



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

Brussels, 29 JUN 2012
ENV.A.2/SG/ym/1038-10-ENVI

Alan Andrews
ClientEarth
3 Chapel Place
London EC2A 3DQ
UNITED KINGDOM

Dear Mr Andrews,

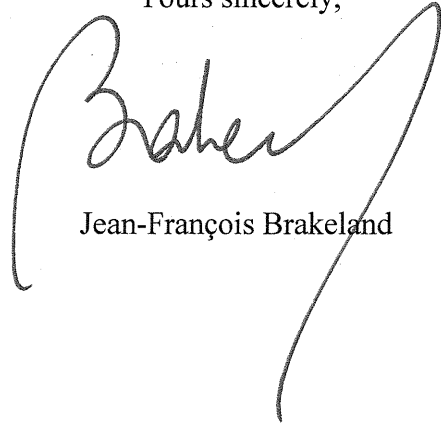
Subject: EU pilot file 1038/10/ENVI

Further to our discussions, I would like to inform you that the above mentioned EU pilot file has been closed. We will await the outcome of your appeal to the United Kingdom's Supreme Court in *R (ClientEarth) v. Secretary of State for the Environment, food and Rural Affairs* and your further update on the situation to decide how best to proceed with this matter given that it now appears clear that numerous Air Quality Plans, including the plan for London, were not communicated to the Commission under Article 22 of Directive 2008/50/EC as was originally thought. In the interim, this EU pilot file will be kept in our archive for access once your proceedings before the Supreme Court case have come to a close. Given that your original complaint was that the United Kingdom had not submitted any applications for time extensions under Article 22 of the Directive, a new case would have to be submitted to the United Kingdom through the EU pilot depending obviously on the outcome of the pending litigation. The Commission would have some considerable concerns if Article 23 of the Directive were seen to be a way of allowing Member States to circumvent the requirements of Article 22 of the Directive. Article 22 of the Directive was introduced in order to afford Member States additional time for compliance for up to a maximum of 5 years, on condition that an air quality plan is established in accordance with Article 23 and communicated to the Commission for assessment. It is only under these conditions that Member States can be afforded additional time for compliance and Article 23 itself cannot be relied upon to further extend this clearly prescribed and limited time extension clause.

As explained, our normal policy is to stay or close complainant files where the issue in question is before the national courts so as to allow national proceedings to run their course before deciding whether or not to instigate our own infringement proceedings under Article 258 of the Treaty on the Functioning of the European Union (TFEU): The national courts are the key authority in Member States tasked with the interpretation and implementation of EU law. The fact that the Commission has powers to bring its own

infringement proceedings against Member States under Article 258 TFEU should not mean that individuals cannot plead these obligations before a national court as has been recognised by the Court of Justice as long ago as 1963 (*Van Gend en Loos* judgment [1963] ECR 1). As the Court already recognised in that case, a restriction of the guarantees against an infringement by Member States to the procedures under Article 258 TFEU would remove all direct legal protection of the individual rights of their nationals. The Court concluded that the vigilance of individuals concerned to protect their rights amounted to an effective supervision in addition to the supervision entrusted by Article 258 TFEU to the Commission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Brakeland', with a large, sweeping flourish extending from the end of the signature.

Jean-François Brakeland