



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT
Directorate A - Legal Affairs and Cohesion
ENV.A.2 - Compliance promotion, governance and legal issues
Head of Unit

11 NOV. 2011

Brussels,
CHAP (2010) 02125

Mrs Christine Metcalfe
luanam@btinternet.com

Dear Mrs Metcalfe,

Subject: Complaint Ref. CHAP(2010) 02125 - Golden Eagles in vicinity of Carraig Gheal wind farm, Argyll and Bute, Scotland – consent for combined Forestry Commission timber haul and turbine delivery route - failure to comply with the requirements of the Wild Birds Directive (Directive 2009/147/EC) and the Environmental Impact Assessment (EIA) Directive (Directive 85/337/EEC as amended)

I am now in a position to update you in relation to this file.

Your complaint centred on the procedure for identifying and granting consent for an access track for the construction road for the wind turbines along the West Loch Awe Timber haul route and the potential impact, as a result of the use of the track, on the nesting site of Golden eagles (approx 1km away). You also raised the concern that a more suitable alternative route was available that the consenting authorities did not take into consideration when granting consent.

You also indicated that the planning permission for the construction of the wind turbines at Carraig Gheal contained a number of conditions for the use of the track, notably that:

- 1) no construction or use of the track as a timber haulage route during the breeding season (Feb to August). If it can be determined that golden eagle are not using their nest, then track operations may continue with the agreement of the authority;
- 2) use of track for wind farm construction to be limited to 2 return convoy journeys per day, max speed 15mph.

At EU level nature protection is regulated by Directive 2009/147/EC¹ (Birds Directive) and Directive 92/43/EEC² (Habitats Directive). The objective of these directives is to ensure a good conservation status of habitats and species covered by the directives. In order to achieve this Member States have to designate sites as special protection areas

¹ OJ L 20, 26.1.2010, p. 7

² OJ L 206, 22.7.1992, p. 7

(SPAs) for birds pursuant to Directive 2009/147/EC and special areas of conservation for habitats and species covered by Directive 92/43/EEC. These sites form the Natura 2000 network.

Projects that can have significant impacts on a Natura 2000 site have to be subjected to an appropriate assessment before being authorised. The project can only be authorised if the assessment shows that the project will not affect the conservation objectives of the site. Projects can be authorised even if they have significant impacts on a Natura 2000 site if they are necessary for overriding public interests, no alternatives exist and measures to ensure the coherence of the Natura 2000 network are provided (Article 6 of Directive 92/43/EEC).

A list of SPA sites of Scotland can be found here: <http://www.snh.gov.uk/protecting-scotlands-nature/protected-areas/international-designations/spa/>

However the area in question at Carraig Gheal, containing the nesting site of the Golden eagles, is not designated as an SPA under the Wild Birds Directive, there is therefore no requirement to undertake an appropriate assessment nor to look at alternatives. The requirements in relation to Annex I species, where such species are outside of a designated area, do not impose an obligation on the authorities to look at alternatives. The Wild Birds Directive does prohibit 'deliberate disturbance'; however, in relation to a nesting site which is 1 km away from the proposed route, with measures to avoid construction work during the birds nesting period, the question of deliberate disturbance would be extremely difficult to prove.

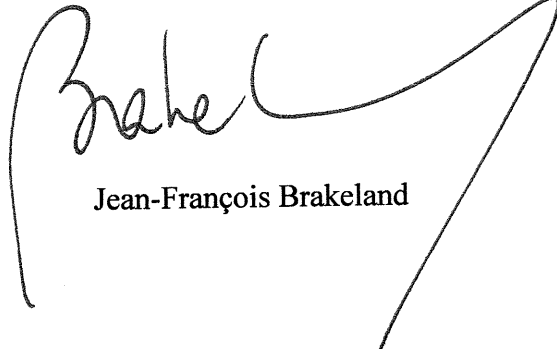
With regard to the question of alternatives under the EIA Directive, Article 5 of the EIA Directive sets out the information to be provided by the developer including Article 5(3): *an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects.*

It should be noted that under the EIA Directive the requirement is limited to indicating that alternatives have been considered, rather than to show that the proposal necessarily represents the best environmental solution in the circumstances.

In relation to the conditions for the use of the route attached to the planning permission, we take the view that as worded the conditions would appear to be reasonable, bearing in mind the role of the competent authority to ensure that they are adequately complied with in practice.

On the basis of our assessment set out above, it is not possible for the Commission to take this matter further at present. I will therefore be proposing that this file is closed. If you have any comments on this assessment please could I ask you to provide these within one month of your receipt of this letter.

Yours sincerely,



Jean-François Brakeland