



EUROPEAN COMMISSION  
 DIRECTORATE-GENERAL  
 ENVIRONMENT  
 Compliance, Governance & Support to Member States  
 Environmental Compliance – Enforcement

Brussels  
 ENV.E.3/SG

Mr Dean Blackwood  
 [REDACTED]  
 Belfast [REDACTED]  
 United Kingdom

[REDACTED]

**Subject: CHAP(2014) 01397 transferred to EU Pilot (2015) 7640 concerning enforcement failures in Northern Ireland (River Faughan SAC)**

Dear Mr Blackwood

I would like to provide you with an update and assessment of your above-mentioned complaint file. Following receipt of your complaint and others raising concerns about a lack of enforcement of EU environmental law in Northern Ireland, we launched an EU Pilot investigation, reference EU Pilot (2015)7640 in June 2015. There followed numerous exchanges between the Commission services and the United Kingdom authorities. Our questions concerned the failures of the Northern Irish authorities to pursue planning enforcement action against unauthorised developments such as quarrying and landfills despite having been informed of the existence of such unlawful developments. In particular, we raised concerns about the fact that this had enable numerous environmentally damaging projects to bypass the requirements of the Environmental Impact Assessment (EIA) Directive, now Directive 2014/52/EU. We asked for clarification about the percentage of permissions that came through the system in Northern Ireland retrospectively, including through applications for Certificates of Lawful Use or Development (CLUDs) under Article 83A of the Planning (Northern Ireland) Order 1991. We drew attention to the critical comments on the planning system contained in the so-called Mills Report.

The UK authorities informed us of the follow up given to the Mills Report. In particular, they explained that they took the criticisms of this report seriously and had significantly reorganised their planning enforcement structures as a result. We were provided with information on these new structures and new Enforcement Practice Notes, which have been accompanied by training provided to the local councils that have been assigned these new functions. Furthermore, the UK authorities informed us of the results of their Internal Audit Follow-up Review of the Mills Report dated 8 March 2018. Whilst it appears that many of the Recommendations of the Mills Report have been implemented

and that improvements have been made regarding environmental enforcement in Northern Ireland, we raised concerns about the lack of follow up to Recommendation 9 of the Report. Recommendation 9 states: *Make changes to the current planning enforcement policy to no longer allow the granting of retrospective planning permission for sand and gravel workings.*

The reasons given by the UK authorities in their review Report for this not being followed up were surprising to the Commission as they appeared to claim that in order to do this, changes would be needed to primary law but that this could not be done as “under EU law, retrospective planning permission for unauthorised EIA development is permissible in certain circumstances”.

We explained to the UK authorities that the Commission’s reading of EU law is entirely at odds with this interpretation. There appears to be an incorrect reliance by the Northern Irish authorities on the judgment of the Court of Justice in case C-98/04, *Commission v. United Kingdom*. The Court in that case indeed found the Commission’s claim to be inadmissible, but as a result did not provide guidance on its views on the substance of our claims. In the meantime, there have been further developments in case law and we referred the UK authorities to case C-215/06 *Commission v. Ireland* on this issue. This case concerned very similar circumstances where Ireland was taken to the European Court of Justice for regularly allowing mining and quarrying operations to commence without authorisation and then authorising these retrospectively. This practice was found to be contrary to EU law. We encouraged the UK authorities to read this judgment, to reconsider their position and to implement Recommendation 9. We underlined our concern that the authorities in Northern Ireland appeared to allow retrospective permission to be applied for on a regular basis: in 2013, this figure was 60% of mineral developments. Whilst we were informed that this had reduced to 38.7% in 2017 and 21% in 2018, this is still a high percentage implying that retrospective permissions are not limited to exceptional cases, as EU law requires under Case C-215/06. Nor have we been provided with information that these retrospective processes require the developers to have carried out remedial environmental impact assessments and to consider possible remediation or restoration for damage caused whilst the operations were carried out illegally.

With regard to the situation in and around the River Faughan and Tributaries Special Area of Conservation (SAC) designated under the Habitats Directive, we discussed the situation of the lack of enforcement surrounding the Mabouy Road illegal landfill. As was explained in the Mills Report, this is one of the largest illegal landfill sites in Europe. The UK authorities explained to us at a package meeting in 2017, that there is a minimum of 913,105 m<sup>3</sup> of waste illegally present in this site together with an additional 252,050 m<sup>3</sup> of waste in the former licensed part of the site, some of which was also deposited illegally. We understand that the site has a long history of enforcement failures as were set out in the Mills Report and that no environmental impact assessment was undertaken even for those activities on the site that underwent development consent.

We were informed that a criminal prosecution was underway with regard to the illegal waste activities on the Mabouy Road site, but that this had undergone many years of appeals since the prosecution file was presented in 2014. The last information we were provided at the end of 2018, was that the criminal trial was scheduled to be heard on 7 January 2019. However, we understand from public news reports that this deadline may again have slipped. With regard to remediation of the site, we were told that assessments were ongoing with estimates that the clean up would cost £35-40 million. At the point in

time of our last information on this site at the end of 2018, it appeared that the failures to address the situation at the Mabouy illegal landfill site and to protect the Faughan SAC had still not been addressed.

As guardian of the Treaties, the Commission has a duty to ensure that Member States' legislation and practice comply with EU law. However, in exercising this role, the Commission enjoys discretionary power in deciding whether, and when, to start infringement proceedings or to refer a case to the Court of Justice.<sup>1</sup>

The United Kingdom left the European Union and ceased to be a Member State on 31 January 2020. In accordance with the provisions of the Agreement on the withdrawal of the United Kingdom from the European Union and the European Atomic Energy Community ("the Withdrawal Agreement")<sup>2</sup>, EU law continued to apply to the United Kingdom for a transition period ending on 31 December 2020.

Given the United Kingdom's departure from the European Union, the Commission uses its discretionary power to pursue only complaints that point to a serious breach of EU law by the United Kingdom that could jeopardise specific EU interests, notably in connection with the interpretation and application of the Withdrawal Agreement. If you wish to contact the UK authorities with regard to any follow up on this case or other matters related to the continued application of environmental law nationally we have been informed that a centralised mailbox has been established which accepts queries and complainants regarding UK environmental enforcement and implementation: [REDACTED] Furthermore, I understand that in future it may be possible for complaints to be made to the Office of Environmental Protection: <https://www.theoep.org.uk/submit-complaint>.

In light of the above considerations, we will be proposing to close this complaint file. I make that proposal in the knowledge that your concerns in relation to the unregulated activities of illegal waste deposition on the edge of the River Faughan SAC have not been resolved. Furthermore, that the practice of allowing retrospective mineral extraction permission to be granted without sufficient regard to the requirements set out in case C-215/06 appears to continue without there being any clear provisions ensuring that such cases are exceptional and require the developer to undertake remedial environmental impact assessments and possible restoration. Whilst we do not see a way of taking these concerns further through infringement action, we hope to have an opportunity of providing the United Kingdom with an overview of the outstanding concerns we had on environmental enforcement at the point of the UK's final departure from the EU.

Should you have new information that might be relevant for the re-assessment of your case, pointing to a serious breach of EU law that jeopardises specific EU interests in the context of the United Kingdom's departure from the EU, please contact us within 4 weeks of the date of this letter. After this date, the case may be closed.

Yours sincerely,

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<sup>1</sup> See in particular: judgement in Case C-329/88, Commission v Greece [1989] ECR 4159 and, more recently, judgement in case C-575/18 P, Czech Republic/ Commission, paragraph 66.

<sup>2</sup> OJ L29, 31.1.2020, p. 7.

*(Esigned)*

Paul Speight  
Head of Unit