Rt. Hon. Cheryl Gillan MP

HOUSE OF COMMONS
LONDON SW1A 0AA

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Chair, Environmental Audit Committee
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Dear Joan,

HS2 Hybrid Bill process and compliance with Aarhus Convention and Environmental Impact Assessment Directive

Now that the HS2 Hybrid Bill Select Committee is underway, I wanted to raise with the EAC some concerns about the Hybrid Bill process and how this is impacting environmental decision-making in relation to the HS2 project.

The April 2014 Environmental Audit Committee report on HS2 and the Environment raised a number of important concerns around the need to ensure proper environmental safeguards in relation to the implementation of the HS2 project. I, and many others, endorse the conclusions reached by the Committee.

Now that the Parliamentary approval process is well underway, I wanted to raise with the Committee the issue of compliance with the Aarhus Convention. You will recall that the Committee’s report concluded that, in the absence of a Strategic Environmental Assessment having been carried out at the planning stage of the HS2 project, at a time when all alternatives were open to consideration, it is important to ensure that the Hybrid Bill parliamentary process complies with both the Aarhus Convention and the Environmental Impact Assessment Directive (EIA Directive).

I believe there are two important questions to be reviewed. First, does the Aarhus Convention apply to the decision making process currently being undertaken by Parliament. Second, if it does, would the current process meet the obligations imposed on the United Kingdom by this international treaty.

On the first question, there can be little doubt that the Aarhus Convention applies in the context of HS2.

Whilst the Aarhus Convention contains an exemption for parliamentary decision making processes for “bodies or institutions acting in a legislative capacity” (Article 2, paragraph 2 of the Convention), this exemption is highly limited in scope. In situations where a national legislature is no longer acting in a legislative capacity but rather as the public authority

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authorising a project under a legislative process, Parliaments will not be exempt from the requirements of the EIA Directive or the Convention.

I would draw the Committee’s attention to a recent finding of the Aarhus Convention Compliance Committee in relation to Crossrail (case no: ACCC/C/2011/61) where it was held that the fact that a hybrid bill process was being used to secure all powers and consents necessary to authorise a major project did not change the nature of the act as a decision permitting the project. As Parliament is no longer “acting in a legislative capacity”, but rather as the “public authority” authorising a project and granting development consent, the exemption would not apply and the provisions of the Aarhus Convention would be applicable to the decision making process.

The Committee went on to observe that “if all large-scale projects were subject to parliamentary authorisations procedure and evoked article 2 paragraph 2 of the Convention, then there is a risk that important projects would never be subject to the public participation requirements of the Convention and this would run counter to its objectives”.

There therefore can be little doubt that the provisions of the Convention apply to the Parliamentary approval process being used to obtain development consent to construct Phase 1 of HS2. Indeed, some changes have been made to Parliamentary Standing Orders (specifically Standing Order 27A) to try to ensure that the parliamentary process complies with the Convention and the EIA Directive. However, I remain concerned that, in spite of these changes to the standing orders, the process remains non-compliant.

One of the pillars of the Aarhus convention is to ensure that the public have a right to obtain environmental information on request from public authorities and also that public authorities have an obligation to provide and update environmental information and to give guidance to the public. This is to ensure effective public participation in environmental decision making. In addition, the decision maker is obliged under the Convention to take due account of the outcome of public participation.

I am concerned that the current parliamentary process breaches these requirements for the following reasons:

- The Environmental Statement (ES) is not an accurate and complete description of the environmental impacts of HS2 – the EAC report highlighted that over 40% of the route had still not been surveyed prior to the publication of the ES. In addition, a number of my constituents including the local authority have identified between them over 100 factual errors and omissions in the ES. The Select Committee is therefore being asked to make decisions which will have adverse environmental impacts without being provided with accurate information on either the baseline (ie the current environmental position) or the likely effects should the planned scheme proceed.

- Usually a corrected ES would be required with a further consultation period and this is even anticipated by standing order 87, however as far as I am aware no further ES correcting these errors is planned. I hope that the Committee will press the
parliamentary authorities to clarify how they plan to deal with this lack of full and
correct environmental information.

- I note that Information papers have been provided to the Select Committee by HS2
  Ltd addressing a number of issues and the Select Committee has been asked to look
  at these for background information by HS2 Ltd. Indeed counsel for HS2 Ltd has
  indicated to the Select Committee that it should use these as documents of
  reference to answer any questions which members have in relation to the project.
  However, the information papers were not set out in the Environmental Statement,
  which was subject to consultation, and the public have been provided with no other
  opportunity to comment on these documents.

- It is not clear how the results of the information gathered in the ES consultation
  responses is being used to inform any decision as to whether or not to provide
  development consent for HS2.

- Thousands of responses to the HS2 Environmental Statement were summarised
  briefly in a report produced by Golder Associates and provided to all MPs prior to
  the Second Reading. However, this rushed and high level summary cannot be said to
  represent an accurate account of the many and varied issues raised in the public
  responses to the ES consultation. To put these figures in context, the ES consisted of
  over 55,000 pages and there were a total of over 22,000 responses to the
  consultation. However, the Golders Report was a mere 112 pages long – many of
  these pages consisting of graphs with a small amount of text. Therefore, an
  effective summary of the many serious issues raised in relation to the ES, including
  those highlighting errors and omissions, is not being made available to the decision
  makers on the Select Committee.

I should be grateful if the EAC could take this matter forward and examine whether the
current Hybrid Bill process is compliant with the Aarhus Convention. In my view, it would
make sense to undertake this exercise as soon as possible, so that any defects in the
approval process could be addressed quickly.