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Ms Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee
UN Economic Commission for Europe
Environment Division
Palais des Nations
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31 October 2016

Dear Ms Marshall

Re: UK response to ACCC questions (ACCC/C/2015/100)

At its fifty-second meeting the Aarhus Convention Compliance Committee heard Communication ACCC/C/2014/100 relating to the United Kingdom's compliance with the Convention in connection of the proposed construction of HS2. Following that meeting the Committee by letter dated 26 September 2016 have posed a number of questions to the Party concerned (the United Kingdom) and the communicant. This is the United Kingdom's response to those questions directed at the Party concerned. We have sought to answer the questions as comprehensively as possible and reference related documents provided to support our response rather than replicate those documents.

1. Were there any major options regarding HS2 discussed by decision-makers before initiating the DNS consultations that were:

(a) Not subject to public consultations;

No, there were no major options regarding HS2 considered by decision-makers before the DNS consultations that were not available to the public for comment. A wide range of information on alternatives to HS2 were made available before and as part of the 2011 High Speed Rail: Investing in Britain's Future consultation. These included consideration of modal alternatives (road and aviation) [[High Speed Rail: Investing in Britain's Future consultation](#), page 57], alternative high speed rail configurations [[Appraisal of Sustainability: a report for HS2 Ltd](#), section 5, [High Level Assessment of the wider network options – reverse 'S' and 'Y'](#)] and conventional rail alternatives to the HS2 Y network [[High Speed Rail: Investing in Britain's Future consultation](#), pages 57-61, [High Speed Rail Strategic Alternatives Study – Strategic Alternatives to the Proposed Y Network](#)]. The consultation also considered station and route alternatives for HS2 Phase One between London and the West Midlands [[High Speed Rail: Investing in Britain's Future consultation](#), Annex B, pages 122-149]. This covered all the major options considered by the UK Government.

In order to be readily accessible to the public the main consultation document dealt with options at a reasonably high level with further detail on options being provided in the supporting documents that were published as part of the consultation [The full list of documents provided can be found [here](#) and have been provided as part of the United Kingdom's response to the Communication].

(b) Foreclosed from public comment in the DNS consultations?

No. Although the 2011 Consultation asked seven questions and presented information on the major options considered by the UK Government this did not prevent the public from commenting on any option, whether or not considered by the UK Government to that date. The consultation process was an open one and the public were not prevented from making any comment they wished and these comments, where provided, were fully considered.

For example consultation responses included alternative high speed rail configurations – a T-shaped network, a P-shape, reverse-S-shape, X-shape [[Consultation Summary Report](#) section 2.3.53]. Consultation responses also proposed conventional rail alternatives to HS2, including some not considered by the decision-makers at that point. The 51M group of local authorities opposed to HS2 submitted their Optimised Alternative. This was an upgrade of the existing railway that built upon, but was different to, conventional rail alternatives considered by the UK Government. The Government subsequently included detailed analysis of this alternative as part of our response to the 2011 consultation.

Respondents also commented on the station and route options [[Consultation Summary Report](#) sections 5.3.6 – 5.3.21] including proposing options that the UK Government had not considered.

This, therefore, demonstrates that it was a completely open consultation process and no options were foreclosed to public comment.

2. Were there any major options, or related environmental studies, regarding HS2 discussed by decision-makers before initiating the Hybrid Bill consultations that were:

(a) Not subject to public consultations;

No. The Environmental Statement that was consulted on between 25 November 2013 and 27 February 2014 included all the major options and environmental studies that had been considered by the UK Government. The development process for HS2 (as set out in response to question 4) was a progressive process of considering and refining options. At each stage the level of detail (in terms of both the option design and environmental assessment) increased. At each stage of design certain options were discounted and these clearly were not progressed to the next level of detail. However, all options considered were included in the Environmental Statement strategic or major options were principally contained in [The Alternatives Report](#), while more localised alternatives were included in the [Community Forum Area Reports](#) (section 2 of each report).

(b) Considered as touching “on the principle of the Bill” and therefore not subject to consultations concerning the Bill?

No. The hybrid Bill Parliamentary process is such that the principle of the Bill is agreed at Second Reading of the Bill, in the case of the High Speed Rail (London – West Midlands) Bill this was not until 28 April 2014. This was *after* the consultation on the Environmental Statement which took place between 25 November 2013 and 27 February 2014. Until Parliament votes in favour of the Bill at Second Reading there is no “principle of the Bill” and, therefore, all options are available for consideration and debate during those consultations. The principle of the Bill was, therefore, not relevant to or a constraining factor on the options considered at any time between the DNS (12 January 2012) and Second Reading (28 April 2014), including the consultation on the Environmental Statement which was required by Parliamentary Standing Orders.

Even after Second Reading the restriction on issues touching on the principle of the Bill only applies to matters that the Select Committee in each House can consider during the petitioning process. This process is designed to enable individuals who are ‘specially and directly affected’ by the Bill to ask for changes to be made to the Bill before it passes into law.¹ It is distinct from the process by which members of the public are entitled to comment upon the likely environmental impacts of the proposed project which is provided through the public consultation on the Environmental Statement deposited with the Bill under Parliamentary Standing Orders. This restriction on issues touching on the principle of the Bill ensures that the Select Committees – representing only a sub-set of each of the Houses of Parliament (the House of Commons and the House of Lords) – cannot do anything that contradicts the will of Parliament as agreed through the vote at Second Reading.

However, importantly this restriction does not apply to the consultations undertaken during the hybrid Bill process on Additional Provision Environmental Statements and Supplementary Environmental Statements. The consultation process in relation to the Additional Provision and Supplementary Environmental Statements (which took place on 5 occasions between September 2014 and January 2016) thus did not preclude the public from proposing alternatives even if they went against the principle of the Bill. The public’s response to these consultations and the environmental information within the Environmental Statements were considered by the House of Commons at Third Reading at which point Parliament reconsiders the principle of the Bill to determine whether following the Committee process and the public response to the environmental consultations whether Parliament is still supportive of the principle of the Bill. Therefore, while the Government (that is to say the Department promoting the Bill) did not explore options that went against the principle of the Bill at this stage, as they were not considered realistic options, it was open for the public to propose them in response to consultation and open for Parliament at Third Reading to conclude that it no longer supported the principle of the Bill, whether as a result of views expressed in the consultations or for other reasons.

3. Was there any significant information, including environmental studies, on any of the options that instructed the HS2 decision-making process which was not available to the public for commenting?

¹ The paradigm example of a person who is ‘directly and specially affected’ is a person whose land is to be acquired, in whole or in part, pursuant to powers conferred by the Bill. A person who lives in a locality through which the railway passes and who is, for example, solely concerned about the general environmental impacts of the proposed scheme on their area is not a person who is ‘specially and directly affected’ for the purpose of the petitioning process.

No. All environmental information including studies were included in Appraisal of Sustainability and the Environmental Statement.

To the Party concerned:

4. Please provide a concise description (in a table or diagram if convenient) of the main steps in the decision-making regarding the HS2, including the DNS and Hybrid Bill procedures, clearly indicating:

(a) The range of major options:

(i) Discussed in detail at each stage;

The development of HS2 to the point of hybrid Bill deposit is most concisely described in [Information Paper A1: Development of the HS2 Proposed Scheme](#). Section 10 of [Volume 1 of the HS2 London – West Midlands Environmental Statement](#) provides fuller detail of the options considered. [High Speed Rail: Investing in Britain's Future consultation](#), Annex B, also provides a useful description of how particular station and route options were narrowed down. To supplement this information the table below sets out the process that was undertaken to translate the Government's broad policy objective and remit for HS2 into the scheme that was consulted on in 2011.

Within each of the route elements there was a three stage sift process to reach a final preferred option for each element for the 2011 Preferred Route. Following the DNS published in 2012 the focus of option consideration was on mitigation options and design development options related to the Preferred Route set out in the DNS. These options are set out in the Main Alternatives section of each of the Environmental Statement Volume Two: Community Forum Area Reports.

During the House of Commons Select Committee process the main focus of option consideration were measures to address concerns raised by petitioners or other environmental issues identified with the project. These are set out in the Main Alternatives section of the Volume Two: Community Forum Area Reports for each of the Additional Provision and Supplementary Environmental Statements produced during the Select Committee process.

This process is set out in further detail in the table below.

Date	Decision/Stage	Options discussed in detail	Options precluded	Environmental Information available
March 2010	<p>Command Paper 'High Speed Rail' (Cm 7827) published. This set out the Government's view that there should be a new high speed rail line, in the form of a 'Y' network, with the initial route running from London to Birmingham,</p>	<p>Strategic options:</p> <ul style="list-style-type: none"> - New motorways / motorway enhancements - New railways - Upgrades to existing railways - Expansion of domestic inter-city aviation <p>Network options</p> <ul style="list-style-type: none"> - 'Y', 'inverse A', 'reverse S', 'reverse E' <p>Potential lines of route between London and Birmingham</p> <p>Alternative stations</p>	<p>None – although the Command Paper made clear that strategic options based on an expansion of domestic inter-city aviation and motorways would be inconsistent with the Government's sustainability policy</p>	<p>Command Paper CM 7828 (Annex 9)</p> <p>HS2 Ltd Report 'High Speed Rail – London to the West Midlands and Beyond' (December 2009) (Annex 8)</p> <p>A non-technical summary of the Appraisal of Sustainability Report (Annex 10)</p> <p>A series of reports produced by Atkins on strategic alternatives (see Annex 11)</p>
February 2011	<p>Public consultation on (1) proposal for a high speed rail line (2) the Y network and (3) the proposed line of route from London to Birmingham</p>	<p>Strategic options:</p> <ul style="list-style-type: none"> - A new high speed rail network - Upgrades to existing railways <p>Network options</p> <ul style="list-style-type: none"> - 'Y', 'inverse A', 'reverse S', 'reverse E' <p>Potential lines of route between London and Birmingham</p> <p>Alternative stations</p>	<p>None – although the Consultation Document and supporting documents made clear that strategic options based on an expansion of domestic inter-city aviation and motorways would be inconsistent with the Government's sustainability policy</p> <p>The Government made clear in its consultation document that its preference was for a new high speed rail network, in the 'Y' configuration, and that upgrades to existing railway lines were unable to meet the Government's</p>	<p><i>'High Speed Rail: Investing in Britain's Future'</i> Consultation Document (February 2011) (Annex 13)</p> <p>HS2 London to the West Midlands Appraisal of Sustainability (Annex 14). See in particular Section 5 of the main report (Annex 14(i)) and Appendix 6 (Annex 14(viii));</p> <p>HS2 Ltd 'High level Assessment of the wider network options – Reverse 'S' and 'Y' network' (Annex 12)</p>

January 2012	Command Paper 'High Speed Rail: Investing in Britain's Future – Decisions and Next Steps' (Cm 8247)	High speed rail, new conventional lines and enhancements to existing rail networks. Options for serving Heathrow Airport. Line of route and alternatives (eg following the M40, M1, direct route via Heathrow Airport) Alternative stations	objectives. Decision taken by the Government to proceed to seek powers to construct the first stage of a high speed railway network. In this decision government also confirmed the Y configuration; localised route alternatives responding to the 2011 consultation were also presented. The Government had ruled out other strategic / route options as a matter of policy, but those options remained open for consideration by Parliament during passage of the proposed hybrid Bill.	Command Paper CM8247 (Applicant's Annex 2) Case for a high speed network considered at pages 51 – 74, phasing, connections to Heathrow Airport and HS2 at pages 74-83, technical specification and route selection at pages 83-91, and line of route for Phase 1 (London to Birmingham) at pages 91-106.
October and November 2013	Design Refinements	Refinements to the Phase One line of route for Phase 1 of the railway (London-West Midlands)	Decisions on local refinements to the proposed line of route for Phase 1 of the railway were made.	HS2 London – West Midlands Design Refinement Consultation (consultation ran May – July 2013) Summaries of the consultation responses were provided in 'HS2 design refinement consultation: government response on Northolt and Bromford' and 'HS2 design refinement consultation: government response on 12 design refinements'
November 2013	Hybrid Bill deposited in Parliament, with supporting documents required by Standing Orders	The proposed line of route for Phase 1 of the railway (London-West Midlands)	None – all options remained open for consideration by Parliament during passage of the Bill	HS2 London to West Midlands Environmental Statement (Annex 31) This included a report on 'Alternatives' (Vol 5 Technical Appendices Alternatives Report (CT-002-000))

				<p>which considered strategic alternatives to high speed rail (including modal alternatives, and enhancements to the existing rail network), alternatives to the proposed Y network, and alternatives to the line of route/proposed stations for Phase 1. (Annex 30)</p> <p>Volume 2, which is divided into 24 reports focussing on specific geographical areas of the route, includes consideration of alternatives considered at a local level (eg as to the line of route or features such as viaducts or vent shafts) (Vol 2 for CFA 7 (Colne Valley) is at Annex 31(iv))</p> <p>The Environmental Statement was the subject of public consultation under the House of Commons Standing Orders between 25 November 2013 and 27 February 2014¹.</p> <p>¹ There was also a non-statutory public consultation on the draft Environmental Statement (between 16 May and 11 July 2013) prior to the Bill being lodged which had informed the Bill Scheme as deposited in Parliament.</p>
28 April 2014	Second Reading of the Bill in the House of Commons	Lengthy debate in the Chamber, reported in Hansard. Available online via http://services.parliament.uk/bills/2016-17/highspeedraillondonwestmidlands/stages.html	None – until the vote	<p>Environmental Statement (see above)</p> <p>HS2 Independent Assessor High Speed Rail (London-West Midlands) Bill: Summary of Issues raised by comments on the Environmental Statement) (HC 1199) (Annex 32) which summarised the consultation</p>

				responses received during the public consultation on the Environmental Statement (which numbered some 21,833 responses)
1 July 2014 – 22 nd February 2016	Consideration of petitions against the Bill by the High Speed Rail (London to West Midlands) Bill Select Committee (Commons)	<p>The Committee heard detailed evidence from the Promoter and Petitioners on a number of changes which petitioners considered should be made to the Bill scheme in order to mitigate the environmental impacts of the project. These included:</p> <ul style="list-style-type: none"> - An extended tunnel through the Chilterns Area of Outstanding Natural Beauty; - A tunnel under the Colne Valley to replace the viaduct proposed in the Bill Scheme; - Relocation of the Rolling Stock Maintenance Depot - Changes to the horizontal and/or vertical alignment of the railway in North Buckinghamshire. 	<p>Following the vote at Second Reading that the Bill should progress, the ‘principle’ of the Bill was set (namely, that there should be a high speed railway line between London to the West Midlands with stations at London Euston, Old Oak Common, Birmingham Interchange and Curzon Street in Birmingham) The Committee was therefore precluded from considering petitions which challenged the principle of the Bill (i.e. that there should be a high speed railway between London to the West Midlands) or its broad line of route and stations.</p> <p>It was not, therefore, permitted to consider strategic alternatives to high speed rail (for example, enhancements to existing rail networks) or significantly different routes (for example, following a different corridor through the Chilterns)</p>	Evidence provided by the Petitioners and (in response) by the Promoter. These included a number of reports considering proposed changes to the Bill scheme including, inter alia, a comparative assessment of the environmental impacts of the proposed changes.
9 September 2014	1 st Additional Provision to the Bill deposited in Parliament			<p>High Speed Rail (London to West Midlands) Additional Provision Environmental Statement</p> <p>Public consultation on the Additional</p>

				<p>Provision Environmental Statement in accordance with Standing Orders between 19 September and 14 November 2014.</p> <p>Summary of consultation responses prepared by HS2 Independent Assessor and provided to the House of Commons</p>
13 July 2015	2 nd Additional Provision to the Bill deposited in Parliament			<p>High Speed Rail (London to West Midlands) Supplementary Environmental Statement and Additional Provision 2 Environmental Statement (SES AP2 ES)</p> <p>Public consultation on the SES2 AP3 ES in accordance with Standing Orders between 17 July and 28 August 2015.</p> <p>Summary of consultation responses prepared by HS2 Independent Assessor and provided to the House of Commons</p>
15 September 2015	3 rd Additional Provision to the Bill deposited in Parliament			<p>High Speed Rail (London to West Midlands) Supplementary Environmental Statement 2 and Additional Provision 3 Environmental Statement (SES 2 AP3 ES) and provided to the House of Commons</p> <p>Public consultation on the SES2 AP3 ES in accordance with Standing Orders between 25 September and 23 October 2015.</p> <p>Summary of consultation responses</p>

				prepared by HS2 Independent Assessor and provided to House of Commons
12 October 2015	4 th Additional Provision to the Bill laid before Parliament			<p>High Speed Rail (London to West Midlands) Supplementary Environmental Statement 3 and Additional Provision 4 Environmental Statement (SES 3 AP4 ES)</p> <p>Public consultation on the SES3 AP4 ES in accordance with Standing Orders between 16 October and 6 November 2015.</p> <p>Summary of consultation responses prepared by HS2 Independent Assessor and provided to House of Commons</p>
2 December 2015	5 th Additional Provision to the Bill laid before Parliament			<p>High Speed Rail (London to West Midlands) Supplementary Environmental Statement 4 and Additional Provision 5 Environmental Statement (SES 4 AP5 ES)</p> <p>Public consultation on the SES4 AP5 ES in accordance with Standing Orders between 11 December 2015 and 22 January 2016.</p> <p>Summary of consultation responses prepared by HS2 Independent Assessor and provided to House of Commons</p>
23 March 2016	Third Reading of the Bill by the House of Common		None – until the vote	All of the information referred to above

14 April 2016	Second Reading of the Bill by the House of Lords		None – until the vote	All of the information referred to above
19 May 2016 – (continuing)	Consideration of petitions against the Bill by the High Speed Rail (London to West Midlands) Bill Select Committee (Lords)		<p>Following the vote at Second Reading that the Bill should progress, the ‘principle’ of the Bill was set (namely, that there should be a high speed railway line between London to the West Midlands with stations at London Euston, Old Oak Common, Birmingham Interchange and Curzon Street in Birmingham) The Committee was therefore precluded from considering petitions which challenged the principle of the Bill (i.e. that there should be a high speed railway between London to the West Midlands) or its broad line of route and stations.</p> <p>It was not, therefore, permitted to consider strategic alternatives to high speed rail (for example, enhancements to existing rail networks) or significantly different routes (for example, following a different corridor through the Chilterns)</p>	
TBC	Third Reading of the Bill by the House of Lords			

(ii) Already foreclosed at each stage (i.e. matters not to be considered - see for example, the reference to petitions that do “not touch on the principle of the Bill” in paragraph 58 of the Party concerned’s response to the communication).

No options were foreclosed but it was clearly the case that as options were refined through the sifting process work was discontinued on options that did not progress to the next stage unless new information came to light that required them to be re-examined. For example, following the Higgin’s Review *HS2 Plus: a report* in 2014 options for links to HS1 were re-examined culminating in the *Review of HS2 – HS1 connectivity and rail links to the Continent* in November 2015 despite the fact that the Preferred Route in 2012 had determined a HS2-HS1 link.

As already mentioned the principle of the Bill was only established in April 2014 and the vast majority of options work was undertaken before this date.

(b) Whether each of the options discussed at a given stage was accompanied by information regarding its potential environmental consequences (environmental studies); and whether that information was available to the public at the time of consultation.

The options discussed at each given stage were accompanied by an appropriate level of environmental information for that level of design. As set out in the table above the level and detail of environmental information increased as options became more refined. Information on options was available to the public at the time of consultation. The key consultations were the 2011 High Speed Rail: Investing in Britain’s future consultation for which relevant information was published in the consultation document, Appraisal of Sustainability and early publications such as the *High Level Assessment of the wider network options – Reverse ‘S’ and ‘Y’*. The draft Environmental Statement consultation in May 2013, which included initial detailed environmental assessment of the Preferred Route and initial information on the main local alternatives. In addition, all the earlier publications remained publically available, as did documents responding to issues raised in the 2011 consultation such as the *Review of HS2 London to West Midlands Route Select and Speed, Review of Possible Refinements to the Proposed HS2 London to West Midlands Route*. The third key consultation opportunity was the consultation on the Environmental Statement in November 2013. That document, particularly through the *Alternatives Report*, sought to encompass the entire option generation process, but in addition all earlier publications were also available to the public.

(c) Whether each of the options discussed at each given stage was:

(i) Open to public comment;

(ii) Accompanied by any related information regarding that option’s potential environmental consequences available at that time.

All of the options discussed were open to public comment and accompanied by the related environmental information at that time. There were three main opportunities for public comment – the High Speed Rail: Investing in Britain’s future consultation in 2011, the draft Environmental Statement consultation in May 2013, the Design Refinements Consultation in May 2013 and the Environmental Statement consultation in November 2013. There was not a public consultation at each stage of the sifting process but

nonetheless the information and choices made at each stage were very much open to public comment in the three main formal public consultations. And moreover the public did comment on these matters.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Azam' with a horizontal line under the 'm'.

Ahmed Azam
United Kingdom National Focal Point to the UNECE Aarhus Convention