



EUROPEAN COMMISSION

DIRECTORATE-GENERAL

ENVIRONMENT

Directorate A - Legal Affairs and Cohesion

ENV.A.2 - Compliance promotion, governance and legal issues

Head of Unit

22 MARS 2012

Brussels,  
CHAP (2010) 02125

Mrs Christine Metcalfe  
[luanam@btinternet.com](mailto: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 2011/92/EU)**

Thank you for your email of 19 November 2011 and for the subsequent emails with the most recent ones sent on 1 February and 8 March 2012, which were submitted in reply to our letter of 11 November 2011 CHAP (2010) 02125.

In your replies you have noted that the nest sites of the Golden Eagles are within 600 meters of the proposed road and not within 1 kilometre as was referred in our letter. Unfortunately this fact alone does not provide sufficient evidence to alter the assessment of your complaint given in our letter of 11 November 2011. Moreover in your email of 1 February 2012 you have forwarded to us an update from the Forestry Commission, in which the following information was given:

*In terms of works within the 'Eagle Section' of the WLATHR, the Ecological Clerk of Works has carried out further ornithological monitoring of the eagle and it has been confirmed that a pair of Golden Eagles (a male (presumed to be the resident bird) and a sub-adult female) have been observed in the vicinity of the recent and historical nest sites. The birds were observed displaying typical breeding behaviour including remaining in very close association with one another, stick passing by the female, mock-attacks and territory display flights by the male, food-passes, non-aggressive in-flight interactions and hunting together over the surrounding moorland and hillsides.*

*In light of these observations, the Ecological Clerk of Works has advised GreenPower (Carraig Gheal) Ltd ('GPCG') to stand down from works along the Eagle Section of the WLATHR in order to allow the eagles to prospect the various nest sites within the nesting*

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*territory without disturbance from the works. GPCG and our contractor have followed this advice and works have been stopped in the Eagle Section.*

We also noted the information provided in your last email that the blasting and rock pecking have been maintained at a distance of over 1.5 km from the nesting territory. However against this we can not ignore the fact that the works have been stood down along the 'Eagle section' and that the document 'the Golden Eagle Nesting Territory Monitoring Programme and Key Decision Dates' has been prepared (submitted to us by your email of 8 March 2012), which provides key dates for the decisions to be made on the resumption of construction works within the Eagle Section and that any of those decisions will be based on the results of eagle monitoring surveys and in relation to key recognised stages in the eagle breeding season (i.e. egg laying, incubation, hatching, fledging ect.).

All the above information shows that the ornithological monitoring is being carried out and measures are being taken to avoid disturbance of the Golden Eagles in the area.

In addition you are asking if the fact that the only environmental impact assessment completed on West Loch Awe Timber Haul Route was the one completed jointly by the Green Power (the developer of the Carraig Gheal wind farm) and the Forestry Enterprise, both of which where the applicants for development consent, could constitute a breach of the Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (the EIA Directive). In this regard you refer to the judgement of the European Union Court of Justice in case C-50/09, in which the Court has clarified the obligations of the competent authorities under Article 3 of the EIA Directive. Indeed the obligations of the competent environmental authorities in an environmental impact assessment procedure have been clarified in this judgment and the Court in paragraph 40 explains what the assessment obligation laid down in Article 3 of Directive 85/337 is:

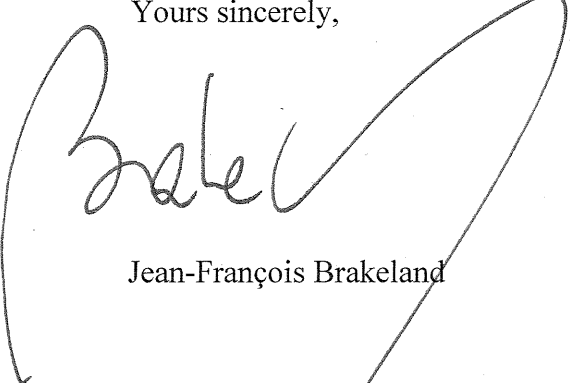
*<...>Indeed, that assessment, which must be carried out before the decision-making process (Case C-508/03 Commission v United Kingdom [2006] ECR I-3969, paragraph 103), involves an examination of the substance of the information gathered as well as a consideration of the expediency of supplementing it, if appropriate, with additional data. That competent environmental authority must thus undertake both an investigation and an analysis to reach as complete an assessment as possible of the direct and indirect effects of the project concerned on the factors set out in the first three indents of Article 3 and the interaction between those factors.*

However there is nothing in the judgement that would oblige the competent authorities to produce their own environmental assessment study.

Finally you are asking if the fact that one of the applicants for the development consent – Forestry Enterprise Scotland – is a subordinate agency of the Forestry Commission, who's services were a competent authority for approval of planning, could constitute a breach of the EIA Directive. In this regard it has to be noted that the EIA Directive applies to both private and public projects. In accordance with Article 1(2)(b) of the EIA Directive the developer can be the applicant for authorisation for a private project or the public authority which initiates a project. Thus it can not be excluded that sometimes the developer and the competent authority could have some links of subordination. However such a fact in itself does not constitute a breach of the EIA Directive.

Having regard to the above and for the reasons given in my letter of 11 November 2011, I have not been able to identify a breach of EU environmental law. Therefore I maintained my proposal to close this file and it was actually closed on 22 March 2012.

Yours sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Brakeland', is written over the typed name. A long, sweeping horizontal line extends from the bottom of the signature across the page.

Jean-François Brakeland

Annex : Specific privacy policy statement