

Towards an Understanding of Ecological “Integrity” under EU Nature Conservation Law: Complementary Legal and Ecological Perspectives

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It seems remarkable that over 20 years after the adoption of the 1992 Habitats Directive, the principal legislative instrument of EUU nature conservation policy, the key concept of ecological “integrity” remains undefined and only barely understood in legal terms. In what undoubtedly amounts to the most significant normative obligation of this entire legislative regime, Article 6(3) of the Habitats Directive stipulates that national competent authorities shall agree to a plan or project likely to have a significant effect on a Natura 2000 site ‘only after having ascertained that it will not adversely affect the integrity of the site concerned’ having regard to its conservation values.

Therefore, “integrity” is the key concept in the determination of whether such plans or projects may proceed. Official guidance from the EU Commission on the implementation of Article 6 goes some way towards informing the concept with the provision of an “Integrity of Site Checklist” which, though helpful, necessarily lists a series of rather broad and vague factors relating, *inter alia*, to:

- progress in moving towards the site’s conservation objectives;
- the population, balance, distribution, density of key species;
- vital aspects of the structure and functioning of the site;
- the area of key habitats;
- the diversity of the site;
- habitat fragmentation; and
- any loss or reduction of key ecological features.

In the absence of a clear statutory definition it has fallen to the judiciary to give practical meaning to the concept in a number of high-profile cases, notably the Sweetman case currently working its way through the Court of Justice of the European Union (CJEU).

However, it quickly becomes apparent that the judiciary, as lawyers, will craft an understanding of ecological “integrity” shaped by established methods of legislative interpretation and traditional policy considerations, rather than purely ecological factors such as habitat structure and complexity, ecosystems function, viability and/or ecosystem services. For example, in her

Opinion in the Sweetman case, Advocate-General Sharpston focused on the possible implications of declining to find that a severe localized impact on a key ecological feature of a Natura 2000 site amounts to an 'adverse effect on the integrity of the site' for the purposes of Article 6(3). The AG expressed concerns regarding the risk of a site's 'death by a thousand cuts'. It remains unclear to what extent judicial decision-makers can take account of the interconnectedness of a protected site as the various legal provisions which might apply in any given case, including for example the 2000 Water Framework Directive, are not necessarily coherently linked.

Only a structured trans-disciplinary dialogue can reconcile these contrasting perspectives, in order both to inform the legal construction of ecological "integrity" through the inclusion of ecologically appropriate factors, indicators and criteria and, conversely, to ensure that any subsequent technical guidance on ecological "integrity", as well as case-by-case expert determinations under Article 6(3), should have regard to the very valid policy considerations identified by the CJEU.