COMMISSION OF THE EUROPEAN COMMUNITIES

SECRETARIAT-GENERAL

Brussels, 04 IV 2008

SG-Greffe(2008)D/ 201578

PERMANENT REPRESENTATION
OF IRELAND TO THE
EUROPEAN UNION
Rue Froissart, 89-93
1040 BRUSSELS

ACCUSÉ DE RÉCEPTION

NOM
(en caractères d'imprimerie)
REÇU LE A HEURES
REÇU PAR TELEFAX LE A HEURES
SIGNATURE [redacted]

Subject: Additional letter of formal notice
Infringement No 2007/2166

The Secretariat-General should be obliged if you would forward to the Minister for Foreign Affairs the enclosed letter from the Commission.

Irish PRB
RECEPTION
04 -04- 2008
RECEIVED

For the Secretary-General
[redacted]

Encl. C(2008) 0906

IE

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Encl. C(2008) 0906

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03/04/2008

2007/2166
C(2008) 0906

Sir,

I would again draw your attention to the implementation of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (hereinafter referred to as "Directive 2001/42/EC" or "the Directive") in connection with Ireland's National Development Plan 2007-2013 (hereinafter referred to as "the NDP"), following the first letter of formal notice sent to you on 29 June 2007 (ref. SG(2007)D/203942).

The first letter of formal notice drew attention to the failure of Ireland to submit the NDP to an environmental impact assessment (hereinafter referred to as a "strategic environmental assessment" or "SEA") in accordance with Directive 2001/42/EC. The purpose of this additional letter of formal notice is to raise a number of additional issues concerning Ireland's transposal and implementation of Directive 2001/42/EC, while at the same time taking account of arguments and submissions set out in Ireland's response dated 27 September 2007 (ref.SG(2007)A/7417) to the first letter of formal notice.

The letter is divided into a number of sections. The first concerns the failure to submit the NDP to an SEA. The second concerns the failure to submit an important forestry plan to an SEA. The third concerns defects in Ireland's transposing legislation.

I National development plan

The Commission wishes to stress that it has no criticism of the preparation of a national development plan as such. Its concerns relate to the lack of an SEA.

Ireland's above-mentioned response advances three main arguments as to why the NDP should not be considered as subject to the requirements of Directive 2001/42/EC:

- The NDP does not come within the definition of "plans and programmes" found in Article 2(a) of Directive 2001/42/EC because it is not required by *"legislative,*

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regulatory or administrative provisions". Ireland refers to a judgment of the Irish High Court of 31 July 2007 in which the High Court judge determined that *"unlike previous development plans, which were required by EU regulations to draw down EU structural funds, the 2007 NDP is not required by any legislative, regulatory or administrative requirement"*.

- The NDP constitutes a financial plan within the meaning of Article 3(8) of Directive 2001/42/EC. Again Ireland refers to the above-mentioned judgment of the Irish High Court in which the judge considered that the NDP was a financial plan within the meaning of Article 3(8) of the Directive.
- The NDP does not represent a framework for future development consent of projects for purposes of Article 3(2)(a) of Directive 2001/42/EC. Again Ireland refers to the above-mentioned High Court judgment.

The Commission understands that the High Court judgment referred to above is under appeal to Ireland's Supreme Court and that the proceedings concerned have not concluded.

Arguments based on Article 2(a) of Directive 2001/42/EC

As regards Ireland's argument based on Article 2(a) of Directive 2001/42/EC, the Commission accepts that the NDP is not required by any legislative or regulatory provisions. However, it is not satisfied that the NDP was not required by administrative provisions.

The interpretation of what is meant by the reference in the final clause of Article 2(a) of Directive 2001/42/EC to *"required by ... administrative provisions"* is ultimately a matter for the European Court of Justice (ECJ) and it is noteworthy that the High Court judgment contains no analysis of these words used in the Directive.

The interpretation advanced by Ireland has far-reaching implications. It would take outside the scope of Directive 2001/42/EC all self-originated plans and programmes prepared by an authority outside of a pre-existing legislative or regulatory framework, even if such plans and programmes are likely to have significant effects on the environment and have subsequent legal effects. The interpretation would indeed seem to be applied in practice to other plans and programmes in Ireland (see below).

The Commission would submit that, having regard to the broad purpose of Directive 2001/42/EC evident in Article 1 as well as to the links between the definition in Article 2(a) and the substantive scope-of-application provisions of Article 3 of Directive 2001/42/EC, the reference to administrative provisions in Article 2(a) should be taken to extend to administrative provisions consisting of the lawful administrative instructions that emanate from a government or other authority to its officials and agencies to prepare a plan or programme that would in other respects come within the scope of Article 3(2),3(3) and 3(4) of Directive 2001/42/EC. The Commission considers that, provided the instructions are lawful and binding on the officials and agencies concerned, the plan thus to be prepared comes within the scope of Article 2(a) because it is required by administrative provisions. It would submit that the purpose of the reference to *"required by ... administrative provisions"* is to include plans or programmes that are not statutorily required but are required by an authority's lawful internal administrative instructions, while excluding those plans and programmes which are prepared without the necessary legal authority (and which as such cannot subsequently serve as a lawful framework for purposes of Article 3 of Directive 2001/42/EC).

The first letter of formal notice sought details of the administrative instructions that governed the preparation of the NDP, referring to Article 10 of the EC Treaty. Ireland's response does not provide details, submitting that "*the Government of Ireland freely of its own volition approved and launched the NDP ...*". Although it regrets the lack of detail provided in Ireland's response, the Commission assumes from it that preparation of the NDP represented a lawful exercise of government powers and that the officials who prepared it had the necessary authority and instructions to do so. In the light of the preceding paragraph, it concludes that the NDP therefore comes within the definition of Article 2(a) of Directive 2001/42/EC.

Arguments based on Article 3(8) of Directive 2001/42/EC

As regards Ireland's argument based on Article 3(8) of Directive 2001/42/EC, the Commission accepts that the NDP has a financial dimension, with the financial resources needed to meet its objectives being set out. However, the NDP describes itself as a "roadmap" marking out the development challenges faced by Ireland including "*removing the remaining infrastructure bottlenecks that constrain ... economic development and inhibit balanced regional development and environmental sustainability.*" It sets out a number of objectives including "*decisively tackling structural infrastructure deficits*" and identifies a number of specific infrastructure projects. It is of a similar character to programmes under the Structural Funds which are subject to SEA. In the light of this, it would be anomalous to treat the NDP as being outside the scope of Directive 2001/42/EC while treating Structural Fund programmes as being within it. The Commission would also submit that the fact that a plan or programme has a financial dimension and sets out the anticipated resource allocation for particular objectives does not necessarily bring it within Article 3(8) of Directive 2001/42/EC. Indeed, Annex II of Directive 2001/42/EC specifically refers to the allocation of resources as amongst the criteria for determining the need for SEA where this is discretionary.

Arguments based on Article 3(2)(3) and 3(4) of Directive 2001/42/EC

As regards Ireland's argument based on Article 3(2), (3) and (4) of Directive 2001/42/EC, the letter of formal notice drew attention to one example of where the NDP could be considered as setting a framework for a development subject to the requirements of Directive 85/337/EEC, namely the Lansdowne Road football stadium.

Other examples may be cited:

- In approving a waste incinerator project in County Meath[1], the Planning Appeals Board cited the NDP provisions in regard to waste management in its reasons and considerations.
- In approving a new airport terminal and ancillary works at Dublin Airport[2], the Board again referred to the NDP[3]. The Board's inspector noted: "*The National Development Plan 2007-2013 (NDP) recognises that investment in the three State*

[1] An Bord Pleanála Reference Number: PL 17.219721

[2] An Bord Pleanála Reference Number: PL 06F.220670

[3] The development consent contains the following text: "*Having regard to National Policy as set out in -*

- *The National Development Plan (2007 to 2011),*
- *The National Spatial Strategy (2002 to 2020), and*
- *Transport 21 (2006 to 2015),*

which provide for expansion of infrastructural capacity and enhancement of the level of service at Dublin Airport because of its international gateway status, and provide for investment priority for an upgraded public transport system and improved road network to serve Dublin Airport."

Airports and the continued support for the Regional Airports will play a key role in promoting internal and external accessibility. It is recognized that, with the completion of the second terminal at Dublin Airport, there would be capacity to cater for in excess of 30 mppa."

- In the development consent process for the N6 Ballinasloe to Athlone Dual Carriageway (a road project in County Galway)[4], the NDP was invoked by a planning inspector in relation to the need for the project.
- In the development consent process for the proposed quarry development at Kilmady Little, Horseleap, County quarry[5], the planning inspector referred to the NDP in terms of creation of a major demand for aggregrate materials.

Apart from these examples, the Commission would point out that, under the terms of Ireland's Planning and Development Act, 2000, which governs project decision-making by Irish local authorities and Ireland's Planning Appeals Board, including in relation to projects falling within the scope of Directive 85/337/EEC, there is explicit reference to planning authorities having regard to *"the policy of the Government, the Minister or any other Minister of the Government"*[6]. Section 143 of the 2000 Act provides that the Planning Appeals Board (which will often be the final decision-maker in projects involving an EIA under Directive 85/337/EEC) *"shall, in performing its functions, have regard to the policies and objectives for the time being of the Government, a state authority..."*. Thus, the influence of the NDP on the decisions of local authorities and the Planning Appeals Board in relation to projects falling under Directive 85/337/EEC is not a matter of arbitrary choice: it is founded on requirements contained in Irish planning legislation.

As regards what constitutes a framework for purposes of Article 3(2) of Directive 2001/42/EC, the Commission would observe that it is not necessary for the relevant plan or programme to dictate the outcome of the project decision in order for it to constitute a framework. By analogy, this is evident from the criteria set out in Annex II of Directive 2001/42/EC

Against this background, the failure to undertake an SEA in respect of the NDP represents a breach of the requirements of Articles 3 to 9 of Directive 2001/42/EC inclusive. A breach of Article 10 also arises in as much as the NDP has not been made subject to the binding monitoring referred to in the provision of Directive 2001/42/EC.

II Other plans and programmes excluded from SEA

The interpretation that Ireland gives to Directive 2001/42/EEC in relation to the NDP opens the prospect of other plans and programmes being treated as outside the scope of Directive 2001/42/EC. The following example has come to the Commission's notice. It reserves the right to cite other examples that derive from Ireland's interpretation of Directive 2001/42/EC.

[4] Planning reference PL07 .ER2042

[5] Planning reference PL19 .223610

[6] Section 34

In March 2007, the Irish Government announced the adoption of what was termed a forestry management protocol creating a framework for the establishment of new forestry plantations – which will in practice consist almost entirely of non-native conifer species – in areas identified as requiring classification as special protection areas (SPAs) for the Hen harrier, a species figuring on Annex I of Directive 79/409/EEC on the conservation of wild birds. The failure of Ireland to classify any areas for the species has been the subject of Case C-418/04.

The species is rare and declining. From a high of 200 – 300 pairs in the 1970s, the 2006 population estimate is 130 pairs.[i] It is understood that breeding Hen harriers in the 9 original candidate SPAs announced in 2003 fell by 22% between 2000 and 2005, to 105 pairs[ii].

The Irish forestry research body COFORD suggests that the decline has been attributed to 'agricultural improvement of marginal rough pasture, bogland and scrub, and to the maturation of the Irish forest plantation estate'[iii]. They note that in areas such as Wicklow, where there is now little afforestation, Hen harriers have disappeared, despite wide availability of young second rotation forests. Elsewhere in Ireland, initial increases in Hen Harrier population have been followed by a decline[iv] which can be co-related with the maturing of large forestry plantations.

In these areas, forest growth from already existing young plantations will reduce the proportion of the designated areas that is suitable for Hen Harriers. The Department of Parks and Wildlife's own scientific advice is that 'While suitable afforested habitat is only available periodically, suitable open habitat can be regarded as permanently suitable' [v]

A memorandum from Ireland's Parks and Wildlife Service dated 19 April 2006 admits that *'the bottom line is that new planting represents a net loss of foraging habitat*[vi]'.

The protocol sets out to safeguard certain habitat types used by the species but allows for cumulatively extensive plantations within the areas meriting SPA classification understood to amount to in the order of 9,000 hectares over its 15 year length. The protocol fails to offer protection in respect of very substantial intermingled areas described as 'dry grassland'/'improved grassland'. These excluded habitats are not used as nest sites but are used extensively for foraging.[vii]

The protocol can be considered to be a plan and appears to establish a framework under which, in the areas concerned, afforestation projects within the scope of Directive 85/337/EEC will be approved without any project assessment under the latter directive. It may be noted that Ireland has not created any statutory basis for assessment of land-use plans in the legislation that it uses to give effect to Directive 92/43/EEC on the assessment of the effects of certain public and private projects on the environment (a matter the subject of infringement 1998/2290 and now of an ECJ ruling in Case C-418/04), referring the Commission to the provision for SEA under its implementing legislation for Directive 2001/42/EC. However, no SEA was undertaken pursuant to Directive 2001/42/EC for this forestry plan. The overall result is that a framework for potentially profound land-use changes has been put in place without any of the procedural safeguards provided for in Directive 2001/42/EC being respected.

Against this background, the failure to undertake an SEA in respect of the forestry protocol represents a breach of the requirements of Articles 2 to 9 of Directive 2001/42EC inclusive. A breach of Article 10 also arises in as much as this forestry plan

has not been made subject to the binding monitoring referred to in that provision of Directive 2001/42/EC.

III Conformity of Ireland's transposal of Directive 2001/42/EC

The legislation notified by Ireland for purposes of Article 13 of the Directive consists of two statutory instruments: European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations, 2004, S.I.No.435 of 2004 (hereinafter "S.I.No.435") and Planning and Development (Strategic Environmental Assessment) Regulations, 2004, S.I.No.436 of 2004 (hereinafter "S.I.No.436").

The basic legislation is S.I.No.435. This relates to the categories of plan set out in Article 3(2)(a) of the Directive but, with the exception of a review of the master-plan for the Dublin Docklands Area, excludes from the scope of its detailed provisions "*town and country planning and land use*". Instead, for town and country planning and land use, S.I.No.435 amends.the Planning and Development, Act 2000 ("the 2000 Act"), which is Ireland's principal framework for land-use planning, inserting ministerial powers to adopt detailed regulations under the Act to give effect to the Directive in relation to different types of land-use plans provided for under the Act.

The new ministerial powers were exercised by S.I.No.436. This covers the following categories of land-use plan which are referred to in the 2000 Act: a development plan, a variation of a development plan, a local area plan (or an amendment thereto), regional planning guidelines or a planning scheme.

Article 3(2) plans and programmes

The Directive requires all plans and programmes coming within the scope of its Article 3(2) to undergo an SEA in accordance with its Articles 4 to 9.

S.I.No.435 and S.I.No.436 do not cover programmes (as distinct from plans) within the sphere of town and country planning and land-use. This narrows the scope of application of the Directive. Thus, important Government building programmes such as for decentralised offices, schools and prisons are excluded, although these may have significant land-use implications and have an important bearing on those types of plan that come within the scope of S.I.No.436. As a result, in as much as Ireland has made inadequate provisions for transposing Article 3(2) of the Directive, there is a concomitant failure to comply with Article 3(1) of the Directive in combination with Articles 4 to 9.

Furthermore, for purposes of Article 2(a) in combination with Article 3(2) of the Directive, S.I.No.435 and S.I.No.436 exclude certain categories of plan with a land-use dimension, notably the National Development Plan and other plans that originate in and are adopted by the Irish Government. As a result, in as much as Ireland has made inadequate provisions for transposing Article 2(a) and 3(2) of the Directive, there is a concomitant failure to comply with Article 3(1) of the Directive in combination with Articles 4 to 9.

S.I.No.436 would also not appear to have completely and correctly transposed Article 2(a) in combination with Article 3(2) of the Directive in relation to major modifications of certain land-use plans within its scope. In particular, whereas Article 2(a) of the Directive covers modifications to plans and programmes, S.I.No.436 does not cover changes or amendments to regional planning guidelines or a planning scheme, even though these may concern very large areas. As a result, in as much as Ireland has made

inadequate provisions for transposing Article 2(a) and 3(2) of the Directive, there is a concomitant failure to comply with Article 3(1) of the Directive in combination with Articles 4 to 9.

In addition, it is not clear that S.I.No.435 and S.I.No.436 cover exercises such as county retail strategies, landscape character assessment guidelines, wind-farm guidelines, national heritage plans and local heritage plans. In the context of Article 10 of the EC Treaty, the Irish authorities are asked to clarify whether these exercises are subject to possible SEA under S.I.No.435 and S.I.No.436. In the event that they are not covered, there would appear to be a failure to comply with Article 3(2) of Directive and a concomitant failure to comply with Article 3(1) in combination with Articles 4 to 9.

Article 3(3) plans and programmes

The Directive provides that plans and programmes coming within the scope of Article 3(2) which determine the use of small areas at local level and minor modifications to plans and programmes referred to in Article 3(2) shall require an SEA only where the Member States determine that they are likely to have significant effects. The provisions of Article 3(5) to (7) of the Directive apply to the process of determining whether an SEA is necessary.

S.I.No.436 uses a population criterion of 10,000 people to establish a dividing line between land-use plans requiring an SEA pursuant to Article 3(2) of the Directive and land-use plans subject to case-by-case screening for the possible need for SEA. The Commission is not convinced that the areas excluded from the scope of the provisions of Article 3(2) by this threshold correspond to the terms *"small areas at local level"* referred to in Article 3(3) of the Directive since, in thinly populated districts, the threshold could result in sizeable and environmentally important surface areas being excluded. Even in more densely populated areas, plans covering entire towns may be excluded by the threshold: this would appear to go beyond what is possible by reference to the terms *"small areas at local level"*. Moreover, the Irish legislation does not appear to contain any provisions to avoid plan-splitting, i.e. the division of related plan-making exercises on a population basis so as to cause each exercise to fall below the threshold, notwithstanding the cumulative impact, thus unjustifiably reducing the scope of application of Article 3(2) of the Directive and increasing the scope of application of Article 3(3). In this context, the Commission would also refer to the 10th recital of the Directive which indicates that the plans mentioned there should as a general rule be made subject to environmental assessment. The plans referred to in Article 3(3) are an exception to this general rule and the Commission considers it inappropriate that Article 3(3) should be given an enlarged application at the expense of Article 3(2).

S.I.No.436 would not appear to have completely and correctly transposed Article 2(a) in combination with Article 3(3), 3(5), (6) and (7) of the Directive. In particular, whereas Article 2(a) of the Directive covers modifications to plans and programmes, S.I.No.436 makes no provision for the possible SEA of changes or amendments to regional planning guidelines or a planning scheme.

S.I.No.436 would also appear deficient in relation to the determination of whether a modification of a proposed development plan, proposed variation of a development plan, proposed local area plan or proposed amendment of a local area plan requires SEA. In particular, it would appear from the wording of S.I.No.436 that where a proposed plan in these categories is determined not to require an SEA or where an SEA is deemed

necessary and an environmental report is prepared, any subsequent amendment to the proposal will procedurally escape requirements deriving from the Directive even where such an amendment is likely to have significant environmental effects. The Commission understands that, in practice, this may operate as a significant omission as often important re-zonings of land are introduced very late in a plan-adoption process.

As regards the criteria of Annex II of the Directive referred to in Article 3(5), in particular those criterion set out in Annex II.1, second indent[7], Ireland makes no reference to other programmes in the schedule of S.I.No.436 that corresponds to Annex II. This omission is potentially significant as there is an important relationship between development plans and local area plans, on the one hand, and infrastructure or pollution-control programmes, on the other. For example, a land zoning may lead to urban development that causes a settlement to come within an agglomeration size carrying waste-water collection and treatment obligations under Directive 91/271/EEC concerning urban waste water treatment and have implications for an updated implementation programme under Article 17 of that Directive. Or such a rezoning may have implications for a pollution reduction programme under Directive 2006/12/EC on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community.

In as much as Ireland has made inadequate provisions for transposing Article 3(3) of the Directive, there is a concomitant failure to comply with Article 3(1) in combination with Article 4 to 9 of the Directive.

Article 5(1) to (3), environmental report

Article 5(1) to (3) of the Directive contains provisions relating to the content of the environmental reports that are to form part of the SEA process. Annex 1 of the Directive sets out information to be given.

S.I.No.436 is deficient in its transposal of Annex I because it contains no reference to the other programmes explicitly mentioned in Annex 1(a). As noted above, there may be an important relationship between a land-use plan and infrastructure and pollution-reduction programmes.

Article 5(4), consultation of environmental authorities with regard to scope and level of detail of the information which must be contained in the environmental report

Article 5(4) of the Directive provides for consultation of the environmental authorities referred to in Article 6(3) of the Directive. As noted below, S.I.No.435 and S.I.No.436 would appear to have unduly narrowed the list of environmental authorities requiring consultation. There is a corresponding undue narrowing of the list of environmental authorities requiring consultation under Article 5(4) (see comments on Article 6(3) below).

Article 6, consultation of environmental authorities

Article 6 of the Directive sets requirements for the consultation of environmental authorities designated pursuant to Article 6(3).

[7] "the degree to which the plan or programme influences other plans and programmes, including those in hierarchy".

It does not appear that Ireland has formally designated any authorities as it is required to do under Article 6(3) of the Directive. Instead, S.I.No.435 and S.I.No.436 envisage the possible consultation of only three environmental authorities – Ireland's Environmental Protection Agency, Ireland's environment ministry and Ireland's marine ministry. Whether these need to be consulted is left to the discretion of the authority preparing the plan or programme.

Apart from the lack of formal designation of authorities for purposes of Article 6(3), the Irish legislation would appear to be unduly narrow in terms of the extent of consultation of environmental authorities that it envisages.

First of all, the Commission understands that, in 2007, Ireland's marine ministry was broken up, with certain responsibilities transferring to its agricultural ministry. It is not evident that provision has been made for consultation of the latter ministry for purposes of Articles 5(4) and 6(3).

Secondly, there is provision for possible consultation of the environment ministry only with regard to a limited set of its functions, i.e. nature conservation and archaeological and architectural heritage: there is no provision for consulting it with reference to its central role in planning and allocating resources for environmental infrastructure such as waste-water treatment plants and drinking water treatment facilities. Combined with the omissions concerning programmes already referred to above, this creates a strong risk that tasks related to SEA in the sphere of land-use planning will not take adequate account of the views of strategic environmental decision-makers.

Thirdly, there is no provision for consultation of authorities such as the Heritage Council, which has an important national role in relation to the physical and natural heritage, and the National Museum, which has important functions in relation to safeguarding the archaeological heritage. Nor is there provision for consulting fisheries boards, despite their considerable responsibilities in relation to water pollution and fisheries.

Fourthly, there is no provision for consultation of local authorities responsible for land-use or environmental quality. For example, a county council may prepare a land-use plan for dormitory towns of a neighbouring city which is under the responsibility of a city council. The land-use plan may provide for substantial urban expansion which in turn substantially increases motor vehicle-related impacts, including air quality impacts, in the neighbouring city. Similarly, one local authority may propose a land-use plan which proposes urban expansion without adequate provision for waste-water treatment: this may negatively impact on a neighbouring authority charged with ensuring compliance with bathing water or other water quality standards. Neither S.I.No.435 nor S.I.No.436 treats the affected authority as a designated authority for purposes of Article 6(3) and Article 5(4) of the Directive. There is also no provision for consultation of the Planning Appeals Board, although the Board may subsequently be obliged to take account of plans in its project decision-making.

The restrictive provision for consultation would appear to be contrary to the requirements of Article 6(3) – and by extension the requirements of Article 5(4) (see comments above).

Article 6, consultation of the public

Article 6 of the Directive sets requirements for the consultation of the public.

Article 6(4) requires Member States to identify the public for purposes of consultation: it includes a specific reference to non-governmental organisations. The provisions of Article 6(4) are not transposed into Irish law.

Article 6(2) provides that the public shall be given an early and effective opportunity to express an opinion on a draft plan or programme and the accompanying environmental report. S.I.No.435 – and *mutatis mutandis* S.I.No.436 - impose duties on those authorities proposing plans or programmes to publicise in a newspaper the proposed preparation of a plan or programme and the availability for inspection of the relevant documents *"at a stated place or places and at stated times during a stated period of not less than 4 weeks from the date of the notice"*. In the absence of an express duty to ensure an effective opportunity to express an opinion, the wording of the Irish legislation allows for the possibility that the relevant documents will only be made available at a remote location and during restricted hours. Combined with the lack of transposal of Article 6(4) of the Directive, this has the potential to undermine the objectives of the Directive. For example, the Commission notes that, under Irish law, Ireland's largest non-governmental environmental organisation, An Taisce, has an important statutory role in relation to projects coming within the scope of development plans. However, SEA-related documents concerning a development plan may only be made available for inspection by An Taisce in buildings hundreds of kilometres from where An Taisce is based, making the consultation process ineffective. For ordinary citizens, a plan made by, for example, a Government ministry may only be made available for inspection at a ministry office hundreds of kilometres from where the citizens live. For instance, an aquaculture programme affecting an off-shore island in the north-west of Ireland may be prepared by the agricultural ministry and made available for inspection at its offices in Clonakilty in the far south of the country. There is no provision for posting documents on the internet and no provision is made for making relevant documents available by post within a time-frame that allows an opinion to be expressed. Thus, an affected member of the public may need to make an overnight round-trip of several hundred kilometres in order to have access to the documentation. Against this background, the provisions of the Irish legislation appear to fall short of what is required for an early and effective opportunity to express an opinion.

The Commission of the European Communities consequently takes the view that Ireland has failed to fulfil its obligations under Articles 2 to 10 inclusive and 13 of Directive 2001/42/EC.

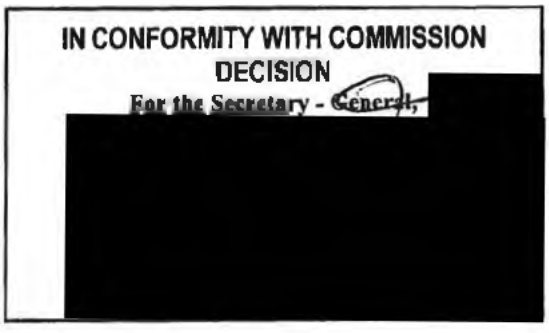
The Commission invites your Government, in accordance with Article 226 of the Treaty establishing the European Community, to submit its observations on the foregoing within two months of receipt of this letter.

After examining these observations, or if no observations have been submitted within the prescribed time-limit, the Commission may, if appropriate, issue a Reasoned Opinion as provided for in the same Article.

Yours faithfully,

For the Commission

Stavros DIMAS
Member of the Commission



[i] BIOFOREST (2006) *Habitat Requirements of Hen Harriers in Ireland,* University College Cork.

[ii] Dr Wilson, Mark (2006) *Report on 2005 Hen Harrier survey data For National Parks and Wildlife Service.* Dept. ZEPS, University College Cork,

[iii] Wilson, Mark, Gittings, Tom, O'Halloran, John, Kelly, Tom, and Pithon, Josephine. (2006) *The distribution of Hen Harriers in Ireland in relation to land use cover, particularly forest cover* COFORD CONNECTS Environment, No.6

[iv] *Op cite.*, BIOFOREST (2006)

[v] *ibid.*

[vi] *Discussion points for Hen harrier Working Group Proposal, National Parks and Wildlife Service, 19 April, 2006*

[vii] *Op site* Dr Wilson, Mark (2006)