



JUSTICE  
AND  
ENVIRONMENT

European Network  
of Environmental Law Organizations

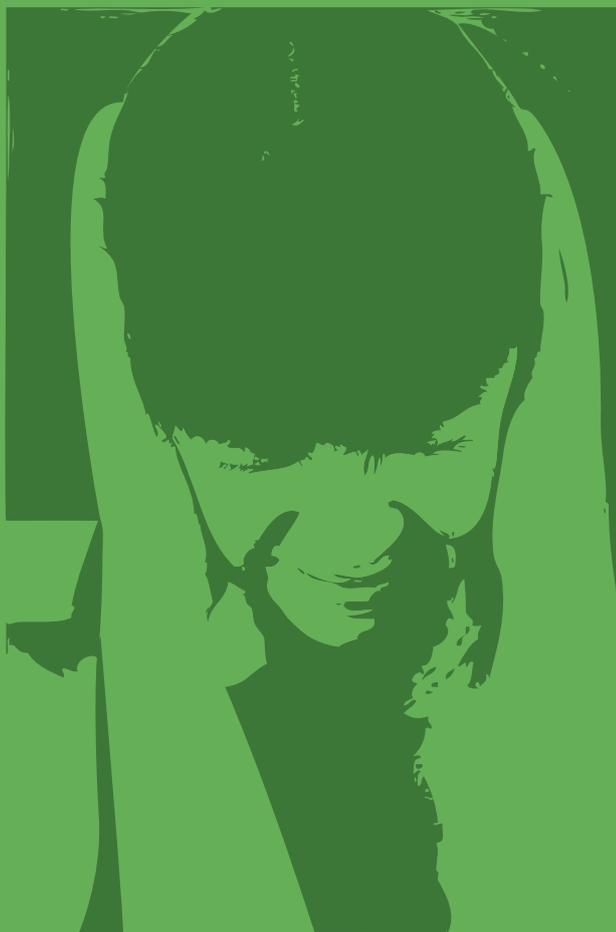


The report was funded by  
the European Commission – LIFE+ programme.

# Make some noise

Shadow report on implementation of the Environmental  
Noise Directive

in Austria, Czech republic, Estonia, Hungary,  
Slovakia and Slovenia



## 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.

J&E was created in January 2003 and founded as a non-profit association in September 2004. 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).

All J&E activities are based on the expertise, knowledge and experience of its member organisations. The members contribute their legal know-how and are instrumental in the initiation, design and implementation of the J&E work programme. The strong grassroots contacts of the members enable J&E to concentrate on Europe-wide legal issues and horizontal legislation, notably the: Aarhus Convention, environmental impact assessment, environmental liability, pollution, Natura 2000, transport and the building of legal capacity. Within these fields J&E: carries out analysis, compiles case studies and joint position papers; formulates strategic complaints, encourages discussion and legal education; and conducts outreach activities. Thus J&E provides added value from civil society to legislators and adds tangible benefits by broadening public knowledge of EU law and legislation.

To carry out its programme of work J&E relies on a number of donors and supporters. First and foremost the members themselves financially contribute to the network. However J&E has been supported by: the European Commission through the LIFE+ programme, the International Visegrad Fund (IVF), The Ministry of Housing, Spatial Planning and the Environment of The Netherlands (VROM), the Sigrid Rausing Trust and its own member organisations

### Contacts

Laszlo PERNECZKY, Coordinator, Tel.: +36 20 39 00 566

### Official address:

Justice & Environment European Association of Environmental Law Organisations Secretariat  
Dvorakova 13, 60200 Brno, Czech Republic

E-mail: [secretariat@justiceandenvironment.org](mailto:secretariat@justiceandenvironment.org)

Website: [www.justiceandenvironment.org](http://www.justiceandenvironment.org)

# Make some noise

Shadow report on implementation of the Environmental  
Noise Directive

in Austria, Czech republic, Estonia, Hungary,  
Slovakia and Slovenia



*The report was funded by  
the European Commission – LIFE+ programme.*

## Acknowledgements

This project of the Justice and Environment Network was made possible by the expertise and dedication of the legal experts and staff of the following member organisations:



ESTONIAN  
ENVIRON  
MENTAL  
L A W  
CENTER



emla



VIA IURIS  
CENTRUM PRE PRÁVA OBČANA



This publication was made possible by the financial support of the European Commission LIFE+ Programme.

Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the European Commission or other supporters.

©2009 Justice and Environment

*Written and edited by Pavel Doucha*

*with contribution from: Clemens Conrad, Silver Nittim, Anna-Matoz Ravnik,  
Martin Stoffa, Szilvia Szilagyi*

*Design and layout: Petur Farkas, [www.iconica.hu](http://www.iconica.hu)*

*Justice & Environment European Association of Environmental Law Organisations Secretariat  
Dvorakova 13, 60200 Brno, Czech Republic*

*[secretariat@justiceandenvironment.org](mailto:secretariat@justiceandenvironment.org)*

*[www.justiceandenvironment.org](http://www.justiceandenvironment.org)*

## Contents

1. Introduction	7
2. Analysis of chief findings	9
2.1. Summary of the main requirements of the Directive	9
2.2. Fulfilment of the formal requirements of the Directive (timely transposition, timely preparation of noise maps and action plans).	10
2.3. Strategic noise maps	13
2.4. Action plans	14
2.5. Brief excursion into national legislation for protection against noise	16
3. Summary and recommendations	18
3.1. Implementation of the Directive	18
3.2. Chief recommendations by Justice&Environment	19
Annex 1. National report Austria	22
Annex 2. National report Czech republic	40
Annex 3. National report Estonia	53
Annex 4. National report Hungary	73
Annex 5. National report Slovakia	95
Annex 6. National report Slovenia	112



## 1. Introduction

Protection against the adverse effects of noise in the environment has always been one of the aspects of the European Community's environmental law, as noise is one of the primary factors affecting the environment. Medical and statistical studies have shown that particularly long-term exposure of the human body to noise above a certain level is harmful. The available figures show that in the European Union there are more than 80 million people who are exposed to noise levels which, according to experts, may be harmful.<sup>1</sup>

Noise is one of the areas, that is regulated by Acquis. The legal basis for resolving this problem within the Community as a whole has assigned anti-noise and anti-vibration protection to the **second and fourth action programme**.

The European Commission's attempts to resolve noise problems initially focused more or less on regulation of **noise emissions** from selected sources, such as cars and technical sources. This approach, however, proved inadequate, and the European Commission gradually began to concentrate on the issue of **noise imissions** (means of protecting people as the recipients of noise). Therefore the Green Paper on Future Noise Policy (COM(96) 540) was published by the Commission in November 1996. It describes noise as one of the basic environmental problems at the local level. One of the targets of the noise reduction policy was to ensure that nobody is exposed to noise levels which are harmful and affect the quality of life.

The European Union's concurrent **Sixth environmental action programme** for the years 2002 to 2012<sup>2</sup> considers the protection of the environment and the health of the citizens of the European Union to be one of its fundamental priorities. This programme has the task of substantially reducing the number of people at risk from long-term noise, including traffic noise. The first step to achieving this target and a key issue for the European Commission in terms of noise protection is the adoption of the Directive relating to the assessment and management of Environmental noise.

Further to the Commission proposal for a Directive relating to the assessment and management of Environmental noise (COM(2000)468), the European Parliament and Council adopted Directive 2002/49/EC<sup>3</sup> on 25 June 2002 (hereinafter END), the main aim of which is to provide a common basis for tackling the noise problem across the EU. The underlying principles of this text are similar to those for other overarching environment policy directives:

- The determination of exposure to environmental noise, through noise mapping, by methods of assessment common in the Member States;
- Ensuring that information on environmental noise and its effects is made available to the public;
- Adoption of action plans by the Member States, based upon noise-mapping results, with a view to preventing and reducing environmental noise where necessary, particularly where exposure levels can result in harmful effects on human health and to preserving noise levels where they are low.

Justice & Environment (J&E) is an association of public interest environmental law organizations based in the EU member states. J&E aims to use the law to protect people, the environment and nature. Our

<sup>1</sup> The Green Paper on Future Noise Policy (COM(96) 540)

<sup>2</sup> The programme is available for download here: <http://ec.europa.eu/environment/newprg/index.htm>

<sup>3</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002L0049:EN:NOT>

primary goal is to ensure the implementation and enforcement of EU legislation through the use of European law and exchange of information.

At a national level the member organisations of J&E specialise in providing legal aid in environmental matters. They often deal with cases where citizens and local NGOs approach them for help in the area of environmental noise. As a result they also have experience with the implementation of the END at the national level.

In order to share their experience with the implementation of the END, certain member organisations of J&E which are most involved with the issue of noise protection have decided to compile this report. Their aim is to:

- summarise 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,
- draw attention to problematic areas of the implementation process in these countries,
- identify elements of the implementation process which are identical or similar in these countries,
- contribute towards the Commission's review of the END.

## 2. Analysis of chief findings

### 2.1. Summary of the main requirements of the Directive

The main requirements of the END can be summarised in four basic groups:

- **Monitoring the environmental problem;** by requiring competent authorities in Member States to draw up “strategic noise maps” for major roads, railways, airports and agglomerations, using harmonised noise indicators  $L_{day}$  (day-evening-night equivalent level) and  $L_{night}$  (night equivalent level). These maps will be used to assess the number of people annoyed and sleep-disturbed respectively throughout Europe.
- **Informing and consulting the public** about noise exposure, its effects, and the measures considered to address noise, in line with the principles of the Aarhus Convention.
- **Addressing local noise issues** by requiring competent authorities to draw up action plans to reduce noise where necessary and maintain environmental noise quality where it is good. The directive does not set any limit value, nor does it prescribe the measures to be used in the action plans, which remain at the discretion of the competent authorities.
- **Developing a long-term EU strategy**, which includes objectives to reduce the number of people affected by noise in the longer term, and provides a framework for developing existing Community policy on noise reduction from source. With this respect, the Commission has made a declaration concerning the provisions laid down in Article 1.2 with regard to the preparation of legislation relating to sources of noise.

The subject of this report also corresponds to these basic areas:

- The first part is an analysis, summarising the main points of contact of the process to implement the END in Austria, the Czech Republic, Estonia, Slovenia and Slovakia. These were chosen because the member organisations of J&E which are involved with the issue of noise protection are active in these countries. Therefore this is not a representative analysis of the implementation of the END throughout the whole of the EU, but merely a kind of probe to assess the situation in certain selected countries;
- The second part contains recommendations and proposals for Community regulations covering noise protection;
- The third part of this work consists of individual national reports which give a detailed overview of the implementation of the END in these member states and also contain a brief description of the national legislation covering protection against noise emissions in the environment.

This work does not attempt to analyse all aspects of the END implementation process as required by the directive. Instead, it focuses on **selected critical points identified by the authors of this report** on the basis of their own experience. In addition, the first part of this work aims to analyse whether the conditions are in place in the individual member states to ensure that measures adopted on the basis of the END (particularly action plans) can actually result in a reduction in noise pollution.

## **2.2. Fulfilment of the formal requirements of the Directive (timely transposition, timely preparation of noise maps and action plans).**

The directive sets the member states deadlines to fulfill the tasks it imposes. The key deadline for this analysis is the closing date for the submission of the report on the implementation of this Directive:

---

*Article 11*

### ***Review and reporting***

*1. No later than 18 July 2009, the Commission shall submit to the European Parliament and the Council a report on the implementation of this Directive.*

---

Member states should fulfill the following tasks imposed by the directive by this deadline:

### **a) Creation of strategic noise maps**

---

*Article 7*

### ***Strategic noise mapping***

*1. Member States shall ensure that strategic noise maps showing the situation in the preceding calendar year are drawn up no later than 30 June 2007 and, where relevant, approved by the competent authorities, for all agglomerations with more than 250 000 inhabitants and for all major roads which have more than six million vehicle passages a year, major railways which have more than 60 000 train passages per year, and major airports within their territories.*

---

The following table summarises compliance with the deadlines for the creation of strategic noise maps in the different countries:

**Table 1**

State	Strategic noise map	Finished within 30 June 2007
Austria	SNM of major roads	No, published January 2009
	SNM of major railways	No, published January 2009
	SNM of major airports	No, published January 2009
	SNM of Vienna agglomeration	No, published January 2009
Czech Republic	SNM of major roads	No, finished in October 2007
	SNM of major railways	No, finished in October 2007
	SNM of Ruzyně airport	No, finished in October 2007
	SNM of Prague agglomeration	No, finished in January 2008
	SNM of Brno agglomeration	No, finished in January 2008
	SNM of Ostrava agglomeration	No, finished in January 2008
Estonia	SNM of Tallin agglomeration	No, still not approved
	SNM of major roads	No, approved August 2008
Hungary	SNM of Budapest agglomeration	Yes, approved June 28, 2007
	SNM of major roads	No, approved between August 14, 2007 and December 13, 2007
	SNM of major railways	No, approved July 1, 2007
	SNM of Ferihegy airport	No, approved July 1, 2007
Slovakia	SNM of Bratislava agglomeration	Yes
	SNM of major roads	Yes
Slovenia	SNM of Ljubljana agglomeration	Yes
	SNM of major railways	Yes
	SNM of major roads	Yes

From this we can clearly conclude that, with a few exceptions, the deadline imposed by the END was not met. In most cases there were major delays with the creation of SNM, which could have had a negative impact on the quality of the action plans, as there was less time to compile them.

---

#### Article 8

##### **Action plans**

Member States shall ensure that no later than 18 July 2008 the competent authorities have drawn up action plans designed to manage, within their territories, noise issues and effects, including noise reduction where necessary, for:

- (a) places near the major roads which have more than six million vehicle passages a year, major railways which have more than 60 000 train passages per year and major airports;
  - (b) agglomerations with more than 250 000 inhabitants. Such plans shall also aim to protect quiet areas against an increase in noise levels.
-

**b) Creation of action plans**

The following table summarises compliance with the deadlines for the creation of action plans in the different countries:

**Table 2**

State	Action plan	Finished within 18 July 2008
Austria	Action plan of major roads	No, published February 2009
	Action plan of other major roads	No, published February 2009, except AP for province Carinthia, Upper Austria and Salzburg, which have not yet been published
	Action plan of major railways	No, published February 2009
	Action plan of major airports	No, published February 2009
	Action plan – IPPC facilities in Vienna	No, published February 2009
Czech Republic	AP of Ruzyne airport	Yes
	AP of major railways	Yes
	AP of road traffic (13 AP for specific regions)	Yes
	AP of Prague agglomeration	No, finished in second half 2008
	AP of Brno agglomeration	No, finished in second half 2008
Estonia	AP of Tallin agglomeration	No, approved May 2009
	AP of road traffic along major roads	No, approved December 2008
	AP of Budapest agglomeration	No, approved November 2008
Hungary	AP of major roads	No, not approved yet
	AP major railways	No, not approved yet
	AP Ferihegy airport	No, not approved yet
	AP Bratislava agglomeration	No, not delivered yet
Slovakia	AP of major roads	No, approved August 2008 and April 2009
	AP of Ljubljana agglomeration	No AP prepared yet
Slovenia	AP of major railways	No AP prepared yet
	AP of major roads	No AP prepared yet

As stated above, in most cases the deadline for the creation of strategic noise maps in these countries was not met. This is even truer as regards the creation of action plans. The only country in which the action plans were partially drawn up on time was the Czech Republic<sup>4</sup>. In contrast, in some cases no action plans had been created at all (Slovenia), or only some (Slovakia, Hungary, Austria). As more than a year has passed since the deadline for the AP, the situation regarding the implementation of this part of the END in these countries is pathetic, to say the least.

<sup>4</sup> The delays with the creation of the strategic noise maps had a negative impact on their quality, as confirmed by the compiler of the AP.

## 2.3. Strategic noise maps

### 2.3.1. Problems during implementation: scope of noise mapping, methodical problems – relevance of noise inputs, credibility of results

In terms of content, the available information shows that the strategic noise maps from most of the countries in question comply with the formal requirements of the directive. They do, however, have some problems in common – particularly compliance with the requirement stipulated in paragraph 6 of Annex 4:

---

*For the purposes of informing the citizen in accordance with Article 9 and the development of action plans in accordance with Article 8, additional and more detailed information must be given, such as:*

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

---

None of the strategic noise maps analysed from Austria, the Czech Republic, Slovenia, and Slovakia contain maps which predict the development of the noise situation in different potential variants.

In the Czech Republic there is a specific problem determining the territory for strategic noise maps of agglomerations. The directive states that in the first phase, i.e. by 30.6. 2007, strategic noise maps must be created for agglomerations with more than 250 thousand inhabitants. The list of precisely marked out agglomerations is, as stipulated by the directive, determined by a national regulation. In the Czech Republic this regulation is Ministry of Health Decree No. 561/2006 Coll. The strategic noise maps in the Czech Republic, however, in contravention of this decree, do not cover the entire territory of the agglomerations. The European Commission does not consider this violation of the national regulation to be a breach of the END.<sup>5</sup>

#### 2.3.1.1. Fulfilment of the requirements of Article 9 of the Directive (timeliness, completeness and clarity of provided information).

It can be said that all the countries in question essentially complied with the requirements of Article 9 of the END. Strategic noise maps are publicly accessible via internet, and are clear and comprehensible.

In one case the requisite information is not available in the strategic noise map, but in the related action plans. This is the case with the strategic noise map in Austria, which does not contain information about the estimated numbers of dwellings, schools and hospitals in a certain area that are exposed to specific values of a noise indicator. This information is contained in the individual action plans.

One serious drawback is the fact that the strategic noise maps in Austria also do not contain a summary of the most important conclusions.

Failure to comply with the basic requirements of Article 9 of the END can essentially only be identified in the strategic noise map of the Tallin agglomeration (Estonia). Apart from the fact that this document does not contain information about the legal framework under which the SNM was created, it does not provide a complete overview of the infringement of noise limits in this agglomeration, something which may be seen as a very serious inadequacy.

---

<sup>5</sup> As evident from the European Commission's response to the municipalities and NGOs which filed a complaint against this procedure

## 2.4. Action plans

### 2.4.1. Process of acquisition of action plans – quality of public involvement

Involving the public in the creation of action plans is one of the fundamental tenets of the END. In all the countries in question these requirements of the Directive have been transposed to the national legal system, even if sometimes only as to comply with its minimal requirements. Despite this, the implementation of these requirements in practice has resulted in a number of major problems in the member states.

Article 8 paragraph 7 of the Directive stipulates the following basic conditions for public involvement:

#### a) Public involvement must be timely and effective

- In Austria the strategic noise maps were published at virtually the same time as the draft action plans, at the beginning of 2009. This is not merely a violation of Article 7 paragraph 1 and Article 8 paragraph 1, but as a result of this the public did not have sufficient time to acquaint itself with the content of the strategic noise maps and the related action plans.
- With regard to discussion of the draft action plan in the province of Vienna the requirements for public involvement were not met at all, as the public was not even given the opportunity to acquaint itself with the proposal. The discussions were attended merely by the heads of the Viennese districts, as foreseen in the Vienna Noise Protection Act. This contradicts one of the basic requirements of the directive.
- In Estonia the public had on average 13-14 days to acquaint itself with the draft action plans. This lack of time, together with the fact that the public were not sufficiently informed about the action plans, meant that public participation in meetings was minimal. In one case the public discussion was cancelled due to lack of interest. Records of these public discussions imply that the public was not sufficiently informed about the topic of the meeting and the aims of action planning, as the majority of the comments and observations related to problems outside of this framework. The comments made by the public were not taken into account when proposing changes to the action plan, but were passed on to be dealt with by the appropriate officials. In other cases they were rejected due to fact that there was no time to modify the draft of the action plan. This form of public involvement cannot by any means be termed effective.
- Unlike in Estonia and other countries, public discussions were not organised in the Czech Republic. Citizens were only given the opportunity to send their comments on the draft action plans in writing. The number of comments sent was very low considering the importance of the issue under discussion – just a few dozen, most of which came from NGOs. Considering the low level of public involvement, public participation in the preparation of action plans cannot be termed effective.
- The process of preparing action plans was not completed in the other countries concerned, therefore the effectiveness of public participation cannot be analysed.

#### b) The results of public involvement must be taken into account by responsible authorities

- Considering the fact that, with the exception of the Czech Republic and Estonia, the process of preparing action plans in the countries concerned is not yet complete, the authorities' approach to comments made by the public cannot be assessed in general terms. The figures show that

public comments are mostly rejected, as they often focus on specific measures in a specific location, which are not supported in such a general text as the AP.

### **c) Information about decisions taken must be given to the public**

- As in the previous section we can only draw on very fragmentary information, as in most countries the process of preparing the action plans was not completed. In formal terms this requirement of the directive was met – the final versions of the action plans are available to the public, including a list of comments and the responses to them (Estonia, the Czech Republic). As regards content, these comments are often arranged in a very formal way and do not answer the questions put forward.

### **d) A reasonable time frame must be given to public involvement.**

- The approach taken by the individual member states differs greatly in this regard. On the one hand there is Estonia, which has set a totally inadequate two-week deadline for the submission of comments on drafts of action plans. At the opposite end there is the Czech Republic, which granted around 8 weeks for the submission of comments. Austria set the deadline at 6 weeks, which is reasonable, but the draft action plans were published at the same time as the country's strategic noise map. Apart from the fact that this is in contravention of the Directive it greatly reduces the level of public involvement, as 6 weeks to study the strategic noise maps and action plans cannot be considered sufficient time to formulate comments.

### **2.4.2. Character of noise protection measures proposed in the action plans (clear measures, emphasis on the most burdened areas - Article 8 paragraph 1)**

In the Czech Republic the main criticism against the draft action plans in the public discussions was the fact that the proposed anti-noise measures are merely a summary of projects and plans which have already negotiated and approved in other strategic documents. This fact is admitted by the compiler himself, who in the text of the action plans explicitly states that the factuality and quality of the plans was affected by the time constraints on the preparation of these documents and that the source material was of low quality (for reasons of technical incompatibility). In formal terms the action plans comply with the requirements of the directive, apart from the fact that they do not specify quiet areas. After analysing the content of the action plans, however, we come to the conclusion that they do not offer much in the way of new means of protecting against noise, even for the most burdened areas, as is stipulated by Article 8, paragraph 1 of the END. They only contain general anti-noise measures which are unrelated to specific areas and also take a time schedule for the implementation of these measures.

In Austria the situation is similar. The available action plans in most cases summarize measures already in place without offering new and/or more effective ways of dealing with environmental noise. No quiet areas are specified and the measures presented do not relate to concrete areas or numbers of people to be disburdened in accordance with Article 8 paragraph 1 END.

As in Estonia, the quality of the content of these action plans is disputable. The action plan for major roads contains a general list of measures being considered, although in the end the only thing it recommends is the construction of noise barriers. The AP of Tallin agglomeration also only gives general anti-noise measures, without listing specific projects, cost estimates, deadlines, etc. Not even this conforms to the directive's requirement stipulating clear measures with emphasis on the most burdened areas.

Slovakia, where the process of preparing the AP is still not formally complete, has faced similar criticism of the content of these plans. The anti-noise measures are often very vague and general, or are missing entirely from some action plans (e.g. the AP of the Bratislava agglomeration). This is another case where clear measures have not been adopted with emphasis on the most burdened areas.

All the above cases show a failure to comply with the requirements of the directive as regards the content of action plans. These AP can do little to help reduce the noise burden in the countries in question.

### ***2.4.3. Interconnection between action plan outputs and other national planning processes and national budget rules.***

The results of analyses carried out in these countries show that this is one of the most critical points affecting the implementation of the directive. Article 1 paragraph 1 c) of the Directive states that the aim of adopting action plans is: “the adoption of action plans by the Member States, based upon noise-mapping results, with a view to preventing and reducing environmental noise.” In order for action plans to help prevent and reduce noise they must be incorporated into the legal system of the member states, obliging authorities to take them into consideration when taking decisions at the national level. Although the END does not explicitly stipulate this requirement, it stems from the provision quoted above regarding the aim of action plans.

Analyses performed in the participating countries demonstrate, however, that in all cases action plans are rather a kind of “soft law”. There is no indication that authorities take them into account within their relevant decision-making processes. Their utility value for urban planning processes, for example, is purely a question of interpretation and of the willingness of the officials involved to take action plans into consideration on a non-committal basis. It is possible to foresee, that “soft” format of action plans will not affect decision making in member states at all.

Action plans do not have any influence on national budget rules in the participating countries. If they do refer to the costs of anti-noise measures, the action plans cannot be used to assist the decision-making process as they are too general and non-binding.

The fact that action plans are not firmly rooted in the national legal systems of the countries concerned leads to the situation that their contribution to preventing and reducing environmental noise is negligible and it is thus hard to determine the Directive’s requirements in this respect are being met

## **2.5. Brief excursion into national legislation for protection against noise**

In order to provide the best insight into the legal sphere in which the END is implemented, this report contains a chapter describing national legal means of noise protection.

### ***2.5.1. Existence of binding noise limits***

From the data available it is apparent that the situation differs greatly in the countries under review. On the one side there is Austria and Slovenia, where the laws do not prescribe universally-binding noise emission limits. It is only in cases of new building projects which are subject to an EIA that the question of noise arises. The Austrian legal system does not stipulate any noise limits for the interior of residential buildings.

On the other side are Hungary, Estonia, Slovakia and the Czech Republic. The legal systems of these countries do contain generally binding (enforceable) limits for environmental noise.

### ***2.5.2. State administration in noise protection***

One specific situation in this regard is in Austria, where noise protection is part of the planning permission process. Therefore the responsible body is the authority issuing the planning permission.

In Hungary and Slovenia the issue of noise protection is the remit of the Ministry of the Environment, while in Estonia, the Czech Republic, and Slovakia this falls under the Ministry of Health of the respective countries. This shows that these countries have different approaches to issue of noise – as a public health problem or as an environmental problem. In any case, the authorities in these countries have at their disposal legal means which allow them to influence permits issued for new building projects or to penalise the infringement of noise limits on existing building sites (this is lacking in Austria). However, none of these countries has a tradition of involving the public in the issue of noise levels and noise protection.

### ***2.5.3. Efficiency of the national noise protection system***

As in the previous two sections, the situation in Austria needs to be assessed separately. There the main obstacle to effective noise protection is the establishment of binding emission limits.

Unlike in other countries this does not appear as a fundamental reform of the law (with the exception of Estonia, where the poorly-designed limits system restricts their applicability). The problem tends to lie in the practical application of these limits by the respective authorities, which often do not have the capacity to deal with noise annoyance cases. One example is the Czech Republic, which has relatively strict noise limits, although the fact that exceptions may be granted to permit sources of excessive noise renders this law somewhat ineffective in some areas (particularly as regards traffic noise).

### ***2.5.4. Other legal instruments, their effectiveness and distribution (i.e. civil law instruments)***

In all the countries in question there are civil law instruments which can be used to enforce protection against noise. However, the use of these instruments is limited to individual cases. In Slovenia there have been several cases where citizens annoyed by noise have gone to court to request reductions in the noise levels of industrial plants. Courts in the Czech Republic deal with numerous suits filed by citizens' groups against the state or regional authorities, as the owners of noisy roads. As in Austria and Estonia these are legal institutes protecting ownership rights against excessive annoyance from other owners (neighbouring properties). In contrast, Slovenia is considering the introduction of damage compensation.

The use of civil law as a means of noise protection is clearly very limited, particularly due to the length and costliness of the civil process. This therefore cannot be described as an generally effective means of protection against noise.

### 3. Summary and recommendations

#### 3.1. Implementation of the Directive

The data collated can be used to determine the main problem areas in the implementation of the END in these countries. In general it can be said that the quality of the implementation of the END in the countries in question is relatively low. Moreover, if we were to compare the quality of the implementation of individual parts of the Directive, there is clearly a difference when comparing noise mapping and action planning. The quality of the content and the way action plans have been prepared in the few countries that have completed them is wholly inadequate. This can particularly be said about compliance with the requirements concerning public involvement in the preparation of these plans. On the other hand, there are few positive examples, one of which is the increased public involvement in the preparation of action plans through the establishment of a noise committee in Hungary.

The following list contains the main findings resulting from this analysis:

##### **a) Failure to meet deadlines for the creation of SNM and AP**

- Most of the countries in question did not abide by the deadlines for the creation of their strategic noise maps or action plans<sup>6</sup>. This had various adverse effects on the quality of the process. In Austria, for example, the strategic noise maps were published practically at the same time as the action plans, 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 action plans. The compilers of the AP admit that the fact that they had limited time to prepare was reflected in the content of the plans.
- The actual process of preparing these action plans is still not complete in most of these countries, despite more than a year having passed since the expiry of the deadline set by the Directive.

##### **b) Very low level of public involvement in the preparation of AP**

- In all these countries inadequacies can 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, evidently due to the lack of public awareness of the possibility of getting involved, was very low, 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.

##### **c) Low quality of action plans and SNMs**

- The countries where the action planning process has been completed (especially the Czech Republic and Estonia but the available AP in Austria show a similar tendency) have one particular problem in common – the quality of AP. This is particularly true as regards the requirements for clear measures with emphasis on the most burdened areas as specified

<sup>6</sup> The reasons of breaking this obligation was not the subject of this report, but are mostly evident: late transposition of the Directive into national legal system, low political will etc.

in Article 8 paragraph 1. The anti-noise measures contained in the action plans are too general and in most cases merely copy previous plans and strategies, especially as regards the development of transport infrastructure. The action plans do not set any deadlines for implementation, and the parts relating to the cost estimates for these measures are also poor.

- For this reason action plans do not offer any great promise of resolving the situation with noise 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 action plans are prepared in order to prevent and reduce environmental noise.
- There are also several serious inadequacies evident in the strategic noise maps. They do not share a common denominator and differ in each different country. In Slovenia the mapping only included plants which require an IPPC permit, while in the Czech Republic the strategic noise maps only covered those parts of agglomerations defined by national legislation. In Estonia it was because of these inadequacies in the content of SNMs that they were not approved by the Health Protection Inspectorate.

#### **d) Non-cohesion of action plans with the national legislation**

- None of the participating countries make clear the legal nature of their action plans, or whether they should just be seen as a basis for related processes (e.g. land use planning). In all the evaluated countries the legal nature of the AP can be interpreted as a “soft law”, which does not have any direct impact on decisions made by the competent authorities. When transposing the Directive member states did not take the opportunity of clarifying how action plans relate to the decision-making process at the national level. In some countries the authorities in question even refuse to consider action plans 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).
- These facts also reduce the potential of action plans to contribute towards preventing and reducing noise in the environment.

Overall the implementation of the END in the countries in question can be rated as being highly problematic, particularly in the action planning phase.

### **3.2. Chief recommendations by Justice&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 (which includes an extension of the role of the Commission as regards the monitoring of the quality of implementation), but it is also necessary to amend the text of the Directive itself and to modify certain provisions. In compliance with Article 11 paragraph 2 of the Directive the Commission, when preparing the report as described in paragraph 1 of the same article, assesses the need for further measures regarding the protection against environmental noise. In this respect the following proposals, which are based on experience with the implementation of the END in the countries assessed, should be considered.

### ***3.2.2. Monitoring the effectiveness of action plans***

As stated above, the “soft law” character of action plans, 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 action plans 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 the updates to action 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.**

---

### ***3.2.3. More specific requirements regarding the content of action plans***

One of the biggest problems with action plans 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 action plans 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 action plans. With reference to this provision the Commission should prepare more detailed guidelines for:

- Defining noise-reduction measures so as to ensure that action plans only contain those measures which are specific and planned for a specific locality. This seems to be most wanted improving of the APs.
- Determining the specific requirements for financial information given by action plans. 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.**

---

### ***3.2.4. Incorporating the need for the integration of action plans into national decision-making processes.***

If action plans are not taken into consideration as part of national decision-making processes, there is little sense in preparing them. As described in the report, legal framework of action plans is not linked to any part of national legislation in countries in question. The Commission should ensure that

member states adopt a unified approach to action plans. Action plans 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.**

---

### ***3.2.5. 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 emissions and concentration standards. This clearly applies also to noise reduction. As regards noise emission limits, the European Union has made some progress. There are a number of regulations which define noise emission limits for machinery and equipment. However, there are no overall noise limit values at the European level, and this is currently left wholly at the discretion of the member states. As this report implies, the legal systems vary greatly in the individual member states. There are some states whose legal systems contain binding noise limits, while in other countries there is evidently nothing of the sort. As a result it can be assumed that the standard of noise protection varies greatly in the different member states.

This analysis also shows that 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.

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 (residential areas etc).

---

**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.**

---

### ***3.2.6. Enhancing the quality of public involvement in the action planning process***

This report has clearly shown that the quality of public involvement in the preparation of action plans 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.**

---

# Annex 1. 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>7</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

<sup>7</sup> All action plans are available at: <http://www.laerminfo.at/article/articleview/59908/1/17978>

for roads, railways and airports, for IPPC facilities the responsibility is shared between the Minister for 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>8</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>8</sup> See BRATRŠCHOVSKY, 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-Betriebezeugesetz (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>9</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>10</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>9</sup> See BRATRSCHOVSKY, Katja: “Öffentliches Lärmrecht” p. 431 f.

<sup>10</sup> ÖAL Directive No. 36 Blatt 1 ([http://www.oal.at/\\_TCgi\\_Images/oal/20080302184211\\_\\_AL-Richtlinie%20Nr%2036%20Blatt%201.pdf](http://www.oal.at/_TCgi_Images/oal/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>11</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>12</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>11</sup> See BRATRŠCHOVSKY, Katja: "Öffentliches Lärmrecht", p. 430.

<sup>12</sup> See Hochreiter: "Gibt es ein Recht auf Lärmschutz?" in Hochreiter (HG), Die Umsetzung der EU-Umgebungsärmrichtlinie 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 Lden and the Lnight 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, kinder gardens, 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 Lden and the Lnight 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<sup>13</sup>” (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

### 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.

<sup>13</sup> <http://www.bmvit.gv.at/verkehr/strasse/autobahn/laermschutz/downloads/umgebungslaerm.pdf>

### **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>14</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>15</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>16</sup> (Österreichischer Arbeitsring zur Lärmbekämpfung) and the Austrian Association for Research on Road - Rail - Transport<sup>17</sup> (Österreichische Forschungsgesellschaft Straße, Schiene, Verkehr). Also the Austrian Environmental Agency has a department<sup>18</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 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.

<sup>14</sup> See HOCHREITER: “Gibt es ein Recht auf Lärmschutz?” p. 75.

<sup>15</sup> Ibid. P. 74.

<sup>16</sup> <http://www.oal.at/TCgi/TCgi.cgi?target=home>

<sup>17</sup> <http://www.fsv.at/>

<sup>18</sup> <http://www.umweltbundesamt.at/umweltschutz/laerm/>

## **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>19</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>19</sup> See HOCHREITER: “Gibt es ein Recht auf Lärmschutz?” p. 76.

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

Clemens KONRAD

OEKOBUERO – Coordination Office of Austrian Environmental Organisations

Volksgartenstraße 1, 1070 Vienna, Austria

Tel: 0043/524 93 77/13 Fax: 0043/542 93 77/20

e-Mail: [Clemens.konrad@oekobuero.at](mailto:Clemens.konrad@oekobuero.at)

[www.oekobuero.at](http://www.oekobuero.at), [www.justicandenvironment.org](http://www.justicandenvironment.org)

# Annex 2. National report Czech republic



## 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*

The following strategic noise maps were drawn up in the Czech Republic:

- Strategic noise maps for agglomerations Prague, Brno, Ostrava,
- A strategic noise map of places near the major roads (approximately 1350 km in all CZ),
- A strategic noise map of places near the major railways (approximately 300 km in all CZ),
- A strategic noise map of Ruzyně International Airport.

The following action plans have been completed as at the date of this Report:

- Airport Prague - Ruzyně action plan
- Action plan - major railways
- Road transport action plans for individual regions:
  - » *South Bohemia Region*
  - » *South Moravia Region*
  - » *Karlovy Vary Region*
  - » *Hradec Králové Region*
  - » *Liberec Region*
  - » *Moravia-Silesia Region*
  - » *Olomouc Region*
  - » *Pardubice Region*
  - » *Plzeň Region*
  - » *Central Bohemia Region*
  - » *Ústí Region*
  - » *Vysočina Region*
  - » *Zlín Region*
- Action plans for agglomerations Prague, Brno, Ostrava

As at the date of the preparation of this Report no quiet areas have been established nor has an implementing regulation been as yet issued that would regulate how to declare quiet areas.

**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)**

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

- Czech legislation does not include any special provisions that would deal with the link between action plans and land-use planning. The cohesion between action plans and land-use planning is, therefore, only a question of legal interpretation, the application practice of authorities and judicial decisions. Discussions are underway that concentrate on whether or not action plans can be subordinated under the general definition of source materials for land-use planning.

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

- Czech legislation does not include provisions from which it would ensure that action plans represent an obligatory source document for whatever kind of further decision-making. As stated above, discussions are being held over whether action plans can at least be viewed as a source material for land-use planning.

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

- A more detailed analysis of action plans drawn up in the Czech Republic shows that these documents in the part that concerns concrete measures for reduction of noise burdens do not contain almost any projects or plans that have not already been planned by the competent authorities within land-use planning, maintenance and transport infrastructure development procedures.
- Basically, all action plans are a mere summary of already drawn up projects and measures and contain only a minimum of new stuff.
- From this point of view it may be said that action plans as such do not measurably-wise contribute to the protection of inhabitants against noise.

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

- In the Czech Republic a special institution has been established by law for the purpose of financing the development and the maintenance of transport infrastructure, namely the State Fund for Transport Infrastructure. The said institution manages a part of the state budget. Formally, the Fund is supervised by Parliament, which approves its budget on an annual basis as part of the state budget.
- The State Fund for Transport Infrastructure is also responsible for financing measures leading to a reduction in noise burden, such as the replacement of windows in exposed houses, the erection of anti-noise walls, and the like. But when putting together the Fund budget for anti-noise measures in the given year it does not act in accordance with any strategies or concepts not to mention any action plans but it proceeds purely

in a utilitarian manner according to which measures individual road administrators succeeded in preparing for the given year.

## 1.2. Overview in details

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

Article 7 (1) of the Directive lays down the latest date for the completion of strategic noise maps for all agglomerations with more than 250 000 inhabitants and for all major roads which have more than six million vehicle passages a year, major railways which have more than 60 000 train passages per year and major airports to 30 June 2007.

As at this date, none of the strategic maps required by the Directive have been provably completed in the Czech Republic. The Ministry of Health succeeded by October 2007 in arranging the drawing up of strategic noise maps for places near the roads, airports and railways.

The remaining strategic noise maps for the agglomerations were completed and published together with the other ones at the Ministry of Health website in January 2008; that is more than half a year after the deadline stipulated by the END.

Failure to observe the binding deadline for the completion and publication of strategic noise maps has become the subject-matter of a complaint filed by seven Czech non-governmental organizations with the European Commission concerning failure to comply with community law. Investigation of the said complaint by the European Commission has as yet not been formally concluded.

The Czech Ombudsman has also criticized the delay in drawing up strategic noise maps.

The deadline for drawing up action plans for places near the major roads which have more than six million vehicle passages a year, major railways which have more than 60 000 train passages per year and major airports and for agglomerations with more than 250 000 inhabitants is set in Article 8 (1) of the END to 18 July 2008.

The first proposals for action plans prepared by the Ministry of Transport were published in May 2008 (the proposals concerned action plans for places near the major roads, railways and airports). These action plans were completed within the time-frame expected by the END. On the other hand action plans for the agglomerations Prague, Brno and Ostrava were completed no sooner than in the following months of the year 2008.

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

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

Czech national legislation is very brief when it comes to public participation in the preparation of action plans. It restricts public participation in the preparation of action plans to the possibility of filing comments to the already drawn up final proposal of an action plans prior to its final approval. It does not expect public participation in the earlier phases of preparation of proposals for the action plan. This fact in itself reduces the effectiveness of public participation. To add to that it needs to be kept in mind that the preparation of the action plans was often delayed – some action plans were actually

completed only after the deadlines set by the END. Comment procedures regarding some proposals for action plans (for example the action plan for the agglomeration Prague) were conducted only after the lapse of the deadline for their completion.

Czech national legislation does not provide for any opportunity whatsoever to initiate reviews of action plans by the public (for example through appeals, actions, etc.)

Overall, public participation in the preparation of action plans can be evaluated as being insufficient. Only a minimal standard is set for informing the public on the possibility of participating in the preparation of an action plan (in documentary form for inspection, in electronic form at the author's website). It does not give the public the chance to comment on the action plan sooner than at the point of the final proposal for the action plan; public participation is only one round; legislation does not deal with how to handle comments made by the public (may be only informal) or with the possibility of filing remedial measures.

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

Czech national legislation in this respect merely stipulates that the author of the action plan will publish how comments and suggestions made by the public will be assessed in documentary form at his registered office and via the Internet. It does not give any further procedural clues how to handle comments made by the public.

Public comments and suggestions, regarding proposals for all action plans, filed within the deadlines stipulated are made by the public at the website of the Ministry of Transport in the form of a comments table. The table always contains the text of the actual comment and information about how it was handled.

Seven persons commented on the Prague Ruzyně Airport action plan. The action plan author handles all comments in the form of explanations or polemics. It is not clear whether any or some of the comments were included in the wording of the action plan (most probably not), it is not expressly stated whether individual comments were accepted, partially accepted or not accepted.

Nine persons commented on the major railways action plan; two comments were partially accepted; six comments did not concern the railway lines that were the subject-matter of the action plan.

A total of forty-four comments from all the regions were filed in regards to the action plans for places near to major roads (of which twelve comments were sent in by the Environmental Law Service).

Three persons commented on the Prague agglomeration action plan. The action plan author handles all comments in the form of explanations or polemics. It is not clear whether any or some of the comments were included in the wording of the action plan (most probably not), it is not expressly stated whether individual comments were accepted, partially accepted or not accepted.

The Brno agglomeration action plan was accepted without any comments from the public.

In what regards the Ostrava agglomeration action plan only one comment was received. It is not stated whether the comment was accepted, partially accepted or not accepted.

Overall, public participation in the preparation of action plans can be evaluated as being very low. More than half of the comments were filed or prepared by two non-governmental organizations (Environmental Law Service, Children of the Earth).

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

Following the requirements of the END and Czech national legislation, strategic noise maps are available to the public in documentary form at the registered office of the Ministry of Health and in electronic form at the website of the same ministry.

Those action plans that have been accepted are collectively presented in electronic form at the website of the Ministry of Transport. The public can also inspect the action plans in documentary form at the building of the same ministry during the allocated hours.

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

Czech national legislation does not stipulate deadlines by which comments regarding proposals for action plans must be sent. In individual cases it therefore depended on the decisions passed by the competent authorities that prepared the action plans.

The exact time-frame for filing comments cannot be retroactively established based on sources available. In all cases, however, the time period was 1-2 months (July – August 2008), which is time enough for formulating comments. The only thing that can probably be pointed out is that the comment procedure in regards to proposals for action plans was conducted during the summer holiday when it is generally more difficult to coordinate time-wise comment procedures with the public due to people being away on holiday.

#### **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)**

Those strategic noise maps which according to national legislation and the END were supposed to have been finished by 18 June 2009 are available at the Ministry of Health's special website, namely: <http://hlukovemapy.mzcr.cz/>. This website, however, only contains the graphic part of the noise maps depicting territories affected by noise. The individual maps can be downloaded as image files.

Furthermore, strategic noise maps form part of the GIS system, which runs on the public administration website at <http://geoportal.cenia.cz/>. These strategic noise maps are depicted as information on the territory.

Other documents can then be located at another part of the Ministry of Health website; this primarily concerns the Report on Drawing Up the Strategic Noise Map of the Czech Republic (Zpráva o zpracování strategické hlukové mapy ČR20) (the report was drawn up

<sup>20</sup> <http://www.mzcr.cz/Verejne/Pages/23-zverejnovani-udaju-o-shm-dle-vyhlasky-c-5232006-sb.html>

by the Health Institution having its seat in Ostrava in December 2007). It presents summary information about the individual strategic noise maps.

Individual strategic noise maps for places near major roads, railways, airports and for agglomerations<sup>21</sup> can then be found at another place at the Ministry of Health website.

In all cases the files concerned can be downloaded in .pdf format, they are quite often very extensive and it is difficult for laymen to find their way around. Overall, the presentation of strategic noise maps on the Internet can be evaluated as exhaustive content-wise, but it comes across rather fragmented and not understandable enough for the general public.

Action plans are collectively published at the Ministry of Transport<sup>22</sup> website. The same website also provides for downloading the text and map parts of the action plans and also presents comments sent in by the public and how they were handled in the form of a table.

#### **g) Information are clear, comprehensible and accessible**

Overall, the presentation of strategic noise maps on the Internet can be evaluated as exhaustive content-wise, but it comes across rather fragmented and not understandable enough for the general public.

Action plans are presented collectively on the Internet at one place, which makes things clearer for the common user. Restrictions, if any, merely touch on the fact that the documents concerned are extensive and that they come in .pdf format – there is no user-friendly summarized information.

The documentary forms of strategic noise maps can be examined at the Ministry of Health during official opening hours (restricted to only two days per week and to add to that only from 3 p.m. to 5 p.m. on these two days). The documentary forms of action plans can be examined at the Ministry of Transport, without a prior appointment only one day per week and to add to that only from 1 p.m. to 4 p.m.). The above described restrictions make the availability of maps and plans to the general public in documentary form practically unexploitable.

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

Strategic noise maps are accompanied by The Report on Drawing Up the Strategic Noise Map of the Czech Republic (Zpráva o zpracování strategické hlukové mapy ČR<sup>23</sup>) (the report was drawn up by the Health Institution having its seat in Ostrava in December 2007). The said Report presents collective data.

There is no collective document in what regards action plans.

### **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:**

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

<sup>21</sup> <http://www.mzcr.cz/Verejne/Pages/24-ii-etapa.html>, <http://www.mzcr.cz/Verejne/Pages/22-i-etapa.html>

<sup>22</sup> [http://www.mzcr.cz/cs/Strategie/Akcni\\_plany/akcni\\_plany.htm](http://www.mzcr.cz/cs/Strategie/Akcni_plany/akcni_plany.htm)

<sup>23</sup> <http://www.mzcr.cz/Verejne/Pages/23-zverejnovani-udaju-o-shm-dle-vyhlaskey-c-5232006-sb.html>

- b) an existing, a previous or a predicted noise situation in terms of a noise indicator,**
- c) the exceeding of a limit value,**
- d) the estimated number of dwellings, schools and hospitals in a certain area that are exposed to specific values of a noise indicator,**
- e) the estimated number of people located in an area exposed to noise.**

Formally, strategic noise maps contain all the required data. Nonetheless, their credibility was challenged by the author of follow-up action plans who added the following commentary to the action plans for major roads:

*“The carried out analysis discovered discrepancies in the total number of dwellings and also in the number of inhabitants in the places near the monitored roads concerned. Owing to the fact that suitable digital data were not provided for the drawing up of the action plans it could not be ascertained whether the stated discrepancies were caused by the drawing up of strategic noise maps or whether the stated discrepancies originated through the provision of inaccurate input data. Without the above stated data, what is difficult is a follow-up analysis, search for hot spots and, thereby, also the drawing up of the actual action plans, that is their results can be affected by inaccuracies that are difficult to specify.”*

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

- » *rail traffic,*
- » *airports,*
- » *industrial activity sites, including ports.*

Formally, strategic noise maps contain all the above-stated data. Nonetheless, strategic noise maps for agglomerations are affected by fundamental unlawful actions. Implementing Regulation No. 523/2006 Sb. lays down a list of those towns that represent individual agglomerations (Prague, Brno, Ostrava) and for the territory of which a strategic noise map should be drawn up. Nevertheless, in reality, the strategic noise maps were drawn up for considerably smaller territories and they do not cover the entire agglomerations stipulated on the basis of the above-stated legal regulation. This fact was the subject-matter of complaints filed by non-governmental organizations at a national level and it was also the subject-matter of complaints filed by omitted towns filed with the European Commission on 5 August 2008. The European Commission, however, did not register this impulse as a complaint on the grounds that the matter does not concern a breach of European law but rather national legislation.

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

- » *a graphical presentation,*
- » *maps disclosing the exceeding of a limit value,*
- » *difference maps, in which the existing situation is compared with various possible future situations,*
- » *maps showing the value of a noise indicator at a height other than 4 m where appropriate.*

Strategic noise maps include graphical presentations that depict the territories where noise limit values are exceeded.

Strategic noise maps do not contain maps in which the existing situation is compared with various possible future situations, and maps showing the value of a noise indicator at a height other than 4 m where appropriate.

**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.**

This information is not available from strategic noise maps.

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

Strategic noise maps for agglomerations contain separate strategic noise maps for road-traffic noise, rail-traffic noise, aircraft noise and industrial noise.

**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,*
- » *the authority responsible,*
- » *the legal context,*
- » *any limit values in place in accordance with Article 5,*
- » *a summary of the results of the noise mapping,*
- » *an evaluation of the estimated number of people exposed to noise, identification of problems and situations that need to be improved,*
- » *a record of the public consultations organised in accordance with Article 8(7),*
- » *any noise-reduction measures already in force and any projects in preparation,*
- » *actions which the competent authorities intend to take in the next five years, including any measures to preserve quiet areas,*
- » *long-term strategy,*
- » *financial information (if available): budgets, cost-effectiveness assessment, cost-benefit assessment,*
- » *provisions envisaged for evaluating the implementation and the results of the action plan.*

The action plans do not contain records of the public consultations organised in accordance with Article 8(7) because no public consultations were organized as part of action plan preparations. The public could participate in the preparation of action plans only through comments filed in writing. The action plans contain summaries of the comments filed and the way how they were handled by the acquirer of the action plan.

The action plans for the agglomerations do not deal with the quiet areas issue. In other regards the action plans meet the formal requirements of the END.

**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.*

A greater number of action plans concentrate on the general enumeration of possible anti-noise measures. Nonetheless, their concrete application to roads, agglomerations, etc., is very short. It focuses primarily on a description of already planned traffic measures (construction of highways, by-passes, etc.) and anti-noise measures (especially the construction of already planned anti-noise walls and the replacement of windows). The number of measures created during the preparation of the action plans is very poor, almost nil. It is probable that this situation is caused by the insufficient source material of strategic noise maps the criticism by the authors of the action plans of which is cited above and the short time period for the preparation of the action plans, in which case the authors add the following, "... the level, the quality and the details of the action plans will correspond with the data and time-frame provided ... The submitted action plan was proposed in regards to the realistic possibilities of the acquirer in the given time-frame to propose measures for noise reduction. It needs to be said that very little time was given for the drawing up of the action plans because of late hand-over of source material, that being the strategic noise maps, and also the handover of the said source material in a form where the outputs are non-uniform and unsuitable for further processing."

The authors of the action plans for places near major roads add to the above that they received the necessary data for the drawing up of the action plans as late as mid May 2008, whereby the deadline for the submission of the proposal for the action plans was July of the same year (max 2.5 months). It is obvious that these factors affected the poor content level of the action plans.

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

The action plans do not contain information on estimates in terms of the reduction of the number of people exposed to noise in consequence of the implementation of the proposed anti-noise measures.

## 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)

### 2.2. Existence of binding limits for indoor noise

National legislation constitutes generally binding hygiene noise limits for indoor and outdoor noise. These limits are laid down by Act 258/2000 Sb. on the protection of public health and Implementing Governmental Decree 148/2006 Sb. on health protection from adverse effects of noise and vibrations. Hygiene limits are construed as equivalent (average) noise values for a certain time period. They differ according to the noise source, according to the nature of the place that is protected from the noise and according to the time of day (various limits for day and night time). For this purpose a complicated system of so-called corrections has been created that are either added to or deducted from the basic limit depending on the nature of the noise source, protected area and time of day.

Those outside areas that are protected by law from excess noise limits are deemed, according to the law, to be undeveloped property that is used for recreation, sports, treatment and training (courtyards, gardens, sports grounds, etc.) and areas up to two meters around residential houses, family houses, constructions for school and pre-school education and for health and social purposes.

Those inside areas that are protected by law from noise are deemed to be dwelling rooms, with the exception of rooms in recreation constructions and in constructions for production and storage.

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

Traffic noise is subject to special hygiene limits and that in two aspects, as follows:

- In contrast to other noise sources, where only the values from the noisiest hour over the period of measurement are averaged to prove the fact that the limits have been exceeded, the limit for traffic noise is calculated as the average value of the entire period of measuring (for the entire day or night period)
- Higher hygiene limits apply to traffic noise in comparison to other noise sources. A further 5 dB is automatically added to the basic noise limit for outside areas (50 dB). A total of 10 dB is added to the basic limit (the total limit is then 60 dB) in the case of so-called major roads or protective zones around railway lines. In the event of noise from roads built before the end of the year 2000, a total of 20dB is actually added to the basic limit and the total limit is then 70 dB.

It may generally be stated that in consequence of the described measures traffic noise has the highest hygiene limits in comparison with the other noise sources. This procedure is partly rationally substantiated by the nature of the traffic noise (stable noise without distinct fluctuations and tonal components, which reduces the rate of negative perception by inhabitants). The main reason, however, is that traffic noise is so widespread that the enforcement of the observance of the basic limits by state authorities would be impossible.

### 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 Czech Republic has a network of state bodies that have the competence to protect so-called public health, against noise amongst others. It *interalia* means that the protection against noise is almost completely outside the competence of communities or regions.

The supreme state authority is the Ministry of Health and it is in charge of the network of Regional Public Health Departments. Special tasks in the field of protection against noise are entrusted to Health Institutions, which are state technical organizations that amongst other arrange noise measuring, the compilation of noise maps, etc.

Specific tasks in the field of protection from noise, arising from the transposition from the END, are entrusted to the Ministry of Health (compilation of strategic noise maps), the Ministry of Transport (compilation of action plans for places near major roads, airports, railways and agglomerations), the Ministry of Environmental Affairs (quiet areas) and Regional authorities (compilation of action plans for agglomerations).

Regional Public Health Departments secure protection against above-limit (excessive) noise in two fields, namely:

- When permitting new constructions that may be a source of noise, they issue a binding standpoint following assessment whether noise limits will be exceeded after completion of construction work,
- Oversee the observance of hygiene noise limits, secure noise measuring and they may impose a fine should it be discovered that noise limits are being exceeded.

## **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?)**

Citizens have rather limited options to achieve protection against above-limit (excessive) noise. Two types of noises need to be distinguished here – current sources of noise and future sources of noise (from a construction site that is still being planned).

In the event of an already existing source of noise, citizens' legal possibilities are narrowed down to them possibly filing an incentive with the Regional Public Health Department. Owing to the fact that the law assumes that it is none other than Regional Public Health Departments that are obliged to control and enforce the observance of hygiene noise limits, it practically does not provide citizens with any effective legal tools. It is at the discretion of the competent Regional Public Health Department whether it will inspect a specific case, have the noise measured and then impose a fine should it be proven that noise limits are being exceeded. A citizen that has been harmed by excess noise does not have any formal position in this procedure – such as a participant in proceedings. He is, therefore, not even immediately informed about the closing of proceedings on the part of the Regional Public Health Department, about the anti-noise measures adopted or about the sanctions imposed.

Even though the hygiene noise limits are stipulated as binding by law, the law knows how to enable long-term operation of sources of excessive noise. Regional Public Health Departments can temporarily and in view of serious reasons permit the running of sources of excessive noise, provided the owner proves that the noise was restricted to a reasonably achievable level. Such a permit is issued as a decision under administrative proceedings the only participant of which is, however, the owner of the noise source.

Not even in this case do citizens affected by excessive noise have the possibility to intervene in the proceedings, yet the matter may concern permission to exceed noise limits for five or more years.

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

The Czech Civil Law provides legal means how a property owner can defend himself against annoyance emissions, including noise emission. The following Civil Law tools are especially applicable from this point of view:

- Protection of ownership rights against annoyance emissions. The provisions of Section 127 of the Civil Code give each and every property owner the right to claim at a court of law protection against annoyance through emissions that originate in neighboring property. During judicial proceedings, the plaintiff must prove that the producer of the annoying noise is the owner or the user of the neighboring property and that the noise is of such an intensity that it is annoying in excess of reasonable circumstances. Should the court satisfy the action it may impose on the defendant to refrain from creating noise emissions.
- In practice this concerns the often applied provisions for protection against so-called neighbor's noise (when the noise source is a minor business premise, specific household operation, playing on musical instruments, etc.). Less common, almost rare, is the application of this tool for the protection against a dominant noise source – industrial business premise and especially traffic. At this point in time there are only two judgments in the Czech Republic where a group of citizens defended themselves against noise from a neighboring road with the help of this legal tool. In both cases the court settled the matter in favor of the plaintiffs.
- Damages. If it can be proved that in consequence of excessive noise emissions a property owner incurred damage (the sales price of the property went down, decrease in income from rent, etc.), the court may be required in accordance with the provisions of Section 415 et seq. of the Civil Code to order the defendant to compensate the damage incurred. The plaintiff must prove in the judicial proceedings that the damage occurred objectively in consequence of noise emissions, that the defendant is responsible for the noise and he must express the damage in money. In practice no judgment is known that would concern this type of case.
- Protection of the personal rights of an individual. The right to protection of personal rights includes the right to protection of health. Provided the plaintiff proves before court that the noise is so intensive that it could harm his health, he may demand of the defendant to refrain from noise emission or to provide reasonable satisfaction in money. In practice no judgment is known that would concern this type of case.

All the above stated possibilities regarding protection against noise have the following joint restrictions:

- Judicial proceedings are expensive (costs originate in consequence of court fees and lawyer fees),
- Judicial proceedings take a long time (courts take a long time to dispose of cases, the same applies to appeals, and this may result in disputes going on for three to five years).
- 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?

Even though the legislation of the Czech Republic in regards to protection against noise is based on binding and enforceable hygiene noise limits, including traffic noise limits, noise limits are practically exceeded very often. Even though the legislation of the Czech Republic in regards to protection against noise has a rather long tradition, and even though the Czech Republic boasts a network of specialized state administrative bodies – Regional Public Health Departments, hundreds of thousands of people are affected by excessive noise. The situation is especially pathetic in regards to the biggest noise source – traffic. Some 226 700 people live near roads where the limit value for traffic noise exceeds  $L_{dvn} 70$  dB and which are the subject-matter of strategic noise maps.

A big shortfall in national legislation is the very restricted space it gives inhabitants that are exposed to excessive noise. Their chances of achieving protection against noise practically narrows down to communication with Regional Public Health Departments or costly, tedious judicial proceedings.

The strategic noise maps and action plans drawn up in accordance with the END do not under this situation present any promise of significant improvement. The strategic noise maps were drawn up after the deadline stipulated by the END. In consequence thereof, there was only restricted space for the good quality preparation of action plans. To add to that, the output of the strategic maps was submitted in a format that was partly unexploitable. Moreover, strategic noise maps suffer from material defects: (a) they contain mistakes from the point of view of the number of affected persons and houses, (b) the strategic noise maps for agglomerations are not compiled for entire agglomerations. Action plans then in the part that concerns proposals for noisy places contain a mere enumeration of already planned projects that would be implemented even without them. Public participation in the preparation of action plans was only formal which is underlined by the number of comments filed. And last but not least it must be underlined and highlighted that the action plans are not interconnected with other national legislation, especially in what concerns land-use planning; therefore, their effect on real solutions to noise-related problems is very doubtful.

In order to improve the situation the following steps need to be taken especially at the legislation creation level:

- Interlink action plans with national legislation at the land-use planning section,
- Reform the national body of laws in regards to protection against noise so that it not only stands on unenforceable binding limits and the necessity to prove the observance thereof through costly measuring, which leads to overall issuance of exceptions that allow the operation of excessive noise sources. Legislation must reflect those situations where it is not possible to observe noise limits in outdoor areas and it must be able to react to these situations in extreme cases also through financial compensations in relation to the owners of the property concerned.

At a political decision-making level it is necessary to increase the budget of the state, regions and communities in what regards the implementation of anti-noise measures.

At an administrative decision-making level it is essentially necessary to remove in the next round of strategic noise map and action plan reviews the current defects and that primarily in what concerns measures proposed in action plans to improve the situation.

### **3. Contact information:**

Pavel Doucha  
Environmental Law Service  
Pribenicka 1908, 39001 TABOR, Czech republic  
Tel: +420 608 873 437 Email: pavel.doucha@eps.cz

# Annex 3. National report Estonia



## 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*

As of 25 June 2009, 3 strategic noise maps and 2 action plans have been prepared in Estonia.

The finished strategic noise maps are following:

- “The strategic noise map of the City of Tallinn” (hereinafter: the Noise Map of Tallinn)<sup>24</sup>;
- “The strategic noise map of road-cuts, which vehicle passages exceed six million a year” (hereinafter: the Noise Map of Roads)<sup>25</sup>;
- “The strategic noise map of the Old City Harbour in Tallinn” (hereinafter: the Noise Map of Old City Harbor)<sup>26</sup>.

Of the above listed noise maps, the first two have been prepared in order to fulfill the requirements of article 7(1) of Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise (hereinafter: END). END has been transposed to the national regulation by sections 130-136, 142 and 151 of the Ambient Air Protection Act (hereinafter: AAPA)<sup>27</sup> and Regulation of the Minister of Social Affairs No 87 of 29 June 2005 “The minimum requirements of strategic noise map and action plan designed to reduce noise” (hereinafter: Regulation No 87)<sup>28</sup>.

The third noise map – the strategic noise map of the Old City Harbor in Tallinn (hereinafter: Noise Map of the Old City Harbor) studies the noise emitted in the Old City Harbor in Tallinn, which is one of the biggest and busiest passenger harbors in the Baltic region and the biggest passenger harbor in Estonia<sup>29</sup>. Although END and the provisions transposing it in the national regulation do not require the compiling of strategic noise map of such site, it will be studied in this analysis, because it self-declares to have been prepared in accordance with the relevant requirements in AAPA and Regulation No 87.

The finished action plans are following:

- The action plan designed to reduce the noise of the City of Tallinn” (hereinafter: the Action Plan of Tallinn)<sup>30</sup>;

<sup>24</sup> Available: <http://www.tervisekaitse.ee/?page=237>

<sup>25</sup> Available: <http://www.mnt.ee/atp/index.php?id=3568>

<sup>26</sup> Available: <http://www.ts.ee/?k=1&p1=2&p2=68&p3=71&t=murauuringud>

<sup>27</sup> Välisõhu kaitse seadus (RT I 2004, 43, 298)

<sup>28</sup> Sotsiaalministri 29. juuni 2005. a määrus nr 87 “Välisõhu strateegilise mürakaardi ja välisõhus leviva müra vähendamise tegevuskava sisule esitatavad miinimumnõuded” (RTL, 14.07.2005, 78, 1092)

<sup>29</sup> Information from the homepage of the Port of Tallinn: <http://www.portoftallinn.com/?k=3&p1=8&p2=27&p3=29&t=old+city+harbour>

<sup>30</sup> Available: <http://www.tervisekaitse.ee/?mid=1118>

- The action plan designed to reduce the noise of road-cuts, which vehicle passages exceed 6 million a year” (hereinafter: the Action Plan of Roads)<sup>31</sup>.

Both of the action plans were prepared in order to fulfill the requirements of article 8(1) of END.

To fulfill the requirements of articles 7(2) and 8(2) of END, three more strategic noise maps (2 for agglomerations and 1 for roads) must be prepared by 30 June 2012 and 3 corresponding action plans must be prepared by 18 July 2013. Also, as is referred in the Noise Map of the Old City Harbor, there is a plan to prepare an action plan designed to reduce the noise of the Old City Harbor in Tallinn.

The Action Plan of Tallinn establishes twenty four quiet areas. The Action Plan of Roads does not establish any quiet areas.<sup>32</sup>

### ***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)***

An action plan and a noise map are prepared by either the operator causing the noise, owner of a road, owner of a railroad or a body of the local government of an densely populated area.<sup>33</sup> When ready<sup>34</sup>, an action plan and a noise map must both get the approval<sup>35</sup> of the Health Protection Inspectorate<sup>36</sup>, that checks whether the documents are in conformity with the requirements of AAPA and lesser acts based on it.<sup>37</sup> Although there is no such provision specifically for the Noise Maps or Action Plans, an action plan or a noise map should be formally endorsed by the compiler of the action plan after the approval of the Health Protection Inspectorate has been acquired (due to the general system of administrative law in Estonia). However, there is no information indicating, that such endorsements were issued in practice in any of the cases.

It cannot be sufficiently determined, whether an action plan and noise map, as regulated in AAPA and Regulation No 87, are binding administrative acts or not.

On the one hand, AAPA provides sanctions for violating the “*requirements of noise mapping, of a strategic noise map or an action plan for reducing the noise*”,<sup>38</sup> The grammatical interpretation of this provision opens a possibility, that the requirements in a noise map or in an action plan are also obligatory. As the action plans must set out anti-noise measures<sup>39</sup>, these measures could be interpreted as “requirements” of the action plan.

On the other hand, noise maps are not supposed to create any “requirements” and in practice, also the anti-noise measures in Estonian action plans can hardly be described as “requirements”. The Action Plan of Roads provides only “possible measures”, of which some are labeled as being “recommended”.

<sup>31</sup> Available: <http://www.tervisekaitse.ee/?mid=1095>

<sup>32</sup> During the publik consultations of the Action Plan of Roads, the compilers of the Action Plan expressed, that it is not clear to them, what does the notion of “quiet area” mean.

<sup>33</sup> Section 134(1) of AAPA

<sup>34</sup> Section 14(2) also indicates, that the in case of noise maps and action plans of agglomerations, the local government bodies of these agglomerations must endorse the noise maps and action plans before submitting them to the Health Protection Inspectorate.

<sup>35</sup> In Estonian “kooskõlastus” – a term, which in the rest of Estonian legislation is sometimes used more in the sense of “coordination” and is never used in the sense of “laying down an administrative or legal act”.

<sup>36</sup> A state body with mainly supervisory functions, in the domain of the Ministry of Social Affairs

<sup>37</sup> Section 135(2) of AAPA

<sup>38</sup> In case of legal persons, the sanction is a fee of 30 000 EEK (approx 1930 EUR)- Article 142 of AAPA

<sup>39</sup> Section 132(2) of AAPA provides, that an action plan must include a list of designed measures with their cost, authorities responsible for them and the deadlines for their application

Similarly, the Action Plan of Tallinn says in its introduction: "...*The Action Plan is a document of "good practice", providing possibilities and measures, that could be applied by different parties to reduce environmental noise*". Moreover, the overall subjects of anti-noise measures cannot be exhaustively defined and most measures are too general to be directly enforceable<sup>40</sup> Due to the generality of the measures, in most cases the action plans also lack the cost of- or deadlines for the measures. Also, the responsible authorities for measures in the Action Plan of Tallinn and for some of the measures in the Action Plan of Roads are state bodies. State bodies cannot be liable on the basis of Section 142 of AAPA.

Subsequently, there is no clear answer to the question, whether the measures in action plans can be binding or not. Section 142 of AAPA allows both interpretations, whereas in practice, the action plans are constructed as non-binding documents. The provisions in AAPA or Regulation No 87 do not exactly say, how specific or how general the anti-noise measures in an action plan should be. In this analysis, we will further on consider the measures of the action plan as non-binding, since this is the situation in practice.

The provisions, that regulate the compilation and content of action plans and noise maps (in AAPA and Regulation No 87) are, however, binding. In case of their violation, the liability provided in Section 142 of AAPA can be applied. The Health Protection Inspectorate can also issue a precept for preparation of a noise map or action plan and for bringing the map or plan into conformity with the requirements of AAPA. The most probable occurrence of violation of the legal requirements for action plans and noise maps would be the failure to prepare the noise maps and action plans on time. Also in practice, The Noise Map of Tallinn and both the Action Plan of Tallinn and the Action Plan of Roads, were finished after the relevant deadlines of Section 151 of AAPA. The Health Protection Inspectorate applied none of the afore-mentioned supervisory measures in practice.

The provision, that Health Protection Inspectorate must approve action plans and noise maps, is also binding. In the case of Noise Map of Tallinn, the Health Protection Inspectorate did not approve it, since it saw several contradictions with relevant legal norms<sup>41</sup>. As the Health Protection Inspectorate told J&E, the City of Tallinn subsequently failed to amend the Noise Map, but it was nevertheless sent to the European Commission and it was the basis of the Action Plan of Tallinn. This means, that not only the Noise Map of Tallinn fails to meet legal requirements, but also the Action Plan of Tallinn is wrongly based on an unlawful Noise Map. Therefore it was incorrect, that the Health Protection Inspectorate later approved the Action Plan of Tallinn. The flaws of the Noise Map of Tallinn make the Action Plan of Tallinn incomplete - some areas exposed to noise were most probably undiscovered by the Noise Map and the Action Plan could not take such areas into account.

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

There is no binding obligation to integrate the measures of an action plan in land use plans. It could be said however, that if measures in an action plan would be relevant to a land use plan in preparation, the body approving this land use plan would have an ethical and social responsibility to take them into

<sup>40</sup> For example, the Action Plan of Tallinn contains a measure (Chapter 1.A.3) "Amendment of existing legal acts (for example Ambient Air Protection Act)". Ministry of Environment, Ministry of Economic Affairs and Communication, Ministry of Social Affairs and Health Protection Inspectorate are listed as the authorities responsible for this measure.

<sup>41</sup> For example- the Noise Map did not use "recommended interim computing measures" from Annex II of END, although Estonia has no official computing measures of its own and must use recommended measures from END; traffic noise was measured only on streets where vehicle passage exceeds 1000 per day, but the Health Protection Inspectorate estimated, that noise limits can be theoretically exceeded already on streets with over 300 vehicle passages per day (According to the information from the Health Protection Inspectorate).

consideration - especially if it is the same body, that prepared the relevant action plan (for example the City of Tallinn in case of building activity inside the City). Also, the ignoring of clearly relevant measures of an action plan without a proper motivation would probably constitute a violation of the rules of discretion of an administrative body.<sup>42</sup> In practice, the measures of the two existing action plans would probably be most relevant to comprehensive plans<sup>43</sup>, since many measures are too general to be considered in detailed plans.

The Action Plan of Tallinn has also a special section of measures, referred as “Considering environmental noise in new land-use plans” (chapter 1.B.1). This provides a list of measures, that could be especially relevant to different land-use plans (comprehensive as well as detailed), for example “*New land use plans should not pose a danger to quiet areas and should include environmental conditions for preserving the quiet areas*”.

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

As mentioned above, the action plans' measures are not legally binding. Therefore, the body issuing a building permit has probably no legal basis to decline the issuing a building permit solely on the basis, that issuing it would be against the measures of an action plan.<sup>44</sup> The measures can be integrated to the building permits only in case they have been part of an earlier land-use plan or if they are similarly prescribed by an environmental assessment.<sup>45</sup>

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

The only type of measures, that the Action Plan of Roads clearly recommends, is the construction of certain type of noise barriers. Since it was finalized only on 9 December 2008, these measures cannot have been actually applied yet, so the practical effectiveness of the measures cannot be evaluated at the moment. It is quite probable, however, that noise barriers have in practice some positive effect to the health of citizens affected.

In case of the Action Plan of Tallinn, it is also too early to evaluate the actual practical effectiveness of the measures, since the Action Plan was finalized on 5 May 2009.

In theory, the measures of both Action Plans could be very benefitting. The Action Plan of Roads sets out specific plans for constructing noise barriers and presents the evaluation of how the noise will be subsequently diminished. The measures in Action Plan of Tallinn are more general, but it is still probably the most comprehensive set of anti-noise measures in an urban community, that has ever been worked out in Estonia. The measures are not only restricted to the activities of the City of Tallinn- they include proposals for amending legislation by the state, for example. General suggestions for protection of quiet areas, considering noise in land-use planning and other guiding measures are included, which could in practice better the noise situation significantly. However, the measures are

<sup>42</sup> The conditions for using the of administrative discretion are provided in Section 4 of the Administrative Procedure Act (Haldusmenetluse seadus, RT I 2001, 58, 354).

<sup>43</sup> Comprehensive plans are land use plans prepared for the whole territory of the rural municipality or city or for parts thereafter according to Section 8 of the Planning Act (Planeerimiseseaduse, RT I 2002, 99, 579).

<sup>44</sup> The conditions for refusing a building permit are provided in Section 24 of the Building Act (Ehitusseadus, RT I 2002, 47, 297).

<sup>45</sup> Based on article of the Planning Act and article of the Environmental Impact Assessment and Environmental Management System Act (Keskkonnamõju hindamise ja keskkonnajuhtimissüsteemi seadus, RT I, 24.03.2005, 15, 87)

non-binding and general. There is no guarantee, that they will affect actual practices. As a rule, the measures of the Action Plan of Tallinn have also no deadlines for their application or cost estimations. Most probably, the City of Tallinn deliberately wanted to avoid taking any direct obligations in the current economic situation (period of diminishing incomes and cutting the already existing costs). During the public consultations, the officials of the City of Tallinn, said several times, that they do not know when the practical changes will take place. They said, that the economic situation is harsh and measures can be applied, “when the money for it can be allocated”

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

The anti-noise measures should be financed by the responsible authorities. In case the responsible authorities are local municipalities, it is probable, that due to the necessity of applying anti-noise measures, the money allocated to them by the state shall increase<sup>46</sup>. The Action Plan of Tallinn and the Action Plan of Roads themselves do not specify the sources of financing, it will be probably regulated in the budgets of responsible authorities. However, at the moment, it is yet early to study the mechanism and source of finances, since the anti-noise measures in the Action Plans were finalized too recently to have been integrated to the budgets of year 2009 (the Action Plan of Roads on 9 December 2008 and the Action Plan of Tallinn on 5 May 2009). In the budgets of year 2009, as well as in few previous years, the respective responsible authorities - the City of Tallinn and the Road Administration<sup>47</sup>- have not included any specific mechanism or source addressing anti-noise measures. Also, during the public consultations of the Action Plan of Tallinn, the officials of the City of Tallinn expressed repeatedly, that they do not know, if and when the City will be able to allocate the finances for the anti-noise measures.

## **1.2. Overview in details**

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

#### **Noise maps**

According to article 7(1) of END, EU member states shall ensure that no later than 30 June 2007 strategic noise maps must be made, and, where relevant, approved by the competent authorities

The most logical interpretation of article 7(1) of END would be, that the finalized version of noise maps must be completed by the fixed deadline of 30 June 2007. However, the transposition of the provision to Estonian legislation has modified this requirement. Namely, according to Section 134(1) of AAPA, after the noise map has been made, the compiler of the noise map (the “competent authority” in END) has to obtain the approval for the noise map from the Health Protection Inspectorate. Section 151 of AAPA sets 30 June 2007 as the deadline for submitting the noise map to the Health Protection Inspectorate for approval. This means, that Estonian national acts do not require the noise maps to be completely finalized by 30 June 2007, since the Health Protection Inspectorate can prescribe amending of the maps submitted to it. Therefore, the transposition of article 7(1) to the Estonian legislation has been improper.

<sup>46</sup> Local governments in Estonia are partly financed directly by the state.

<sup>47</sup> The Road Administration is a state body under the governance of the Ministry of Economic Affairs and Communications

The Noise Map of Roads was approved by the Health Protection Inspectorate on 27 August 2008. The END deadline was not followed.

The Noise Map of Tallinn was submitted to the Health Protection Inspectorate on 30 June 2008. This was a year after it should have been finalized according to END. Although at the time of writing the current report another year has passed, the Health Protection Inspectorate has still not approved the Noise Map of Tallinn, because it contained significant contradictions with relevant legal norms. Nevertheless, the Noise Map was forwarded to the European Commission and the City of Tallinn has not amended the Noise Map according to the suggestions of the Health Protection Inspectorate.<sup>48</sup>

The compilation of the Noise Map of the Old City Harbor was not an object of END deadlines, so it will not be discussed in this section.

### **Action Plans**

Article 8(1) of END provides, that EU member states shall ensure that no later than 18 July 2008 the competent authorities have made and approved action plans. Like in the case of noise maps, Estonian legislator has modified the initial requirement set out in art 8(1) in END, since Section 151 of AAPA sets 18 July 2008 as the deadline for submitting the noise map to the Health Protection Inspectorate for approval. Therefore (like in the case of article 7(1)) the transposition of article 8(1) to the Estonian legislation has been improper.

The Action Plan of Roads was submitted to the Health Protection Inspectorate on 30 October 2008 and approved on 9 December 2008. The Action Plan of Tallinn was submitted to Health Protection Inspectorate on 26 February 2009 and approved on 5 May 2009. The END deadlines were clearly not followed.

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

In Estonia, the specific process of PP is regulated by Section 12 of Regulation No 87. It most importantly provides mainly, that:

- Approved noise maps and action plans shall be made available to the public and disseminated through means of information technology, ensuring the free access to environmental information;
- The compilers of the action plans notify the public, provide the possibility to participate in the preparation and overview of all phases of the action plan, ensure that the opinion of public is taken into account and that the public is informed of the decisions made. The deadlines of the action plan process must enable the public to participate in all the phases of the action plan.

No specific lengths of public displays or other deadlines are provided.

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

After its initial compilation (but before its submittance for approval), The Action Plan of Roads was on the public display for 14 days (1-15 October 2008). The public display was announced on the website of

<sup>48</sup> The information received from the Health Protection Inspectorate,

official publication *Ametlikud Teadaanded*<sup>49</sup> and It was available in the offices of two local governments (which were passed by the road sections covered by the Action Plan) and in the office and on the website of Road Administration (competent authority). On 15 October 2008, public consultations were supposed to be held in two locations. One of them was cancelled due to lack of participants. The other took place, but aside from the compilers of the Action Plan, the only participants were the employees of the company, that compiled the Action Plan of Tallinn. They were participating seemingly mainly out of professional interest and the public consultation turned into a discussion among noise experts exclusively. No written proposals were submitted to the Action Plan of Roads.

The absence of any actual participation from public indicates, that the notification of the public of the upcoming opportunities of PP was ineffective and probably insufficient.

After its initial compilation (but before its submittance for approval), The Action Plan of Tallinn was on the public display for 13 days (3-16 February 2009). The public display was announced in one nationally distributed newspaper and on the website of the City of Tallinn. There was also some additional media coverage (story in a nationally distributed newspaper) during the duration of the public display. During 16-18 February, 3 public consultations (in different districts of the City) were held. The number of participants was quite low – two of the consultations were attended by four citizens (beside the officials and experts) and one consultation was attended by only one citizen. This indicates probably the insufficiency of media coverage (press releases etc, articles etc). The few participating citizens took part of the consultations very actively, however. Several letters with proposals were also submitted during the public display of the Action Plan.

The minutes of the public consultations show, that the PP was not early and effective. While addressing the problems of the citizens, the typical answer of the City officials was, that they will forward the problems to the relevant department of the City (instead of agreeing to amend the Action Plan). One of the reasons for such behavior was probably the delay in completing the Action Plan- at the time of public consultations, the deadline of art 8(1) of END had passed 7 months earlier. On one occasion, an official said in a public consultation clearly, that there is no time to incorporate a proposal to the Action Plan (although it should otherwise be done), so the problem will be solved through other measures.

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

The Action Plan of Roads did not have any results (see the previous point of the current analysis).

The published version of the Action Plan of Tallinn includes the minutes of the public consultations as well as a table listing the proposals made and the answers, which were provided. Of approximately twenty proposals, only one brought upon the amendment of the Action Plan. In other cases, the most typical answers given during the public consultations or to written proposals, were:

- the problem is too specific to be addressed in the Action Plan of Tallinn;
- the problem will be forwarded to another administrative body or department( (Health Protection Inspectorate, Department of Transport of Tallinn, the Police etc);
- the problem is already covered by the Action Plan.

---

<sup>49</sup> [www.ametlikudteadaanded.ee](http://www.ametlikudteadaanded.ee)

It can be clearly seen, that the citizens' proposals were much more specific, than the anti-noise measures in the Action Plan. For example, one citizen suggested reducing of the speed of trams in 2 specific sections of tramlines. The Action Plan at the same time provides a measure "Reducing the speed of tram- and trainlines", without further specification. There is also no deadline for this action, its duration is marked as "indefinite". Probably because of this general measure, the City of Tallinn found no reason to amend the Action Plan according to the afore-mentioned proposal, although it did promise to forward the proposal to the Department of Transport of Tallinn. This is a very typical example reflecting the nature of the public consultations.

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

The final versions of both Action Plans are available in internet. In case of the Action Plan of Tallinn, the final available version includes the minutes of public consultations and the account of proposals made and the answers provided.

In case of the Action Plan of Roads, the minutes of public consultation are not available in internet.

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

The Action Plan of Roads and the Action Plan of Tallinn were on public display for 14 and 13 days respectively. Given the complexity and length of these documents, the public display should have been longer. This applies especially to the Action Plan of Tallinn, which covers significantly more problems and measures, than the Action Plan of Roads. In case of comprehensive (land use) plans of local municipalities, the analogous time-span is four weeks. At least for the Action Plan of Tallinn, a similar length of public display should have been used.

Both of the Action Plans were completed significantly later, than the deadline set out in END. This probably put a pressure on the compilers of action plans. During the PP of the Action Plan of Tallinn, the City of Tallinn seemed to be reluctant to further amend the Action Plan. On one occasion, an official of the City of Tallinn said in a public consultation clearly, that there is no time to incorporate a proposal to the Action Plan (although it should otherwise be done), so the problem will be addressed by other measures).

### **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)**

The final versions (with all accompanying maps) of the Action Plan of Tallinn, the Action Plan of Roads, Noise Map of Tallinn, Noise Map of Old City Harbor and Noise Map of Roads are available in internet. The summaries of all those documents are available in internet as well.

The only exception is Annex IV of the Action Plan of Roads containing the minutes of the public consultation, which is not available in internet<sup>50</sup>.

### **g) Information are clear, comprehensible and accessible**

The most problematic of the documents in that aspect is the Noise Map of Tallinn. It is often impossible to understand, where have the compilers taken their information on existing noise and

<sup>50</sup> We had to submit a request to the Estonian Road Administration to receive this Annex.

its sources (for example only 12 facilities were studied in connection to industrial noise and it is not clear, how this choice was made). The noise map provides no clear explanation of the relevant legal framework, and the exceeding of noise limits are not clearly presented, but only referred to in a few specific cases (which are just explanatory). As a result, the explanatory letter of the Noise Map of Tallinn (the maps are clear) is difficult to understand even for people with good knowledge in noise regulation.

In the other Action Plans and Noise Maps, there are no defects of that scope, but they are still quite complicated (it might be unavoidable in these cases).

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

The Summary has been compiled and published in the internet for the Action Plan of Tallinn, the Action Plan of Roads, the Noise Map of Tallinn, the Noise Map of Roads and the Noise Map of Old City Harbor.

#### **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:**

**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 Noise Map of Old City Harbor, the Noise Map of Roads and Noise Map of Tallinn all provide only the existing noise situation in terms of the noise indicator.

The noise indicators used in the maps are Lden, Lday, Levening and Lnight.

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

In case of the Noise Map of Roads, the exceedings of limit values are not shown on the maps. However, these are quite specifically described in the explanatory letter of the Noise Map. Together with the relatively good explanation of the legal framework of limit values, this description gives quite clear and comprehensible overview of exceeding of limit values. Also the maps of existing situation show the indicators of the exposed noise concerning every individual building,

The Noise Map of Tallinn has also no maps showing the exceedings of limit values. In this case, the textual part of the Noise Map provides only a general overview of the noise situation (there are separate chapters for railroad transport-, road transport-, tram transport-, industrial- and airport noise), together with overall conclusions and some examples of typical noise situations. Subsequently, also the exceeding in limit values are hardly mentioned – only in few cases in the context of a specific example or in some vague conclusions.<sup>51</sup>

Similarly, the Noise Map of Old City Harbor hardly explains the aspect of exceeding noise limits. The violations can only be evaluated from the maps, which present the existing noise situation in terms of noise indicator. Only in the “Conclusions” part of the Noise Map, some overall notions are made in connection to exceeding noise limits. In that matter, the Noise Map is not only insufficient and too

<sup>51</sup> For example, in the chapter describing the industrial noise, the Noise Map says (p 29): “If all industrial- and harbor facilities would work with full power and emit continuously noise more than 60 db/m<sup>2</sup>, then the noise level Lden of 55 db would be exceeded in dwelling areas- especially Mustamäe, Lasnamäe and Kristiine.” This sentence means, that in the created hypothetical situation, noise limits “could be” exceeded in at least half of the City of Tallinn. It is difficult to understand, what is the goal of such statement, if it is not explained more specifically.

general – it is also intransparent, because it remains unclear, which noise limits were actually applied in specific situations. The choice of applicable noise limits is often open to interpretation, due to big amount of different limits and confusing wordings in Estonian relevant acts.

Since legislation leaves room for interpretation of noise limits, it must be stressed, that in case of all the Noise Maps, the determination of the limit values applicable to certain situations are always based on the subjective interpretation of norms by the compilers of the Noise Map and can often be disputed.

The matter is further complicated by the fact, that the indicators of END (Lden, Lday, Lnight etc.) are different from the indicators in (Leq, Ln, Ld etc) which are used in the regulation of noise limits.<sup>52</sup>

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

The Noise Map of Roads provide only the number of noise-sensitive buildings<sup>53</sup> The abovementioned categories are not specifically brought out in the Noise Map of Roads.

The Noise Map of Tallinn provides the estimated number of three type of buildings:

- Educational and childrens' institutions;
- Healthcare- and welfare institutions;
- Recreational areas, playgrounds and parks

However, the Noise Map of Tallinn lacks completely the amount of dwellings exposed to noise.

The Noise Map of Old City Harbor lacks any estimations of these type, although it mentions some specific dwellings exposed to noise.

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

The Noise Map of Roads provides the estimated number of people exposed to noise in a corresponding table. The estimation is based on a presumption, that a household consists of an average of 2,4 persons.

The Noise Map of Tallinn also provides the estimation of people located in the area exposed to noise. However, since no statistical information regarding the dwellings exposed to noise has been provided, the basis of the estimation of people exposed to noise is not exactly clear. The Noise Map says, that the calculations were made by the Office of City Planning of Tallinn and given to the compiler of the Noise Map.

The Noise Map of Old City Harbor lacks this estimation.

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

- » *road traffic,*
- » *rail traffic,*

<sup>52</sup> This was specifically pointed out in the public consultation of the Action Plan of Roads.

<sup>53</sup> The “noise-sensitive” buildings are dwellings, healthcare- and welfare institutions, educational- and childrens' institutions and other buildings, that are exposed to special noise levels (Regulation No 42 of the Minister of Social Affairs from 4 March 2002 “Standard noise levels for residential and recreational areas, dwellings and buildings with joint use, and the methods of measuring noise”)

- » *airports,*
- » *industrial activity sites, including ports.*

The Noise Map of Tallinn clearly puts a special emphasis on the above-mentioned sources of noise – all the chapters of the explanatory text of the Noise Map are devoted to the subchapters regarding those exact sources. Noise from different sources is also covered by adhering maps. Additionally to the above-mentioned categories, the maps and the explanatory text cover the noise emitted by “tram traffic”.

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

- » *A graphical presentation*
- » *maps disclosing the exceeding of a limit value,*
- » *difference maps, in which the existing situation is compared with various possible future situations,*
- » *maps showing the value of a noise indicator at a height other than 4 m where appropriate.*

All Noise Maps include numerous elements, that could be defined as “graphical presentations”

None of the three Noise Maps<sup>54</sup> contains such maps, in which the exceeding of limit values would be specifically brought out, it does not contain any difference maps or maps showing the value of a noise indicator at a height other than 4 m.

**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.**

The Noise Map of Roads assessment height of 4 m and the 5 dB ranges of Lden and Lnight as defined in Annex VI.

Regarding the Noise Map of Tallinn and the Noise Map of Old City Harbor, the case is the same.

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

Yes, Noise Map of Tallinn includes separate noise maps.

**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,*

The Action Plan of Tallinn contains a corresponding section. It seems to be legally correct.

<sup>54</sup> At the same time, such maps are included in the Action Plan of Roads, which present:

- The predicted noise situation in year 2020 in terms of the noise indicator;
- The predicted noise situation in year 2020 in terms of the noise indicator, if noise barriers would be built.

Also in the Action Plan of Tallinn, there are “explanatory” models and maps for possible future situations with noise-alleviating measures concerning four specific locations.

- » *the authority responsible,*

The Action Plan of Tallinn does not have a corresponding section, but the authority responsible is mentioned in the “Introduction” (Section 1) of the Action Plan.

The Action Plan of Roads does have a corresponding section.

- » *the legal context,*

The Action Plan of Tallinn does have a corresponding section. The legal context is quite well presented.

The Action Plan of Roads includes a corresponding section as well. It gives a short list of relevant legislation with very general descriptions, so it could have gone into more detail.

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

Both the Action Plan of Tallinn and the Action Plan of Roads, provide a quite clear and sufficient overview of binding noise limits.

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

Both the Action Plan of Tallinn and the Action Plan of Roads include a corresponding section and it seems to be quite clear and sufficient.

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

Both Action Plans cover this question, although the Action Plan of Tallinn does not specifically give the overall number of people exposed to noise (it was given in the Noise Map of Tallinn).

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

The Action Plan of Tallinn does have a corresponding section, it is publicly available.

The Action Plan of Roads has this record as well, as an annex to the Action Plan, but it is not available in internet.

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

The Action Plan of Tallinn and the Action Plan of Roads both have a corresponding section.

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

The Action Plan of Roads includes the list of those actions, but there are no specific measures for preserving quiet areas, since the Action Plan does not determine quiet areas.

The Action Plan of Tallinn includes a list of such actions.

- » *long-term strategy,*

The Action Plan of Tallinn and the Action Plan of Roads both have a corresponding section.

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

The Action Plan of Roads includes the specific cost of the proposed measures, as well as the cost-effectiveness assessment and cost-benefit assessment.

The Action Plan of Tallinn does not have any cost-effectiveness or cost-benefit assessments. The costs of the most anti-noise measures are also lacking, probably because the measures are so general, that it is impossible to determine their exact costs. More financial information is presented in connection to the actions which the competent authorities already intended to take before the Action Plan.

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

The Action Plan of Roads lacks this section.

The Action Plan has not a separate section, but very briefly lists the following actions for evaluation:

- concerning actions which the competent authorities intend to take in the next five years, the Action Plan of Tallinn declares, that a report will be compiled regarding the application of the measures and general noise situation, which will be made public on the website of the City of Tallinn.;
- annual supervision/audit of application of measures;
- annual surveillance of noise complaints;
- noise measurement tests after the application of noise-alleviating measures.

**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.*

The Action Plan of Roads presents a set of possible measures, which include technical measures at noise sources, (for example “quiet” road paving materials) , as well as measures connected to traffic planning, land use planning and reduction of sound transmission. During the analysis of those measures, the Action Plan reaches to a conclusion, that only one type of measures – building of noise-barriers – is “recommendable”.

The Action Plan of Tallinn includes measures from all of the categories mentioned in the question above. However, these measures are general and as a rule, no application costs or –deadlines are provided.

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

Both, the Action Plan of Tallinn and the Action Plan of Noise lack such estimation.

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

The legal framework of protection against noise is chiefly based on AAPA and the Public Health Act. AAPA provides the definition of ambient noise and the most important definitions connected to measuring and limiting noise.<sup>55</sup> and sets the Health Protection Inspectorate as the body carrying out supervision of the following of noise protection requirements.<sup>56</sup> The Public Health Act<sup>57</sup> provides, that the level of noise shall not cause health disorders and shall comply with the requirements established for rest- and non-work areas.<sup>58</sup>

Based on AAPA and the Public Health Act, the main act to provide binding noise limits in Estonia is the

- Regulation No 42 of the Minister of Social Affairs from 4 March 2002 “Standard noise levels for residential and recreational areas, dwellings and buildings with joint use, and the methods of measuring noise” (hereinafter: Regulation No 42)<sup>59</sup>.

Some more specific noise limits are also provided in:

- Government of the Republic Regulation No 108 from 12 April 2007 “Requirements of occupational health and –safety for the noise-influenced occupational environment, noise limit levels of occupational environment and conditions of measuring noise”<sup>60</sup>;
- Regulation No 122 of the Minister of Environment from 22 September 2004 “The limit values of emissions, pollutant emissions, smokyness and noise-levels in fumes of a motor vehicle”<sup>61</sup>;
- Regulation No 87 of the Minister of Economic Affairs and Communication from 4 August 2005 “Requirements for noise, measuring of noise and marking of noise caused by the devices used in outdoor environment”<sup>62</sup>.

In the context of the focus of the current analysis, mainly Regulation No 42 is relevant

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

The binding limits for outdoor noise are mainly provided in Regulation No 42.

Regulation No 42 does not specifically define “outdoor protected”. However, the “noise-targets” for which the noise limits are applied are divided into four categories which serve as criterias for applying

<sup>55</sup> Section 123 of AAPA provides, that ambient noise means unwanted or harmful outdoor sound created by human activities created by stationary or mobile sources of pollution. Unjustified creation of noise is prohibited.

<sup>56</sup> Section 135 of AAPA

<sup>57</sup> Rahvatervise seadus (RT I 1995, 57, 978)

<sup>58</sup> Section 4(13) of Public Health Act

<sup>59</sup> Sotsiaalministri 4. märtsi 2002. a määrus nr 42 “Müra normtasemed elu- ja puhkealal, elamutes ning ühiskasutusega hoonetes ja müra piirnormide meetodid” (RTL, 14.03.2002, 38, 511)

<sup>60</sup> Vabariigi Valitsuse 12. aprilli 2007. a määrus nr 108 “Töötervishoiu ja tööohutuse nõuded müra mõjutatud töökeskkonnale, töökeskkonna müra piirnormid ja müra mõõtmise kord” (RTL, 27.04.2007, 34, 214)

<sup>61</sup> Keskkonnaministri 22. septembri 2004. a määrus nr 122 “Mootorsõiduki heitgaasis sisalduvate saasteainete heitkoguste, suitsususe ja müra piirväärtused” (RTL, 27.09.2004, 128, 1986)

<sup>62</sup> Majandus- ja kommunikatsiooniministri 4.08.2005. a määrus nr 87 “Nõuded välitingimustes kasutatavate seadmete poolt tekitatavale mürale, müra piirnormidele ja müra piirnormide määramisele” (RTL 2005, 88, 1312)

different noise limits. These categories basically define the “outdoor environment” in the scope of the Regulation, and are the following:

- Category I: natural recreational areas and national parks, recreational areas of recreational- and healthcare institutions;
- Category II: childrens’- and educational institutions, healthcare- and welfare institutions, residential areas, recreational areas and parks in cities and urban settlements;
- Category III: mixed area (dwellings and buildings in joint-use, commercial-, services’- and manufacturing enterprises);
- Category IV: industrial area.

The second criteria, based on which the noise limits are applied, is the “sources of noise”. Regulation No 42 specifically excludes from its scope the so called “domestic noise” (“noise caused by human activities in buildings”) and noise caused by technical devices in dwellings..

It does apply to the following sources of noise:

- vehicle-, flight-, and air transport (with some special provisions concerning exclusively flight transport);
- industrial enterprises;
- commercial- and services’ enterprises, sports fields and entertainment venues;
- construction works.

The strictest limits are set for noise from construction works. As a general rule limits for noise from commercial- and services’ enterprises, sports fields and entertainment venues are the same as for industrial noise. The most non-strict are the limits for transport-caused noise.

The third category, based on which the noise limits are applied, is the time of the causing of noise. Different limits apply for:

- Daytime noise (from 7.00-23.00);
- Night-time noise

The fourth category is the duration of noise. As a general rule, the noise limits are set for the average level of noise for the whole period (daytime or night-time) , which is shown by the indicator Leq. However, in case of certain types of short “noise incidents” (lasting less than 5 minutes) in vehicle and air transport, also maximum levels (shown by indicator Lmax) of these incidents are separately provided.

The fifth category based on which noise limits are applied, is the “type of noise limit”. This category makes the application of Regulation No 42 especially complicated. Namely, it provides 3 different standards for noise levels (represented in order from the strictest to the most non-strict):

- “Target level of noise” represents good noise situation. This can be used as a recommendable level of noise, if the aim is simply “improving the existing noise situation.” However, in case of noise exposed to newly planned areas, its appliance is compulsory;

- “Limit level of noise” is the general maximum permitted level of noise - the exceeding of it requires enforcement of mitigation measures;
- “Critical level of noise” is a level of noise the exceeding of which creates an “unsatisfactory noise situation”, causes a significant annoyance to persons and requires the application of measures for the protection of human health.

Additionally to the system of Regulation No 42, the local government has some competences for limiting outdoor noise:

- According to Section 22(1) of the Local Government Organization Act<sup>63</sup>, the establishment of rules for public order in order to ensure public order is in the competence of governments of local municipalities (cities and counties). Such rules can also include noise restrictions, in practice mainly to prohibit the disturbing noise at nights;
- According to Section 129 of AAPA, local government bodies have the right to establish, with regard to their administrative territories or parts thereafter, standard levels for ambient noise which are up to 50 per cent more stringent than the standard levels established in Regulation No 42;
- In order to prevent the exceeding of the standard levels of ambient noise, the local government body has the right to restrict, through traffic management, the movement of motor vehicles within its territory (Section 138 of AAPA)

In practice, the proper application of the outdoor noise limits is often difficult, because some provisions of Regulation No 42 are complicated and confusing. It can maybe even be said, that the outdoor noise limits are over-regulated. Most important problems, which are caused by the current regulation, are following:

- It is unclear, how the areas exposed to noise should in practice be divided into the categories of Regulation No 42 (categories of “outdoor protected”),. Section 3 of Regulation No 42 says that the categorization should be done based on comprehensive plans of local municipalities (e.g. land use-plans on the level of local municipalities). However, the comprehensive plans of local municipalities do not endorse “noise categories”. Comprehensive plans do include the sectioning of territory according to its land-use, but these terms are different from the terms in the categories of Section 42. Therefore, the categories and subsequently the noise limits applicable are always open for subjective interpretations in specific situations;
- The purpose of the “critical noise levels” is unclear, since the more stringent “limit levels” should never be exceeded anyway. The reaching of “critical level” should probably bring upon urgent activities for the protection of human health. However, it is sometimes claimed, that in some “extraordinary situations”, the critical levels, not the limit levels, are in fact the applicable noise limits. This interpretation should not be used and it creates confusion, but the current wording of Regulation 42 does not exclude it entirely;
- Regulation No 42 and AAPA do not provide whether, and how, cumulative noise should be evaluated;

<sup>63</sup> Kohaliku omavalitsuse korralduse seadus (RT I 1993, 37, 558)

- Section 10(2) of Regulation No 42 provides, that noise has to be measured and computed according to ISO standards ISO 1996-1: 1982(E) and ISO 1996-2:1987(E)). The referred standards are out-dated. Moreover, the only way to get access to the standards, is to read them on spot in the office of Estonian Centre of Standardization or purchase the standards for a rather high cost (for 1021 EEK and 1248 EEK respectively).

It must be stressed, that these are only some of the problems, and several additional, but more specific, application problems have risen due to the unclear and confusing wording of Regulation No 42.

## 2.2. Existence of binding limits for indoor noise

Regulation No 42 provides as well binding limits for indoor noise. The application of limits has following criterias:

- Sources of noise (transport noise or noise caused by technical devices<sup>64</sup>)
- The type of indoor space, which is exposed to noise.

The indoor spaces are divided primarily in following groups (each are further divided):

- Dwellings;
- Accomodation institutions;
- Healthcare institutions;
- Schools and other educational institutions;
- Pre-school childrens' institutions;
- Office- and administrative buildings;
- Sports venues;
- Commercial- and services' enterprises.

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

There are special limits for noise from transport (as described above). Compared to noise from other sources, these limits lower the standard of protection. The only exception is indoor noise, which is caused by technical devices outside, but near the buildings – this type of noise has less stringent limits than noise from transport.

## 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?)

<sup>64</sup> Technical devices is defined as: technical communications of buildings (water-, sewerage-, heating- ventilation- and cooling devices, elevators) and noise-causing devices in the manufacturing- or service areas of the same building or buildings, commercial- or industrial enterprises nearby (Section 7 of Regulation No 42).

The most important state body dealing with noise problems is certainly the Health Protection Inspectorate. Section 135(2) of AAPA provides, that it exercises supervision over ambient air noise levels. As a supervisory official, it has the right to:

- demand information and documents from persons who cause the creation of ambient noise and, with the knowledge of the persons or their representatives, use results of measurements or technical devices for recording noise levels;
- to receive, free of charge, excerpts from documents and up to two copies of each relevant document from persons who cause the creation of ambient noise;
- to issue a precept in order to restrict or terminate the operation of a stationary source of pollution if the noise levels emitted thereby exceed the limit or critical ambient noise levels. Upon failure to comply with this precept, the Health Protection Inspectorate may impose penalty with the upper limit of 10 000 kroons;
- conduct audit measurement tests for verifying noise level (the results of the tests indicate that the standard noise levels have been exceeded, the possessor of the relevant source of pollution is required to pay for the tests.)

The Health Protection Inspectorate has also the right to impose sanctions in case of violation of limit levels. It seems, that since both AAPA and Public Health Act refer to Regulation No 42, which sets out the noise limits, the Health Protection Inspectorate can apply the sanctions either on the grounds of violating AAPA or Public Health Act. If the sanctions are applied based on Public Health Act<sup>65</sup>, the fine for legal persons would be 50 000 EEK. If the sanctions are applied based on AAPA<sup>66</sup>, the fine would be 30 000 EEK.

In some local municipalities, the approval of Health Protection Inspectorate is sometimes also needed for buildings or land-use plans. This however, is not an overall rule. Either way, environmental conditions must be considered in land-use plans (either based on strategic impact assessment or not), so the local government has the obligation to consider the possible future risks of exceeding noise limits. In case of environmental permits, including building permits, the evaluation of noise levels is mainly actual as a part of environmental impact assessment.

In case of noise disturbances which contradict the rules of public order of the local municipality, the Police has the right to restrict or terminate the activity or impose sanctions to the person causing the noise.

The main problems in the legal regulation connected to the supervisory activities of the state bodies are the following:

- The Health Protection Inspectorate has the right to restrict or terminate an operation only when “limit levels” or “critical levels” of noise are exceeded. However, in some cases the “target levels” apply as obligatory noise limits, but the Health Protection Inspectorate has no right to restrict or terminate the operation;
- It is not clear, whether the sanctions based on AAPA or the sanctions based on Public Health Act should be applied when noise limits are exceeded;

---

<sup>65</sup> Section 18<sup>1</sup> of Public Health Act

<sup>66</sup> Section 139 of AAPA

- In practice, the local governments are often reluctant to deal with noise questions, seeing it as an exclusive competence of Health Protection Inspectorate

**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?)**

In case of violation of noise limits, the citizens can:

- Inform the Health Protection Inspectorate of the possible violation. The citizen can request for audit measurement tests, but at first, the citizens themselves must cover the costs of such tests. If the limits are indeed exceeded, the costs will be beared by the possessor of the noise source;
- Demand from the Health Protection Inspectorate the restricting or terminating of the processes, which cause noise. Demand the imposition of sanctions;
- Inform the local government of the violations and demand the withdrawal of the activity license of the operation causing the noise (this would probably be successful if this violation is against the rules of public order of the local municipality, but in many cases the rules of public order include a requirement, that the noise must not exceed the levels in Regulation No 42).

In case of noise disturbances which contradict the rules of public order of the local municipality

- Inform the Police. Demand the restricting or terminating of the processes, which cause noise. Demand the imposition of sanctions;
- Inform the local government of the violations and demand the withdrawal of the activity license of the operation causing the noise

The main problems in practice are in our experience:

- Although the citizens often prefer to turn to the local government in case of noise problems, the competence of local government in these situations are not always clear;
- If the citizens turn to the Health Care Inspectorate, they will be asked to cover the costs of noise measurement tests. This limits the citizens' readiness and possibilities to protect their rights
- Before commencing the noise measurement tests, the Health Protection Inspectorate has to notify the person causing the noise. Sometimes this requirement diminishes the objectiveness of the tests, since the person causing the noise can be prepared and diminish the noise for the duration of tests.

Also, Section 5(6) of Regulation No 42 provides, that in case of single sports- or entertainment events and with the approval of the local government, the noise levels can exceed the usual limit level by 10 dB. The citizens cannot participate in issuing the aforementioned approval of the local government.

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

According to Section 143(1) of the Law of Property Act, if noise is coming from an immovable to another immovable and it significantly damages the use of the other immovable or is contrary to environmental protection requirements, then the owner of an immovable has a right to prohibit this nuisance. This right can be protected at a civil court. However, in case the termination of the nuisance cannot be economically assumed from the person causing it, then the owner of the disturbed immovable can claim only compensation (Section 143(2) of the Law of Property Act).

- 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 connected to noise limits is not sufficient due to the complex and open-for-interpretation nature of noise limits in Regulation No 42. If an supervisory authority "is not interested" in identifying the violation of noise limits, it can always find a way to interpret the regulation so, that less stringent noise limits would be applied. The same applies to the persons studying noise disturbances in environmental impact assessments and strategic environmental impact assessments.

The most effective legal tool from the citizens perspective is probably the making of a complaint to the Health Protection Inspectorate and demanding the conduction of audit measurement tests, and further on the restriction or termination of the operation causing limit-exceeding noise and/or the imposition of fees. Turning to local governments is not so effective, because their competences are not totally clear and they are often reluctant to deal with noise. However, the making of a complaint to Health Protection Inspectorate often eventually brings upon the necessity to cover the costs of audit noise measurements by the citizens themselves (which will only be compensated if the test identify the exceeding of limits). This restricts the use of this tool.

In order to improve the situation:

- The criterias of application of different noise limits in Regulation No 42 should be made clear and direct, so there would not be possibilities to manipulate the applicable noise limits due to "necessities of the situation";
- The rights of Health Protection Inspectorate and the rights of local governments as supervisory bodies should be clearly and sufficiently regulated and separated;
- In case of more apparent and probable noise disturbances, the citizens should not have to pay for audit measurement tests – whether the later results of these tests show the exceeding of noise limits or not.

## 3. Contact information

Silver Nittim  
Estonian Environmental Law Center, Mäe 28, Tartu, Estonia  
Tel: +37-2-7-424-524,  
Email: silver@k6k.ee  
www.k6k.ee

## Annex 4. National report Hungary



### Some basic facts about Hungary<sup>67</sup>:

<b>Official name</b>	<b>Republic of Hungary</b>
<b>Capital</b>	Budapest
<b>Area</b>	93,030 sq km / 35,919 sq mi (administratively divided into 7 regions and 19 counties)
<b>Population</b>	10,1 million out of which about 2 million inhabitants live in the capital, Budapest
<b>Largest towns</b>	Debrecen, Miskolc, Szeged, Pécs, Győr
<b>Climate</b>	temperate; cold, cloudy, humid winters; warm summers
<b>Geography</b>	landlocked; strategic location astride main land routes between Western Europe and Balkan Peninsula as well as between Ukraine and Mediterranean basin; the north-south flowing Duna (Danube) and Tisza Rivers divide the country into three large regions
<b>Terrain</b>	mostly flat to rolling plains; hills and low mountains on the Slovakian border. Highest point: Kékes (1,014 meters). Lowest point: Tisza River 78 m
<b>Main rivers and lakes</b>	Danube, Tisza, Lake Balaton, Lake Velence
<b>Natural resources</b>	bauxite, coal, natural gas, fertile soils, arable land
<b>Land use</b>	arable land: 49.58%, permanent crops: 2.06%, other: 48.36% (2005)
<b>Irrigated land</b>	2,300 sq km
<b>Environment</b>	large ongoing investments to upgrade Hungary's standards in waste management, energy efficiency, and air, soil, and water pollution to meet EU requirements
<b>Per capita GDP (at purchasing power parity)</b>	EUR 15,700/ USD 20,230 (2008, wiiw*, EIU**) <small>* The Vienna Institute for International Economic Studies. ** The Economist Intelligence Unit.</small>
<b>Currency</b>	Forint (HUF)
<b>Composition of GDP</b>	agriculture: 3.2%; industry: 31.9%; services: 65% (2008 est., Central Intelligence Agency)
<b>Transportation (2008)</b>	railway network: 7,937 km (2,628 km electrified), public road network: 160,680 km, six international airports.

<sup>67</sup> Hungarian Investment and Trade Development Agency. <http://www.itdh.com>

## 1. Implementation of the Environmental Noise Directive (END) in Hungary

### 1.1. General information

The main factors determining the environmental quality of towns are air pollution, noise pollution, the existence or lack of urban green areas, the condition of residential buildings and the rehabilitation of abandoned industrial areas. Noise nuisance is harmful to health in addition to adversely affecting people's general conditions, quality of life. Noise nuisance primarily comes from transport (road, railway, air), but noise caused by industrial and commercial facilities is also considerable.

The number of noise and vibration sources, noise nuisance and vibration is continuously increasing, which is also reflected in the number of household complaints and increasing sensitivity of the population to noise. Noise pollution is becoming a graver factor threatening also health.

Statistical processing of noise measurements near the busiest routes of the country in the peak hours, tested between 1995 and 2000, shows that at 98 per cent of the measuring points the noise level exceeded 65 dBA<sup>68</sup>.

Of environmental noise sources, transport, including road transport is the most important one. The proportion of the impact disturbing the population amounts to 50-55 per cent on average in the country. In large cities this proportion is 60-65 per cent. Noise pollution affects especially those who live by main road sections crossing large towns.

The implementation of the 2002/49/EC directive relating to the assessment and management of environmental noise is a crucial point in noise protection policy of Hungary.

At the initial phase of the implementation process of the directive Phare-project titled "Strategic Noise Mapping in Hungary" has provided experience in the preparation of noise maps, the estimation of costs and time requirements of the complete noise map of the agglomeration of Budapest, and has made recommendations for the organization responsible for the preparation of the noise map of the capital<sup>69</sup>.

Within the framework of the preparation of the new regulation on environmental noise and vibration protection, a complete review of current regulations determining the authorities' noise protection activities has been carried out.

Within the first phase of the central project of the Transportation and Infrastructure Operational Programme (KIOP), the strategic noise mapping of about 400 kilometres of national highways, 40 kilometres of railways, and 21 settlements in the surroundings of Budapest has been prepared.

For today the harmonisation procedure of END in Hungary is completed, the implementation and enforcement of the requirements of the END and the respective Hungarian regulations is continuous.

<sup>68</sup> National Environmental Programme of Hungary 2003-2008. Ministry of Environment and Water. Printed and bound by Komáromi Nyomda 2004. Budapest

<sup>69</sup> Government of the Hungarian Republic: Member State Report on the Implementation of Renewed EU Sustainable Development Strategy (EU SDS). Budapest, June 2007.

## Legal background

END is transposed into Hungarian law with the following legislative measures:

- Amendment of Act LIII of 1995 on the General Rules of Environmental Protection (Env. Prot. Act);
- Government Decree 280/2004. (X. 20.) On Assessment and Management of Environmental Noise (Gov. Decree);
- Decree 25/2004 (XII. 20.) of the Minister of the Environment and Water on the Required Form and Content of Strategic Noise Maps Used for the Evaluation and Management of Environmental Noise, and the Calculation and Testing Methods Used for the Preparation of Strategic Noise Maps.

**First of all Env. Prot. Act. defining the basic general rules of environmental protection has been amended.** As a result of the amendment it is stipulated in Env. Prot. Act. that the reduction of environmental noise in highly exposed areas and the preservation of quiet areas from noise damage shall be implemented by way of an action plan built on strategic noise mapping pursuant to specific other legislation.

Further goal of this amendment was to render the obligations of preparation of the strategic noise maps and action plans to local municipalities inter alia by stipulating that the municipal environmental program (basic planning document relating to environmental protection of local municipalities) shall contain, in particular, tasks and regulations pertaining to the communities' protection against noise, vibration and air pollution, and the action plan devised around the strategic noise map prepared by the local authorities subject to the obligation of strategic noise mapping by virtue of specific other legislation.

Env. Prot. Act also stipulates the obligation that in the interest of environmental protection, each municipal local government (as well as the Metropolitan Government of Budapest) shall analyze and evaluate the state of the environment in its jurisdiction and shall inform the public thereof as necessary, but at least once a year<sup>70</sup>.

In order to integrate the outcomes of strategic noise maps relating to administrative areas of local municipalities imposed by noise and the related planning documents of environmental protection prepared at local level the amendment stipulates, that the local authorities of communities, specified in specific other legislation, shall prepare the above mentioned evaluation of environmental status relating to environmental noise based on the strategic noise map for the areas and facilities specified and according to the instructions contained in specific other legislation.

**The general, detailed implementation of END has been attained by Government Decree 280/2004. (X. 20.) On Assessment and Management of Environmental Noise (Gov. Decree)** inter alia by means of the following provisions<sup>71</sup>:

- It determines those territories and transport facilities which fall under the provisions of the relevant regulation;

<sup>70</sup> Section 46. Para 1, point e) of Env. Prot. Act.

<sup>71</sup> Detailed presentation and analysis of the relevant regulations of Gov. Decree will be provided in the next section (II.3.).

- Identifies and designates the bodies and authorities responsible for preparation, publication and for the approval of strategic noise maps and action plans as well as bodies responsible for providing information;
- Contains detailed rules on the relevant procedures;
- Specifies the minimum requirements concerning content of strategic noise maps and action plans;
- Determines the deadlines of the obligations;
- Stipulates the rules of participation of the public and the rules of publication of strategic noise maps and action plans.

In the event of communities - within the agglomeration of Budapest and towns with a population exceeding 100 000 residents - the community municipalities (in the event of Budapest, the Metropolitan Municipality) are obligated, while in the event of a major traffic facility, an organization designated by the Minister of Economy and Transport is required to prepare a strategic noise map and action plan.

**The detailed, technical rules of preparation of strategic noise maps are regulated in Decree 25/2004 (XII. 20.) of the Minister of the Environment and Water on the Required Form and Content of Strategic Noise Maps.** E.g. it contains the methods of calculation to be applied by preparing the strategic noise maps, as well as the relevant emission and transmission models. The methods to be applied by checking the relevant calculations are also determined.

### Costs

Regarding the costs of the implementation, the first phase of the planning (strategic noise maps of Budapest and its agglomeration, including the above mentioned 21 settlements surrounding the capital) has been fulfilled in 75% from EU and in 25% from governmental funds. The total cost of the project was 680 million Ft (about 2.4 million Euros<sup>72</sup>).

In the forthcoming phases of the planning process all the municipalities obligated to prepare strategic noise maps and action plans are getting technical assistance from the Ministry of Environment and Water and do have the possibility to make a tender for financial funds (with a moratorium percentage of 15%) to the Environment and Energy Operative Programme 2007-2013 (KEOP) which is funded by the EU.

As regards the strategic noise maps of public roads, railways and the main airport, they were prepared by the Institute designated by the Minister of Economy and Transport and financed from governmental funds as well. Based on the information note of Ministry of Transport, Telecommunication and Energy (former Ministry of Economy and Transport) published in 2008, for preparation of the action plan on the main airport the Ferihegy Airport Zrt. became responsible, while preparation of the action plans of other major traffic facilities remained at KTI Institute for Transport Sciences Non-profit Limited Company.

It is important to note that the relevant legislation harmonizing the END does not contain any reference on funding of future measures and investments necessary to realize the content of the action plans.

<sup>72</sup> Counting with exchange rate 1Eur=279 Ft.

In the case of Ferihegy Airport the situation is rather simple, because other legal instruments dealing with airport noise [like Gov. Decree 176/1995, (XI. 11.) on the rules of the designation, benefit and termination of noise protection areas established in the vicinity of airports, or joint KHVM-KTM Decree 18/1997. (X. 11.) On Detailed Technical Rules of Designation, Management and Termination of Noise-Protective Zones in the Vicinity of Airports] obligating primarily the operator of the airport do anyway require noise abatement programs and measures.

The situation is different in the case of local governments; they have to finance the implementation of the action plans and all of the noise abatement measures from their own budget or they have to make attempts to get EU or governmental funds in the future. Considering, that generally speaking local governments do already have many important decentralized social-sector functions without sufficient resources, the implementation of the action plans is to say the least doubtful.

### **Liability of action plans**

The main legal requirements with regard to the process of construction activities are described inter alia in Act LXXVII of 1997 (Construction Act) and its executive decree (37/2007 OTM decree) and in Governmental Decree 253/1997 (20 Dec) on the National Requirements of City-Planning and Construction. Under Governmental Decree no. 253/1997, noise-protection of newly-built residential and industrial buildings is the responsibility of the developers.

All of the requirements harmonizing the END have been materialized in a form of a governmental decree, consequently in a form of a legal regulation, which is binding in general for all legal entities. However after analyzing the provisions of Gov. Decree in details it is apparent, that there is no legally coercible regulation nor for the preparation of the strategic noise maps nor for the action plans. There aren't any legal consequences if they won't be prepared in time, further there is no legal obligation to consider or implement the findings of the action plans e.g. into land use planning, permitting etc.

This statement is especially true in the case of local governments. In the event of communities within the agglomeration of Budapest and towns with population exceeding 100.000 residents the community municipality (and in the event of Budapest the Metropolitan Municipality) is required to prepare a strategic noise map and action plan.

The main problem is arising from the constitutional and administrative system of Hungary. The country is partitioned into counties, cities, communities (villages) and the capital, which is divided into districts. Administratively, local governments are constituted in each of these units. Independence of local governments is very strong as their decisions can be overridden only by the decision of the Constitutional Court. The Constitutional Court protects the rights of local governments, oversees the legality of local authority activities and exercises constitutional control over local government decrees. The Constitutional Court has the right to abolish decrees that do not comply with the constitution.

Generally speaking apart from the Constitutional Court there isn't any body or state organ today in Hungary which is entitled to hold the municipalities responsible (with real legal consequences) if they fail to fulfill any obligations stipulated in the prevailing laws.

In the present form of the respective legal regulations there aren't any legal consequences in the case of late or no implementation as well as there aren't any obligations to integrate or consider the action plan measures at land use planning or at licencing of construction activities etc.

Nor the strategic noise maps nor the action plans appear in a form of a legal regulation: the strategic noise maps and action plans of the obligant municipalities shall be accepted by the councils of representatives and/or general assemblies of obligant municipalities, while the strategic noise maps and action plans for the major traffic facilities shall be approved by the environmental inspectorate (both in a form of a decision).

### **Possible benefits**

Apart from the doubts drafted above implementing in a proper and consistent way strategic noise maps and action plans can be serve as an appropriate tool in noise abatement and protection of the environment from noise in the long run.

- They present the significant and dominant sources of noise, including their impact area;
- The extent of noise levels from the different sources can be compared with each other expressed with measurement units and in graphical way as well;
- It is and will be possible to localize the most critical locations from the point of view of annoyance;
- There will be possible in the long term to estimate and evaluate strategic decisions affecting larger areas from the aspect of protection against noise;
- Besides presenting information on annoyance there is/will be possible to get information to what extent residents and so called sensitive areas (residential areas, schools, hospitals etc.) are affected;
- Hereby it will be also possible to consider the aspects of environmental noise in the relevant decision making procedures;
- Critical noise situations can be communicated and presented to the public in an easily intelligible way;
- They are the first step towards a long-term process to decrease the annoyance of the affected areas.

## 1.2. Overview in details<sup>73</sup>

### Deadlines

The following table gives a short overview on the different deadlines and actors of the preparation process of strategic noise maps and action plans.

Task	Affected areas	Who is responsible for	Deadline	Realization
<b>Preparation of strategic noise maps for towns exceeding 250.000 residents</b>	Capital of Hungary, Budapest and its agglomeration (21 towns)	The Metropolitan Municipality of Budapest and the community municipalities of its agglomeration		The strategic noise map of Budapest has been approved by the General Assembly of the City of Budapest on June 28. 2007
<b>Preparation of strategic noise maps for</b> <ul style="list-style-type: none"> <li>all public roads with heavy traffic exceeding 6 million vehicles per year,</li> <li>all railways with heavy traffic exceeding 60 000 trains per year and</li> <li>major airports</li> </ul>	All the affected public roads, railways and the airport has been announced by a communication of the Minister of Economy and Transport. There are altogether 539,4 km of roads countrywide (136 road-sections) and 21 km of railway lines (2 main railway lines) affected. There is only one airport, the Ferihegy Airport which can be regarded as a major airport.	KTI Institute for Transport Sciences Non-profit Ltd*.	June 30. 2007	The strategic noise maps of the main public roads were prepared and approved continuously from August 14. 2007 to December 13. 2007. Strategic noise maps of the main railways and the Ferihegy Airport were approved on July 1. 2007.
<b>Preparation of action plans for towns exceeding 250.000 residents</b>		The Metropolitan Municipality of Budapest and the community municipalities of its agglomeration		The strategic noise map of Budapest has been approved by the General Assembly of the City of Budapest on November 27. 2008.
<b>Preparation of action plans for</b> <ul style="list-style-type: none"> <li>all public roads with heavy traffic exceeding 6 million vehicles per year,</li> <li>all railways with heavy traffic exceeding 60 000 trains per year and</li> <li>major airports</li> </ul>		KTI Institute for Transport Sciences Non-profit Ltd.	July 18. 2008	Action plans of the main public roads and railways are still under preparation, are not approved yet. The action plan of Ferihagy Airport is already prepared but isn't approved yet.

\* The KTI Institute for Transport Sciences Non-profit Limited Company is a priority public benefit company. Together with its predecessors KTI goes back more than 70 years into the past. The state-owned KTI is one of the research bases of the Ministry of Transport, Telecommunication and Energy. KTI's partners come from both the public and private sector and are under the professional guidance of the State. KTI - with its total research activity - plays a significant role among transport research institutes in Hungary and within Europe as well. Its highly-qualified experts enjoy national and international acclaim, which is reflected by the successful projects of recent years and the extensive partnerships of the Institute. (<http://www.kti.hu/index.php/about-us/briefly-about-kti/tradition-and-partnership> downloaded at: 08.06.2009)

<sup>73</sup> Hereby we would like to give thanks to Viola Parászka, councillor of the Hungarian Ministry of the Environment and Water for the generous help and information.

Task	Affected areas	Who is responsible for	Deadline	Realization
<b>Preparation of strategic noise maps for towns exceeding 100.000 residents</b>		The Metropolitan Municipality of Budapest and the community municipalities of its agglomeration and the municipalities of the 7 largest towns of Hungary		In progress
<b>Preparation of strategic noise maps for</b> <ul style="list-style-type: none"> <li>• all public roads with heavy traffic exceeding 3 million vehicles per year,</li> <li>• all railways with heavy traffic exceeding 30 000 trains per year and</li> <li>• major airports</li> </ul>	<p>All the affected public roads, railways and the airport has been announced by a communication of the Minister of Transport, Telecommunication and Energy.</p> <p>There are altogether 2902,871 km of roads countrywide (658 road-sections) and 914,1 km of railway lines (9 main railway lines) affected.</p> <p>There is only one airport, the Ferihegy Airport which can be regarded as major airport.</p>	<p>KTI Institute for Transport Sciences Non-profit Ltd.</p>	<p>June 30. 2012</p>	In progress
<b>Preparation of action plans for towns exceeding 100.000 residents</b>	There are 8 settlements in Hungary with a population exceeding 100.000 residents.	The Metropolitan Municipality of Budapest and the community municipalities of its agglomeration and the municipalities of the 8 largest towns of Hungary		In progress
<b>Preparation of action plans for</b> <ul style="list-style-type: none"> <li>• all public roads with heavy traffic exceeding 3 million vehicles per year,</li> <li>• all railways with heavy traffic exceeding 30 000 trains per year and</li> <li>• major airports</li> </ul>		<p>KTI Institute for Transport Sciences Non-profit Ltd.</p> <p>In the case of Ferihegy Airport as the only major airport in Hungary: Budapest Airport Zrt.*</p>	<p>July 18. 2013</p>	In progress

\* Budapest Airport Zrt. is in charge of managing, operating and developing Hungary's main international airport.

As it is apparent from the information above, preparation of the relevant strategic noise maps has been fulfilled more or less in time.

Action plan of the Metropolitan Municipality of Budapest and the community municipalities of its agglomeration were approved with some months of delay compared to the deadline stipulated in the END, while action plans of the main public roads and railways are still under preparation, are not approved yet.

## Public participation

Based on the regulations of Gov. Decree insuring participation of the public by the preparation of action plans is primarily the task of local governments.

The municipality required to prepare the action plan shall inform the relevant public in a locally accepted manner about the following:

- the opportunities to view the approved strategic noise maps serving as basis for the action plan concerning the given area (location, date and time);
- contents of the action plan proposal and the objectives expressed therein.

Locally accepted manner can be e.g. posting the relevant notice on the notice board of the municipality, publication in the local paper or on the municipality's website.

In our opinion information of the relevant public in a locally accepted manner do not always provide an effective possibility for public participation to say nothing of requirements of the END which stipulates that member states shall ensure that the public is consulted and not only informed about proposals for action plans.

A period of 30 days starting from the date and time of publication shall be provided for the comments regarding the action plan proposal, which can be enough in the case of smaller settlements, while in the case of e.g. of the capital is too short period of time.

In order to assure the appropriate information for the public, the obligant of the major traffic facility shall inform the municipality, which shall inform the public within 8 days. The information published with regard to the action plan proposal must be well understandable. The obligant municipality as well as the obligant of the major traffic facility shall prepare the summary of the most important topics. The obligant municipality as well as the obligant of the major traffic facility shall finalize the action plan, while taking the opinions into consideration.

The rules regarding the preparation of the strategic noise map shall be applied for the review and modification of the map as well.

Gov. Decree stipulates that strategic noise maps shall be published on the website of the Ministry of the Environment and Water. There is no reference in Gov. Decree on the publication of the action plans, however based on the regulations of Act LXIII of 1992 on the Protection of Personal Data and the Disclosure of Information of Public Interest all the action plans shall be regarded as "public information" and all the state or local public authorities and agencies and other bodies shall allow free access to it for any person.

## Availability<sup>74</sup>

As regards to the availability in practice of strategic noise maps and action plans already prepared, all these strategic noise maps and action plans are available via the Internet in a user-friendly way and in a comprehensible form.

<sup>74</sup> All of the following webpages and links are accessed on the 23<sup>th</sup> of June 2009.

The website [http://terkep.budapest.hu/website/zajterkep\\_html/zaj\\_index.htm](http://terkep.budapest.hu/website/zajterkep_html/zaj_index.htm) with the title “Simplified interactive strategic noise map of Budapest and its agglomeration geospatial information system” contains general information on the planning process and describes the main information on strategic noise maps and action plans.

The full text as well as the assessment of the action plan can be downloaded from the site and there is a link to the site of the geospatial information system as well where the strategic noise map can be explored in details. The detailed content of noise maps and action plans will be presented in the followings.

Concerning the main traffic facilities, strategic noise maps of the major roads can be accessed via the Internet on the site of KTI: <http://www.kti.hu/kozut/> . As all of the major railway lines are within the administrative territory of Budapest and its agglomeration, strategic noise maps on these railways are incorporated in the strategic noise map of the capital.

The website of KTI gives a general overview on regulations of END, introduces the main requirements of the national legislation concerned and makes it possible to download the strategic noise maps and the related documentation. The documentation is grouped by the competent environmental inspectorates.

As regards to the strategic noise map of the single major airport, the Ferihegy Airport, it can be also accessed on the homepage of KTI via the following link: <http://www.kti.hu/noise/ferihegy/> . The structure of the homepage is similar to the foregoing; it contains a general overview of the planning process and of the related legal requirements and there are pictures to illustrate the noise levels in accordance with the regulations presented in the followings.

In our opinion all the information are clear, comprehensible and easy to access.

### **Content of strategic noise maps**

Based on the regulations of Gov. Decree<sup>75</sup> the following strategic noise map types shall be prepared:

- noise immission map and
- conflict map

collectively referred to as strategic noise map in the regulation.

Strategic noise maps shall be prepared separately for each of the facilities within the administrative area of the obligant municipality detailed below:

- public roads except for those with heavy traffic and service roads subject to a separate piece of legislation and roads without through traffic;
- railways except for those with heavy traffic;
- all airports except for major airports;
- industrial facilities.

---

<sup>75</sup> Section 4.

The noise indicators of the strategic noise maps shall be displayed in topographic base maps subject to a separate piece of legislation<sup>76</sup>. The minimum requirements regarding the content of the strategic noise maps are detailed in Annex 1 of the Gov. Decree.

Display of strategic noise maps shall contain:

- presentation of noise indicators on a noise immission map using multicolored, 5 dB noise level contours;
- specification of the extent of exceedance of strategic threshold values by specified multicolored noise level contours of 5 dB or greater resolution on the noise level contours;
- specification of the number of the population and that of the residential buildings, schools and hospitals concerned on the conflict map in tabular form.

Noise maps shall be prepared separately for individual noise source groups, for an evaluation height of 4 m, noise level bands of 5 dB, as well as the noise indicators  $L_{den}$  and  $L_{night}$ .

The dose – effect relations should be used to assess the effect of noise on the population. The dose – effect relations refer to the followings in special:

- the relation between the noise immission, the  $L_{den}$  value concerning the noise from public road, railway and air traffic, as well as from industrial facilities, and the harmful effect;
- the relation between the  $L_{night}$  value concerning sleep disturbance and the noise from public road, railway and air traffic, as well as from industrial facilities, and the harmful effect.

The results of the strategic noise map are summarized in a written evaluation.

Strategic noise maps shall be published on the website of the Ministry of the Environment and Water. The relevant informations (links to the strategic noise map of the capital and its agglomeration, strategic noise maps of the main public roads and strategic noise map of Ferihegy Airport) can be accessed on the homepage of the Ministry of Environment and Water via the following link: <http://www.kvvm.hu/index.php?pid=9&sid=47&hid=1520> .

In practice all of these legal requirements prevail in the prepared strategic noise maps. For example in the case of Budapest and its agglomeration the interactive strategic noise map contains the extract of the following main data groups:

- 14 thematic noise map grouped by sources of noise (roads, railways, industrial facilities, flight noise), types of noise and by time periods (day, night);
- buildings;
- street names;
- administrative borders (borders of the settlements and of the districts);
- axis of road traffic;
- axis of fixed-track road traffic;
- axis of the railways;

<sup>76</sup> KvVM Decree 25/2004 (XII. 20.) On the Required Form and Content of Strategic Noise Maps Used for the Evaluation and Management of Environmental Noise, and the Calculation and Testing Methods Used for the Preparation of Strategic Noise Maps.

- axis of the airports (except of Ferihegy Airport).

Tables containing detailed information on the number of residents affected by noise in Budapest and in its agglomeration can also be downloaded from the relevant website. There are separate statements on the number of people affected by noise in residential buildings and number of schools and hospitals differentiating between noise levels of  $L_{den}$  and  $L_{night}$ .

### Content of action plans

Based on the regulations of Gov. Decree<sup>77</sup> action plans shall contain the specifications for the noise reduction or other, technical, organizational, urban planning solutions and other measures aiming at noise protection (e. g initiation of administrative proceedings) which can be applied to prevent the increase of noise in quiet areas designated by the municipality or in areas to be protected from noise (or where such protection is intended) where the noise characteristics satisfy or do not exceed the following strategic threshold values:

- for an industrial facility  $L_{den} = 46$  dB,  $L_{night} = 40$  dB;
- for a traffic-related noise source  $L_{den} = 63$  dB,  $L_{night} = 55$  dB.

The action plan shall contain the specifications for the noise reduction or other, technical, organizational, urban planning solutions and other measures with a time limit not exceeding 10 years in a preferential order, where the noise characteristics exceed the following strategic threshold values in areas to be protected from noise (or where such protection is intended):

- for an industrial facility  $L_{den} = 46$  dB,  $L_{night} = 40$  dB,
- for a traffic-related noise source  $L_{den} = 63$  dB,  $L_{night} = 55$  dB.

The action plan shall contain the specifications for the noise reduction or other, technical, organizational, urban planning solutions and other measures with a time limit not exceeding 5 years in a preferential order, where the noise characteristics exceed the following strategic threshold values in areas to be protected from noise (or where such protection is intended):

- for an industrial facility  $L_{den} = 56$  dB,  $L_{night} = 50$  dB,
- for a traffic-related noise source  $L_{den} = 73$  dB,  $L_{night} = 65$  dB.

Minimum requirements for the content of the action plans are detailed in Annex 5 of Gov. Decree. Based on these regulations action plans must at least include the following datas:

- description of noise sources taken into account in Budapest and its agglomeration, in towns with a population exceeding 100 000 residents and in areas intended for construction pursuant to the separate piece of legislation<sup>78</sup> as well as in areas subject to increased noise protection;
- name of the obligant required to prepare the action plan;
- related pieces of legislation;
- strategic threshold values;

<sup>77</sup> Section 9.

<sup>78</sup> Act No. LXXVIII of 1997 On Creation and Protection of Constructed Environment.

- summary of the results of noise mapping;
- evaluation of the estimated number of persons exposed to noise, identification of problems and situations that need to be improved;
- report on informing the public;
- noise reduction measures previously performed, in progress and in preparation.
- measures within the following five years required from the obligant to decrease the noise, including measures to preserve the quiet zones in Budapest and its agglomeration, in towns with a population exceeding 100 000 residents and in areas intended for construction pursuant to the separate piece of legislation<sup>79</sup> as well as in areas subject to increased noise protection;
- long-term strategy;
- financial strategy: budgets, cost effectiveness assessments, cost-benefit assessments;
- method for evaluation of the implementation and the results of the action plan.

The estimated decrease in the number of persons affected by the noise shall be specified also in the action plan.

To prepare a good foundation for the action plan, the obligant of said plan may establish a noise committee due to the rules of Gov. Decree. The noise committee is a body, the purpose of which is consultation, counseling and the harmonization of interests, which has a right to express its opinion regarding the noise-related aspects of action plan.

In the event of preparing action plans for public roads and railways the noise committee shall involve:

- one representative each of the obligant of the major traffic facility,
- one person each representing the relevant municipalities.

The noise committee, and/or noise protection committee pursuant to a separate piece of legislation<sup>80</sup> shall involve the following persons:

- representatives of civil organizations, at least 3 persons;
- one representative of the environmental inspectorate;
- one representative of the relevant county (Budapest metropolitan) department of the National Public Health and Medical Officer Service (hereinafter referred to as: ANTSZ county department);
- at least one expert (natural person or the business organization or other artificial person) holding a permit for expert activity in the field of environmental noise and vibration protection pursuant to a separate piece of legislation<sup>81</sup> or employing such expert.

The noise committee shall determine its procedural rules and by-laws.

<sup>79</sup> Act No. LXXVIII of 1997 On Creation and Protection of Constructed Environment.

<sup>80</sup> Joint KHVM-KTM Decree 18/1997. (X. 11.) On Detailed Technical Rules of Designation, Management and Termination of Noise-Protective Zones in the Vicinity of Airports.

<sup>81</sup> OKTH Decree 6/1985 (XII. 28.) On the Authorization of Expert Activity in Individual Areas of Environmental and Nature Protection.

The preparation of action plans concerning major airports shall involve a noise protection committee pursuant to a separate piece of legislation<sup>82</sup>.

The action plan shall be reviewed and modified if necessary in the event of significant changes affecting the existing noise situation as well as every five years following its date and time of approval. The change can be regarded as significant if the noise load value increases by 10 dB compared to the previously determined value.

Upon the review, the factors modifying the existing noise load shall be presented separately in the event of industrial and traffic noise sources, and the action plan shall be revised or complemented while taking into consideration the modified noise load and observing the provisions concerning preparation of action plans.

As it is obvious from the table presenting the deadlines of preparation of strategic noise maps and action plans in Hungary under section II.3., until now only the action plan of Budapest and its agglomeration has been prepared and approved.

The action plan and its assessment can be downloaded from the following link: [http://terkep.budapest.hu/website/zajterkep\\_html/zaj\\_index.htm](http://terkep.budapest.hu/website/zajterkep_html/zaj_index.htm). The content of the action plan basically fulfills the requirements of Gov. Decree based on the following structure:

- short description of preparation of strategic noise maps and action plans;
- legal background, requirements;
- introduction and description of sources of noise in Budapest differentiating between noise deriving from road traffic, rail transport, air navigation and from industrial facilities;
- name of the obligant required to prepare the action plan;
- strategic threshold values;
- summary of the results of noise mapping (differentiating between  $L_{den}$  and  $L_{night}$  values and between sources of noise specified by districts);
- a summary evaluation based on the datas of strategic noise maps;
- evaluation of the estimated number of persons exposed to noise;
- identification of problems and situations that need to be improved;
- report on informing the public;
- noise reduction measures previously performed, in progress and in preparation;
- measures within the following five years required from the obligant to decrease the noise (like noise walls, restriction on roads in critical time periods, continuous reconstruction of roads and fixed-track lines etc.)
- long-term strategy;
- method for evaluation of the implementation and the results of the action plan.

<sup>82</sup> Joint KHVM-KTM Decree 18/1997. (X. 11.) On Detailed Technical Rules of Designation, Management and Termination of Noise-Protective Zones in the Vicinity of Airports.

There is a subsection on the financial strategy (budgets, cost effectiveness assessments, cost-benefit assessments) as well but this section describes only the reasons and explanation why this financial strategy could not be prepared at all. As this section describes even the END does not contain any real method on the assessment of dose-effect relations, so the financial strategy can be prepared only in the future after having real assessment methods for harmful effects.

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

### Structure of environmental administration in Hungary

The governmental structure is divided according to different environmental components and the supervision of the individual environmental fields in Hungary. Within the government - the **Ministry for Environment and Water** is in charge of the overall strategy of environmental policy and legislation. It is responsible for environmental issues and executes the governmental environmental policy through the activities of various offices and regional organs.

**The 10 regional inspectorates** for environment, nature and water and 2 sub-offices are the 'green authorities' at first instance, while their supervisory National Inspectorate works mainly as an authority at second instance.

Based on appeals or as a supervisory body, the first instance decisions related to environmental issues are reviewed by the National Inspectorate. The authority work performed by regional inspectorates is coordinated and controlled by the National Inspectorate.

As first instance authority - set by legislation for environment, nature and water - the National Inspectorate issues permits for certain activities, gives expert authority opinions, imposes fines and penalties.

**The environmental inspectorates** are organised according to water catchment areas. The inspectorates in their scope practice first instance jurisdiction in specific environmental state administrative issues. The inspectorates are responsible inter alia for noise and vibration protection.

**The specific tasks of local governments in environmental protection** are regulated by Act XX of 1991 on local governments, and the Act relating to General Rules of Environmental Protection (Env.Prot.Act).

As regards the Act on local governments the board of representatives of local governments are entitled to

- designate special protection areas for the purposes of protection against noise;
- to designate silent areas around facilities requiring an increased degree of noise protection;
- to determine the local rules of protection against noise and vibration.

**Notaries of local governments** also act as environmental authorities and do have important tasks in the protection against noise and vibration<sup>83</sup>.

Based on the rules of Env.Prot.Act in the interest of environmental protection, **each municipal local government**

---

<sup>83</sup> Please see below.

- shall ensure the execution of the legal regulations serving the protection of the environment and shall perform the official tasks assigned to it;
- shall work out a separate municipal environmental program for its jurisdiction, to be approved by the representative body thereof;
- shall issue municipal bylaws and shall pass resolutions to attain objectives related to environmental protection;
- shall cooperate with other authorities in charge of environmental protection and with other local governments and social organizations;
- shall analyze and evaluate the state of the environment in its jurisdiction and shall inform the public thereof as necessary, but at least once a year;
- shall enforce the environmental protection requirements in the course of carrying out development tasks and shall promote the improvement of the state of the environment.

The local authorities of communities, specified in specific other legislation, shall prepare the evaluation of environmental status relating to environmental noise based on a strategic noise map for the areas and facilities specified and according to the instructions contained in specific other legislation.

### **Basic rules of protection against noise and vibration in Hungary**

Protection against noise and vibration endangering the human health and the environment forms an integral part of environmental protection. Respective rules are found in the European Union law and in Hungarian law as well.

#### **The Constitution**

Rights and obligations concerning the environment - together with the obligations of the state - are regulated in Hungary at constitutional level. The basis of environmental protection is Article 18 and clause D of Article 70 of the Constitution.

Article 18 declares the basic right of citizens to a healthy environment and allows for a broad interpretation. The Hungarian Republic admits and enforces the rights of all to a healthy environment. The state is responsible for enforcement of rights concerning the environment.

Article 70D guarantees environmental protection as an instrument of enforcement for rights on health. People who live in the territory of the Republic of Hungary have the right to the highest level of physical and mental health. The state implements these rights by safeguarding the interests of workers, organising public health institutions and medical services, and guaranteeing regular physical culture and the protection of both the man-made and the natural environment.

#### **Act on the General Rules of Environmental Protection**

The basic principles of environmental protection are embodied in Env. Prot. Act.

Based on Art. 31. of Env. Prot. Act the protection against noise and vibration in the environment shall cover all artificially generated energy emissions that cause unpleasant, disturbing, hazardous or impairing noise or vibration load.

Within the framework of protection against noise and vibration, the following shall be resolved using technical and organizational methods:

- the reduction of the degree to which sources of noise and vibration emit noise and generate vibrations;
- the reduction or prevention of an increase in the noise or vibration load;
- the subsequent protection of environments that are permanently loaded above standard levels.

The reduction of environmental noise in highly exposed areas and the preservation of quiet areas from noise damage shall be implemented by way of an action plan built on strategic noise mapping pursuant to specific other legislation.

The Hungarian legal provisions concerning noise protection have been amended on the basis of the EU-directives and for today they fulfill the legal requirements of these directives.

#### **Detailed rules of protection against noise**

Based on the authorization of the Env.Prot. Act main noise protection regulations dealing with environmental effects of noise are the followings:

- Government Decree 280/2004. (X. 20.) On Assessment and Management of Environmental Noise;
- Decree 25/2004 (XII. 20.) of the Minister of the Environment and Water on the Required Form and Content of Strategic Noise Maps Used for the Evaluation and Management of Environmental Noise, and the Calculation and Testing Methods Used for the Preparation of Strategic Noise Maps;
- Government Decree 284/2007. (X.29.) on certain rules of protection from environmental noise and vibration;
- Joint Decree of the Minister of the Environment and Water and of the Minister of Health 27/2008. (XII. 3.) on the Establishment of Noise and Vibration Limits.

**Government Decree No. 284/2007.** regulates the noise and frequency stemming from human activities, with the exception of noise related to public events, workplaces, domestic activities, public transport, activities connected to healthcare, criminal investigation, fire-fighting or religious events.

On the one hand it regulates the obligations of people and firms doing economic activities and operating transport facilities; on the other hand it regulates the rules of designating the areas calling for an increased degree of noise protection, finally, it aims to prevent the expansion of protected areas towards the sources of noise.

The decree includes detailed rules to establish special protection areas for the purpose of noise protection and to establish silent areas around facilities requiring an increased degree of noise protection<sup>84</sup>.

<sup>84</sup> Based on the definition of Gov. Decree quiet area is an area designated by the council of the community municipality which is subject to an increased degree of noise protection, as well as a quiet zone designated around facilities requiring an increased degree of noise protection.

An area, where the effective degree of noise satisfies or does not exceed the value limits specified in separate piece of legislation, may be designated as special protection area or silent area by the council of the community municipality.

In order to prepare the procedure of designation the municipality shall commission an expert in the field of environmental noise and vibration protection.

Following the designation of special protection area or silent area the notary shall acquaint the inspectorate with the decision of the municipality. Based on the rules of the decree new plants with noise emission that might effect the designated areas shall not be permitted to set up.

The decree defines all the territories, buildings and places which must be protected from noise in a different extent regulated by law. These definitions are based on the definitions of the different legal instruments relating to building activities<sup>85</sup>.

In case of a plant installation emitting noise the owner must request the environmental authority to define a noise emission limit, while in case of a construction work this obligation is the burden of the builder.

Based on the generally defined limits in separate piece of legislation the environmental authority stipulates an individual noise emission limit considering also the characteristics of the given area and the intended project.

The owner/builder must observe the value limits, unless the noise protection limit defined by the respective standard is not exceeded and this is declared by the planner/builder or if the construction work is necessary for the prevention of a natural disaster or for other public urgency. In the latter case the value limits may be exceeded, however, it must be endeavoured also in such cases that the caused noise disturb the inhabitants in the lowest possible measure.

For the fulfilment of the noise protection requirements the environmental authority may prescribe the application of noise reducing equipment in case of the construction or significant reconstruction of a road, railway or civil airport.

A possible sanction of the excession of the value limits is the noise or vibration fine, which may be imposed upon the owner or builder breaching the respective provisions or value limits on noise protection.

The environmental authority applying sanctions against facilities exceeding the noise emission values defined by law also does have the possibility to force the user of the environment to prepare an action plan containing noise abatement measures for the given facility.

The environmental authority may order the restriction or the suspension of the activity as well if the obligant does not meet the above requirements.

Not all types of exceed of noise emission limits will be sanctioned. With regard to the rules of the decree the environmental authority may designate noisy areas around the buildings of public utilities where the degree of noise emission could not be reduced to the value limits defined in separate piece of regulation.

---

<sup>85</sup> In Hungary, the basic requirements, means, rights and obligations as well as the tasks, competences and spheres of authority related to the shaping and protection of the built environment are regulated by the 78/1997 Act on the shaping and protection of the built environment and by Government Decree 253/1997 (20 December) on National Requirements of Spatial Planning and Building.

As from the side of environmental administration the environmental inspectorates are responsible for protection against noise and vibration, almost all of the inspectorates do have a team specialized in that territory. Regional environmental inspectorates are responsible for:

- The enforcement of rules and regulations concerning protection against noise and vibration in environmental impact assessment and IPPC procedures;
- The assessment of planned establishments in terms of noise protection in building permit procedures, the evaluation of the expected noise emission levels, defining the requirements for noise abatement;
- Inspection and control of activities, plants and establishments as well as transport facilities with use of the environment from the point of view of noise protection;
- Instituting noise protection inquiries relating to petitions, notices and complaints of public interest, doing the necessary measures and provisions during the procedure, address other competent administrative authorities if necessary.

In cases regarding protection against noise and vibration administrative powers are divided between environmental inspectorates working at regional levels and between notaries of local municipalities. Competences are regulated by law.

Based on the rules of the decree (Annex I.) protection against noise and vibration falls within the competence of notaries working at the headquarters of the small regions relating to the following activities:

- Construction of buildings;
- Civil engineering;
- Specialised construction activities;
- Wholesale and retail trade and repair of motor vehicles and motorcycles;
- Wholesale trade, except of motor vehicles and motorcycles;
- Retail trade, except of motor vehicles and motorcycles;
- Accomodation;
- Food and beverage service activities;
- Advertising and market research;
- Services to buildings and landscape activities;
- Creative, arts and entertainment activities;
- Sports activities and amusement and recreation activities.

As regards the **Joint Decree of the Minister of the Environment and Water and of the Minister of Health 27/2008. (XII. 3.) on the Establishment of Noise and Vibration Limits** it regulates the emission limits relating to different sources of noise and vibration and contains detailed provisions on the methods of measuring these emissions. There exist provisions on noise and vibration from industrial and leisure activities, on construction and building works and on noise and vibration deriving from transport.

There exist different emission limits regarding resort areas, towns and cities, green and industrial areas etc. distinguishing between parts of the day as well, setting different emission limits on activities by daytime and by night.

Regulations on noise and vibration deriving from transport differentiate between certain means of transport and their emissions e.g. between roads (whether it is a motorway, a national or a secondary road), airports (depending on the size of the airplanes using the airport) and railway lines (differentiating between main railway lines, local railways etc.).

Considering the different areas and the value limits defined in the Joint Decree, there exist higher degrees for traffic noise load than in the event of industrial and/or leisure activities.

Finally, Annex 4. of the Decree determines the relevant noise exposure limits relating to rooms of buildings (e.g. hospital-wards, classrooms in educational institutions, living-rooms in residential buildings and in hotels, restaurants etc.) to be protected from noise.

The Joint Decree defines the noise limits with regard to the types of noise, time periods (day, night) and the concerned areas, however there are some special rules existing as exceptions of the generally binding noise limits e.g. in the event of festivals organized between the 1. June and 15. September the noise emission limits are higher.

In practice rather frequently occur complaints because of noise<sup>86</sup>. On the one hand noise of different facilities of catering trade and disco clubs can be mentioned, but other services especially those operating a ventilating equipment, e.g. hairdresser, beauty shops can also cause noise in case of careless operation. The number of noise and vibration sources, noise nuisance and vibration is continuously increasing, which is also reflected in the number of household complaints and increasing sensitivity of the population to noise.

With regard to the practical enforcement of the noise protection rules we can refer to the unsolved difficulties connected to the measuring of noise and to the unsolved protection against noises that do not reach the limit, are of lower intensity, but last long and are varied by louder episodes from time to time.

In case of a car repair workshop the neighbours complained of increased noise and airpollution arising from the plant's work. At first the plaintiff's filed their petition to the administrative authorities for withdrawal of the workshop's concession or impose restrictions on its activities. As the result of the administrative procedure the authority did not declare the infringement of administrative rules and discontinued the process. When public administration rules are not efficient enough, the legal institution of neighborhood law, disturbance and damage compensation offer themselves as solution.

Based on the rules of the Civil Code of Hungary<sup>87</sup> an owner is obliged, while using a thing, to refrain from any conduct that would needlessly disturb others, especially his neighbors, or that would jeopardize the exercise of their rights.

In the event of increased and disturbing noise emission the rights arising from neighbour law and also the rights of protection of possession may be exercised.

<sup>86</sup> EMLA Environmental Management and Law Association: Ten years of the Environmental Management and Law Association. November, 2003. p. 17-18.

<sup>87</sup> Act IV of 1959 on the Civil Code of the Republic of Hungary

If a possessor is deprived of his possession without legal grounds or is restrained in maintaining such possession (illicit power), he shall be entitled to protection of his possession.

A person who is deprived of his possession or is restrained in its enjoyment shall, within one year, be entitled to file a request with the town clerk for the restoration of the original state of possession or for the discontinuance of restraint.

The party who finds the decision of the town clerk prejudicial may appeal to the court within fifteen days of receipt of the decision to have the decision overturned. After one year, a possessor shall be entitled to request the restoration of the original state of possession or the discontinuance of restraint directly from the court.

That's all very well, but the more flexible and applicable to the wider range of the facts of the case the civil law is, the more tolerant are its rules and applicants against the economic activities that are environment pollutant, but otherwise "useful".

In the above mentioned case the neighbours commenced an action based on neighbourhood law and rights of possessors against the owner of the workshop and requested the court to restrain the owner from further disturbance.

The plaintiff's had to prove that the noise arising from the activity of the workshop reaches the amount of the needlessly disturbance.

The court of first instance dismissed the complaint and the appeal court affirmed this decision on the base of the fact that increased noise and needlessly disturbance were not perceptible within the visit of scene of the nuisance<sup>88</sup>.

### 3. Conclusion

Preparation of strategic noise maps and action plans and the regulation concerned gives a new approach on the territory of noise protection.

Hungary does have the appropriate legal framework to turn the rules of END into practice. The enforcement of these regulations mainly depends on the practical barriers: on financial background and on the ability of law enforcement agencies, administrative and municipal bodies to foresee the potentials hidden in these legal obligations.

Preparation of strategic noise maps and action plans offers a great possibility for municipalities and for the regulator in general, to get information about the state of the environment and about number of people effected by nuisance. Noise maps and action plans are strategic tools for further action and can fulfill their original role only if they are prepared carefully, are concrete enough and when decision makers are determined for real action. Strategic noise maps and action plans must be part of a general, strategic approach; results of the noise maps and statements of the action plans have to build into all of administrative and strategic decisions, into all actions which have effect on the state of the environment from the point of view of annoyance.

---

<sup>88</sup> Metropolitan Court; 44.Pf. 633.466/2006

Neither the strategic noise maps nor the action plans appear in a form of a legal regulation so there aren't any obligations to consider the action plan measures at land use planning or at licencing of construction activities etc.

At the moment we miss this strategic attitude from the hungarian regulation. Similarly, it is doubtful if e.g. the municipalities (partially responsible for the implementation of noise abatement measures) will have any infrastructural and financial resources to turn action plans into practice.

The regulation and its hungarian implementation is rather new; the concerns mentioned above will be answered in the perspective of the forthcoming years.

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

Szilvia Szilagyi  
Environmental Management and Law Association  
1076 Budapest, Garay u. 29-31. I. em. 1., Hungary  
Tel:+36-1-322-8462  
Email: szilvia@emla.hu  
www.emla.hu

# Annex 5. National report Slovakia

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

### 1.1. General info

Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise was transposed into Slovak national law in the beginning of 2005. It happened by adopting two main legal regulations:

- Act No. 2/2005 Coll. on Assessment and Control of Environmental Noise which entered into force on February 1, 2005

The above mentioned act defines its purpose in setting up the integrated approach in the process of environmental noise assessment and control in order to avoid, prevent or reduce harmful effects of environmental noise exposure. The act contains basic definitions related to SNMs and APs creation. It stipulates duties, obligations and fines for natural and legal persons, state bodies and local municipalities as well. It also contains binding terms for SNMs and APs completion. The annex of this act enumerates information that need to be reported to European Commission.

- Decree of the Government No. 43/2005 Coll. on Details of Strategic Noise Maps and Action Plans on Noise Protection which entered into force on February 15, 2005.

Cited decree describes noise indicators in more details, sets limit values for different sources of noise and elaborates detailed information on data which SNMs and APs have to contain.

Apart from these two substantial regulations, there are three further regulations with relevance to environmental noise issue which are to be mentioned here:

- firstly it is Ordinance of the Ministry of Health No. 195/2005 Coll. giving more detailed information on providing requested data from responsible natural and legal persons in SNMs preparation process;

- secondly it is Expert Guideline No. OZPaZ/5459/2005 as the more comprehensive material issued by Public Health Authority of the Slovak Republic which regulates the progress of SNMs preparation. This Expert Guideline sets exact computing methods applicable for different sources of noise in Slovakia. It specifies areas for which calculation must be done and also sources of noise which must be taken into consideration

- thirdly it is Expert Guideline of Public Health Authority of the Slovak Republic No. OZPaZ/5828/2007 which defines principles of APs preparation and rules for information given to the public in compliance with Act. No. 2/2005 Coll.

#### ***1.1.1. Information on how many strategic noise maps (SNMs) and action plans (APs) were prepared in Slovakia, how many quiet areas were established***

According to Article 7(1) and 8(1) END there were three SNMs together with three APs prepared and published during the first reporting period. Under the conditions of the Slovak republic only one agglomeration with more than 250.000 inhabitants was created for the purposes of END (Bratislava

agglomeration with 528.123 inhabitants). The next (and also the last) agglomeration considered in the Slovak republic (Košice agglomeration with 226.192 inhabitants) falls into reporting period as referred in Art. 7(2) END with the reporting term up to 30/06/2012. The two remaining SNMs and APs are related to major roads. With respect to the body responsible for their preparation (National Motorway and Slovak Road Administration company) they are divided into two separate parts: motorways and express ways (which falls under the National Motorway) and 1<sup>st</sup> class roads and roads of lower classification (which falls under the Slovak Road Administration). According to the last available statistics there are neither major railways with more than 60.000 train passages per year nor major airports with more than 50.000 movements per year in Slovakia. Due to this there were no SNMs and APs prepared for this infrastructure under obligation of Article 7(1) and 8(1) END.

Considering the quiet areas the situation is explained below. According to information published on web site dealing with SNMs and APs there were no quiet areas in agglomerations announced or established. As for the quiet areas in open country, the Slovak Ministry of Environment has delimited these with respect to national legislation on nature protection. Under respective legislation the term “quiet areas in open country” covers selected protected areas (their number and area is then identical). Talking about quiet areas in open country in Slovakia means talking about the territory of 9 National Parks, 14 Protected Landscape Areas, 384 Nature Protected Areas and 38 Special Protected Areas under Birds Directive all of which represent the quiet areas.

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

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

Wording of END as well as national legislation ensures that every AP shall include actions intended to be taken by the competent authorities in the fields within their competence. These actions may also consist of measures in the area of land use planning or traffic planning. Following the wording of national legislation it seems that integration of AP measures into land use plans is stipulated only as a possibility and may not be used in a certain cases.

In two of three adopted APs in Slovakia the list of proposed measures of competent authorities is missing. Only the AP for motorways and express ways deals briefly with this issue, but anyway it has nothing to do with land use planning or traffic planning. In the two remaining APs which deal with road traffic there is also a reference to land use planning (in the part named “long-term strategy”), but it is mentioned only as an example of tools which can be used to achieve the aim. According to the remaining context it is obviously only a proclaimed principle and it has a character of a recommendation.

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

The situation is the same as described in the paragraph above. According to the national legislation on environmental noise, there is no direct or indirect relation between AP measures and permitting procedures or authorizing authorities. In the Slovak Republic the obligation to adopt an action plan binds municipalities, road administrators, railway operators and airports operators. Only these responsible subjects are then also obliged to ensure that AP measures are being really applied. Under the Slovak laws there is no imperative instruction for bodies issuing land use permits to take into account AP measures in order to apply them in practice.

On the other hand, in every administrative procedure in which a permission for any kind of construction (apart from buildings, roads and airports) may be granted, the responsible authority shall set (independently on AP) an obligation not to exceed limit values for noise as a relevant and binding condition for issuing the permit. This may result in adopting some appropriate anti-noise measures (under the separate law) regardless AP and its measures.

**c) is there clear and specific mechanism and source of finances for financing the anti-noise measurements?**

Information regarding any financial mechanism or source for financing anti-noise measurements is not available - the Slovak law does not deal with this issue explicitly. In the Slovak Act No. 2/2005 Coll. on Assessment and Control of Environmental Noise only the matter of financing for SNMs and APs expenditures is handled. All expenditures related to SNMs and APs completion, adoption and publishing bears responsible legal entities determined according to the subject of noise mapping (the major municipality in the agglomeration for whole agglomeration, road administrators for major roads, railway operators for major railways, airport operators for major airports). More detailed information on SNMs and APs and guidelines can be found in the Decree of the Government No. 43/2005 Coll. According to the definition of limit value, the exceeding of noise indicator enables the above mentioned responsible subjects adoption of necessary measures in order to lower the level of noise.

As mentioned before, there have already been three APs adopted in Slovakia. First AP for Bratislava agglomeration does not contain any information on financing anti-noise measures, besides the list of perspective anti-noise measures is also not included. In the second AP for major roads (motorways and express ways) there is a part dedicated to financing, but it contains only data on how much these measures will cost but not a word on who will cover the expenses. In another part of this AP there is a brief notice that AP measures will be evaluated together with the Slovak Ministry of Transport, Post and Telecommunications and it is necessary to look for sources of financing (e.g. co-financing with municipalities, owners, EU funds etc.).

Notice: On April 28, 2009 the Slovak parliament adopted Act No. 170/2009 Coll. amending Act No. 2/2005 Coll., which shall enter into force on August 1, 2009. According to the wording of this act (originally proposed by Ministry of Health Issues) since August 1, 2009 there will be no financial support from state for municipalities, which are obliged to adopt SNM and AP. In another words, affected municipalities will be responsible on they own for ensuring sufficient funding. As the reason for this step Ministry of Health declared, that the previous codified model of financing was not usual within other EU countries and was no longer sustainable. As an example the preparation of SNM of Bratislava agglomeration was presented. Although the Slovak Government in its resolution No. 894 (issued in 2004) agreed that the budget of Ministry of Health shall be raised of additional 70 millions Slovak crowns for the purpose of SNM making in the period of years 2005-2007, this aim was problematic to achieve in reality. Finally only 20 millions crowns were given to Ministry of Health, the remaining sum of 50 millions had this ministry to find from its own resources. Due to these financial troubles the continuous SNM making was also endangered. With regard to the fact, that SNM is mainly a systematic tool for local municipalities for strategic decision-making, Ministry of Health proposed and the National Council (Slovak parliament) passed the above mentioned act which means, that all next SNMs and APs are going to be financed without state help.

## 1.2. Overview in details

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

Information on terms for the real preparation of SNMs and APs are not available to public. The only accessible findings come from report on SNM in Slovakia made by the Public Health Institute in accordance with Article 10 (2) END, which was sent to the European Commission in December 2007. This report was enclosed by final report from SNM of Bratislava agglomeration and report from SNM of 1<sup>st</sup> class roads. Both final reports are dated 2006, so it is possible to conclude, that at least these two SNMs was sent up the END deadline set on June 30, 2007. Other information, mainly with connection to APs, are not available.

During verbal consultation with responsible state coordination body (Slovenská agentúra životného prostredia - Slovak Environmental Agency), who carries the reporting duties of the Slovak Republic to the Commission, it was presented, that there is a serious problem with APs processing and these have not been completed yet. For this reason there is also a delay with reporting obligation as stated in Article 10 (2) with respect to Article 8 (1) NED. According to this consultation the Commission was informed on this delay and its reasons. The APs completion was presumed to be finished in the first half of 2009, but up to now there is still no information available of its progress.

On the other hand the SNM- and AP-processor's representative stated that all the three SNMs were prepared and elaborated just in time, but only two of them (SNMs for motorways and for 1<sup>st</sup> class roads) were delivered to the responsible entities. The last SNM of Bratislava agglomeration was delivered with a delay of about 4 months, which was caused by the cash flow complications on the side of Ministry of Health and subsequently on the side of responsible local municipality. In addition there were presented some information on APs – according to them two APs related to major roads were finished again in time and delivered to responsible entities but work on the one for agglomeration has been suspended because of missing finances. The asked processor's representative confirmed that there was an effort to complete this task in the first half of 2009, but competent authorities failed to perform next necessary steps, so there is no clear perspective for the term of completion.

In order to obtain an official statement on SNMs and APs completion, request on Public Health Authority of the Slovak Republic was sent according to provisions of Freedom of Information Act. This competent state authority made a reply in which the following completion dates were mentioned:

#### **Dates of factual SNMs completion**

for Bratislava agglomeration	15. 06. 2007
for motorways and express ways	30. 04. 2007
for 1st class roads	04. 06. 2007

#### **Dates of factual APs delivery to Public Health Authority**

for Bratislava agglomeration	not delivered yet
for motorways and express ways	04. 08. 2008
for 1st class roads	09. 04. 2009

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

- a) Early and effective opportunities of PP**
- b) Results of the PP taken into account**
- c) Information about decision taken given to public**
- d) Reasonable time frame allowing sufficient time given to PP**

The issue of public participation in APs preparation process is not very well documented. The main reason for this is that APs have not been completed yet which means they have not been discussed with the wide public yet.

In the section “records from the public consultations” two of three partly published APs contain a notice, that these records will be published and documented after the end of discussions. While none reports from public consultations regarding the proposed AP for Bratislava agglomeration and AP for 1<sup>st</sup> class roads have not been published yet, it may be deducted that public consultations have not been organized yet.

In the AP for motorways there is a PDF file named Records from public consultations, which comprises minutes from two sessions organized in order to consult the prepared AP with affected public. The National Motorway Company as an entity responsible for preparation the AP for motorways sent AP summaries and invitation to public consultation to those local and regional municipalities (self-governing regions, cities and villages), which are located in territories affected by AP. There was also an advertisement about planned public consultations on July 3 and 4, 2008 in the two widely read opinion-making newspapers. These two public consultations took part on July 8, 2008 in the seat of Banska Bystrica Self-governing Region and on July 15, 2008 in the seat of Trnava Self-governing Region.

Both of these two records describe the course of meetings, questions of representatives of affected municipalities, answers of representatives of responsible entity and short final conclusions. Some requests were solved immediately; some of them were clarified or explained. All participants had the possibility to send supplementary written statements till July 31, 2008.

The main conclusions from public consultations records are these:

- on the basis of AP the responsible entity, in close cooperation with Ministry of Transport, Posts and Telecommunications, will develop a concept of solution for noise problems (including detailed noise studies for problematic areas, examination of efficiency of existing anti-noise measures, financing possibilities)
- already running anti-noise measures will continue without regard to AP
- all additional measures will proceed with respect to financial limits of responsible entity and/or Ministry of Transport, Post and Telecommunications

- e) Information on meeting END requirements on availability and dissemination of strategic noise maps and action plans**
- f) Availability and dissemination through the means of IT (internet)**

All information concerning completed SNMs and APs which have been disclosed up to the present are concentrated on a special web site on <http://www.hlukovamapa.sk> (transl. [www.noisemap.sk](http://www.noisemap.sk)).

Layout of the web site is very simple and the content of its sub-menus is very easy and intuitive to find. This web site is divided into six main sub-menus dedicated to

- aims of SNMs and APs in general,
- relevant legislation,
- SNM and AP of Bratislava agglomeration,
- SNM and AP of 1<sup>st</sup> class roads,
- SNM and AP of motorways, and
- useful links.

#### **g) Information are clear, comprehensible and accessible**

In all three available SNMs and APs information given either in text or in graphical form seem to be quite clear written or designed. Texts are brief, but in general they cover all relevant issues. All three web page sub-menus for agglomeration, motorways and 1<sup>st</sup> class roads are segmented into one part dedicated to SNM and the other part dedicated to AP. Both SNM and AP parts are divided into content trees, whose elements are inspired by END and national legislation demands.

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

Although the structure of all three SNMs is very similar as long as the content prescribed by END and national legislation is concerned, the situation with APs is obviously different. The two APs dealing with noise from motorways and 1<sup>st</sup> class roads contain very clear and transparent conclusion from noise mapping and its evaluation, so it is possible to find concrete outputs (e. g. number of people affected, noise limits exceeding) in one short text. Such conclusions (outputs) are not available on web site dedicated to Bratislava agglomeration, since its AP has not been completed yet (it does not meet all necessary requirements).

**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:**

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

	<b>SNM of Bratislava agglomeration</b>	<b>SNM of motorways</b>	<b>SNM of 1st class roads</b>
an existing, a previous or a predicted noise situation in terms of a noise indicator	only existing situation determined by mapping	only existing situation determined by mapping	only existing situation determined by mapping
the exceeding of a limit value	available in a graphical form	available both in graphical form in SNM and textual statistic in AP	available both in graphical form in SNM and textual statistic in AP
the estimated number of dwellings, schools and hospitals in a certain area that are exposed to specific values of a noise indicator	222 939 dwellings, 426 schools, 211 hospitals	13 900 dwellings, 65 schools, 13 hospitals	71 900 dwellings, 269 schools, 68 hospitals
the estimated number of people located in an area exposed to noise	546 300 people	102 500 people	378 080 people

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

	<b>SNM of Bratislava agglomeration</b>	<b>SNM of motorways</b>	<b>SNM of 1st class roads</b>
a graphical presentation	available	available	available
maps disclosing the exceeding of a limit value	available	available	available
difference maps, in which the existing situation is compared with various possible future situations	N/A	N/A	N/A
maps showing the value of a noise indicator at a height other than 4 m where appropriate	N/A	N/A	N/A

**c) 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.**

	<b>SNM of Bratislava agglomeration</b>	<b>SNM of motorways</b>	<b>SNM of 1st class roads</b>
<b>assessment height</b>	4 m	4 m	4 m
<b>dB ranges</b>	less than 35, 35-40, 40-45, 45-50, 50-55, 55-60, 60-65, 65-70, 70-75, 75-80, more than 80	less than 35, 35-40, 40-45, 45-50, 50-55, 55-60, 60-65, 65-70, 70-75, 75-80, more than 80	less than 35, 35-40, 40-45, 45-50, 50-55, 55-60, 60-65, 65-70, 70-75, 75-80, more than 80

**d) If strategic noise maps for agglomerations put a special emphasis on the noise emitted by road traffic, rail traffic, airports, industrial activity sites, including ports**

The SNM of Bratislava agglomeration contains brief characteristic and description of its area in which different noise sources are mentioned – road traffic, rail traffic, airport and industrial enterprises. The SNM for this agglomeration reflects and considers

- noise from traffic on 3 289 km of roads in total,
- noise from traffic on 384 km of rails in total (311 km train rails, 73 km tram rails),
- noise from traffic on one international airport with approx. 30 500 movements per year, and
- noise from selected 31 industrial enterprises.

Numerical data on noise limit values exceeding are being divided according to noise indicators intervals and according to different noise sources, so there are data available for noise coming from road traffic, rail traffic, air traffic and industry.

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

Concerning the graphical plots presentation, the complex SNM of Bratislava agglomeration consists of separate partial SNMs. In the section “graphical presentation of the noise annoyance” on web page [www.hlukovamapa.sk](http://www.hlukovamapa.sk) there is an external link to another web page [www.laermkarten.de/bratislava/](http://www.laermkarten.de/bratislava/) on which noise maps in a graphical form are displayed. Following separate noise maps are available:

- road traffic noise levels with Lden indicator
- road traffic noise levels with Lnight indicator
- rail traffic noise levels with Lden indicator
- rail traffic noise levels with Lnight indicator
- air traffic noise levels with Lden indicator
- air traffic noise levels with Lnight indicator
- industrial noise levels with Lden indicator
- industrial noise levels with Lnight indicator

In addition, a clear geographical map of agglomeration is available. All of these different maps have common color distinction (color key legend) for various noise value intervals. For anyone it is possible

to move through those maps with arrow cursors, to select the size of screening window and its raster and to choose between various pre-selected scales (1:10 000, 1:20 000, 1:40 000, 1:80 000, 1:160 000 and 1:320 000).

**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:

	AP of Bratislava agglomeration	AP of motorways	AP of 1st class roads
a description of the agglomeration, the major roads, the major railways or major airports and other noise sources taken into account	- considered area of 853,15 km <sup>2</sup>  - only very brief description, less descriptive as in SNM	- considered area of 421 km <sup>2</sup> - total roads length of 284,5 km - only very brief description, less descriptive as in SNM	- considered area of 284,9 km <sup>2</sup> - total roads length of 237,7 km - only very brief description, less descriptive as in SNM
the authority responsible	Capital city Bratislava	National Motorway Company	Slovak Road Administration
the legal context	both EU and national	both EU and national	both EU and national
any limit values in place in accordance with Article 5	available	available	available
a summary of the results of the noise mapping	N/A	available	available
an evaluation of the estimated number of people exposed to noise, identification of problems and situations that need to be improved	N/A	available	available
a record of the public consultations organised in accordance with Article 8(7)	N/A	records from two public consultations available	N/A
any noise-reduction measures already in force and any projects in preparation	N/A brief information mentioned in SNM	available	available
actions which the competent authorities intend to take in the next five years, including any measures to preserve quiet areas	N/A	available (but only from the scope of responsible entity – execution of noise studies and building of anti-noise shields)	N/A
long-term strategy	N/A	available (but very brief, formalistic and vague)	available (but very brief, formalistic and vague)
financial information (if available): budgets, cost-effectiveness assessment, cost-benefit assessment	N/A	available (total financial costs for preliminary anti-noise measures estimated for 906,21 mil. SKK)	N/A
provisions envisaged for evaluating the implementation and the results of the action plan	N/A	N/A	N/A

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

	AP of Bratislava agglomeration	AP of motorways	AP of 1st class roads
traffic planning	N/A	N/A	N/A
land-use planning	N/A	N/A	N/A
technical measures at noise sources	N/A	building of anti-noise shields	N/A
selection of quieter sources	N/A	evaluation of acoustic efficiency	N/A
reduction of sound transmission	N/A	N/A	N/A
regulatory or economic measures or incentives	N/A	N/A	N/A
other	N/A	detailed noise studies preparation	N/A

**2. Description of national legal frame of protection against noise****2.1. Information on existence of binding limits for outdoor noise (including definition of outdoor protected against noise) and on existence of binding limits for indoor noise**

In Slovakia there is a joint legal regulation for both outdoor and indoor noise limits. This regulation is incorporated in the Ordinance of the Ministry of Health No. 549/2007 Coll. on Details of Permissible Values of Noise, Infrasound and Vibrations and on Requirements of Noise, Infrasound and Vibrations Objectification in the Environment, which entered into force on December 1, 2007.

This ordinance applies to noise occurring whether continuously or discontinuously in the outdoor environment or indoor environment which is caused by activity of people or by functioning of technical facilities. The ordinance contains negative definition as well - it does not apply on noise on workplaces, on noise inside vehicles, on places with traffic services and in case of natural disasters or emergencies.

Outdoor environment is defined as protected external space

- out of buildings in which people stay for relaxation, recreation, healing or other reasons with the exception of work
- in front of facades of dwellings, schools, hospitals and other buildings demanding quiet environment.

Indoor environment is defined as protected internal space of buildings where people stay permanently or repeatedly for the long time, it comprises mainly rooms in dwellings, old people's homes, lodging houses, hospitals or other rooms demanding quiet environment (classrooms, study halls, reading rooms).

Binding permissible limit values of noise indicators are incorporated into annex of the above mentioned ordinance. Limit values are separated according to the category of considered area,

according to day intervals and according to the source of noise. Reference day intervals are divided into day (from 06:00 to 18:00), evening (from 18:00 to 22:00) and night (from 22:00 to 06:00).

Limit values of noise indicator for outdoor noise are following:

Category of area	Reference day intervals	Limit values for road traffic noise (dB)	Limit values for rail traffic noise (dB)	Limit values for air traffic noise (dB)	Limit values for other noise sources (dB)
I.*	day	45	45	50	45
	evening	45	45	50	45
	night	40	40	40	40
II.**	day	50	50	55	50
	evening	50	50	55	50
	night	45	45	45	45
III.***	day	60	60	60	50
	evening	60	60	60	50
	night	50	55	50	45
IV.****	day	70	70	70	70
	evening	70	70	70	70
	night	70	70	70	70

\* Area of I. category means area with special protection level against noise, e. g. spa areas, spa towns

\*\* Area of II. category means area in front of windows of flats and houses, protected rooms in schools, medical centres and other protected objects and vacation resorts.

\*\*\* Area of III. category means the same area as in the second category but near motorways, first class roads, local communications with public transport, railways and airports, city centres.

\*\*\*\* Area of IV. category means non living area, industrial and production zones, areas of plants

Limit values of noise indicators for indoor noise are following:

Category of Internal space	Reference day intervals	Limit values for noise coming from internal sources (dB)	Limit values for noise coming from outdoor (dB)
A*	day	35	35
	evening	30	30
	night	25	25
B**	day	40	40
	evening	40	40
	night	30	30
C***	during use	40	40
D****	during use	45	45
E*****	during use	50	50

\* Internal space A category means rooms in hospitals, rooms of spa residents

\*\* Internal space B category means dwellings, hostels, old people's house, nursery schools and kindergartens

\*\*\* Internal space C category means classrooms, study halls, reading rooms, auditoriums, conference rooms, courtrooms

\*\*\*\* Internal space D category means rooms for public, informational points

\*\*\*\*\* Internal space E category means spaces in which communication is needed, e. g. school workrooms, waiting rooms and vestibules

## 2.2. Information on any special legal condition for noise from transport

There are three specific provisions in the Annex of the Ordinance of the Ministry of Health No. 549/2007 Coll. on Details of Permissible Values of Noise, Infrasound and Vibrations and on Requirements of Noise, Infrasound and Vibrations Objectification in the Environment relating to noise from transport.

1. According to the first one, the limit value of noise indicator can be exceeded if it was proved enough, that presently existing noise from road- and rail- traffic exceeds limit values of noise indicator for areas of II. and III. category due to the increase of transportation capacity and this noise can not be reduced by implementation of any available technical or organizational measures. For potential adoption of such measures there is a condition that these measures must not negatively nor substantially influence the transportation performance. The conclusion is that if fulfilment of such conditions is proved, it is legally possible to exceed limit values of noise indicator up to 5 dB in areas of II. category and up to 10 dB in areas of III. and IV. category. Very similar exception applies also to the noise from air traffic where responsible state authority is competent to grant a dispensation. It may be granted if there are prescribed flight processes for take-offs and landings with certain specification of flight trajectory. In such cases limit values of noise indicator can be exceeded up to 5 dB in areas of II. and III. category.
2. The next specific provision applies to new buildings planned to be build up in certain areas. According to this provision it is possible to locate new houses and buildings demanding quiet environment (with the exception of schools, nursery schools, hospitals etc.) also in those areas where existing noise exceeds limit values of noise indicator for areas of II. category or in areas where such exceeding may be expected in the future. But this exception may only be applied on the basis of previous affirmative opinion of competent state body responsible for health protection and if
  - appropriate measures against noise influence of indoor environment in such buildings are to be taken simultaneously,
  - the considered limit value of noise indicator in neighbouring space of such buildings will not exceed in the future of more than 5 dB the limit values of noise indicator set for areas of III. category.
3. The last provision applies to situation when new buildings are intended to be situated in certain areas belonging to areas of IV. category. If administrative buildings or buildings with workplaces which demand quiet environment are going to be build up in an area of IV. category, limit values of noise indicator for noise coming from traffic or other sources are set on 65 dB (for day, evening and night) instead of general limit values 70 dB. This lower limit values refer to windows designated to ventilation of workplaces with permanent stay of people.

**2.3. Information on 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)**

**2.4. Information on 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.)**

Concerning the issue of noise and its combating in Slovakia there are three possible ways how to achieve problem solving from citizen's perspective.

The most competent state body when dealing with noise from various sources in general is specialized state body established with the aim of public health protection. Its name is Public Health Authority of the Slovak Republic (PHA) and it is non-profit state organization led by Chief Hygienist of the Slovak Republic with its residence in Bratislava. PHA is linked with its financial relations to the budget of the Ministry of Health of the Slovak Republic. Public Health Authority of the Slovak Republic carries out its activities on the territory of the Slovak Republic through the net of its regional offices.

Competences of PHA and its regional offices are clearly set in Act No. 355/2007 Coll. on Protection, Support and Development of Public Health which entered into force on September 1, 2007 (a very few provisions will enter into force on January 1, 2010 only). According to this act PHA and regional offices of PHA are entitled to perform state health supervision, which means to perform control of observance of this act together with other binding regulations with regard to public health protection.

In the above cited act there is a provision of § 27 according to which:

- every enterpriser or legal person who is using or operating any source of noise, infrasound or vibrations must
  - ensure that exposure of population and environment where they live is the lowest possible and it must not exceed the permissible limit values
  - ensure that objectification and assessment of noise, infrasound and vibrations is performed once a year
  - ensure that periodical metering and evaluating of limit values for noise, infrasound and vibrations is performed once a year for all used or operated sources
- when projecting, building or substantially restoring traffic related buildings and infrastructure the noise in related outdoor or indoor environment must not exceed permissible limit values by estimated transportation capacity
- when projecting, building or substantially restoring houses it is necessary to ensure protection of indoor environment of such houses against noise coming from outdoor environment

To Public Health Authority was given a competence to check up if responsible entities mentioned in § 27 of the Act No. 355/2007 Coll. carry out their legal duties. PHA can perform state health supervision from its own initiative or on the basis of someone's complaint or announcement. If the probing is positive and PHA finds imperfections or if there is a breach of law, responsible entity may be fined in a range from 165 to 16 596 euro and appropriate necessary measures may be ordered to perform.

Another state bodies which have to face and deal with noise difficulties are bodies issuing building permits. Their competence in this field results from Building Code No. 50/1976 Coll.

According to this and related regulation building authorities have to ensure

- that all kinds of intended and planned buildings and constructions meet all prescribed requirements with respect to protection against outdoor and indoor noise
- that all kinds of intended and planned buildings and constructions meet all prescribed requirements for limit values observance in the field of noise emissions

- that all kinds of existing or renovated buildings and constructions meet all above mentioned requirements for their whole lifetime period

Building permits issuing authorities together with specialised state body named Slovak Building Inspection are empowered to perform state building supervision, through which the control of observance of building code and other binding regulations in this field is executed. If acting authority finds in a certain case breach of law it may result into

- issuing of a decision addressed to responsible entity which orders to make necessary adjustments (in less serious cases);
- issuing of a decision addressed to responsible entity which orders to perform safeguarding measures (in serious cases);
- issuing of a decision addressed to responsible entity which orders demolition of a building (in serious cases);
- fining the responsible entity in the range up to 5 millions Slovak crowns (approx. 165 969 euro) at most.

Remark: In the Ordinance of the Ministry of Environment of the Slovak Republic No. 532/2002 Coll. on Details of General Technical Requirements on Buildings there is a provision with connection to protection against noise in general. According to that provision urbanistic measures shall be adopted preferentially when ensuring the protection of buildings against noise coming from traffic instead of measures protecting buildings individually.

The third possible way how to possibly achieve noise annoyance reduction applies only (and even not every time) to noise caused by road traffic. Noise coming from road traffic depends on many different factors (lane surface type and its quality, speed limit, transportation capacity, number of lanes, car tyres used etc.). Some of these factors may be influenced in a positive way when responsible entity or competent administrative body adopts effective technical or organisational measures. Therefore it is sometimes possible to initiate a special process of assessment of measures which are available and executable and have not crucial negative impact on transportation conditions. These measures may consist for instance from speed limit decrease, installation of retarders, exchange of lane surface for the one with better acoustic attributes, traffic rerouting etc. and their combinations where meaningful. Affected people can file a petition or sent a complaint to competent state body and to responsible entity as well. Road authorities according to their consideration are able to select between available measures which were mentioned above and order to responsible entities realisation of these measures by issuing of a decision. Entities responsible for road administration (which are in fact somehow linked by their legal nature to the relevant ministry) can execute required measures also according to their own initiative or on the basis of people's petition and so achieve noise reduction finally.

- Information on mechanism for decision about exception from noise limits, and if citizens effectively participate in the proceeding

In Slovak regulation on noise there is only one example when competent state body is deciding about granting an exception from noise limits to demanding entity. But there are two more cases when noise limits are allowed to be exceeded legally.

The only one situation in which competent state body for public health protection (regional office of the Public Health Authority of the Slovak Republic) can issue a permit allowing applicant to exceed

binding limit values of noise indicator can happen in relation with noise from air traffic. As described also in the paragraph on special provisions on noise from traffic, this exception may be granted if there are prescribed flight processes for take-offs and landings with certain specification of flight trajectory according to specific binding regulation (link on Convention on International Civil Aviation also known as Chicago Convention is provided). In such cases limit values of noise indicator can be exceeded up to 5 dB in areas of II. and III. category (for different categories description see previous texts).

Category of area	Ref. day intervals	Limit values for air traffic noise (dB)	Maximum limit values if exception is granted (dB)
II.	day	55	60
	evening	55	60
	night	45	50
III.	day	60	65
	evening	60	65
	night	50	55

As already written in the part dedicated to special provisions regulating noise from traffic, next case of legally possible exceeding of limit values of noise indicators apply to existing noise from road- and rail-traffic when it is proved that it can not be reduced by any measures available. In such circumstances it is allowed directly by the law to exceed limit values of noise indicator for road traffic noise. This exception is given right in the text of legal regulation and no decision or permit of competent authority is required. Responsible entity must only reliably prove that existing noise from transport can not be reduced.

Category of area	Ref. day intervals	Limit values for road traffic noise (dB)	Maximum limit values with legal exception (dB)
II.	day	50	55
	evening	50	55
	night	45	50
III.	day	60	70
	evening	60	70
	night	50	60
IV.	day	70	80
	evening	70	80
	night	70	80

Finally, limit values of noise indicator may be exceeded when new houses and buildings demanding quiet environment are planned and situated in the area, where existing noise from transport exceeds limit values set for areas of II. category. But this can only happen when state body for public health protection gives its affirmative expert opinion to such intent in advance. In addition to that, certain protective measures for indoor environment are to be adopted simultaneously and limit values for areas of III. category must not be exceeded of more than 5 dB.

## **2.5. Information on existence of other (for instance civil legal) instruments for protection against noise**

In Slovak Civil Code there is a provision § 127 (1) concerning so-called “neighbourly lawsuits”, according to which every owner of a thing (incl. real estate) must not neither annoy anyone nor seriously endanger execution of someone’s rights. Further in the legal text there are enumerated examples of prohibited conduct which include the annoyance of neighbours with noise over accustomed level. Offended owner is entitled to file a lawsuit against his neighbour who is annoying him with noise coming from any source. This legal tool in noise cases is very rare used (if ever in Slovakia) because of three main reasons:

- it is hard to define what does it exactly mean “noise annoyance over accustomed level” and therefore it is hard to predict the result of court decision
- the plaintiff is not allowed to demand any active conduct from defendant in order to stop noise annoyance, only defendant’s negative obligation not to annoy over accustomed level can be sued which is very hard to enforce
- people better rely on any other legal tool than on lawsuit to the court because of long lasting civil proceedings and the necessity of financing it from their own resources

Note: As far as we know there is a positive example from Czech Republic where this kind of lawsuit was filed against owner of a road and it was successful on the appellate court.

## **3. Short conclusion: if there is 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**

Legal protection against noise in Slovakia is perhaps well enacted in laws and regulations but their application and their enforcement in real life is quite poor.

Concerning strategic noise mapping and action plans, text of Slovak laws (and END as well) is here and there unclear and allows more ways of interpretation. Sometimes the real sense of the regulation is supplanted by formal activity or steps without real content and connections to other areas. Preparation and adoption of SNMs and APs is very good idea and may help in combating noise annoyance but if following steps and activities are not well managed and realised, they will remain only as an idea. The great weakness of END implementation in Slovakia seems to lie in insufficient funding for smoothness of this process. Delayed work on APs and their missing content are making this important project less effective. Moreover, APs are formulated only as recommendations; they are not legally binding for anyone and therefore it stays only up to the goodwill of responsible entities when and how adopt certain measures. Another weak point of this project is the missing clear and binding connection of SNMs and APs to land use planning and town planning.

From the citizen’s point of view there are legal tools available through which competent authorities are forced to pay attention to noise issue. The most effective seems to be petition or complaint to state bodies responsible for public health protection with respect to all noise sources and to building authorities with respect to noise from buildings and constructions.

When using this legal tools, noise metering by experts can be achieved as well as issuing of decision ordering adoption of appropriate measures or fining. Relevant state bodies are empowered with sufficient competencies and shall able to find a solution. But when competent authorities would not enforce their decisions properly, then all these tools are weak and fail to their function in protection against noise. When thinking about civil lawsuits it must be taken into account that there is a time- and costs- barrier.

Finally there are two principal recommendations:

- there shall be a direct and binding connection between measures and strategies in APs and measures and strategies of land use plans, what would ensure that contribution of APs will mirror in real life and will positively influence people in affected areas
- competent national authorities shall enforce their decisions and ordered measures not only by fining (because the fine for responsible entity does not solve the problem with noise) but together with fining ensure that appropriate measure is really performed (even through alternative way)

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

Martin Stoffa  
VIA IURIS - Center for Public Advocacy  
Radnicne namestie 9  
902 01 Pezinok, Slovak Republic  
Tel: +421 33 641 25 75  
[www.viaiuris.sk/](http://www.viaiuris.sk/)

# Annex 6. National report Slovenia

## 1. Implementation of the END (Environmental Noise Directive) on national level – National Report of Slovenia

### 1.2. General info

Protection of people against noise is one of the most important guidelines that are set in the Resolution of National program for environmental protection 2005 -2012 and other environmental protection directions in Slovenia. Noise in natural as well as in living environment is increasing. The fact is that noise in urban environment in general exceeds the noise in rural areas, which is due to the fact that the number of people in urban environment is increasing twice as fast as in non-urban environment.

The most important factor of environmental noise is road transport. In the last few years the number of registered motor vehicles has drastically increased, where old cars are the most crucial tranquility disruptors. On the basis of noise measurements data in the city of Ljubljana, where there are 266.251 residents registered, the wider region of city center is burdened with noise high above average. It is estimated that this area has around 50.000 residents, which is around one fifth of the Ljubljana residents.

According to EU regulations Slovenia transposed END with two Decrees, Decree on the assessment and management of environmental noise (Ur. l. RS, št. 121/2004) and Decree on limit values for environment noise indicators (Ur. l. RS, št. 105/2005; 34/08), but the implementation is rather very slow, since only strategic noise maps were prepared according the Decree.

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

- According to Article 6 and Annex IV of Slovenian Decree on the assessment and management of environmental noise (Ur. l. RS, št. 121/2004) three (3) strategic noise maps were prepared in Slovenia for:
  - » *all major roads which have more than six million vehicle passages a year,*
  - » *major railways which have more than 60.000 train passages,*
  - » *all agglomerations with more than 250 000 inhabitants – strategic noise map as a consequence of road and railway traffic as well as noise from IPPC installations, was made only for the capital city of Ljubljana, which is the only city in Slovenia, which has more than 250.000 inhabitants.*

Strategic noise maps for major roads and railways were made on the basis of available traffic data about the number of transports of individual categories of vehicles. Noise maps for industrial units in the settlement development zone in the city of Ljubljana were made on the basis of data from 2006, which can be seen from the reports of noise operational monitoring.

According to the Environmental protection act (EPA) and Decree on the assessment and management of environmental noise, the most important information for the public regarding noise burden are available as graphical presentations.

Noise level on specific area, which is shown on strategic noise maps does not represent current noise level, but long term average level of noise throughout the year. For the purposes of action plans projects with possibilities for the implementation of noise protection were prepared for our capital city.

- No quiet areas have been established until the date of the preparation of this report. The Decree on limit values for environmental noise indicators (Ur. l. RS, št. 105/2005; 34/08) includes the definition of quiet areas. Furthermore Article 4 defines that quiet area can be defined on whichever second area of noise protection or on its part<sup>89</sup>.
- The END requires that action plan in the respective country should have been prepared until 18th of July 2008. No action plans were prepared in Slovenia yet. Only noise maps, which include data processing about traffic noise burden and projects with possibilities for the implementation for noise protection, were prepared for our capital city, which are the basis for making an action plan. All available documents envisage the adoption of an action plan, which will introduce appropriate measures for the reduction of environmental pollution (noise burden from the traffic and other noise burdens, parallel also air pollution from the traffic).

### ***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)***

Slovenia transposed END with the following regulations:

- Decree on the assessment and management of environmental noise (Ur. l. RS, št. 121/2004);
- Decree on limit values for environment noise indicators (Ur. l. RS, št. 105/2005; 34/08);
- Rules on initial measurements and operational monitoring of noise sources and on conditions for their implementation (Ur. l. RS, št. 105/2008).

#### **Decree on the assessment and management of environmental noise (Ur. l. RS, št. 121/2004)**

is the basic document with which END was transposed into Slovenian law. In general it includes measurements for the reduction of environmental noise burden, especially in the connection with:

- methods for assessing environmental noise;
- determining noise exposure with mapping noise burden of built-up areas;
- accessing information about environmental noise and its impacts to the public;
- preparation of the noise action plan with the intention to prevent and reduce environmental noise, which basis on the mapping of noise burden;
- preparation of the action program in built-up areas, which are burdened by noise and therefore arranged into class with the highest burden and because of the noise exposure set as degraded environment.

<sup>89</sup> Second area of noise protection is set for areas for which land use is determined and on which no activity affecting the environment, which will cause noise, is allowed.

**Decree on limit values for environment noise indicators (Ur. l. RS, št. 105/2005; 34/08)** – subject to the END and recommendations of the European Commission 2003/613/ES and for the protection of natural and living environment this decree determines:

- level of the reduction of the environmental noise pollution/burden;
- limit values of the environmental noise indicators;
- critical values of the environmental noise indicators;
- temporary methods for the assessment of the environmental noise indicators;
- adjustments, which have to be taken into account by the calculation of the

**Rules on initial measurements and operational monitoring of noise sources and on conditions for their implementation (Ur. l. RS, št. 105/2008)** – subject to Annex II of END, recommendations of the European Commission 2003/613/ES and in connection with assessing noise with measurements and model calculations these rules determines:

- methods of noise measurements and implementation of model calculations with the usage of calculation methods;
- the content and form of the report and method and form for reporting the data to the Ministry for the Environment.

**Environmental protection act (Uradni list RS, št. 39/06; št.70/08)** stipulates that environmental protection permit for the operation of an installation that causes emissions into air<sup>90</sup>, water or soil for which limit values are prescribed, a polluter shall take the necessary measures to prevent and reduce the pollution so that the emissions into the environment do not exceed the prescribed limit values. A polluter shall have an environmental protection permit in accordance with EPA for an installation where an activity is carried out which may pollute the environment due to emissions.

The monitoring of the state of the environment (in regard of soil, water and air, including the noise and radiation, except ionising radiation) is provided by the competent ministries directly or via public authorisation granted to a public institute established for the monitoring of these phenomena and selected on the basis of a public tender.

As already mentioned Slovenia did not prepare action plan until 18<sup>th</sup> of July 2008 as was required by the END. For that reason we can give only very general or no answers to the following questions. There is only one general article transposed directly from END, which is included in Decree on the assessment and management of environmental noise. It states that an action plan has to include plans for measures that have to be taken in order to control problems, which are caused by outside noise. Furthermore action plan has to be repaired in cases of important happenings, which could impact the current noise situation, but at least every five years after the date of its acceptance.

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

In Annex 5 of the Decree on the assessment and management of environmental noise there are the same requirements as are set in END, including the need that action plan and measures that will be accepted by competent bodies CAN also include land-use planning.

<sup>90</sup> Emission shall mean any direct or indirect release or discharge into the environment of substances (liquid, gas or solid) or energy (noise, vibration, radiation, heat, light) or organisms or microorganisms from a particular source.

More specific provisions were not yet accepted due to the already mentioned fact, that action plans have not been accepted.

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

According to Slovenian legislation action plans include goals, directions and tasks on specific or whole environmental field. According to this it could be concluded that action plans are not an obligatory source of document but more guidelines for implementing responsibilities from ratified and published international treaties, strategies and EU regulations. However EU does consider action plans as obligatory documents, which should have penalty provisions. This is not the case in Slovenia.

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

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

(Remark: I think you can also ask the authorities for information about financing the anti-noise measures.)

**1.2. Overview in details**

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

- Slovenia prepared strategic noise plans according to the deadline set in END. They were made in 2006. However action plans have not been prepared yet, which is a big failure for Slovenia.

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

- No action plans were prepared yet, only projects showing the possibilities for the implementation of noise barrier have been made for the city of Ljubljana. Now it is up to MoE to start with the preparation of the noise action plan, where according to our regulation, public participation is needed and required.
- Because of the existing problem of NGOs in Slovenia<sup>91</sup> and because very few NGOs are active in the noise field, there has been or is no pressure to the Ministry responsible for the preparation of the action plans.

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

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

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

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

<sup>91</sup> Still almost 5 years after the AC ratification and passing of EPA there is no “NGO acting in public interest” with a legal standing under EPA in Slovenia, because of very strict conditions set by EPA. The status of “NGO acting in public interest” is granted by the minister of environment upon the NGO’s application. Under article 155 of EPA these NGOs have the right to participate in procedures in accordance with this law’s provisions; thus EPA explicitly states in which procedures NGOs can participate.

### 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)

- » *Strategic noise maps for Ljubljana are available and accessible on the Internet on the webpage of Agency for the Environment (<http://www.arso.gov.si/varstvo%20okolja/hrup/>) and also on the webpage of the Municipality of Ljubljana (<http://www.ljubljana.si/si/mescani/okolje/hrup/default.html>), but to our knowledge only summaries are available and not the whole text. There is also no info, where you could get the whole documents, even though the company that made noise plans is known.*

#### g) Information are clear, comprehensible and accessible

Information in noise maps are very brief but include almost all most important information that is required by END. However by every noise map there is a note that noise level on specific area, which is shown on strategic noise maps does not represent current noise level, but long-term average level of noise throughout the year. For the purposes of action plans more specific analysis of the specific area will be needed.

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

To our knowledge the only document that is available is a summary of the most important conclusions, which include also graphical representation as it is required by END, Annex IV, point 2.

### 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:

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

Noise map for the whole city of Ljubljana, which expands on the area of 275 km<sup>2</sup> and has 266.251 permanent residents. In the model calculations 90.149 buildings, 928 km roads and 100,6 km of railway tracks were considered. For the purposes of strategic noise maps input data about:

- area (topography of the terrain, buildings, data about roads and railways, anti noise barriers, meteorological data,...);

- noise source and

- population of the area in question (number of inhabitants, commercial entity) were prepared. On the basis of calculated noise level:

- areas, burdened with different noise levels, with band 5dB(A) in width;
- number of permanent residents, living on this area;
- number of addresses with permanent residence;
- number of buildings with “quiet facade”<sup>92</sup>;

<sup>92</sup> Quiet facade is an expression, which is being used for buildings, by which noise burden of quiet in comparison with noisy side of the facade distinguishes for more than 20dB.

- number of permanent residents living in buildings with “quiet facade”;
- number of schools and hospitals on the area in question, because of road and railway noise were determined.

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

Even though Slovenian Decree on the assessment and management of environmental noise (Ur.l. RS, št. 121/2004) does include Annex 4 and the same requirements that are set in the END, noise level on a specific area, shown on the strategic noise maps that were made for Ljubljana do not represent current noise level, but a longterm average noise level throughout the whole year.

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

Graphical presentation that is also available shows noise pollution marked with colour scale, that was made according to the DIN 18005 standard. On this map areas, where exceeding of a limit value for the city of Ljubljana<sup>93</sup> are shown.

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

- road traffic,
- rail traffic,
- airports,
- industrial activity sites, including ports.

Strategic noise map for Ljubljana puts special emphasis on the noise emitted by road and rail traffic, as well as noise from industrial activity sites. Because there is no airport in the city area, noise coming from the airports was not considered. Because neither END nor Slovenian Decree on the assessment and management of environmental noise don't specifically lay down, which industrial activity sites should be mapped, there was a suggestion, coming from EU level, stating that only large – scale pollution facilities should be subject to evaluation. According to this suggestion only noise maps for IPPC installations should have been made for the whole territory of Slovenia in the first phase. Other installations, which cause permanent or occasional noise were not included.

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

- a graphical presentation,
- maps disclosing the exceeding of a limit value,
- difference maps, in which the existing situation is compared with various possible future situations,

<sup>93</sup> No other strategic noise maps were prepared yet. But to our knowledge also other strategic noise maps will include graphical presentation showing exceeding of limits.

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

There is a graphical presentation and maps do disclose exceeding of a limit value, but maps do not show existing situation in comparison with various possible future situations. However all maps were made at a height 4 m above the terrain as it is required by END.

**f) 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.**

This information is not available.

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

Yes, strategic noise maps do contain road-traffic noise, rail-traffic noise and industrial noise (except for aircraft noise – see explanation above) in agglomerations.

**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,
- the authority responsible,
- the legal context,
- any limit values in place in accordance with Article 5,
- a summary of the results of the noise mapping,
- an evaluation of the estimated number of people exposed to noise, identification of problems and situations that need to be improved,
- a record of the public consultations organised in accordance with Article 8(7),
- any noise-reduction measures already in force and any projects in preparation,
- actions which the competent authorities intend to take in the next five years, including any measures to preserve quiet areas,
- long-term strategy,
- financial information (if available): budgets, cost-effectiveness assessment, cost-benefit assessment,
- provisions envisaged for evaluating the implementation and the results of the action plan.

**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.

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

## **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)**

**2.2. Existence of binding limits for indoor noise**

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

**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?)**

**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?)**

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

## **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?**

In Slovenia the legislation on the noise field is regulated with regulations and decrees. General provisions are set in Environmental protection act.

Based on EPA, Construction Act and EU regulations some more specific rules are in force in Slovenia. Beside the already mentioned ones there is another regulation, called Rules on sound protection in buildings (Uradni list RS, št. 14/1999), which was accepted on the basis of Construction act (ZGO-1-NPB3) – this law includes only very general provision about noise, stating that buildings should be protected against noise. It includes requirements for the sound protection of buildings, which are

meant for living and working and also about limit values in living and working environment. Noise protection of buildings, living and working environment, which is regulated with this rule, ensures protection from:

- noise coming from other rooms/apartments in the same or other building, which is structurally connected with the first one;
- noise coming from house equipment and installations in the same or other building, which is structurally connected with the first one;
- outdoor noise from traffic and noise coming from craft industry or industrial installations, which are not structurally connected with the building, where there is living and working environment.

Despite these provisions about noise protection in living environment these rules do not ensure protection from the noise coming from noise sources in the same apartment. And also these rules do not contain the definition of outdoor noise.

There was a special Decree on noise due to road or rail transport, but its validity was cancelled with the acceptance of the Decree on limit values for environmental noise. Provisions included in this decree do not contain any specific legal condition for noise from traffic. The only legal condition for noise from traffic is included in already mentioned Rules on sound protection in buildings.

Besides administrative court and MoE as appeal body, there is one state body that has competences according to the noise legislation in Slovenia and to which citizens can make an application.

Supervision is carried out by inspection body responsible for environmental protection, who can order measurements of noise, which are caused by noise source. Control over implementation of the provisions set in EPA is also carried out by the same inspection body, meaning that this control includes among other control over:

1. activities affecting the environment, environmental burdening, and entities causing burden, including supervision over the conformity of operation of an installation or plant with environmental permit or greenhouse gas emissions permit,
2. environmental quality status and waste and
3. implementation of prescribed or imposed environmental protection measures.

According to EPA there is also Environmental protection supervisory service, whose supervisors can conduct specific activities in the procedure prior to the issuance of an inspection decision under EPA, in particular the establishment of facts and circumstances and control over the compliance with the measures issued by inspectors. Specific activities shall also concern the supervision over environmental burdening by noise from crafts and activities similar to crafts.

Law of Property Code (Ur.l. RS, št. 87/2002) regulates the protection of ownership rights against emissions. Property rights on the field of emissions can be claimed with a lawsuit, which is reserved for property and alleged owner of the real estate and with which especially suspension of molestation or veto of further molestation can be requested. Without special legal title a disturbance with special devices is forbidden.

There is also a special Article in Law of Property Code for the protection against molestation. If anyone unlawfully molests property or alleged owner a lawsuit can be brought, with which it is claimed to stop or to forbid further molestation. If the molestation caused damage, owner has the right for the compensation according to general rules for claims for damages. There is a lot of practice in this field also in the noise field<sup>94</sup>.

In general it can be said that in Slovenia the level of legal protection connected to noise is not sufficient enough. This can be concluded due to the fact that Slovenian inspectorate as competent authority is not effective enough, since they do not have enough resources in order to cover this area – many applications are left unsolved or the inspectorate does not impose a sanction or the procedure is too long. Another problem is also that in Slovenia noise area is completely uncovered by NGOs and for that reason there is no pressure to the competent authorities to improve the situation. This could also be one of the reasons, why Slovenia did not prepare action plans until the date set in END. The only very well functioning part of Slovenian practice is practice coming from the usage of civil legal instruments. But the problems here are very costly and long court procedures and the fact that the situation does not improve via civil court procedures.

#### **4) Contact information**

Ana Matoz Ravnik

Legal-informational centre for NGOs – PIC, Povšetova 37, 1000 Ljubljana

Tel: +386 1 521 18 88, Fax: +386 1 540 19 13

Email: ana.matoz-ravnik@pic.si

www.pic.si.

---

<sup>94</sup> There are quite some cases, where the owner of a private apartment or house sues the owner of a factory or industrial installation because of the excessive noise, coming from it. When the defendant is causing disturbance with legal activity, the plaintiff cannot, according to Slovenian Code of Obligations, require a removal of the source of noise disturbance. The plaintiff can only request/sue for compensation, which exceeds normal limits and social eligible measurements for minimization of damage. But if, because of the noise disturbance, living in the apartment gets impossible, the plaintiff can demand replacement with a new apartment.

