

COMMENTS TO THE REVIEW PROCESS OF THE EUROPEAN NOISE DIRECTIVE

Legal Analysis

Justice and Environment 2012

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The Environmental Noise Directive (END) (2002/49/EC) is a major piece of European Union 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.

In line with its principal aims, the END applies to noise to which humans are exposed, particularly in built-up areas, in public parks or other quiet areas in an agglomeration, in quiet areas in open country, near schools, hospitals and other noise-sensitive buildings and areas (Article 2.1).

The Directive does not apply to noise that is caused by the exposed person himself, noise from domestic activities, noise created by neighbours, noise at work places or noise inside means of transport or due to military activities in military areas (Article 2.2).

Some excluded areas, e.g. related to indoor noise, are covered by other policy instruments both at national and EU level.

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.

In 2011, J&E prepared a legal analysis and a position paper, analysing and evaluating those policy options which are elaborated in the report¹ commissioned by the Environmental Commission, reviewed the implementation of the END, as required by Article 11 of the END.

In 2012, in the online consultation process of the END J&E submitted its detailed comments, based on its reports and legal analysis in 2009 and 2011 and based on the experiences, J&E’s lawyers gained during their legal advocacy work at national level.

Relating to the policy context, we find protection against noise a very important topic within the territory of environmental protection. Due to the researches of the World Health Organization *„excessive noise seriously harms human health and interferes with people’s daily activities at school, at work, at home and during leisure time. It can disturb sleep, cause cardiovascular and psychophysiological effects, reduce performance and provoke annoyance responses and changes in social behaviour.”*²

Due to our experiences in the EU Member States, ambient noise is a serious problem EU-wide, even talking about traffic noise, noise of different industrial activities or noise caused by recreational or everyday household activities.

¹ http://www.milieu.be/noise/final_reports/end_task_3_final_report.pdf

² <http://www.euro.who.int/en/what-we-do/health-topics/environment-and-health/noise>

Due to our opinion the following topics needs consideration during the review process of the END:

Noise limits

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. 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. Determining noise limit values is therefore the basic prerequisite for any further fundamental progress towards improving this situation. 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.

Noise mapping

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 on 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 strategic noise maps (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.

Action plans

Based on our experiences, in some countries even the basic prerequisites of noise mapping and of preparation of action plans (APs) are missing. 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 would be also necessary. The budget estimate, cost-effectiveness assessment, and cost-benefit assessment shall be tied in with specific anti-noise measures for a specific locality and shall contain an implementation estimate as well.

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.

Anti-noise measures

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 shall 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.

Application of the principle of integration

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

In order to implement this requirement, the content of the END shall 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. 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 shall 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.

Synergies in the air quality and noise management policy

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 fully at the discretion of the member states.

The implementation of the Ambient Air Quality Directive and its predecessors requires similar elements, e.g. the data collection in agglomerations, improvement of assessment methods, preparation of action plans, information of the public and reporting to the Commission. In some of the MS there are positive experiences from integrating air quality and noise implementation, e.g. by integrated action planning in particular for road hot spots with noise and air pollution problems. These aspects could be explored further with the view to foster synergies and create experiences.

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