora-Kaléda (Jagiellonian University in Kraków)

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Szanowni Państwo,

z przyjemnością prezentujemy numer specjalny czasopisma, w którym publikujemy artykuły będące rezultatem wystąpień podczas konferencji międzynarodowej „Bioróżnorodność na rozdrożu – (nie)możliwe poszukiwanie równowagi między ludźmi, klimatem i planetą?”, zorganizowanej w październiku 2024 r. w ramach projektu Jean Monnet Module (Erasmus+) – „Sustainability and Climate Change in EU Law” (SustEULaw), realizowanego w Katedrze Prawa Europejskiego Uniwersytetu Jagiellońskiego.

Publikowane teksty koncentrują się na problematyce ochrony bioróżnorodności jako jednego z kluczowych wyzwań współczesnego prawa UE, ujmowanego w perspektywie zrównoważonego rozwoju i transformacji klimatycznej. Przedstawiają one zarówno ujęcie systemowe i horyzontalne proponując nowe, holistyczne podejście do bioróżnorodności a tym samym porzucenie tradycyjnego podejścia na zasadzie jej ochrony i zachowania (M. Baran), jak i analizy szczegółowe, dotyczące relacji między rolnictwem a ochroną środowiska. Rolnictwo stało się bowiem w ostatnich latach reprezentatywną dziedziną poszukiwania i rozwoju nowych rozwiązań w dziedzinie bioróżnorodności (A. Suchoń).

Kolejne artykuły podejmują problem konfliktów wewnątrzśrodowiskowych w kontekście transformacji energetycznej, w szczególności w odniesieniu do dyrektywy RED III i zasad unijnego prawa ochrony środowiska (V. Karageorgou), a także zagadnienia ochrony bioróżnorodności w państwach spoza UE (M.P. Kostić), oraz implementacji celów unijnych na poziomie krajowym w państwach członkowskich (O. Mital). Numer zamyka opracowanie poświęcone sądowej ochronie środowiska w ujęciu porównawczym (E. Nahavandi).

Serdecznie dziękujemy Recenzentkom i Recenzentom za ich cenny wkład w przygotowanie niniejszego numeru.

Inga Kawka, Alicja Sikora-Kaléda

Dear Readers,

we are pleased to present this special issue, which includes articles based on papers presented at the international conference “Biodiversity at the Crossroads – An (Im)possible Balancing Exercise between People, Climate and the Planet?”, organised in October 2024 within the Jean Monnet Module (Erasmus+) – “Sustainability and Climate Change in EU Law” (SustEULaw), carried out at the Chair of European Law of the Jagiellonian University.

The contributions focus on biodiversity protection as a key challenge in contemporary EU law, analysed in the broader context of sustainable development and climate transition. They present both a systemic and horizontal perspective advancing a holistic approach instead of classical measures of conservation and preservation (M. Baran) and more specific analyses, concerning the relationship between agriculture and environmental protection, as agriculture has in recent years become a key field for testing and developing new approaches to biodiversity protection (A. Suchoń).

Further articles address intra-environmental conflicts in the context of the energy transition, in particular in relation to the RED III Directive and principles of EU environmental law (V. Karageorgou), as well as biodiversity protection in third countries (M. P. Kostić), and the implementation of EU objectives at the national level within Member States (O. Mital’). The issue concludes with a comparative study on judicial protection of the environment (E. Nahavandi).

We would like to express our sincere gratitude to the reviewers for their valuable contribution to the preparation of this special issue.

Inga Kawka, Alicja Sikora-Kaléda



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How to protect and rebuild biodiversity and ecosystems across the European Union? From a sectoral perspective to horizontal challenges – An overview of EU nature protection law*

Jak chronić i odbudowywać różnorodność biologiczną i ekosystemy w Unii Europejskiej? Od perspektywy sektorowej do wyzwań horyzontalnych – spojrzenie na unijne prawo ochrony przyrody

Abstract: The paper analyses the current challenges in protecting and rebuilding biodiversity and ecosystems across the European Union. Its aim is to demonstrate the need to move away from the concept of conservation – which focusses on preserving single elements of nature – towards a holistic approach. Given the need to halt the decline of the natural environment, attention is increasingly directed towards nature restoration. The article then discusses the EU's Nature Restoration Law, which marks a shift from a sectoral perspective toward addressing horizontal challenges in EU biodiversity (nature protection) law.

Keywords: nature restoration regulation, environmental law, holistic approach, integrated protection of biodiversity

* The paper was written as part of a scientific project of the National Science Centre in Krakow (agreement no. UMO-2016/21/D/HS5/03841, research project registration no. 2016/21/D/HS5/03841).

Abstrakt: Celem artykułu jest analiza aktualnych wyzwań związanych z ochroną i odbudową różnorodności biologicznej oraz ekosystemów w Unii Europejskiej. Artykuł stanowi próbę wykazania konieczności odejścia od koncepcji ochrony przyrody, skupiającej się na zachowaniu pojedynczych tworów i elementów natury, na rzecz podejścia holistycznego. Aby powstrzymać degradację środowiska naturalnego, coraz większą uwagę zwraca się na odbudowę przyrody. W artykule omówiono następnie przykład unijnego rozporządzenia dotyczącego odbudowy przyrody (Nature Restoration Law), które odchodzi od sektorowego podejścia w obszarze ochrony różnorodności biologicznej/bioróżnorodności (ochrony przyrody) na rzecz podejścia uwzględniającego wyzwania horyzontalne.

Słowa kluczowe: regulacje dotyczące odbudowy środowiska naturalnego, prawo ochrony przyrody, podejście holistyczne, zintegrowana ochrona różnorodności biologicznej

1. Introduction

Environmental law is both the law of risk (encompassing the governance of potential hazards and the mitigation of adverse consequences) and the law of distributing and protecting common goods over which a multitude of interests prevail.¹ This multifaceted nature of environmental law is characterised by its intricate relationship with various interests related to the utilisation of these resources, emphasising the need for balanced decision-making and the consideration of ecological, economic, and social factors in the pursuit of sustainable development. By combining these areas in a purposeful way, the aim is to create a uniform, comprehensive regulatory structure that can adequately protect the environment (understood as a structure of action) in terms of eliminating environmental damage, removing and avoiding environmental risks and restoring its ability to function.²

It is evident that biodiversity constitutes the foundation of life on Earth; its significance extends beyond the realm of environmental and climate protection, as it is equally crucial for sustaining human life.³ It is evident that biodiversity

¹ E. Schmidt-Aßmann, *Ogólne prawo administracyjne jako idea porządku* [General Administrative Law as an Idea of Order], C.H. Beck, Warsaw 2011, p. 144–145.

² Ibidem, p. 145–146.

³ See. e.g., S. Díaz, J. Settele, E.S. Brondízio, H.T. Ngo, M. Guèze, J. Agard, A. Arneth, P. Balvanera, K.A. Brauman, S.H.M. Butchart, K.M.A. Chan, L.A. Garibaldi, K.I.J. Liu, S.M. Subramanian,

loss constitutes a component of a triad of planetary crises, alongside climate change and toxic pollution.

But biodiversity loss as part of a “triple planetary crisis” (along with climate change and pollution).⁴ The term “biodiversity loss” is used to denote the ongoing decline in the variety of life on Earth. This decline encompasses species extinctions, habitat loss and ecosystem degradation.⁵ The present crisis is principally the result of human activities, including, but not limited to, the destruction of habitats, pollution, climate change, and the overexploitation of resources.⁶

In 2019 the European Commission unveiled a comprehensive array of policy initiatives with the objective of transforming the EU into a sustainable and climate-neutral economy by 2050. This initiative, entitled the European Green Deal, represents a significant commitment on the part of the European Commission to address the pressing environmental challenges of the contemporary era.⁷ In the context of the aforementioned policies, the Commission

G.F. Midgley, P. Miloslavich, Z. Molnár, D. Obura, A. Pfaff, S. Polasky, A. Purvis, J. Razzaque, B. Reyers, R. Roy Chowdhury, Y.J. Shin, I.J. Visseren-Hamakers, K.J. Willis, C.N. Zayas, *Summary for Policymakers of the Global Assessment Report on Biodiversity and Ecosystem Services*, Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, Paris 2019; *Climate Change and Land: An IPCC Special Report on Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food Security, and Greenhouse Gas Fluxes in Terrestrial Ecosystems – Summary for Policymakers*, Intergovernmental Panel on Climate Change, Geneva 2019, p. 7, https://www.ipcc.ch/site/assets/uploads/2019/08/4.-SPM_Approved_Microsite_FINAL.pdf [access: 31.07.2025].

⁴ A. Sikora-Kaléda, *Rights in the Era of Climate Change Contemplating the Limits of Human Rights as Instruments of Pressure for the Planetary Cause*, in: A. Sikora-Kaléda, I. Kawka (eds), *Rights in the Era of a Climate Change: Contemplating the Limits of Human Rights as Instruments of Pressure for the Planetary Cause*, Księgarnia Akademicka, Cracow 2025, p. 9 and seq; E. Morgera, *International Environmental Law: A Case for Transformative Change through the Lens of Children's Human Rights*, “Environmental Policy and Law” 2024, vol. 53, no. 5–6, p. 307–319; A. Cliquet, *Linkages Between Biodiversity and Climate Change. Twin Crises Need Twin Solutions*, in: E. Cocciolo, J. Jaria-Manzano, A. De la Varga-Pastor, M. Marques-Banque (eds), *Rethinking Environmental Law. Connectivity, Intersections and Conflicts in the Global Environmental Crisis*, Intersentia, Cambridge 2024, p. 10–39.

⁵ A. Cliquet, *Linkages Between Biodiversity and Climate Change...*, p. 11–14; *Connecting Biodiversity and Climate Change Mitigation and Adaptation: Report of the Second Ad Hoc Technical Expert Group on Biodiversity and Climate Change*, Secretariat of the Convention on Biological Diversity, Montreal 2009, <https://www.cbd.int/doc/publications/cbd-ts-41-en.pdf> [access: 14.07.2025].

⁶ S. Díaz, J. Settele, E.S. Brondízio, H.T. Ngo, M. Guèze, J. Agard, A. Arneth, P. Balvanera, K.A. Brauman, S.H.M. Butchart, K.M.A. Chan, L.A. Garibaldi, K.I.J. Liu, S.M. Subramanian, G.F. Midgley, P. Miloslavich, Z. Molnár, D. Obura, A. Pfaff, S. Polasky, A. Purvis, J. Razzaque, B. Reyers, R. Roy Chowdhury, Y.J. Shin, I.J. Visseren-Hamakers, K.J. Willis, C.N. Zayas, *Summary for policymakers...*, op. cit.

⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *The European Green Deal*, COM/2019/640 final, <https://eur-lex.europa.eu/legal-content/PL/TXT/HTML/?uri=CELEX:52019DC0640&from=EN> [access: 14.07.2025].

reaffirmed the Union's robust environmental policy framework by adopting the EU Biodiversity Strategy. Among these policies, the Commission reiterated the strong environmental policy of the Union by adopting the EU Biodiversity Strategy.⁸ As such, the European Green Deal laid the foundations, or *premises*, of EU action to tackle the drivers of climate change and biodiversity loss.⁹

A traditional view of environmental law sees this area of regulation as a set of legal norms regarding the object (specificity) of protected goods, i.e. the environment, its individual elements (including nature), the protection of human life and health and the identification of specific threats.¹⁰ It links the challenges facing nature protection today with the requirement for a complex, holistic approach; therefore, we see nature protection evolving from a sectoral perspective to horizontal challenges.¹¹

⁸ 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*, COM/2020/380 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52020DC0380> [access: 14.07.2025]. See also the Biodiversity Strategy to 2020 – Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, *Our life insurance, our natural capital: an EU biodiversity strategy to 2020*, COM/2011/244 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52011DC0244> [access: 14.07.2025].

⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *The European Green Deal*, COM/2019/640 final, p. 2 and passim, <https://eur-lex.europa.eu/legal-content/PL/TXT/HTML/?uri=CELEX:52019DC0640&from=EN> [access: 14.07.2025]. See also on linkages between biodiversity and climate change: A. Trouwborst, *International Nature Conservation Law and the Adaptation of Biodiversity to Climate Change: a Mismatch?*, "Journal of Environmental Law" 2009, vol. 21, no. 3, p. 419–442; A. Cliquet, C. Backes, J. Harris, P. Howsam, *Adaptation to Climate Change: Legal Challenges for Protected Areas*, "Utrecht Law Review" 2009, vol. 5, no. 1, p. 158–175; A. Trouwborst, *Conserving European Biodiversity in a Changing Climate: The Bern Convention, the European Union Birds and Habitats Directives and the Adaptation of Nature to Climate Change*, "Review of European Community and International Environmental Law" 2011 vol. 20, no. 1, p. 62–77; A. Cliquet, *International and European Law on Protected Areas and Climate Change: Need for Adaptation or Implementation?*, "Environmental Management" 2014, vol. 54, p. 721–722.

¹⁰ See e.g. M. Baran, *Pytanie o potrzebę zmiany paradygmatu w prawie (ochrony) środowiska: środowisko jako przedmiot czy podmiot prawa – wybrane uwagi* [Question About the Need for a Paradigm Shift in Environmental (Protection) Law: The Environment as an Object or Subject of Law – Selected Comments], in: M. Baran, B. Iwańska, I. Przybojewska (eds), *Prawa i interesy w ochronie środowiska. Perspektywa międzynarodowa, unijna i krajowa* [Rights and Interests in Environmental Protection. International, EU, and National Perspectives], C.H. Beck, Warsaw 2024, p. 121–123; A. Sikora, *Constitutionalisation of Environmental Protection Law in EU Law*, Europa Law Publishing, Zutphen 2020, p. 5–15.

¹¹ See broadly on evolution of EU environmental law: E. Orlando, *The Evolution of EU Legislation and Policy in the Environmental Field: Achievements and Current Challenges*, in: C. Bakker, F. Francioni (eds), *The EU, the US and Global Climate Governance*, Routledge, London 2014, p. 61 et seq.; E. Morgera, M. Geelhoed, M. Ntona, *European Environmental Law*, in: E. Techera,

Simultaneously, in an era characterised by mounting environmental challenges, the complexity of protection is imperative for the efficacy of the implemented measures.¹² These challenges are a consequence of the repercussions of human activity on the environment, which are particularly evident in the Anthropocene era.¹³

It is clear that a transition is required from the prevailing concept¹⁴ of conservation, which focusses on preserving single elements of nature in its original form, towards a more comprehensive, integrated and holistic approach. It is no longer just a matter of protecting dedicated areas; it is increasingly important to regulate the protection and sustainable use of nature outside protected areas. It is imperative that conservation is regarded as a fundamental component of spatial policy, in addition to sectoral policies and development strategies drawn up by national authorities at various levels. Traditional environmental law is human-centered (anthropocentric) and treats nature primarily as a resource to be managed, exploited, or conserved. Ecological law flips this paradigm. It is built on the following core concepts: ecocentrism (nature-centered), ecological primacy and ecological justice.¹⁵

This paper investigates the question of how to protect and rebuild biodiversity in the EU. Its objective is to demonstrate the departure from a sectoral perspective to horizontal challenges in EU nature protection law. In this regard, EU climate law and EU nature restoration law are highlighted as exemplifying a holistic approach to protecting nature (biodiversity). In the current state of development of EU nature protection law, the introduction of the new legislation is a functional mechanism for

J. Lindley, K.N. Scott, A. Telesetsky (eds) *Routledge Handbook of International Environmental Law*, Routledge, London 2020, p. 234 et seq.

¹² E. Cocciolo, J. Jaria-Manzano, A. De la Varga-Pastor, M. Marques-Banque, *Introduction: Rethinking Environmental Law*, in: E. Cocciolo, J. Jaria-Manzano, A. De la Varga-Pastor, M. Marques-Banque (eds), *Rethinking Environmental Law. Connectivity, Intersections and Conflicts in the Global Environmental Crisis*, Intersentia, Cambridge 2024, p. 1–2.

¹³ See, e.g. H.O. Pörtner, R.J. Scholes, A. Arneth, D.K.A. Barnes, M.T. Burrows, S.E. Diamond, C.M. Duarte, W. Kiessling, P. Leadley, S. Managi, P. McElwee, G. Midgley, H.T. Ngo, D. Obura, U. Pascual, M. Sankaran, Y.J. Shin, A.L. Val, *Overcoming the Coupled Climate and Biodiversity Crises and Their Societal Impacts*, “Science” 2023, vol. 380, no. 6642, p. 1–12.

¹⁴ The term “concept” is not used in its strict legal meaning, but in a broader sense.

¹⁵ For a normative concept of “ecological law” articulated in the legal literature, see K. Anker, P.D. Burdon, G. Garver, M. Maloney, C. Sbert, *From Environmental Law to Ecological Law*, Routledge, London 2021; C. Sbert, *The Lens of Ecological Law: A look at Mining*, Edward Elgar Publishing, Cheltenham 2020; K. Bosselmann, *The Rule of Law Grounded in the Earth: Ecological Integrity as a Grundnorm*, in: L. Westra, M. Vilela (eds), *The Earth Charter, Ecological Integrity and Social Movements*, Routledge, London 2014, p. 3–12; G. Garver, *The Rule of Ecological Law: The Legal Complement to Degrowth Economics*, “Sustainability” 2013, vol. 5, no. 1, p. 316–337.

achieving national and European objectives in relation to climate and biodiversity. Before proceeding, two preliminary points should be made. Recently, legislative approaches to nature conservation and biodiversity at the EU level have been part of a general process recommending a paradigm shift in nature conservation.¹⁶ This shift is evident in the programming documents of the European Green Deal, where we can observe the first steps of a legal process that is moving away from an approach limited solely to ecological modernization to broadly implement a different logic of “ecological primacy”¹⁷ through the implementation of the “do no harm”¹⁸ principle.

The logic of the European Green Deal has shifted from European regulations that typically address individual environmental issues to an increasingly integrated, holistic approach that coordinates various policies and measures.¹⁹ While an integrated approach to environmental protection is not a new concept in law – as EU regulations already have a long history of addressing industrial emissions in large installations²⁰ – such an approach had not been adopted for nature conservation and biodiversity.²¹

¹⁶ See e.g., A. Devis, *Change of Paradigm in EU Environmental Law: Does the Climate Crisis Now ‘Override’ the Biodiversity Crisis?*, <https://www.europeanlawblog.eu/pub/174pacq5/release/4> [access: 31.07.2025]; E. Lees, O.W. Pedersen, *Restoring the Regulated: The EU’s Nature Restoration Law*, “Journal of Environmental Law” 2025, vol. 37, no. 1, p. 75–96.

¹⁷ E. Chiti, *Managing the Ecological Transition of the EU: The European Green Deal as Regulatory Process*, “Common Market Law Review” 2022, vol. 59, no. 1, p. 19 et seq.

¹⁸ M. Onida, *The “Do Not (Significantly) Harm” Principle*, in: K. de Graaf, B. Marseille, S. Prechal, R. Widdershoven, H. Winter (eds), *Liber amicorum Jan Jans*, Uitgeverij Paris, Zutphen 2021, p. 45 et seq. Though the European Green Deal does not elaborate on this principle, guidance can be found in the Taxonomy Regulation (and associated delegated acts), which specifies under which circumstances economic activities can be considered to lead to significant harm to environmental objectives. See Art. 17 of Regulation (EU) 2020/852 of the European Parliament and Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, OJ L 198, 22.06.2020, p. 13–43 as well as Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives, OJ L 442, 9.12.2021, p. 1–349.

¹⁹ L. Krämer, *Planning for Climate and the Environment: the EU Green Deal*, “Journal for European Environmental & Planning Law” 2020, vol. 17, no. 3, p. 267–306; E. Chiti, *Managing the Ecological Transition...*, p. 19–48; E. Chiti, A. Giorgi, *Sustainability in Transition*, in: E. Chiti, A. Giorgi (eds), *Ecological Sustainability and the Law the European Green Deal and the New Frontiers of Sustainability*, Routledge, London 2025, p. 1–28.

²⁰ F. Oosterhuis, M. Peeters, *Limits to International in Pollution Prevention and Control*, in: M.G.W.M. Peeters, R. Uylenburg (eds), *EU Environmental Legislation: Legal Perspectives on Regulatory Strategies*, Edward Elgar Publishing, London 2014, p. 91–115.

²¹ See e.g. M. Biscosi, *From Natura to Nature Restoration. The Ecological Objective of the Green Deal at the Legal Litmus Test*, in: E. Chiti, A. Giorgi (eds), *Ecological Sustainability and the Law the*

2. Nature protection's place in EU law: The beginnings

From a historical perspective, EU nature protection law²² originated with Directive 79/409/EEC (the Birds Directive), concerning the protection of wild birds.²³ Adopted when international nature conservation initiatives were just beginning to take shape, this directive is the oldest piece of European Union environmental legislation. A few years later, in 1992, Directive 92/43/EEC (the Habitats Directive) was adopted.²⁴ These two directives constitute the cornerstone of EU nature conservation (habitats and species).²⁵

As for the protection of biodiversity, other legal acts in the area of environmental protection are also important,²⁶ as well as legal acts such as the Water Framework Directive,²⁷ the Marine Strategy Directive,²⁸ the common fisheries policy and the common agricultural policy.²⁹

European Green Deal and the New Frontiers of Sustainability, Routledge, London 2025, p. 149–170; E. Chiti, A. Giorgi, *Sustainability in Transition...*, p. 149–170; L. Pascucci, *Nature Restoration Law: Reshaping Sustainable Development?*, in: E. Chiti, A. Giorgi (eds), *Ecological Sustainability and the Law the European Green Deal and the New Frontiers of Sustainability*, Routledge, London 2025, p. 171–182.

²² The notion “nature protection law” and “EU biodiversity law” are used as synonyms in this text.

²³ Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, OJ L 103, 25.04.1979, p. 1–18. This directive was replaced by Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, OJ L 20, 26.01.2012, p. 7–25.

²⁴ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.07.1992, p. 7–50.

²⁵ See for an overview: A. García-Ureta, *EU Biodiversity Law: Wild Birds and Habitats Directives*, Europa Law Publishing, Zutphen 2020; A. Cliquet, *EU Nature Conservation Law: Fit for Purpose*, in: M. Peeters, M. Eliantonio (eds), *Research Handbook on EU Environmental Law*, Edward Elgar Publishing, London 2020, p. 265–279; G. Tucker, K. Hart, A. Farmer, E. Dunn, D. Baldock, *Nature Conservation Policy, Legislation and Funding in the EU*, in: G. Tucker (ed.), *Nature Conservation in Europe: Approaches and Lessons*, Cambridge University Press, Oxford 2023, p. 59–105; N. de Sadeleer, *Habitats Conservation in EC Law – From Nature Sanctuaries to Ecological Networks*, “Yearbook of European Environmental Law” 2005, vol. 5, p. 215.

²⁶ Such as, e.g., Regulation 338/97 on the protection of species of wild fauna and flora by regulating trade therein (Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, OJ L 61, 3.03.1997, p. 1–69) and Regulation 1143/2014 on invasive alien species (Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species, OJ L 317, 4.11.2014, p. 35–55).

²⁷ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, OJ L 327, 22.12.2000, p. 1–73.

²⁸ Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy, OJ L 164, 25.06.2008, p. 19–40.

²⁹ A. Cliquet, *EU Nature Conservation Law: Fit for Purpose...*, p. 265 et seq; On the relationship between biodiversity protection and the CFP and CAP see: H. Schoukens, H. Dotinga, *Natura 2000*

The Birds Directive and the Habitats Directive constitute a fundamental instrument for achieving the Treaty objectives of environmental policy (Article 191(1) TFEU) in the form of preserving, protecting and improving the nature and protecting biodiversity by preserving and enhancing the EU's natural resources.³⁰ Legislation covering areas such as pollution, invasive alien species and climate change also contributes to conserving biodiversity by tackling the drivers of its loss.³¹

The primary objective of the Habitats Directive – “to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies” – is achieved through measures to “maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest”.

This is achieved by establishing Natura 2000 (Article 3(1) of the Directive), a European ecological network of special conservation areas containing the habitat types listed in the Annexes to the Directive, in order to maintain these natural habitat types and species habitats at a favourable conservation status (obligation of result) in their natural range or, where appropriate, to restore them.³² The Natura 2000 network also includes special conservation areas classified by the Member States in accordance with the Birds Directive.

The way of constructing the protection used by the EU legislator in both directives is based on the traditional “command and control”³³ method, in

and Fisheries: A Question of Competence or Willingness, in: C.-H. Born, A. Cliquet, H. Schoukens, D. Misonne, G. Van Hoorick (eds), *The Habitats Directive in its EU Environmental Law Context: European Nature's Best Hope?*, Routledge, London 2015, p. 375–398; I. Doussan, H. Schoukens, *Biodiversity and Agriculture: Greening the CAP Beyond the Status Quo*, in: C.-H. Born, A. Cliquet, H. Schoukens, D. Misonne, G. Van Hoorick (eds), *The Habitats Directive in its EU Environmental Law Context: European Nature's Best Hope?*, Routledge, London 2015, p. 443–451.

³⁰ A. Cliquet, *EU Nature Conservation Law: Fit for Purpose...*, p. 267.

³¹ See C. Romao, *The Added Value of the Habitats Directive: Is Biodiversity Better Protected Since the Directive Entered into Force?*, in: C.-H. Born, A. Cliquet, H. Schoukens, D. Misonne, G. Van Hoorick (eds), *The Habitats Directive in its EU Environmental Law Context: European Nature's Best Hope?*, Routledge, London 2015, p. 21–28; G. Van Hoorick, *Biodiversity outside protected areas: an outlaw waiting to be saved?*, in: ..., C.-H. Born, A. Cliquet, H. Schoukens, D. Misonne, G. Van Hoorick (eds), *The Habitats Directive in its EU Environmental Law Context: European Nature's Best Hope?*, Routledge, London 2015, p. 452–468.

³² *Natura 2000 Network's Contribution to Good Status*, <https://www.eea.europa.eu/en/topics/at-a-glance/nature/state-of-nature-in-europe-a-health-check/natura2000-networks-contribution-to-good-status> [access: 15.09.2025]; *Managing Natura 2000 Sites: The Provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*, European Union Publications Office, Luxembourg 2000, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2019_033_R_0001 [access: 15.09.2025].

³³ In environmental policy, the command-and-control approach basically involves the setting of standards to protect or improve environmental quality. Otherwise new environmental

terms of imposing specific obligations on Member States to take specific actions (positive obligations) and formulating prohibitions addressed to Member States regarding certain actions (negative obligations).³⁴

The source of positive obligations in relation to Natura 2000 sites is currently³⁵ Articles 6 and 7 of the Habitats Directive,³⁶ which provide for “a series of specific obligations and procedures designed (...) to maintain, or as the case may be restore, at a favourable conservation status natural habitats and, in particular, special areas of conservation”.³⁷

These include the following duties:

- to establish conservation measures involving, “if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the environmental requirements of the natural habitat types listed in Annex I or the species listed in Annex II living on those sites” (Article 6(1) Habitats Directive)³⁸
- the general obligation of protection, including taking “appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, insofar as such

governance (NEG) approach is a decentralized, collaborative approach to environmental management that broadens participation beyond top-down state regulations. The literature on new environmental governance (NEG) is vast, but worth mentioning: e.g., G. de Búrca, J. Scott (eds), *Law and New Governance in the EU and the US*, Hart Publishing, Oxford, 2006; N. Gunningham, C. Holley, *Next Generation Environmental Regulation: Law, Regulation and Governance*, “Annual Review of Law and Social Science” 2016, vol. 12, no. 1, p. 273–293; N. Gunningham, *The New Collaborative Environmental Governance: The Localization of Regulation*, “Journal of Law and Society” 2009, vol. 36, no. 1, p. 145–166.

³⁴ A. Cliquet, *EU Nature Conservation Law: Fit for Purpose...*, p. 266.

³⁵ The original obligation for Member States arose also from Article 4(4) of the Birds Directive.

³⁶ In accordance with Article 7 of the Habitats Directive, the obligations arising from Article 6(2), (3) and (4) of this Directive shall replace any obligations arising from the first sentence of Article 4(4) of Directive 79/409/EEC in respect of sites classified in accordance with Article 4(1) of that Directive or similarly recognised under Article 4(2), from the date of implementation of this Directive or from the date of classification or recognition by the Member State under Directive 79/409/EEC, where the latter date is later.

³⁷ E.g. judgment of the CJ of 11 April 2013, Case C-258/11, *Peter Sweetman and Others v An Bord Pleanála*, EU:C:2013:220, para 36; L. Cashman, *Ensuring Compliance: Regulatory Regimes under the EU Nature Directives*, in: A.L.R. Jackson (ed.), *Nature Law and Policy in Europe*, Routledge, London 2023, p. 47–72.

³⁸ See judgments of the CJ: of 10 May 2007, Case C-508/04, *Commission of the European Communities v Republic of Austria*, EU:C:2007:274, paras 76, 87; of 17 April 2018, Case C-441/17, *European Commission v Republic of Poland*, EU:C:2018:255, para 213.

- disturbance could be significant in relation to the objectives of this Directive” (Art. 6(2) of the Habitats Directive)³⁹
- the procedure laid down in Art. 6(3) of the Habitats Directive for appropriately assessing plans or projects which are not directly connected with or necessary for the management of an area, but may have a significant effect thereon, comprising two stages – the preliminary assessment and the assessment proper⁴⁰ – the result of which determines whether the plan or project is approved or rejected (Article 6(3) of the Habitats Directive);⁴¹
 - the derogation provided for in Art. 6(4) of the Directive that enables a plan or project to be carried out even if its possible adverse impact on the integrity of a given area has been confirmed, which should be interpreted strictly⁴² and may only be applied after an appropriate assessment of the impact on the Natura 2000 area has been carried out (Article 6(3) of the Habitats Directive).⁴³

Essential instruments for achieving and implementing the objectives of the Habitats Directive and the Birds Directive are the species protection obligations arising there from (Articles 5–9 of the Birds Directive and Articles 12–16 of the Habitats Directive), which create a coherent system

³⁹ E.g. judgments of the CJ: of 24 November 2011, Case C-404/09, *European Commission v Kingdom of Spain*, EU:C:2011:768, para 142; of 11 April 2013, Case C-258/11, *Peter Sweetman and Others v An Bord Pleanála*, para 32; of 15 May 2014, Case C-521/12, *T.C. Briels and Others v Minister van Infrastructuur en Milieu*, EU:C:2014:330, para 19.

⁴⁰ E.g. judgment of the CJ of 11 April 2013, Case C-258/11, *Peter Sweetman and Others v An Bord Pleanála*, paras 29–31.

⁴¹ See judgments of the CJ: of 7 September 2004, Case C-127/02, *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij*, EU:C:2004:482, para 23–27; of 13 December 2007, Case C-418/04, *Commission of the European Communities v Ireland*, EU:C:2007:780, paras 238–240; of 14 January 2010, Case C-226/08, *Stadt Papenburg v Bundesrepublik Deutschland*, EU:C:2010:19, para 38–40; of 20 October 2005, Case C-6/04, *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland*, EU:C:2005:613, para 54; of 10 January 2006, Case C-98/03, *Commission of the European Communities v Federal Republic of Germany*, EU:C:2006:529, para 39–41.

⁴² Judgment of the CJ of 14 January 2016, Case C-399/14, *Grüne Liga Sachsen eV and Others v Freistaat Sachsen*, EU:C:2016:10, para 73.

⁴³ C. Sobotta, *The Margin of Appreciation When Applying Article 6(3) and (4) of the Habitats Directive*, in: A.L.R. Jackson (ed.), *Nature Law and Policy in Europe*, Routledge, London 2023, p. 73–90; G. Balias, *The Appropriate Assessment under the European Habitats Directive: Interplay Between Science, Law, and Policy*, “Journal of International Wildlife Law & Policy” 2018, vol. 21, no. 4, p. 281–306; judgments of the CJ: of 14 September 2006, Case C-244/05, *Bund Naturschutz in Bayern eV and Others v Freistaat Bayern*, EU:C:2006:579, para 46; of 11 April 2013, Case C-258/11, *Peter Sweetman and Others v An Bord Pleanála*, para 43–46.

of standards requiring Member States to establish a protection system for specific species of fauna and flora. These obligations are essentially prohibitive in nature.⁴⁴ Species protection refers not only to direct impacts on the species themselves, but also (in specific cases) on their breeding and resting places. However, unlike Natura 2000 sites, there are no geographical limitations.⁴⁵ Species protection measures encompass Member States' obligations to provide for general or strict species protection and to control the exploitation of specific species.⁴⁶

Derogations from prohibitions arising from species protection of wild birds and species of wild fauna and flora are permitted only when no alternatives exist and if they meet specific criteria, such as a risk to public health or safety, significant damage to agriculture, fisheries or forestry or for research purposes.⁴⁷

⁴⁴ A. Trouwborst, *Waking up Bats, Hazing Wolves and Draining Snake Lakes – Exploring the EU Habitats Directive's Prohibition of "Deliberate Disturbance"*, "Journal for European Environmental & Planning Law" 2023, vol. 20, no. 3–4, p. 217–235.

⁴⁵ See: H. Tegner Anker, B. Egelund Olsen, *EU Species Protection Law and Wind Energy: Current Challenges and Danish Experiences*, "European Energy and Environmental Law Review" 2023, vol. 32, no. 1, p. 36–46; H. Schoukens, K. Bastmeijer, *Species Protection in the European Union: How Strict is Strict?* in: C.-H. Born, A. Cliquet, H. Schoukens, D. Misonne, G. Van Hoorick (eds), *The Habitats Directive in its EU Environmental Law Context: European Nature's Best Hope?*, Routledge, London 2015, p. 121–146; C. Sobotta, *The Impact of Species Protection on Land-use Planning Via the Environmental Assessment: Towards a More Proactive Approach?*, in: C.-H. Born, A. Cliquet, H. Schoukens, D. Misonne, G. Van Hoorick (eds), *The Habitats Directive in its EU Environmental Law Context: European Nature's Best Hope?*, Routledge, London 2015, p. 147–159; C. Sobotta, *Species Protection in the Environmental Assessment-Assembling the Puzzle*, "Journal for European Environmental & Planning Law" 2013, vol. 10, no. 3, p. 233–249; *Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC*, European Union Publications Office, Luxembourg 2007, p. 12, <https://publications.europa.eu/en/publication-detail/-/publication/1059d053-7082-421a-9bdc-54b2749c16c7/language-en> [access: 21.07.2025]; see judgments of the CJ: of 10 November 2016, Case C-504/14 *European Commission v Hellenic Republic*, EU:C:2016:847; of 11 January 2007, Case C-183/05, *Commission of the European Communities v Ireland*, EU:C:2007:14, para 29.

⁴⁶ E.g. judgments of the CJ: of 18 May 2006, Case C-221/04, *Commission of the European Communities v Kingdom of Spain*, EU:C:2006:329, para 71; of 30 January 2002, Case C-103/00, *Commission of the European Communities v Hellenic Republic*, EU:C:2002:60, para 32–40; see Commission notice *Guidance document on the strict protection of animal species of Community interest under the Habitats Directive*, C/2021/7301 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=intcom:C%282021%297301> [access: 28.09.2025].

⁴⁷ Article 9 of the Birds Directive (see *Derogations from the Protection of Birds. Under the EU Birds Directive, the Bern Convention and the African-Eurasian Waterbird Agreement*, BirdLife International, Bruxelles 2020, <https://www.birdlife.org/wp-content/uploads/2022/04/report-eu-derogations-protection-birds-directive-bern-convention.pdf> [access: 19.09.2025] and Article 12 of the Habitats Directive (judgments of the CJ: of 14 June 2007, Case C-342/05, *Commission of the European Communities v Republic of Finland*, EU:C:2007:341, para 29; of 10 October 2019, Case C-674/17, *Luonnonsuojeluyhdistys Tapiola Pohjois-Savo – Kainuu ry v Risto Mustonen and Others*, EU:C:2019:851, para 66).

The overall conservation objective, explicitly stated in the Habitats Directive, is to ensure the maintenance or restoration of these species and habitats in the EU. All forms of deliberate capture or killing in the wild are prohibited, as are disturbing or destroying breeding sites, nests or eggs and trade in wild specimens. Member States must also, where necessary, implement measures to ensure that the capture or exploitation of certain species does not hinder their favourable conservation status.⁴⁸

At the heart of both directives is the Natura 2000 network, which sets conservation objectives and legal standards for the sustainable management of sites and the reduction of damage resulting from human activities.⁴⁹ Currently, almost one fifth of the EU's land area and around 10% of its marine area are covered by the Natura 2000 network (approximately 28,000 sites), making it the largest network of protected areas in the world.⁵⁰

In 2015 the Commission conducted a "Fitness Check" of the Birds and Habitats Directives. The findings of this assessment confirm that both Directives remain highly relevant and fit for purpose.⁵¹ On the other hand, they need to be better implemented by Member States,⁵² with only 15% of habitats being in good condition, while 81% are in poor condition; moreover, 35% of species in unfavourable condition continue to decline.⁵³ As the study highlights, effective

⁴⁸ See *The Habitats Directive*, https://environment.ec.europa.eu/topics/nature-andbiodiversity/habitats-directive_en [access: 19.09.2025].

⁴⁹ C. Romao, *The Added Value of the Habitats Directive...*, p. 21–28.

⁵⁰ See also *Natura 2000 Barometer*, http://ec.europa.eu/environment/nature/natura2000/barometer/index_en.htm [access: 28.02.2025].

⁵¹ Commission Staff Working Document, Fitness check of the EU Nature Legislation (Birds and Habitats Directives) Directive 2009/147/EC on the conservation of wild birds and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, Brussels, 16.12.2016, SWD(2016) 472 final, https://commission.europa.eu/system/files/2017-01/swd-2016-472-final_en.pdf [access: 19.09.2025]; *The European Environment State and Outlook 2015. Synthesis Report*, Publications Office of the European Union, Luxembourg 2015, p. 57, <https://portals.iucn.org/library/sites/library/files/documents/Co-Europe-Env-035.pdf> [access: 19.09.2025].

⁵² See A. Garcia-Ureta, I. Lazkano, *Instruments for Active Site Management Under Natura 2000: Balancing Between Stakeholders and Nature Conservation?*, in: C.-H. Born, A. Cliquet, H. Schoukens, D. Misonne, G. Van Hoorick (eds), *The Habitats Directive in its EU Environmental Law Context: European Nature's Best Hope?*, Routledge, London 2015, p. 71–92; L. Stahl, *The Concept of 'Conservation Objectives' in the Habitats Directive: A Need for a Better Definition?*, Routledge, London 2014, p. 56–70.

⁵³ *Habitats and Species: Latest Status and Trends*, <https://www.eea.europa.eu/en/topics/at-a-glance/nature/state-of-nature-in-europe-a-health-check/habitats-and-species-latest-status-and-trends> [access: 18.07.2025]; see also *State of Nature in the EU. Results from Reporting Under the Nature directives 2013–2018*, Publications Office of the European Union, Luxembourg 2020, p. 41, <https://www.eea.europa.eu/publications/state-of-nature-in-the-eu-2020> [access: 18.07.2025].

management, not just designation, is crucial to species' habitat recovery and climate adaptation, and for halting biodiversity loss and rebuilding natural ecosystems.⁵⁴

Due to many species and habitats having an *unfavourable* conservation status – worldwide as well as in Europe⁵⁵ – to stop or reduce biodiversity loss, it will be insufficient to only conserve what remains of biodiversity. Species and habitats need to be restored to a favourable conservation status.⁵⁶

3. Need to rethink EU nature conservation (biodiversity) law

Nature conservation has a long-standing tradition.⁵⁷ On a larger scale, the idea began to be promoted as early as the 19th century, when the primary form of protection was creating nature parks and reservations to preserve natural features and valuable landscapes.⁵⁸

Nature legislation to date has mostly been formulated from a perspective that prioritises conservation over restoration.⁵⁹ Lately, there has been an increased focus on the restoration of these elements. The recent EU regulatory framework has been identified as playing a significant role in the realm of

⁵⁴ Commission Staff Working Document, Fitness check of the EU Nature Legislation (Birds and Habitats Directives) Directive 2009/147/EC on the conservation of wild birds and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, Brussels, 16.12.2016, SWD(2016) 472 final, p. 5–8, https://commission.europa.eu/system/files/2017-01/swd-2016-472-final_en.pdf [access: 18.07.2025]; M. Kovc, D. Hladni, L. Kutnar, *Biodiversity in Natura 2000 Forest Habitats is Not Static: Its Conservation Calls for an Active Management Approach*, "Journal for Nature Conservation" 2018, vol. 43, p. 250–260.

⁵⁵ E.g. S. Jen, *The Effectiveness of EU Nature Legislation: A Long Battle to Secure Supporting Sectoral Policies*, in: S. Maljean-Dubois, *The Effectiveness of Environmental Law*, Intersentia, Cambridge, 2017, p. 221–239.

⁵⁶ See e.g. M. Baran, *Towards EU Nature Restoration Law: A Boost for Biodiversity and Climate?*, in: A. Sikora, I. Kawka (eds), *The European Green Deal and the Impact of Climate Change on the EU Regulatory Framework: Searching for Coherence*, Presses universitaires Saint-Louis, Bruxelles 2024, p. 113–140.

⁵⁷ G. Tucker, *Europe's Nature and Conservation Needs*, in: G. Tucker (ed.) *Nature Conservation in Europe: Approaches and Lessons*, Cambridge University Press, Cambridge 2023, p. 25–35; G. Tucker, *Conclusions, Lessons Learnt and Implications for the Future*, in: G. Tucker (ed.) *Nature Conservation in Europe: Approaches and Lessons*, Cambridge University Press, Cambridge 2023, p. 106–141.

⁵⁸ Ibidem.

⁵⁹ E.g. A. Cliquet, K. Decler, H. Schoukens, *Restoring Nature in the EU: The Only Way is Up?*, in: C.-H. Born, A. Cliquet, H. Schoukens, D. Misonne, G. Van Hoorick (eds), *The Habitats Directive in its EU Environmental Law Context: European Nature's Best Hope?*, Routledge, London 2015, p. 265–284.

ecological restoration, with this process being recognised as a global priority. It is asserted that the foundation of nature conservation is predicated on three overarching principles these being: (i) maintenance, (ii) sustainable use and (iii) the restoration of the resources and components of nature.⁶⁰

Whilst the field of nature conservation law has historically concentrated on local phenomena, recent developments – most likely in response to the growing body of knowledge and awareness regarding the human impact on the planet – have highlighted the necessity for a more comprehensive approach to nature conservation. It is evident that the repercussions of climate change (i.e. a crisis) serve to underscore the magnitude of humanity's impact on the planet, as well as the interconnected nature of environmental concerns; this necessitates a holistic approach to address these issues.⁶¹ This, in turn, requires a shift away from the traditional focus on only specific areas of nature conservation, a new exchange between different areas of environmental law and an interdisciplinarity that goes beyond legal knowledge.⁶²

In implementing an integrated and holistic approach to protecting natural ecosystems in Europe, as mentioned above, reconciling top-down environmental standards and objectives and local management based on spatial planning are crucial. The positive dimension (opportunity) of such action is visible in a horizontal (rather than merely sectoral) approach to nature conservation, which constitutes a “specific” emancipation of this element of the environment and emphasises the role of nature in protecting biodiversity and mitigating and adapting to ongoing climate change. A threat (negative dimension) may stem from a tendency to deepen the discrepancy between local planning practices and the (EU) level of standard-setting; this can lead to conflicts between various interests.⁶³ Furthermore, there is an intermediate level of transposition of European standards into national legislation, which often leads to additional complications.

Shifting perspectives in nature protection from sectoral to horizontal means moving from focussing on isolated aspects of nature (such as specific species or habitats) to a more holistic approach that considers the interconnectedness of all natural systems and their relationship with human activity.⁶⁴ This involves

⁶⁰ M. Biscosi, *From Natura to Nature Restoration...*, p. 149–170; E. Less, O.W. Pedersen, *Restoring the Regulated...*, p. 75–96.

⁶¹ E. Cocciolo, J. Jaria-Manzano, A. De la Varga-Pastor, M. Marques-Banque, *Introduction...*, p. 1–2.

⁶² Ibidem.

⁶³ M. Fermeglia, K. Pedrosa, *Planning for Citizens' Health: Towards an Integrated Approach to Air and Noise Pollution in the EU*, “Journal for European Environmental & Planning Law” 2022, vol. 19, no. 1–2, p. 9–30.

⁶⁴ E. Cocciolo, J. Jaria-Manzano, A. De la Varga-Pastor, M. Marques-Banque, *Introduction...*, p. 1–2; J. Penca, M. Tănăsescu, *The Transformative Potential...*, p. 643–647.

integrating ecological considerations into various sectors, recognising nature's intrinsic value and promoting sustainable practices across all levels of society.

The key differences between the sectoral and holistic approaches are that the former is narrow, often limited to specific areas (e.g. nature reserves) or species (e.g. endangered birds); often fragmented, with separate policies and institutions for different sectors (e.g. forestry,⁶⁵ agriculture⁶⁶ or fisheries⁶⁷); and primarily focusses on conservation goals, often neglecting broader ecological or societal impacts.

The opposite is the integrated approach, which is characterised by a horizontal perspective. The ecosystem-based management approach acknowledges the interconnectedness of ecosystems and aims to preserve their structural integrity, functional capacity and resilience. This approach facilitates the use of natural processes to address societal challenges, such as climate change, water management and urban development. Cross-sectoral collaboration fosters cooperation and coordination between different sectors to achieve common conservation goals and integrates ecological considerations into land-use planning to ensure sustainable development and protect valuable ecosystems.

The benefits of a horizontal perspective include:

- 1) more effective conservation in addressing the root causes of environmental degradation and promoting long-term sustainability;
- 2) increased resilience to climate change, utilising natural systems to mitigate the impacts of climate change and adapt to a changing environment;
- 3) improved human well-being by recognising the crucial role of healthy ecosystems in providing clean air, water, food and other essential resources.

⁶⁵ For example, forest management that prioritises timber production with limited consideration for biodiversity – see Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee, *New EU Forest Strategy for 2030*, COM/2021/572 final, https://commission.europa.eu/document/cf3294e1-8358-4c93-8de4-3e1503b95201_en [access: 18.07.2025].

⁶⁶ For example, agricultural activities that prioritise production volume over environmental impacts and impact on biodiversity – see I. Doussan, H. Schoukens, *Biodiversity and Agriculture...*, p. 437–451.

⁶⁷ For example, fishing activities that prioritise the quantity caught over environmental impacts and impact on biodiversity – see S. Luk, S. Gregerson, *Marine Species Protection and Management in the European Union: Who Will Save our Dolphins?*, in: C.-H. Born, A. Cliquet, H. Schoukens, D. Misonne, G. Van Hoorick (eds), *The Habitats Directive in its EU Environmental Law Context: European Nature's Best Hope?*, Routledge, London 2015, p. 399–416; H. Schoukens, H. Dotinga, *Natura 2000 and Fisheries...*, p. 375–398.

An integrated approach also is predicated on the objective of reducing conflicts between different sectors, promoting collaboration and finding solutions that benefit both nature and society and that enhance cultural values by recognising the cultural significance of nature and promoting its protection for future generations.

By adopting a horizontal perspective, we can move towards a more integrated, effective approach to nature protection. This approach acknowledges the interconnectedness of all natural ecosystems and promotes the promotion of a sustainable future for both humans and the environment

The evolution of EU environmental policies, such as those related to nature conservation and biodiversity has given rise to a novel dimension of tension between environmental planning and legislation. This phenomenon, evident in the context of policies related to air quality and noise standards⁶⁸, underscores the complexity of balancing environmental concerns with the need for regulatory compliance.

The efficacy of the “do not significant harm” principle and environmental legislation is contingent upon their implementation at the project level. The equilibrium of various interests, both environmental and natural, cannot disregard the repercussions of climate change and biodiversity loss; consequently, a purely sectoral approach would be incompatible with the ongoing changes and the requisite legal response to them.

4. Deficiencies in the European legal framework for protecting natural ecosystems

The natural ecosystems in Europe have declined and disappeared despite the EU’s existing nature conservation laws. In the context of this “failure”, the criticism is directed at the existing regulations on nature protection (mainly the Habitats Directive and the Birds Directive).⁶⁹ The shortcomings of the existing legislation are indicated, as is the problem of effectively enforcing and applying the current legal instruments.⁷⁰

⁶⁸ Report from the Commission to the European Parliament and the Council, *On the Implementation of the Environmental Noise Directive*, COM/2017/151 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017DC0151> [access: 18.07.2025].

⁶⁹ N. Hoek, *A Critical Analysis of the Proposed EU Regulation on Nature Restoration: Have the Problems Been Resolved?*, “European Energy and Environmental Law Review” 2022, vol. 31, no. 5, p. 320–333; *The EU Nature Restoration Law: Providing Legal Certainty in Tackling the Biodiversity and Climate Crisis*, <https://chapter.ser.org/europe/> [access: 18.07.2025].

⁷⁰ M. Baran, *Towards EU Nature Restoration Law...*, p. 113–140.

In the context of EU nature conservation law, the restoration of natural resources is considered to be responsibility of Member States, as outlined in the mandatory provisions. However, significant challenges have been identified in the implementation of these obligations.⁷¹ There are both inadequacies⁷² in the existing regulations (e.g. lack of clear or binding targets and deadlines and definitions or criteria for the restoration or sustainable use of natural ecosystems) and sizeable areas of natural resource restoration issues which are as yet unregulated by EU law. These circumstances significantly impede the restoration and maintenance of natural ecosystems in Europe. Finally, the existing provisions of EU law do not require Member States to develop plans that are comprehensive and consistent with other environmental regulations or biodiversity restoration plans.

4.1. Moving away from a sectoral concept of nature conservation to a holistic approach, from the Habitats Directive and the Birds Directive to EU climate law and EU restoration law

One of the basic legal acts of the European Green Deal is Regulation 2021/1119 establishing the framework for achieving climate neutrality (European Climate Law).⁷³ It writes into law the goal for Europe's economy and society to become climate neutral by 2050. The law also sets the intermediate target of reducing net greenhouse gas (GHG) emissions by at least 55% by 2030, compared to 1990 levels.⁷⁴ The main objectives of the European Climate Law are: (i) meeting the 2050 climate neutrality objective through all policies, in a socially fair and cost-efficient manner, (ii) creating a system for monitoring

⁷¹ Ibidem; M. Biscosi, *From Natura to Nature Restoration...*, p. 149–170.

⁷² M. Baran, *Towards EU Nature Restoration Law...*, p. 113–140

⁷³ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (European Climate Law), OJ L 243, 9.07.2021, p. 1–17. See e.g.: K. Kulovesi, S. Oberthür, H. van Asselt, A. Savaresi, *The European Climate Law: Strengthening EU Procedural Climate Governance?*, "Journal of Environmental Law" 2024, vol. 36, no. 1, p. 23–42; see also: L. Fisher, *Challenges for the EU Climate Change Regime*, "German Law Journal" 2020, vol. 21, no. 1, p. 5–9; M. Peeters, *EU Climate Law: Largely Uncharted Legal Territory*, "Climate Law" 2019, vol. 9, no. 1–22, p. 137–147; B. Pérez de las Heras, *European Climate Law(s): Assessing the Legal Path to Climate Neutrality*, "Romanian Journal of European Affairs" 2021, vol. 21, no. 1, p. 19 et seq. Climate neutrality by 2050 means achieving net-zero GHG emissions for EU Member States as a whole, mainly by cutting emissions, investing in clean technologies and protecting the environment; see also *2050 Long-term Strategy. Striving to Become the World's First Climate-neutral Continent by 2050*, https://climate.ec.europa.eu/eu-action/climate-strategies-targets/2050-long-term-strategy_en [access: 18.07.2025].

⁷⁴ Article 4(1) European Climate Law.

progress and taking further action if needed and (iii) ensuring that the transition to climate neutrality is irreversible.⁷⁵

The European Climate Law sets a legally binding target of net-zero GHG emissions by 2050. The EU institutions and the Member States are bound to take the necessary measures at the EU and national levels to meet the target, considering the importance of promoting fairness and solidarity among the Member States.

Although EU nature conservation legislation and the Birds and Habitats Directives do not refer explicitly to climate change in their texts, there is no doubt that there are many connections and interdependencies between climate protection and the protection of nature and biodiversity.⁷⁶

Regarding nature (ecosystem) and biodiversity protection, recital 32 of the European Climate Law states:

Ecosystems, people and economies in all regions of the Union will face major impacts from climate change, such as extreme heat, floods, droughts, water scarcity, sea level rise, thawing glaciers, forest fires, windthrows and agricultural losses. Recent extreme events have already had substantial impacts on ecosystems, affecting carbon sequestration and storage capacities of forest and agricultural land. Enhancing adaptive capacities and resilience, taking into account the United Nations Sustainable Development Goals, help to minimise climate change impacts, to address unavoidable impacts in a socially balanced manner and to improve living conditions in impacted areas. Preparing early for such impacts is cost-effective and can also bring considerable co-benefits for ecosystems, health and the economy. Nature-based solutions, in particular, can benefit climate change mitigation, adaptation and biodiversity protection.⁷⁷

⁷⁵ S. Oberthür, I. von Homeyer, *From Emissions Trading to the European Green Deal: The Evolution of the Climate Policy Mix and Climate Policy Integration in the EU*, "Journal of European Public Policy" 2023, vol. 30, no. 2, p. 1–24; W.M. Lafferty, E. Hovden, *Environmental Policy Integration: Towards an Analytical Framework*, "Environmental Politics" 2003, vol. 12, no. 3, p. 1–22; D. Bechtel, *The New EU Climate Law: Symbolic Law or New Governance Framework*, <https://verfassungsblog.de/the-new-eu-climate-law/> [accessed: 18 July 2025].

⁷⁶ A. Cliquet, *Linkages Between Biodiversity and Climate Change...*, p. 17 et seq.; for an analysis, see A. Trouwborst, *The Habitats Directive and Climate Change: Is the Law Climate Proof?*, in: C. Born, A. Cliquet, H. Schoukens, D. Misonne, G. van Hoorick (eds), *The Habitats Directive in its EU Environmental Law Context: European Nature's Best Hope?*, Routledge, London 2014, p. 303–324.

⁷⁷ See also recital 23 of the European Climate Law: "The restoration of ecosystems would assist in maintaining, managing and enhancing natural sinks and promote biodiversity while fighting climate change. Furthermore, the 'triple role' of forests, namely, as carbon sinks, storage and substitution, contributes to the reduction of greenhouse gases in the atmosphere, while ensuring that forests continue to grow and provide many other services".

This underscores the necessity for a comprehensive and integrative strategy that encompasses not only climate protection but also nature and biodiversity conservation. Moreover, the interdependence of climate protection, nature conservation and biodiversity conservation is evident. Biodiversity and climate change are linked, as identified by Cliquet, in at least in three ways: (i) biodiversity helps to mitigate climate change, through carbon sinks; (ii) it helps people adapt to the impact of climate change; and (iii) it is under threat from climate change, and needs to become more resilient.^{78, 79}

4.2. EU Nature Restoration Law as an example of a holistic approach to nature (biodiversity) protection

The EU's Regulation 2024/1991 on nature restoration (the Nature Restoration Law)⁸⁰ is an example of a holistic approach to nature protection because it integrates biodiversity conservation with other environmental and social goals.⁸¹ The present initiative represents an advance on conventional conservation efforts insofar as it focuses on the restoration of degraded ecosystems across a variety of terrestrial and maritime environments, including agricultural, urban, and marine areas.⁸² The objective of the Regulation is threefold: firstly, to enhance biodiversity; secondly, to mitigate climate change; and thirdly, to improve human well-being through nature-based solutions.⁸³ According to its Art. 3(3), restoration means:

the process of actively or passively assisting the recovery of an ecosystem in order to improve its structure and functions, with the aim of conserving or enhancing biodiversity and ecosystem resilience, through improving an area of a habitat type to good condition, re-establishing favourable reference area, and improving a habitat of a species to sufficient quality and quantity (...), and meeting the targets and ful-

⁷⁸ A. Cliquet, *Linkages Between Biodiversity and Climate Change...*, p. 17.

⁷⁹ E. Cocciolo, J. Jaria-Manzano, A. De la Varga-Pastor, M. Marques-Banque, *Introduction...*, p. 1–2.

⁸⁰ Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869, OJ L 2024/1991, 29.07.2024.

⁸¹ J. Penca, M. Tănăsescu, *The Transformative Potential...*, p. 643–647; E. Less, O.W. Pedersen, *Restoring the Regulated...*, p. 75–96; E. Chiti, *Ecosystem Restoration and EU Law: An Introduction to the Symposium*, “European Law Open” 2024, vol. 3, no. 1, p. 175–179; M. Petersmann, *Reordering the European Ground-Regrounding the European Legal Order?*, “European Law Open” 2024 vol. 3, no. 1, p. 180–189.

⁸² See Articles 4, 5 and Articles 8–12 of the Nature Restoration Law.

⁸³ Article 1 of the Nature Restoration Law.

filling the obligations under Articles 8 to 12, including reaching satisfactory levels for the indicators referred to in Articles 8 to 12.⁸⁴

The holistic approach in the Nature Restoration Law recognises that biodiversity conservation is not a standalone issue, but rather an integral part of broader environmental and societal objectives.⁸⁵ The overarching aim of the initiative is to establish a future for the European Union that is characterised by enhanced resilience and sustainability. The strategy to achieve this is the restoration and protection of its natural ecosystems.⁸⁶

The fundamental goals of the EU's Nature Restoration Law are to ensure that Member States take significant steps towards restoring natural resources and enhancing biodiversity. To achieve this, the Regulation 2024/1991 formulates a series of obligations addressed to Member States which are divided into two groups. The first category is substantive, concerning practical actions to ensure the restoration of natural resources and biodiversity.⁸⁷ The second category is formal, concerning Member States' development and implementation of national restoration plans.⁸⁸

Regulation 2024/1991 is considered to follow a holistic approach due to the extensive scope that characterises it. The law is concerned with a broad spectrum of ecosystems, encompassing forests, wetlands, agricultural land, urban areas and marine environments – and recognises the interconnectedness of these systems.⁸⁹ In the domain of the Nature Restoration Law, there is an observable paradigm shift “from traditional ‘command and control’ regulation towards

⁸⁴ On the notion of restoration in general see: A. Telesetsky, A. Cliquet, A. Akhtar-Khavari, *Ecological Restoration in International Environmental Law*, Routledge, London 2017; S.K. Allison, S.D. Murphy (eds), *Routledge Handbook of Ecological and Environmental Restoration*, Routledge, London 2017.

⁸⁵ E. Less, O.W. Pedersen, *Restoring the Regulated...*, p. 94.

⁸⁶ See E. Morgera, *The Trajectory of EU Biodiversity Cooperation: Supporting Environmental Multilateralism through EU External Action*, in: E. Morgera (ed.), *The External Environmental Policy of the European Union*, Cambridge University Press, Cambridge 2012, p. 235 et seq.

⁸⁷ The substantive obligations are contained in Chapter II of the Nature Restoration Law, with the broadest scope of obligations being found in Article 4 on terrestrial, coastal and freshwater ecosystems and Article 5 on marine areas; see E. Less, O.W. Pedersen, *Restoring the Regulated ...*, p. 81–88; B.J. de Leeuw, C. Backes, *The Non-Deterioration Obligation in the Nature Restoration Regulation – a Necessary and Proportionate Addition to the Habitats Directive or a Monstrosity with Disastrous Consequences for Society?*, “Journal for European Environmental & Planning Law” 2024, vol. 21, no. 1, p. 22–40.

⁸⁸ E. Less, O.W. Pedersen, *Restoring the Regulated ...*, p. 94–95.

⁸⁹ *Ibidem*, p. 80.

less rigid, less structured and less prescriptive modes of regulation”.⁹⁰ This transition is accompanied by the adoption of a holistic approach to the method of regulation. The Regulation 2024/1991 links biodiversity conservation with climate change mitigation and adaptation, recognising that healthy ecosystems play a crucial role in carbon sequestration and reducing the impacts of extreme weather events.⁹¹ Another aspect of this holistic perspective is focussing on ecosystem services.⁹² The Regulation 2024/1991 acknowledges the importance of ecosystem services, such as water filtration, pollination and flood control, which are essential for human well-being and economic activity.⁹³ The Nature Restoration Law sets legally binding restoration targets for Member States, requiring them to develop national restoration plans and to implement specific measures to achieve these targets.⁹⁴ The Regulation 2024/1991 provisions encompass the establishment of mechanisms for monitoring progress towards restoration targets and reporting on the effectiveness of any implemented measures.⁹⁵

5. Conclusion

It is imperative that greater integration of existing legal instruments is effected in order to arrest the deleterious trends in the state of the quality of natural ecosystems and the loss of biodiversity in the EU. Moreover, the adoption of new legal solutions (a new legal instrument) covering nature protection (biodiversity) was essential. What is needed is better integration of existing legal instruments to stop the negative trends in the state of natural ecosystems and the loss of biodiversity in the EU, as well as new legal solutions (a new legal instrument) covering the restoration of natural resources in Europe.

The prevailing environmental crisis has become deeply entrenched in our day-to-day lives, necessitating the development of a legal framework that can effectively address these intersecting issues. The connections between these issues are numerous and diverse, including but not limited to climate and land use, food security and energy, waste and marine protection, trade and biodiversity. They must also acknowledge the importance of conflict as a source of

⁹⁰ Ibidem.

⁹¹ Recitals 1, 16–19, 47 and Article 1(1) of the Nature Restoration Law.

⁹² Recitals 3–5, 14–17 and 47–48 of the Nature Restoration Law.

⁹³ Ibidem.

⁹⁴ Chapter III, Articles 14–19 of the Nature Restoration Law.

⁹⁵ Articles 20–21 of the Nature Restoration Law.

legal imagination, and as an expression of the complexity of the intertwined network of life and technology in the Anthropocene.

A fundamental rethinking of environmental law is imperative to address the challenges posed by the intricate structure of the biosphere and the pervasive human footprint on it. The existing legislation pertaining to nature protection (biodiversity) must undergo a process of re-examination, with a view to addressing the challenges that are presented by the intricate structure of the biosphere, the pervasive impact of human activity on it, and the requirement to ensure more effective protection and restoration of biodiversity. It entails the need for a more holistic approach to nature protection (biodiversity): not only prohibitions, but more proactive strategies. The adoption of EU (ecosystem) legislation should be seen as indicative of a growing awareness that the prevailing approach to ecosystem protection is inadequate.

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Selected legal aspects of biodiversity, especially related to agriculture (CAP 2023–2027, Poland, Austria and Canada)

Wybrane aspekty prawne bioróżnorodności, ze szczególnym uwzględnieniem rolnictwa (WPR 2023–2027, Polska, Austria i Kanada)

Abstract: Agricultural activities are essential for providing food, but they can also have a positive or negative impact on biodiversity protection. This article assesses the extent to which legislation and policy address biodiversity issues, particularly in relation to agriculture, and explores how they can contribute to halting and reversing biodiversity loss. Due to the broad scope of the topic, the article focusses on specific aspects of the EU's Common Agricultural Policy for 2023–2027, as well as national legislation in Poland and Austria. Canadian legislation is also analysed. The article begins by referring to the Convention on Biological Diversity (signed in Rio de Janeiro on 5 June 1992), the Kunming-Montreal Global Biodiversity Framework (agreed in December 2022) and FAO Council Resolution 1/1681, concerning the conservation and sustainable use of biological diversity for food and agriculture. The author concludes that the issue of biodiversity in agriculture is becoming increasingly important at the global, EU, and national levels due to the worldwide decline or disappearance of many plant and animal species. More legal regulations are being adopted to encourage agricultural producers to protect biodiversity, for instance, by participating in agri-environment-climate programmes, eco-schemes, soil protection initiatives, precision farming techniques and tree planting on agricultural land. However, further legislative action is needed in CAP 2028–2034.

Keywords: biodiversity, Common Agricultural Policy, agricultural activity, agri-environment-climate programmes, eco-schemes, rural areas

Abstrakt: Działalność rolnicza ma zasadnicze znaczenie dla zapewnienia żywności, ale może mieć pozytywny lub negatywny wpływ na ochronę różnorodności biologicznej. Celem niniejszego artykułu jest ocena, w jakim stopniu przepisy prawne i polityka odnoszą się do kwestii różnorodności biologicznej, zwłaszcza w odniesieniu do rolnictwa oraz w jaki sposób mogą one przyczynić się do powstrzymania i odwrócenia procesu utraty różnorodności biologicznej. Ze względu na szeroki zakres zagadnień w artykule skupiono się na wybranych aspektach wspólnej polityki rolnej UE na lata 2023–2027, krajowych przepisach prawnych w Polsce i Austrii. Nastąpi także nawiązanie do Kanady. Na początku wskazano na postanowienia Konwencji o różnorodności biologicznej, sporządzonej w Rio de Janeiro 5 czerwca 1992 r., Globalnych ram różnorodności biologicznej z Kunming-Montreal z grudnia 2022 r. oraz rezolucji Rady FAO nr 1/168 w sprawie ochrony i zrównoważonego wykorzystania różnorodności biologicznej na rzecz wyżywienia i rolnictwa. Podsumowując, autorka stwierdziła, że kwestia różnorodności biologicznej w rolnictwie staje się coraz ważniejsza na poziomie globalnym, unijnym i krajowym ze względu na spadek liczebności lub zanikanie wielu gatunków roślin i zwierząt na całym świecie. Uchwalanych jest więcej regulacji prawnych zachęcających producentów rolnych do podejmowania działań na rzecz ochrony różnorodności biologicznej, na przykład poprzez udział w programach rolno-środowiskowo-klimatycznych, ekoschematach dotyczących ochrony gleb, wykorzystywanie technik rolnictwa precyzyjnego i sadzenie drzew na gruntach rolnych. Potrzebne są jednak dalsze działania legislacyjne w ramach WPR 2028–2034.

Słowa kluczowe: różnorodność biologiczna, Wspólna Polityka Rolna, działalność rolnicza, programy rolno-środowiskowo-klimatyczne, ekoschematy, obszary wiejskie

1. Introduction

Human activity in areas such as industry, mining, and the overexploitation of natural resources, forests, oceans, rivers, lakes and soils has had a negative impact on biodiversity. Climate change, environmental pollution, invasive alien

species and ecologically unsustainable production and consumption patterns also contribute to biodiversity loss.¹ Biodiversity is fundamental to human and planetary health and economic prosperity by supporting all life systems on Earth. It provides crucial ecosystem services such as food, medicine, energy, clean air and water, safety from natural disasters, recreation and cultural inspiration.² The Convention on Biological Diversity, drawn up in Rio de Janeiro on 5 June 1992,³ defines biodiversity as the variability among all living organisms derived, *inter alia*, from terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part. This encompasses genetic diversity within species, taxonomic diversity between species and ecological diversity between ecosystems and habitats, particularly those characterised by high species richness, a high proportion of endemic or threatened taxa and a demonstrable social, economic, cultural or scientific value.⁴

During the UN COP 15 Biodiversity Conference in Montreal, Canada, on 7–14 December 2022, the European Union joined the countries that signed the historic Kunming-Montreal Global Biodiversity Framework (GBF).⁵ The

¹ *Działania w obronie interesów natury – Kompendium informacyjne* [Actions in Defense of Nature's Interests – Information Compendium], <https://www.gov.pl/web/wprpo2020/strategia-na-rzecz-bioroznorodnosci-2030>, [access: 3.08.2025].

² *Introduction to the GBF*, <https://www.cbd.int/gbf/introduction> [access: 3.08.2025].

³ The article specifies the objectives of the Convention on Biological Diversity, signed in Rio de Janeiro on 5 June 1992, *Journal of Laws* of 2002, No. 184, item 1532.

⁴ B.J. Cardinale, J.E. Duffy, A. Gonzalez, D.U. Hooper, C. Perrings, P. Venail, A. Narwani, G.M. Mace, D. Tilman, D.A. Wardle, A.P. Kinzig, G.C. Daily, M. Loreau, J.B. Grace, A. Larigauderie, D.S. Srivastava, S. Naeem, *Biodiversity Loss and Its Impact on Humanity*, "Nature" 2012, no. 486, p. 59–67; S.C. Phang, P. Failler, P. Bridgewater, *Addressing the Implementation Challenge of the Global Biodiversity Framework*, "Biodiversity and Conservation" 2020, vol. 29, no. 9–10, p. 3061–3066, <https://doi.org/10.1007/s10531-020-02009-2>; H. Locke, E.C. Ellis, O. Venter, R. Schuster, K. Ma, X. Shen, S. Woodley, N. Kingston, N. Bhola, B.B.N. Strassburg, A. Paulsch, B. Williams, J.E.M. Watson, *Three Global Conditions for Biodiversity Conservation and Sustainable Use: An Implementation Framework*, "National Science Review" 2019, vol. 6, no. 6, p. 1080–1082, <https://doi.org/10.1093/nsr/nwz136>; D. Armitage, P. Mbatha, E. Muhl, W. Rice, M. Sowman, *Governance Principles for Community-centered Conservation in the Post-2020 Global Biodiversity Framework*, "Conservation Science and Practice," 2020, vol. 2, no. 2, p. 1–18, <https://doi.org/10.1111/csp2.160>; M. Baran, *Towards EU Nature Restoration Law: A Boost for Biodiversity and Climate?*, in: A. Sikora, I. Kawka (eds), *The European Green Deal and the Impact of Climate Change on the EU Regulatory Framework: Searching for Coherence*, Presses universitaires Saint-Louis Bruxelles, Bruxelles 2024, p. 113–140, <https://books.openedition.org/pusl/36401> [access: 3.08.2025].

⁵ *The Kunming-Montreal Global Biodiversity Framework*, <https://www.cbd.int/gbf> [access: 30.09.2025]; E.A. Mikhailova, H.A. Zurqani, L. Lin, Z. Hao, C.J. Post, M.A. Schlautman, G.C. Post, G.A. Highberger, G.B. Shepherd, *The Role of Soil Diversity in the Kunming-Montreal Global Biodiversity Framework: Example of the Contiguous United States of America (USA)*, "Biosphere" 2025, no. 1, p. 3, <https://doi.org/10.3390/biosphere1010003>; A.C. Hughes, R.E. Grumbine, *The Kunming-Montreal Global Biodiversity Framework: What it Does and Does Not Do, and How to Improve It*, "Frontiers in Environmental Science" 2023, no. 11, p. 1–12, <https://doi.org/10.3389/fenvs.2023.1281536>.

GBF was adopted by 196 countries with the aim of reducing biodiversity loss and the main objective to “halt and reverse biodiversity loss”, based on 23 targets to be achieved by 2030, along with four long-term targets for 2050. After a four-year consultation and negotiation process, targets were identified: to restore 30% of the world’s degraded ecosystems (on land and at sea) by 2030; to halt the extinction of known species and, by 2050, to reduce tenfold the risk and rate of extinction of all species (including those not yet known); to reduce the risk of pollution and the negative impact of pollutants from all sources by 2030 to a level that is not harmful to biodiversity and ecosystem functions; to manage agricultural areas, aquaculture, fisheries and forestry and to achieve a significant increase in agroecology and other biodiversity-friendly practices; to combat climate change through nature-based solutions; and to reduce the introduction and establishment of invasive alien species by at least 50% by 2030.⁶ It is worth noting that the Cartagena Protocol on Biosafety to the Convention on Biological Diversity,⁷ also drawn up in Montreal, Canada in 2000, states that its objective is to ensure an adequate level of protection in the safe movement, transport, transfer and use of living modified organisms resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity.

Agricultural activities, which produce agricultural products essential for human life, can have either a positive or negative impact on biodiversity conservation (e.g. the loss of animal habitats, the extinction of plant species and the reduction of genetic diversity in crop populations through the use of large amounts of plant protection products, improper work practices and extensive farming). The less intensive agriculture is, the greater the diversity of plants and animals in the fields can be. Biodiversity has a positive impact on agricultural production, ensuring such aspects as proper soil structure and function, soil fertility and productivity, pollination of plants, protection against water and wind erosion, nutrient cycling in nature (including waste decomposition),

⁶ M. Rutkowski, *Dla przyrody i ludzkości — COP 15. Historyczne porozumienie podpisane!* [For Nature and Humanity – COP 15. Historic Agreement Signed!], <https://ksow.pl/aktualnosc/dla-przyrody-i-ludzkości-cop-15-historyczne-porozumienie-podpisane> [access: 30.09.2025].

⁷ Cartagena Protocol on Biosafety to the Convention on Biological Diversity, done in Montreal on 29 January 2000, Journal of Laws 2004, No. 216, item 2201; J. Jendrośka, M. Bar, Z. Bukowski, *Protokół Kartageński o bezpieczeństwie biologicznym do Konwencji o różnorodności biologicznej: komentarz* [Commentary on the Cartagena Protocol on Biosafety to the Convention on Biological Diversity], Centrum Prawa Ekologicznego, Wrocław 2004; *Cartagena Protocol on Biosafety to the Convention on Biological Diversity*, Secretariat of the Convention on Biological Diversity, Montreal 2000, <https://www.cbd.int/doc/legal/cartagena-protocol-en.pdf> [access: 7.08.2025]; D. Pyć, *Ochrona przyrody* [Nature Conservation], in: Z. Brodecki (ed.), *Ochrona środowiska* [Environmental Protection], LexisNexis, Warsaw 2005, p. 277–291.

control over the proper water cycle in nature and diversity of organisms in a changing climate.

FAO Resolution 1/168, Conservation and sustainable use of biodiversity for food and agriculture and the post-2020 global biodiversity framework⁸ of 4 December 2021, emphasises that the Commission on Genetic Resources for Food and Agriculture points to the need to protect biodiversity for food and agriculture and to promote its use in order to support global food security and sustainable development for present and future generations. This resolution encourages Member States to incorporate the Commission's sectoral global action plans, the framework for action on biodiversity for food and agriculture and policy tools into policies, programmes and national and regional action plans in agriculture, forestry, fisheries and aquaculture, biodiversity, climate change, food security, nutrition and health and other relevant sectors, as appropriate. This document also emphasizes the need to develop proposals for financing biodiversity actions for food and agriculture, including genetic resources, in line with their national priorities, where appropriate, seeking funding from various sources, including the Global Environment Facility, the Green Climate Fund and other financing mechanisms and forms.⁹

EU legislation has been addressing the issue of biodiversity for many years. It is worth noting that as early as 1993, the Convention on Biological Diversity, signed in June 1992 in Rio de Janeiro, was approved on behalf of the European Economic Community.¹⁰ This was done on the basis of Council Decision of 25 October 1993 on the conclusion of the Convention on Biological Diversity (93/626/EEC).¹¹ The preamble emphasises that the conservation of biological diversity is a matter of global concern and that it is therefore appropriate for the Community and its Member States to participate in international efforts to achieve the same objective – in particular, by promoting the conservation and sustainable use of biological diversity and by adopting agreed rules on its use

⁸ Appendix E. Resolution 1/168 The Conservation and Sustainable Use of Biodiversity for Food and Agriculture and the Post-2020 Global Biodiversity, <https://openknowledge.fao.org/server/api/core/bitstreams/ac175d82-5b5a-4b66-a088-62a114677c7b/content> [access: 30.09.2025].

⁹ I. Brierley, E. Wooden, K. Crumpler, J. Bélanger, *Biodiversity and Agrifood Systems in Nationally Determined Contributions – NDC Thematic Policy Analysis*, Food and Agriculture Organization, Rome 2024, <https://doi.org/10.4060/cd2827en>.

¹⁰ M. Niekisch, R. Wittig, *Gesetze, Verordnungen und Konventionen zum Schutz der Biodiversität*, in: R. Wittig, M. Niekisch (eds), *Biodiversität: Grundlagen, Gefährdung, Schutz*, Springer, Berlin 2014, p. 373–405, https://doi.org/10.1007/978-3-642-54694-5_13.

¹¹ Council Decision of 25 October 1993 concerning the conclusion of the Convention on Biological Diversity, OJ L 309, 13.12.1993, p. 1–2.

and the sharing of its benefits. The EU's efforts to halt the loss of biodiversity and ecosystems are based on legislation such as the Birds and Habitats Directives, the Water Framework Directive and the Marine Strategy Framework Directive. In addition, resolutions, communications and strategies setting out action plans for biodiversity are also important, e.g. the EU Biodiversity Strategy for 2030.¹²

This is an ambitious, long-term plan to protect nature and reverse the degradation of ecosystems. The main objective of the strategy is to restore biodiversity in Europe by 2030 through specific actions and commitments. In turn, the EU Biodiversity Strategy for 2030, entitled "Restoring nature to our lives",¹³ was published by the European Commission on 20 May 2020. It emphasises that biodiversity is crucial to ensuring food security and that the EU agricultural sector plays an important role in producing healthy, safe and affordable food. It also points out that farmers have a key role to play in the success of this strategy and that the strategy itself should be aligned with the measures, objectives and targets set out in the Farm to Fork Strategy, taking into account the potential socioeconomic impacts. It is necessary for farmers to receive support, including economic support and training, in the transition to sustainable agricultural systems in order to promote agroecological practices and other innovative sustainable practices.

However, according to Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 laying down provisions on support for strategic plans,¹⁴ the specific objective of the Common Agricultural Policy (CAP) for 2023–2027 is to contribute to halting and reversing biodiversity loss, enhancing ecosystem services and protecting habitats and landscapes. The preamble emphasises that, given the importance of counteracting the radical loss of biodiversity, support under this Regulation should help integrate biodiversity measures into Union policies and achieve the goal of allocating 7.5% of annual expenditure under the multiannual financial framework (MFF) to biodiversity

¹² European Parliament resolution of 9 June 2021 on the EU Biodiversity Strategy for 2030 – Bringing nature back into our lives (2020/2273(INI)), OJ C 67, 8.02.2022, p. 25–55.

¹³ *Biodiversity Strategy for 2030*, https://environment.ec.europa.eu/strategy/biodiversity-strategy-2030_en [access: 7.08.2025].

¹⁴ 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, OJ L 435, 6.12.2021, p. 1–186.

objectives in 2024 and 10% of annual MFF expenditure to biodiversity objectives in 2026 and 2027.

Based on EU legislation and the permitted possibilities for enacting national regulations, Poland and other EU countries are taking measures to protect biodiversity. One example is Austria, which has the largest share of organic farming in the EU,¹⁵ and substantial forested and mountainous areas. Biodiversity protection is also crucial on other continents. Another relevant example is Canada, a country where agriculture is very important and which has been taking action in this area for many years. Although it has a significant amount of agricultural land, most of it is not high quality and is subject to drought.

This article aims to determine the extent to which legislation and policy take into account the issue of biodiversity, especially in relation to agriculture, and can contribute to halting and reversing the process of biodiversity loss. Due to the broad scope of the discussion, the article focusses on selected issues of the Common Agricultural Policy for 2023–2027 and national legal regulations in force in Poland, Austria and Canada.¹⁶

2. International and EU policy and legal regulations on biodiversity – Selected aspects

Article 8 of the 1992 Convention on Biological Diversity stipulates, among other things, that each contracting party shall, as far as possible and as appropriate, pass regulations on and manage biological resources important for the conservation of biological diversity both within and outside protected areas. There is no doubt that the challenges related to biodiversity vary from country

¹⁵ B. Freyer, E. Michael, W. Schneeberger, I. Darnhofer, L. Kirner, T. Lindenthal, W. Zollitsch, *Organic Farming in Austria – Developments and Perspectives*, “German Journal of Agricultural Economics” 2001, vol. 50, no. 7, p. 400–409; N. Gleirscher, *Policy Instruments in Support of Organic Farming in Austria*, “International Journal of Agricultural Resources, Governance and Ecology” 2008, vol. 7, no. 1, p. 51–62, <https://doi.org/10.1504/IJARGE.2008.016979>; K. Ishikura, *Current Status of Organic Farming Promotion and Agri-environmental Policy in Austria*, “Journal of Rural Problems” 2024, vol. 60, no. 1, p. 19–26, <https://doi.org/10.7310/arfe.60.19>.

¹⁶ Poland, Austria and Canada are countries that vary in size and natural conditions, but agriculture is an important sector of their economies. Environmental protection is also a priority in these countries. For example, organic farming accounts for over 20% of the agricultural sector in Austria, and in Canada, environmental protection is also a significant issue due to the country’s diverse climate zones and farming conditions. Similarly in Poland. Furthermore, having conducted comparative legal research on agriculture in these three countries, the author of this article considers that the issue of biodiversity should also be addressed.

to country and depend on the natural conditions and socioeconomic situation.¹⁷ The Convention introduced three levels of nature protection – genetic, species and ecosystem – and the concept of protection is understood as a number of measures consisting of preserving biodiversity at all levels, including restoring lost elements and creating forms of biodiversity resource management.¹⁸

Agricultural activities can have a negative impact on, for example, water, soil and the organisms living in it. That is why it is important to use land, especially agricultural land, in a sustainable manner. The Convention on Biological Diversity defines “sustainable use” as the use of elements of biological diversity in such a way and at such a rate that they are not depleted over the long term, thus maintaining their potential to meet the needs and aspirations of present and future generations (Art. 2). The Convention states that soil biodiversity includes microorganisms – encompassing bacteria, fungi, protozoa and nematodes – as well as larger organisms, which together contribute to the ecological and functional diversity of soil ecosystems. Biodiversity below and above ground is closely linked and interacts through mutual relationships (e.g. mycorrhizal fungi that connect plant roots).

The International Treaty on Plant Genetic Resources for Food and Agriculture, adopted in Rome on 3 November 2001,¹⁹ emphasises that plant genetic resources for food and agriculture are a common concern of all states and that all states are highly dependent on plant genetic resources for food and agriculture originating in foreign territories. Article 1 specifies that the objectives of this treaty are the conservation and sustainable use of plant genetic resources for food and agriculture and the fair, equitable sharing of the benefits arising therefrom, which are to be achieved in accordance with the Convention on Biological Diversity. These objectives are to be achieved by establishing a close relationship between this treaty and the Food and Agriculture Organization of the United Nations and the Convention on Biological Diversity.²⁰ The Contracting Parties shall develop and implement appropriate policies and apply

¹⁷ K. Stępień, *Charakterystyka instrumentów prawnych służących ochronie różnorodności biologicznej w Polsce* [Characteristics of Legal Instruments for the Protection of Biodiversity in Poland], „Przegląd Prawa Ochrony Środowiska” 2016, no. 2, p. 157–174.

¹⁸ Ibidem.

¹⁹ International Treaty on Plant Genetic Resources for Food and Agriculture, done in Rome on 3 November 2001, *Journal of Laws* 2006, No. 159, item 1128.

²⁰ P. Gała, *Ochrona i wykorzystanie roślinnych zasobów genowych. Wybrane aspekty prawne* [Protection and Use of Plant Genetic Resources. Selected Legal Aspects], „*Studia Iuridica Agraria*” 2012, no. 10, p. 489–502; P. Gała, *Ochrona bioróżnorodności a prawa własności intelektualnej w rolnictwie* [Biodiversity Protection and Intellectual Property Rights in Agriculture], „*Studia Iuridica Agraria*” 2014, no. 12, p. 137–148.

legal regulations that promote the sustainable use of plant genetic resources for food and agriculture. It is important to pursue sound agricultural policies that promote the development and maintenance of various agricultural systems that support sustainability, agricultural biological diversity and the protection of natural resources. These include expanding research that supports and protects biological diversity, broadening the genetic base of crop plants, increasing the range of genetic diversity available to farmers and promoting the widespread use of local and locally adapted crops, varieties and marginal crops.

Council Directive 79/409/EEC on the conservation of wild birds²¹ and Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora²² address the issue of biodiversity, as do Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for Community action in the field of marine environmental policy²³ and Regulation (EU) 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species.²⁴ Of particular importance is the Natura 2000 network, an EU-wide system of protected areas established by the Habitats Directive, which also includes special protection areas established under the Birds Directive. The EU's Biodiversity Strategy to 2030 – “Bringing nature back into our lives” is an ambitious, long-term plan to protect nature and reverse the degradation of ecosystems.²⁵

The main objective of the Strategy is to restore biodiversity in Europe by 2030.²⁶ The European Parliament resolution of 9 June 2021 on the EU's Biodiversity Strategy for 2030 – “Bringing nature back into our lives” emphasises that soil provides essential ecosystem services and mitigates climate change, making

²¹ Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, OJ L 103, 25.04.1979, p. 1–18.

²² Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.07.1992, p. 7–50.

²³ Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy, OJ L 164, 25.06.2008, p. 19–40.

²⁴ Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species, OJ L 317, 4.11.2014, p. 35–55.

²⁵ 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, COM/2020/380 final.

²⁶ *Biodiversity Strategy 2030 – Common Agricultural Policy After 2020*, <https://www.gov.pl/web/wprpo2020/bioroznorodnosc---wspolna-polityka-rolna-po-2020-roku> [access: 30.09.2025].

it one of the most important terrestrial carbon sinks. A common framework for soil should address all major threats to soil, including loss of soil biodiversity, loss of soil organic matter, contamination, salinisation, acidification, desertification, erosion and soil sealing.

In June 2024, the Council adopted legislation on nature restoration: Regulation (EU) 2024/1991 of the European Parliament and of the Council on the restoration of natural resources and amending Regulation (EU) 2022/869 (Nature Restoration Law).²⁷ As stated in the explanatory memorandum, to date the EU has failed to halt biodiversity loss. A recent study completed as part of the evaluation of the EU Biodiversity Strategy to 2020 shows that between 2011 and 2020, the EU was unable to halt biodiversity loss. The voluntary target of restoring at least 15% of degraded ecosystems by 2020 (in line with Aichi Target 15 of the Convention on Biological Diversity) has not been met. As far as biodiversity and ecosystems are concerned, the outlook is bleak and indicates that the current approach is not sufficiently effective; therefore, further legislative changes and concrete actions are necessary²⁸.

The 2024 Nature Restoration Law introduces provisions that are intended to contribute to the long-term, sustainable restoration of biologically diverse, resilient ecosystems in the terrestrial and marine areas of Member States through the restoration of degraded ecosystems. According to the Regulation, “restoration” means the process of actively or passively supporting the return of an ecosystem to a favourable condition in order to improve its structure and functions with the aim of maintaining or enhancing the biodiversity and resilience of the ecosystem, by bringing the habitat area of a given type to a favourable condition (Article 3 point 3). Article 11 of the Nature Restoration Law concerns the restoration of agricultural ecosystems. Member States are to introduce the restoration measures necessary to increase biodiversity in agricultural ecosys-

²⁷ Regulation (EU) 2022/869 of the European Parliament and of the Council of 30 May 2022 on guidelines for trans-European energy infrastructure, amending Regulations (EC) No 715/2009, (EU) 2019/942 and (EU) 2019/943 and Directives 2009/73/EC and (EU) 2019/944, and repealing Regulation (EU) No 347/2013, OJ L 2024/1991, 29.07.2024. see also G. Tucker, *Europe's Nature and Conservation Needs*, in: G. Tucker (ed.), *Nature Conservation in Europe: Approaches and Lessons*, Cambridge University Press, Cambridge 2023, p. 13–40.

²⁸ Proposal for a Regulation of the European Parliament and of the Council on nature restoration, COM/2022/304 final; A. Suchoń, *Prawa, obowiązki i interesy właścicieli gruntów rolnych a ochrona środowiska – perspektywa krajowa, unijna i międzynarodowa* [Rights, Obligations and Interests of Agricultural Land Owners and Environmental Protection – National, EU and International Perspectives], in: M. Baran, B. Iwańska, I. Przybojewska (eds), *Prawa i interesy w ochronie środowiska. Perspektywa międzynarodowa, unijna i krajowa* [Rights and Interests in Environmental Protection. International, EU and National Perspectives], C.H. Beck, Warsaw 2025, p. 255–286.

tems, taking into account climate change, the social and economic needs of rural areas and the need to ensure sustainable agricultural production in the Union. The aim is to achieve, at the national level, an upward trend in at least two of the three indicators in agricultural ecosystems, namely, the abundance of butterflies on grassland, organic carbon stocks in mineral soils of arable land and the percentage of agricultural land with high biodiversity features. Where appropriate, they shall create incentives for rewetting to make it attractive to farmers and private landowners and support access to training and advice for farmers and other stakeholders on the benefits of rewetting peatlands and on subsequent land management options and related opportunities.

It is also worth mentioning the Directive on Soil Monitoring and Resilience (Soil Monitoring Law).²⁹ Point 21 of its Preamble states that soils contain over 25% of all biodiversity resources and are the second largest carbon reservoir on our planet. Soil biodiversity includes microorganisms, such as bacteria, fungi, protists and nematodes, as well as larger organisms such as earthworms and insects and plant roots, which together contribute to the ecological and functional diversity of soil ecosystems. Biodiversity underground and above ground are closely linked and interact through interspecies relationships. The Directive establishes a framework and measures for a) monitoring and assessing soil health, b) soil resilience and c) managing contaminated sites.³⁰ According to Art. 3(3) of the Directive, “soil biodiversity” means the variation in soil life, from genes to communities of organisms, and the ecological complexes of which they are part – that is, complexes ranging from soil micro-habitats to landscapes.

Growing concerns about the state of the world’s soils prompted the UN General Assembly to declare 2015 the International Year of Soils. The FAO

²⁹ Directive (EU) 2025/2360 of the European Parliament and of the Council of 12 November 2025 on soil monitoring and resilience, OJ L 2025/2360, 26.11.2025; *Overview of Land Degradation Neutrality (LDN) in Europe and Central Asia*, Food and Agriculture Organization, Rome 2022, <https://www.fao.org/documents/card/en/c/cb7986en> [access: 17.10.2024]. A. Suchoń, *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*, in: A. Sikora-Kaléda, I. Kawka (eds), *Fundamental Rights and Climate Change. Exploring New Perspectives and Corresponding Remedies*, Księgarnia Akademicka, Cracow 2025, p. 169–192, <https://doi.org/10.12797/9788383682471>.

³⁰ J. Augier, J. Papuchon, A. Devot, V. Ayrat, A. De Pierrepont, A. Marechal, S. Meredith, D. Lisbona, E. Poirier, E. Maire, D. Pinsault, A. Frelih-Larsen, T. Clement, *Evaluation Study on the Impact of the CAP on the Sustainable Management of Soil. Final Report to DG Agriculture*, Publications Office of the European Union, Luxembourg 2021, <https://www.ecologic.eu/sites/default/files/publication/2022/3591-Evaluation-Support-Study-on-The-Impact-of-The-CAP-on-Sustainable-Management-of-The-Soil-web.pdf> [access: 7.08.2025].

also adopted an amendment to the World Soil Charter, and World Soil Day is celebrated on 5 December of each year. Soil degradation has a negative impact on other elements of the environment. According to a FAO publication, soils perform 11 key functions, including purifying water and reducing pollution, participating in the circulation 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 having a decisive impact on the survival and prosperity of humanity.³¹

3. Short history of the Common Agricultural Policy, the CAP 2023–2027 and biodiversity

The CAP is a central pillar of the European project and, for over 69 years, has represented a commitment to ensuring food security in accordance with the objectives of the EU Treaties. It should be emphasised that even the Treaty of Rome of 1957 contained provisions on agriculture. This was linked to problems regarding adequate food supplies and ensuring the stability of supplies following the Second World War, among other things. As Holzer rightly points out, the CAP is the most developed and structured area of the EU legal order, due to its scope, diversity, technical nature and dynamics.³² Over the years, addressing environmental challenges has become increasingly important. Article 6, added to the Treaty of Rome, and now Article 11 of the Treaty on the Functioning of the European Union, has also had an impact. It stipulates that, in defining and implementing the Union's policies and activities, in particular with a view to promoting sustainable development, environmental protection requirements must be taken into account. Article 13 is also significant: in formulating and implementing agricultural policies, the Union and the Member States shall take full account of the welfare requirements of animals as sentient beings, whilst respecting the laws, regulations and administrative provisions and customs of the Member States. Article 191 TFEU, on the other hand, states that the EU's policy on the environment shall contribute to the

³¹ *Soil Functions*, <http://www.fao.org/resources/infographics/infographics-details/en/c/284478/> [access: 17.10.2025]; N. Harari, R. Mekdaschi Studer, S. Bastidas Fegan, S. Schlingloff, A. Brès, *Promoting Sustainable Land Management Through Evidence-based Decision Support – A Guide with Country Insights*, Food and Agriculture Organization of the United Nations, Rome 2023, <https://doi.org/10.4060/cc6118en>.

³² G. Holzer, *Agrarrecht*, Der Verlag Österreich, Wien 2023, p. 10–20.

following objectives: the preservation, protection and improvement of the quality of the environment, the protection of human health and the prudent and rational utilisation of natural resources. The Union's environmental policy aims for a high level of protection, taking into account the diversity of situations in the various regions of the Union.

It should also be pointed out that the CAP objectives set out in the 1957 Treaty of Rome remain binding today, but the CAP faces an increasing number of challenges, such as climate change and the sustainable management of natural resources, care for rural areas across the EU and maintaining the sustainability of the agricultural economy, as well as ensuring profitable food production.³³ Agricultural producers also face more obligations, which often relate to environmental protection rather than agricultural production. As part of Ray MacShare's 1992 reform, a number of environmental protection measures were introduced, including the afforestation of agricultural land and agri-environmental schemes.³⁴ It should be noted that there are an increasing number of obligations linked to direct payments concerning environmental protection. The evolution of the importance of biodiversity issues should be highlighted. For example, in 2006 the Commission issued a Communication titled "Halting the loss of biodiversity by 2010 and beyond: Sustaining ecosystem services for human well-being" (COM(2006) 216 final), and in 2011 the first EU Biodiversity Strategy for 2020.³⁵ In subsequent years, an increasing number of measures have been taken to promote biodiversity, including in agriculture. The European Green Deal³⁶ has significantly helped place a greater emphasis on environmental protection within the CAP. Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 laying down rules on support for strategic plans emphasises that, given the importance of addressing the dramatic loss of biodiversity, support under this Regulation should contribute to integrating biodiversity considerations into Union policies and to achieving the goal of allocating 7.5% of annual

³³ See more A. Jurciewicz (ed.), *Prawo i polityka rolna Unii Europejskiej* [European Union Agricultural Law and Policy], Instytut Wydawniczy EuroPrawo, Warsaw 2010.

³⁴ A. Matthews, *Greening Agricultural Payments in the EU's Common Agricultural Policy*, "Bio-based and Applied Economics" 2013, 2(1), p. 1–27.

³⁵ *Biodiversity Strategy for 2020*, <https://eur-lex.europa.eu/EN/legal-content/summary/biodiversity-strategy-for-2020.html> [access: 30.09.2025].

³⁶ About The EU Green Deal see: e.g. M. Inglese, *The EU Green Deal and the Farm to Fork Strategy: A Fundamental Rights Approach to Harmonise the Internal Market*, in: A. Sikora, I. Kawka (eds), *The European Green Deal and the Impact of Climate Change on the EU Regulatory Framework*, Presses universitaires Saint-Louis Bruxelles, Bruxelles 2024, p. 183–199, <https://books.openedition.org/pusl/36416> [access: 30.09.2025].

expenditure under the multiannual financial framework (MFF) to biodiversity objectives in 2024. In addition, 10% of annual expenditure under the MFF should go towards biodiversity objectives in 2026 and 2027. This Regulation specifies that within the general objectives (Article 5), support from the EAGF (the European Agricultural Guarantee Fund) and the European Agricultural Fund for Rural Development (EAFRD) shall serve to further improve the sustainability of agriculture, food and rural areas and to achieve the general economic, environmental and social objectives. This will contribute to the implementation of the 2030 Agenda for Sustainable Development, including supporting and strengthening environmental protection (e.g. biodiversity and climate action) and contributing to the achievement of the Union's environmental and climate objectives and commitments under the Paris Agreement.

The specific objective of the CAP 2023–2027 set out in Article 6 is to contribute to halting and reversing biodiversity loss, enhancing ecosystem services and protecting habitats and landscapes, contributing to climate change mitigation and adaptation – including through the reduction of greenhouse gas emissions and the enhancement of carbon sequestration – and promoting sustainable energy.

A new feature of the CAP 2023–2027 is the climate, environment and animal welfare schemes, some of which directly address biodiversity. Member States shall establish voluntary schemes for these areas and provide support for them under the conditions set out in this article and specified in their CAP Strategic Plans. Each eco-scheme should, in principle, cover at least two of the following areas of action for climate, environment, animal welfare and combating antimicrobial resistance: adaptation to climate change, including measures to increase the resilience of food production systems and animal and plant diversity, and biodiversity protection, preservation or restoration of habitats or species, including the preservation and creation of landscape features or non-productive areas. Regulation (EU) 2021/2115 provides that agricultural producers in certain sectors, referred to in Article 42(f) and including fruit and vegetable, hops, olive oil and table olives, may also benefit from interventions for protecting and improving biodiversity, sustainably using natural resources and protecting water, soil and air in particular.

The payments specified in Article 70 of Regulation (EU) 2021/2115 are also intended to contribute to the achievement of biodiversity objectives: Member States shall include agri-environment-climate commitments among the interventions provided for in their CAP strategic plans. These shall be granted only to farmers or other beneficiaries who voluntarily undertake actions recognised as beneficial for achieving one or more of the specific objectives set out

in Article 6(1) and (2), such as contributing to halting and reversing biodiversity loss, enhancing ecosystem services and protecting habitats and landscapes. This Regulation also provides that Member States may, under the conditions laid down in its Article 72 and specified in their CAP *strategic plans*, grant payments for specific disadvantages in a given area arising from the requirements of the implementing Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora and Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds or Directive 2000/60/EC. These payments shall be granted to farmers, forest holders and their associations and other land managers. When determining areas with handicaps, Member States may take into account agricultural and forested areas of the Natura 2000 network designated in accordance with Directives 92/43/EEC and 2009/147/EC or other designated environmental protection areas where environmental restrictions on agricultural or forestry activities apply, contributing to the implementation of Article 10 of Directive 92/43/EEC.

In order to halt and reverse biodiversity loss, strengthen ecosystem services and protect habitats and landscapes, suggested measures include increasing the population of farmland birds (e.g. the percentage of species and habitats of Community interest associated with agriculture that are stable or increasing, including that of wild pollinating insects); supporting the provision of ecosystem services (the share of agricultural land with landscape features); enhancing agri-biodiversity in the agricultural system; developing organic farming; supporting sustainable forest management (percentage of forest land covered by commitments to support forest protection and ecosystem service management); protecting habitats and species (percentage of utilised agricultural area covered by supported commitments to protect or restore biodiversity, including high nature value farming practices); making biodiversity-related investments (percentage of farms receiving CAP support for biodiversity investments); improving the management of the Natura 2000 network (preserving landscape features); and protecting beehives.

4. CAP 2028–2034 – some remarks for the future

As regards the Common Agricultural Policy after 2027, the general principles are set out in the Proposal for a Regulation of the European Parliament and of the Council establishing the conditions for the implementation of Union

support for the Common Agricultural Policy for the period from 2028 to 2034.³⁷ Right at the start of the explanatory memorandum, it is pointed out that agriculture and food are sectors of strategic importance to the Union, providing 450 million Europeans with safe, high-quality food, and are also vital for solutions on protecting climate, nature, soil, water and biodiversity, which are currently under various pressures. It was also emphasised that this sector is vulnerable to climate change, biodiversity loss and socioeconomic pressures, which threaten its long-term sustainability and livelihoods. Article 10 of the Proposal concerns agri-environmental and climate actions. According to the draft, Member States are to provide incentives in the coming years for measures beneficial to the climate, the environment, animal health and welfare and sustainable forestry, such as voluntary management commitments from farmers and other beneficiaries, including commitments to maintain organic farming and the extensification of livestock production. Management commitments may be annual or multi-annual and may have the following particular objectives: protecting biodiversity, including landscape features; reducing pesticide use; protecting water quality and reducing pressure on water resources; and soil protection. Article 4 concerns priority areas for the environment and climate. Specifically, Member States are to provide support to farmers and other beneficiaries in at least each of the following environmental and climate priority areas: climate change adaptation and water resilience; healthy soil; conservation of biodiversity, e.g. protection of habitats, species or landscape features; and reduction of pesticide use.³⁸

5. Biodiversity in Poland and the CAP 2023–2027

Poland, like other European Union countries, has prepared a Strategic Plan for the CAP 2023–2027. It is worth explaining that this is a new CAP implementation instrument that gives Member States greater freedom and takes into account the needs of financing agriculture and rural areas. The Plan identifies measures which, in accordance with Regulation (EU) 2021/2115, have been selected by Poland for funding. Initially, a SWOT analysis was performed

³⁷ Proposal for a Regulation of the European Parliament and of the Council establishing the conditions for the implementation of the Union support to the Common Agriculture Policy for the period from 2028 to 2034, COM/2025/560, <https://eur-lex.europa.eu/legal-content/EN/HIS/?uri=COM%3A2025%3A0560%3AFIN> [access: 7.04.2026].

³⁸ Ibidem.

and the challenges were identified (contributing to halting and reversing the loss of biodiversity, enhancing ecosystem services and protecting habitats and landscapes). The identified strengths were diverse geographical conditions and agricultural production systems; diverse landscapes, ecosystems (including those dependent on agriculture and forestry) and species of flora and fauna; a large proportion of agricultural land with significant natural and landscape values (the result of agricultural fragmentation and extensive agricultural production); a significant area and good condition of natural and semi-natural habitats (compared to other European countries); potential for restoring the ecosystems dependent on agriculture and forestry and related ecosystem services; well-preserved diversity of genetic resources of farm animals, crops and segetal plants and functioning systems for their protection; growing knowledge, awareness, activity and social expectations (including among farmers) regarding environmental issues, including biodiversity and landscapes; and scientific, expert, advisory and organisational support.³⁹

Weaknesses include the unsatisfactory condition of some natural habitats and the condition of plant and animal populations associated with ecosystems dependent on agriculture and forestry; the decline in pollinating insect populations; insufficient adaptation of agricultural management to natural conditions; low ecosystem efficiency of private forests in terms of carbon sequestration, water and soil protection and biodiversity; a decline in biodiversity as a result of agricultural production being dominated by plant varieties/animal breeds intended for intensive production; a lack of conservation action plans/conservation plans for all Natura 2000 sites; and conflict between the protection of protected species and agricultural management.⁴⁰

The Strategic Plan for the CAP 2023–2027 takes into account halting and reversing biodiversity loss, strengthening ecosystem services and protecting habitats and landscapes. One example is agricultural activity in Natura 2000-protected areas. According to 2020 data, Natura 2000 areas cover 19,6% of the country. This indicator does not differ significantly from the EU average (EU27) of 19,8%. The need to increase crop diversity has been highlighted.⁴¹ High

³⁹ *Plan Strategiczny dla Wspólnej Polityki Rolnej na lata 2023–2027 (PS WPR 2023–2027)* [Polish Strategic Plan for the CAP 2023–2027], <https://www.gov.pl/web/rolnictwo/plan-strategiczny-dla-wspolnej-polityki-rolnej-na-lata-2023-27> [access: 7.08.2025].

⁴⁰ Ibidem.

⁴¹ *Dwadzieścia procent powierzchni Polski zajmują obszary Natura 2000. Wkrótce pojawią się nowe, a niektóre już istniejące zostaną powiększone!* [Twenty Per Cent of Poland's Territory is Covered by Natura 2000 Areas. New Ones Will Soon be Added, and Some Existing Ones Will be Enlarged!], <https://www.gov.pl/web/gdos/dwadzieścia-procent-powierzchni-polski-zajmują-obszary-natura-2000-wkrotce-pojawia-sie-nowe-a-niektore-juz-istniejące-zostana-powiekszone> [access: 30.09.2025].

crop diversity counteracts the loss of biodiversity and has a positive impact on the diversity of the rural landscape. Crop rotation or other practices aimed at preserving soil potential, including crop diversification, are justified. Under the eco-schemes, crop diversification will be promoted particularly through the practice of diverse crop structure, requiring at least three different crops on the farm.

The Strategic Plan for the CAP 2023–2027⁴² also includes protecting the genetic resources of cultivated plants as part of preserving biodiversity. Plant varieties developed in the past by generations of farmers were adapted to the conditions of extensive agriculture. In terms of promoting the cultivation of traditional species and varieties, it is proposed to continue supporting extensive traditional orchards (I.8.4 – Preservation of traditional orchards of fruit tree varieties, multi-variety or multi-species, consisting of old varieties of trees). Emphasis is also placed on measures to increase biodiversity in private forests by diversifying the forest structure and species composition of tree stands (introducing deciduous species and those used in honey production). It is necessary to support the sustainable use of plant protection products and fertilisers that affect the quality of the environment.

It also indicates the importance of establishing and maintaining perennial flower strips on arable land and in fields, which provide habitat, shelter and a food source for many animal species, thereby enriching the rural landscape. Biodiversity gardens, on the other hand, shall consist of at least 20 species and contribute to the diversification of the rural landscape.⁴³ It is planned that approximately 1,400 ha will be covered by the support.

Based on the approved Strategic Plan, the Act of 8 February 2023 on the Strategic Plan for the Common Agricultural Policy for 2023–2027 was adopted.⁴⁴ In terms of biodiversity, particular attention should be paid to eco-schemes, which have appeared for the first time in the current CAP. According to Article 30, grants under eco-schemes go to farmers for areas planted for honey production, for carbon farming and nutrient management, for integrated crop

⁴² *Plan Strategiczny dla Wspólnej...*, op. cit.

⁴³ J. Kowalska, P. Sienkiewicz, M. Antkowiak, J. Krzysińska, *Pas kwietny jako element zielonej infrastruktury wzmacniającej bioróżnorodność ekosystemu* [Flower Strips as an Element of Green Infrastructure Strengthening Ecosystem Biodiversity], Instytut Ochrony Roślin – Państwowy Instytut Badawczy, Warsaw 2024; D.F. Dostatny, I. Świechowska, *Ogród bioróżnorodności* [Biodiversity Garden], Centrum Doradztwa Rolniczego w Brwinowie, Poznań 2023, https://www.cdr.gov.pl/images/wydawnictwa/2023/2023_Ogrod_bioroznorodnosci.pdf [access: 7.09.2025].

⁴⁴ Act of 8 February 2023 on the Strategic Plan for the Common Agricultural Policy for 2023–2027, Journal of Laws 2024, item 1741 as amended.

production, for organic farming, for water retention on permanent grassland, for land set aside, for elite or certified seed and for animal welfare.

As regards carbon farming, the beneficiaries are farmers who implement practices to increase carbon sequestration in the soil and improve nutrient management on agricultural land in approved areas. The Regulation of the Minister of Agriculture and Rural Development of 13 March 2023 on the detailed conditions and detailed procedure for paying payments under climate and environmental schemes under the Strategic Plan for the Common Agricultural Policy for 2023–2027⁴⁵ stipulates that grants for carbon farming and nutrient management are intended for implementing at least one of the following practices aimed at increasing carbon sequestration in the soil and improving nutrient management: extensive use of permanent grassland with livestock; winter catch crops or intercrops; 3) developing and adhering to a fertilisation plan, either basic or liming; diversified crop structure; mixing manure into arable land within 12 hours of application; applying natural liquid fertilisers by methods other than spraying; simplified cultivation systems; and mixing straw with soil. For example, points are awarded if the farmer cultivates at least three different crops on arable land, including at least one crop that has a positive effect on the soil organic matter balance.

Payments under interventions related to the environment, climate and other management commitments for the period 2023–2027 are granted in the form of agri-environment-climate payments, ecological payments and premiums for afforestation, tree planting or agroforestry systems. The Regulation of the Minister of Agriculture and Rural Development of 31 March 2023 on the detailed conditions and detailed procedure for granting and paying agri-environment-climate payments under the Strategic Plan for the Common Agricultural Policy for 2023–2027 specifies that agri-environment-climate payments are granted for implementing agri-environment-climate commitments referred to in Article 70(1) of Regulation 2021/2115, as part of interventions such as protecting valuable habitats and endangered species *in* Natura 2000 areas; protecting valuable habitats and endangered species outside Natura 2000 areas; extensively using meadows and pastures in Natura 2000 areas; preserving traditional fruit tree varieties; preserving endangered plant genetic resources in agriculture; pre-

⁴⁵ Regulation of the Minister of Agriculture and Rural Development of 13 March 2023 on the detailed conditions and detailed procedure for paying payments under climate and environmental schemes under the Strategic Plan for the Common Agricultural Policy for 2023–2027, Journal of Laws 2023, item 493 as amended.

serving endangered animal genetic resources in agriculture; and supporting biodiversity on arable land.

Biodiversity on arable land refers to two options: perennial flower strips (7.1) and biodiversity gardens (7.2). Section 18 of the Regulation stipulates that agri-environment-climate payments are granted for arable land on which perennial flower strips are established and maintained using a mixture of the plant species listed in the Regulation, or biodiversity gardens established with the plants specified therein. Payments are also granted to farmers for fulfilling their obligations on agricultural land, where they carry out organic production within the meaning of Article 2(1)(10) of the Act of 23 June 2022 on organic farming and organic production, and if they have at least one hectare of agricultural land.

Agri-environmental payments, and later agri-environment-climate payments, have been part of the Polish legal system for years. Owners as well as dependent holders may continue the programme. For example, in its judgment in Gorzów Wielkopolski of 16 January 2020 (I SA/Go 734/19, LEX 2767327) the Provincial Administrative Court ruled that:

the transfer of possession referred to in § 29(1) and (2) of the Regulation of 18 March 2015 on the detailed conditions and procedure for granting financial assistance under the “*Agri-environment-climate measure*” covered by the Rural Development Programme for the years (...) (Journal of Laws of 2015, item 415) may take place between two successive tenants of the land. Although paragraph 1 contains the phrase “as a result of a sale, lease or other agreement”, this only means that the basis for the transfer of possession must be a specific legal relationship. However, the cited regulation does not impose an obligation for the parties to the aforementioned agreements to be the transferor and transferee of possession.⁴⁶

Although state forests predominate in Poland (over 86%), there are also private forests for whose maintenance biodiversity is important. The possibility of obtaining EU funds should be assessed positively. Currently, Article 46 of the Act of 8 February 2023 on the Strategic Plan for the Common Agricultural Policy for 2023–2027 stipulates that support for forest or afforestation investments carried out under Article 69(d) of Regulation 2021/2115 shall be granted under the following interventions: 1) afforestation of agricultural land; 2) creation of field trees; 3) establishment of agroforestry systems; and 4) increasing the

⁴⁶ Judgment of the Provincial Administrative Court in Gorzów Wielkopolski of 16 January 2020, I SA/Go 734/19, LEX 2767327.

biodiversity of private forests. In the current period (2023–2027), premiums for afforestation, tree planting or agroforestry systems are possible. They are granted for implementing other management commitments referred to in Article 70(1) of Regulation 2021/2115, on land 1) which, as part of the interventions referred to in Article 46(1)(1)–(3), has been afforested, wooded or on which an agroforestry system has been established, 2) afforested as a result of natural succession or 3) which has been wooded as part of the sub-measure referred to in Article 3(1)(8)(a) of the Act of 20 February 2015 on supporting the development of rural areas with the participation of the European Agricultural Fund for Rural Development under the Rural Development Programme for 2014–2020.⁴⁷

It is also worth mentioning the specific guidelines for the granting, payment and recovery of financial assistance under the Strategic Plan for the Common Agricultural Policy for 2023–2027 for intervention I.10.4 – Investments contributing to environmental and climate protection.⁴⁸ It also refers to biodiversity and landscapes (protection and quality). Aid under I.10.4 pursues the following specific objectives of the CAP: halting and reversing biodiversity loss, enhancing ecosystem services and protecting habitats and landscapes; contributing to climate change mitigation and adaptation, including through the reduction of greenhouse gas emissions and the enhancement of carbon sequestration; promoting sustainable energy; and supporting the sustainable development and efficient management of natural resources such as water, soil and air, including by reducing dependence on chemicals. For example, IV.3.7 – Improvement of carbon sequestration or soil biodiversity specifies that if the operation includes an investment aimed at increasing carbon sequestration or soil biodiversity through appropriate land use, six points are awarded. Aid is granted for investments in the construction of, for example, new storage tanks for liquid manure, slurry and manure or the conversion or purchase of such storage tanks.⁴⁹

⁴⁷ Act of 20 February 2015 on supporting the development of rural areas with the participation of the European Agricultural Fund for Rural Development under the Rural Development Programme for 2014–2020, Journal of Laws 2023, item 2298.

⁴⁸ Communication of the Minister of Agriculture and Rural Development of 16 April 2024 on detailed guidelines for the granting, payment and reimbursement of financial aid under the Strategic Plan for the Common Agricultural Policy for 2023–2027 for interventions I.10.4 Investments contributing to environmental and climate protection, Monitor Polski 2024, item 306.

⁴⁹ Wytyczne szczegółowe dla interwencji I.10.4 Inwestycje przyczyniające się do ochrony środowiska i klimatu w ramach Planu Strategicznego dla Wspólnej Polityki Rolnej na lata 2023–2027 [Detailed Guidelines for Intervention I.10.4 Investments Contributing to Environmental and Climate Protection Under the Strategic Plan for the Common Agricultural Policy for 2023–2027], <https://www.gov.pl/web/wprpo2020> [access: 30.09.2025].

6. Selected aspects of biodiversity in Austria

Due to its geographical location and natural landscape, Austria has a very wide range of habitats and species. It is also one of the most species-rich countries in Europe: there are around 67,000 species, including around 45,000 animal species and 3,000 ferns and flowering plants. However, it is estimated that 27% of its mammals and 27% of birds are endangered. In addition, 57% of the 93 types of forest biotopes are classified as endangered.⁵⁰ This country has a national biodiversity strategy that includes targets and measures for all relevant policy areas. The Austrian federal government has also created a biodiversity fund to contribute to the implementation of Austria's biodiversity strategy and the achievement of Austria's biodiversity targets.⁵¹

Small and medium-sized farms predominate in this country, which has the highest share of organic farming in the European Union. Organic farms contribute to biodiversity. The country has a long tradition of organic food production and processing: the first Austrian organic farmer was registered in 1927. Today, more than 23,000 organic farmers cultivate around 24 per cent of Austria's agricultural land. This means that about a quarter of Austria's agriculture is organic. Furthermore, between 2016 and 2017, the number of organic farms increased by six per cent, to a total of 23,000 farms. Moreover, between 2014 and 2017, an average of seven new organic farms were added every day. Consequently, 20.4 per cent of all farms in Austria are now organic, which contributes to protecting the country's biodiversity.⁵²

Biodiversity in forests is also important for Austria. Agricultural land accounts for 32% of the country's total area, while forests cover 44%. About half of the utilised agricultural area is arable land, while the other half is mainly permanent grassland. However, a substantial part of it is located in mountainous areas, which generates additional problems for cultivation. Rural areas cover 75% of Austria's territory, while 18% of the territory is categorised as intermediate regions (not yet cities). There are over 110,000 farms in the country, and the

⁵⁰ *Biodiversity in Austria*, <https://www.bmimi.gv.at/en/topics/climate-environment/nature-species-protection/biodiversity/biodiversity.html> [access: 30.09.2025]; T. Lumetsberger, G. Neubauer, R. Wenzina, *Integration of Ecosystem Services and Habitats into the Biodiversity Atlas Austria*, "Biodiversity Information Science and Standards" 2023, no. 7, p. 1–3, <https://doi.org/10.3897/biss.7.112315>.

⁵¹ *Biodiversity in Austria...*, op. cit.

⁵² *Organic Farming in Figures*, <https://www.bmluk.gv.at/en/topics/agriculture/organic-farming/organic-farming-in-figures.html> [access: 9.08.2025].

average farm has an area of about 20 hectares.⁵³ Austria's strategic plan includes issues related to biodiversity. Important objectives include halting and reversing biodiversity loss, improving ecosystem functions and preserving habitats and landscapes.⁵⁴

The summary of the SWOT analysis in Austria's Strategic Plan highlights the strengths of biodiversity in Austria, including good topographical and climatic conditions conducive to rich biodiversity; high species diversity thanks to the maintenance of extensive farming (mountain areas); a high proportion of forests with potential for further species diversity; a favourable high proportion of small-scale farms; well-developed institutions and instruments and good cooperation between actors in rural areas; a solid knowledge base and effective knowledge transfer between nature conservation and agricultural stakeholders on the status of assets protected by the Habitats Directive and the Birds Directive; and a combination of horizontal and (regional) measures promoting biodiversity.⁵⁵

The identified weaknesses include trends towards the intensification, specialisation and enlargement of farms, and the increase in cultivated area, leading to a loss of biodiversity. Moreover, the abandonment of marginal land and the reduction in agricultural area are causing a decline in biodiversity in agriculture. Climate change is also a factor that causes biodiversity loss in forests. Finally, there are limited human resources for advising on and implementing biodiversity-related measures. Opportunities include the growing commitment to international and national agreements and strategies; EU and national biodiversity strategies; rising public expectations of agriculture and forestry in terms of biodiversity conservation; increasing demand for products produced in accordance with higher environmental requirements; and a growing share of organic farms with potential for biodiversity thanks to the further development of the relevant requirements.⁵⁶

⁵³ *Green Report 2023. The Situation of Austrian Agriculture and Forestry Pursuant to Section 9 of the Agriculture Act*, Federal Ministry of Agriculture, Forestry, Regions and Water Management, Vienna 2023.

⁵⁴ *Austria – CAP Strategic Plan*, https://agriculture.ec.europa.eu/cap-my-country/cap-strategic-plans/austria_en [access: 9.08.2025]; *At a Glance: Austria's CAP Strategic Plan*, https://rural-interfaces.eu/wp-content/uploads/2020/04/csp-at-a-glance-austria_en_0.pdf [access: 9.08.2025]; *GAP Strategy Plan Austria 2023–2027*, <https://www.bmluk.gv.at/themen/landwirtschaft/gemeinsame-agrarpolitik-foerderungen/nationaler-strategieplan/aktuelle-planversion.html> [access: 9.08.2025]; *Green Report 2023...*, op. cit.

⁵⁵ *Ibidem*.

⁵⁶ *CAP Strategic Plan Austria 2023–2027. National Strategic Plan 2023–2027*, Federal Ministry of Agriculture, Forestry, Regions and Water Management, Vienna 2023.

Austria spends almost 60% of its rural development budget on environmental objectives, such as area payments for environmentally friendly practices. One of the strongest interventions under the Plan are payments for agri-environment-climate measures. The main objective of the Plan is to strengthen biodiversity-friendly agriculture. Practices such as nature conservation, mowing mountain meadows and results-orientated management will be applied on more than 20% of agricultural land. More than 56% of agricultural land will be cultivated with the aim of protecting water quality.⁵⁷

The Austrian programme for environmentally friendly agriculture (ÖPUL), which has been in existence since 1995, supports agricultural policy in Austria and is financed by the second pillar of the EU's Common Agricultural Policy ("Rural Development"). It was part of the rural development programme for 2014–2020 (LE 14–20)⁵⁸ ÖPUL therefore supports environmentally friendly agricultural land management, which is important for preserving the basis of agricultural production.⁵⁹ Four of the measures in the LE 14–20 are covered by ÖPUL: introducing agri-environmental and climate measures; organic farming; implementing animal welfare measures; and farming in Natura 2000 areas and under the Water Framework Directive.⁶⁰

In 2019, a total of 90,795 farms participated in the ÖPUL programme, representing 83,3% of farms registered in the INVEKOS system (integrated management and control system) (AMA 2010). In 2019, the total area covered by the ÖPUL programme was approximately 1.81 million hectares (excluding pastures), which represents approximately 80,4% of the agricultural area, excluding pastures. Compared to 2015, when the programme covered approximately 1.75 million hectares, a slight increase has been observed again in recent years. Thanks to such a high participation rate in the agri-environmental programme, Austria ranks among the leading EU Member States⁶¹ ÖPUL 2023 covers the

⁵⁷ Ibidem.

⁵⁸ *Österreichisches Programm für die Entwicklung des Ländlichen Raums 2007–2013*, https://www.suedburgenlandplus.at/fileadmin/user_upload/318__sterreichisches_Programm_f_r_die_Entwicklung_des_L_ndlichen_Raums_2007-2013.pdf [access: 1.09.2025].

⁵⁹ M. Groier, *The Development of the Agricultural Environmental Programme ÖPUL*, Austrian Federal Institute for Agricultural Economics, Vienna 2015.

⁶⁰ Bundesministerium für Landwirtschaft, Regionen und Tourismus, *Grüner Bericht 2020 Die Situation der österreichischen Land- und Forstwirtschaft*, Wien 2020, p. 54 and next

⁶¹ Bundesministerium für Landwirtschaft, Regionen und Tourismus, Umweltbericht zur strategischen Umweltprüfung (SUP) des Österreichischen Strategieplans für die Gemeinsame Agrarpolitik 2021–2027, Wien, 2021, p. 154 ; *Evaluation of the Austrian Agri-Environmental Programme ÖPUL – National Detailed Report. As part of the accompanying evaluation of the Rural Development Programme*, https://ec.europa.eu/enrd/sites/default/files/evaluation_publications/nationaler_detailbericht_2019_oepul.pdf [access: 30.09.2025].

national implementation of interventions under intervention programmes for the environment, climate and other management obligations, as well as interventions resulting from specific disadvantages in a given area, and is part of the implementation of the CAP 2023–2027 and Austria's Strategic Plan. The support measures aim to preserve or increase biodiversity and habitats, improve soil structure, reduce the use of fertilisers and pesticides in water bodies, control air pollution and climate protection and improve animal welfare in livestock farming, among other things. Starting with application year 2024, agri-environmental premiums and premiums for areas with unfavourable conditions have been increased by 8%.⁶²

The Alpine Convention is an important international agreement for the sustainable development of the Alps. It was signed in 1991 and came into force in 1995. It covers eight Alpine countries and the European Union. The Convention is also important for the protection of biodiversity in Austria. It was signed by Austria, Germany, France, Italy, Liechtenstein, Monaco, Slovenia and Switzerland. The Alps are an interesting ecological system characterised by diverse flora and fauna, including over 30,000 animal species and 13,000 plant species.⁶³ However, the biodiversity there is subject to many negative factors, particularly habitat loss due to changes in land use, such as road construction or urban expansion. The Alpine Convention and its protocol on nature and landscape conservation aim to strengthen joint efforts among the Alpine countries to address these challenges. Issues of Alpine biodiversity are not limited to the Alps, but also affect other regions, including the Carpathians. In 2023, the Convention on Biological Diversity, the Carpathian Convention and the Alpine Convention renewed a trilateral Memorandum of Cooperation to deepen their cooperation on biodiversity.⁶⁴ The 16th Alpine Conference Declaration on the Protection and Promotion of Mountain Biodiversity at an International Level emphasised the need for agricultural practices adapted to specific local conditions to preserve mountain pastures and prevent high-biodiversity pastures from overgrowing, as well as the need to protect rare and sensitive habitats.⁶⁵

⁶² *ÖPUL 2023 Special Guideline (Including Eco-schemes)*, Federal Minister for Agriculture, Forestry, Regions and Water Management, Vienna 2023.

⁶³ *Biodiversity & Nature Conservation*, <https://www.alpconv.org/en/home/topics/biodiversity-nature-conservation/> [access: 7.04.2026].

⁶⁴ Ibidem; see also C. Steine, *Bodenschutz in der Landwirtschaft: Was die Alpenkonvention dazu beiträgt?*, in: P. Kuncio, S. Schmidt (eds), *Das Protokoll „Bodenschutz“ der Alpenkonvention*, Verlag Österreich, Vienna 2023, p. 27–37.

⁶⁵ *Erklärung der XVI. Alpenkonferenz zum Schutz der Bergbiodiversität und deren Förderung auf internationaler Ebene*, https://www.alpconv.org/fileadmin/user_upload/Organisation/AC/XVI/ACXVI_MountainBiodiversityDeclaration_de.pdf [access: 30.09.2025].

7. Biodiversity in Canada

Canada is the second largest country in the world, and it has a rich biodiversity, including ecosystems and species.⁶⁶ However, due to challenges related to climate change and other factors such as fires, some plant and animal species that were once common are now disappearing and even threatened with extinction. Canada has committed to implementing the Kunming-Montréal Global Biodiversity Framework and has developed the 2030 Nature Strategy: Halting and Reversing Biodiversity Loss in Canada,⁶⁷ which points to a triple crisis inextricably linking biodiversity loss, climate change and pollution. Pollution can exacerbate the effects of climate change and other factors that cause biodiversity loss.⁶⁸ The strategy lays out six pillars to ensure greater protection of biodiversity, for example, recognising, supporting and implementing the rights of indigenous peoples and promoting reconciliation. It is rightly emphasised that indigenous peoples are the original custodians of the land, water and ice; it is important to have a coherent policy and to use the strengths of each social group to develop and deliver solutions; it is necessary to increase efficiency and create a coherent policy, support local action by taking regional differences into account, support communities and adopt flexible approaches based on community involvement. Likewise, available scientific knowledge should be used, and an integrated, holistic approach should be taken to ensure inclusiveness.

The federal government's responsibilities include protecting migratory birds, species covered by the Species at Risk Act (S.C. 2002, c. 29),⁶⁹ international trade in wild species, fisheries management, aquatic species and pollution prevention, and it plays an important role in scientific research, monitoring and the sustainable development of natural resources. Provincial and territorial

⁶⁶ Boîte à outils – Droit, <https://boite-outils.bib.umontreal.ca/droit> [access: 7.08.2025]; *Ducks Unlimited Canada – About*, <https://www.ducks.ca/about/> [access: 7.08.2025].

⁶⁷ *Canada's 2030 Nature Strategy: Halting and Reversing Biodiversity Loss in Canada*, <https://www.canada.ca/en/environment-climate-change/services/biodiversity/canada-2030-nature-strategy.html> [access: 7.08.2025].

⁶⁸ Ibidem; J. Desforges, J. Clarke, E. Harmsen, A. Jardine, J. Robichaud, S. Serre, P. Chakrabarty, J.R. Bennett, D.E.L. Hanna, J.P. Smol, T. Rytwinski, J.J. Taylor, A.L. Martel, A.K. Winegardner, J. Marty, M.K. Taylor, C.M. O'Connor, S.A. Robinson, A.J. Reid, I.F. Creed, I. Gregory-Eaves, N.W.R. Lapointe, S.J. Cooke, *The Alarming State of Freshwater Biodiversity in Canada*, "Canadian Journal of Fisheries and Aquatic Sciences" 2022, vol. 79, no. 2, p. 352–365, <https://doi.org/10.1139/cjfas-2021-0073>.

⁶⁹ Species at Risk Act of 12 December 2002, S.C. 2002, c. 29, <https://laws-lois.justice.gc.ca/eng/acts/s-15.3/> [access: 7.08.2025].

authorities focus on wildlife and habitat management, including responsibility for terrestrial species on provincial lands. They also play a significant role in the development and management of natural resources and land use planning in most of Canada's terrestrial and coastal areas.⁷⁰ At the same time, there are some in the scientific literature who claim that the system for dividing competences sometimes does not favour innovation and may not take sufficient account of scientific research.

Examples of regulations passed by the Canadian Parliament include the Canadian Act of 1999 on Environmental Protection⁷¹ or the Act of Pest Control Products,⁷² which respects transparency and accountability in Canada's efforts to achieve net-zero greenhouse gas emissions by the year 2050.⁷³ It is important in setting national greenhouse gas emission reduction targets based on the best available scientific information and promoting transparency, accountability and immediate and ambitious action to achieve those targets, in order to support Canada in achieving net-zero emissions by 2050 and meeting its international commitments to mitigate climate change. These targets will be set by the Minister of the Environment for 2030, 2035, 2040 and 2045. The legal regulations provides for public participation in climate change mitigation efforts. It also establishes an advisory body to advise the Minister of the Environment on matters related to achieving net-zero emissions by 2050 and on matters referred to it by the Minister. Furthermore, the Act requires the Minister of Finance to prepare an annual report on key measures taken by the federal public administration to manage financial risks and opportunities related to climate change. Finally, it requires the Commissioner of the Environment and Sustainable Development to examine and report at least once every five years on the Government of Canada's implementation of measures to mitigate climate change, and to protect biodiversity.⁷⁴

⁷⁰ *Canada's 2030 Nature Strategy: Halting and Reversing Biodiversity Loss in Canada*, Environment and Climate Change Canada, Gatineau 2024, <https://faolex.fao.org/docs/pdf/can231326.pdf> [access: 7.08.2025].

⁷¹ Canadian Environmental Protection Act of 14 September 1999, S.C. 1999, c. 33, <https://laws-lois.justice.gc.ca/eng/acts/c-15.31/> [access: 7.08.2025].

⁷² Pest Control Products Act of 12 December 2002, S.C. 2002, c. 28, <https://laws-lois.justice.gc.ca/eng/acts/p-9.01/FullText.html> [access: 7.08.2025].

⁷³ Bill C-12 (43rd Parliament, 2nd Session) – Canadian Net-Zero Emissions Accountability Act, <https://www.parl.ca/legisinfo/en/bill/43-2/c-12> [access: 7.08.2025].

⁷⁴ T. Swerdfager, A. Olive, *Laws Matter: A Foundational Approach to Biodiversity Conservation in Canada*, "FACETS" 2023, no. 8, p. 1–13, <https://doi.org/10.1139/facets-2022-0095>.

It is also worth mentioning that on 13 June 2024, the Government of Canada introduced Bill C-73 (the Nature Accountability Act),⁷⁵ which proposed to establish a framework of transparency and accountability for the federal government in fulfilling its Kunming-Montreal Global Biodiversity Framework commitments and related federal-level commitments. It included requirements to develop national biodiversity strategies and action plans, such as the 2030 Nature Strategy, and to report on their implementation. On 6 January 2025, Canada's parliament was dissolved and Bill C-73 could not be passed. In order to continue the work in the current parliamentary term, the bill must be resubmitted.⁷⁶

Data from the 2021 agricultural census show that Canada has 189,874 farms and 153.7 million acres of total farmland, or approximately 60 million hectares.⁷⁷ However, only about 5% of the land is classified as high-quality, and this area is decreasing. Each year, Canada loses between 20,000 and 25,000 hectares of arable land as a result of urban expansion. Factors such as climate, soil quality and terrain also limit the total usable agricultural land. Moreover, several recent droughts have affected cropping and grazing conditions in some areas. Biodiversity is also declining on agricultural land. When soil loses its fertility, desertification occurs. Desertification accelerates climate change, and climate change accelerates desertification, with urbanisation obviously being the most serious form of desertification. It is therefore very important to protect agricultural land, especially high-quality agricultural land near urban areas, to promote local food production and consumption, and to engage in urban agriculture, which is usually carried out by cooperatives. In Canada, there are many laws protecting agricultural land,⁷⁸ such as the Act respecting the preservation of agricultural land and agricultural activities⁷⁹ in the province of Quebec. It should be emphasised that agriculture contributes to greenhouse gas emissions in Canada. However, Canada's farmers are taking effective measures to reduce emissions and combat climate change in the country. Emissions from other sectors have increased, while the agricultural sector shows continuous improvement, both by reducing its share of Canada's emissions and by redu-

⁷⁵ *Canada's 2030 Nature Strategy*, <https://www.canada.ca/en/environment-climate-change/services/biodiversity/2030-nature-strategy.html> [access: 7.08.2025].

⁷⁶ *Ibidem*.

⁷⁷ A. Dyck, *Canadian Agriculture by the Numbers*, National Farmers Union, Saskatoon 2024, <https://www.nfu.ca/wp-content/uploads/2024/03/Canadian-Ag-by-the-Numbers-2024.pdf> [access: 9.08.2025].

⁷⁸ See D. Buckingham, R. Fuller, B. Scriven, *Agriculture Law in Canada*, LexisNexis, Ottawa 2019.

⁷⁹ Act respecting the protection of agricultural land and agricultural activities (P-41.1), 1996, c. 26, p. 1, <https://www.legisquebec.gouv.qc.ca/en/document/cs/p-41.1> [access: 7.08.2025].

cing emissions per unit of production. Canadian farmers are taking numerous measures to protect biodiversity and address climate change. Examples include regenerative agriculture,⁸⁰ precision farming,⁸¹ environmental stewardship and operating in a sustainable manner.⁸²

8. Conclusion

In conclusion, it should be noted that the issue of biodiversity at the global, EU and national levels is becoming increasingly important due to the decline or disappearance of many plant and animal species around the world. EU, Polish and Austrian regulations under the CAP 2023–2027 are placing increasing emphasis on financing measures to halt biodiversity loss. Farmers must meet additional conditions if they seek to benefit from many EU programmes. This improvement will provide greater environmental benefits by protecting water, soil and biodiversity, and also by contributing to reducing greenhouse gas emissions from agriculture.

It should be noted that the issue of biodiversity has been addressed within the CAP for many years, but its expansion and the transfer of EU funds to new activities related to biodiversity protection should be highlighted. The EU proposal for a directive on soil monitoring should also be viewed positively. The need to create a uniform European soil protection system has long been the subject of discussion and debate. Soil protection cannot be solely local, regional or national in nature. The directive on soil monitoring⁸³ focusses not only on agricultural land, but also on land dedicated to other uses, for example, for forestry or housing. Soil contamination can have a negative impact on human health and on biodiversity. Climate change affects the soil, and changing soil conditions affect the climate. Above all, it is important to monitor the pre-

⁸⁰ J.-F. Obregón, M. Aguanno, M. Brooking, D.-L. Arjaliès, *Advancing Regenerative Agriculture in Canada: Barriers, Enablers, and Recommendations*, Western University, London 2023, <https://ir.lib.uwo.ca/iveypub/66> [access: 30.09.2025].

⁸¹ A.A. Farooque, Q.U. Zaman, *Advancing Precision Agriculture for Sustainable Farming in Canada*, “Open Access Government” 2025, p. 438–439, <https://www.openaccessgovernment.org/article/advancing-precision-agriculture-for-sustainable-farming-in-canada/194288/> [access: 3.09.2025].

⁸² S. Gulab, G. Lhermie, *Enhancing Agricultural Research and Development for Sustainable Growth in Canada*, “Briefing Papers” 2025, vol. 18, no. 1, p. 1–11, <https://doi.org/10.55016/ojs/sppp.v18i1.80911>.

⁸³ Directive (EU) 2025/2360 of the European Parliament and of the Council of 12 November 2025 on soil monitoring and resilience, OJ L 2025/2360, 26.11.2025.

servation of biodiversity. The directive on soil monitoring 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 and the International Covenant on Civil and Political Rights.

Outside the EU, as well, increasing attention is being paid to protecting biodiversity, for example in Canada. This issue is particularly important for agriculture, which, on the one hand, can contribute to biodiversity problems and, on the other, suffers the consequences of fewer plant and animal species. The Kunming-Montreal Global Biodiversity Framework was adopted in Montreal by 196 countries with the aim of reducing biodiversity loss. The main objective of this framework is to “halt and reverse biodiversity loss”, which is based on 23 targets to be achieved by 2030, along with four long-term targets for 2050. A legal measure that should be evaluated positively is Bill C-73 (the Nature Accountability Act)⁸⁴ from 2024, which proposed establishing a framework of transparency and accountability for the federal government in fulfilling its Kunming-Montreal Global Biodiversity Framework commitments and related federal-level commitments. Canada has many federal and provincial regulations that protect biodiversity. Further legislative measures are being considered, as the current ones are insufficient.

Finally, it is worth emphasising that agricultural producers, through their participation in agri-environment-climate programmes, eco-schemes and the afforestation of agricultural land, can contribute significantly to improving or halting biodiversity loss. It is also important to promote organic farming, improve water management in terms of water quality and availability and take action to maintain and improve soil resources. At the same time, the expected effects may be undermined by progressive climate change, disturbances in weather conditions, more extreme phenomena, disruptions to water management and diseases and pests.

⁸⁴ *Canada's 2030 Nature Strategy...*, op. cit.

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**Intra-environmental Conflicts in the Context of
the Sustainable Energy Transition at the EU Level:
Analyzing the Respective Legislative Developments
(RED III Directive) and the Role of the Principles of EU
Environmental Law**

Konflikty wewnątrzśrodowiskowe w kontekście zrównoważonej transformacji energetycznej na poziomie Unii Europejskiej: analiza rozwoju ustawodawstwa (dyrektywa RED III) oraz roli zasad unijnego prawa ochrony środowiska

Abstract: The main research question which the article aims to address concerns whether the EU environmental principles can provide normative guidance for the resolution of intra-environmental conflicts. These conflicts arise from legal instruments, such as the Renewable Energy Directive (RED) III, that aim to promote the growth of projects for renewable energy sources as a critical means of promoting the sustainable energy transition. The first conclusion is that these conflicts are resolved in favor of climate-related interests and at the expense of other environmental interests in the context of the RED III Directive. A second conclusion is that the EU environmental principles are critical in limiting the prioritization of one category of environmental interests over others. Therefore, critical regulatory choices made in the RED III Directive do not comply with the criteria arising from the environmental principles.

Keywords: Intra-environmental conflicts, RED III Directive, EU Environmental Principles, Environmental Interests, Sustainable Energy Transition

Abstrakt: Główne pytanie badawcze, na które artykuł stara się odpowiedzieć, dotyczy tego, czy unijne zasady ochrony środowiska mogą dostarczać normatywnych wskazówek dla rozstrzygania konfliktów wewnątrzśrodowiskowych. Konflikty te wynikają z instrumentów prawnych, takich jak dyrektywa RED III, które zmierzają do promowania zwiększonego wdrażania projektów w zakresie odnawialnych źródeł energii jako kluczowego środka służącego wspieraniu zrównoważonej transformacji energetycznej. Pierwszy wniosek wskazuje, że konflikty te, w kontekście dyrektywy RED III, są rozstrzygane na rzecz interesów związanych z klimatem, kosztem innych interesów środowiskowych. Zgodnie z drugim wnioskiem unijne zasady ochrony środowiska mają kluczowe znaczenie dla wyznaczania granic uprzywilejowania jednej kategorii interesów środowiskowych względem innych interesów środowiskowych. W konsekwencji zasadnicze wybory regulacyjne dokonane w dyrektywie RED III nie spełniają kryteriów wynikających z zasad ochrony środowiska.

Słowa kluczowe: konflikty wewnątrzśrodowiskowe, dyrektywa RED III, unijne zasady ochrony środowiska, interesy środowiskowe, zrównoważona transformacja energetyczna

1. Introduction: Defining intra-environmental conflicts and the research question

The climate crisis poses fundamental challenges to the entire globe, such as water shortages, mass migration, catastrophic floods, and irreversible damage to ecosystems and biodiversity.¹ The climate crisis is also a part of a larger megatrend of environmental degradation linked to the overexploitation of natural resources and to rapid biodiversity loss.² The interdependencies

¹ AR6 Climate Change 2023: Synthesis Report Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Intergovernmental Panel on Climate Change, Geneva 2023, p. 35–115, <https://doi.org/10.59327/IPCC/AR6-978929169164/>.

² S. Prakash, A. Neuville, *Biodiversity, Climate Change and Energy*, Publications Office of the European Union, Luxembourg 2024, p. 3, <https://op.europa.eu/en/publication-detail/-/publication/323615cea5c-11ee-bf53-01aa75ed71a1/language-en> [access: 15.03.2025].

between the environmental crisis of biodiversity loss and the climate crisis are thus recognized, because well-functioning ecosystems help mitigate climate change, whereas degraded ecosystems intensify climate change.³

A significant component of any effort to mitigate climate change and avoid its disruptive effects concerns the decarbonization of the energy sector, which is associated with fundamental changes in the way that energy is produced and consumed. These changes are described with the term “energy transition.”⁴ In this context, increasing the deployment of renewable energy constitutes an indispensable and fundamental component of the decarbonization agenda at the various levels of governance (international, regional, and national).⁵ If poorly planned, however, greater use of renewable energy and the development of the necessary infrastructure may have negative consequences on the protection of species, the conservation of forests and nature conservation, and competing land uses.⁶ Subsequently, the law plays a critical role in both steering the energy transition through the adoption of legally binding targets and instruments for achieving those targets and in providing directions for the regulation of the possible trade-offs in the respective processes.⁷

In the EU context, achieving the cross-cutting objective of climate neutrality – a central component of the European Green Deal⁸ and a legally binding goal set out in the European Climate Law⁹ – requires the rapid replacement of fossil fuels with renewable energy sources. It is also worth noting that the European Climate Law

³ H.O. Pörtner, R.J. Scholes, A. Arneth, D.K.A. Barnes, M.T. Burrows, S.E. Diamond, C.M. Duarte, W. Kiessling, P. Leadley, S. Managi, P. McElwee, G. Midgley, H.T. Ngo, D. Obura, U. Pascual, M. Sankaran, Y.J. Shin, A.L. Val, *Overcoming the Coupled Climate and Biodiversity Crises and Their Societal Impacts*, “Science” 2023, vol. 380, no. 6642, p. 1–12, <https://doi.org/10.1126/science.abl4881>.

⁴ *World Energy Transitions Outlook: 1.5C Pathway*, International Renewable Energy Agency, Abu Dhabi 2021; O. Hailes, J.E. Viñuales, *The Energy Transition at a Critical Juncture*, “Journal of International Economic Law” 2023, vol. 26, no. 4, p. 627 et seq.

⁵ Ibidem, p. 17; S. Prakash, A. Neuville, *Biodiversity, Climate Change and Energy...*, p. 3.

⁶ S. Prakash, A. Neuville, *Biodiversity, Climate Change and Energy...*, p. 3–4.

⁷ K. Huhta, S. Romppanen, *Comparing Legal Disciplines as an Approach to Understanding the Role of Law in Decarbonizing Societies*, “Transnational Environmental Law” 2023, vol. 12, no. 3, p. 649–650; S. Romppanen, K. Huhta, *The Interface Between EU Climate and Energy Law*, “Maastricht Journal of European and Comparative Law” 2023, vol. 30, no. 1, p. 45.

⁸ Communication from the Commission to the European Parliament, the European Council, the European Economic and Social Committee and the Committee of the Regions, *The European Green Deal*, COM/2019/640 final; See also E. Chiti, *Managing the Ecological Transition of the EU: The European Green Deal as a Regulatory Process*, “Common Market Law Review” 2022, vol. 59, no. 1, p. 34.

⁹ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (“European Climate Law”), OJ L 243, 9.07.2021, p. 1–17.

acknowledges the essential role of carbon sinks for achieving climate neutrality and therefore calls for the restoration of ecosystems in order to assist in the maintenance and enhancement of natural sinks, as well as the development of adaptation capacities and resilience and the minimization of climate impacts (Recitals No. 22 and 23, Article 5 (4) of Regulation 2021/1119).

Along with the environmental and climate considerations, the EU's energy transition has to a significant extent been initiated by Russia's invasion of Ukraine. The invasion caused a major disruption in energy supplies, so that the achievement of the objective of energy security, which is a central objective of the EU's energy law (Article 194 TFEU), became even more central and urgent in the EU Energy Agenda.¹⁰ The so-called Emergency Regulation was the first legislative instrument adopted to address the effects of the energy crisis. The Regulation sets temporary rules to accelerate the permitting procedures for renewable energy projects and for grid and infrastructure projects that are necessary to integrate renewable energy into the electricity system.¹¹ Furthermore, the RED III Directive (Directive 2023/2413), which amended the RED II Directive (Directive 2018/2001), constitutes a key legal pillar for initiating the sustainable energy transition at the EU level.¹² A key characteristic of the RED III Directive is that it introduces significant regulatory features that aim to significantly accelerate the authorization procedures for deploying renewable energy infrastructure as a means of achieving decarbonization. This is affected in a manner that seems to prioritize renewable energy projects and the necessary infrastructure over the protection of other environmental interests or competing land uses.

Subsequently, conflicts arise from the collision of climate-related interests – which are associated with the sustainable energy transition and operate in a broader environmental protection context – with other environmental interests that mainly relate to protecting biodiversity or forests, water, and soil. These conflicts can also be characterized as intra-environmental conflicts and the current trend is that they are mainly resolved in favor of the climate-related

¹⁰ Communication from the Commission to the European Parliament, the European Council, the European Economic and Social Committee and the Committee of the Regions, *REpower EU Action Plan*, COM/2022/230, p. 6.

¹¹ Council Regulation (EU) 2022/2257 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy, OJ L 335, 29.12.2022, p. 36–44.

¹² Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652, OJ L 2023/2413, 31.10.2023.

interests.¹³ Similar conflicts may arise within the context of the Net-Zero Industry Act, which includes provisions that facilitate the manufacturing of net-zero technologies through fast-track permitting procedures in order to contribute to the decarbonization of industry.¹⁴ It is also worth mentioning that the respective conflicts demonstrate the divergent values and objectives that underpin the three legal disciplines playing a critical role in the EU decarbonization agenda, namely the EU's energy law, climate law,¹⁵ and environmental law.¹⁶

The aim of this paper is to examine whether the environmental principles – primarily those that are set in EU primary law and are horizontal in nature, such as the environmental integration principle – can provide normative guidance for resolving the intra-environmental conflicts that arise primarily in the context of the EU framework for deploying renewable energy sources as a central component of the EU energy transition. In particular, it will be examined whether they can play a role in setting concrete environment-related thresholds that cannot be exceeded and therefore require specific procedural guarantees in the respective legislative instruments. To this end, the second section of the paper briefly analyzes the EU's primary law on energy, climate,

¹³ A. Hardiman, *Climate, Energy and the Environment-Reconciliation of the EU Environmental Law with the Implementation Realities of EU Climate Law*, "Climate Law" 2022, vol. 12, no. 3–4, p. 242–272; J. Jendroška, A. Anapyanova, *Towards a Green Energy Transition: REPowerEU Directive vs Environmental Acquis?*, "elni Review" 2023, vol. 23, p. 1 et seq.; H.T. Anker, B.E. Olsen, *EU Species Protection Law and Wind Energy: Current Challenges and Danish Experiences*, "European Energy and Environmental Law Review" 2023, vol. 32, no. 1, p. 38 et seq.; M. Montini, *Addressing the Conflicts Between Climate-related Renewable Energy Goals and Environmental Protection Interests Under the RED Directive*, "European Law Open" 2024, vol. 3, no. 1, p. 209, 210; E. Tla da Silva, *In Search of the Golden Ratio: The Conundrum of Balancing Environmental Protection and Energy Security*, "European Energy and Environmental Law Review" 2024, vol. 33, no. 6, p. 264 et seq.; J. Darpö, *Will European Biodiversity be Sacrificed on the Green Transition Altar?* "Nordic Environmental Law Journal" 2024, vol. 2, p. 7 et seq.; M. Baran, *Conflicts of Interest in Environmental Law: Renewable Energy Goals Versus Environmental Protection in the RES III Directive*, in: F. Tiche, L. Squintani, K. de Graaf, H. Vedder, E. Woerdman (eds), *Sustainable Energy: Still United in Diversity? Integrating Energy, Climate and Environmental Law in Times of Geopolitical Instability*, University of Groningen Press, Groningen 2025, p. 133–156.

¹⁴ Regulation (EU) 2024/1735 of the European Parliament and of the Council of 13 June 2024 on establishing a framework of measures for strengthening Europe's net-zero technology manufacturing ecosystem and amending Regulation (EU) 2018/1724, OJ L 2024/1735, 28.06.2024.

¹⁵ For the definition of the legal disciplines and the recognition of EU climate law and EU energy law as distinct disciplines see S. Romppanen, K. Huhta, *The Interface...*, p. 47 and footnotes 8 and 9.

¹⁶ For EU environmental law as a legal discipline see M. Peeters, M. Elia Antonio (eds), *Research Handbook on EU Environmental Law*, Edward Elgar Publishing, Cheltenham 2020, p. 1 et seq. For the divergent objectives of the three disciplines and especially of the EU's energy law and climate law see S. Romppanen, K. Huhta, *The Interface...*, p. 47, 58; K. Huhta, S. Romppanen, *Comparing Legal Disciplines...*, p. 660.

and the environment and the respective EU competences. The third section analyzes the intra-environmental conflicts that may arise from the RED III Directive and their resolution in normative terms in the context of the Directive. The fourth section analyzes the guidance that the EU environmental principles can provide to the regulation of intra-environmental conflicts, so as to ensure the coherence of EU environmental law and to contribute to the adoption of balanced solutions.

2. EU primary-law framework on energy, climate, and the environment

The provisions of EU primary law that are relevant for resolving the conflicts that arise between implementing renewable energy source (RES) projects and developing the necessary infrastructure and other environmental interests (e.g., biodiversity or forests) are mainly Articles 191 and 194 TFEU. In particular, Article 191(1) TFEU sets out the objectives of EU environmental policy making, which are far-reaching and determine the boundaries of the EU's competence on the environment.¹⁷ Subsequently, the intra-environmental conflicts reflect the inherent tensions that mainly arise from simultaneously pursuing the first objective of the EU's environmental policy ("protecting, preserving and improving the quality of the environment") and the fourth objective ("promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change"). This is due to the fact that while RES projects contribute to climate mitigation even in a broader extraterritorial perspective, it can be associated with environmental impacts at the sites where the RES projects are being implemented.¹⁸ In addition, the inherent tension between the aforementioned objectives of Article 191(1) TFEU is exacerbated by Article 191(2) TFEU, which stipulates that "Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union." In addition to this, Article 191(2) TFEU enshrines the principles that should guide the EU environmental legislative processes.¹⁹ Furthermore,

¹⁷ G. van Calster, L. Reins, *EU Environmental Law*, Edward Elgar Publishing, Cheltenham 2017, p. 8 et seq.

¹⁸ A. Hardiman, *Climate, Energy and the Environment...*, p. 248–249.

¹⁹ G. Bandi, *Principles of EU Environmental Law, Including (the Objective of) Sustainable Development*, in: M. Peeters, M. Elia Antonio (eds), *Research Handbook on EU Environmental Law*, Edward Elgar Publishing, Cheltenham 2020, p. 43 et seq.; N. de Sadeleer, *Environmental Principles: From Political Slogans to Legal Rules*, Oxford University Press, Oxford 2020, p. 1 et seq., 31 et seq.

Article 194(1)(a)–(d) TFEU clearly sets out the objectives of the EU energy policy, one of which concerns the development of renewable energy sources along with the promotion of energy efficiency and energy-saving –under (c). This objective can conflict with the first objective of the EU environmental policy under Article 191(1) TFEU. The respective objectives determine the contours of the EU’s competence on energy under Article 194 TFEU.

The EU’s competence on issues regarding both the environment and energy is a shared competence (Article 4(2) (e) and (i) TFEU). Subsequently, the principles of subsidiarity and proportionality guide the exercise of the respective competences.²⁰ It is also critical that politically sensitive decisions in these fields, such as those that concern resource sovereignty, are subject to specific procedures or are left to the discretion of the Member States (MSs). In particular, Article 192(2) TFEU requires that decisions concerning fiscal issues, measures affecting town and county planning, the quantitative management of water resources, the availability of those resources (directly or indirectly), land use (with the exception of waste management), or measures affecting MSs’ choice between different energy sources and the general structure of their energy supply are subject to a special legislative procedure that requires unanimity in the Council and only the consultation of the European Parliament.²¹ It is also worth noting that the CJEU has interpreted the respective competence limitation under Article 192(2)(c) in light of the EU’s climate objectives and therefore ruled that its application shall be restricted to cases in which “it follows from the aim and content of that measure that the primary outcome sought by that measure is significantly to affect a Member State’s choice between different energy sources and the general structure of the energy supply of that Member State.”²²

Furthermore, Article 194(2) TFEU reflects the principle of permanent sovereignty over natural resources and therefore enshrines a limitation in the

²⁰ J. Öberg, *Subsidiarity as a Limit to the Exercise of EU Competences*, “Yearbook of European Law” 2017, vol. 36, p. 391 et seq., <https://doi.org/10.1093/yel/yew027>; V. Kosta, *The Principle of Proportionality in EU Law: An Interest-based Taxonomy*, in: J. Mendes (ed.), *Executive Discretion and the Limits of Law*, Oxford University Press, Oxford 2019, p. 198, 202, P. Craig, G. de Búrca, *EU Law: Texts, Cases and Materials*, Oxford University Press, Oxford 2020, p. 83 et seq.

²¹ N. de Sadeleer, *EU Environmental Law and the Internal Market*, Oxford University Press, Oxford 2014, p. 153 et seq.; K. Huhta, *The Scope of State Sovereignty under Article 194 (2) TFEU and the Evolution of EU Competences in the Energy Sector*, “International and Comparative Law Quarterly” 2021, vol. 70, no. 4, p. 991, 998 arguing that the competence limitation under Article 192(2)(c) TFEU is more procedural in nature.

²² Judgment of the CJ of 21 June 2018, Case C-5/16, *Republic of Poland v European Parliament and Council of the European Union*, EU:C:2018:483, paras 43–44 and 46. See also K. Huhta, *The Scope of State Sovereignty...*, p. 1008.

exercise of the EU's energy competence by establishing that measures taken to further the objectives of the EU energy policy "shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply."²³ The CJEU has interpreted Article 194(2) TFEU in a manner that recognizes the strong discretion of MSs to decide on their means of energy production and on delicate political issues, such as the use of nuclear energy.²⁴ Despite the wide margin of discretion left to MSs to determine their energy system, the legally binding climate objectives *de facto* broaden the powers of the EU legislator to adopt legislative measures in the field of energy as means of achieving the objectives.²⁵

The systematic interpretation of the above-mentioned provisions of EU primary law that set the objectives and governing the competence on environment and energy do not provide significant guidance for regulating the trade-offs between RES projects and their associated infrastructure and the protection of other environmental interests. This is due to the fact that the EU legislator is obliged to promote RES projects both under Article 191(1) (the fourth objective) and Article 194(1)(c) TFEU,²⁶ while at the same time having the obligation to take protective measures for the environment, including biodiversity and water resources, under Article 191(1) (the first objective).²⁷ This tension has already been pointed out. Moreover, Article 3(3) TEU, which enshrines sustainable development as a fundamental objective guiding all EU actions,²⁸ does not provide

²³ Ibidem, p. 993, 1000 et seq.

²⁴ Judgment of the CJ of 22 September 2020, Case C-594/18 P, *Republic of Austria v European Commission*, EU:C:2020:742, paras 48–49, in which the Court ruled that the right of MSs to determine the conditions for exploiting their energy resources and choose their means of energy production under Article 194(2) TFEU also applies to nuclear energy.

²⁵ K. Huhta, N. Soininen, S. Vesa, *The Ecological Sustainability of the Energy Transition in EU Law: Pro et Contra Hydropower*, "Journal of Energy and Natural Resources Law" 2025, vol. 43, no. 1, p. 29, 34.

²⁶ In the scholarly literature, the scope of Article 194 TFEU as a legal basis on energy has been extensively discussed. See C. Calliess, C. Hey, *Multilevel Energy Policy in the EU: Paving the Way for Renewables?* "Journal for European Environmental & Planning Law" 2013, vol. 10, no. 2, p 87, 95, who adopted the thesis that Article 194 TFEU does not cover EU policies to promote renewable forms of energy, but only measures concerning the technological development of RES activities. See also K. Huhta, *The Scope of State Sovereignty...*, p. 999–1000, who rightly points out that "legal instruments directly pursuing the objectives of Article 194, such as the promotion of renewable energy, would have to be adopted using Article 194 as their legal basis."

²⁷ K. Huhta, N. Soininen, S. Vesa, *The Ecological Sustainability...*, p. 32–33.

²⁸ For the qualification of "Sustainable Development" in the EU legal order as a fundamental objective see G. Bándi, *Principles of EU Environmental Law, including (the Objective of) Sustainable Development*, in: M. Peeters, M. Eliantonio (eds), *Research Handbook on EU Environmental Law*, Edward Elgar Publishing, Cheltenham, Northampton 2020, p. 38–39.

significant guidance on resolving intra-environmental conflicts. This can be attributed to the multifaceted nature of the concept²⁹ of sustainable development, which consists of three – equally important, according to the dominant view – pillars (economic, social, and environmental),³⁰ so that no concrete criteria can be extracted regarding the resolution of collisions of different environmental interests. The situation is rendered even more perplexing, as MSSs' right to choose among different renewable energy sources due to the limitation of the EU's competence on energy also justifies choices of certain forms of renewable energy – such as hydropower, which is associated with significant environmental impacts³¹ or of forms of energy that raise both environmental and safety issues – such as nuclear energy.

The relationship between protecting biodiversity and promoting renewable energy sources was dealt with by the CJEU in the *Puglia* case. More specifically, the Court had to decide whether a national provision, which prohibited wind power production in a Natura 2000 site, contradicted EU law. The Court based its thesis on the reference made in Article 194(1) TFEU on the “need to preserve and improve the environment” and the limited scope of the prohibition. In light of the above, the CJEU ruled that the general prohibition is not “liable to jeopardize the European Union objective of developing new and renewable forms of energy.”³² Furthermore, the broader issue of the relationship between the environmental protection requirements and energy security as an objective of the EU energy policy was dealt with by the Court in *Inter-Environnement Wallonie*. In that case, the Court ruled that a MS can exempt a project (e.g., a law that introduces a moratorium on producing electricity from nuclear reactors)

²⁹ The term concept is used in a rather broad sense. In the literature, concepts are distinguished by the level of abstraction and generality, in the sense that they express the highest degree of generality to which a legal principle can be expressed. See V. Barral, *The Principle of Sustainable Development*, in: L. Krämer, E. Orlando (eds), *Principles of Environmental Law*, Edward Elgar Publishing, Cheltenham 2017, p. 103, 105; P.-M. Dupuy, J.E. Viñuales, *International Environmental Law*, Cambridge University Press, Cambridge 2018, p. 59.

³⁰ M.C. Cordonier-Segger, *Sustainable Development in International Law*, in: H.-C. Burge, C. Voigt (eds), *Sustainable Development in International and National Law*, Europa Law Publishing, Groningen 2008, p. 93, 103 arguing that the three pillars are of equal importance; K. Bosselmann, *The Principle of Sustainability: Transforming Law and Governance*, Routledge, London 2017, p. 104 arguing that the environment is the overriding system which sets the limits for economic and social development.

³¹ K. Huhta, N. Soininen, S. Vesa, *The Ecological Sustainability...*, p. 38 et seq.

³² Judgment of the CJ of 21 July 2011, Case C-2/10, *Azienda Agro-Zootecnica Franchini Srl and Eolica di Altamura Srl v Regione Puglia*, EU:C:2011:502, para. 55–57. The Court also required that the provision under consideration must respect the principles of non-discrimination and proportionality (paras 64 and 73–75).

from the obligation for an environmental impact assessment (EIA) if the alleged risk to the security of electricity supply is reasonably probable and the project in question is sufficiently urgent to justify not carrying out an EIA.³³ In addition, the Court also ruled that the security of energy supply constitutes a reason of overriding public interest under Article 6(4) of the Habitats Directive.³⁴ The CJEU also regarded the security of electricity supply as justifying the maintenance of effects of measures that contravene EU law (e.g., an order and a circular that have not been subjected to strategic environmental assessment [SEA] and a permit for the installation and operation of wind turbines, which was granted on their basis). However, the maintenance of effects of the respective measures – and especially those of the permit – would only apply to the extent that its annulment would be likely to have significant implications for the electricity supply of the entire Member State concerned, and only for the period of time strictly necessary to remedy that illegality.³⁵

3. The rise of intra-environmental conflicts in the context of the EU energy and green transition

3.1. The basic features of the RED III Directive and the rise of intra-environmental conflicts

3.1.1. The sustainability aspects of different forms of renewable energy

The RED III Directive (2023/2413), which amended Directive 2018/2001, sets a common framework for promoting renewable energy at the EU level and establishes a Union-wide binding target for the share of renewable energy in the Union's gross final consumption of energy in 2030 of at least 42.5% (Article 3(1)). Achieving this objective is closely related with the long-term objective of climate neutrality and the intermediate objective of reducing emissions

³³ Judgment of the CJ of 29 July 2019, Case C-411/17, *Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen ASBL v Conseil des ministres*, EU:C:2019:622, para. 101. The Court also ruled that the exemption must be strictly applied.

³⁴ *Ibidem*, paras 151–159.

³⁵ Judgment of the CJ of 25 June 2020, Case C-24/19, *A and Others v Gewestelijke stedenbouwkundige ambtenaar van het departement Ruimte Vlaanderen, afdeling Oost-Vlaanderen*, EU:C:2020:503, paras 92–95.

by 55% by 2030 (Recital 1).³⁶ Likewise, the Directive sets out sub-targets concerning the use of RES in specific sectors, including industry, transport, and construction (Articles 22a and 25). It is also worth noting that the Directive had multiple legal bases, specifically Articles 194(2), 114(1), and 192(2) TFEU.

The Directive adopts a unified approach toward the different forms of renewable energy in the sense that it does not prescribe which sources should be prioritized (a one-size-fits-all regulatory approach to renewable energy sources).³⁷ In this context, the EU legislator has not paid specific attention to the sustainability risks associated with the production of energy by the different types of renewable energy sources, such as hydropower, which can impact freshwater ecosystems.³⁸ Subsequently, the authorization of hydropower plants can give rise to collisions between the climate interests associated with its promotion and those for the protection of freshwater ecosystems. The Directive further specifies the cascading principle for the use of biomass (Article 3(3)), which requires that woody biomass³⁹ should be used according to its highest economic and environmental added value in a determined order of priorities. Derogations from the principle are foreseen for wood coming from natural disasters or when there are no other local options than bioenergy (Article 3(3a)). Furthermore, the Directive has strengthened, to some extent, the existing sustainability criteria for bioenergy⁴⁰ that have to be fulfilled, so that biofuels, bioliquid, and biomass are counted toward the increased renewable energy targets and are eligible for financial support (Article 29). These criteria concern certain environmental aspects of agricultural and forestry biomass, some of which are common for the two kinds of biomass and some of which are different.⁴¹ It is also foreseen

³⁶ M. Montini, *Addressing the Conflicts...*, p. 211.

³⁷ K. Huhta, N. Soininen, S. Vesa, *The Ecological Sustainability...*, p. 38.

³⁸ Ibidem, p. 36. It is also worth mentioning that more than 130 NGOs sent an open letter to the co-legislators in the context of the co-decision procedure for adopting the RED III Directive, in which they asked hydropower to be excluded from the renewable acceleration areas and to set sustainability criteria for hydropower in order to ensure that its effects on freshwater ecosystems are mitigated. See *Open Letter: Counting on New Hydropower to Accelerate Renewable Energy Deployment in Europe is Irresponsible*, https://www.feu.awsassets.panda.org/downloads/open_letter_counting_on_new_hydropower_is_irresponsible_2_03_2023.pdf [access: 31.03.2025].

³⁹ For the opposition to the classification of forestry biomass as a renewable energy source with scientific arguments see *Letter from Scientists to the EU Parliament Regarding Forest Biomass*, https://www.pfpi.net/wp-content/uploads/2018/04/UPDATE-800-signatures_Scientist-Letter-on-EU-Forest-Biomass.pdf, [access: 31.03.2025].

⁴⁰ The term “bioenergy” encapsulates a wide range of energy sources generated from organic matter. It includes biomass (such as crops, wood pellets, and waste matter), biogases, and biofuels.

⁴¹ The sustainability criteria, which are common for agricultural and forestry biomass, are as follows: a) They should not be sourced from land that was peatland in January 2008 under certain conditions (Article 29(5) and (6)). b) A minimum level of GHG emission reduction must be

that consistency should be achieved between the planned use of biomass and MSs' national carbon sink targets (Article 29(7)(a)). In spite of the stronger sustainability criteria for biomass, these criteria are complex in their application. Moreover, certain loopholes remain in the RED III Directive – for example, MSs can provide financial support to primary woody biomass under the conditions that are set and also enjoy a margin of discretion to determine the “old-growth forests” that are excluded from biomass production.⁴² Subsequently, intra-environmental conflicts may arise, as the use of forests for the production of bioenergy, although limited to some extent by the respective provisions, collides with the need to regrow them as carbon sinks in the face of climate change.

3.1.2. The designation of renewables acceleration areas

A critical feature of the RED III Directive is its establishment of renewables acceleration areas (RAAs) (Article 15c), as they are regarded as a means to contribute to the faster deployment of RES (Recitals 25 and 26). The designation of RAAs thus presupposes that MSs set effective spatial planning processes in motion.⁴³ At the first stage, MSs have to conduct coordinated mapping of their

achieved by both agricultural and forestry biomass (Article 29(10)). Furthermore, indirect land use effects from both agricultural and forestry bioenergy used for transport, as well as bioliquids in other applications, must be reduced (Article 26(2)). In addition, agricultural biomass must fulfill sustainability criteria which concern specific pools, such as the soil carbon (Article 29(2)) and the land use categories from which biomass is extracted. In particular, agricultural biomass must not be extracted from land with a high biodiversity value, and more particularly, from primary and old-growth forests or highly biodiverse forests or other wooded land, from areas designated for nature protection, or from highly biodiverse grassland (Article 29(3)). Agricultural biomass should also not be extracted from land with high-carbon stock, such as wetlands or continuously forested areas (Article 29(4)). Furthermore, forestry biomass must fulfill the sustainability criteria that concern the production process to minimize the risk of using forest biomass derived from unsustainable production. In particular, national legislation must be set in place so as to ensure that the forest from which the forestry biomass is harvested does not have the status of primary or old growth forest, highly biodiverse forest and woodland, highly biodiverse grassland, or heathland (Article 29(6)). In addition, it is set out that harvesting must be carried out in a manner that not only considers the maintenance of soil quality and biodiversity, but also fulfills the standards of sustainable forest management (Article 29(6)(iv)).

⁴² J. Stubenrauch, B. Garske, *Forest Protection in the EU's Renewable Energy Directive and Nature Conservation Legislation in Light of the Climate and Biodiversity Crisis – Identifying Legal Shortcomings and Solutions*, “Forest Policy and Economics” 2023, vol. 153, p. 1–11, <https://doi.org/10.1016/j.forpol.2023.102996>; M. Pigeon, R. Łuszczek, *Wiser with Wood. A Guide on How to Transpose the EU's Revised Renewable Energy Directive (RED III) to Better Protect Forests, the Climate, Public Health and Other Wood-using Industries*, Fern, ClientEarth, Brussels 2024.

⁴³ M. Wingenbach, K. Dünzen, S. Krieger, J. Gibson, *Overview of Renewable Energy Spatial Planning and Designation of Acceleration Areas in Selected EU Member States*, Öko-Institut e.V, Freiburg 2024, p. 9.

territory by 2025, in order to identify the domestic potential and the available land or inland water areas that are necessary for the installation of renewable energy plants and their infrastructure, so that their national contribution to achieving the EU target is met (Article 15b).⁴⁴

At the second stage, and having as a starting point the areas identified under Article 15b, MSs must adopt plans designating RAAs in their territory for one or more renewable energy sources by 2026. Specifically, a MS can either prepare a single plan covering all RAAs in its territory and all renewable energy sources or plans which designate RAAs for one and more renewable energy sources and their connection systems. MSs should also use wildlife sensitivity mapping to exclude areas of high environmental value from RAA designation (Article 15c(1)(a)(iii)). Given their environmental impacts, a MS may exclude biomass combustion and hydropower plants from RAAs. Natura 2000 sites and areas designated under national protection schemes for nature and biodiversity conservation cannot be included in the RAAs (Article 15c(1)(a)(ii)). Instead, priority should be given to artificial and built surfaces (Article 15c(1)(a)(i)).

Moreover, in the context of the preparation of the plans for designating RAAs, the competent authorities have to prepare a “mitigation rulebook” which includes a set of rules on mitigation measures that have to be adopted in the specific area in order to contribute to the avoidance or significant reduction of the environmental impacts resulting from RES installations. The respective mitigatory measures aim to ensure compliance with the obligations laid down in Article 6(2) and Article 12(1) of Directive 92/43/EEC, Article 5 of Directive 2009/147/EEC, and Article 4(1)(a)(i) of Directive 2000/60/EC (Article 15c(1)(b)).

The plans designating RAAs should be subjected to a SEA under Directive 2001/42 and to an appropriate impact assessment (AIA) under Directive 92/43 if they are likely to have a significant impact on Natura 2000 sites (Article 15c(3)). In addition, Article 15d(1) states that MSs shall ensure public participation regarding the plans designating RAAs, in accordance with Article 6 of Directive 2001/42/EC, therefore, the public and the “public concerned” have to be identified. Given the fact that RES projects which are to be implemented in RAAs will benefit from simplified procedures and that the choice of the location of each one will be presumed to not conflict with respective interests relating to competing

⁴⁴ Commission Staff Working Document, Guidance on designating renewables acceleration areas Accompanying the document Commission Recommendation on speeding up permit-granting procedures for renewable energy and related infrastructure projects, Brussels, 13.05.2024, SWD(2024) 333 final, p. 4 et seq, [https://ec.europa.eu/transparency/documents-register/detail?ref=SWD\(2024\)333&lang=pl](https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2024)333&lang=pl) [access: 31.03.2025].

land uses or forest or biodiversity protection,⁴⁵ it is critical that effective public participation occurs at an early stage, so that the diverse needs and interests of the affected citizens and relevant stakeholders are taken into account.⁴⁶

Because energy infrastructure also has to be in place to support the significant scaling up of renewable energy production, MSs have to additionally adopt one or more plans to designate dedicated infrastructure areas for the development of grid and storage projects that are necessary to integrate renewable energy into the electricity system. This must take place where such development is not expected to have a significant environmental impact or such an impact can be duly mitigated or, where impossible, compensated for (Recital 46 and Article 15e).

In conclusion, the normative feature of RAAs in the form of plans does not *per se* give rise to the creation of intra-environmental conflicts, provided that the planning procedures are organized in a manner that can achieve the following two goals simultaneously: a) the optimal development of a country's renewable energy sources and b) the minimization of land-use conflicts and the avoidance of conflicts with protected areas. Achieving the aforementioned objectives presupposes the use of appropriate data and tools for preparing the plans.⁴⁷ Additionally, the quality and detail of SEAs and AIAs are of critical importance for resolving possible conflicts, not only among competing land uses, but also between land needs for the implementation of RES projects and the protection of biodiversity.⁴⁸ One case that may create conflicts is when a single plan for the designation of RAAs covers the state's whole territory and all kinds of renewable energy sources and their connections to the grid. In such a case, it is doubtful – given the extent of the prospective assessment – whether the respective environmental impacts can be extensively investigated. The same applies to examination of a plan's impacts on protected areas and species in light of the precautionary principle.⁴⁹

3.1.3. Integrated permitting procedure

Another significant feature of the RED III Directive concerns the introduction of provisions on organizing the permitting procedure. They reflect the

⁴⁵ M. Montini, *Addressing the Conflicts...*, p. 212.

⁴⁶ M. Wingenbach, K. Dünzen, S. Krieger, J. Gibson, *Overview of Renewable Energy...*, op. cit.

⁴⁷ Ibidem.

⁴⁸ J. Darpö, *Will European Biodiversity be Sacrificed...*, p. 16.

⁴⁹ Ibidem, p. 15–16.

model of an integrated permitting procedure⁵⁰ and build further on the RED II Directive in streamlining the administrative procedure, with the aim of eliminating administrative barriers for RES projects – including the lengthy administrative procedures – and infrastructure grids (RED III Directive, Recitals No. 16 and No. 20). Article 16 sets out rules that are applicable for permitting procedures regarding the projects located within and outside RAAs. It also provides a definition, according to which the permit-granting procedures cover all relevant administrative permits to build, repower, and operate renewable energy plans, the grid connection permits, and the environmental assessments. In addition, the permitting procedure must comprise all the administrative stages, from the acknowledgement that the application is complete to the issuance of the final decision (Article 16(1) and (2)).

The provisions concerning the permitting procedure serve the declared goal of simplifying and accelerating the authorization of RES projects both within and outside RAAs. Specifically, the purpose of accelerating the permitting procedures is served by the provisions that set significantly shorter time limits for authorizing RES projects, mainly in relation to the time limits that were foreseen in the RED II Directive (Articles 16a(1) and 16b(1)). Furthermore, the purposes of both accelerating and simplifying the permitting procedure are served by Article 16a(3). This provision exempts new RES plants, including those that combine different types of RES technology, and the repowering of renewable energy power plants⁵¹ in RAAs from the obligation to undergo an EIA and an AIA with regard to their potential impacts on Natura 2000 sites, provided that the respective plant is located in a RAA for which the MS has established appropriate rules on “effective mitigation measures.” In addition, Article 15c(1)(b) foresees that when appropriate mitigation measures are adopted for a particular RAA, killings and disturbances of the species listed in Annex IV of Directive 92/43 and for all species of birds resulting from the RES project in question are regarded as not being “deliberate” in the meaning of Article 12(1) of Directive 92/43 and of Article 5 of Directive 2009/147.⁵²

The competent authorities are in any case obliged to carry out a screening process to identify whether the project under consideration is highly likely to give rise to significant unforeseen adverse effects with regard to the environmental sensitivity of the geographical area in which it will be located that were

⁵⁰ Ibidem, p. 13.

⁵¹ Repowering is defined in Article 2(10) of the RED III Directive.

⁵² For the CJEU jurisprudence on the terms “deliberate killing” or “disturbance” of the species set in Annex IV of Directive 92/43 and for all wild bird species under Directive 2009/107 see H.T. Anker, B.E. Olsen, *EU Species Protection Law and Wind Energy...*, p. 37–40.

not identified in the SEA accompanying the plan for designating RAAs. This screening process must be concluded within 45 days. If the competent authority has not decided whether the project should be subject to an EIA and to an AIA, if necessary, within that deadline, the project is regarded to be authorized from an environmental perspective (Article 16a(4) and (5)). Moreover, even if the public authority identifies the “highly likely environmental effects” of the project during the screening process, the project should be subject to an EIA only if the environmental effects cannot be mitigated by the measures identified in the plans designating RAAs or proposed by the project developer (Article 16a(5)). MSs can also exempt wind and photovoltaic projects from assessments under the EIA Directive and the Habitats Directive in the event of justified circumstances, including cases where accelerating the deployment of renewable energy is needed in order to achieve the climate and renewable energy targets (Article 16a(5)). If the competent authority decides that an EIA or an AIA is required, it has the obligation to provide relevant reasons based on clear evidence, and the assessments have to be concluded within 6 months of the administrative decision identifying the need to conduct the assessments (Article 16a(5)). It therefore becomes obvious that the respective assessments for projects in RAAs can be conducted in exceptional circumstances.

Additionally, the purpose of accelerating the permitting procedures is also served by provisions that set out procedures for authorizing RES projects outside RAAs. Article 16b(2) states that when an EIA is required, it has to be carried out in a single process that combines all relevant assessments. It also requires the project developer to provide certain information about the project and the competent authority to take this information into account and issue an opinion on the scope and level of detail of the EIA. In addition to this, if the permit contains conditions for mitigation measures, any killing or disturbance of the species protected under Article 12(1) of Directive 92/43/EEC and Article 5 of Directive 2009/147/EC shall not be considered to be deliberate (Article 16b(2)).

Another significant feature of the RED III Directive concerns the determination that, from February 21 2024 until climate neutrality is achieved, in the permit-granting procedure, the planning, construction, and operation of renewable energy plants, the connection of such plants to the grid, the related grid itself, and storage assets are presumed to be in the overriding public interest and to serve public health and safety when balanced with other interests under the Birds Directive (2009/147), the Habitats Directive, and the Water Framework Directive (WFD) (Article 16f).

3.1.4. The intra-environmental conflicts arising in the context of the permitting procedure

The analysis of the relevant provisions leads to the conclusion that climate-related interests associated with the promotion of RES are given priority over the thorough consideration and protection of the other environmental interests (biodiversity, water protection) within the permitting procedure and the associated balancing process. More specifically, it is doubtful whether exempting projects located in RAAs from the obligation to undergo EIAs and AIAs can guarantee thorough examination and assessment of the prospective environmental impacts of each project and can identify possible environmental harm that can be avoided through different measures. This is due to the fact that a SEA is a different and broader assessment than an EIA.⁵³ Additionally, the compulsory preliminary screening process cannot ensure an effective assessment of all possible adverse effects of a particular project, especially given the strict time frames,⁵⁴ while even the identification of highly likely adverse effects⁵⁵ cannot result in an EIA or AIA if the effects can be mitigated through appropriate mitigation measures. As already mentioned, MSs also enjoy a wide margin of discretion to exempt from EIAs and AIAs wind and photovoltaic projects located in RAAs that satisfy the “highly likely” criterion, by applying justified circumstances, which are not precisely set out in the Directive. Therefore, its application can pave the way for bypassing the respective EU environmental legislation.⁵⁶ Furthermore, it also seems doubtful whether mitigation measures can be effective, especially in the case of highly likely adverse effects, as the possible damage cannot be precisely identified *ex ante* due to the lack of an individual assessment in the form of an EIA or AIA.⁵⁷

⁵³ A. Garcia-Ureta, *Environmental Impact Assessment in the EU: More than a Procedure?*, in: M. Peeters, M. Elia Antonio (eds), *Research Handbook on EU Environmental Law*, Edward Elgar Publishing, Cheltenham 2020, p. 170–171; M. Montini, *Addressing the Conflicts...*, p. 212–213.

⁵⁴ *Ibidem*, p. 213.

⁵⁵ J. Darpo, *Will European Biodiversity be Sacrificed...*, p. 16 arguing persuasively that the “highly likely” criterion puts the burden of proof on public authorities and the public to demonstrate the need for further investigations. See also M. Malafry, *Renewable Energy Activities – Overriding the Interest of Biodiversity?*, in: M. Dahlberg, T. Fridström Montoya, M. Hansson, C. Zetterberg (eds), *De Lege: Hållbarhet ur ett rättsligt perspektiv*, Iustus förlag, Uppsala 2022, p. 159, 176 arguing forcefully that the removal of the EIA is not beneficial from the temporal perspective either.

⁵⁶ J. Darpo, *Will European Biodiversity be Sacrificed...*, p. 17.

⁵⁷ *Ibidem*. See also judgment of the CJ of 21 July 2016, Joined Cases C-387/15, C-388/15, *Hilde Orleans and others v Vlaams Gewest*, EU:C:2016:583, para 61; judgment of the CJ of 12 April 2018, Case C-323/17, *People over Wind and Peter Sweetman v Coillte Teoranta*, EU:C:2018:244, paras 35–36. In

Finally, the provision on the presumption of overriding interest (Article 16f) raises issues concerning legal clarity as well as possible insufficient consideration of environmental interests. In particular, it does not sufficiently take into account the different content of the respective derogation provisions, which poses difficulties to their cumulative implementation at the project level. For example, it is questionable how the presumption of an overriding public interest will be applied in the case of Article 6(4) of Directive 92/43 at the project level, given that its application presupposes both the existence of imperative reasons of overriding public interest and the lack of alternatives, a condition which is difficult to demonstrate, as no such assessment takes place in the majority of cases.⁵⁸ A similar observation can be made about the manner in which the presumption of overriding public interest will be applied with regard to Article 4(7) WFD, which also presupposes the lack of better environmental options.⁵⁹ Subsequently, introducing the presumption of an overriding public interest without modifying the derogation provisions in Directives 92/43 and 2000/60 (WFD) can create confusion for the competent authorities. Thus, decisions may be made which constitute significant deviations from the existing derogation provisions at the expense of other environmental interests. Finally, it is worth noting that while the climate interests in connection with the objective of energy security could, to some extent, justify the classification of certain large-scale RES projects as being of overriding public interest after consideration of all the circumstances, this cannot be the case for every single RES project.⁶⁰

these rulings, the CJ ruled in a rather clear manner that a precondition for determining the compensatory measures under Article 6(4) of the Habitats Directive constitutes the precise identification of the damage to the site concerned and that the compensatory measures must be precisely analyzed, specifically at the stage of the appropriate assessment.

⁵⁸ Judgments of the CJ: of 20 September 2007, Case C-304/05, *Commission of the European Communities v Italian Republic*, EU:C:2007:532, para. 83; of 16 February 2012, Case C-182/10, *Marie-Noëlle Solvay and Others v Région wallonne*, EU:C:2012:82, paras 72–73. In accordance with this jurisprudence, conducting an AIA is a precondition for applying the derogation provision of Article 6(4) of the Habitats Directive. See also M. Malafry, *Renewable Energy Activities...*, p. 178.

⁵⁹ Judgments of the CJ: of 11 September 2011, Case C-43/10, *Nomarchiaki Aftodioikisi Aitolokarnanias and Others v Ipourgios Perivallontos and Others*, EU:C:2012:560, para. 67; of 4 May 2016, Case C-346/14, *European Commission v Republic of Austria*, EU:C:2016:322, paras 65–75.

⁶⁰ M. Malafry, *Renewable Energy Activities...*, p. 191. See also M. Baran, *Conflicts of Interest...*, p. 147.

4. Role of the principles of EU environmental law in the resolution of intra-environmental conflicts, with emphasis on the environmental integration principle

4.1. Role of the environmental principles in directing legal developments and ensuring the coherence of EU environmental law

Before entering the core of the analysis, certain initial qualifications about the role of the principles of EU environmental law should be made. First of all, as it is forcefully argued in the legal literature, the term “principle” is polysemous in the sense that it takes on varied legal meanings depending on the legal framework in which it appears.⁶¹ In any case, in contrast to rules – which prescribe a concrete outcome or a prescribed behavior – principles reflect fundamental values and overarching objectives, are characterized by a certain level of generality, and constitute central elements of legal systems.⁶²

It should be mentioned that the classification and role of the principles of EU environmental law are intertwined with the specificities of this legal field and those of the EU legal order. Therefore, the case law which has been developed for the general principles of EU law cannot apply to the legal analysis concerning the role and functions of the principles of EU environmental law.⁶³ In addition, the environmental policy is the only EU policy for which the TFEU (especially Article 191(2)) sets out certain principles that should guide secondary legislation.⁶⁴

⁶¹ N. de Sadeleer, *Environmental Principles...*, p. 450.

⁶² See J. Raz, *Legal Principles and the Limits of Law*, “Yale Law Journal” 1972, vol. 81, p. 823, who notes that principles could be clearly identified by recourse to the level of abstraction of a norm; R. Dworkin, *Taking Rights Seriously*, Harvard University Press, Cambridge 1977, p. 22–28, according to whom legal principles are propositions which provide general orientation and direction, to which positive law must conform, and inform judicial reasoning, while rules apply in an all-or-nothing fashion; H.L.H. Hart, *The Concept of Law*, Clarendon Press, Oxford 1994, p. 259 et seq., according to whom principles are distinct from rules in their level of generality and desirability and justify the reasoning about the rules; R. Alexy, *Zum Begriff des Rechtsprinzips*, “Rechtstheorie” 1979, no. 1, p. 59, 68–71, according to whom principles are goals that can be fulfilled to varying degrees; T. Tridimas, *The General Principles of EU Law and the Europeanization of National Laws*, “Review of European Administrative Law” 2020, vol. 13, p. 5, 8.

⁶³ E. Scotford, *Environmental Principles and the Evolution of Environmental Law*, Hart Publishing, Oxford 2017, p. 61.

⁶⁴ N. de Sadeleer, *Environmental Principles...*, p. 410. See also A. Aragão, *Environmental Principles in the EU*, in: L. Krämer, E. Orlando (eds), *Principles of Environmental Law*, Edward Elgar Publishing, Cheltenham 2018, p. 454 arguing forcefully that environmental principles can also be derived from secondary legislation.

The environmental integration principle (Article 11 TFEU), which is horizontal in nature, is also classified as an EU environmental principle.⁶⁵ Moreover, it is argued in legal theory that by virtue of the environmental integration principle, all the EU's environmental principles are indirectly applicable to the definition and implementation of every EU policy.⁶⁶

Due to the mandatory language of the TFEU provisions (Articles 11 and 191(2) TFEU), the respective environmental principles are legally binding.⁶⁷ In addition to other functions,⁶⁸ the principles⁶⁹ can also provide greater coherence to the rules composing the EU's environmental law by strengthening its internal logic.⁷⁰ Also, due to its transversal nature and function as a vehicle for the application of the other environmental principles, the environmental integration principle can exert influence on the regulative context of norms which are adopted within the framework of sectoral policies, such as the EU energy policy, and can give rise to intra-environmental conflicts. It therefore becomes evident that EU environmental principles can play a critical role in providing normative guidance for solving the intra-environmental conflicts in a balanced manner.⁷¹

⁶⁵ N. de Sadeleer, *Environmental Principles...*, p. 472.

⁶⁶ A. Aragão, *Environmental Principles in the EU...*, p. 452.

⁶⁷ N. de Sadeleer, *Environmental Principles...*, p. 473.

⁶⁸ The functions served by the EU environmental principles concern their use in the interpretation of ambiguous legal provisions, filling gaps of existing legislation, guiding judicial reasoning, and delimiting administrative discretion. See G. Martins, *Rules and Principles*, in: L. Krämer, E. Orlando (eds), *Principles of Environmental Law*, Edward Elgar Publishing, Cheltenham 2018, p. 18 et seq.; N. de Sadeleer, *Environmental Principles...*, p. 412–418 and 474 et seq.

⁶⁹ For the characterization of EU environmental principles as directing principles in the sense that the EU institutions are obliged to take them into account when designing the respective policies and legal instruments to achieve the objective of the environmental protection see N. de Sadeleer, *Environmental Principles...*, p. 406 et seq.

⁷⁰ Ibidem; G. Martins, *Rules and Principles...*, p. 20.

⁷¹ N. de Sadeleer, *Environmental Principles...*, p. 418.

4.2. Normative directions and criteria arising from the environmental principles for resolving intra-environmental conflicts

4.2.1. Environmental integration principle and its link with the principles of prevention and precaution

The environmental principle which is of critical importance for resolving intra-environmental conflicts is the environmental integration principle,⁷² which is enshrined in Article 11 TFEU and in Article 37 EU Charter of Fundamental Rights (EUCFR).⁷³ Despite the ambiguities surrounding Article 37 EUCFR and its categorization as a principle in the Charter,⁷⁴ which is equated with the lack of an autonomous legal function as a right or as a standard of judicial review,⁷⁵ Article 37 has the potential to generate innovative and interesting legal reasoning in the context of its conjunctive application with Article 11 TFEU.⁷⁶ This is due to the fact that such a conjunctive interpretation can strengthen the substantive content of the environmental integration principle, because Article 37 specifically presupposes the infusion of the requirements for a “high level of environmental protection” and improvement of the environment in the various EU policies. In addition, the conjunctive interpretation of Article 37 EUCFR along with Article 3(3) TEU, Article 11 TFEU, and Article

⁷² For the reasons for which the environmental integration clause should be classified as a principle of EU environmental law and not as a concept or objective see V. Karageorgou, *The Environmental Integration Principle: Normative Content and Functions also in Light of New Developments, such as the European Green Deal*, “European Papers” 2023, vol. 8, no. 1, p. 159, 164–165. In this regard see also G. van Calster, L. Reins, *EU Environmental Law...*, p. 22; M. Montini, *The Principle of Integration*, in: L. Krämer, E. Orlando (eds), *Principles of Environmental Law*, Edward Elgar Publishing, Cheltenham 2018, p. 139 et seq.; E. Scotford, *Environmental Principles...*, p. 87–88; N. de Sadeleer, *Environmental Principles...*, p. 472–483.

⁷³ For the differences regarding the formulation of the environmental integration duty in Article 11 TFEU and in Article 37 EUCFR see M. Montini, *Addressing the Conflicts...*, p. 215–216.

⁷⁴ Article 52(5) EUCFR explicitly limits the cognizability of the principles to the interpretation of the acts of EU legal organs and of MSs when implementing EU law and in rulings on their legality.

⁷⁵ See also judgment of the CJ of 25 June 2024, Case C-626/22, *C. Z. and Others v Ilva SpA in Amministrazione Straordinaria and Others*, EU:C:2024:542, paras 71–72 and 110, in which the Court conjunctively applied Article 35 EUCFR (right to health) and Article 37 EUCFR to interpret the Industrial Emissions Directive, reaching a conclusion according to which serious and persistent risks to human health deriving from environmental degradation may justify the suspension of industrial operations.

⁷⁶ E. Scotford, *Environmental Rights and Principles: Investigating Article 37 of the EU Charter of Fundamental Rights*, in: S. Bogojević, R. Rayfuse (eds), *Environmental Rights in Europe and Beyond*, Hart Publishing, Portland 2018, p. 133, 148.

le 191 TFEU also contributes to the enhanced recognition of environmental protection as an intersecting and fundamental concept of EU primary law that should guide all EU policies and activities.⁷⁷

The environmental integration principle obliges the EU institutions and agencies to integrate the environmental protection requirements into secondary legislation concerning all the fields of EU policy, as well as into policy documents and individual decisions (state aid decisions) outside the area of the environment,⁷⁸ with the aim of promoting the fundamental objective of sustainable development set out in Article 3.3 TEU.⁷⁹ In addition, the term “environmental protection requirements,” which according to Article 11 TFEU have to be integrated into EU legislation and policies, includes all the environmental policy objectives listed in Article 191(1) TFEU, the environmental principles listed in Article 191(2) TFEU, and the environmental policy aspects listed in Article 191(3) TFEU.⁸⁰

The principle has a procedural dimension, which requires that the environmental considerations are taken into account in the Union decision-making processes as well as at the implementation stage through monitoring mechanisms.⁸¹ Furthermore, the principle also has a substantive dimension, which is grounded in its link with the fundamental objective of sustainable development. This substantive dimension requires at least that the environmental considerations should be on equal footing with other sectoral policy objectives or interests in the decision-making processes and should be incorporated in the content of the respective legislative instruments or decisions as a result of a balancing process, so that the fundamental objective of a “sustainable development” can be achieved.⁸²

⁷⁷ A. Sikora, *Constitutionalisation of Environmental Protection in EU Law*, Europa Law Publishing, Zutphen 2020, p. 78–79, 135 et seq and 158. It is also worth referring that Article 37 EUCFR is explicitly referred to in Recital 6 of the EU Climate Law (Regulation 2021/1119).

⁷⁸ N. de Sadeleer, *EU Environmental Law and the Internal Market*, Oxford University Press, Oxford 2014, p. 26. For the legally binding nature of the principle see C. Calliess, E. Tuncel, *The Role of Article 11 TFEU in the Greening of the ECB’s Monetary Policy*, “German Law Journal” 2023, vol. 24, no. 5, p. 803–804.

⁷⁹ For the classification of sustainable development as a fundamental objective in the EU legal order see G. Bandi, *Principles of EU Environmental Law...*, op.cit.

⁸⁰ J. Jans, *Stop the Integration Principle?*, “Fordham International Law Journal” 2011, vol. 33, no. 5, p. 1542.

⁸¹ C. Calliess, E. Tuncel, *The Role of Article 11 TFEU...*, p. 805–806.

⁸² S. Kingston, *Greening EU Competition Law and Policy*, Cambridge University Press, Cambridge 2012, p. 114, who rightly argues that the substantive dimension of the integration principle requires that, if various options are possible, the most favorable from an environmental perspective is chosen.

A criterion that arises from the procedural dimension of the environmental integration principle and is critical for resolving intra-environmental conflicts is that adequate processes must be in place to ensure the sufficient consideration of the environmental interests both at the decision-making stage and at the implementation stage through monitoring mechanisms. In this context, exempting RES projects located in RAAs from EIAs and AIAs may raise issues of incompatibility with the above-mentioned criterion. The reason for this is that the scope and level of detail of SEAs conducted before the designation of RAAs does not provide the necessary guarantees for sufficient consideration of the concrete advance effects of the individual projects.

In any case, given the urgent need for greater use of renewable energy in order to achieve the climate objectives, the simplification and acceleration of the authorization procedures for RES projects could be a legitimate objective that could justify exempting RES projects in RAAs from EIAs and AIAs, if certain procedural guarantees are in place. For instance, such guarantees are not in place and the respective criterion is not fulfilled in the case of projects located in an RAA that is designated as such due to its prior classification as an area suitable for the accelerated deployment of one or more types of renewable energy technology, in accordance with the requirements of Article 15c(4) of RED III Directive. This thesis is based on the argument that the designation of an RAA is not based on an SEA that involved recent data concerning the environmental effects of the current and prospective projects to be located in the area, but instead on one that was conducted for the prior classification of the area.

In addition, the hardly acceptable exemption of the projects located in RAAs from EIAs and AIAs should in any case be counterbalanced by the establishment of a screening procedure that encompasses the appropriate procedural guarantees for the examination of each project, with regard to its probability to cause unforeseen adverse environmental effects that were not identified in the SEA and therefore must be subject to an EIA and an AIA, if necessary. Given the strict time frames provided for completing the envisaged screening procedure (Article 16a(4)), it is highly questionable whether this procedure enables the examination of all possible adverse effects that a project can have on the various environmental interests. Therefore, this process does not seem to fulfill the procedural guarantees required by the respective criterion.⁸³ Furthermore, the possibility for an MS to exempt wind and photovoltaic projects located in RAAs from undergoing an EIA and an AIA, even if they fulfill the criterion

⁸³ M. Montini, *Addressing the Conflicts...*, p. 214.

of highly likely adverse effects after the screening process in the case of the so-called “justified circumstances” (Article 16a(5)), is not compatible with the afore-mentioned criterion. This is due to the fact that the exemption can be arbitrarily applied and that its application deprives necessary guarantees for sufficient consideration of the environmental interests.⁸⁴

Furthermore, regarding the criteria that arise from the substantive component of the environmental integration principle, it should first be clarified that the delineation of the “appropriate level” of greening of each legislative instrument in the various sectoral policies and the extraction of concrete substantive criteria presents significant difficulties. In spite of these difficulties, a criterion that arises from the substantive dimension of the principle and has a negative character concerns a threshold (limit) that cannot be exceeded in the balancing process. This limit lies in the avoidance of any significant damage to the environment encompassing the various environmental goods (water, nature, or air) by the adopted (legislative) measure or individual decision. This thesis is grounded on the assumption that if such a threshold is exceeded, the environmental pillar of the objective of sustainable development would be violated.⁸⁵

In the case of intra-environmental conflicts, this criterion thus requires the assurance that the environmental interest (biodiversity, for example) that is not prioritized in the authorization process of RES projects in favor of climate interests will not be significantly damaged. It is worth pointing out that this criterion aligns to some extent with the “do no significant harm” principle, which is an emerging principle in EU law.⁸⁶ Furthermore, the application of this criterion requires the adoption of further science-based criteria which will set the thresholds for acceptable damage caused to each specific environmental interest.⁸⁷

⁸⁴ J. Darpö, *Will European Biodiversity be Sacrificed...*, p. 17.

⁸⁵ V. Karageorgou, *The Environmental Integration Principle...*, p. 170. See also R. Famá, *Beyond “Fit for 55”: The Emergence of the “Do No Significant Harm” Principle in EU Law and EU Funding Mechanisms*, “Review of European, Comparative & International Environmental Law” 2025, vol. 34, p. 62, 73.

⁸⁶ R. Famá, *Beyond “Fit for 55”...*, p. 73. As it is argued in the referenced article, the “do no harm” principle, or otherwise the “green oath” that is set in the EU Green Deal Communication, is rather broader than the “do no significant harm” principle and a general principle that applies mainly to EU lawmaking procedures (Ibidem, p. 66, 75). For reasons of clarity and sufficient determination, it seems preferable to align the negative aspect of the environmental integration principle in terms of setting a limit with the “do no significant harm” principle.

⁸⁷ This is also the case with the criteria that are set in the delegated acts of the EU taxonomy regulation and in the “Technical Guidance on the application of the ‘do no significant harm’ principle.” See R. Famá, *Beyond “Fit for 55”...*, p. 65.

In this context, the criterion of avoiding significant harm to the environmental interests that are not prioritized in the authorization process cannot allow the exemption from EIAs and AIAs of the RES projects that are located in RAAs designated under Article 15c(4) of the RED III Directive. Furthermore, the application of this criterion can raise the issue of the incompatibility of the exemption of the RES projects located in RAAs from EIAs and AIAs if it cannot be ensured that significant damage will not be caused to the environmental interests that are not prioritized in the assessment process. Therefore, specific emphasis should be placed on both the effectiveness of the screening process and the design and effective implementation of the mitigation measures envisaged for the given RAA. Monitoring mechanisms should also be established. Furthermore, the possibility provided to MSs to exempt wind and photovoltaic projects located in RAAs from EIAs and AIAs, even if they fulfill the highly likely criterion in the case of “justified circumstances” (Article 16a(5)), is not compatible with the above-mentioned criterion, because possible significant environmental harm cannot be *ex ante* identified and avoided.⁸⁸

Furthermore, given that all the environmental principles are applied through the environmental integration principle, its linkage with the prevention principle⁸⁹ can be a basis for adopting a criterion that can be used to resolve intra-environmental conflicts. This criterion would require that all the appropriate instruments are in place, so as to avoid significant environmental harm to the environmental interests that are not prioritized in the authorization process. Subsequently, the application of this criterion would lead to the same conclusions concerning the need for an effective screening procedure for the projects located in RAAs and highly likely to have unforeseen adverse effects,⁹⁰ as well as for the exemption from EIAs and AIAs established in Article 16a(5) of the RED III Directive.

In addition, the linkage of the environmental integration principle with the precautionary principle, which applies to the nature protection Directives (Directive 92/43 and Directive 2009/147), requires that the effects of RES projects on Natura 2000-protected areas and protected species are thoroughly examined and that projects can only be authorized under Article 6(3) of the Habitats

⁸⁸ M. Montini, *Addressing the Conflicts...*, p. 214.

⁸⁹ G Bándi, *Principles of EU Environmental Law...*, p. 43–44.

⁹⁰ It can be argued that even the criterion of highly likely effects that were not foreseen in the SEA is not compatible with the criterion that arises from the prevention principle because it raises the bar higher for a project to be subject to an EIA than the respective provision of the EIA Directive (Article 2 (1)), so that it cannot be ensured that significant environmental harm is prevented. See E. Tla da Silva, *In Search of the Golden Ratio...*, p. 267.

Directive if there is no doubt that they will not affect the ecological integrity of the site. It is therefore obvious that the respective provision for exempting RES projects located in RAAs from AIAs, and the application of AIAs only in exceptional cases when the highly likely criterion is fulfilled, does not meet the standards arising from the precautionary principle with regard to the soundness of the assessment and the authorization of projects that can have effects on the integrity of nature-protected areas which are in their vicinity.⁹¹ In addition, the lack of an individual AIA also affects the design and implementation of mitigation measures, as well as the application of the derogation provision of Article 6(4) of the Habitats Directive. Moreover, an issue of coherence of EU environmental law arises, because deviation provisions regarding the well-established EU nature protection rules and the respective jurisprudence of the CJEU⁹² are set for RES projects.

4.2.2. Principle of a high level of environmental protection

The principle of a high level of environmental protection,⁹³ which is set out in Article 191(2) TFEU, Article 3(3) TEU, and Article 37 EUCFR, is also important for resolving intra-environmental conflicts. A reference to a high level of environmental protection is also made in Article 114(3) TFEU. The principle imposes an obligation on the EU legislature, when formulating environmental legislation, to aim at a high level of protection, also taking into account the diversity of situations in the various regions of the Union. The importance

⁹¹ J. Darpö, *Will European Biodiversity be Sacrificed...*, p. 16. As it is already mentioned, RAAs cannot be designated in nature protected areas.

⁹² Judgments of the CJ: of 11 September 2011, Case C-43/10, *Nomarchiaki Aftodioikisi Aitolokarnanias and Others v Ipourgos Perivallontos and Others*, paras 119–126, 134–139; of 14 January 2016, Case C-399/14, *Grüne Liga Sachsen eV and Others v Freistaat Sachsen*, EU:C:2016:10, paras 72–77; of 21 July 2016, Joined Cases C-387/15, C-388/15, *Hilde Orleans and others v Vlaams Gewest*, para. 63; of 17 April 2018, Case C-441/17, *European Commission v Republic of Poland*, EU:C:2018:255, paras 188–192; of 16 July 2020, Case C-411/19, *WWF Italia Onlus and Others v Presidenza del Consiglio dei Ministri and Azienda Nazionale Autonoma Strade SpA*, EU:C:2020:580, paras 35–44.

⁹³ There is discussion in the legal scholarship on whether the requirement for a high level of environmental protection can be qualified as a legal principle or an objective. On the one hand, it is argued that it can be seen as a policy objective that does not set any specific standard. See E. Scotford, *Environmental Principles...*, p. 145 (footnote 121). Other scholars qualify this requirement as a principle. See A. Sikora, *Constitutionalisation...*, p. 81. See also opinion of Advocate General J. Kokott in Case C-444/15, *Associazione Italia Nostra Onlus v Comune di Venezia and Others*, EU:C:2016:665, paras 24–25. Although at this point the classification of such a requirement as a principle or objective cannot be further analyzed, it is understood as a principle in this paper, given its transversal nature and gradual recognition in the CJEU jurisprudence.

of the principle mainly as a tool for interpreting EU secondary legislation is also being increasingly recognized by the EU Courts.⁹⁴ Besides that, the principle is also transversally and horizontally relevant to all EU policies⁹⁵ and has a dynamic character, since the obligation also concerns improving the quality of the environment.⁹⁶

Determining the substantive content of the principle⁹⁷ poses difficulties, as it presupposes a comparison with another level of protection.⁹⁸ Moreover, the respective provisions do not provide any hints as regards the level of stringency that the EU measures should have in order to fulfill the standards of the principle or the manner by which such a high level is achieved.⁹⁹ In any case, an obligation for the non-deterioration of the environmental interests, which co-exists with the obligation to take measures to ensure the constant improvement of the environment, can be inferred implicitly from the substantive component of the principle of a high level of environmental protection.¹⁰⁰ Additionally, it should be noted that the thesis for recognizing a stand-still obligation is also grounded

⁹⁴ Judgments of the CJ: of 22 January 2009, Case C-473/07, *Association nationale pour la protection des eaux et rivières-TOS and Association OABA v Ministère de l'Ecologie, du Développement et de l'Aménagement durables*, EU:C:2009:30, para. 25–27; of 8 July 2020, Case C-343/09, *Afton Chemical Limited v Secretary of State for Transport*, EU:C:2010:419, para. 56; of 15 January 2013, Case C-416/10, *Jozef Križan and Others v Slovenská inšpekcia životného prostredia*, EU:C:2013:8, paras 108–109; of 17 March 2021, Case C-900/19, *One Voice, Ligue pour la protection des oiseaux v Ministre de la Transition écologique et solidaire, Fédération nationale des Chasseurs*, EU:C:2021:211, para. 60 and 65; of 4 October 2024, Case C-727/22, *Friends of the Irish Environment CLG v Government of Ireland and Others*, EU:C:2024:825, para. 25; opinion of Advocate General J. Kokott in Case C-723/17, *Lies Crayenest and Others v Brussels Hoofdstedelijk Gewest and Others*, EU:C:2019:168, para. 33.

⁹⁵ Judgment of the CJ of 21 December 2011, Case C-28/09, *European Commission v Republic of Austria*, EU:C:2011:854, para. 121 (with regard to the transversal nature of Article 37EUCFR). See also A. Sikora, *Constitutionalisation...*, p. 82.

⁹⁶ *Ibidem*, p. 156.

⁹⁷ J. Jans, H.H.B. Vedder, *European Environmental Law: Treaty Based Law*, Europa Law Publishing, Zutphen 2024, p. 43 arguing that the principle of a high level of environmental protection is one of the most important substantive principles of EU environmental policy.

⁹⁸ Opinion of Advocate General J. Kokott in Case C-444/15, *Associazione Italia Nostra Onlus v Comune di Venezia and Others*, paras 29–31.

⁹⁹ The CJ ruled that the level of environmental protection that must be ensured in accordance with this principle does not have to necessarily be the highest that is technically possible. See judgment of the CJ of 14 July 1998, Case C-284/95, *Safety Hi-Tech Srl v S. & T. Srl*, EU:C:1998:352, para. 49. See N. de Sadeleer, *The Principle of a High Level of Environmental Protection in EU Law: Policy Principle or General Principle of Law?* in: L. Gipperth, C. Zetterberg (eds), *Miljörättsliga Perspektiv Och Tankevänder, Vänbok till Jan Darpö & Gabriel Michanek*, Iustus Förlag, Uppsala 2013, p. 447, 450.

¹⁰⁰ D. Missone, *The Importance of Setting a Target: The EU Ambition of a High Level of Protection*, “Transnational Environmental Law” 2015, vol. 4, no. 1, p. 22–24; E. Tla da Silva, *In Search of the Golden Ratio...*, p. 270–273 who argues that the non-regression principle is embedded implicitly in the principle of a high level of environmental protection.

in the various non-regression clauses in EU environmental legislation, such as Article 6(2) of the Habitats Directive, Article 4(4) of the Birds Directive, Article 4(1) WFD, and Article 4(11) and (12) of the Nature Restoration Regulation.¹⁰¹

The criterion that arises from the non-deterioration obligation allows climate-related interests to be prioritized at the expense of other environmental interests in the authorization procedure for RES projects, only to the extent that the status of non-prioritized environmental interests is not deteriorated. Therefore, it can be argued that it cannot be guaranteed that the non-prioritized environmental interests will not be deteriorated by exemption from EIAs and AIAs for projects to be located in RAAs – and even more by the exemption of projects that meet the highly likely criterion in the case of justified circumstances. In addition, the presumption of an overriding public interest for RES projects without specific guarantees is not compatible with the above-mentioned criterion.

5. Epilogue

The article has analyzed the intra-environmental conflicts that arise from legal instruments, such as the RED III Directive, that aim to promote the increased usage of RES projects as a critical means of realizing the sustainable energy transition and the manner by which they are regulated. The main conclusion is that the intra-environmental conflicts that arise in the context of the RED III Directive are resolved in favor of the climate-related interests and at the expense of other environmental interests. This regulatory tendency demonstrates the “climate-centrism” that characterizes the EU Green Deal and certain legislative instruments which were either revised or adopted for its implementation (Net-Zero Industry Act).¹⁰² It also demonstrates the lack of a coherent approach in dealing with the climate crisis and the simultaneous environmental crisis.

Furthermore, the article has examined the role that the EU environmental principles can play in setting limits on the prioritization of one category of environmental interests (e.g., climate-related interests) over others. Specific emphasis was placed on the role that the environmental integration principle

¹⁰¹ E. Tla da Silva, *In Search of the Golden Ratio...*, p. 272.

¹⁰² N. de Sadeleer, *The European Green Deal: Greenwashing Compounded by Deregulation (Omnibus Law) or a Genuine Paradigm Shift?* “European Journal of the Risk Regulation” 2025, vol. 16, no. 4, p. 1343, 1373, <https://doi.org/10.1017/err.2025.20>.

can play, because it constitutes a horizontal principle through which all the other environmental principles are applied, and on the principle of a high level of environmental protection, due to its transversal nature. The conclusion that underpins the analysis is that in spite of the legitimate aim of accelerating and simplifying the authorization procedures for RES projects and certain positive steps that have been taken, critical regulatory choices made in the RED III Directive do not comply with the criteria arising from the environmental principles. Specifically, the incompatibility of these choices lies in the lack of respective guarantees that are founded on the principles and can ensure that no significant damage is caused to the environmental interests that are not prioritized in the authorization procedures. It remains to be seen whether these choices will be subject to a judicial review of the CJEU through a request for a preliminary ruling by a national court. In any case, the emergence of intra-environmental conflicts is embedded in a more general issue, which concerns the extent of the acceptable sacrifices that can be made to protect environmental interests within the framework of a green transition emphasizing decarbonization. The environmental principles can therefore play a critical role by dictating more balanced approaches.

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Normative prerequisites and general interest for the preservation of biodiversity in the Republic of Serbia*

Normatywne przesłanki i interes ogólny w zakresie ochrony
bioróżnorodności w Republice Serbii

Abstract: The Stabilisation and Association Agreement with the European Union entered into force on 1 September 2013. Serbia's negotiating positions are defined in 35 chapters. Chapter 27 is entitled Environment and Climate Change and covers 10 basic sectors: horizontal legislation, air quality, waste management, water management, nature protection, industrial pollution control, chemicals, noise protection, climate change, and civil protection. In 2007, the Law on Ratification of the Convention on Environmental Impact Assessment in a Transboundary Context (ESPOO Convention) was adopted. The Ministry of European Integration and the Ministry of Environmental Protection provide up-to-date reports on their websites on all the steps taken by the Republic of Serbia in the opening and closing of Chapter 27. The Law on Nature Protection from 2009 defines biodiversity as biological diversity, which is the totality of genes, species, and ecosystems on Earth or in a clearly defined area. The law prescribes the sustainable use of natural assets and/or resources, meaning the use of components of biodiversity or geodiversity in a way and to an extent that does not lead to a long-term reduc-

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tion of biodiversity – i.e. geodiversity – maintaining their potential to meet the needs and aspirations of current and future generations. The aim of this work is to indicate that the Republic of Serbia meets the normative prerequisites for the preservation of biodiversity, in terms of regulation and protection. The next long-term goal is for the population of Serbia to continually act in accordance with the numerous norms that have been adopted to preserve biodiversity.

Keywords: biodiversity, Serbia, legal norms, negotiation chapters, interest, criminology

Abstrakt: Układ o stabilizacji i stowarzyszeniu Republiki Serbii z Unią Europejską wszedł w życie 1 września 2013 r. Pozycja negocjacyjna Serbii została określona w ramach 35 rozdziałów. Rozdział 27 pt. Środowisko i zmiany klimatu, obejmuje 10 podstawowych sektorów: ustawodawstwo horyzontalne, jakość powietrza, gospodarowanie odpadami, gospodarkę wodną, ochronę przyrody, kontrolę zanieczyszczeń przemysłowych, substancje chemiczne, ochronę przed hałasem, zmiany klimatu oraz ochronę ludności. W 2007 r. przyjęto ustawę o ratyfikacji Konwencji o ocenach oddziaływania na środowisko w kontekście transgranicznym (Konwencja z Espoo). Ministerstwo Integracji Europejskiej oraz Ministerstwo Ochrony Środowiska publikują na swoich stronach internetowych aktualne raporty dotyczące wszystkich działań podjętych przez Republikę Serbii w ramach otwierania i zamykania Rozdziału 27. Ustawa o ochronie przyrody z 2009 r. definiuje bioróżnorodność jako różnorodność biologiczną, czyli całokształt genów, gatunków i ekosystemów na Ziemi lub w wyraźnie określonym obszarze. Ustawa określa również zasady zrównoważonego użytkowania zasobów naturalnych – rozumianego jako wykorzystywanie elementów bioróżnorodności lub georóżnorodności w taki sposób i w takim zakresie, aby nie prowadziło to do długoterminowego zmniejszenia bioróżnorodności lub georóżnorodności, przy jednoczesnym utrzymaniu ich potencjału do zaspokajania potrzeb i aspiracji obecnych oraz przyszłych pokoleń. Celem niniejszego opracowania jest wskazanie, że Republika Serbii spełnia normatywne przesłanki dla ochrony bioróżnorodności – zarówno w wymiarze regulacyjnym, jak i w zakresie ochrony praktycznej. Długofalowym celem jest natomiast kształtowanie trwałych postaw społeczeństwa serbskiego wobec przyjętych licznych norm mających na celu zachowanie bioróżnorodności.

Słowa kluczowe: bioróżnorodność, Serbia, normy prawne, rozdziały negocjacyjne, interes, kryminologia

1. Introductory considerations

The history of human civilization, as pointed out by Morris:

is in great part the account of man's efforts to free himself from the restrictions imposed by his natural environment; not only can he now live and work under practically all climatic conditions, but he can inhabit great conurbations which, though unable to support themselves, can exist by means of ingenious technology and efficient transport.¹

However, what has resulted, Morris further argues, is that man has created his own new environment which, in turn, begins to manifest its own limitations on human beings. A large city or a suburb can set limits on human activity which, although derived from a very different sense, are no less real than those set in the past by mountains, rivers, deserts, and oceans. It is precisely here that the ancient premise recognizing the differences between urban and rural lifestyles appears. That diversity is an appreciation of the basic association between patterns of behavior and characteristics of the local community. And, once upon a time, in the literature on criminology and sociology, a fundamental difference was made.

However, in the scientific community and the public at large, new terms, which correspond to the new reality, often meet with mistrust, which stems from ignorance about new phenomena – or about phenomena from the ancient or recent past, the knowledge of which is not deeply rooted in the population's consciousness. Some authors call it “global despair”: “Along with severe despair, innumerable confusions emerge in periods of great technological and cultural transitions.”²

From an internet search of the meaning of the term “biodiversity” in Serbian, one finds a large amount of information and clear explanations. On the other hand, that word – which was not used until recently, except in the field of natural sciences – became relevant in our country only last year, with discussions about the Jadar project.³ In 2001, Serbia ratified the Convention on Biological

¹ T. Morris, *The Criminal Area*, Routledge, London 1971, p. 1.

² S. Crnobrnja, *Globalno oćajanje* [Global Despair], <https://magazin.politika.rs/sr/clanak/571228/globalno-oćajanje> [access: 24.02.2025].

³ *Projekat Jadar – pitanja i odgovori* [Jadar Project – Questions and Answers], <https://www.mre.gov.rs/tekst/sr/6831/projekat-jadar-pitanja-i-odgovori.php> [access: 24.02.2025].

Diversity,⁴ according to which “biological diversity means the diversity of living organisms in all frameworks including, among others, terrestrial, marine and other water ecosystems and ecological complexes of which they are a part; this includes diversity within a species, between species and between ecosystems”. It is important to emphasize that Serbia is one of the six centers of European biodiversity, with 4,082 plant and animal species. Of these, 270 animal and 600 plant species are endangered.⁵

The aim of this work is to indicate that the Republic of Serbia meets the normative prerequisites for the preservation of biodiversity. The next long-term goal is for the population of Serbia to continually act in accordance with the numerous norms that have been adopted to preserve biodiversity, as a matter of general interest. The paper is divided into three basic parts: the first refers to the normative basis of the issue of biodiversity in Serbia; the second addresses the cognitive balance between green criminology and ecology of crime; and the third discusses the scientific and public interest in these issues in Serbia.

2. Normative basis of the issue of biodiversity and Green Agenda in Serbia

In the non-transparent field, a multitude of written or spoken thoughts, attitudes, and claims related to the concept of human rights may need to employ labels, such as “Understanding Human Rights”⁶, because at first glance they contain a clear explanation of the concept, as well as of the need to refresh one’s knowledge. The reason for this is that Article 1 of the Universal Declaration of Human Rights of 1948 stipulates three basic tenets: freedom, equality, and solidarity, or “all human rights for all”, which at the same time requires the interdependence of content. Freedom should include the freedom of thought, conscience, religion, and expression. Then, human rights should provide all people with equality in terms of protection against discrimination in the enjoyment of human rights, such as full equality between men and women.

⁴ Zakon o potvrđivanju Konvencije o biološkoj raznovrsnosti [Act on the Ratification of the Convention on Biological Diversity], Official Gazette of the FRY – International Treaties, No. 11/2001.

⁵ *Biodiverzitet Srbije* [Biodiversity of Serbia], <https://ekologika.rs/vesti/srbija/infografika-u-srbiji-ugrozeno-270-zivotinjskih-vrsta/> [access: 27.02.2025].

⁶ J. Marković, V. Petrović, *Razumevanje ljudskih prava – priručnik o obrazovanju za ljudska prava* [Understanding Human Rights – Manual on Human Rights Education], Ministarstvo za ljudska i manjinska prava Srbije i Crne Gore, Beograd 2003, p. 18, <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/04/razumevanje-ljudskih-prava.pdf> [access: 25.02.2025].

Solidarity combines economic and social rights, such as social security, fair remuneration, adequate standards of living and health, and access to education. Based on the stated principles and content of their reach, human rights are divided into five categories: political, civil, economic, social, and cultural human rights. These rights are standardized in the Universal Declaration of Human Rights, as well as in two Pacts, and together they form the Charter of Human Rights.⁷

However, the idea of codifying and realizing human rights did not end with the adoption of the Universal Declaration of Human Rights in 1948. In the 1980s, when there was economic growth in European countries and the United States, the idea of special rights of victims, of unauthorized behavior, and of the incomprehensible consequences of natural disasters was founded. With the development of victimology and critical criminology in the sociological thinking of the Western world – as well as economically empowered economies, from which a part of the budget for remedying the consequences of victimhood of the population could be spared – they grouped together as protective objects in the domain of human rights the right to peace, the right to development, and the right to a healthy environment. In the literature on the subject, these rights are defined as true solidarity.

In modern states, the protection of human rights is envisaged as administrative law, judicial protection, constitutional court protection, and the protection of human rights through an ombudsman in those countries whose constitution and parliament have established one. However, in the broadest sense, human rights are most often protected in practice in administrative, criminal, and civil litigation.

During the period of the Socialist Federal Republic of Yugoslavia (SFRY), the Slovenian criminologist Janez Pečar wrote in an essay (1981) about the importance of a deeper and broader study of crime against the environment within the framework of criminology,⁸ as a special type of crime which is still called environmental crime today. Unfortunately, his work did not attract more attention from criminologists, considering the target audience. It is worth noting that, at the time, Slovenia was an integral part of the SFRY. However, today, in the Republic of Serbia, the issue of the green agenda is spoken about more often and more simply by ordinary citizens. Even then, they often do not know about the agreements that Serbia has concluded with international entities on the

⁷ Ibidem.

⁸ J. Pečar, *Ekološka kriminaliteta in kriminologija* [Environmental Crime and Criminology], "Revija za kriminalistiko in kriminologijo" 1981, vol. 32, no. 1, p. 33–45.

topic of biodiversity. More often, such questions are asked in the framework of incrimination for environmental crime.

In this paper, which is aimed at encouraging and empowering the knowledge of the history of law and legal norms in Serbia about the protection of nature, the author has started her theoretical and normative approach to the issue from modern regulations in Serbia, in order to make a thoughtful turning point toward the past. It seems desirable today to exalt the departure of the past. However, by studying the criminal law of Serbia during its state-building in the 19th century, a simple, unpretentious knowledge emerges that it is enough to read, interpret, and remember, so a genuine approach to comparing it with the present need not be feared.

It should be emphasized that in Serbia there is a long criminal justice history of standardized protection of the environment by those who were obliged to take care of it, from the citizens to civil servants. The Criminal Code of 1860 categorized all punishable offenses into crimes, offenses and acts, or crimes, deportations, and extraditions. In Chapter 34 of the Criminal Code for the Principality of Serbia from 1860, prescribes statements (exposures) relating to the protection of the life and health of humans and domestic animals, and on cleanliness. In nomotechnical terms, apart from a clear linguistic distinction, what was the subject of comparison of the method of standardization in one and the other criminal-law regulation, refers to group objects that protect the safety of human and animal health and cleanliness.

The archaic language and descriptions of individual procedures that are now viewed as overcome must not distract us, in the context of that need, from something that is reliable and always applicable from the legal heritage in our country. At the same time, neglecting this knowledge would lead to an unbiased approach to the present, which always reflects the past knowledge and experiences of people to ban or permit individual treatment.

In the long interval from the second half of the 19th century until the end of the Second World War, the realization of human rights had become a necessary issue at the international level, as well as in domestic law. Although human rights are not explicitly stated in the description of the beings of some crimes, in the contemporary criminal legislation of the Republic of Serbia,⁹ in special

⁹ After a period of almost 150 years, in 2005 Serbia prescribed and adopted new criminal legislation, which primarily marked the positioning of juvenile criminal legislation of criminal legislation under which the act in relation to adult offenders. A special part of the Criminal Code, i.e., substantive criminal law, is applied to all offenders unless the Law on Juvenile Offenders and Criminal Protection of Juveniles applies. See *Krivični zakonik Republike Srbije* [Criminal Code

heads, as group protection facilities, criminal offenses against human health (Chapter 23), the environment (Chapter 24) and the general safety of people and property (Chapter 25), which could be categorized as the right of solidarity. Each chapter includes a number of specific incriminations, whose content and context are largely determined by the progress of civilizational trends, as well as the needs of quality and organization of the everyday life of citizens.

The Stabilisation and Association Agreement with the European Union entered into force on 1 September 2013.¹⁰ Serbia's negotiating positions are defined in 35 chapters. Chapter 27 is entitled *Environment and Climate Change* and covers 10 basic sectors: horizontal legislation, air quality, waste management, water management, nature protection, industrial pollution control, chemicals, noise protection, climate change, and civil protection.¹¹

Serbia's accession to the European Union implies the opening of Chapter 27, titled *Environment and Climate Change*. The European Union policy aims to promote sustainable development and to protect the environment for present and future generations. It is based on preventive action, the "polluter pays" principle, the fight against ecological damage at its source, shared responsibility, and the integration of environmental protection into other EU policies. The legal heritage contains more than 200 important legal documents that include horizontal legislation, water and air quality, waste management, nature protection, industrial pollution control and risk management, chemicals and genetically modified organisms (GMOs), noise pollution, and forestry. Respect for the legal legacy requires significant investment. A strong, well-equipped administration at the national and local levels is an imperative for the application and implementation of legal heritage in the field of environmental protection.¹²

of the Republic of Serbia], Official Gazette of the RS, Nos. 85/2005, 88/2005 (corr.), 107/2005 (corr.), 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016.

¹⁰ The Foreign Affairs Council, comprised of ministers of European Union Member States, issued a decision on the ratification of the Stabilization and Association Agreement with Serbia on 14 June 2010. The European Parliament ratified the Stabilization and Association Agreement with Serbia on 19 January 2011, while the ratification process in the Member States of the European Union concluded on 18 June 2013 after Lithuania's ratification – Stabilisation and Association Agreement, <https://www.mei.gov.rs/eng/serbia-and-eu/stabilisation-and-association-agreement/> [access: 26.02.2025].

¹¹ From the description of Chapter 27, it clearly follows that it is important to observe the norms from the following headings of the Code: 23 *Criminal Offenses Against Human Health*, section 24 *Criminal Offenses Against the Environment*, para. 25 *Criminal Offenses Against the General Safety of People and Property*.

¹² *Pregovaračka poglavlja. 35 koraka ka Evropskoj uniji* [Negotiation Chapters. 35 Steps Towards the European Union], EU Information Centre in Belgrade, Belgrade 2014, p. 30, https://europa.rs/images/publikacije/34-35_koraka_ka_EU.pdf [access: 5.02.2025].

Therefore, the political, social, and economic reality in Serbia motivates a careful consideration of all the issues related to Chapter 27. It seems that the general and professional public in our country is less concerned with the meaning of this segment of negotiations, because – sociologically and criminologically – their interests lie in groups of people who are often viewed as living on the margins of society, and the protection of quality of life as a distant echo of something that is clear to the public is an advantage of other chapters, such as Chapter 23 (justice and fundamental rights) or Chapter 24 (justice, freedom, and security). Secondary raw material collectors represent the paradigm of such a vision – especially regarding the objective measurement of quality of life – as a clear elaboration of solidarity, seen as one of the perspectives of the Universal Declaration of Human Rights.

The Ministry of European Integration and the Ministry of Environmental Protection provide up-to-date reports on their websites on all the steps taken by the Republic of Serbia in the opening and closing of Chapter 27. Now, Chapter 27 belongs to Cluster 4 – Green Agenda and Sustainable Connectivity.¹³

In public policy implemented in Serbia, the importance of passing a series of laws that enable the development of the green agenda and the application of adopted international norms is particularly emphasized.¹⁴ In 2007, the Law on Ratification of the Convention on Environmental Impact Assessment in a Transboundary Context (ESPOO Convention) was adopted.¹⁵ Many different laws have been adopted before and after the ratification of the ESPOO Convention, such as the Law on the Use of Renewable Energy Sources (*Zakon o korišćenju obnovljivih izvora energije*)¹⁶, the Law on Environmental Protection (*Zakon o zaštiti životne sredine*)¹⁷, the Law on Integrated Prevention and Control of Environmental Pollution (*Zakon o integrisanom sprečavanju i kontroli zagađi-*

¹³ Negotiating Position of the Republic of Serbia for the Intergovernmental Conference on Accession of the Republic of Serbia to the European Union for Chapter 27 – Environment and Climate Change, <https://www.mei.gov.rs/eng/documents/negotiations-with-the-eu/accession-negotiations-with-the-eu/negotiating-positions/chapter-27/> [access: 27.02.2025].

¹⁴ *Mapa dokumenata javnih politika Republike Srbije* [Map of Public Policy Documents of the Republic of Serbia], <https://rsjp.gov.rs/sr/sema-jp-mapa/> [access: 28.02.2025].

¹⁵ *Zakon o potvrđivanju Konvencije o proceni uticaja na životnu sredinu u prekograničnom kontekstu* [Act on the Ratification of the Convention on Environmental Impact Assessment in a Transboundary Context], Official Gazette of the RS – International Treaties, No. 102/2007.

¹⁶ *Zakon o korišćenju obnovljivih izvora energije* [Law on the Use of Renewable Energy Sources], Official Gazette of the RS, Nos. 40/2021 and 35/2023.

¹⁷ *Zakon o zaštiti životne sredine* [Law on Environmental Protection], Official Gazette of the RS, Nos. 135/2004, 36/2009, 36/2009 (amending law), 72/2009 (amending law), 43/2011 (Constitutional Court decision), 14/2016, 76/2018, 95/2018 (amending law) and 95/2018 (amending law).

vanja životne sredine)¹⁸, the Law on Packaging and Packaging Waste (Zakon o ambalaži i ambalažnom otpadu)¹⁹, the Law on Waste Management (Zakon o upravljanju otpadom)²⁰, the Water Law (Zakon o vodama)²¹, the Law on Land Protection (Zakon o zaštiti zemljišta)²², the Law on Protection Against Noise in the Environment (Zakon o zaštiti od buke u životnoj sredini)²³, the Law on Protection Against Non-Ionizing Radiation (Zakon o zaštiti od nejonizujućih zračenja)²⁴, the Air Protection Law (Zakon o zaštiti vazduha)²⁵, the Law on Climate Change (Zakon o klimatskim promenama)²⁶ and the Law on Protection of Nature (Zakon o zaštiti prirode)²⁷.

The concept and protection of biodiversity are specifically explained in the Law on Protection of Nature from 2009, which achieves the following goals:

- 1) protection, preservation, and improvement of biological (genetic, species, and ecosystem), geological, and regional diversity;
- 2) harmonization of human activities, economic and social development plans, and programs, foundations, and projects for the sustainable use of renewable and non-renewable natural resources and long-term preservation of natural ecosystems and natural balance;
- 3) sustainable use and/or management of natural resources and goods, ensuring their function while preserving natural values and the balance of natural ecosystems;
- 4) timely prevention of human activities and activities that can lead to permanent impoverishment of biological, geological, and landscape diversity, as well as disturbances with negative consequences in nature;

¹⁸ Zakon o integrisanom sprečavanju i kontroli zagađivanja životne sredine [Law on Integrated Prevention and Control of Environmental Pollution], Official Gazette of the RS, Nos. 135/2004, 25/2015 and 109/2021.

¹⁹ Zakon o ambalaži i ambalažnom otpadu [Law on Packaging and Packaging Waste], Official Gazette of the RS, Nos. 36/2009 and 95/2018 (amending law).

²⁰ Zakon o upravljanju otpadom [Law on Waste Management], Official Gazette of the RS, Nos. 36/2009, 88/2010, 14/2016 and 95/2018 (amending law).

²¹ Zakon o vodama [Law on Waters], Official Gazette of the RS, Nos. 30/2010, 93/2012, 101/2016, 95/2018 and 95/2018 (amending law).

²² Zakon o zaštiti zemljišta [Law on Soil Protection], Official Gazette of the RS, No. 112/2015.

²³ Zakon o zaštiti od buke u životnoj sredini [Law on Protection Against Noise in the Environment], Official Gazette of the RS, No. 96/2021.

²⁴ Zakon o zaštiti od nejonizujućih zračenja [Law on Protection Against Non-Ionizing Radiation], Official Gazette of the RS, No. 36/2009.

²⁵ Zakon o zaštiti vazduha [Law on Air Protection], Official Gazette of the RS, Nos. 36/2009, 10/2013 and 26/2021 (amending law).

²⁶ Zakon o klimatskim promenama [Law on Climate Change], Official Gazette of the RS, No. 26/2021.

²⁷ Zakon o zaštiti prirode [Law on Nature Protection], Official Gazette of the RS, Nos. 36/2009, 88/2010, 91/2010 (corr.), 14/2016, 95/2018 (amending law) and 71/2021.

5) determining and monitoring the state of nature.

Also, the Law mentions the word “biodiversity” only four times, defining biodiversity as biological diversity, which is the totality of genes, species, and ecosystems on Earth or in a clearly defined area. The Law prescribes the sustainable use of natural assets and/or resources, i.e., the use of components of biodiversity or geodiversity in a way and to an extent that does not lead to a long-term reduction of biodiversity, but maintains their potential to meet the needs and aspirations of current and future generations.

Three years ago, the website of the Government of the Republic of Serbia featured a text dated 18 January 2022, in which Prime Minister Ana Brnabić was quoted as saying that the “EU Green Agenda in Serbia” project will improve the quality of life of citizens in Serbia by improving the quality of air, water, and soil. Speaking at the event on the occasion of the project’s launch, Brnabić expressed her gratitude to the European Union, Sweden, and the UNDP for their partnership and financial support of EUR 8 million for the implementation of the project. The Prime Minister explained that the project will last until 2024 and will be aimed at improving the environment and green transition. On that occasion, she recalled that the two key priorities of the government of Serbia are the rule of law and the green agenda, which is the protection and improvement of the environment, and that the EU is our country’s main partner in these areas. When it comes to environmental protection, there are three main points: air quality protection, solid waste management, and watercourse protection, i.e., the construction of sewage networks and wastewater treatment plants.²⁸

All achieved or planned results in this area can be followed on the website map of the Ministry of Environmental Protection of the Republic of Serbia.²⁹

3. Balance between green criminology and ecology of crime

In criminology, criminal phenomenology is explained by questions about the dynamics of criminality, which link the changes in the extent of criminality, as a mass social phenomenon, in a certain period and in a certain space. In addition, it is possible to observe and statistically monitor the dynamics of individual forms of criminality: economic, political, property, environmental, or juvenile. These questions can also refer to the regional distribution of crime

²⁸ *Realisation of Project “EU for Green Agenda in Serbia” Begins*, <https://www.srbija.gov.rs/vest/en/183760/realisation-of-project-eu-for-green-agenda-in-serbia-begins.php> [access: 7.02.2025].

²⁹ *Home Page*, <https://www.ekologija.gov.rs/> [access: 17.02.2025].

(geography of crime), or the distribution of crime on a global and national scale, in certain jurisdictions, in cities and villages, or in certain parts of the city (ecology of crime).³⁰

The study of the regional characteristics of criminality is one of the most important areas of interest in criminal phenomenology.³¹ Traditionally, criminology in the socio-spatial sense includes two central issues: explaining the spatial distribution of delinquency and of delinquents. Also, in recent years, the study of the spatial distribution of anti-social behavior has been added to these topics,³² and along with the development of ecological awareness so has consideration of all issues surrounding the destruction of ecosystems. The characteristics of the distribution of crime in rural versus urban areas and the influence of local conditions on that distribution represent a special subject of research into the ecology of crime.³³ Today, green criminology and green victimology are also becoming increasingly important.

Empirical research shows that crime and delinquency increase with the process of urbanization. Illich³⁴ wrote that due to industrial development, many dangers threaten the modern city-dweller. Excessive industrial growth threatens people's right to exist in the environment in which they are born and threatens people's right to autonomy in action. The increasing impact of resource exploitation mechanisms threatens human heritage, which is composed of traditions, myths, languages, and rituals.

Apart from the phenomenological approach to the ecology of crime, in another important area of criminology – criminal etiology – ecological theory stands out as one of the basic etiological explanations within criminal sociology. Ecology is the study of the distribution of a phenomenon and its relationship to the environment. The ecological school in criminology tends to explain crime as a function of social change that occurs in accordance with changes in the environment. In other words, according to the definition written by Reid, the

³⁰ S. Konstantinović Vilić, V. Nikolić Ristanović, M. Kostić, *Kriminologija* [Criminology], Pelikan print, Niš 2009, p. 30.

³¹ Ibidem.

³² M. Maguire, R. Morgan, R. Reiner (eds), *The Oxford Handbook of Criminology*, Oxford University Press, Oxford 2007, p. 230.

³³ The term ecology is taken from the physical sciences and refers to the study of plant and animal organisms adapting to their environment. Cities are also distributed territorially according to the "natural order", through the processes of competition, invasion, and replacement, i.e., similar to those taking place in biological ecology. For more, see E. Gidens, *Sociologija* [Sociology], Ekonomski fakultet, Beograd 2005, p. 586.

³⁴ I. Illich, *Selbstbegrenzung* [Self-Limitation], Ronjohlt, Reinbek bei Hamburg 1980, p. 88; I. Cifrić, *Socijalna ekologija* [Social Ecology], Globus, Zagreb 1989, p. 104.

ecological school is an approach or teaching about the quantitative relationship between geographic phenomena and crime.³⁵

More than twenty years ago, in the year 2000 to be exact, a film that is often repeated today – *Erin Brockovich*, directed by Steven Soderbergh³⁶ – was shot and awarded an Oscar. A ray of light for the young single mother comes from the least expected source: a court settlement with a mega-corporation. After losing a court case, Erin Brockovich (Julia Roberts) takes a job as a receptionist for her lawyer, Ed Masry (Albert Finney). Erin soon discovers how dirty business is taking place in the small Californian town of Hinkley: a large company, Pacific Gas & Electric, is trying to cover up a large-scale environmental disaster in which the drinking water sources were completely contaminated, resulting in numerous illnesses among the local population. Step by step, Erin wins the townspeople over to her side and, having collected more than six hundred individual complaints, together with her lawyer employer initiates a lawsuit against the perpetrator. Today, with retrospection and introspection, the generations of those who watched the film at the time certainly viewed that achievement as an isolated case of the struggle to protect human health, not bringing up something that long ago was studied in criminology and victimology as a delinquent area, and even less under the umbrella of green criminology.

Nevertheless, green criminology, as a special branch of criminology, developed in the early 1990s from the framework of critical criminology in order to deal with the so-called green criminality: criminal acts and damages caused to the environment.

Human or social ecology describes the relationships between people who share the same habitat or local territory; these relationships are clearly related to the character of the territory itself. It is, in fact, learning about social structure in relation to the local environment.

In the criminological literature, there is a distinction, but also similarities, between green criminology and the delinquent area, that is, the ecology of crime. The focus of green criminology is on legal and illegal harm to the environment (ecosystems), people and animals. There is a subfield of criminology, commonly called environmental criminology, which examines the relationship between crime and place, or the geography of crime and criminal behavior. A simple example can explain the difference. An ecologically oriented criminologist would focus on why crimes occur in a particular location, for example, why

³⁵ See S.T. Reid, *Crime and Criminology*, McGraw-Hill, New York 2003, p. 120.

³⁶ Steven Soderbergh, in: *Britannica*, <https://www.britannica.com/biography/Steven-Soderbergh>, [access: 31.01.2025].

there are more car thefts in a particular neighborhood or street. Looking at the physical space, they would ask the following questions: Is there sufficient lighting on the street? Are there trees or bushes that hide the activities of car thieves from people living in the area? Are there ways to adapt the physical environment to reduce car theft, such as installing lighting or removing bushes? Can police patrols be increased to tackle this car theft “hot spot”? The focus would therefore be on preventing or reducing criminal activities through changing the physical environment.

Followers of green criminology would have a different focus in this situation. They would be concerned about the amount of light pollution that would be caused by installing brighter lights, as this may harm the movement and life cycle of nocturnal animals, and the damage caused by removing bushes and trees (which would be necessary to increase the visibility of vehicles and thus reduce the likelihood of car theft), as trees and bushes are important nesting sites for birds and contribute to clean air by sequestering carbon and producing oxygen. Green criminologists may agree that increased police patrols are a good policy to reduce neighborhood car crime, but would suggest bicycle patrols over typical police vehicles because they do not contribute to the atmospheric greenhouse effect and reduce environmental damage. They might also identify forms of social harm in a neighborhood that environmental criminologists are unlikely to consider: a factory that routinely discharges toxic waste into local waterways or a hazardous waste site located next to residential properties, for example. While the environment is a central concept in both green criminology and environmental criminology, sometimes very different aspects of it are in focus.³⁷

In this part of the paper, it is necessary to point out the concept of globalization. The use of the word “globalization”, in the everyday speech of citizens, government representatives, politicians, and scientists, often assumes the importance of a foothold for their argumentation. Sometimes, their initial starting points and the final conclusions they present, in an attempt to bring them together under the umbrella of globalization, get an extremely unfavorable outcome and sound contradictory. Therefore, consideration of the issue of globalization and globalization processes in the modern era requires an initial explanation, that is, the origin of this term.

Globalization is a process of interaction and integration between human beings, companies, and governments of different countries, a process that ta-

³⁷ G. Simmons, M. Vardy, R. Stevenson, *What is the Difference Between Green Criminology and Environmental Criminology?*, <https://kpu.pressbooks.pub/introcrim/chapter/13-2-what-is-the-difference-between-green-criminology-and-environmental-criminology/> [access: 28.02.2025].

kes place through international trade and investment, and which is supported by information technology.³⁸ The process of globalization affects the natural environment, culture, political systems, economic development and prosperity, and the physical well-being of people in societies around the world.

Globalization is not particularly novel. Thousands of years ago, first individuals and then companies bought and sold goods among themselves, in different countries and over long distances. For example, the movement of merchants on the Silk Road, which stretched across Central Asia and connected China to Europe during the Middle Ages, is still being studied today. Similarly, centuries ago, entrepreneurs and businesses invested in profitable businesses outside their home countries.³⁹

However, political and technological developments over the last few decades have encouraged growth in cross-border trade, investment, and population migration to such an extent that a qualitatively new phase in the development of human society is often discussed. Being in the world of globalization processes also means living in a global “risk society”. According to the interpretation of Giddens (2005), “it is not limited only to health and environmental risks – it includes a whole series of related changes in modern social life”, “so that its risks are not spatially, temporally or socially limited.”⁴⁰

There is no doubt that the process of globalization has affected all social flows, including crime. Its action is most noticeable in the development of new forms of criminality, which in many ways go beyond the national boundaries of states and acquire a supranational character. This includes, first of all, various forms of organized crime, which represent a kind of state violence and whose consequences are reflected in the systematic violation of human rights.

Gloomy legal texts overflowing with norms, an unsuspected selection of information on social networks that only a narrow circle of experts understands and knows how to devise strategies to make use of, do not find their way to ordinary citizens. Rather, a receptive explanation of the “butterfly effect” can be found in the domain of imagination. Perhaps this type of educational program could explain the following more simply, without going into the laws of physics: “Does it seem realistic to you that a butterfly flapping its wings in Serbia can cause a hurricane in America? The theory says that a small impact on one system can have large and unpredictable consequences elsewhere and at another time.”⁴¹

³⁸ *What is Globalization?*, <http://www.globalization101.org/what-is-globalization/> [access: 28.02.2025].

³⁹ Ibidem.

⁴⁰ E. Giddens, *Sociologija...*, p. 73.

⁴¹ N. Marković, *Efekat leptira – kako samo jedan zamah krila može izazvati uragan* [The Butterfly Effect – How a Single Flap of Wings Can Cause a Hurricane], <https://www.rts.rs/lat/magazin/>

4. Legal, public, and scientific interest in the preservation of biodiversity in Serbia

The slogan “Think globally, act locally” translated into Serbian can be found in many texts on the websites of domestic daily newspapers. By typing the keywords “think globally” in the archive of the daily “Politika”⁴², one finds as many as 110 articles dealing with the topic of ecology, going back to 2006, when the “Politika” online archive became available.⁴³ In addition, a few readers will be interested in researching the origin of this slogan, whose concept of urban planning exists in the book *Cities in Evolutions* by Patrick Geddes, from 1915.⁴⁴ It is even more interesting that the keyword “biodiversity,” in the same format of “Politika”⁴⁵, appears in the titles of as many as 136 articles published since 2006 – i.e., more often than the phrase “think globally...” However, in everyday communication, even in efforts to define criminological concepts – such as the emergence of environmental crime – the word “biodiversity” is not often used.

In the first quarter of the 21st century, there are still many who receive the news on 2 February that is, World Wetlands Day, along with an emblem picture; their interest in such information will last a very short time. Most of the consumers will forget about it very quickly – or will remember it for a moment if similar news is repeated on the same or another media channel. The smallest coverage of the citizenry receiving similar information will not lead to a con-

nauka/4794269/efekat-leptira--kako-samo-jedan-zamah-krila-moze-izazvati-uragan.html [access: 27.02.2025].

⁴² “Politika” is the oldest Serbian national daily newspaper. “Politika” is an irreplaceable historical source of knowledge about the history and culture of the people in the Balkans. The first issue was published on 12 January 1904 and it has been in circulation ever since (except during the First and Second World Wars).

⁴³ On 25 January 2024, the daily newspaper “Politika” marked its 120th anniversary of the first issue being published in 1904. Relying on the history, importance, and influence of “Politika”, the research investigated the newspaper articles published online. This study used the “Politika” online archives, which date back to 2 July 2006. The “Politika” online archives are available via the “Politika” website. See *Arhiva* [Archive], <https://www.politika.rs/scclanci/arhiva> [access: 24.02.2025].

⁴⁴ P. Geddes, *Cities in Evolutions*, Williams, London 1915, <https://archive.org/details/citiesinevolution00gedduoft/page/12/mode/2up> [access: 24.02.2025]. It has been a long journey from the beginning of the 20th century until now. For example, look today at the site “Friends of the Earth” – *Home Page*, <https://www.foei.org/> [access: 24.02.2025].

⁴⁵ It is impossible to conduct research on media reporting on various social phenomena without referring to newspaper articles published in “Politika”; N. Trklja, *Uticajna stara dama* [The Impactful Old Lady], <https://www.politika.rs/scclstranica/4/O-nama> [access: 24.02.2025].

nection with organized crime, for example, or some other criminal activity or even with the process of victimogenesis or other unimportant ones, or more precisely, something that has no immediate connection with their daily life.

Who is dealing with the wetlands, for example, when both domestic and world news is so filled with wars, demonstrations, changing world order, or – most recently – a trade war initiated by the USA.⁴⁶ In the criminological research methodology, it would be interesting to ask the citizens about biodiversity, for example, to ask the citizens of Serbia whether they know that back in 1977, during the time of the SFRY, the country ratified the Convention on Wetlands of International Importance, especially as habitats for wetland birds⁴⁷, which was adopted in Ramsar, Iran, on 2 February 1971.⁴⁸ The hypothesis would be that they know nothing about it.

Despite several examples of good practice, nature protection in Serbia, and in the region, encounters numerous obstacles and problems. Environmental crime is often perceived as a petty crime, instead of a serious crime against our future. The mere criminalization of environmental crimes does not represent a guarantee of adequate criminal protection. The key words are “prevention” and “sanctions”, as well as “education” of the citizens.

About 44,200 species and subspecies are officially registered in Serbia, but many groups of organisms have not been sufficiently researched, and it is believed that there are more of them, about 60,000. The Institute for Nature Protection of Serbia marked 75 years of work with its “Voice of Nature” exhibition, which it organized with the Gallery of Science and Technology SANU, under whose roof on Đure Jakšića Street it was presented. The creators were Jelena Kovačević and Jovana Ilić. Until 2 of September 2024 visitors could see a variety of multimedia materials about the natural heritage of our country and its institutional protection. Unique landscape values, as well as biodiversity and geodiversity, were presented in the form of video presentations linked to geographical representations of protected areas and species. Exhibits from the institute’s geological collection, archival photos, and audio footage on the topic

⁴⁶ K. Herchenroeder, *Trump Kicks off Trade War by Slapping Tariffs on Mexico, Canada, and China*, <https://www.vanityfair.com/news/story/trump-tariffs-mexico-canada-china-trade-war?srlti-d=AfmBOop76c6hRtvbJsZmzfplk02kfVhqCeI2lB2xbk2Wi2EDALQ08W8I> [access: 3.02.2025].

⁴⁷ Uredba o ratifikaciji Konvencije o močvarama koje su od međunarodnog značaja, naročito kao staništa ptica močvarica [Decree on the Ratification of the Convention on Wetlands of International Importance Especially as Waterfowl Habitat], Official Gazette of the SFRY – International Treaties, No. 9/1977.

⁴⁸ Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat of 2 February 1971, <https://www.ramsar.org/> [access: 12.02.2025]

of plant world communication are also attracting attention, and visitors can watch a film that bears the same name as the exhibition.

But the fight for biodiversity is not only against criminal activity. Albert Einstein once said: "There is more perfection in a drop of water than in any machine made by man".

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From EU Objectives to Slovak Action: Biodiversity Governance Across Scales

Od celów Unii Europejskiej do działań Słowacji: wielopoziomowe
zarządzanie bioróżnorodnością

Abstract: The study examines multi-level biodiversity governance with an emphasis on reflecting biodiversity protection priorities at the local level. The literature review emphasises the importance of multi-level governance of biodiversity, considering both the strategic implications of biodiversity loss and the need to protect biodiversity. The research focusses on priority areas of biodiversity protection, which are identified by the eight regional cities in Slovakia through their strategic development documents. At the same time, in this context, the study also examines the interrelationships between local strategies of selected cities and biodiversity protection priorities at the national and European levels, as well as selected documents. The primary benefit of this research is the mapping of priority areas for biodiversity protection at the local level in the Slovak regional cities. The research also confirms the need for continuity of priority areas across scales. The study highlights the interconnectedness of priority areas in the strategies of Slovak cities at both the national and European levels.

Keywords: biodiversity, multi-level governance, strategies, municipalities and cities, Slovakia

Abstrakt: Celem artykułu jest analiza wielopoziomowego zarządzania bioróżnorodnością, ze szczególnym uwzględnieniem priorytetów ochrony bioróżnorodności na poziomie lokalnym. Przegląd literatury ujawnił znaczenie wielopoziomowego zarządzania bioróżnorodnością, uwzględniającego zarówno strategiczne konsekwencje utraty bioróżnorodności, jak i konieczność jej ochrony. W artykule skoncentrowano się na priorytetowych obszarach ochrony bioróżnorodności, które zostały zidentyfikowane przez osiem miast regionalnych na Słowacji w ich dokumentach strategicznego rozwoju. Jednocześnie analiza obejmuje relacje pomiędzy lokalnymi strategiami wybranych miast a priorytetami ochrony bioróżnorodności na poziomie krajowym i europejskim, a także wybrany mi dokumentami strategicznymi. Główną wartością badania jest mapowanie priorytetowych obszarów ochrony bioróżnorodności na poziomie lokalnym w słowackich miastach regionalnych. Wyniki potwierdziły również konieczność zachowania ciągłości priorytetów pomiędzy różnymi poziomami zarządzania. Badanie uwydatniło powiązania priorytetowych obszarów w strategiach słowackich miast regionalnych z priorytetami na poziomie krajowym i europejskim.

Słowa kluczowe: bioróżnorodność, zarządzanie wielopoziomowe, strategie, gminy i miasta, Słowacja

1. Introduction

The growing interest in protecting biodiversity is a result of long-term negative factors that have contributed to biodiversity loss, including intensive human activity, climate change, urbanisation and many others. Since biodiversity makes an undeniable contribution to the proper functioning of ecosystems, it is natural that several strategies are dedicated to biodiversity protection at different levels of societal governance, i.e. global, European and national, as well as local.¹

The study examines multi-level biodiversity governance and emphasises biodiversity protection priorities at the local level. It focusses on priority areas of biodiversity protection, which are identified by the eight regional cities in

¹ Biodiversity, <https://www.who.int/news-room/fact-sheets/detail/biodiversity>, [access: 10.06.2025]; L. Groen, *Explaining European Union Effectiveness (Goal Achievement) in the Convention on Biological Diversity: The Importance of Diplomatic Engagement*, "International Environmental Agreements: Politics, Law and Economics" 2019, vol. 19, p. 70, <https://doi.org/10.1007/s10784-018-9424-y>.

Slovakia through their strategic development documents. In this context, the study aims to address the research question: What priority areas of biodiversity protection are defined by Slovakia's regional cities in their long-term strategic documents? At the same time, the study also examines the interrelationships between local strategies of selected cities and biodiversity protection priorities at the national and European levels.

The intention behind the content analysis was not to exhaustively examine all biodiversity documents existing at the European, national and local levels; it was instead to explore the content of selected strategic documents, focussing on the priorities declared by public institutions at various levels of governance, specifically at the European, national and local levels. A prerequisite for such use is also a theoretical examination of biodiversity protection through a literature review, primarily focussed on identifying the positive and negative connotations of biodiversity, the role of various stakeholders and the importance of multi-level governance in biodiversity protection.

2. The role of biodiversity in ecosystem services

Biodiversity is a vital aspect of our ecosystems and the environment worldwide. It can be described as critical to the functioning of the global ecosystem.² Biodiversity is threatened by intensive urbanisation, as well as agriculture and deforestation.³ As a result, the integrity of biodiversity is being degraded by human-driven activities.⁴ An international consensus has been reached that preserving ecosystem integrity can be a key response to the current biodiversity crisis.⁵

² M. Hirschmann, Ch. Fisch, S. Farny, *Biodiversity Loss and Entrepreneurship: Empirical Evidence on Threat Perceptions Among Primary-sector Entrepreneurs in 28 European Countries*, "Journal of Business Venturing Insights" 2025, vol. 23, p. 1–27, <https://doi.org/10.1016/j.jbvi.2025.e00529>.

³ J. Köninger, P. Panagos, A. Jones, M.J.I. Briones, A. Orgiazzi, *In Defence of Soil Biodiversity: Towards an Inclusive Protection in the European Union*, "Biological Conservation" 2022, vol. 268, p. 1–12, <https://doi.org/10.1016/j.biocon.2022.109475>; P. Theodorou, *The Effects of Urbanisation on Ecological Interactions*, "Current Opinion in Insect Science" 2022, vol. 52, p. 1–9, <https://doi.org/10.1016/j.cois.2022.100922>.

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⁵ Y. Feng, Y. Cao, M.Y. Chan, Z. Ye, Z. Zhao, L. Yu, Y. Liang, S. Carve, R. Yang, *Assessing Ecosystem Integrity in Protected Areas: A Systematic Review of Methods and Applications*, "Biological Conservation" 2025, vol. 305, <https://doi.org/10.1016/j.biocon.2025.111057>; R. Lemoine-Rodríguez,

2.1. Negative and positive connotations of biodiversity

Academics, politicians and practitioners discuss biodiversity in various ways, from different perspectives and with different meanings and scopes. Biodiversity is often discussed in the professional literature with negative connotations that reflect primary biodiversity loss or a lack of protection. The primary aspect of the widespread discussion on biodiversity at various levels of governance is biodiversity loss,⁶ which is caused not only by climate change, but also by economic activity.⁷

The impact of human activity on ecosystems' biodiversity is directly connected to the quality of life of the local inhabitants.⁸ Low biodiversity and the resulting reduced ecosystem services in states, regions and cities negatively impact residents' well-being and resilience to climate change.⁹ In general, as biodiversity declines, the loss could threaten the quality of life of all humans; thus, urban biodiversity conservation should be considered an essential public health investment.¹⁰

However, biodiversity is also researched and often discussed in terms of its positive impacts on the functioning of ecosystems and human society, e.g. in the context of energy governance, primarily about the transition from fossil fuels to

M. García-Arroyo, Miguel A. Gómez-Martínez, M. Back, T. Lindeman, I. MacGregor-Fors, *Unveiling Urban Ecological Integrity: Spatially Explicit Assessment in Contrasting Environments*, "Urban Ecosystems" 2024, vol. 27, p. 1168, <https://doi.org/10.1007/s11252-024-01517-1>; B. Mackey, E. Morgan, H. Keith, *Evaluating Forest Landscape Management for Ecosystem Integrity*, "Landscape Research" 2023, vol. 49, no. 2, p. 247, <https://doi.org/10.1080/01426397.2023.2284938>.

⁶ R.A. Baquero, D. Ayllón, F.J. Oficialdegui, G.G. Nicola, *Tackling Biological Invasions in Natura 2000 Network in the Light of the New EU Biodiversity Strategy for 2030*, "Management of Biological Invasions" 2021, vol. 12, no. 4, p. 787, <https://doi.org/10.3391/mbi.2021.12.4.01>; A. Kok, E.M. de Olde, I.J.M. de Boer, R. Ripoll-Bosch, *European Biodiversity Assessments in Livestock Science: A Review of Research Characteristics and Indicators*, "Ecological Indicators" 2020, vol. 112, p. 1–10, <https://doi.org/10.1016/j.ecolind.2019.105902>.

⁷ P. Dasgupta, S. Levin, *Economic Factors Underlying Biodiversity Loss*, "Philosophical Transactions B" 2023, vol. 378, p. 1–15, <https://doi.org/10.1098/rstb.2022.0197>; A. Dobson, Z. Rowe, J. Berger, P. Wholey, T. Caro, *Biodiversity Loss Due to More Than Climate Change*, "Science" 2021, vol. 374, p. 699, <https://doi.org/10.1126/science.abm6216>.

⁸ F. Vasco, J. Perrin, B. Oertli, *Urban Pondscape Connecting People with Nature and Biodiversity in a Medium-sized European City (Geneva, Switzerland)*, "Urban Ecosystems" 2024, vol. 27, p. 1118, <https://doi.org/10.1007/s11252-023-01493-y>.

⁹ M. Pedersen Zari, M. MacKinnon, K. Varshney, N. Bakshi, *Regenerative Living Cities and the Urban Climate-biodiversity-wellbeing Nexus*, "Nature Climate Change" 2022, vol. 12, p. 601, <https://doi.org/10.1038/s41558-022-01390-w>.

¹⁰ M.R. Marselle, S.J. Lindley, P.A. Cook, A. Bonn, *Biodiversity and Health in the Urban Environment*, "Current Environmental Health Reports" 2021, vol. 8, p. 150, <https://doi.org/10.1007/s40572-021-00313-9>.

renewable energy sources.¹¹ At the same time, biodiversity is closely connected to blue and green infrastructure of national, regional and local significance.¹²

From a long-term perspective, biodiversity is a crucial driver of sustainable urban development¹³ and ecological security,¹⁴ and it is a vital element in the resilience of cities and communities.¹⁵ Well-managed biodiversity can also promote human health and well-being,¹⁶ as well as ecosystem services for local stakeholders.¹⁷

Protecting biodiversity is a complex and never-ending process. Governments cannot be the only ones involved in this process through public policies; relevant stakeholders must also be involved in their creation, implementation and evaluation. This tendency and necessary practice create opportunities for diverse urban nature voices to co-create a case for biodiversity, which can be supported through existing local networks, global city networks and platforms.¹⁸ The interactions between urbanisation, humans, biodiversity and ecosystems are perceived as key issues for cities.¹⁹ Subsequently, biodiversity at the local level requires co-management and community-based actions, including

¹¹ A. Hausmann, T. Väisänen, T. Toivonen, G. Cortés-Capano, *Climate and Biodiversity Perceptions Amid the European Energy Crisis: Shifting Social Media Narratives*, "Sustainability Science" 2025, vol. 20, p. 920, <https://doi.org/10.1007/s11625-025-01639-1>.

¹² C. Hyseni, J. Heino, L.M. Bini, U. Bjelke, F. Johansson, *The Importance of Blue and Green Landscape Connectivity for Biodiversity in Urban Ponds*, "Basic and Applied Ecology" 2021, vol. 57, p. 138, <https://doi.org/10.1016/j.baae.2021.10.004>.

¹³ C. Hernandez-Santin, M. Amati, S. Bekessy, Ch. Desha, *Integrating Biodiversity as a Non-human Stakeholder Within Urban Development*, "Landscape and Urban Planning" 2023, vol. 232, <https://doi.org/10.1016/j.landurbplan.2022.104678>.

¹⁴ M. Kostić, *Ecology of Crime and Ecological Explanations in Criminology*, "Proceedings of the Twelfth International Scientific Conference «Social Changes in the Global World»" 2022, vol. 1, no. 9, p. 245, <https://doi.org/10.46763/SCGW221235k>.

¹⁵ M. Pedersen Zari, M. MacKinnon, K. Varshney, N. Bakshi, *Regenerative Living Cities...*, p. 602.

¹⁶ X. Sun, C. Liddicoat, A. Tiunov, B. Wang, Y. Zhang, Ch. Lu, Z. Li, S. Scheu, M.F. Breed, S. Geisen, Y.-G. Zhu, *Harnessing Soil Biodiversity to Promote Human Health in Cities*, "NPJ Urban Sustainability" 2023, vol. 3, no. 5, p. 1–8, <https://doi.org/10.1038/s42949-023-00086-0>.

¹⁷ J.P. Kachanova, S.B. Steppe, S.E. Hobbs, *Urban Orchards Provide Important Biodiversity and Ecosystem Services*, "Urban Ecosystems" 2025, vol. 28, p. 1–12, <https://doi.org/10.1007/s11252-025-01739-x>.

¹⁸ C. Oke, S.A. Bekessy, N. Frantzeskaki, J. Bush, J.A. Fitzsimons, G.E. Garrard, M. Grenfell, L. Harrison, M. Hartigan, D. Callow, B. Cotter, S. Gawler, *Cities Should Respond to the Biodiversity Extinction Crisis*, "NPJ Urban Sustainability" 2021, vol. 1, no. 11, p. 1–4, <https://doi.org/10.1038/s42949-020-00010-w>.

¹⁹ I. Kowarik, *Urban Biodiversity, Ecosystems and the City. Insights from 50 Years of the Berlin School of Urban Ecology*, "Landscape and Urban Planning" 2023, vol. 240, <https://doi.org/10.1016/j.landurbplan.2023.104877>.

mainly supportive organisational policies and strategies, community support and integrative human–nature designs.²⁰

The protection of biodiversity requires the engagement of all stakeholders who influence and are affected by changes in biodiversity. In this regard, the roles of entrepreneurs,²¹ communities²² and higher education institutions²³ are more than beneficial for biodiversity protection. Greater engagement from policymakers and planners, as well as partnerships between public bodies and private households to coordinate local initiatives, is constructive for improving biodiversity.²⁴

2.2. Biodiversity as a multi-level governance issue

In the European Union, biodiversity requires multi-level governance for the creation, implementation and evaluation of relevant public policies.²⁵ To achieve targets determined by biodiversity policies, it is essential to complement the understanding of biodiversity indicators.²⁶ The issue of biodiversity has been a long-standing focus of attention at the European Union level. Politicians and experts at EU institutions perceive biodiversity as a key component of

²⁰ L. Taylor, C.J. Maller, K. Soanes, C.E. Ramalho, A. Aiyer, K.M. Parris, C.G. Threlfall, *Enablers and Challenges When Engaging Local Communities for Urban Biodiversity Conservation in Australian Cities*, “Sustainability Science” 2022, vol. 17, p. 788, <https://doi.org/10.1007/s11625-021-01012-y>.

²¹ M. Hirschmann, Ch. Fisch, S. Farny, *Biodiversity Loss and Entrepreneurship...*, op. cit.

²² N.M. Dawson, B. Coolsaet, A. Bhardwaj, F. Booker, D. Brown, B. Lliso, J. Loos, A. Martin, M. Oliva, U. Pascual, P. Sherpa, T. Worsdell, *Is It Just Conservation? A Typology of Indigenous Peoples' and Local Communities' Roles in Conserving Biodiversity*, “One Earth” 2024, vol. 7, no. 6, p. 1009, <https://doi.org/10.1016/j.oneear.2024.05.001>.

²³ R. Ali, A. Naz, M. Azhar, *Eco-citizens of Academia: Unravelling Students' Behavior Toward Biodiversity Management in Higher Education Institutions*, “International Journal of Sustainability in Higher Education” 2025, vol. 26, no. 4, p. 736, <https://doi.org/10.1108/IJSHE-11-2023-0541>; P. Tiago, A.I. Leal, I.T. Rosário, S. Chozas, *Discovering Urban Nature: Citizen Science and Biodiversity on a University Campus*, “Urban Ecosystems” 2024, vol. 27, p. 1619, <https://doi.org/10.1007/s11252-024-01526-0>.

²⁴ R.J. Delahay, D. Sherman, B. Soyalan, K.J. Gaston, *Biodiversity in Residential Gardens: A Review of the Evidence Base*, “Biodiversity and Conservation” 2023, vol. 32, p. 4170, <https://doi.org/10.1007/s10531-023-02694-9>.

²⁵ M. Alda-Fernández, A. De la Peña Varona, *Multilevel Governance of the Commons and Environmental Sustainability*, “Gestión Y Análisis De Políticas Públicas” 2024, vol. 34, p. 8, <https://doi.org/10.24965/gapp.11353>; G. Ferraro, P. Failler, *Biodiversity, Multi-level Governance, and Policy Implementation in Europe: A Comparative Analysis at the Subnational Level*, “Journal of Public Policy” 2024, vol. 44, no. 3, p. 568, <https://doi.org/10.1017/S0143814X24000072>.

²⁶ A. Kok, E.M. de Olde, I.J.M. de Boer, R. Ripoll-Bosch, *European Biodiversity Assessments...*, op. cit.

policies, which has resulted in biodiversity being reflected in EU funding and programmes during the current programming period. In a broader context, biodiversity – as an essential component of environmental protection – is often viewed as a complementary goal to the digital transformation of our society, aligning with the concept of a twin transition.²⁷

At the European level, halting the loss of biodiversity has been noted as a high-level political priority over the last decade.²⁸ The European Union Biodiversity Strategy for 2030, as part of the European Green Deal, is the basis for building biodiversity resilience and strengthening the protection of nature.²⁹ In general, EU policies under the European Green Deal call for improvements such as adapting to climate change, slowing biodiversity loss and enhancing social cohesion.³⁰

However, the European Union has failed to reverse biodiversity loss; thus, more evidence-based actions are needed.³¹ In the EU Member States biodiversity planning and the implementation of measures are realised under limited and uncertain budgets; thus, more funds and management plans, together with

²⁷ S. Ručinská, M. Fečko, O. Mitaľ, *Municipalities and Cities in the Center of the Digital and Green Transition*, in: R. Lisowski, L. Scholz, Ch. Trüe (eds), *Academia, Administration, Digitalization and Sustainability: Change and Transformation the EU Way*, Nomos Verlagsgesellschaft, Baden-Baden 2025, p. 32, <https://doi.org/doi.org/10.5771/9783957104434-19>; I. Kawka, *E-government and Environmental Protection Towards Greater Sustainability*, in: A. Sikora, I. Kawka (eds), *The European Green Deal and the Impact of Climate Change on the EU Regulatory Framework: Searching for Coherence*, Presses universitaires Saint-Louis Bruxelles, Bruxelles 2024, p. 55, <https://doi.org/10.4000/12kfd>.

²⁸ J. Cortina-Segarra, I. García-Sánchez, M. Grace, P. Andrés, S. Baker, C. Bullock, K. Decler, L.V. Dicks, J.L. Fisher, J. Frouz, A. Klimkowska, A.P. Kyriazopoulos, D. Moreno-Mateos, P.M. Rodríguez-González, S. Sarkki, J.L. Ventocilla, *Barriers to Ecological Restoration in Europe: Expert Perspectives*, “Restoration Ecology” 2021, vol. 29, p. 1–18, <https://doi.org/10.1111/rec.13346>.

²⁹ M.M. Kenig-Witkowska, *The EU Biodiversity Strategy for 2030: Building Nature Resilience in the Wake of the Post Pandemic COVID-19 Socioeconomic Recovery*, “Studia Iuridica” 2022, vol. 91, p. 149, <https://doi.org/10.31338/2544-3135.si.2022-91.8>.

³⁰ R. Hansen, M. Buizer, A. Buijs, S. Pauleit, T. Mattijssen, H. Fors, A. van der Jagt, N. Kabisch, M. Cook, T. Delshammar, T.B. Randrup, S. Erlwein, K. Vierikko, H. Nieminen, J. Langemeyer, C.S. Texereau, A.C. Luz, M. Nastran, A.S. Olafsson, M.S. Møller, D. Haase, W. Rolf, B. Ambrose-Oji, C. Branquinho, G. Havik, J. Kronenberg, C. Konijnendijk, *Transformative or Piecemeal? Changes in Green Space Planning and Governance in Eleven European Cities*, “European Planning Studies” 2022, vol. 31, no. 12, p. 2402, <https://doi.org/10.1080/09654313.2022.2139594>.

³¹ G. Pe’er, J.A. Finn, M. Díaz, M. Birkenstock, S. Lakner, N. Röder, Y. Kazakova, T. Šumrada, P. Bezák, E.D. Concepción, J. Dänhardt, M.B. Morales, I. Rac, J. Špulerová, S. Schindler, M. Stavriniades, S. Targetti, D. Viaggi, I.N. Vogiatzakis, H. Guyomard, *How Can the European Common Agricultural Policy Help Halt Biodiversity Loss? Recommendations by Over 300 Experts*, “Conservation Letters” 2022, vol. 15, p. 1–12, <https://doi.org/10.1111/conl.12901>.

stakeholder participation, can help enhance biodiversity more effectively.³² The successful implementation of the EU Biodiversity Strategy for 2030 will require transformative actions across several sectors to address both nature and climate change.³³

In Europe, there is currently no comprehensive, unified governmental framework strictly devoted to biodiversity conservation.³⁴ Thus, the Member States must concretise long-term documents adopted by the European institutions. In this regard, struggles in implementing European environmental protection strategies are not new to the European administrative area.³⁵ Although biodiversity protection needs to be viewed as a complex global and European problem, its concretisation in the specifics of individual countries is crucial to devising practical applications. National policies focussed on biodiversity are primarily based on key policies and documents adopted at the EU level. These include the European Green Deal, the EU Biodiversity Strategy for 2030 and the Convention on Biological Diversity.

Research indicates that states draw inspiration from documents of a supranational and international nature when developing their national policies, as well as when implementing and evaluating them.³⁶ Because biodiversity protection at the national level is also still evolving, monitoring to optimise

³² V. Hermoso, S.B. Carvalho, S. Giakoumi, D. Goldsbrough, S. Katsanevakis, S. Leontiou, V. Markantonatou, B. Rumes, I.N. Vogiatzakis, K.L. Yates, *The EU Biodiversity Strategy for 2030: Opportunities and Challenges on the Path Towards Biodiversity Recovery*, "Environmental Science & Policy" 2022, vol. 127, p. 269, <https://doi.org/10.1016/j.envsci.2021.10.028>.

³³ F. Burns, M.A. Eaton, I.J. Burfield, A. Klvaňová, E. Šilarová, A. Staneva, R.D. Gregory, *Abundance Decline in the Avifauna of the European Union Reveals Cross-continental Similarities in Biodiversity Change*, "Ecology and Evolution" 2021, vol. 11, no. 23, p. 16647, <https://doi.org/10.1002/ece3.8282>.

³⁴ R. Sousa, T. Zając, D. Halabowski, O.V. Aksenova, Y.V. Bepalaya, F. Carvalho, P. Castro, K. Douda, J.P. da Silva, N. Ferreira-Rodríguez, J. Geist, C. Gumpinger, A.M. Labecka, J. Lajtner, I. Lewin, M. Lopes-Lima, A. Meira, K. Nakamura, J. Garrido Nogueira, P. Ondina, M. Özgo, J. Reis, N. Riccardi, S. Shumka, M.O. Son, A. Teixeira, F. Thielen, M. Urbańska, S. Varandas, N. Wengström, K. Zając, A. Zieritz, D.C. Aldridge, *A Roadmap for the Conservation of Freshwater Mussels in Europe*, "Conservation Biology" 2023, vol. 37, p. 1–5, <https://doi.org/10.1111/cobi.13994>.

³⁵ M. Bryk-Zwolska, *The EU ETS and the European Green Deal – the Struggle for Compromise*, in: A. Sikora, I. Kawka (eds), *The European Green Deal and the Impact of Climate Change on the EU Regulatory Framework: Searching for Coherence*, Presses universitaires Saint-Louis Bruxelles, Bruxelles 2024, p. 165, <https://doi.org/10.4000/12kfd>.

³⁶ P.R. Whitehorn, L.M. Navarro, M. Schröter, M. Fernandez, X. Rotllan-Puig, A. Marques, *Mainstreaming Biodiversity: A Review of National Strategies*, "Biological Conservation" 2019, vol. 235, p. 161, <https://doi.org/10.1016/j.biocon.2019.04.016>; S. Sarkki, R. Tinch, J. Niemelä, U. Heink, K. Waylen, J. Timaeus, J. Young, A. Watt, C. Neßhöver, S. van den Hove, *Adding 'Iterativity' to the Credibility, Relevance, Legitimacy: A Novel Scheme to Highlight Dynamic Aspects of Science-policy Interfaces*, "Environmental Science & Policy" 2015, vol. 54, p. 511, <https://doi.org/10.1016/j.envsci.2015.02.016>.

existing observation efforts, harmonising data and enhancing the ability to predict and respond to key challenges are crucial.³⁷ The role of EU Member States is to support the ambitious goals outlined in EU documents and strategies; thus, states' attitudes are crucial to the sustainable multi-level governance of biodiversity protection.³⁸

At the local government level, it is essential to manage human well-being and biodiversity in an optimal and complementary manner.³⁹ Biodiversity at the local level is a crucial aspect that contributes to the provision of ecosystem services and facilitates sustainable urban development.⁴⁰ Biodiversity in cities continues to expand, and multidisciplinary is becoming increasingly important in a rapidly urbanising world, which could help pave the way to healthier, liveable cities.⁴¹ Understanding how populations and communities respond to specific pressures and how the interactions among urban environments function may lead to a deeper understanding of urban biodiversity, informing cities' planning strategies to maintain biodiversity in a rapidly changing world.⁴² Biodiversity research and its importance at the local level are underlined by various studies: in Geneva, Switzerland,⁴³ Lahti in Finland, Xalapa in Mexico,⁴⁴ in 290 Swedish

³⁷ H. Moersberger, J. Valdez, J.G.C. Martin, J. Junker, I. Georgieva, S. Bauer, P. Beja, T.D. Breeze, M. Fernandez, N. Fernández, L. Brotons, U. Jandt, H. Bruelheide, W.D. Kissling, C. Langer, C. Liqueste, M. Lumbrieres, A.L. Solheim, J. Maes, A. Morán-Ordóñez, F. Moreira, G. Pe'er, J. Santana, J. Shamoun-Baranes, B. Smets, C. Capinha, I. McCallum, H.M. Pereira, A. Bonn, *Biodiversity Monitoring in Europe: User and Policy Needs*, „Conservation Letters” 2024, vol. 17, p. 1–12, <https://doi.org/10.1111/conl.13038>.

³⁸ M. Baran, *Towards EU Nature Restoration Law: A Boost for Biodiversity and Climate?*, in: A. Sikora, I. Kawka (eds), *The European Green Deal and the Impact of Climate Change on the EU Regulatory Framework: Searching for Coherence*, Presses universitaires Saint-Louis Bruxelles, Bruxelles 2024, p. 113, <https://doi.org/10.4000/12kfd>.

³⁹ F. Vasco, J. Perrin, B. Oertli, *Urban Pondscape...*, p. 1118.

⁴⁰ E. Ranta, M. Rosario Vidal-Abarca, A.R. Calapez, M. João Feio, *Urban Stream Assessment System (UsAs): An Integrative Tool to Assess Biodiversity, Ecosystem Functions and Services*, „Ecological Indicators” 2021, vol. 121, p. 1–11, <https://doi.org/10.1016/j.ecolind.2020.106980>.

⁴¹ C.C. Rega-Brotsky, M.F.J. Aronson, M.R. Piana, E.-S. Carpenter, A.K. Hahs, A. Herrera-Montes, S. Knapp, D.J. Kotze, C.A. Lepczyk, M. Moretti, A.B. Salisbury, N.S.G. Williams, K. Jung, M. Katti, I. MacGregor-Fors, J.S. MacIvor, F.A. La Sorte, V. Sheel, C.G. Threfall, C.H. Nilon, *Urban Biodiversity: State of the Science and Future Directions*, „Urban Ecosystems” 2022, vol. 25, p. 1083–1096, <https://doi.org/10.1007/s11252-022-01207-w>.

⁴² M. Alberti, T. Wang, *Detecting Patterns of Vertebrate Biodiversity Across the Multidimensional Urban Landscape*, „Ecology Letters” 2022, vol. 25, p. 1029, <https://doi.org/10.1111/ele.13969>.

⁴³ F. Vasco, J. Perrin, B. Oertli, *Urban Pondscape...*, p. 1118.

⁴⁴ R. Lemoine-Rodríguez, M. García-Arroyo, M.A. Gómez-Martínez, M. Back, T. Lindema, I. MacGregor-Fors, *Unveiling Urban Ecological Integrity...*, p. 1172.

municipalities,⁴⁵ in Valencia, Spain,⁴⁶ in 15 Italian cities⁴⁷ and in five Australian capital cities.⁴⁸

3. Methods

The study examines multi-level biodiversity governance and emphasises biodiversity protection priorities at the local level. The research focusses on priority areas of biodiversity protection, which are identified by the eight regional cities in Slovakia through their strategic development documents. In this context, the study aims to answer the research question: What priority areas of biodiversity protection are defined by the Slovak regional cities in their long-term strategic documents?

As biodiversity positively impacts society and ecosystems, the literature review focusses on biodiversity and emphasises strategic frameworks and contexts related to its broader impact on states, cities and communities. More precisely, it explored the importance of multi-level governance of biodiversity, considering both the strategic implications of biodiversity loss and the need to protect biodiversity.

Content analysis was used to examine the content of selected strategic documents, with a focus on the priorities established by public institutions at various levels of governance, specifically at the European, national and local levels. Content analysis enabled individual documents to be examined in terms of the priority given to biodiversity and the contexts in which individual long-term strategic documents perceive biodiversity. The intention behind the content analysis was not to exhaustively examine all documents connected with biodiversity at the European, national and local levels. The deliberate selection of documents for content analysis reflects the basic strategic frameworks for

⁴⁵ H.I. Hanson, J. Alkan Olsson, *Uptake and Use of Biodiversity Offsetting in Urban Planning – The Case of Sweden*, “Urban Forestry & Urban Greening” 2023, vol. 80, p. 1–10, <https://doi.org/10.1016/j.ufug.2023.127841>.

⁴⁶ V.B. Durà, E. Meseguer, C. Hernández Crespo, M.M. Monerris, I.A. Doménech, M.E.R. Santamalia, *Contribution of Green Roofs to Urban Arthropod Biodiversity in a Mediterranean Climate: A Case Study in Valencia, Spain*, “Building and Environment” 2023, vol. 228, p. 1–10, <https://doi.org/10.1016/j.buildenv.2022.109865>.

⁴⁷ F. Bartoli, V. Savo, G. Caneva, *Biodiversity of Urban Street Trees in Italian Cities: A Comparative Analysis*, “Plant Biosystems – An International Journal Dealing with All Aspects of Plant Biology” 2021, vol. 156, no. 3, p. 649, <https://doi.org/10.1080/11263504.2021.1906347>.

⁴⁸ L. Taylor, C.J. Maller, K. Soanes, C.E. Ramalho, A. Aiyer, K.M. Parris, C.G. Threlfall, *Enablers and Challenges...*, p. 791.

biodiversity at the EU, state and local government levels in Slovakia. This includes the European Union Biodiversity Strategy for 2030: Bringing Nature Back into Our Lives at the EU level. At the national level, this aligns with Slovakia's National Biodiversity Protection Strategy until 2030. Given the fragmentation of local governments, the eight strategic documents of Slovakia's eight regional cities were selected to represent the local level, since they can be perceived as centres of development in Slovakia. The research sample therefore consists of strategies adopted by the regional cities of Bratislava, Banská Bystrica, Košice, Nitra, Trenčín, Trnava, Prešov and Žilina, which primarily cover development measures from 2014 to 2032. These are strategic documents required by the legal framework from a city's perspective. Therefore, they are development plans that outline the basic frameworks for long-term development. Conducting the content analysis in this manner enabled the identification of intersections between the priorities for supporting biodiversity protection and mitigating biodiversity loss across multiple levels of biodiversity governance, including the European, national and local levels.

4. Results

The research revealed different scales of priorities and key areas in the documents at different levels of governance. This tendency confirms the importance and necessity of biodiversity topics in our contemporary society. The EU's Biodiversity Strategy for 2030 is a comprehensive, ambitious and long-term plan to protect nature and reverse the degradation of ecosystems, primarily reflecting the European Green Deal and international negotiations, as well as supporting a green recovery following the COVID-19 pandemic.⁴⁹

The EU Biodiversity Strategy for 2030: Bringing Nature Back into Our Lives includes three key policy areas: (1) protecting and restoring nature in the European Union, (2) enabling transformative change and (3) an ambitious global biodiversity agenda.⁵⁰ The actual biodiversity strategy is to formulate and disseminate the importance of biodiversity protection as a framework for states.

⁴⁹ 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*, COM/2020/380 final.

⁵⁰ *Biodiversity Strategy for 2030*, https://environment.ec.europa.eu/strategy/biodiversity-strategy-2030_en#implementation [access: 10.06.2025].

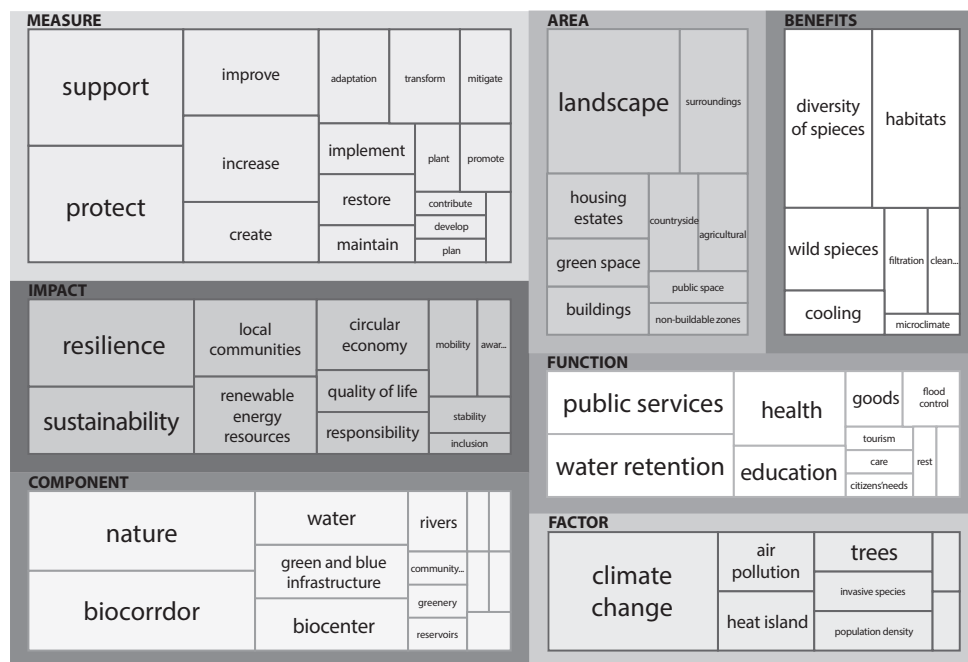
At the same time, this document aims to define the European Union as a territory where biodiversity is an integral part of environmental and green policies.

In Slovakia the key strategy for biodiversity protection is the National Biodiversity Protection Strategy until 2030. The current national strategy is not a new strategic document in its own right, but an update to previous national strategies and evaluations of previous action plans, which are anchored in the framework of the Convention on Biological Diversity from Rio de Janeiro, aiming to protect biodiversity by 2030.⁵¹ The National Biodiversity Protection Strategy until 2030 defines key areas in biodiversity protection in more detail than documents at the EU level: 1) protection of nature, 2) conservation and enhancement of ecosystems and their services, 3) protection and mainstreaming of biodiversity in the state policy of agriculture, forestry, water management and fisheries, 4) mitigating the negative impact of invasive alien species on biodiversity, health and the economy, 5) mitigating pressure on biodiversity and the rational use of genetic resources and 6) improving environmental and sectoral policies for measures aimed at reducing the ecological footprint in terms of international cooperation and supporting education, training and research in this area.

At the local level, cities and municipalities in Slovakia do not typically adopt strategic documents that are primarily and exclusively focussed on biodiversity protection. This important environmental topic is therefore partially incorporated into the basic long-term strategies of cities and municipalities, which include development plans and other relevant initiatives.

Given the selection of the eight regional cities, which can be attributed to the high fragmentation of territorial self-government in Slovakia, eight different development plans dedicated to biodiversity have been enacted in these cities. Based on the content analysis, the selected regional cities have set different priorities and key areas for biodiversity protection. The summary overview of individual priorities includes Figure 1, which illustrates biodiversity protection in the context of the eight regional cities using a tree diagram.

⁵¹ *National Biodiversity Protection Strategy until 2030*, <https://www.enviroportal.sk/eia/detail/narodna-strategia-ochrany-biodiverzity-do-roku-2030>, [access: 10.06.2025].

Figure 1. Biodiversity priorities and key areas of the regional cities in Slovakia

Source: Own work

The measures related to biodiversity and implemented by the selected cities consistently included support and protective activities. The cities also often used the terms “improve”, “increase”, “create” and “transform” in connection with the measures. Especially in the context of climate change, both “adaptation” and “mitigation” were identified as key activities. However, activities such as “expanding”, “contributing”, “restoring” or “reducing” were also identified.

These activities have an impact on the functioning of cities and local communities. The positive impact of biodiversity on resilience and sustainability was most often noted in the analysed city strategies. However, the positive impact on renewable energy sources and the circular economy was no less important. The cities also highlighted as positive impacts improved quality of life, stakeholders’ responsibility and the support of mobility and the stability of the ecosystem.

Of course, the individual components of biodiversity serve to achieve positive impacts, as defined by the selected cities. The key elements of the cities’ strategies were nature itself and biocorridors. The cities placed less importance on water, green and blue infrastructure and biocentres in terms of the occur-

rence of individual components. They also viewed rivers, community gardens, greenery and reservoirs as essential components of biodiversity.

Selected Slovak regional cities highlighted the positive impacts of biodiversity and its individual components in their strategies, including in the context of biodiversity functions within ecosystems. From their perspective, the greatest benefits of biodiversity protection are the diversity of species and the support of their natural habitat. They also counted the support of wild species among the benefits of biodiversity. Another benefit was cooling in cities, which improves air quality and microclimates. Biodiversity helps to fulfil ecosystem functions. Based on the analysis, biodiversity contributes primarily to the provision of public services. It significantly helps with water retention and flood control. It also supports public health and environmental education and awareness, helping to care for citizens and meet their needs.

The benefits and functions of ecosystems that result from strengthening biodiversity are linked to various strategies, particularly in the landscape and surroundings. However, the approach of the selected cities also supports biodiversity in housing estates, green spaces, buildings, public spaces, the countryside and non-buildable zones.

All measures related to biodiversity are implemented in the selected cities – and essentially worldwide – due to negative factors that cause biodiversity loss. The analysed strategies of the regional cities primarily pointed to climate change as a negative factor affecting biodiversity, which is a key priority. Factors with a negative impact on biodiversity include air pollution, the existence of heat islands in cities and the loss of trees. Less frequent factors negatively affecting biodiversity have also been identified, such as population density, seasonal droughts or the increase in invasive species.

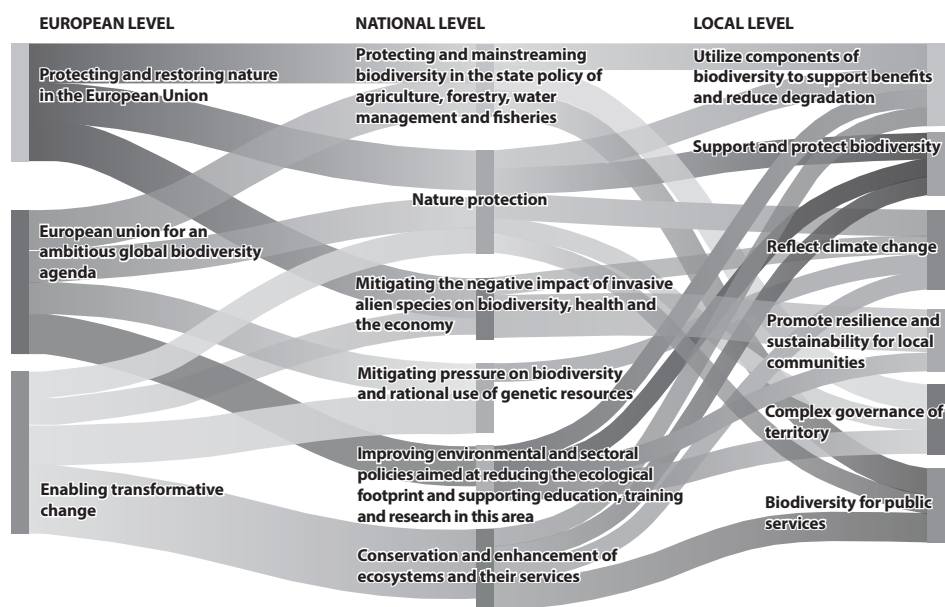
5. Discussion

Given the complexity of biodiversity protection, it is essential to note at the outset that all subcategories of biodiversity are interconnected and interdependent. The priorities set within the framework of multi-level governance of biodiversity must therefore be fulfilled simultaneously. Otherwise, it is unrealistic to expect the fulfilment of biodiversity functions and services within ecosystems in the European, national and local contexts.

Our content analysis has shown that European and national strategies must be broken down and specified through city-level strategies. Figure 2. illustrates

the specifications of European and national goals for biodiversity in the context of Slovakia's regional cities. Reflecting the content analysis conducted for this study, it is possible to define locally specific priorities that are based on superior documents at the European and national levels, but are also given priority due to the character of the environment and ecosystem of the city in question.

Figure 2. Intersections of multi-level governance priorities and key areas in biodiversity protection at the European, national and local levels



Source: Own work

Regional cities in Slovakia reflected the goals primarily in the context of support and protection of biodiversity, strengthening biodiversity for public services, climate change, promotion of resilience and sustainability for local communities, for the complex governance of the territory and also for utilising biodiversity components to support biodiversity and reduce biodiversity degradation.

In the context of the European Union's objectives, cities enable transformative change by addressing climate change and promoting resilience and sustainability for local communities. At the same time, they implement national objectives into practice at the local level, particularly in terms of mitigating

pressure on biodiversity and promoting the rational use of genetic resources; reducing the negative impact of invasive alien species on biodiversity, health and the economy; and enhancing environmental and sectoral policies. In addition, these priority areas identified at the local level make significant contributions to the national objective of protecting nature.

Cities also focus on supporting and protecting biodiversity. The main idea is to break down the objectives of conserving and enhancing ecosystems and their services and to improve environmental and sectoral policies, as outlined in the National Biodiversity Protection Strategy until 2030. At the same time, however, it is also necessary to identify the link to the national objective of protecting nature in the context of this local priority.

Cities, in support of biodiversity, implement complex governance systems for their territories. The result is the implementation of national objectives, particularly nature protection and mainstreaming biodiversity within state policy, as well as mitigating the negative impact of invasive alien species on biodiversity, health and the economy. In this context, practically all European objectives related to biodiversity are implemented in practice at the local level. Because biodiversity contributes to ecosystem services, from the perspective of cities we can consider these services public services. In this sense, it is a direct implementation of nature protection, conservation and the enhancement of ecosystems and their services. The result is a local implementation of the first two objectives of the EU Biodiversity Strategy for 2030.

The cities' strategies also aimed to utilise biodiversity components to support biodiversity and reduce biodiversity degradation. To this end, they are primarily related to the conservation and enhancement of ecosystems and their services, the protection of nature and the protection and mainstreaming of biodiversity in state agriculture, forestry, water management and fisheries policies. This aim also requires a connection with improving environmental and sectoral policies on education, training and research at the national level.

6. Conclusions

Biodiversity in today's ecosystems is becoming more important, mainly due to the growing factors that intensify negative impacts on biodiversity. At the same time, various levels of society's governance are increasingly understanding the role of biodiversity in ecosystem services, which serve primarily to support the functioning of the ecosystem and the local communities.

The primary benefit of this research is the mapping of priority areas for biodiversity protection at the local level in Slovakia's regional cities. The research also confirmed the need for continuity of priority areas across scales. The study highlighted the interconnectedness of priority areas in the strategies of the eight Slovak regional cities at both the national and European levels.

The limits of the research need to be seen primarily in the context of the deliberate selection of the research sample, leading to a limited number of selected city strategies constituting the subject of the research. Future research may explore the reflection of biodiversity priorities among cities in different countries, or compare cities across different size categories. At the same time, it may be essential for researchers to examine how priority areas for biodiversity conservation reflect global trends related to climate change.

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Litigating for Biodiversity: Comparative Insights from Iran and the European Union*

Postępowania sądowe na rzecz bioróżnorodności: porównawcze spojrzenie z perspektywy Iranu i Unii Europejskiej

Abstract: This essay explores the potential for biodiversity litigation in Iran, where biodiversity loss has become a serious concern. Article 50 of the Iranian Constitution emphasises the need for environmental protection, yet most environmental cases are adjudicated by the Administrative Court of Justice, ignoring the precautionary principle. The paper examines the legal foundation for such claims under Article 10 of the Court's legislation and compares Iran's approach with the more efficient legal framework of the European Union. The objective is to enhance the efficacy of biodiversity litigation in Iran.

Keywords: biodiversity liability, legal basis, Administrative Court of Justice, fault-based liability, precautionary principle

Abstrakt: Niniejszy artykuł analizuje potencjał postępowań sądowych dotyczących ochrony bioróżnorodności w Iranie, gdzie jej utrata stanowi poważny

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problem. Artykuł 50 Konstytucji Iranu podkreśla potrzebę ochrony środowiska, jednak większość spraw środowiskowych rozstrzygana jest przez Administracyjny Trybunał Sprawiedliwości, często z pominięciem zasady ostrożności. W artykule omówiono podstawy prawne takich roszczeń w świetle artykułu 10 ustawy o Trybunale oraz porównano podejście Iranu z bardziej efektywnym systemem prawnym Unii Europejskiej. Celem jest zwiększenie skuteczności pozwów dotyczących ochrony różnorodności biologicznej w Iranie.

Słowa kluczowe: postępowania sądowe dotyczące ochrony bioróżnorodności, podstawa prawna, Administracyjny Trybunał Sprawiedliwości, odpowiedzialność oparta na winie, zasada ostrożności

1. Introduction

Biodiversity, the complex web of life that comprises all living organisms and their interactions, is facing an extreme crisis. This biological annihilation¹ “is not merely an environmental concern, but a profound threat to human well-being and the planet’s life-support systems”.²

Whereas the legal scholarship has provided significant conceptual underpinning for humankind’s shared concerns, the notion remains poorly developed in substance. Recent developments in state practice can help provide much-needed substance for the concept of these shared concerns, while other analyses have been primarily restricted to theoretical inquiry and political declaration.³ The Convention on Biological Diversity (CBD), signed and ratified by Iran and many other countries, is evidence of the growing recognition of the value of biodiversity and concern over its loss.⁴ Article 1 explicitly includes the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources.

¹ G. Ceballos, P.R. Ehrlich, R. Dirzo, *Biological Annihilation Via the Ongoing Sixth Mass Extinction Signaled by Vertebrate Population Losses and Declines*, “Proceedings of the National Academy of Sciences” 2017, vol. 114, no. 30, p. 1, <https://doi.org/10.1073/pnas.1704949114>.

² Ibidem.

³ F. Biermann, “Common Concern of Humankind”: *The Emergence of a New Concept of International Environmental Law*, “Archiv des Völkerrechts” 1996, vol. 34, no. 4, p. 426.

⁴ I. Koziell, *Diversity Not Adversity: Sustaining Livelihoods with Biodiversity*, International Institute for Environment and Development, London 2001, p. 8.

Thus, any balance between the claims of national sovereignty and those of collective responsibility must be underpinned with a rigorous framework for elaborating on biodiversity rights and burdens.⁵ This essay examines a judicial method for pursuing biodiversity claims in Iran, which is legally obligated by its Constitution and the ratification of the CBD, an international legal instrument. It compares Iranian and EU legal procedures for biodiversity-related lawsuits in order to find practical strategies for improving biodiversity protection mechanisms.

Iran is one of the Middle East's top biodiversity conservation destinations,⁶ with deserts, forests, mountains and marshes that are home to over 500 bird species, 160 mammals, 164 reptiles and 8,200 plant species – 2,500 of which are indigenous.⁷ Climate change – characterised by rising temperatures; declining precipitation and worsening desertification in regions such as the Caspian Sea; and human activities like unsustainable hunting, water mismanagement, infrastructure development and urban expansion – threaten fragile ecosystems that protect endangered species like the Asiatic cheetah, now confined to central Iran.⁸ National studies accept climate change's negative effects on biodiversity, yet habitat destruction and unlawful hunting continue to threaten leopards, zebras, reptiles and tiny birds.⁹ However, anthropogenic activities, such as the management of water resources, can accelerate the impacts. Furthermore, the development of infrastructure can lead to biodiversity loss and habitat destruction.¹⁰ Thus, Iran needs stronger legal enforcement, including biodiversity lawsuits, to punish violators and preserve environments.

⁵ E. Casetta, J.M. da Silva, D. Vecchi, *From Assessing to Conserving Biodiversity: Conceptual and Practical Challenges*, Springer, Cham 2019, p. 436.

⁶ H. Jowkar, S. Ostrowski, M. Tahbaz, P. Zahler, *The Conservation of Biodiversity in Iran: Threats, Challenges and Hopes*, "Iranian Studies" 2016, vol. 49, no. 6, p. 1073, <https://doi.org/10.1080/00210862.2016.1241602>.

⁷ B. Selajgeh, H. Bahmanpour, *Environmental Literacy Educational Package for Educators and Facilitators: Biodiversity*, Zarnevesht Publishing, Tehran 2020, p. 41 (in Persian).

⁸ *Ibidem*.

⁹ I. Emadodin, T. Reinsch, F. Taube, *Drought and Desertification in Iran*, "Hydrology" 2019, vol. 6, no. 3, p. 66, <https://doi.org/10.3390/hydrology6030066>.

¹⁰ M.L. Richardson, B.A. Wilson, D.A. Aiuto, J.E. Crosby, A. Alonso, F. Dallmeier, G.K. Golinski, *A Review of the Impact of Pipelines and Power Lines on Biodiversity and Strategies for Mitigation*, "Biodiversity and Conservation" 2017, vol. 26, no. 8, p. 1813, <https://doi.org/10.1007/s10531-017-1341-9>.

2. Legal Framework for Environmental Protection in Iran

Iran's environmental legislation, which is divided into general and special laws, aims at preventing damage and maintaining sustainable development, with the general conservation laws playing a secondary role and the special laws directly protecting the environment. Effective enforcement and revision of the latter are essential to protecting biodiversity.

2.1. Iranian General Laws on Protecting Biodiversity

According to Article 50 of the Iranian Constitution, future generations have the right to enjoy the environment. This principle states that protecting the environment, which is essential for future generations, is a civic obligation in the Islamic Republic. This statement reflects Iran's current constitutional position, emphasising future generations' rights and environmental sustainability. Other clauses of this legislative instrument also indicate the importance of protecting the environment. Article 43 aims to meet the basic needs of the population: food, shelter, clothing, healthcare and medical treatment. This provision highlights the need to meet the requirements of both current and future generations and the connection between sustainable development and a healthy environment, as meeting basic human needs requires responsible use of natural resources and natural ecosystems. Article 43 of the Constitution emphasises environmental preservation. Maintaining ecological balance and minimising disruption to natural resources is crucial for future generations' survival. The General Inspection Organisation, which is responsible for implementing Article 174 of the Constitution and is overseen by the judiciary, allows citizens to file complaints about government institutions' environmental performance.¹¹

In the last two decades, Iran's environmental indicators have declined significantly, from 80th among 180 countries¹² at the beginning of its Sixth Development Plan (2017–2022) to 133rd at the end of the same Plan.¹³

¹¹ M.H. Riyazi, M. Faqih Habibi, M. Pournouri, M. Mansour, *A Study of Intergenerational Rights and Obligations to Achieve Sustainable Development Goals: With Emphasis on Article 50 of the Iranian Constitution*, "Environmental Science and Technology" 2023, vol. 25, no. 2, p. 51 (in Persian).

¹² Z.A. Wendling, J. W. Emerson, D. C. Esty, M. A. Levy, A. de Sherbinin, *2018 Environmental Performance Index: Iran Country Profile*, Yale Center for Environmental Law & Policy, Columbia University Center for International Earth Science Information Network, New Haven 2018, p. vii

¹³ H. Gholampour Arbastan, M. Rezaei, *Examining the 7th Development Plan Bill: Environment and Presenting Proposed Rulings (19072)*, "Monthly Expert Reports of Islamic Council Research Center" 2023, vol. 31, no. 4, p. 8 (in Persian).

The non-fulfilment of environmental goals in previous development plans can be attributed to sectionalism, poor communication, insufficient executive guarantees and insufficient deterrence of environmental crime.¹⁴

The Islamic Penal Code is another important source of protecting the environment in general and biodiversity as a part of that. Article 680 of the Islamic Penal Code prohibits the hunting of certain animals and protected wild animals, while Article 686¹⁵ specifically prohibits cutting down trees in urban green spaces.

A major criticism of these legal restrictions is their inadequate enforcement mechanisms. Short-term imprisonment or fines may not be enough to discourage perpetrators. Importantly, these articles do not demand compensation for biodiversity destruction. Article 11 of the Civil Liability Law may also apply in this context. This article outlines the responsibility of government workers, municipalities and related organisations when others are harmed. The policy clearly identifies losses resulting from instrument or equipment failure, and it assigns compensation responsibilities to the relevant department or institution.¹⁶

Another part of this article that plays a role in the legal analysis of environmental damage is the exception related to the exercise of state sovereignty.

The Iranian Civil Code, following Islamic jurisprudence (*Fiqh*), delineates the provisions regarding liability for inflicting harm outside contractual relationships into two categories: direct causation (*Itlaf*) and indirect causation (*Tasbib*). *Itlaf* refers to the direct infliction of harm, while *Tasbib* pertains to the indirect infliction of harm through the act of an object, animal or another person. In the context of civil liability, Articles 328¹⁷ to 330 of the Civil Code address *Itlaf*, while Articles 331¹⁸ to 335 are dedicated to *Tasbib*.¹⁹ When a law relating to environmental damage, including damage to biodiversity, states that possible damages can be brought before the competent court, the claim for damages is usually brought in the general civil court, citing these general civil-law provisions.

¹⁴ Ibidem.

¹⁵ Art. 686 of the Islamic Penal Code of the Islamic Republic of Iran.

¹⁶ Art. 11 of the Civil Liability Law of 1940 of the Islamic Republic of Iran.

¹⁷ Anyone who destroys another's property, whether intentionally or unintentionally, tangible or intangible, is liable and must compensate its value or price.

¹⁸ Anyone who causes financial loss must compensate its value, and if a defect or flaw is caused they must bear the cost of repair.

¹⁹ I. Babaei, *The Status of Differentiating Direct Harm and Indirect Harm in Civil Liability Law*, "Legal Research" 2016, vol. 19, no. 76, p. 87 (in Persian).

Some Iranian jurists argue that private-law and fault-based accountability have limitations in cases of environmental harm. They believe that the environment is often not considered private property that can be protected under private law.²⁰ Environmental damage victims are rarely identified. Determining the link between environmental impact and behaviour is legally and scientifically challenging.²¹ The complex relationship between contaminants and the ecosystem is hard to show. However, when Iranian legal restrictions are silent, general civil responsibility laws must be applied. Lawsuits involving environmental issues such as biodiversity fall between public and private law.²²

Islamic jurisprudence permits the imposition of strict liability without proof of fault;²³ this is grounded in the principle of “no harm” (*La darar*).²⁴ Unfortunately, Iranian courts’ fault-based approach cannot avoid environmental damage, although absolute culpability in jurisprudence is effective and accepted.

The environmental policy of the EU, based on the “polluter pays” principle that was incorporated in the 1992 Rio Declaration and Environmental Liability Directive, holds polluters accountable for compensation for environmental damages, but its application faces difficulties in defining pollution, the responsible polluters and the extent of their liability.²⁵ Although adopting absolute liability is challenging, it provides a legal basis for payment without requiring proof of negligence despite the fact that Iran’s internal rules do not specifically require absolute accountability for environmental damage, including biodiversity loss.²⁶

²⁰ N. Katouzian, M. Ansari, *Liability Arising from Environmental Damages*, „Private Law Studies” 2008, vol. 38, no. 2, p. 290 (in Persian).

²¹ *Ibidem*.

²² A. Rajabi, *Environmental Damage Litigation: Stray Between Public and Private Law*, https://clcl.ut.ac.ir/article_530.html [access: 14.02.2025].

²³ A. Gohari, M. Beijani, *Strict Liability in Environmental Degradation from a Jurisprudential Perspective*, „Private Law Studies” 2011, vol. 38, no. 2, p. 142 (in Persian).

²⁴ S. Bouzari, *Compensation for Damage to the Environment by Emphasizing the Crisis of Urmia Lake and Invoking the Rule of No Harm and Loss and Causation*, „Bioethics Journal” 2021, vol. 11, no. 36, p. 2, <https://doi.org/10.22037/bioeth.v11i36.34906> (in Persian).

²⁵ A. Bleeker, *Does the Polluter Pay? The Polluter-pays Principle in the Case Law of the European Court of Justice*, „European Energy and Environmental Law Review” 2009, vol. 18, no. 6, p. 293, <https://doi.org/10.54648/eelr2009024>.

²⁶ F. Karimi Khanjari, M. Sajadi Kia, *Civil Liability for Environmental Damage in Iranian Law and International Instruments*, „Environment and Interdisciplinary Development” 2021, vol. 6, no. 73, p. 23 (in Persian).

2.2. Iranian Special Laws on Biodiversity Protection

Iran customised its laws to handle environmental and biodiversity protection problems, rather than just depending on criminal law. While criminal laws are often employed to address environmental issues, their overuse and irrationality have resulted in crime inflation.²⁷ This issue not only burdens the judiciary with numerous infractions and inefficiency, but it also weakens the deterrent effect of criminal legislation.²⁸ For a more balanced approach, specialised legislation must address environmental deterioration and biodiversity loss, emphasising preventive measures, regulatory frameworks and sustainable development goals. Specific laws control activities that affect natural ecosystems and biodiversity, distinguishing them from general rules. Assessing their breadth, capabilities and opportunities for development might enhance their effectiveness in protecting Iran's environmental legacy.

The 1967 Law on the Protection and Exploitation of Forests and Rangelands (amended 2020) and the 1974 Environmental Protection Act constituted Iran's first legislation for conservation, mandating environmental impact assessments, punishment through fines and inspection by the Department of Environment, while Article 8 of the 2018 Genetic Resources Law addresses offences against biodiversity, though it ineptly defines the competent authorities for compensation.

The EU legislation also addresses environmental offences. The 2024 Directive introduces new requirements for interstate collaboration in criminal matters and delineates new categories of and stronger criminal penalties for environmental offences in EU Member States.²⁹ It will expand the definition of environmental crime beyond the current parameters in Iran.

The main distinctions between Iran and the EU in criminalising environmental degradation are the fines and circumstances. Under Iranian law, environmental harm is a minor crime with ineffective punishments. Directive 2024/1203, on the other hand, requires effective, dissuasive and appropriate penalties. This principle, based on CJEU case law, requires Member States to implement directives with penalties that meet minimum standards of effective-

²⁷ S.E. Ghodsi, H. Goldouzian, *Explanation of the Crime of Environmental Pollution: With Reflection on Article 688 of the Islamic Penal Code*, "Rah-e Vekalat" 2013, vol. 5, no. 9, p. 193. (in Persian).

²⁸ *Ibidem*.

²⁹ R. Pereira, *A Critical Evaluation of the New EU Environmental Crime Directive 2024/1203*, "eucrim – European Law Forum: Prevention, Investigation, Prosecution" 2024, p. 159.

veness, proportionality and dissuasiveness to ensure proper enforcement and deter infringements.³⁰

Although Iran is a party to the Rio Declaration, which includes the precautionary principle as one of its key principles, the country voiced concerns about the application of this principle during the negotiations on combating plastic pollution. Iran emphasises that the precautionary principle should not be interpreted so as to limit national sovereignty and countries' right to use their natural resources nor to impose disproportionate pressure on developing countries. Iran also believes that this principle should be applied by taking into account the different capacities and conditions of countries in order to avoid imposing additional economic and social burdens on them. This stance reflects Iran's concern about the possible consequences of implementing this principle in the areas of national development and the use of natural resources.³¹

Although Iran became a signatory to the Convention on Biological Diversity in 1996, the precautionary principle has little reflection in its national law; however, scholars make its application dependent upon Islamic law, which mandates preventive action against catastrophic or questionable threats for the protection of life, honour and property.³² Since the precautionary principle is not clearly reflected in the regulations, courts rarely invoke it as a legal basis for judgments.

3. Biodiversity Lawsuits and Procedure

Degradation of biodiversity due to illegal wildlife trade, deforestation, pollution and mining has significant ecological, social and economic impacts. To address these repercussions, legal systems must reinforce rules, enhance monitoring and guarantee that officials recompense for damages. While laws, methods and enforcement tactics differ by country, many offer legal remedies for environmental damage, notably in the EU.³³

³⁰ M.G. Faure, *The Environmental Crime Directive 2008/99/EC*, "Revue Européenne de Droit de la Consommation" 2011, no. 1, p. 203.

³¹ *Iran Inputs on Preamble, Objectives, Principles and Scope*, https://resolutions.unep.org/incres/uploads/cg1-sub_cg1.1-iran_inputs_on_preamble_objectives_principles_and_scope_0.pdf [access: 1.06.2025].

³² Z. Asadi, M. Khorsandiyan, *A Comparative Study of the Principle of Precaution in Modern Law and Iranian and Islamic Law*, "Comparative Studies on Islamic and Western Law" 2022, vol. 9, no. 2, p. 26 (in Persian).

³³ C.A. Jones, J. Pendergrass, J. Broderick, J. Phelps, *Tropical Conservation and Liability for Environmental Harm*, "Environmental Law Reporter" 2015, vol. 45, p. 11047.

The compensation process for environmental issues entails lawsuits, the legal basis and the relevant courts. Iran has provisions regarding compensation and penalties for detrimental environmental behaviour. The nature of this responsibility differs greatly from that in the European Union. Case law, expert assistance and practical experience in environmental disputes are still evolving in many nations. It may be difficult to define environmental damage and determine suitable legal remedies. Environmental lawsuits are challenging to identify defendants and prove a causal link between their conduct and injury.³⁴

The framework for biodiversity-related legal claims must be transparent so that these challenges can be effectively addressed and managed. Biodiversity claims may be defined as “[a]ny legal dispute at the national, regional or international level that concerns conservation of, sustainable use of”, access to and benefit-sharing of “genetic resources, species, ecosystems and their relations”.³⁵

3.1. Legal Standing

One of the primary questions in biodiversity litigation is determining the individuals or entities against whom a claim can be brought to enforce species protection laws. This determination affects the type of claim that can be brought and the possible damages. In the European Union, claims are usually brought against Member States,³⁶ while in Iran they may be brought against individuals or entities, as discussed above. In the European Union, while Member States have been sued for failure to implement directives such as the Habitats Directive, the central EU institutions have remained largely immune to direct challenges.³⁷ The EU and its Member States have acceded to the Aarhus Convention, which requires parties to provide for the possibility of public objection to acts and omissions by regulatory bodies and the private sector that are contrary to environmental law.

Although Iran has no direct counterpart to the Aarhus Convention, certain domestic legal frameworks allow for limited public participation in environ-

³⁴ M. Burger, J. Wentz, R. Horton, *The Law and Science of Climate Change Attribution*, “Columbia Journal of Environmental Law” 2020, vol. 45, no. 1, p. 148, <https://doi.org/10.7916/cjel.v45i1.4730>.

³⁵ C. Rodríguez-Garavito, D.R. Boyd, *A Rights Turn in Biodiversity Litigation?*, “Transnational Environmental Law” 2023, vol. 12, no. 3, p. 498–536, <https://doi.org/10.1017/s2047102523000171>.

³⁶ Y. Epstein, *Adversarial Legalism and Biodiversity Protection in the United States and the European Union*, “Transnational Environmental Law” 2018, vol. 7, no. 3, p. 495, <https://doi.org/10.1017/s2047102518000109>.

³⁷ *Ibidem*.

mental governance.³⁸ In Iran, whether the defendant is a government entity or a natural person determines which competent authority will hear the claim, which is explained in detail below.

In Iran, Article 34 of the Constitution declares that the right to legal action is an inalienable right and anyone can seek legal action through the courts. All citizens have the right to access the courts, and no-one can be denied entrance to a court they are entitled to use by law. Observing environmental damage should allow for a court review if protecting the environment is a public duty. However, difficulties occur in practice.

Although Iran has implemented a programme of criminalisation and compensation for environmental damage, one of the main concerns in this regard is the determination of persons or institutions that have the right to launch a lawsuit in cases of environmental damage. Clearly, direct victims have the right to sue and submit to legal authorities. One topic to consider is the legal framework for non-governmental organisations (NGOs) to file lawsuits for environmental damage that impacts the public interest.

In the EU, Regulation 1367/2006, implementing the Aarhus Convention, allows environmental NGOs to request internal examination of specific actions or omissions.³⁹ This was challenging historically. For instance, two Belgian high courts which environmental organisations frequently appeal to have tightly interpreted the criterion of sufficient interest for claimants, limiting their admissibility. Critics argue that this interpretation violates the ideals of wide access to justice under Article 9(2) of the Aarhus Convention and the right to justice under Article 1.⁴⁰

The case of *Lesoochránárske zoskupenie VLK v. Ministry of the Environment of the Slovak Republic* is a major CJEU decision on the interpretation of Article 9(3) of the Aarhus Convention. This significant case clarifies Member States' duty to offer environmental NGOs access to courts under EU environmental law.⁴¹ The case stemmed from issues in Slovakia, where the environmental NGO *Lesoochránárske zoskupenie VLK* sought party status in administrative procedures to exempt brown bears from species protection regulations. According to the Slovak Ministry of the Environment, the organisation lacked legal

³⁸ Art. 10 Administrative Court Act.

³⁹ Y. Epstein, *Adversarial Legalism and Biodiversity Protection ...*, p. 496.

⁴⁰ M. Pallemmaerts (ed.), *The Aarhus Convention at Ten: Interactions and Tensions Between Conventional International Law and EU Environmental Law*, Europa Law Publishing, Groningen 2011, p. 347.

⁴¹ Judgment of the CJ of 8 March 2011, C-240/09, *Lesoochránárske zoskupenie VLK v. Ministerstvo životného prostredia Slovenskej republiky*, EU:C:2011:124.

capacity in the matter. The Slovak Supreme Court asked the CJEU to interpret Article 9(3) of the Aarhus Convention and its implications under EU law. This provision mandates that public members – including NGOs – may challenge environmental law violations through administrative or judicial action. However, it does not directly affect EU law or provide immediately enforceable rights in national courts. Despite the lack of direct impact, should national courts follow Convention and EU requirements for effective judicial protection in interpreting domestic procedural norms?

The Court of Justice ruled that while Article 9(3) of the Convention does not directly apply, national courts must interpret procedural rules in accordance with the Aarhus Convention and the principle of effective judicial protection in EU law.⁴² Granting environmental NGOs standing in environmental litigation is difficult, especially in mature legal systems like the EU's. Although several laws and regulations in Iran acknowledge the importance of NGOs in environmental protection, their right to file lawsuits is still limited. Environmental NGOs may face constraints due to legal ambiguity, insufficient enforcement or institutional barriers in recognising their role as public plaintiffs.

In the 2013 Criminal Procedure Code, Article 66 emphasised NGOs' participation in the criminal process in the form of reporting crimes, participating in trials and objecting to votes in order to protect vulnerable groups and crimes that do not have a specific victim. However, in the 2015 amendments, the right of NGOs to object to votes was eliminated. This change, along with the *ex post* supervision of the Head of the Judiciary, had a direct impact on the presence and actions of NGOs. Although the *ex post* supervision was amended with the approval of the Permanent Provisions Law on the National Development Programs in 2017,⁴³ the right of NGOs to object to votes in Article 66 was not restored.

Article 66 of the Criminal Procedure Code requires NGOs to meet four conditions for participation in criminal proceedings: being an NGO, complying with their statute and scope of activity, obtaining the consent of victims and being approved by the Head of the Judiciary. Recently, the requirement for the Head of the Judiciary to approve the list of organisations was changed in 2016.

⁴² A. Danthinne, M. Eliantonio, M. Peeters, *Justifying a Presumed Standing for Environmental NGOs: A Legal Assessment of Article 9(3) of the Aarhus Convention*, "Review of European, Comparative & International Environmental Law" 2022, vol. 31, no. 3, p. 414, <https://doi.org/10.1111/reel.12450>.

⁴³ Permanent Provisions Law on the National Development Programs, ratified by the Islamic Consultative Assembly in 19 February 2017, Official Gazette No. 96683/32.

An NGO can only benefit from the rights set out in Article 66 if it has been properly established in accordance with the laws and regulations. However, enacting strict and complex conditions for establishing NGOs can have negative consequences on the participation of these organisations; the details of these conditions, due to their extensiveness, are beyond the scope of this discussion.⁴⁴ Article 66 allows NGOs that protect children, adolescents, women, the environment, natural resources and cultural heritage to participate in the criminal process under certain conditions.

The fourth criterion in Article 66 stipulates that an NGO shall be on a specific list, updated in February 2017 by the Law on Permanent Provisions of National Development Programs. Article 66 that allows non-governmental organizations to take part in criminal proceedings shows a very restricted approach towards public interest litigation. The following amendments that took away their power to appeal to the judiciary's decisions greatly restricted the role played by NGOs during proceedings. This contrasts greatly with the purpose of Article 9(3) of the Aarhus convention whose intent is to improve the justice system for environmental NGOs. Though the provision is non-binding in the EU, its interpretative weight underlines the comparatively restricted NGO standing in Iran.

An example of standing in the context of Iran's environmental law is seen in the case where a shipping company was sued on grounds of environmental pollution. Following the pollution episode, which caused great harm to marine life, the relevant authorities – the Ports and Shipping Organisation, the Environmental Protection Organisation, and the Fisheries Company – filed a suit against the company in question. The legal case aimed at seeking remediation, through the process of removing the sunk containers and emptying the fuel tank of the ship, and compensation for damages. It is the Tehran General Court, Third Branch, that found the company guilty on March 23, 1997.⁴⁵

3.2. Judicial Pathways

3.2.1. General Courts

Iranian laws and regulations do not specify the requirements for prosecuting environmental offences, and crimes are handled in a broad and absolute man-

⁴⁴ Executive Regulations on the Establishment and Activities of Non-Governmental Organizations of 2005.

⁴⁵ F. Karimi Khanjari, M. Sajadi Kia, *Civil Liability for Environmental Damage...*, p. 30.

ner. Criminal activity affecting the environmental can result in two types of lawsuit: a public lawsuit that protects public order and rights or private action seeking damages or legal penalties for the victim.⁴⁶

Article 11 of the Criminal Procedure Code assigns responsibility for public prosecution and defines the plaintiffs for private claims; Article 25 provides for the establishment of specialised prosecutors without the requirement of stipulating an environmental office; and Article 301 assigns environmental crimes to the service of the General Criminal Court, except as otherwise stipulated by law.

Do the Dispute Resolution Councils have the authority to hear cases with criminal penalties of IRR 200 million or less, as stated in Article 9h of the Councils Law? The answer is absolutely negative. Dispute Resolution Councils do not have jurisdiction over issues involving public or state property, as the environment is considered public property.⁴⁷ This limitation is due to the main philosophy behind the Dispute Resolution Councils, which is to focus on amicable dispute settlement in cases. Cases related to public and state property may only be referred to arbitration if approved by the Council of Minister and with the knowledge of the Islamic Consultative Assembly.⁴⁸

The general court handles liability and compensation issues, but where a duty or authority is performed by government agents in the capacity of the government or in charge of a public matter – and such acts are performed or omitted in violation of the law and result in damage to individuals – in order to determine whether the government has exceeded its authority, the matter is heard in the court, and then the claim for damages is raised and heard in the general court, since such a matter in itself can be better judged based on the expertise of administrative courts.⁴⁹

3.2.2. The Competent Court in Claims against Government Organisations

According to Article 10 of the Organisation and Procedure of the Administrative Court of Justice Act of 2013, the victims of harm caused by environmental pollution or the actions of an administrative agency may file complaints before

⁴⁶ Article 9 of the Criminal Procedure Code.

⁴⁷ Clause “t” of Article 10 of the Dispute Resolution Councils Law.

⁴⁸ M. Hemmati, *Filing a Lawsuit for Environmental Damage Compensation in the Iranian Legal System*, “Judicial Legal Perspectives Quarterly” 2023, vol. 23, no. 81, p. 242 (in Persian).

⁴⁹ J. Kashani, *The Competent Forum for Hearing Responsibility Cases Against the State*, “Judicial Law Views Quarterly” 2016, vol. 21, no. 73, p. 133 (in Persian).

the Administrative Court of Justice, which adjudicates over complaints against government authorities, whose actions can affirm victims' civil remedy rights. As an example, the General Assembly of the Administrative Court of Justice struck down a directive from the Forests, Range and Watershed Management Organisation that suggested transferring nurseries, forest parks and seed stations to private persons or corporations. The court invalidated the order that allowed private firms to take control over these resources, which would have potentially lowered government oversight and worsened environmental damage to forests and rangelands. Annuling the order avoided illicit exploitation and human meddling in natural regions, highlighting the need to preserve and prevent the degradation of natural resources.⁵⁰

The Court's decision to nullify the decree may seem like a step towards environmental protection, but it was based on bureaucratic concerns and lacks environmental awareness or aggressive measures to safeguard nature. The Court ruled that the directive breached the law by transferring nurseries, forest parks and seed stations to private entities without proper government monitoring. The ruling highlights concerns about laws and government control over public resources, rather than the intrinsic value of natural places. The decision's phrasing indicates that the Court prioritised legal and administrative soundness over environmental protection, but it does not explicitly address environmental issues and it overlooks the significance of protecting biodiversity and natural ecosystems.

Note that this judgment is from 2001. Before 2013, the Administrative Court of Justice was limited to reviewing procedural and bureaucratic aspects of cases and did not examine the substance of disputed matters. The Court could only rule on infractions of regulations or laws, not on the aims, implications or substantial impacts of administrative judgments. Following the 2013 amendments the Court's jurisdiction was expanded, and it now has the power to examine administrative judgments.⁵¹

In 2014 the Administrative Justice Court struck down the Anzali Free Trade Zone extension decisions issued by the Coordinating Council of Free Trade-Industrial Zones Ministers. The resolutions would have reduced the size of Anzali National Park and protected zones, despite the High Council of Environmental Protection having the jurisdiction to set and change boundaries (as per

⁵⁰ Judgment of the Administrative Justice Court of Iran of 15 July 2001, Case No. 129–1380.4.24, <https://rc.majlis.ir/fa/law/show/102305> [access: 14.05.2025].

⁵¹ M.J. Shariat Bagheri, M.R. Kord Firoozjaji, *Substantive Proceedings in the Administrative Justice Court*, "Judicial Legal Perspectives Quarterly" 2023, vol. 26, no. 96, p. 113 (in Persian).

legislation). Placing these zones in the free trade area takes them from council oversight and places them under the Free Zone Authority, perhaps causing more ecological degradation. Therefore, the court nullified these resolutions.⁵²

Though reforms since 2013 have broadened the jurisdiction of the Court of Administrative Justice, the Court has failed to utilise this authority to tackle issues of substance on the environment, demonstrating a shallow application of legal processes and a lost opportunity to enhance environmental protection.

The *Waddenze* case illustrates how the Iranian Administrative Court of Justice and the Court of Justice of the European Union differ in their approach to environmental law, particularly in integrating formal and substantive principles. Although the Iranian Administrative Court of Justice emphasises procedural procedures, the CJEU's ruling in the *Waddenze* case emphasises environmental protection and the precautionary principle.⁵³

The *Waddenze* case (C-127/02) revolved around the interpretation of the EU Habitats Directive. It examined whether mechanical shellfish harvesting in the Wadden Sea, which is a Natura 2000-protected area, qualifies as a plan or project requiring an environmental assessment under Article 6(3) of the Directive.⁵⁴ According to the Court of Justice, any activity that may significantly impact a protected site requires an environmental evaluation. The Court underlined the precautionary principle, holding that even with scientific uncertainty, any risk of environmental damage requires preventive action. This judgment prioritises environmental protection and ecosystem preservation over commercial interests and administrative reasons.

One distinction is the application of the precautionary principle. In the *Waddenze* case the Court emphasised the importance of carefully assessing actions that may impact protected habitats, especially if there is no scientific assurance about the environmental impact. This precautionary approach prioritised environmental factors in decision-making. After 2013, the Iranian Administrative Court of Justice gained competence to assess cases, but did not examine ecological implications from privatisation. The court prioritised formal rules over precautionary considerations for environmental preservation.

⁵² Judgment of the Administrative Justice Court of Iran of 20 September 2014, Case No. 856–1393.6.29. <https://qavanin.ir/Law/TreeText/?IDS=12161583974501531390> [access: 22.04.2026].

⁵³ Judgment of the CJ of 7 September 2004, C-127/02, *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij (Waddenzee)*, EU:C:2004:482, para 44.

⁵⁴ *Ibidem*, para 48.

4. Conclusion

This essay demonstrates how despite having constitutional and legislative provisions for the protection of biodiversity, weak enforcement mechanisms, fault-based liability and the judiciary's restrictive application of principles such as the precautionary principle hinder effective environmental litigation. The Administrative Court of Justice, despite having broader jurisdiction since 2013, is still generally procedural and does not deal with the substantive ecological issues, which differs significantly from the European Union's more sophisticated system, where principles such as the precautionary principle and "the polluter pays" are entrenched judicially. Strengthening Iran's biodiversity litigation relies not only on more open legal standing for citizens and NGOs, but also on a shift towards substantive judicial reasoning that acknowledges ecological integrity alongside administrative legality. Comparative lessons drawn from EU practice suggest that including precaution, enhancing access to justice and instituting stricter liability regimes can transform Iran's biodiversity litigation into a more effective tool for conservation and sustainable development.

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