

# Opinion on the END

Policy Options for the Review of the  
Environmental Noise Directive

(END)

Position Paper

*Justice and Environment 2011*

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#### **1. 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 EU level to protect the environment, people and nature.

J&E currently comprises six full-member organisations: Environmental Law Service, Czech Republic (EPS); Estonian Environmental Law Centre, Estonia (EELC); Environmental Management and Law Association, Hungary (EMLA); ÖKOBÜRO – Coordination Office of Austrian Environmental Organisations, Austria; Legal-Informational Centre for NGOs, Slovenia (PIC); and the Centre for Public Advocacy, Slovakia (VIA IURIS). J&E also has six associate members: Environmental Justice Association, Spain (AJA); Centre for Legal Resources, Romania (CRJ); Front 21/42 Citizens' Association, Macedonia (Front 21/42); MilieuKontakt International, the Netherlands (MKI); Independent Institute of Environmental Concerns, Germany (UfU); and Green Action – Friends of the Earth Croatia, Croatia (ZA).

#### **2. The European Noise Directive (END) and the Justice & Environment activities**

Protection against the adverse effects of noise in the environment has always been one aspect of the European Community's environmental law mandate, as noise is one of the primary factors affecting the environment. Not only may excessive noise have a negative effect on wildlife, but humans are affected, as well. For example, some 40 percent of Europe's population is currently exposed to excessive noise, which can cause not only annoyance, but also injuries to their health, such as hearing loss.<sup>1</sup>

While both national and European legislation try to face these problems, the effectiveness of legal regulations regarding excessive noise is rather weak. One reason for this is that there is strong opposition from industry and a lack of political will to deal with these challenges more efficiently. Nonetheless, legal instruments focusing on noise pollution nevertheless do have significant advantages compared to, for instance, purely climate change instruments. One advantage is that actual limit values have to be strictly obeyed ("hard law").

The quality of transposition and implementation of the relevant European Commission (EC) noise directives in the national legal systems varies considerably. Whereas in some Member States the noise pollution limits are considered strict criteria for new projects (installations or infrastructure), in others they are undermined by other criteria that have to be considered. For example in Austria there are no binding limit values for existing transport infrastructure, only for new constructions or reconstructions that make an EIA necessary ,

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<sup>1</sup> World Health Organization: Night noise guidelines for Europe. World Health Organization 2009, p62.

(where noise will be an issue and limit values might be included in the permit). These differences are so substantial that they affect both the position of operators (entrepreneurs) on the market and the position of the public concerned regarding the enforcement of basic legal standards protecting their rights for a favourable environment and healthy living conditions.<sup>2</sup>

There also is a direct connection between protection from noise and individuals' basic rights and freedoms (for health and favourable environment). Furthermore, as excessive noise is clearly connected to an individual's health, it is also better understood and perceived by people. Due to this, there is an opportunity for European citizens and NGOs and their lawyers to use this noise protection legislation and the corresponding legal tools to exert pressure and achieve a better practical level of human health protection.

From the perspective of both citizens and entrepreneurs, much more pressure for a common level of national application of the rules and a common level of enforcement of legal instruments is needed ("level playing field") within EC countries. Also, citizens need to be aware of legal instruments in both EC and national law to be able to improve their environment and health.

J&E has already researched the implementation of the END in 2009 and has published a shadow report (hereinafter shadow report) on the implementation of the END. The shadow report introduced the key shortcomings of the state of legal protection of citizens – including both implementation of EU law and key national law regarding protection against noise.

J&E has also prepared a legal analysis that mapped potential legal tools (EU law and national law, including best practice examples), selectively assessed transposition and implementation of relevant EU legislation and identified key insufficiencies in the standards of protection provided by national level law.

Relating to the review process of the END, a 2010 report<sup>3</sup> commissioned by the EC (hereinafter report) reviewed the implementation of the END, as required by Article 11 of the END. The report identified seven main policy options designed to address the systematic problems of implementing the END. The report also developed a corresponding Action Plan outlining further implementation strategies and Community action on environmental noise. Finally, the report recommended taking further steps outside of END to address the inherent problem of noise.

Based on the above mentioned report, J&E has prepared an analysis highlighting those policy options that best fit the goals of an easily enforceable and strong END. By evaluating those policy options, J&E has used a unique set of criteria, i.e. not only paying attention to the specific effectiveness of provisions or a proposed regulation, but also factoring in the public participation implications. J&E only endorses those solutions that promote environmental democracy and accountability – as a result of this, J&E promotes only those solutions in the END review process that at the same time promote access rights as well.

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<sup>2</sup> Justice and Environment: Make some noise. Shadow report on implementation of the Environmental Noise Directive. 2009.

<sup>3</sup> [http://www.milieu.be/noise/final\\_reports/end\\_task\\_3\\_final\\_report.pdf](http://www.milieu.be/noise/final_reports/end_task_3_final_report.pdf)

### 3. Findings and conclusions of the analysis

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:

#### 3.1 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).<sup>4</sup> This had various adverse effects on the 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.

#### 3.2 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.

#### 3.3 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.

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<sup>4</sup> 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.

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.

### 3.4 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 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.

## 4. 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:

### 4.1 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.

### 4.2 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.

### 4.3 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.

#### 4.4 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.

#### 4.5 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.

**Summary: To summarize our recommendations, J&E would support a review process which would result in significant changes to the END and/or other noise-related legislation, improved implementation of END plus additional action to achieve effective protection.**

**Contact information:**

**name:** dr. Szilvia Szilágyi  
**organization:** J&E  
**address:** 1076 Budapest, Garay u. 29-31.  
**tel/fax:** 36 1 3228462/36 1 4130300  
**e-mail:** [info@justiceandenvironment.org](mailto:info@justiceandenvironment.org)  
**web:** [www.justiceandenvironment.org](http://www.justiceandenvironment.org)

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