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 ENVIRONMENT  
 Directorate A - Legal Affairs and Cohesion  
 ENV.A.3 - Cohesion policy and EIA

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[REDACTED]  
 Team Co-ordinator  
 UKREP  
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**Subject: The UK Transitional National Plan (TNP) and the Strategic Environmental Assessment (SEA)**

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I refer to your letter dated 14 December 2012 (ref. ARES(2012)1530054), which was sent to the Commission together with the submission of the UK Transitional National Plan (TNP), which sets out your position regarding the application of Directive 2001/42/EC (known as the SEA Directive) to the TNP prepared under Article 32(5) of Directive 2010/75/EU (Industrial Emissions Directive – IED).

First of all, I would like to stress that the application of the SEA Directive to the TNP has been discussed at the regular meetings of the Commission Group of of EIA/SEA National Experts in October 2011 and May 2012. During these meetings, the Commission services pointed out that *"the applicability of the SEA Directive cannot be excluded and will depend on the content of the TNPs"*<sup>1</sup>. The same position was communicated to the Industrial Emissions Expert Group meetings of 4 June and of 20 November 2012.

In the letter (paragraphs 8-10), you acknowledge that the TNP contains measures with which operators of the plants concerned will have to comply and which will lead to changes of the permit conditions of the plants concerned<sup>2</sup>. In addition, it is not disputed that the TNPs are "plans and programmes" within the meaning of Article 2(a) of Directive 2001/42/EC and that are related to "industry". However, you consider that the second part of the condition of Article 3(2)(a) is not fulfilled. Indeed, you argue that if no "construction works" are to be carried out at the plants concerned by the TNP, then there is no "project" in the sense of Article 1(2)(a) of the EIA Directive (2011/92/EU) and no "development consent" in the sense of Article 1(2)(c) of the EIA Directive. The consequence of this argument is that Article

<sup>1</sup> The minutes of those meetings are available at <http://ec.europa.eu/environment/eia/meetings.htm>.

<sup>2</sup> It should be recalled that the TNP shall set a ceiling (for each of the pollutants it covers) defining the maximum total annual emissions for all of the plants covered by the plan (Article 32(3) of the IED) and shall contain *"the measures foreseen for each of the plants in order to ensure timely compliance with the emission limit values that will apply from 1 July 2020"* (Article 32(4) of the IED).

3(2)(a) of the SEA Directive would not apply to TNP, if the latter only contains measures which do not involve "construction works" and do not require "development consent".

Before replying to your question, it should be recalled that the SEA Directive applies on its own merits and its guiding principle is whether plans and programmes are likely to have significant effects on the environment<sup>3</sup>. With regard to the second condition of Article 3(2)(a), in order to establish whether the TNP *"sets the framework for future development consent of projects listed in Annexes I and II to Directive 85/337"*, it is necessary to examine the content and purpose of the TNP.

The condition of Article 3(2)(a) of the SEA Directive concerning the "framework-setting effect" of the TNP is fulfilled, as the TNP will contain measures or conditions which will guide the way the consenting authority decides an application for development consent<sup>4</sup>. It is also evident that the large combustion plants are listed in Annexes I and II of the EIA Directive. In order to determine whether the remaining part of the conditions for applying Article 3(2)(a) of the SEA Directive is met (i.e. *"future development consent of projects"*), it has to be verified whether **the measures included in the draft TNP involve any "construction works" or "interventions in the natural surroundings and landscape" in the sense of the definition of project under the EIA Directive**. Consequently, Article 3(2)(a) would not apply to a TNP including **only** measures, such as closure of a plant or reduction in operating hours, which do not involve any "construction works" and do not require "development consent".

It should be stressed that the above clarification is without prejudice to the application of Article 3(2)(b) of the SEA Directive and of Article 7 of the Aarhus Convention. In addition, if the TNP only refers to small areas at local level or if it introduces minor modifications to existing plans, Article 3(3) of the SEA Directive could apply; in that case, a screening would be required to verify the significance of the effects (positive or negative) and determine the need for a full SEA.

I hope that the above explanation clarifies the requirements of the SEA Directive in relation to the TNP. **In any case, the applicability of the SEA Directive depends on the content of each TNP and the type of measures included in it, proposed by the competent authorities of Member States and approved by the Commission.**

Concerning the **second part of your letter** (i.e. how to best conduct an SEA and how to combine the SEA process with the Impact Assessment process related to the adoption of the national Regulations regarding the administration and maintenance of the TNP), the concrete timing and the various steps depend on the national procedures applicable to the preparation, submission and adoption of TNPs and the way the SEA Directive is transposed at national level. It appears that the draft TNP submitted to the Commission will be subject to preparation and adoption by the UK authorities at a later stage, following the Commission's evaluation and decision; hence, the SEA may be applied at this stage. To avoid duplication of procedures, it is possible to combine the SEA process with the adoption of the national Regulations regarding the administration and maintenance of the TNP.

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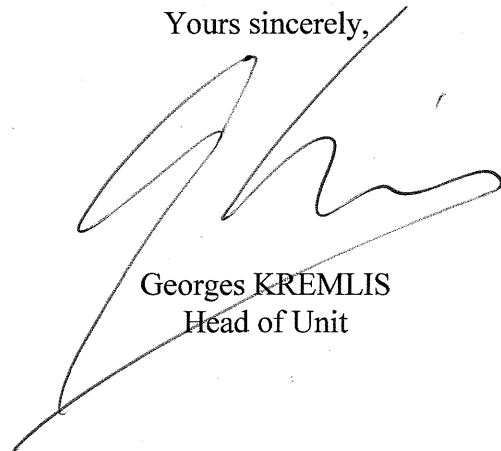
<sup>3</sup> The fundamental objective of the SEA Directive is to require that an environmental assessment is carried out for plans and programmes likely to have significant effects on the environment, at the time they are prepared and before they are adopted (e.g. cases C-105/09 and C-110/09, paragraph 32).

<sup>4</sup> See cases C-105/09 and C-110/09, paragraphs 45-48 and 53.

I would like to draw your attention to the fact that the application of the SEA Directive may lead to changes in the draft TNP. Indeed, in such cases, when formally adopting the TNP, the Member State has to take into account the environmental report and the opinions expressed during the consultation with the public and the environmental authorities (see Article 8 of the SEA Directive). In addition, if the SEA process shows that the implementation of the TNP is likely to have significant effects on the environment, monitoring measures should be foreseen (see Article 10 of the SEA Directive). In these cases, it should be recalled that, in accordance with Article 32(6) of the IED, the national authorities should inform the Commission of any subsequent changes to the TNP.

I trust this information will be of assistance to you. If you have any additional queries, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'G. Kremlis', written over a horizontal line.

Georges KREMLIS  
Head of Unit

C.c.: T. Verheye, Ch. Allen, F. François, K. Panek-Gondek, G. Gerzsenyi, D. Grimeaud, S. Dobрева (ENV)