

30 June 2010

Your Ref: 950/10/ENVI

Karl Falkenberg  
Director General  
C/O Pilot Project  
European Commission  
Environment DG  
B – 1049 Brussels  
Belgium

Dear Mr Falkenberg,

**EU Pilot Project Case: 950/10/ENVI – UK Environmental Impact Assessment**

1. Thank you for your correspondence in which you requested details on the progress made by the UK in drafting legislation to address two court judgements (R. Baker v. Bath and North East Somerset Council Hinton Organics (Wessex) Ltd. [2009] EWHC 595 (Admin) 'Baker' case and the Court of Justice in ex parte 'Mellor' case C-75/08) in response to a letter addressed to the Commission from the Kent Environment and Community Network (KECN) dated 15<sup>th</sup> January 2010. The letter from the KECN raised concerns specifically in relation to the 'Baker' judgement which they allege has not been addressed in changes to legislation in spite of assurances made by this Department that the necessary amendments would be made.
2. We are grateful for the opportunity to provide details on the amendments we are making to the relevant domestic legislation. We should explain that this subject is devolved in the United Kingdom, and the response of the responsible administrations is set out below.

## England

3. The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (the 'EIA Regulations') transpose Directive 85/337/EEC in England, as well as in Wales.
4. As noted by the KECN, a letter was sent to all Local Planning Authorities in England in November 2009 which explained our intentions to consider the need to amend our legislation in light of the 'Mellor' and 'Baker' cases. We are now in the process of drafting new Regulations which will take account of these judgements and also consolidate the EIA Regulations with various amending Regulations that have been made since 1999.
5. The new EIA Regulations will be a statutory instrument subject to UK Parliamentary procedure. The timetable for enacting the new EIA Regulations is as follows:
  - August to October 2010 – Public consultation on the draft statutory instrument
  - December 2010 – draft statutory instrument is laid before Parliament

- January 2011 – statutory instrument comes into force.
6. The KEEN have asked that infringement proceedings against the UK are commenced against the UK because it has failed to properly transpose article 10a of the EIA Directive into UK law. We have carefully considered Mr Justice Collins' comments with regard to regulation 4(8) of the EIA Regulations 1999. We wish to explain that regulation 4(8) of the EIA Regulations does not, and is not intended to, transpose Article 10(a) of the EIA Directive. It is a residual power vested in the Secretary of State to direct that a development is EIA development notwithstanding that it falls neither within Schedule 1 nor with the relevant Schedule 2 thresholds. There is guidance on regulation 4(8) in Circular 02/99 (Environmental Impact Assessment) which can be found at: <http://www.communities.gov.uk/documents/planningandbuilding/pdf/155958.pdf>. It is considered that the domestic remedy of judicial review satisfies the requirements of the review procedures under Article 10(a). Part 6 of the EIA Regulations sets out provisions relating to the availability of opinions, directions etc. for inspection and also the requirements relating to information regarding the right to challenge the validity of decisions and the procedures for doing so.
  7. Further to this, we will be consulting on whether there is a need for further guidance on identifying Schedule 2 development, following comments on the 'Baker' judgement.

#### Scotland

8. The Scottish Government is currently in the process of consulting on amendments to their EIA regulations which take account of the 'Baker' and 'Mellor' judgements. The consultation is due to run to August 27<sup>th</sup> 2010 with the regulations being laid before the Scottish Parliament before the end of the year. The consultation can be viewed at: <http://www.scotland.gov.uk/Topics/Built-Environment/planning/National-Planning-Policy/themes/enviro-assessment/eia/Q/editmode/on/forceupdate/on>

#### Wales and Northern Ireland

9. In Wales, consultation on proposed amendments to the EIA regulations is anticipated in July 2010, with a view to them being laid before the National Assembly for Wales before the end of the year. Similarly, Northern Ireland intend to consult on proposed amendments to their EIA regulations in autumn 2010, with a view to laying them before the Northern Ireland Assembly in early 2011.
10. In conclusion, and as explained above, we consider that we are taking the appropriate measures to ensure that the EIA Regulations will accurately transpose Directive 85/337/EEC (as amended). In taking matters forward, we would therefore kindly ask the Commission to consider the steps we are currently undertaking to address the issues which have been highlighted by the two judgments in question.
11. If you continue to have concerns about the matters discussed in this letter we would be happy to discuss them further.

Please do not hesitate to contact me should you require anything further. I look forward to your response.

Yours sincerely,

**Stephanie Hurst**

Deputy Director

Planning and Environment

Communities and Local Government

cc Dr Geoff Meaden