Natura 2000
European protected areas - navigating the legal landscape

3. The importance and meaning of 'site integrity' (Article 6(3))
About the briefings series

1. This is the third briefing in ClientEarth’s series ‘European protected areas - navigating the legal landscape.’ In this briefing, we provide a simple overview of the meaning of the term ‘site integrity’, used in Article 6(3) of the Habitats Directive.¹ Our second briefing - ‘The test of ‘likely significant effect’ and appropriate assessments (Article 6(3))’ - considered the circumstances in which Member States must undertake appropriate assessments, and what they involve. This briefing follows that analysis, and considers what it means to "adversely affect the integrity of the site", and the circumstances in which a plan or project can be granted permission to proceed. The briefing also considers the legal meaning of ‘favourable conservation status’.

2. This briefing series provides a broad overview of the legal landscape surrounding Article 6 of the Habitats Directive. It is designed to provide the key legal information needed to engage in discussions relating to developments, or plans for developments, in or around Natura 2000 sites. The Natura 2000 network is made up of Special Protection Areas (SPAs) classified under the Birds Directive², and Special Areas of Conservation (SACs) designated under the Habitats Directive.³ The reader will become familiar with the legal framework of Article 6 of the Habitats Directive, which applies across the Natura 2000 network⁴, and how it has been applied by the courts in practice. There are 8 briefings in the series:

1. An overview of Natura 2000
2. The test of ‘likely significant effect’ and appropriate assessments (Article 6(3))
3. The importance and meaning of ‘site integrity’ (Article 6(3))
4. Article 6(3): the precautionary principle and proportionality
5. Article 6(4): the precautionary, proportionality and subsidiarity principles
6. Article 6(3): What constitutes a ‘plan or project’?
7. Article 6: compensation v. mitigation measures
8. Article 6(4): Absence of alternative solutions and imperative reasons of overriding public interest

3. Please check ClientEarth’s website for the latest briefings on the Habitats Directive, and for other documents that may be helpful to those using arguments relating to Article 6. If you have a suggestion for a briefing that is not currently available on www.clientearth.org, please get in touch through wildlife@clientearth.org.

³ For more detail on the classification of SPAs and the designation of SACs, please see briefing 1 of this series, ‘An overview of Natura 2000’
⁴ Articles 6(2) to 6(4) of the Habitats Directive are relevant to the conservation of SPAs classified under the Birds Directive, by virtue of Article 7 of the Habitats Directive
The meaning of 'site integrity'

4. As set out in the first ClientEarth briefing, 'An overview of Natura 2000', Article 6(3) establishes a two-pronged approach to the governance of the Natura 2000 network, containing both procedural and substantive safeguards. It provides that:

- an appropriate assessment is to be carried out when a proposed plan or project, not directly involved with or necessary to the management of the site concerned, is likely to have a significant effect, either individually or in combination with other plans or projects, on the site concerned; and
- after Member States have undertaken the appropriate assessment, and in light of the conclusions of that assessment, the plan or project may only be approved if it can be ascertained that it will not adversely affect the integrity of the site concerned.

5. The concept of 'site integrity' is, thus, found in the second prong of the safeguards of Article 6(3). While that concept is essential for the governance of Natura 2000, it is often not properly understood. Thanks to recent case-law, which provides some clarification on what 'site integrity' means, government decision-makers are now more able to ensure that they are making the correct considerations when authorising activities in Natura 2000 sites.

6. A starting point for any attempt to define the concept of 'site integrity' is recognition of the connection between 'integrity' and the 'site'. The law is clearly drafted so that the relevant consideration is 'site' integrity, rather than the integrity of a specific habitat or species for which the site may have been designated. The term 'site' is defined in the Habitats Directive as "a geographically defined area whose extent is clearly delineated."5 The phrase 'integrity of the site' is not defined.

7. As discussed in our first briefing, 'An overview of Natura 2000', Member States may only permit an activity that could have a significant effect on the Natura 2000 network "if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects".6 It is therefore necessary to understand what "not adversely affect the integrity of the site" means, in order to understand the circumstances in which a Member State may permit proposed plans or projects that affect Natura 2000 sites to proceed.

8. The judgment of the Court of Justice of the European Union (CJEU) in Sweetman7 has provided some clarification on the meaning of 'site integrity'. That case related to a proposal for a road bypass, which would bring about the partial and permanent loss of a limestone pavement within a SAC. That SAC had been partially designated to protect the limestone pavement, a globally rare habitat that is listed in Annex I of the Habitats Directive as a natura

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5 Article 1(j), Habitats Directive
6 See Case C-127/02 Landelijke Vereniging tot Behoud van de Waddenzee, Nederlandse vereniging tot Bescherming van Gogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij ECR I-7405 (Waddenzee), para.59 and 61.
2000 'priority' habitat. The judgment provides guidance on the legal criteria to be applied by a competent authority in an assessment of the likelihood of a plan or project having an adverse effect on the integrity of the site.

9. In its reasoning, the CJEU recalled previously established case law to the effect that "the Habitats Directive has the aim that the Member States take appropriate protective measures to preserve the ecological characteristics of sites which host natural habitat types." This means, the CJEU explains, that in order for the integrity of a site not to be adversely affected, the site needs to be preserved at a 'favourable conservation status'. This requires "the lasting preservation of the constitutive characteristics of the site concerned that are connected to the presence of a natural habitat type whose preservation was the objective justifying the designation of that site."

10. The CJEU goes on to state that "competent national authorities cannot therefore authorise interventions where there is a risk of lasting harm to the ecological characteristics of sites which host priority natural habitats types."

11. The conclusions in Sweetman clearly support a holistic approach to the question of whether 'site integrity' is affected. They require protection not only of the protected habitats and species directly, but also of the constitutive characteristics of the site that are connected to a protected habitat or the habitat of a protected species.

12. Specifically, any intervention which would "prevent the lasting preservation of the constitutive characteristics of the site that are connected to the presence of a priority natural habitat whose conservation was the objective justifying the designation of the site", will be held to be an "adverse effect on site integrity." In Sweetman, it was found that there was an adverse affect on 'site integrity', even though only 1.47 ha out of 270 ha of limestone pavement was lost. This demonstrates that 'site integrity' can be adversely affected even if there are only relatively small direct impacts on the protected habitat itself.

13. The judgment in Sweetman related to 'priority' natural habitat types. Although not all habitat types protected by the Habitats Directive count as 'priority' habitats, it is ClientEarth's position that the judgment would be similarly applicable to any natural habitat included in Annex I in the context of Article 6(3).

14. The holistic requirement to consider a site's constitutive characteristics, as set out in Sweetman, is consistent with the reality that a site's conservation objectives may be affected by activities conducted away from the immediate boundary of the protected habitat for which the site is protected. This is because such activities could have indirect effects on the

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8 Please refer to the first briefing in this series, 'An overview of Natura 2000', for more information about Annex I habitats, and in particular 'priority' status.
9 n.7, para.18
10 n.7, para.38
11 n.7, para.39
12 n.7, para.43
13 n.7, para.48
protected feature. For example, damage to a sandy area may affect the abundance of molluscs and crustaceans available as food for predators occurring on protected reef features. Those activities could therefore remove a key species that plays an essential ecological role for the maintenance of a protected habitat's favourable conditions, for example, through extractive fishing. They could adversely affect the site as a whole, and its ecological resilience and functioning. While Sweetman itself concerned direct damage to an area of Annex I habitat, it nevertheless provides clear confirmation that consideration of the ecological functioning of a site, with regard to its constitutive characteristics, is necessary.

15. The European Commission has also set out guidance on the meaning of 'site integrity'. While guidance from the Commission is not legally binding, it can offer helpful assistance in interpreting requirements under the law. The Commission confirms that the integrity of the site relates to the site's conservation objectives. It suggests, however, that if a plan or project "... will adversely affect the integrity of a site only in a visual sense or only habitat types or species other than those listed in Annex I or Annex II ... the effects do not amount to an adverse effect for purposes of Article 6(3), provided that the coherence of the network is not affected." This guidance overlooks the inherently interconnected character of natural systems, which has since been recognised by the CJEU's requirement to consider the "ecological characteristics of sites which host natural habitat types" rather than only the protected site itself.

16. While the Commission guidance must be updated in light of Sweetman, it may still provide assistance to decision-makers required to consider activities which have superficial effects on a SAC, in conservation terms.

17. In relation to "habitat types or species other than those listed in Annex I or Annex II", referred to in the above extract, the Commission guidance also refers to the definition of "integrity of the site" used in a document of the UK Department of the Environment, which is "the coherence of the site's ecological structure and function, across its whole area, that enables it to sustain the habitats, complex of habitats and/or the levels of populations of the species for which it was classified." This definition, which has been applied in the UK, also confirms that adverse effects to any part of a site, even those which are not designated features, are relevant to the consideration of site integrity. This is necessary in order to ensure a coherent approach to a site's ecological function across its whole area.

18. Guidance published by the UK Department of the Environment and Rural Affairs (Defra) in 2012 also defines the integrity of the site as "the coherence of its ecological structure and
function across its whole area, or the habitats and/or populations of species for which the site has been (or will be) designated."\(^{21}\)

**Favourable conservation status and its relationship with site integrity**

19. As set out in the first briefing of this series, 'An overview of Natura 2000', the primary goal of the Habitats Directive is the achievement of favourable conservation status\(^{22}\) for habitats listed in Annex I of the Habitats Directive, and the species listed in Annex II. It is, therefore, necessary to understand what 'favourable conservation status' means, and how it relates to the concept of 'site integrity'.

20. Conservation status applies to both habitats and species. It is defined in Article 1 of the Habitats Directive as the "sum of the influences" acting on natural habitats or species, by reference to factors such as distribution, structure, function, and abundance.\(^{23}\) It is, therefore, not just the condition of the designated feature itself, but also of its relevant surroundings and influences, which determines conservation status.

21. Moreover, the conservation status of a natural habitat automatically includes the species typically occurring therein, and it will only be taken as 'favourable' if the statuses of its 'typical species' are, themselves, favourable.\(^{24}\) It is also defined by the continued availability of "the specific structure and functions which are necessary for its long-term maintenance", and a stable or increasing natural range.\(^{25}\) Favourable conservation status of a natural habitat, therefore, goes beyond the simple condition of the habitat itself, but also includes interrelated species and ecological functions.

22. For protected species, 'favourable conservation status' requires that there is a "viable component of its natural habitat", and a requirement that "there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis."\(^{26}\) Moreover, Article 3(1) of the Habitats Directive requires that habitats of species for which a SAC has been designated must, themselves, be maintained at, or restored to, favourable conservation status. The 'habitats of species' are defined in Article 1(f) as "an environment defined by specific abiotic and biotic factors, in which the species lives at any stage of its biological cycle." Again, this encompasses much wider factors than merely the protected species itself. Any consideration of site integrity must take place with these broad definitions in mind.

23. A principle means of achieving 'favourable conservation status' is through establishing 'conservation measures' - or 'conservation objectives' - for protected habitats. Article 6(1) of the Habitats Directive states that conservation measures need to correspond to the

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21 Ibid, para.60
22 Article 2(2), 3(1), and 4(4), Habitats Directive
23 Article 1(e) and 1(i), Habitats Directive
24 Ibid, Article 1(e)
25 Ibid
26 Article 1(i), Habitats Directive
ecological requirements of the natural habitats and species listed in Annexes I and II. The European Commission's 'Note on Setting Conservation Objectives for Natura 2000 Sites' also makes it clear that "[s]ite level conservation objectives should be based on the ecological requirements of the natural habitat types and species."27

24. A site's conservation objectives, and the meaning of site integrity, are closely linked. In the UK, the (now superseded) Department of the Environment guidance28 confirmed the widely recognised approach that, for any decision concerning adverse effects on the integrity of a site, the competent authority must take into account the site's conservation objectives.

25. As seen above, the Habitat Directive's framing of the concept of 'site integrity' means that the conservation objectives under Article 6(3) must concern the whole site, and not just its designated features. Therefore, in order for the integrity of a site not to be adversely affected, the whole site needs to be preserved at a favourable conservation status. Sweetman helpfully clarifies that 'favourable conservation status' must be determined by reference to "the lasting preservation of the constitutive characteristics of the site concerned that are connected to the presence of a natural habitat type whose preservation was the objective justifying the designation of that site."29 As we have seen, this is a holistic, rather than a narrowly focussed, requirement.

Conclusion

26. As set out in the first ClientEarth briefing, 'An overview of Natura 2000', Natura 2000 sites are designated to protect specific features, such as bird species, forests, animals, or plants. However, that does not mean that it is only those selected features within Natura 2000 sites that must be protected when authorising plans or projects.

27. Sweetman confirms that the manner in which those protected features interact with the "the lasting preservation of the constitutive characteristics of the site" is the relevant consideration that decision makers must take into account before authorising any plan or project that may affect the Natura 2000 site.

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28 n.18
29 n.7, para.39
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ClientEarth is a non-profit environmental law organisation based in London, Brussels and Warsaw. We are activist lawyers working at the interface of law, science and policy. Using the power of the law, we develop legal strategies and tools to address major environmental issues.

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