

**COMMUNICATION TO THE AARHUS CONVENTION'S
COMPLIANCE COMMITTEE – (ACCC/C/2010/61)**

COMMENTS ON THE COMMITTEE'S DRAFT FINDINGS IN (ACCC/C/2010/61)

PUBLIC PARTICIPATION REGARDING CONSULTATION

1. The Communicant doesn't accept the Committee's view that the Party concerned didn't fail to comply with article 6.2 of the Convention.
2. However, the Communicant accepts the decision of the Committee in respect of this issue and makes no further submissions in addition to the ones already made.

ACCESS TO ENVIRONMENTAL JUSTICE UNDER ARTICLE 9.2, 9.3 AND 9.4

1. The Communicant is naturally disappointed that the Committee hasn't made any findings one way or another regarding the compliance with articles 9.2, 9.3 and 9.4 of the Convention regarding judicial remedies in respect of the Hybrid Bill procedure hearings before the Committee of the House of Commons.
2. The Communicant has already made detailed written submissions and also oral submissions at the hearing held on 26 June 2012 and it is unnecessary to repeat them.
3. The Communicant also notes that the Committee expressed the view that as the possibility of judicial remedies were never tested in this case, and that there was "a lack of sufficient information about the practice on legal remedies concerning Hybrid Bills, the Party concerned is not in non-compliance with article 9, paragraph 2 of the Convention.
4. In so finding, the Communicant is interpreting this to mean that the Committee would prefer to have concrete instances of alleged breaches, and that Communicants should seek to exhaust all domestic remedies first and test them via review remedies in the courts.
5. The Communicant is therefore interpreting these findings as not pre-judging or precluding any further Communications to the Committee regarding any specific alleged breaches of article 9.2, 9.3 and 9.4 of the Convention concerning Judicial Review as a judicial remedy in respect of environmental decisions heard before House of Commons Committees under the Hybrid Bill procedure.
6. This will be of particular relevance to any Bill relating to HS2 concerning the proposed building of the high speed London to Birmingham railway, in respect of which it is proposed to introduce a Bill to Parliament later this year.
7. The Communicant has already stated that the availability of any judicial remedies in respect of the Hybrid Bill procedure may be subject to prohibition under article 9 of the Bill of Rights 1689.
8. It therefore remains to be seen what view the courts may take regarding this in future cases, or whether to the extent that article 9 of the Convention has been the subject of Directive 2003/35/EC amending Council Directives 85/337/EEC and 96/61/EC that the provisions of section 2 of the European Communities Act 1972 would render article 9 of the Bill of Rights 1689 ineffectual and inoperable in future instances of court challenges under EU law.

9. The Communicant also understands that the UK's compliance with the Convention and in particular article 9.2. 9.3 and 9.4 is also currently the subject of a referral to the Court of Justice of the European Union by the European Commission on behalf of the European Union, and the outcome of that referral is awaited with great interest and will clearly have important implications for the Committee generally and the implementation of the Convention in the UK.

Signed

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