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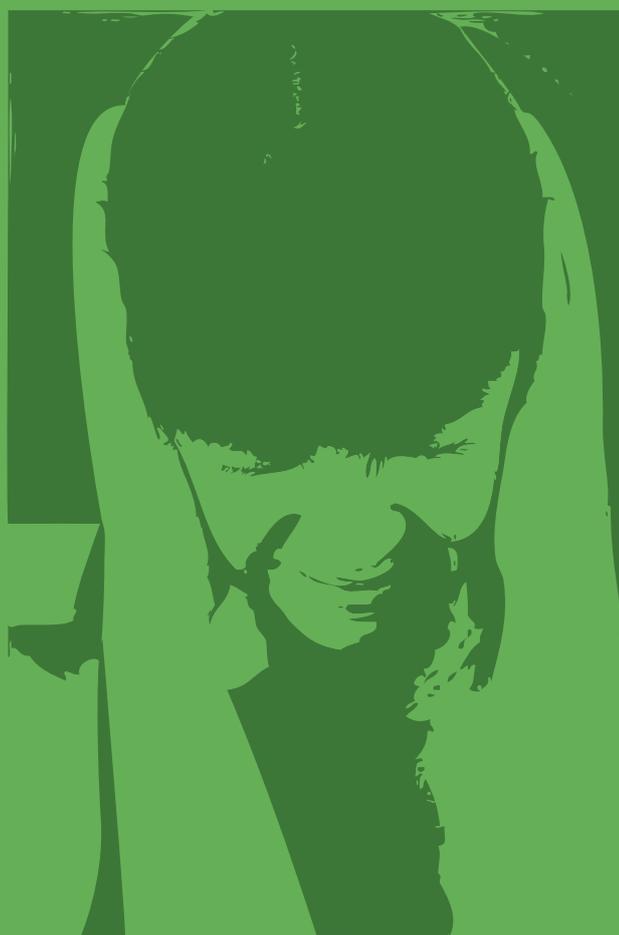


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the European Commission – LIFE+ programme.*

# Make some noise

Shadow report on implementation of the Environmental  
Noise Directive

## Austria



## Justice & Environment

Justice & Environment (J&E) is a European network of environmental law organisations. J&E is a non-profit association with a mission that *aims for better legislation and implementation of environmental law on the national and European Union (EU) level to protect the environment, people and nature*. J&E fulfils this mission by ensuring the enforcement of EU legislation through the use of European law and exchange of information.

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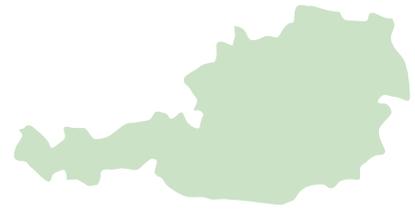
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# National report Austria



## 1. Implementation of the END (Environmental Noise Directive) on national level

### 1.1. General info

#### *1.1.1. How many strategic noise maps and action plans were prepared in respective country, how many quiet areas were established*

##### Noise Maps

Within the first phase of noise mapping, as contained in Directive 2002/49/EC relating to the assessment and management of environmental noise (European Noise Directive, END) the member states are obliged to ensure that no later than 30 June 2007 noise maps for agglomerations with more than 250.000 inhabitants as well as for all major roads, railways and airports have been made.

Five kinds of noise maps have been created and combined into an integrated online map allowing for interactive research on noise exposure

- From road traffic along major roads and in agglomerations: The interactive noise maps allow for a differentiated view on the DEN (day-evening-night) indicator, on the night indicator and on the respective conflict zones where the limit values are exceeded.
- The same is true for noise from railways: The online map shows the noise exposure as indicated by the DEN and the night value along major railways and around railways in agglomerations as well as the respective conflict zones.
- Noise from air traffic is also indicated in a separate map as regards the DEN and the night indicator. Conflict zones are also covered.
- For industrial facilities falling under the IPPC regime information on noise is available only for the agglomeration of Vienna. This information covers the DEN and the night indicator as well as the conflict zones. Vienna is the only agglomeration for which noise maps and action plans have to be created in the first phase.

##### Action Plans

Up to now 11 action plans have been issued. The authority competent for the source of the noise is also competent for noise action planning. Those authorities are the following:

- Noise from highways and expressways: Federal Minister For Transport, Innovation and Technology
- Noise from other roads: The provincial governments (In Vienna the magistrate) of the respective province
- Noise from Railways: Federal Minister for Transport, Innovation and Technology. In addition also the Provincial Governor of Vienna for noise from tram lines
- Noise from Air Traffic: Federal Minister For Transport, Innovation and Technology

- Noise from Industrial Activity of IPPC facilities in the agglomeration of Vienna: Federal Minister for Economics, Family and Youth and the Federal Minister for Agriculture, Forestry, Environment and Water Management

Due to this situation various different action plans have been issued. At the time of writing of this study altogether eleven were available. Following action plans are provided on the homepage of the MoE<sup>1</sup>:

- Action Plan Transport Ministry: Roads
- Action Plan Transport Ministry: Railways
- Action Plan Transport Ministry: Air Traffic
- Action Plan Vienna: Tram Lines
- Action Plan Burgenland
- Action Plan Lower Austria
- Action Plan Styria
- Action Plan Tyrol
- Action Plan Vorarlberg
- Action Plan Vienna
- Action Plan Ministry of Economics/MoE: IPPC facilities in the agglomeration Vienna

For the provinces of Carinthia, Upper Austria and Salzburg no action plans were available at the time of writing of this study.

### Quiet Areas

No quiet areas have been established. They are shortly defined in the Federal Act on Environmental Noise. According to this act they are supposed to be part of the action plans “if applicable”.

#### ***1.1.2. Legal context (liability of action plans, or their connection to other fields of law, like link to land use planning, permitting etc)***

### Transposition of the END

The transposition of the END in Austria had to be carried out on a federal as well as on a provincial level. Following legal acts were amended or newly issued on a federal level as a result of the transposition obligation:

- Federal Act on Environmental Noise (Bundes-Umgebungslärmschutzgesetz, Bundes-LärmG, BGBl I. 60/2005)
- Federal Ordinance on Environmental Noise and corresponding Annex (Bundes-Umgebungslärmschutzverordnung, Bundes-LärmVO, BGBl II. 144/2006)

The competence for the enforcement on the federal level is divided between different ministries according to their assigned responsibilities. Therefore the Federal Minister for Transport is responsible for roads, railways and airports, for IPPC facilities the responsibility is shared between the Minister for

<sup>1</sup> All action plans are available at: <http://www.laerminfo.at/article/articleview/59908/1/17978>

Economics and Labor and the Minister of the Environment (the portfolio of the ministry also covers agriculture, forestry and water management), depending on the type of facility.

On the provincial level each individual province has amended or issued a variety of different acts. In most cases the new provisions on protection from environmental noise have been integrated into the material legal acts regulating the corresponding fields such as the Provincial Road Acts. Only Vienna has chosen a completely integrated approach with one Act and one Ordinance only dealing with noise issues. In general it can be said that the provisions on provincial level are comparable to those of the federal level<sup>2</sup>. Following acts were amended or newly issued:

#### *Burgenland*

- Burgenland Land Use Planning Act (Burgenländisches Raumplanungsgesetz (LGBl. Nr. 47/2006))
- Burgenland IPPC Facilities and Seveso II Enterprises Information Act (Burgenländisches IPPC-Anlagen-, SEVESO II-Betriebe- und Umweltinformationsgesetz (LGBl. Nr. 8/2007))
- Burgenland Road Act (Burgenländisches Straßengesetz 2005 (LGBl. Nr. 11/2007))
- Burgenland Ordinance on the Protection from Environmental Noise (Burgenländische Umgebungslärmschutzverordnung (LGBl. Nr. 71/2007))

#### *Carinthia*

- Carinthian Road Act (Kärntner Straßengesetz (LGBl. Nr. 87/2005))
- Carinthian Town Planning Act (Kärntner Gemeindeplanungsgesetz (LGBl. Nr. 88/2005))
- Carinthian Environmental Planning Act (Kärntner Umweltplanungsgesetz (LGBl. Nr. 89/2005))
- Carinthian IPPC Facilities Act (Kärntner IPPC-Anlagengesetz (LGBl. Nr. 13/2006))
- Carinthian Ordinance on Environmental Noise (Kärntner Umgebungslärmverordnung (LGBl. Nr. 76/2006))

#### *Lower Austria*

- Lower Austrian Road Act (Niederösterreichisches Straßengesetz (not implemented yet))
- Lower Austrian IPPC facilities Act (Niederösterreichisches IPPC-Anlagengesetz (not implemented yet))
- Lower Austrian Spatial Planning Act (Niederösterreichisches Raumordnungsgesetz (LGBl. Nr. 8000-19))

<sup>2</sup> See BRATRSCHOVSKY, Katja: "Öffentliches Lärmrecht" in Raschauer, Wesseley (HG) "Handbuch Umweltrecht", Vienna 2006, p. 430.

### *Upper Austria*

- Upper Austrian Environmental Protection Act (Oberösterreichisches Umweltschutzgesetz (LGBl. Nr. 44/2006))
- Upper Austrian Road Act (Oberösterreichisches Straßengesetz (LGBl. Nr. 61/2008))
- Upper Austrian Ordinance on the Protection from Environmental Noise (Oberösterreichische Umgebungslärmschutzverordnung (LGBl. Nr. 94/2008))

### *Salzburg*

- Salzburg Environmental Protection and Environmental Information Act (Salzburger Umweltschutz- und Umweltinformationsgesetz (LGBl. Nr. 72/2007))

### *Styria*

- Styrian Act on the Operation of IPPC facilities and Seveso II enterprises (Steiermärkisches IPPC-Anlagen- und Seveso-II-Betriebsgesetz (LGBl. Nr. 113/2006))
- Styrian Land Use Planning Act (Steiermärkisches Raumordnungsgesetz (LGBl. Nr. 47/2007))
- Styrian Act on the Protection from Noise from Provincial Roads (Steiermärkisches Landesstraßenumgebungslärmschutzgesetz 2007 (LGBl. Nr. 56/2007))
- Styrian Ordinance on the Protection from Environmental Noise (Steiermärkische Umgebungslärmschutzverordnung - St-ULV (LGBl. Nr. 50/2008))

### *Tyrol*

- Tyrolean Roads Act (Tiroler Straßengesetz (LGBl. Nr. 101/2006))
- Ordinance on the Determination of Main Roads and the Technical Specifications related to Environmental Noise (Verordnung über die Feststellung von Hauptverkehrsstraßen und die technischen Spezifikationen in Bezug auf Umgebungslärm (LGBl. Nr. 43/2007))

### *Vorarlberg*

- Vorarlberg Roads Act (Vorarlberger Straßengesetz (LGBl. Nr. 22/2006))
- IPPC and Seveso II Facilities Act (IPPC- und Seveso-II-Anlagengesetz (LGBl. Nr. 26/2006))
- Ordinance on Noise Maps (Lärmkartenverordnung (LGBl. Nr. 23/2007))

### *Vienna*

- Vienna Environmental Noise Protection Act (Wiener Umgebungslärmschutzgesetz (LGBl. Nr. 19/2006))
- Vienna Ordinance on the Protection from Environmental Noise (Wiener Umgebungslärmschutzverordnung (LGBl. Nr. 26/2006))

### **Liability of Action Plans and their link to other fields of law**

According to Art. 7 par. 10 Bundes-LärmG the action plan has to contain measures which are “suitable” to reduce environmental noise in those areas where exceedances of the limit values occur or where the noise may have a negative impact on human health or can be considered an “unacceptable nuisance”.

Noise Action Plans do not fit into the Austrian system of binding legal acts (law, ordinance, decision). It is unclear what kind of document they are; there is also uncertainty within the legal doctrine<sup>3</sup>. In a commenting document (EB 857 BlgNR 22. 18 GP) they are described as “*non-binding programs which shall describe the future work of authorities*”, which underlines their descriptive and non-binding character. They can therefore be considered pure planning documents. Their creation, contents and issuing is determined but the measures described therein are not binding for authorities.

This uncertainty about the legal character and the binding effect of noise action plans makes it difficult to determine if and to what degree they have an effect for instance on the planning of roads or within local land use planning.

In any case the law (Art 7 par. 12 Bundes-LärmG) determines explicitly that no rights of the individual, therefore no subjective-public rights can be deducted from the provisions on the noise action plans.

#### **a) are the action plans measures to be integrated into land use plans?**

There is no provision demanding the integration of noise action plans into land use planning considerations or documents. There is also no general obligation regarding the cooperation of the different authorities involved as well as no provision on the responsibility for coordination (for example through the MoE).

There is a provision in the Bundes LärmV (Art 9 par.3), which exemplarily lists possible fields of action to be dealt with in the action plans. This provision explicitly mentions land use planning. This is the only instance in which land use planning is brought into direct connection with the action plans in a federal legal act.

In practice noise can be an issue for land-use planning. Two technical directives<sup>4</sup> (not legally binding) deal with noise as a relevant parameter for determining where residential areas may be constructed according to the land use plan and provide limit values.

#### **b) is the body issuing land use permit (for building, roads, airports) obliged to apply the action plans measures?**

As mentioned above there is no obligation to integrate the measures contained in the action plans into land use plans. Due to the non-binding nature of the measures included in the action plans the authorities competent for issuing land use permit will not be obliged to refer to the plans as a basis for their decision.

#### **c) does the action plan help in praxis from the perspective of protection of health of citizens, if no why / what should be changed**

<sup>3</sup> See BRATRSCHOVSKY, Katja: “Öffentliches Lärmrecht” p. 431 f.

<sup>4</sup> ÖAL Directive No. 36 Blatt 1 ([http://www.oal.at/\\_TCgi\\_Images/oeal/20080302184211\\_\\_AL-Richtlinie%20Nr%2036%20Blatt%201.pdf](http://www.oal.at/_TCgi_Images/oeal/20080302184211__AL-Richtlinie%20Nr%2036%20Blatt%201.pdf)) and OENorm S 5021-1 (not possible to provide link).

Within this study it will only be possible to analyze the action plans on a federal level (regarding roads, railways, air traffic) and two exemplary action plan on a provincial level (Vienna roads and tramway lines). This approach seems justified as the legal framework for the provincial action plans basically corresponds with the federal legal framework<sup>5</sup>.

Generally it has to be said that there is de facto no legal possibility for anyone affected by noise to demand protective measures. The situation is particularly difficult regarding noise from traffic, be it road, railway or air traffic<sup>6</sup>. The question to be answered here is therefore if the action plans, which will be discussed, offer measures that are suitable to protect the health of citizens affected by exceedances of limit values for environmental noise.

### **Action Plan: Federal Roads**

This action plan does not seem suitable to make a difference for the protection of the health of the affected population in practice. The plan fulfils the minimum requirements as determined in Annex V of Directive 2002/49/EC by adopting the structure of No 1. Annex V. Nevertheless the content of the action plan is not very elaborate and limits itself to the listing of existing and planned measures and very general remarks regarding costs and numbers of people profiting from existing measures. For instance there is no estimation as regards the reduction of the number of people affected by noise and the measures listed address no priorities as demanded by Art 8 par. 1 END. Also quiet areas are not mentioned.

The whole set-up of the action plan makes it hard to determine, which measures will be taken when and where and according to which criteria. Therefore it leaves a lot of room for discretion regarding the factual implementation of the action plan to the competent authorities. The measures mentioned in the plan might be suited to make a difference, in particular with appropriate funding, nevertheless it is unclear how, where and for whom they will have an effect.

A clearer determination of priority areas, in particular as regards the number of people affected by exceedances would have lead to an increased transparency as regards the steps to be taken according to the plan.

### **Action Plan: Railways**

What was said about the Action Plan for federal roads is in large parts also true for the Action Plan for railways. The structure of the plan follows Annex V of the END but the contents is not very elaborate. The plan exhaustively describes the measures already taken and, regarding future railway projects only refers to noise protection based on existing legal tools or programs already brought on the way before the issuing of the action plan.

Again priority areas are not addressed and the plan contains no statement about how many people will be relieved from the exceedance of noise limit values and where this will happen. This action plan also contains no reference to quiet areas.

<sup>5</sup> See BRATRSCHOVSKY, Katja: "Öffentliches Lärmrecht", p. 430.

<sup>6</sup> See Hochreiter: "Gibt es ein Recht auf Lärmschutz?" in Hochreiter (HG), Die Umsetzung der EU-Umgebungslärmrichtlinie in Österreich, Informationen zur Umweltpolitik, Nr. 178, p. 67.

The mentioned uncertainties and the missing obligations for the competent authorities will lead to the situation that the action plan by itself will most probably have no impact on the health situation of the people affected by noise from railways.

#### **Action Plan: Tramway lines Vienna**

For tramway lines in Vienna the noise maps only show one crossroads where there is a slight exceedance of limit values. For subways, which in Vienna are partially in the open, only one conflict point is identified. The action plan nevertheless states that at this specific point the noise from car traffic is more relevant and that any measure to reduce car traffic noise will ultimately also reduce the noise from the subway.

The action plan further describes measures already taken and measures planned but because de facto there are no exceedances of limit values in this area, no new measures are introduced in the action plan. Therefore the action plan by itself will not have any impact on the health of citizens affected by tram and subway noise.

#### **Action Plan: Air Traffic**

This action plan is the shortest one analyzed. The measures already in place are only described in a very cursory way. The same is true for measures stipulated in the action plan. The instruments are described but not put in relation to people or municipalities affected. Therefore no concrete measures for concrete people can be deduced from the plan.

#### **Action Plan: Agglomeration Vienna (roads)**

This action plan primarily describes measures already in place. Those measures are intended to be part of noise action planning also for the future. The measures planned for the next five years are mentioned but not described in detail. If implemented those measures would for sure have a positive impact on the health of the affected population. But as in all analyzed action plans there is no statement as to how many people will be protected where in the future. Quiet areas are not mentioned.

What is particularly surprising is that the garage encouragement program is mentioned as measure for noise reduction an elaborated in detail. There is no reference as to how exactly the measures provided in the framework of this program are or will be leading to noise reduction in the agglomeration of Vienna.

#### **d) is there clear and specific mechanism and source of finances for financing the anti-noise measures?**

Each Action Plan contains individual determinations on financing issues regarding noise protection and reduction measures. There is no harmonized system of financing.

Action Plan Federal Roads: The section on financing is very short. It just mentions average planned expenditure for noise reduction and protection measures (between 30 and 50 million Euros p.a.) but contains no assessment of cost-effectiveness or cost-benefit or determinations on sources or mechanisms for financing.

Action Plan Railways: Also in this action plan the determinations on financing are not given a lot of room. Again there are only values for average planned expenditure for measures (between 25 and 30 million Euros p.a.).

Action plan Tramway lines Vienna: With reference to the fact that there was no exceedance of limit values no evidence on financing additional measures is given.

Action Plan Air Traffic: This action plan contains no information on financing at all.

Action Plan Agglomeration Vienna (roads): Apart from reference to existing encouragement programs and measures already in place which are to be financed as before through the city's budget lines there is no information on mechanisms sources and sources for financing. An exception is the abovementioned garage encouragement program whose financing mechanisms are described in detail. In any case this is an existing measure and not a new measure introduced by the action plan.

## **1.2. Overview in details**

### ***1.2.1. Timely preparation of strategic noise maps and action plans, according to deadlines of END***

Both the strategic noise maps and action plans were not issued on time. In contrast to the specifications in the END they were published in January and February 2009 and almost at the same time. This contradicts the requirement of the END for a step-by-step procedure.

### ***1.2.2. Meeting END requirements on public participation in action plans preparation process***

#### **a) Early and effective opportunities of PP**

As mentioned above strategic noise maps and action plans were published almost at the same time (Strategic noise maps: 27 January 2009, action plans: 9 February 2009). This contradicts the requirements of the END which determines that first strategic noise maps have to be published and only later (and most probably after the public has had a chance to identify e.g. conflict zones) the action plans based on the maps. The fact that this was not the case made public participation regarding the preparation of the action plans difficult. It is questionable if this approach can be considered as allowing for early and effective public participation.

The timeframe for statements on the noise action plans prepared under the competence of the federal state was from 9 February 2009 to 23 March 2009 (6 weeks). For the action plan on tramway lines prepared under the competence of the province of Vienna the same timeframe was given for public participation.

The approach chosen for the action plan on roads in the province of Vienna is somewhat different: There was no participation of the general public at all. Only the heads of the Viennese districts were invited for participating in the process. This is clearly contradicting the requirements of the END.

#### **b) Results of the PP taken into account**

This did not happen up to now; there are no current versions of the action plans available yet.

#### **c) Information about decision taken given to public**

Since the overworked action plans have not been published yet no information was given to the public concerning the decision taken.

#### **d) Reasonable time frame allowing sufficient time given to PP**

As mentioned above for the analyzed action plans (apart from the Vienna action plan for roads) six weeks are foreseen for the filing of statements.

**e) Meeting END requirements on availability and dissemination of strategic noise maps and action plans**

**f) Availability and dissemination through the means of IT (internet)**

Once the strategic noise maps and the action plans were published they were made available on a sub-homepage of the homepage of the Federal Ministry for Agriculture, Forestry, Environment and Water Management. This homepage is: <http://www.laerminfo.at/>.

Strategic noise maps are made available on the homepage: [http://gis.lebensministerium.at/eLISA/frames/index.php?&gui\\_id=eLISA](http://gis.lebensministerium.at/eLISA/frames/index.php?&gui_id=eLISA). Five kinds of noise maps have been created and combined into an integrated online map allowing for interactive research on the noise exposure.

- Road traffic along major roads and in agglomerations: The interactive noise maps allow for a differentiated view on the DEN (day-evening-night) indicator, on the night indicator and on the respective conflict zones where the limit values are exceeded.
- The same is true for noise from railways: The online map shows the noise exposure as indicated by the DEN and the night value along major railways and around railways in agglomerations as well as the respective conflict zones.
- Noise from air traffic is also indicated in a separate map as regards the DEN and the night indicator. Conflict zones are also covered.
- For industrial facilities covered by the IPPC regime information on noise is available only for the agglomeration of Vienna. This information covers the DEN and the night indicator as well as the conflict zones.

Action plans are made available under: <http://www.laerminfo.at/article/articleview/59908>

**g) Information is clear, comprehensible and accessible**

The information which is accessible by means of IT is clear, comprehensible and accessible.

**h) Summary of the most important conclusions is provided**

For the strategic noise maps no conclusion is provided as regards the results of the noise mapping process. Regarding action plan each action plan contains a summary. On the respective homepages no general conclusion of the results of the action planning process can be found.

***1.2.3. Meeting END requirements on content of strategic noise maps (according to the Annex IV of END, art. 1,2,3,6,7,8), especially:***

As mentioned above the strategic noise maps have been merged into one interactive map accessible via the internet. The map shows which areas have been examined in an overview. It is then possible to examine the noise situation at a particular address if it is covered by the area of analysis of the noise maps.

**a) If a strategic noise map presents data on one of the following aspects:**

**b) an existing, a previous or a predicted noise situation in terms of a noise indicator,**

The maps show the existing noise situation in terms of both the  $L_{den}$  and the  $L_{night}$  indicator for roads, railways, air traffic and IPPC facilities. Technically the question on how to best present the different noise levels was resolved by use of different colors. The legend shows the different colors used and links them to the noise level (in dB).

**c) the exceeding of a limit value,**

There is the option to show only the areas where exceedances are taking place by choosing the option “zones of conflict”. Again colors indicate the level of exceedance.

**d) the estimated number of dwellings, schools and hospitals in a certain area that are exposed to specific values of a noise indicator,**

This information is not available directly in the noise maps but in a specific action plan. This action plan is not an action plan by itself but contains the numbers of people affected by noise. For each area of action planning the number of dwellings, kindergartens, schools and hospitals that are exposed to specific values of a noise indicator is listed.

**e) the estimated number of people located in an area exposed to noise.**

There is only a general overview over the number of people (registered with a principal residence in Vienna) exposed to different noise levels. This information is available for both the  $L_{den}$  and the  $L_{night}$  indicator for all noise sources covered (road, rail and air traffic, IPPC facilities).

**f) If strategic noise maps for agglomerations put a special emphasis on the noise emitted by:**

» *road traffic,*

Yes, there is a noise map dedicated to noise from road traffic.

» *rail traffic,*

Yes, there is a noise map dedicated to noise from rail traffic.

» *airports,*

Yes, there is a noise map dedicated to noise from airports.

» *industrial activity sites, including ports.*

Yes, there is a noise map dedicated to noise from IPPC facilities.

**g) If additional and more detailed information are given, such as:**

» *a graphical presentation,*

Yes, as mentioned above.

» *maps disclosing the exceeding of a limit value,*

Yes, as mentioned above.

» *difference maps, in which the existing situation is compared with various possible future situations,*

No, such a comparison is not presented.

- » *maps showing the value of a noise indicator at a height other than 4 m where appropriate.*

No, in an additional information text (not possible to provide link) only the levels at a height of 4 meters are mentioned as a basis for the maps.

**h) If strategic noise maps for local or national application are made for an assessment height of 4 m and the 5 dB ranges of Lden and Lnight as defined in Annex VI.**

Yes, this criterion is fulfilled.

**i) If separate strategic noise maps for road-traffic noise, rail-traffic noise, aircraft noise and industrial noise are made in agglomerations**

Yes, there are maps for all kinds of noise for the city of Vienna (as the only agglomeration).

**1.2.4. Meeting END requirements on content of action plans (according to the Annex V, art. 1-4), especially:**

**a) If action plan include the following elements:**

- » *a description of the agglomeration, the major roads, the major railways or major airports and other noise sources taken into account,*

Action Plan Federal Roads: There is a detailed description of the road and highway segments (detailed information on the starting point and end as well as total length) covered by the action plan.

Action Plan Railways: There is a general description of the railways covered by the action plan. The segments covered by the action plan are determined by towns or cities.

Action Plan Tramway Lines Vienna: There is no detailed description of the observed tramway lines. The action plan only mentions “tramway lines in the municipal area of Vienna”.

Action Plan Air Traffic: This action plan only mentions the “major airport Vienna” as the planning area.

Action Plan Agglomeration Vienna (roads): There is no detailed description of the agglomeration. It is simply defined as the municipal area of the city of Vienna. This is not the same as the urban agglomeration, which does not respect the political borders. An integrated examination of the whole agglomerated area was not carried out.

- » *the authority responsible,*

All analyzed action plans contain information on the authority responsible for the drawing up of the action plan.

- » *the legal context,*

All analyzed action plans contain a short paragraph on the national legal basis for the plan. Only the action plan for railways goes into more detail and includes European legislation and a brief description of the contents of each individual act.

- » *any limit values in place in accordance with Article 5,*

In the same section where the legal context is presented all analyzed action plans contain information on the applicable limit values

- » *a summary of the results of the noise mapping,*

All analyzed action plans describe (in more or less detail) on what technical basis (for example which computer program was used or which year's traffic data was relevant) the noise maps were compiled. None of them contains a summary of the actual results of noise mapping.

- » *an evaluation of the estimated number of people exposed to noise, identification of problems and situations that need to be improved,*

All analyzed action plans refer to a separate document containing the estimates for the number of people exposed to noise for all relevant areas.

Regarding the identification of problems and situations that need to be improved all analyzed action plans, apart from the action plan for federal roads; contain a separate section on this issue. This section is rather brief and in all cases the action plans simply refer to the noise maps for the identification of problematic areas with exceedances of limit values. Only the action plan for tramway lines in Vienna contains reference to specific problematic areas and a short description of the situation.

- » *a record of the public consultations organised in accordance with Article 8(7),*

All analyzed action plans contain a section in which the public participation process is briefly described. The section contains information on where the action plan was published, in which timeframe public participation was possible and where statements had to be sent. One exception is, due to the choice of a different participation approach (only the heads of the Viennese districts involved, see above) the action plan for the agglomeration Vienna regarding roads. This action plan only contains reference to the legal basis for the non-involvement of the general public into the action planning process.

- » *any noise-reduction measures already in force and any projects in preparation,*

All of the analyzed action plans contain a section on the noise-reduction measures already taken and in some cases also of projects which were at the moment of the issuing of the action plans still in preparation.

- » *actions which the competent authorities intend to take in the next five years, including any measures to preserve quiet areas,*

Action plan Federal Roads: This action plan provides only a very general overview over the spending on environmental and noise protection measures regarding federal roads. No concrete measures or actions are indicated in the plan.

Action Plan Railways: Even though this action plan contains the most extensive part on future measures. The essential content is however, that existing refurbishment programs are being continued. The realization of noise protection measures regarding new railways or the upgrading of existing

tracks takes place according to the specifications contained in the Ordinance on Railway Noise (Schienenfahrzeug- Lärmzulässigkeitsverordnung, SchlVO, BGBl 414/1993). There is no detailed information on concrete measures or timeframes.

Action Plan Tramway lines Vienna: Because no exceedances of limit values were identified for this area of action planning this action plan states that no measures apart from the running programs will be necessary.

Action plan Air Traffic: Here reference is made to European legislation (Directive 2002/30/EC on introduction of noise-related operating restrictions at Community airports) and to standards developed by the International Civil Aviation Organization (ICAO). Otherwise only measures already taken are described under this heading.

Action Plan Agglomeration Vienna (roads): Under this section this action plan describes what the main foci regarding noise reduction will be in the future. Also concrete measures are presented, unfortunately not in detail and without a concrete plan for implementation.

Quiet areas are not mentioned in any of the action plans.

» *long-term strategy,*

Action plan Federal Roads: In this section of the action plan various measures and research projects are described which are either already running or in a planning state. However, those singular measures are not merged into a general noise reduction strategy for roads; there is no consistent systematic approach.

Action Plan Railways: The long-term strategy described in this action plan is limited to reducing the noise from railways by introducing new technology for breaking that produce less noise. The long-term aspect concerning this measure is limited to the long life cycle of the coaches used.

Action Plan Tramway Lines Vienna: Reference is made to the “Master plan Traffic Vienna”, which was issued in 2003. This aim of this plan is a reduction of traffic and a gradual modal shift towards public transport. This clearly also has implications for noise. However there is no direct reference to noise reduction as an aim of the strategy and no measures are presented on how to reduce noise from tramway lines in Vienna.

Action plan Air Traffic: This action plan contains no long-term strategy.

Action Plan Agglomeration Vienna (roads): Just as in the action plan for tramway lines in Vienna also this action plan refers to the “Master plan Traffic Vienna” as strategic document. Again noise reduction is not directly addressed in this context. In a subsection of the plan noise reduction through “quiet tires” is described; again a direct connection to a noise reduction strategy for Vienna and to concrete measures to be taken is missing.

» *financial information (if available): budgets, cost-effectiveness assessment, cost-benefit assessment,*

Apart from the action plan for air traffic all of the action plans contain at least a short paragraph on financial information. However, none of them goes further than to estimate, how much money will be spent (action plans railways and federal roads). The action plan on tramway lines in Vienna contains no financial information because no measures are foreseen (no exceedances).

» *provisions envisaged for evaluating the implementation and the results of the action plan.*

The action plan for federal roads contains no provisions on the evaluation of the implementation of the action plan. The same is true for the action plan on tramway lines in Vienna where reference is made to the fact that de facto no exceedances were recorded and therefore no measures have to be taken.

Two other plans, namely the action plans for air traffic and for the agglomeration of Vienna (roads) only refer to the 2012 noise maps as indicator for the evaluation of the implementation and of the results of the action plans.

The action plan for railways contains a more elaborate section on the evaluation of the action plan. A so-called “steering committee” consisting of representatives from the Ministry of Transport as well as representatives from the province concerned is responsible for the coordination of noise reduction measures. The evaluation of the measures implemented is carried out by a working group headed by the Austrian Federal Railway Company (Österreichische Bundesbahnen AG, OEBB).

**b) Description of actions which the competent authorities intend to take in the fields within their competence, for example:**

- » *traffic planning,*
- » *land-use planning,*
- » *technical measures at noise sources,*
- » *selection of quieter sources,*
- » *reduction of sound transmission,*
- » *regulatory or economic measures or incentives.*

Action Plan Federal Roads: Apart from the measures described above no further actions are foreseen in this action plan.

Action Plan Railways: Reference is made to land-use planning and its importance for the prevention of (noise-) conflicts already at a very early stage. However, the Ministry for transport, which issued the action plan, is not competent in this area. The action plan can therefore only refer to noise as a factor to be considered in land-use planning.

Action Plan Tramway Lines Vienna: An “Urban- and region development strategy” contains (next to aims and measures mentioned but not directly related to tramway traffic in Vienna) the goal to extend two tramway lines across the city borders to neighboring towns. Also the general development of city public transport is mentioned together with the aim to increase the use of public transport in Vienna by 6 percent as compared to other means of transport.

Action Plan Air Traffic: Apart from the measures mentioned above no additional actions are mentioned.

Action Plan Agglomeration Vienna (roads): This action plan contains the most comprehensive list of additional measures to be taken in other areas regarding noise reduction and protection. The plan covers the following areas:

- Procurement: noise as a criterion for choosing vehicles and machines in the procurement procedure

- Speed limits for city roads: the action plan lists a number of roads where the speed limits have been reduced
- Improvement of traffic light coordination (“green wave”)
- City and regional development strategy: facilitation of a modal shift towards public transport, cycling and walking, development of public space, development of regional and trans-boundary transport infrastructure, traffic control measures, climate protection program, improvement of public transport on various levels (safety, favoritism over other means of transport in traffic, mobility management and information, various other programs).

**c) If each action plan contains estimates in terms of the reduction of the number of people affected (annoyed, sleep disturbed, or other).**

None of the action plans contains an estimation of the reduction of the number of people affected by noise through the implementation of the plans.

## 2. Description of national legal frame of protection against noise

### 2.1. Existence of binding limits for outdoor noise (including definition of outdoor protected against noise)

The Austrian system for protection against noise is diverse. There are no binding limit values for existing transport infrastructure, only for new constructions or reconstructions that make an EIA necessary noise will be an issue and limit values might be included in the permit (in Austria the EIA is at the same time permit proceeding). A so-called “Dienstanweisung” (approx.: internal order) was issued by the Ministry of Transport, which contain limit values for existing roads (Lden 60 dB, Lnight 50 dB). What is problematic is that the legal nature of such a “Dienstanweisung” (most probably binding for authorities but without external impact) is unclear and that it creates no rights for the public concerned.

Regarding railway noise the Ordinance on Rail Vehicle Noise (Schienenfahrzeug-Lärmzulässigkeitsverordnung, SchLV, BGBl I No 414/1993) contains emission limit values for rail vehicles.

Neighbors of a noisy business will be able to protect themselves against noise emitted on the basis of the permit issued under the Trade, Commerce and Industry Regulation Act (Gewerbeordnung, GewO (BGBl. I Nr. 194/1994)).

Art. 8 Federal Ordinance on Environmental Noise (Bundes LärmVO) contains limit values for action planning. These are:

- for traffic noise from major roads: Lden: 60 dB, Lnight: 50 dB
- for noise from traffic on railways: Lden: 70 dB, Lnight: 60 dB
- for noise from civil air traffic: Lden: 65 dB, Lnight: 55 dB
- for noise from industrial activities: Lden: 55 dB, Lnight: 50 dB

<sup>7</sup> <http://www.bmvit.gov.at/verkehr/strasse/autobahn/laermschutz/downloads/umgebungslaerm.pdf>

## 2.2. Existence of binding limits for indoor noise

The Ordinance on the Protection of Employees against Noise and Vibrations (Verordnung Lärm und Vibrationen, VOLV (BGBl. II Nr. 22/2006)) contains limit values for the exposition to noise in a working environment. Apart from that there are no binding limit values for indoor noise.

## 2.3. Any special legal condition for noise from transport? Does it help or does it lower the standards of protection?

As mentioned above the protection against noise from transport is difficult for the people affected. Limit values are only contained in the abovementioned “Dienstanweisung” whereas their binding character is disputed<sup>8</sup>. Within EIA proceedings noise is a topic to be dealt with. The public participation process in this proceeding makes it possible for the public to push for stricter limit values to be included in the construction permit.

There is a specific problem with transport infrastructure. The constitutional separation of competences in the area of federal transport infrastructure planning (federal competence) and land-use planning (provincial competence), which makes a coordination between these two fields difficult and a binding arrangement impossible<sup>9</sup>. In practice it may happen that areas for housing construction move closer and closer towards existing transport infrastructure.

## 2.4. Are there specialized state bodies, which do have competence to deal with noise problems on the basis of national legislation (preventive, i.e. sources of noise during the course of issuing a permit for construction work, sanctions, i.e. supervision that specified noise limits are not exceeded, can the body award a fine?)

The competence for the dealing with noise problems regularly lies with the authority which issued the permit for the noisy facility or road/railway. It is also obliged to monitor emissions from the permitted projects.

There are no state bodies specialized in noise problems as such but there are expert groups and a standardization office which issue recommendations and guidelines regarding noise reduction and protection against noise. Those are in particular the Austrian Expert Working Group on Noise Reduction<sup>10</sup> (Österreichischer Arbeitsring zur Lärmbekämpfung) and the Austrian Association for Research on Road - Rail - Transport<sup>11</sup> (Österreichische Forschungsgesellschaft Straße, Schiene, Verkehr). Also the Austrian Environmental Agency has a department<sup>12</sup> specialized in noise issues, which can be addressed by the public.

## 2.5. What options do citizens have to achieve protection against noise in relation to administrative state bodies, which address this issue (option of initiating noise metering, fine proceedings, etc.) If there is a mechanism for decision about exception from noise limits - can the citizens effectively participate in the proceeding?)

The options of citizens as regard protection from noise are very limited. As mentioned above regarding transport infrastructure an EIA proceeding provides the only possibility for the public to actively shape

<sup>8</sup> See HOCHREITER: “Gibt es ein Recht auf Lärmschutz?” p. 75.

<sup>9</sup> Ibid. P. 74.

<sup>10</sup> <http://www.oal.at/TCgi/TCgi.cgi?target=home>

<sup>11</sup> <http://www.fsv.at/>

<sup>12</sup> <http://www.umweltbundesamt.at/umweltschutz/laerm/>

the conditions contained in the permit as regards noise issues. For facilities covered by the GewO the permit proceedings involve neighbors as well. If the permit is to be adapted the neighbors concerned are to be involved in this proceeding as well.

Art 79 GewO contains the obligation to adapt a permit if (amongst others) neighbors are not sufficiently protected against noise. This procedure can be demanded by any neighbor according to Art 79a GewO.

## **2.6. Existence of other (for instance civil legal) instruments for protection against noise, their effectiveness.**

Generally in Austrian Civil Law there is a possibility for the owner of a property to demand from neighbors to refrain from emissions that are “considerable” and “not customary in the specific place” by means of a cease and desist order (Art 364 par 2 General Civil Rights Act, Allgemeines Bürgerliches Gesetzbuch, ABGB).

This right is limited by Art 364a ABGB: This provision foresees that Art. 362 par 2 ABGB shall be applicable only in a very limited way to facilities, which have been officially permitted, meaning that they have gone through a permitting procedure. Only compensation for a damage caused by the emissions can be claimed in this case, there is no possibility for injunctive relief.

Case law shows that this privilege for officially permitted facilities is only granted if the neighbors were allowed to take part in the permitting procedure and were able to effectively assert their objections. This is not the case for transport infrastructure. Jurisdiction qualifies this type of construction as “officially permitted” and applies Art 364a ABGB, ignoring the fact that neighbors have no protected rights in the corresponding permitting procedure.<sup>13</sup>

## **3. Your short conclusion: is there sufficient level of legal protection? Which legal tools are effective from the citizen’s perspective? What should be addressed in order to improve the situation?**

The level of legal protection regarding noise is not sufficient in Austria. There are no binding limit values and there is possibility for affected persons to demand the implementation of measures foreseen in the action plans. The Bundes-LärmG explicitly makes clear in its Art. 7 par 12 that the provisions on the action plans contained in this act do not establish any subjective rights.

In addition the level of protection for people affected by noise from transport infrastructure is particularly low. An approximation towards the level of protection provided by the GewO should be aspired also for this sector.

Within the existing system of noise management the next steps/measures should be the following:

- Establishment of binding noise limit values
- Action planning based on early and effective public participation
- Possibility for the public to demand an examination of the action plan and the measures contained therein before courts
- Opening a possibility to demand the implementation of measures in case of exceedances of noise limit values

<sup>13</sup> See HOCHREITER: “Gibt es ein Recht auf Lärmschutz?” p. 76.

#### **4. Contact information**

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