

Opinion on the END

Policy Options for the Review of the
Environmental Noise Directive

(END)

Legal Analysis

Justice and Environment 2011

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I. Introduction

The Environmental Noise Directive (END) (2002/49/EC) is a major piece of European Union (EU) legislation. The END aims to “define a common approach intended to avoid, prevent or reduce on a prioritised basis the harmful effects, including annoyance, due to the exposure to environmental noise.” Its role in fighting against noise pollution cannot be overestimated.

To combat excessive environmental noise, END requires the Member States to carry out a number of actions, in particular:

- To determine the exposure to environmental noise through noise mapping – to be prepared by the competent authorities in Member States for major roads, railways, airports and agglomerations using harmonised noise indicators for estimating the number of people affected by noise;
- To adopt action plans based upon the noise mapping results that will serve to address local noise issues, reduce noise where necessary and maintain environmental noise quality where it is good; and
- To ensure that the information on environmental noise is made available to the public and to inform the public about noise exposure, its effects and mitigation options.

The Directive also provides a basis for developing further EU measures to reduce noise emitted by various sources.

In 2011 the Commission has published the first implementation report¹ which summarises the implementation progress to date and outlines possible ways forward to improve implementation and enhance the effectiveness of EU's environmental noise policy.²

Justice and Environment (J&E) has already researched the implementation of the END in 2009 and published a shadow report (hereinafter “shadow report”) on the implementation of the END. With this document, now our goal is to influence the further review process in order to have a more comprehensive and enforceable piece of EU environmental noise legislation.

In 2010, a report³ commissioned by the Environmental Commission (EC) (hereinafter “report”) reviewed the implementation of the END, as required by Article 11 of the END. One output of the report is an Action Plan outlining further implementation strategies and

¹ COM(2011) 321 final of 1 June 2011.

² <http://ec.europa.eu/environment/noise/home.htm>

³ http://www.milieu.be/noise/final_reports/end_task_3_final_report.pdf

Community action on environmental noise. The report also identifies seven main policy options designed to address the systematic problems of implementing the END as it stands, but also to take further steps to address the inherent problem of noise.

Based on the aforementioned 2010 report, this paper highlights those policy options that J&E believes best fit the goals of an easily enforceable and strong END. In terms of the END review process, J&E only promotes to solutions that promote environmental democracy, environmental accountability, and other access rights. Therefore, in evaluating such policy options, we not only pay attention to the specific effectiveness of a provision or proposed regulation, but we factor in its public participation implications, as well.

II. Policy options

The overall objective of END is *“to define a common approach intended to avoid, prevent or reduce on a prioritised basis the harmful effects, including annoyance, due to exposure to environmental noise.”*⁴

As the aforementioned 2010 report also notes,⁵ this overall objective can be broken down into two linked sub-objectives:

1. to improve enforcement and implementation of the END to meet its objective as far as possible, and
2. to take any additional action necessary to achieve effective protection against the harmful effects of noise.

While the first sub-objective is based on the assumption that clarification of terminology, additional guidance and harmonization of methodologies will result in more efficient implementation of the END, the second sub-objective is based on the assumption that improving enforcement of the END alone is not sufficient to address the problems of exposing EU citizens to potentially harmful levels of environmental noise.

The report also identifies seven main policy options to address each sub-objective mentioned above. The following is a summary overview of these policy options:⁶

⁴ Article 1., Point 1.

⁵ Page 30.

⁶ Page 31., Table 9.

Sub-objective	Option	Drivers addressed
Baseline	1: no change to the END.	None
Improve enforcement and implementation of END	<p>2: minor changes to the text of the END to clarify definitions identified as problematic, e.g. quiet areas, agglomeration, major roads;</p> <p>3: compliance promotion: additional guidance, workshops and training for Member States to improve compliance with the Directive;</p> <p>4: development and application harmonised mapping methods, including a requirement to report on exposure to noise down to 50 dB (Lden) and down to 40dB (Lnight);</p> <p>5: closer integration with air quality action: guidance to encourage Member States to integrate the implementation of the END with the implementation of the Air Quality Directive through combining administrative activities and adopting measures that address both air emissions and noise in urban areas.</p>	<p>Confusion over definitions amongst responsible authorities</p> <p>Lack of expertise and shortage of guidance leading to poor quality maps and action plans</p> <p>Divergence in mapping methods due to lack of common assessment methods</p> <p>Lack of experience in preparing maps and action plans, leading to poor quality outputs. Lack of resources for implementing action plans</p>
Additional action necessary to achieve effective protection	<p>6: either a) setting noise limit values that cannot be exceeded or b) a less stringent trigger value approach, requiring action to be taken within a specified time limit if the limit values are exceeded;</p> <p>7: additional source-based measures: improved protection from noise through linking source-based measures under other EU legislation with the END.</p>	Lack of political awareness and insufficient resources allocated to address the problem of environmental noise

Table 10 of the report⁷ sets out potential combinations of options, linking these to scenarios representing the degree of change that would need to be made to the END to implement them. Under scenario 1, Options 3 and 5 could be implemented without any change to the END text; if minor changes to the text are acceptable, these could be combined with options 2 and 4 under scenario 2. Under scenario 3, Options 6 and 7 would require significant changes to the text of the END or, in the case of option 7, changes to the related legislation on noise.

Potential combinations of policy options⁸

Scenario	Option 2	Option 3	Option 4	Option 5	Option 6	Option 7
1: Minimal changes; no amendment of the END text; focus on improved implementation of END		X		X		
2: Minor changes to the END; focus on improved implementation of the END	X	X	X	X		
3: Significant changes to the END and/or other noise-related legislation; improved implementation of the END plus additional action to achieve effective protection	X	X	X	X	X	X

III. Evaluation of the policy options

In its shadow report in 2009, J&E summarised their experience with the implementation of the END in Austria, the Czech Republic, Estonia, Slovenia and Slovakia, particularly from the viewpoint of NGOs and citizens. The shadow report draws attention to problematic areas of the implementation process in these countries, and identifies elements of the implementation process that are identical or similar in these countries in order to contribute towards the Commission's review of the END.

Based on findings of the shadow report and professional experience of J&E members regarding the implementation of the END, the following problems and recommendations can be listed:

III.1. Failure to meet deadlines for the creation of strategic noise maps and action plans

Most of the countries in question did not abide by the deadlines for the creation of their strategic noise maps (SNMs) or action plans (APs).⁹ This had various adverse effects on the

⁷ Page 32.

⁸ Page 32. Table 10.

quality of the process. In Austria, for example, the SNMs were published practically at the same time as the APs, which greatly cut the amount of time available to study the SNM and prepare comments on the AP. As a result of delays, with the creation of the SNM in the Czech Republic, there were problems with the quality of the AP. The compilers of the AP admit that the fact that they had limited time to prepare was reflected in the content of the plans.

III.2. Very low level of public involvement in the preparation of action plans

In all the examined countries, inadequacies could be identified in the implementation of the END relating to the requisite public involvement in the preparation of AP. In some cases the public was completely excluded (the AP of the Vienna province); in other cases the public involvement in the preparations was very low, evidently due to the lack of public awareness of the possibility of getting involved, and public comments were rejected across the board instead of being dealt with specifically. The low or total absence of public involvement in the preparation of AP may be considered one of the greatest failings of the implementation of the END in the countries in question.

III.3. Low quality of action plans and strategic noise maps

The countries where the action planning process has been completed (especially the Czech Republic and Estonia, but the available AP in Austria shows a similar tendency) have one particular problem in common: the low quality of AP. This is particularly true in regards to the requirements for clear measures with emphasis on the most burdened areas as specified in Article 8 paragraph 1. The anti-noise measures contained in the APs are too general and in most cases merely copy previous plans and strategies, especially as regards the development of transport infrastructure. The APs also do not set any deadlines for implementation. Finally, the parts relating to the cost estimates for these measures are also poor.

For these reasons, APs do not offer any great promise of resolving excessive noise problems in these countries, and it is doubtful whether they comply with the aims of the Directive as contained in Article 1, paragraph 1(c), which states that APs are prepared in order to prevent and reduce environmental noise.

There are also serious inadequacies evident in the SNMs. One major problem is that the SNM procedures differ from country to country. In Slovenia, for example, the mapping only included plants which require an IPPC permit, while in the Czech Republic the SNMs only covered those parts of agglomerations defined by national legislation.

III.4. Non-cohesion of action plans with the national legislation

There are several problems with the APs as implemented in national legislation. First, none of the participating countries make clear the legal nature of their APs. For example, are they independent, or should they just be seen as a basis for related processes (e.g. land use planning)? Regardless, in all of the evaluated countries, the legal nature of the AP can be

⁹ The reasons for breaking this obligation was not the subject of the shadow report, but are mostly evident: late transposition of the Directive into national legal system, low political will, etc.

interpreted as a “soft law,” which means that it does not have any direct impact on decisions made by the competent authorities. Also, when transposing the Directive, member states did not take the opportunity to clarify how APs relate to the decision-making process at the national level. In some countries, the authorities in question even refuse to consider APs as a non-committal source of information (in the Czech Republic SNM and AP are rejected as a basis for regional land planning due to the fact that they have not been prepared according to the demanded standards). Overall the implementation of the END in the countries in question can be rated as being highly problematic, particularly in the action planning phase, which reduces the potential of actions plans to help prevent and reduce noise in the environment.

The drawbacks of implementation as described above are partially the result of poor practice in the individual member states and partially of the actual wording of the Directive. Rectifying these problems requires an enhancement of the quality of implementation at the level of the member states, but it is also necessary to amend the text of the Directive itself and to modify certain provisions.

In our view, the review should:

- Introduce the monitoring of the effectiveness of action plans;
- Establish more specific requirements regarding the content of action plans;
- Incorporate the need for the integration of action plans into national decision-making processes and encourage the inclusion of noise considerations in national policy making;
- Set binding noise limits;
- Enhance the quality of public involvement in the action planning process.

IV. Recommendations of J&E towards an effective END

The main recommendations of J&E towards an effective END after the review process are the following:

IV.1. Monitoring the effectiveness of action plans

The “soft law” character of APs, together with the fact that they are so general, leads to doubts about whether the anti-noise measures they describe will be implemented, and if so, what quality they will have. At the same time, the Directive completely lacks any sort of mechanism to provide the Commission with information about whether the anti-noise measures described in APs are put into practice. This mechanism should be based on the principle of submitting regular reports to the Commission, ideally in relation to the five-year interval as specified in Article 8 paragraph 5 of the Directive, during which time the updates to APs plans are prepared. On the basis of these reports, the Commission should enforce compliance with END requirements in the member states.

In order to implement this proposal, it is necessary to change the text of the END so that it then obliges member states to provide the Commission with reports on the implementation of the measures defined in action plans.

IV.2. More specific requirements regarding the content of action plans

One of the biggest problems with APs in the countries in question is that they are far too general. They only contain specific measures and projects to a very limited extent. This makes it very difficult to quantify how APs help to resolve problems with environmental noise. Appendix V point 4 of the Directive states that the Commission may develop guidelines providing further guidance on APs. With reference to this provision, the Commission should prepare more detailed guidelines for:

- Defining noise-reduction measures so as to ensure that APs only contain those measures which are specific and planned for a specific locality. This seems to be most desired improvement of the APs.
- Determining the specific requirements for financial information given by APs. The budget estimate, cost-effectiveness assessment, and cost-benefit assessment must be tied in with specific anti-noise measures for a specific locality and must contain an implementation estimate.

In order to increase the effectiveness of action plans, the Commission should issue guidelines with more detailed requirements regarding the content of action plans. Action plans must contain a specific list of measures to reduce noise that will be localised in specific areas, giving an estimated time schedule and a cost estimate for implementation.

IV.3. Incorporating the need for the integration of action plans into national decision-making processes

If APs are not taken into consideration as part of national decision-making processes, there is little sense in preparing them. As described in the report, the legal framework of APs is not linked to any part of national legislation in the countries in question. The Commission should ensure that member states adopt a unified approach to APs. APs must serve as a basis for decision-making processes, particularly as regards traffic and land-use planning.

In order to implement this requirement, the content of the END should be amended so that it contains the stipulation that action plans must be taken into consideration by member states in cases of traffic and land-use planning.

IV.4. Setting binding noise limits

Legislative developments covering protection of the air against pollutants can be used as an example of how effective environmental protection requires a combination of individual emissions and overall concentration standards. The same concept applies also to noise reduction. While the European Union has made some progress through a number of regulations that define noise emission limits for machinery and equipment, there are no overall noise limit values at the European level, which is currently left wholly at the discretion of the member states.

As the shadow report implies, the legal systems vary greatly between individual member states. There are some states whose legal systems contain binding noise limits, while other countries have no such limits. As a result, the standard of noise protection varies greatly in the different member states.

The implementation of the END, considering the “soft law” nature of SNMs and APs, is unlikely to lead to a reduction in the noise burden for the inhabitants of the member states. If the European Union wants to achieve its goal in this respect, it must take stronger legal steps to enforce its measures. Furthermore, the experience of the countries where no binding noise limits exist has shown that other methods, like controlling noise through EIA procedures, are not sufficient on their own for ensuring satisfactory noise protection.

Determining noise limit values is therefore the basic prerequisite for any further fundamental progress towards improving this situation. Further discussion is needed as to whether noise limits should be set only for the interior of buildings or also for outside areas, for the whole day or only at night, and whether these limits will only apply to certain designated zones (e.g. residential areas), as the determination of the exact noise limit values needs also a due foresight.

It is necessary to renew discussions on setting noise limits at the European level and to focus further EU legislative steps towards achieving this goal.

IV.5. Enhancing the quality of public involvement in the action planning process

The shadow report has clearly shown that the quality of public involvement in the preparation of APs in many countries does not comply with the requirements stipulated by the Directive. One of the reasons is evidently that the formulation of the requirements for public involvement is too general.

It is necessary to clarify the legal regulations and specify in which phases of the process the public should be consulted, whether public hearings should be held, in what ways the public should be informed about the individual phases of action planning etc.

V. Conclusions

Option 1 (no change to the END) consists of no modification to the current text of the Directive. Based on the problems and requirements described above, change to the END is necessary, thus Option 1 is not a viable option.

Option 2 (minor changes to the text of the END, specially aimed at clarification of the definitions and thus enhancing implementation), **Option 3** (additional guidance and training for Member States to assist them to enforce and implement the END more effectively) and

Option 4 (development and application of harmonised mapping methods) all contribute to the goal to improve compliance with the END via giving assistance to improve the quality of the SNMs and APs and to introduce common assessment methods in the EU countries. In the opinion of J&E, all of these measures are necessary to address the problems with implementation of the END, which will require a complex and comprehensive review.

Option 5 (providing guidance to Member States on how to integrate noise and air quality directives, together with any changes to the END needs to address barriers to closer integration) would admittedly contribute to the better use of resources and knowledge. However, in our opinion, the differences in, for example, definitions between the air quality legislation and noise legislation and the significant differences between the relevant directives may limit the scope for integration.

Option 6 (either setting noise limit values, which cannot be exceeded, or introducing a less stringent trigger value approach, requiring action to be taken within a specified time limit if the limit values are exceeded) is the basic prerequisite for any further fundamental progress towards improving the current situation and to make END more effective in practice. The implementation of the END, considering the “soft law” nature of SNMs and APs, will evidently not lead to a reduction in the noise burden for the inhabitants of the member states. If the European Union wants to achieve its goal in this respect, it must take stronger legal steps to enforce its measures. Determining noise limit values is therefore the basic prerequisite for any further fundamental progress towards improving this situation.

Finally, **Option 7** (linking source-based measures under other EU legislation, including noise emission limits for vehicles, vehicle tyres and outdoor equipment, rules on noise-related operating procedures for airports etc.) is also an important objective. However, the impacts of this option will depend upon not only the extent to which noise limits in source based legislation can be tightened, but also the extent to which the subsequent reductions in noise generation may be offset by other factors.¹⁰

That is why J&E urges EU decision makers to incorporate action plans into national decision-making processes. In order to implement such a requirement, the content of the END should be amended so that it contains the stipulation that action plans must be taken into consideration by member states in cases of traffic and land-use planning.

Summary: To summarize our recommendations, J&E would support “Scenario 3” which incorporates significant changes to the END and/or other noise-related legislation, improved implementation of END plus additional action to achieve effective protection.

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¹⁰ See page 65. of the report.