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Secretary to the Aarhus Convention Compliance
Committee
Economic Commission for Europe
Environment, Housing and Land
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Bureau 348
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Dear Ms Smagadi

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by the United Kingdom with provisions of the Convention in connection with the planning of the Crossrail project in the metropolitan area (Ref. ACCC/C/2011/61)

Thank you for your letter dated 18 October 2011 inviting us to comment on the complaints outlined in communication ACCC/C/2011/61.

We have set out below responses to the complaints raised in the communication.

Background

The Crossrail Bill (the "Bill") was introduced in Parliament on 22 February 2005 by the Secretary of State (the "Promoter") and became an Act of Parliament on 22 July 2008 when it received Royal Assent. A chronology of the Bill's passage through Parliament is attached at annex 1. By approving the Bill, Parliament was acting as the decision making body by approving the building of the project and also the powers contained in the Bill needed for the project, including those which are the subject of the communication.

As explained in more detail below, the legislative process that was followed for the Crossrail Act 2008 (the "Act") gave the public sufficient opportunity to participate in the decision making process. The process also meant that Parliamentarians were provided with sufficiently detailed information about the project to enable them to properly consider the likely environmental impact of the project before giving their approval for the project to proceed.



A number of documents were made available to enable members of Parliament to consider environmental issues before deciding whether or not to approve the passing of the Bill when it had its third reading. For example, an environmental statement on the likely environmental impacts of the project was prepared and submitted to Parliament when the Bill was introduced to Parliament in 2005 and supplementary environmental statements were also submitted to Parliament when amendments were made to the Bill or when changes were made to the project which affected its environmental impact. Copies of the environmental statement and supplementary environmental statements can be found at <http://www.crossrail.co.uk/railway/getting-approval/crossrail-bill-supporting-documents/environmental-statement>.

A command paper entitled the "Government Overview of the Case for Crossrail and its Environmental Impacts" which summarised the work that had been done to assess, control and mitigate the environmental impacts of the project and why the Government considered that the project was worthy of support was prepared to inform the debate of the Bill prior to its third reading in the House of Commons, after which the House of Commons was asked to approve the Bill, and in doing so, was asked to approve the building of Crossrail. A copy of the paper can be found at <http://www.official-documents.gov.uk/document/cm72/7250/7250.pdf>. That paper also referred to a number of documents which had been made available to members of Parliament and which members of Parliament would wish to consider before taking a decision on whether to approve the project. The documents referred to in that command paper include:

- the First Special Report of the Crossrail Bill Committee, session 2006-07, on the Crossrail Bill (which is referred to later in this response) and in particular chapter 10 of this document in which the Committee summarised issues relating to the environmental impact of the project which could then be considered by members of the House of Commons;
- responses to the Government's consultation on the environmental statement and supplementary environmental statements which were published in two command papers and which are referred to later in this response; and
- information papers which were produced to address some of the frequently raised concerns about the project, including its environmental impact.

During the passage of the Bill through Parliament there were, through debates and also the Select Committee process which is referred to below, ample opportunities for discussion and consideration of the project and its impact before a decision was taken by Parliament to approve the Bill and therefore the construction of the project.

Public participation

The communication claims that there was a lack of public participation in the developments involving Crossrail because there was no requirement for applications for planning consent, for conservation area consent and for listed building consent to be submitted in respect of certain works related to Crossrail.

In this context, we note that the definition of public authorities in Article 2 of the Convention excludes legislative bodies. As the Implementation Guide explains:

Bodies or institutions acting in a legislative or judicial capacity are not included in the definition of public authorities. This is due to the fundamentally different character of decision making either in a legislative capacity, where elected representatives are more directly accountable to the public through the election process, or in a judicial capacity, where tribunals must apply the law impartially and professionally without regard to public opinion.

As explained above, the legislative process that the Crossrail Bill went through was clearly sufficient to satisfy the objectives of the Convention. The information placed before the legislature was sufficiently detailed and informative to enable the legislature to evaluate the likely environmental impact of the proposed project. The elected representatives had sufficient time to examine and consider the proposed project. The legislation itself makes clear what is authorised and any limitations or constraints that are imposed.

The communicant raises the fact that section 10 of the Act deems planning permission for works authorised by the Act and that the requirement for listed building consent and conservation area consent in relation to certain works is disapplied by paragraph 1(a) and paragraph 4 respectively of schedule 9 of the Act. This does not mean that there was no opportunity for the public, and for the communicant, to participate in the decision making process. The Bill was, as explained above, subject to Parliamentary scrutiny and the communicant had the opportunity to participate in, and comment on, the proposals for the project and also the Bill both prior to the Bill's introduction to Parliament and during the Bill's progress through Parliament, before it received Royal Assent on 22 July 2008.

There were a number of consultations which took place before the Bill was introduced to Parliament with specific parties with a particular interest in the project and also a number of consultations with the public more generally. These consultations allowed the public to raise objections to those aspects of the project or the Bill with which they had concerns which could then be given consideration. The Aggregated Consultation Report that was published by Crossrail Limited in September 2005, and which can be found at <http://www.crossrail.co.uk/assets/download/4397>, provides in sections 2 and 3 details about the various consultations that were undertaken and, in sections 5 to 8, the results of those consultations.

The Bill was what is called a hybrid bill which traditionally is used by the Government to obtain authorisation for major projects deemed to be in the national interest, but which also affect a large number of private interests of individuals and organisations. The procedure adopted in relation to hybrid bills gives individuals and organisations an opportunity to oppose the bill or to seek its amendment before a Select Committee under a quasi-judicial procedure in either or both the House of Commons and House of Lords. The procedure for hybrid bills meant that individuals or organisations who were opposed to the Bill were able to submit petitions, in which they set out the objections to the Bill. Provided that a petition was not withdrawn by the relevant petitioner and the petitioner had standing to submit the petition, the petitions were then considered by the Select Committee of the relevant House of Parliament. The Petitioners had the right to appear before the Select Committee to make their cases for objecting to the Bill. Information on the hybrid bill procedure is available at <http://www.parliament.uk/documents/commons-information-office/I05.pdf>.

The Select Committee in the House of Commons sat in public for 84 days of hearings and heard 205 of the 466 petitions against the Bill between 17 January 2006 and 18 October 2007. The remaining petitions were either withdrawn or the petitioner chose not to appear before the Select Committee. As a result of its sittings, the Select Committee suggested amendments to the Bill and also made recommendations to the Promoter of the Bill where it considered that amendments were not appropriate. The Promoter then considered those amendments and recommendations and a number of amendments were made to the Bill as a result. Copies of the Select Committee's interim decisions from July 2006 and July 2007 are available at <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmccross/235/235iv.pdf> (page reference EV 1555) and <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmccross/235/235v.pdf> (page reference EV2063). A copy of the Promoter's responses to the Committee's interim decisions is at <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmccross/235/235v.pdf> (page reference EV1582) and <http://webarchive.nationalarchives.gov.uk/+http://www.dft.gov.uk/adobepdf/165234/302038/4GovernmentresponsetotheCro1.pdf>. A copy of the Select Committee's final report of October 2007 entitled First Special Report of the Crossrail Bill Committee, session 2006-07, on the Crossrail Bill is available at <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmccross/235/235.pdf>.

When the Bill had its first reading in the House of Lords in December 2007, a second petitioning period was triggered which started on 8 January 2008 and ended on 30 January 2008. Over a period of 29 days, the Select Committee in the House of Lords heard 45 petitions of the 113 petitions that were submitted. A copy of the Select Committee's report can be found at <http://www.publications.parliament.uk/pa/ld/ldcross.htm#evid> and a copy of the Promoter's response can be found at <http://www.parliament.uk/documents/upload/080605response.pdf>.

In light of the opportunity to petition against the Bill which is described above, the communicant had an opportunity prior to the Bill receiving Royal Assent to participate in the process which led to the powers which are the subject of the communication being approved by Parliament. The Select Committee process also demonstrates a further aspect of the Parliamentary scrutiny to which the Bill was subject.

Finally, as part of the process of seeking powers for the project, the project was subject to an Environmental Impact Assessment. The findings of the assessment were reported in an environmental statement which was submitted to Parliament, and also published, when the Bill was introduced in February 2005. When the Bill was introduced in Parliament, the Department for Transport invited comments on the environmental statement. It issued a press notice in April 2005 reminding the public of the invitation to submit comments on the environmental statement and setting a deadline for those comment of 17 May 2005. The consultation period on the environmental statement was subsequently extended to 10 June and this extension was also publicised. The comments the Department for Transport received on the environmental statement were included in a command paper entitled Responses to the Consultation on the Crossrail Bill Environmental Statement which was presented to Parliament for its consideration prior to second reading of the Bill in the House of Commons. A copy can be found at <http://www.official->

documents.gov.uk/document/cm66/6603/6603.pdf. Further comments which were received on the environmental statement after 10 June 2005 but before 8 August 2007 were compiled into a further command paper entitled Further Responses to the Government's Consultation on the Crossrail Bill Environmental Statement (<http://www.official-documents.gov.uk/document/cm72/7249/7249.pdf>) which was also presented to Parliament for its consideration prior to third reading of the Bill in the House of Commons when the House of Commons was asked to approve the Bill.

Supplementary environmental statements were also published as amendments were made to the Bill or as changes were made to the project which altered the environmental impacts. Following publication of each of the supplementary statements, the Government issued notice alerting interested parties to the opportunity to comment on the statements. The notices were published in The London Gazette, The Times, The Standard, in local papers along the Crossrail route and on Crossrail Limited's website and the Department for Transport's website.

The consultation that was held in relation to the environmental statement and the supplementary environmental statements also gave the communicant the opportunity to comment on the environmental impact of the project before the Act received Royal Assent. At annex 2 is a chronology showing when the environmental statement and supplementary statements were deposited with Parliament and when the period for commenting on the statements ended.

Access to justice

The communication claims that the communicant had no access to justice because the absence of any planning consent applications, conservation area consent applications and listed building consent applications meant that the communicant was unable to apply for a judicial review. However, as described above, the aims of the Convention in this regard were met through the legislative process. The communicant had an opportunity to participate in the decision making process and make representations before deemed planning was granted for works authorised by the Act and before the disapplication of listed building consent and conservation area consent in respect of certain works and buildings was approved by Parliament.

It is also worth noting the legislation makes clear exactly what was authorised by the legislative process. Although section 10 does provide for deemed planning permission in respect of development authorised under the Act, development which consists of the carrying out of works other than those which are set out in schedule 1 of the Act, only have deemed planning permission if the development is not of a kind which requires environmental information to be taken into account before granting planning permission or, if it is development that is likely to have a significant effect on the environment, the impact of the development assessed in the environmental statements deposited in Parliament or published in connection with the Bill. If such development has not been assessed in the environmental statements then planning permission would have to be sought in the usual way.

In addition, the powers which have been granted under the Act have to be exercised lawfully. The exercise of the powers can be challenged by members of the public through judicial review if they consider that the powers have not been exercised lawfully.

We hope that this clarifies matters for the compliance committee. If you need any further information, please do not hesitate to contact us.

Regards

David Hamson DAVID HAMSON

PP BARBARA ANNING

Barbara Anning

Annex 1 Chronology of the Crossrail Bill's passage through Parliament

22 February 2005 Bill introduced in the House of Commons and receives First Reading

10 March 2005 Examiners (both Houses)

17 March 2005 House of Commons Standing Orders Committee

22 March 2005 House of Lords Standing Orders Committee

7 April 2005 House of Commons and House of Lords carry-over motion debates

7 April 2005 Parliament prorogued for General Election

5 May 2005 General Election

17 May 2005 Queen's Speech

18 May 2005 Bill re-introduced

26 May 2005 Publication of (first) Supplementary Environmental Statement

26 May 2005 – 6 June 2005 Whit Recess

19 July 2005 House of Commons Second Reading and instruction to Select Committee

19 July 2005 Motion to amend House of Commons Standing Order 209 (to allow the Private Bill Office to be open for longer hours during the Recess) approved during Private Business

21 July 2005 – 10 October 2005 Summer Recess

16 September End of petitioning period

2005

30 November 2005 Committee of Selection

20 December 2005 – 9 January 2006: Christmas Recess

12 January 2006 Debate on instructions relating to Additional Provisions 1 & 2

17 January 2006 Start of Commons Select Committee

25 July 2006 Commons Select Committee Interim Decisions

11 October 2006 Promoter's Response to Interim Decisions

24 October 2007 Committee suspends hearings

30 October 2006 Commons Select Committee report on Woolwich Station

31 October 2006 Commons debate on instructions relating to Additional Provision 3 and Carry Over Motion

6 November 2006 Debate on Lords Carry-Over Motion

7 November 2006 Deposit of Additional Provision 3 and Supplementary Environmental Statement 3

8 November 2006 Prorogation

15 November 2006 Queen's Speech

16 November 2006 Bill re-introduced

13 December 2006 End of Additional Provision 3 petitioning period

19 December 2006 – 8 January 2007: Christmas Recess

8 February 2007 – 19 February 2007: Half Term

28 March 2007 Select Committee suspends hearings until consideration of Woolwich Additional Provision; Promoter's closing submissions made

25 April 2007 Debate on instructions relating to Additional Provision 4

16 May 2007 Additional Provision 4 deposited

12 June 2007 End of Additional Provision 4 petitioning period

12 July 2007 Commons Select Committee further interim decisions

26 July 2007 – 8 October 2007: Summer Recess

9 October 2007 Promoter's Response to further Select Committee interim decisions

11 October 2007 Appearance before Examiners on Standing Orders Committee regarding Additional Provisions 1 to 4

18 October 2007 Commons Select Committee reports the Bill
Dissolution of Commons Select Committee

18 October 2007 Commons and Lords Standing Orders Committees

23 October 2007 Commons Select Committee First Special Report published and debate on Commons Carry-Over Motion

25 October 2007 Debate on Lords Carry-Over Motion

30 October 2007 Prorogation

6 November 2007 Queen's Speech

8 November 2007	Bill re-introduced
22 November 2007	Start of Commons Public Bill Committee (2 sessions)
27 November 2007	Continuation and conclusion of Commons Public Bill Committee (2 sessions)
13 December 2007	Report and Third Reading
14 December 2007	Introduced in the House of Lords, receives First Reading and order for petitions passed
18 December 2007	Examiner - second House proofs

18 December 2007 - 7 January 2008: Christmas Recess

9 January 2007	Second Reading
30 January 2008	End of House of Lords petitioning period
19 February 2008	Start of House of Lords Select Committee proceedings
19 May 2008	Bill reported from House of Lords Select Committee
27 May 2008	House of Lords Select Committee publish their first special report
5 June 2008	Promoters response to the House of Lords Select Committee's first special report published
26 June 2008	House of Lords Grand Committee
16 July 2008	House of Lords Report stage
22 July 2008	House of Lords Third Reading

22 July 2008 Commons Consideration of Lords Amendments

22 July 2008 Royal Assent

Annex 2 Chronology of consultations relating to the environmental statement and supplementary environmental statements

Document		Date of Deposit	Deadline for comments
Environmental statement		22 February 2005	17 May 2005 but subsequently extended to 10 June 2005
Supplementary environmental statement 1		26 May 2005	8 July 2005
Supplementary environmental statement 2		18 January 2006	2 March 2006
Amendment provisions environmental statement 1	of	18 January 2006	2 March 2006
Amendment provisions environmental statement 2	of of	9 May 2006	21 May 2006
Amendment provisions environmental statement 3	of	7 November 2006	20 December 2006
Supplementary environmental statement 3		7 November 2006	20 December 2006
A supplementary environmental statement errata		25 January 2007	9 March 2007
Supplementary environmental statement 4		16 May 2007	27 June 2007
Amendment provisions environmental statement 4	of	16 May 2007	27 June 2007