



Department
for Environment
Food & Rural Affairs

Nobel House
17 Smith Square
London SW1P 3JR

T: 08459 335577
helpline@defra.gsi.gov.uk
www.defra.gov.uk

Aphrodite Smagadi
Secretary to the Aarhus Convention Compliance Committee
Economic Commission for Europe
Environment, Housing and Land
Management Division
Bureau 348
Palais des Nations
CH-1211 Geneva 10
Switzerland

7 June 2013

Dear Ms Smagadi,

Response to draft findings concerning compliance by the United Kingdom with provisions of the Convention (ACCC/C/2012/61)

1. The United Kingdom welcomes the Committee's finding that no issues of non-compliance with the Convention were raised by this communication.
2. We maintain, however, that any suggestion that Parliament is a public authority for the purposes of the Convention because it does not act in a legislative capacity when dealing with a hybrid bill is an incorrect application of the Convention and inconsistent with EU law.
3. As the Committee is aware, projects authorised under the hybrid bill procedure are out of scope of the EU Environmental Impact Assessment Directive 2011/92/EU (EIA Directive). Article 1(4) of the directive provides that it does "not apply to projects the details of which are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process". Our submissions highlighted the

relevance of the CJEU case *Boxus v Region Wallone* (C-128/09) [2012] CEC 414. The Court, in considering both the EIA Directive and the Convention, put forward two conditions that, if met in respect of a legislative act, would take the projects adopted by legislative act outside the scope of the Convention and the directive. These conditions built on the position adopted by the Court in *WWF and others* ((C-435/97) [1999] ECR I-5613) and *Linster* ((C-287/98) [2000] ECR I-6917).

4. The first condition is that the details of the project are to be adopted by a legislative act. That is to say it must be specific, giving the developer the right to carry out the project. This condition is clearly met, with such bills giving the necessary permissions for developers once they are adopted as Acts of Parliament. The second condition is that the objectives of the directive are met by the legislative process. The hybrid bill process, which was outlined in our letter of 16th March 2012, includes the provision of significant amounts of information and opportunities for debate on the proposals and again clearly meets the second condition put forward by the Court. In line with the case law of the CJEU, which had specific regard to the definition of “public authority” in article 2(2) of the Convention as well as articles 6 and 9, the hybrid bill legislative process is outside the scope of both the EIA Directive and the Convention (*Boxus*, paragraph 50). The Committee’s reference to “a decision to permit a specific activity” (paragraph 56 of the draft findings) as a characteristic of a legislative process to which the Convention applies is precisely one of the conditions laid down by the Court for exclusion from the EIA Directive and the Convention (*Boxus*, paragraph 38: “a legislative act adopting a project must...be specific and display the same characteristics as a consent of that kind”).
5. It therefore follows, in line with our earlier submissions, that article 9(2) and (3) of the Convention does not apply to the process put before the Committee in this communication. These provisions relate to challenges to acts of public authorities. Applying the CJEU decision in *Boxus* to the legislative procedure in question means that an examination of the hybrid bill process in the context of article 9 is unnecessary.
6. We request that the Committee reflects these comments on the application of the Convention to hybrid bills in light of the CJEU case law in its findings.
7. There are also some specific comments on the draft, as set out below:
 - In paragraph 14 it should be noted that there are other planning regimes applicable to certain types of project, such as highways, harbours and railways. It could also be noted here that the communicant is comparing the process used to approve Crossrail (the hybrid bill process discussed further

later on in the draft findings) with the process for considering planning applications detailed in paragraph 14.

- In paragraph 21 it should be noted that, if it is decided that the bill is a hybrid bill, it is, after its Second Reading, committed to a select committee (i.e. a committee appointed by the Houses to examine the bill in detail, check and report on it, including the review of petitions). The addition of this stage means that the parliamentary process for a hybrid bill is longer than for regular public bills.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Ceri Morgan', with a stylized, cursive script.

Ceri Morgan