

	<i>Contents</i>	v
	<i>Authors</i>	xvi
Part I	Property and Environmental Protection	
	An Overview	
	Gerd Winter	
1.	General Reflections on Private Property	2
1.1	Reasons for a Property Guarantee	2
1.2	Institutions Determining Property Concepts	3
1.3	Multilevel Property Protection	4
1.4	Comparing Property Protection	5
2.	Private Property, Public Property, Common Good	5
3.	Private Property in Private and Public Law	6
4.	Constitutionalising Private Property	7
5.	The Objects of Property	7
6.	Property as Opponent and as Defender of Environmental Protection	9
7.	The Scope of Private Property in Relation to Environmental Protection	10
8.	Self-Binding Obligations as Property Content	12
9.	Regulation of Property Uses	13
10.	The Taking of Property	15
10.1	Characterization of Taking	15
10.2	Preconditions and Effects of Lawful Taking	16
11.	Onerous Restrictions of Property Uses (Indirect Expropriation, Conditioned Content Determination)	17
11.1	Categorizing Use Restrictions	17
11.2	Characterization	18
11.2.1	Gravity of Impact	19
11.2.2	Sacrifice for the Public Benefit	20
11.2.2	Weighing up the Gravity of Impact and the Public Interest	20
11.2.3	Sectoral Legislation and Case Law	21
11.3	Preconditions and Effects	22
12.	Dissolution of Property Positions Through Fundamental Policy Change	23
Part II	Jurisprudence of the European Court of Human Rights, Court of Justice of the European Union, and Courts of Transnational Arbitration	
CHAPTER I	Property and Environmental Protection in the Jurisprudence of the European Court of Human Rights	
	Bernhard Wegener	

A.	Historical Development	28
B.	Importance of Environmental Protection in the Court's Case-Law	28
C.	Property and the Environment	30
1.	Depriving or Restricting Property to Protect the Environment	31
2.	Property Protecting the Environment	36
D.	The Parallel Jurisdiction Concerning Art. 8 ECHR	38
E.	Some Preliminary Conclusions	39
CHAPTER 2	Property and Environmental Protection in the Jurisprudence of the Court of Justice of the European Union	
	Jan H. Jans & Annalies Outhuijse	
A.	Introduction	42
B.	The Legal Status of the Right to Property in EU Law	42
C.	Who is Responsible For What?	45
D.	Balancing the Right to Property and Environmental Protection Requirements in the Case Law of the CJEU	50
1.	The Right to Property as 'Shield' to Environmental Regulation	50
2.	The Right to Property as a 'Sword'	52
E.	Restricting the Right to Property With or Without Compensation?	52
F.	Conclusion	54
CHAPTER 3	The ECJ Jurisprudence on Nature Protection and Ownership Rights	
	Agustin Garcia- Ureta	
A.	Introduction	56
B.	Natura 2000 and Ownership Rights	57
1.	Introductory Remarks	57
2.	The Role of 'Economic' Requirements in the WBD and HD	59
3.	Restrictions on the Carrying out of Activities in ECJ Case Law	61
4.	Compensation Measures and Property Rights in Environmental Assessments under the Habitats Directive	65
5.	Declassification of Sites and Ownership Rights	66
6.	Habitats, Species and Ownership Rights	68
C.	Concluding Remarks	73

CHAPTER 4	Property and Environmental Protection in Investor – State Arbitration	
	Ole Kristian Fauchald	
	A. Introduction	76
	B. Definition of Investment	77
	C. Whose Rights are Protected?	82
	D. Indirect Expropriation	82
	E. Amount of Compensation	87
	F. Concluding Remarks	90
Part III	EU and EEA Member States	
CHAPTER I	Property and Environmental Protection in Belgium	
	Luc Lavrysen	
	A./B. Objects of Private Property, Private Property in Natural Resources	94
	C. Private Property Used in Defense of Environmental Protection	94
	D. Property in Public Aids for Beneficial Use of Natural Resources	96
	E. Expropriation	97
	F. Indirect Expropriation by Environmental Regulation?	101
	G. Dissolution of Property for Environmental Protection	103
	H. State Liability for Environmental Damage to Private Property	105
	I. Proprietor's Liability for Environmental Damage	106
	J. Permit Excuse in Environmental Liability	107
	K. Direct or Indirect Expropriation by EU Measures	108
CHAPTER 2	Property and Environmental Protection in Czechia	
	Ilona Jancarova, Jakub Hanak & Vojtech Vomacka	
	A. Objects of Private Property	112
	B. Private Property in Natural Resources	115
	C. Private Property Used in Defense of Environmental Protection	118
	D. Natural Resources as Public Property or Interest	119
	E. Property in Public Aids for Beneficial Use of Natural Resources	120
	F. Expropriation	121
	G. Indirect Expropriation by Environmental Regulation?	122
	H. Dissolution of Property for Environmental Protection	124
	I. State Liability for Environmental Damage to Private Property	125

	J.	Proprietor's Liability for Environmental Damage	125
	K.	Permit Excuse in Environmental Liability	125
	L.	Direct or Indirect Expropriation by EU Measures	126
CHAPTER 3		Property and Environmental Protection in Croatia	
		Lana Ofak	
	A.	Objects of Private Property	128
	B.	Private Property in Natural Resources	128
	C.	Private Property Used in Defense of Environmental Protection	129
	D.	Natural Resources as Public Property or Interest	130
	E.	Property in Public Aids for Beneficial Use of Natural Resources	132
	F.	Expropriation	132
	G.	Indirect Expropriation by Environmental Regulation?	133
	H.	Dissolution of Property for Environmental Protection	136
	I.	State Liability for Environmental Damage to Private Property	137
	J.	Proprietor's Liability for Environmental Damage	138
	K.	Permit Excuse in Environmental Liability	139
	L.	Direct or Indirect Expropriation by EU Measures	139
CHAPTER 4		Property and Environmental Protection in Denmark	
		Peter Pagh	
	A.	Constitutional Aspects	142
	B.	The Scope of Private Property Protection	145
	C.	Natural Resources as Legal Concept	147
	D.	The Legal Status of Subsidies For Environmental Friendly Use	148
	E.	Landowner Liability, State Liability and Operator Liability	148
CHAPTER 5		Property and Environmental Protection in France	
		Matthieu Galey	
	A.	Objects of Private Property	152
	B.	Private Property in Natural Resources	154
	C.	Private Property Used in Defense of Environmental Protection	156
	D.	Natural Resources as Public Property or Interest	159
	E.	Property in Public Aids for Beneficial Use of Natural Resources	161
	F.	Expropriation	162
	G.	Indirect Expropriation by Environmental Regulation?	163

	H.	Dissolution of Property for Environmental Protection	165
	I.	State Liability for Environmental Damage to Private Property (incl. Case of Communal Waste Disposal Site)	166
	J.	Proprietor's Liability for Environmental Damage	167
	K.	Permit Excuse in Environmental Liability	168
	L.	Direct or Indirect Expropriation by EU Measures	169
CHAPTER 6		Property and Environmental Protection in Germany Gerd Winter	
	A.	Objects of Private Property	172
	B.	Private Property in Natural Resources	173
	C.	Private Property Used in Defense of Environmental Protection (incl. Case of Polluting Factory)	173
	D.	Natural Resources as Public Property or Interest	176
	E.	Property in Public Aids for Beneficial Use of Natural Resources	177
	F.	Expropriation	177
	G.	Indirect Expropriation by Environmental Regulation?	179
	H.	Dissolution of Property for Environmental Protection	181
	I.	State Liability for Environmental Damage to Private Property (incl. Case of Municipal Waste Disposal Site)	182
	J.	Proprietor's Liability for Environmental Damage	184
	K.	Permit Excuse in Environmental Liability	184
	L.	Direct or Indirect Expropriation by EU Measures	184
CHAPTER 7		Property and Environmental Protection in Hungary Gyula Bándi	
		Introduction: the Concept of Environmental and Property Rights	186
	A.	Objects of Private Property	187
	B.	Private Property in Natural Resources	188
	C.	Private Property as Opponent and Defense of Environmental Protection	188
	D.	Natural Resources as Public Property or Interest	190
	E.	Property in Public Aids for Beneficial Use of Natural Resources	191
	F.	Expropriation	192
	G.	Indirect Expropriation by Environmental Regulation?	193
	H.	Dissolution of Property for Environmental Protection	194
	I.	State Liability for Environmental Damage to Private Property	194
	J.	Proprietor's Liability for Environmental Damage	196
	K.	Permit Excuse in Environmental Liability	196
	L.	Direct or Indirect Expropriation by EU Measures	197

CHAPTER 8	Property and Environmental Protection in Italy	
	Massimiliano Montini	
A.	Objects of Private Property	200
B.	Private Property in Natural Resources	201
C.	Private Property Used in Defense of Environmental Protection (incl. Case on Industrial Pollution)	202
D.	Natural Resources as Public Property or Interest	203
E.	Property in Public Aids for Beneficial Use of Natural Resources	203
F.	Expropriation	203
G.	Indirect Expropriation by Environmental Regulation?	204
H.	Dissolution of Property for Environmental Protection	205
I.	State Liability for Environmental Damage to Private Property (incl. Case of Municipal Waste Disposal Site)	205
J.	Proprietor's Liability for Environmental Damage	206
K.	Permit Excuse in Environmental Liability	207
L.	Direct or Indirect Expropriation by EU Measures	207
CHAPTER 9	Property and Environmental Protection in Latvia	
	Zaneta Mikosa	
A.	Objects of Private Property	210
B.	Private Property in Natural Resources	212
C.	Private Property Used in Defense of Environmental Protection (incl. Case on Pollution from Industrial Installation)	213
D.	Natural Resources as Public Property or Interest	213
E.	Property in Public Aids for Beneficial Use of Natural Resources	214
F.	Expropriation	215
G.	Indirect Expropriation by Environmental Regulation?	216
H.	Dissolution of Property for Environmental Protection	218
I.	State Liability for Environmental Damage to Private Property	218
J.	Proprietor's Liability for Environmental Damage	219
K.	Permit Excuse in Environmental Liability	220
L.	Direct or Indirect Expropriation by EU Measures	221
CHAPTER 10	Property and Environmental Protection in the Netherlands	
	Jan H. Jans & Annalies Outhuijse	
A.	Constitutional Framework	224
B.	Article 1, Protocol 1 ECHR	225
C.	The <i>Égalité</i> -Principle	228

	D.	The Two Cases According to Dutch Law	231
	E.	Summary	231
CHAPTER II		Property and Environmental Protection in Norway	
		Ole Kristian Fauchald	
	A.	Objects of Private Property	234
	B.	Private Property in Natural Resources	235
	C.	Private Property Used in Defense of Environmental Protection	235
	D.	Natural Resources as Public Property or Interest	236
	E.	Property in Public Aids for Beneficial Use of Natural Resources	238
	F.	Expropriation	238
	G.	Indirect Expropriation by Environmental Regulation?	239
	H.	Dissolution of Property for Environmental Protection	240
	I.	State Liability for Environmental Damage to Private Property	241
	J.	Proprietor's Liability for Environmental Damage	242
	K.	Permit Excuse in Environmental Liability	242
	L.	Direct or Indirect Expropriation by EU Measures	243
CHAPTER 12		Property and Environmental Protection in Poland	
		Barbara Iwanska & Mariusz Baran	
	A.	Objects of Private Property; Property in Natural Resources	246
	C.	Private Property in Natural Resources	249
	D.	Natural Resources as Public Property or Interest	253
	E.	Property in Public Aids for Beneficial Use of Natural Resources	255
	F.	Expropriation	255
	G.	Indirect Expropriation by Environmental Regulation?	256
	H.	Dissolution of Property for Environmental Protection	258
	J.	Proprietor's Liability for Environmental Damage	259
	K.	Permit Excuse in Environmental Liability	259
	L.	Direct or Indirect Expropriation by EU Measures	259
CHAPTER 13		Property and Environmental Protection in Portugal	
		Alexandra Aragão	
	A.	Introduction	262
	B.	The Right to Property and to Environmental Protection in the Constitution	262
	C.	Ownership of Natural Resources	263
	D.	Management of Natural Resources	266

	E.	Expropriation	269
	F.	Restriction to Private Property	271
	G.	Environmental Protection <i>Against</i> Private Property	275
	H.	Environmental Protection <i>Through</i> Private Property	277
	I.	Conclusion	277
CHAPTER 14		Property and Environmental Protection in Slovenia	
		Rajko Knez	
	A.	Objects of Private Property	280
	B.	Private Property in Natural Resources	280
	C.	Private Property Used in Defense of Environmental Protection	281
	D.	Natural Resources as Public Property or Interest	283
	E.	Property in Public Aids for Beneficial Use of Natural Resources	284
	F.	Expropriation	284
	G.	Indirect Expropriation by Environmental Regulation?	285
	H.	Dissolution of Property for Environmental Protection	286
	I.	State Liability for Environmental Damage to Private Property	287
	J.	Proprietor's Liability for Environmental Damage	288
	K.	Permit Excuse in Environmental Liability	288
	L.	Direct or Indirect Expropriation by EU Measures	289
CHAPTER 15		Property and Environmental Protection in Spain	
		Agustin Garcia-Ureta	
	A.	Objects of Private Property	292
	B.	Private Property in Natural Resources	293
	C.	Private Property Used in Defense of Environmental Protection	294
	D.	Natural Resources as Public Property or Interest	295
	E.	Property in Public Aids for Beneficial Use of Natural Resources	296
	F.	Expropriation	297
	G.	Indirect Expropriation by Environmental Regulation?	298
	H.	Dissolution of Property for Environmental Protection	300
	I.	State Liability for Environmental Damage to Private Property	302
	J.	Proprietor's Liability for Environmental Damage	303
	K.	Permit Excuse in Environmental Liability	303
	L.	Direct or Indirect Expropriation by EU Measures	304

CHAPTER 16	Property and Environmental Protection in the United Kingdom	
	Eloise Scotford	
	Overall Comments	306
A.	Objects of Private Property	306
B.	Private Property in Natural Resources	307
C.	Private Property Used in Defence of Environmental Protection	308
D.	Private Property Used in Defence of Environmental Protection	310
E.	Property in Public Aids for Beneficial Use of Natural Resources	310
F.	Expropriation	311
G.	Indirect Expropriation by Environmental Regulation?	313
H.	Dissolution of Property for Environmental Protection Reasons	315
I.	State Liability for Environmental Damage by Government Action to Private Property	315
J.	Proprietor's Liability for Environmental Damage	316
K.	Permit Excuse in Environmental Liability	317
L.	Direct or Indirect Expropriation by EU Measures	317
Part IV	Comparative Studies	
CHAPTER 1	In the Name of "Common Interest": Framing Environmental Goods as Common Goods	
	Massimiliano Montini & Mery Ciacci	
A.	Introduction	322
B.	Public Ownership and Private Ownership of Environmental Goods in the European Jurisdictions: an Overview	324
C.	Ownership in Whose Interest?	327
D.	In the Name of 'Common Interest': Environmental Goods as Common Goods	331
E.	Conclusion	335
CHAPTER 2	Private Property in Request for Environmental Protection	
	Rajko Knez	
A.	Introduction	340
B.	Property Based Remedies Asking for Environmental Protection	341
I.	Private Law Remedies	342

	2.	Public Law Remedies	345
	C.	Conclusion	347
CHAPTER 3		Private Rights and Public Regulation. Civil Liability and the 'Permit Defence'	
		Eloise Scotford	
	A.	No Permit Defence to Third Party Liability of Regulated Entities	350
	B.	Permit Defence to Third Party Liability of Regulated Entities	354
	C.	Conclusion	356
		<i>Questionnaire</i>	362