

WORK GROUP TO RETHINK NOISE LEGISLATION

SUMMARY

At the APCAP Standing Committee on Environment and Security meetings, the concessionaires manifested a great concern about the underlying requirements for compliance with the General Noise Regulation (GNR) and the way the environment supervisory entities managed its enforcement. In particular, because these requirements did not consider economic variables (cost / benefit analysis, for instance) or circumstances resulting from serious failure of spatial planning outside the control of the entities who manage transport infra-structures. Also, because the allocation of responsibilities to the various actors intervening in the acoustic environment was not clarified within a logic of justice and fairness. In this context, APCAP took the initiative of creating a Work Group to Rethink Noise Legislation (WGRNL). The present communication intends to present the work developed by this group, which has played a key role within the collaborative activity of APCAP. In addition to the concessionaires represented in APCAP, other transport infrastructure managers (airports, railways) were involved in the work group as well as the Supervisory Body of infrastructure road transport. It was demonstrated that certain issues, which are not an exclusive concern of the concessionaires, can benefit from an extended discussion and a close collaboration with other partners as a means for strengthening and enriching the APCAP positions.

Keywords: Noise, cost / benefit analysis, economical-financial sustainability

INTRODUCTION

Since 1987 a specific legislation has been in place for the management of environmental noise in Portugal, which henceforth is referred to as the General Noise Regulation (GNR).

The approach in this first legislative framework was preventive, particularly for new operations and new urban transport infrastructure.

From the year 2000 onwards the law was changed. In addition to the preventive approach, a corrective vision was introduced, which addressed the resolution of noise problems, mainly to the transport infrastructure managers, already in operation.

In 2007, there was a new change aiming to make the link with the European Directive 2002/49/EC of 25 June. This change resulted in the present Decree-Law no. 9/2007. In this latter GNR, the noise limits imposed by the previous legislation generically remained, but references of three periods for acoustic assessment, Strategic Noise Maps and Action Plans were introduced.

PORTUGUESE LAW VS. EUROPEAN LAW

In 2010, within the Environment and Security Work Group of APCAP, European legislation regarding noise descriptor was collected. The conclusion was that the Portuguese legislation had more restrictive clauses regarding noise levels limits and also that it did not take into account exceptions for situations of proven public interest where technically and economically it was not feasible to implement measures to minimize noise.

In addition, the Portuguese legislation does not clarify protection obligations related to situations subsequent to the construction of transport infrastructure as French law does.

Other important aspects that are present in European legislation and are not covered by the Portuguese legislation are highlighted below:

- The UK legislation is directly linked to local planning and allotment projects must take into account the category of areas in which they are situated. This perspective implies that there are areas where the urbanization projects should be refused because of existing noise levels;
- In Italy, the perspective of implementing measures to minimize noise at the medium / long term is contemplated. Also, noise reduction plans must include cost estimates and set priorities;
- The Spanish law establishes zones of sound servitude along the infrastructure of road where the limits can be overcome. It clarifies that the Environmental Impact Study should take into account pre-existing buildings and formulate economically proportionate measures. It also advocates the definition of “pre-existing” as building permit being prior to the approval of the sound servitude. It includes an exception clause related with cases where the exploitation of an infrastructure, given its justified public interest, can be exceptionally authorized if there are no technical and economically feasible alternative measures for adjusting noise levels to the limit standards.

CONTINGENCIES OF THE LAW AND THE CREATION OF THE WORK GROUP

In short, the contingencies that APCAP has been identifying in Portuguese noise legislation are related to:

- Strict adherence to the recommended legal limits in the legislation leads to disproportionate costs in measures to minimize noise when compared to the benefits achieved;
- The absence of definition of a methodology for prioritizing the implementation of noise reducing measures, which takes into account reasonable implementation schedules

with respect to time and cost, is causing a tendency for dysfunctional measures with negative social and landscape impacts;

- Controversy on the limits to be applied in nearby areas not classified;
- Lack of clarification of the responsibilities of various actors and receivers installed after the transport infrastructure, aggravated by not having easily accessible relevant information such as building permits;
- The allocation of responsibilities for the legal compliance of the environmental noise levels almost exclusively to the transport infrastructure managers. For example, there are responsibilities to be assigned to state entities responsible for monitoring the maintenance of vehicles, speeds and engine emissions and the existence of poorly accommodated loads in heavy vehicles and for the land management (specially local and regional government);
- There are still situations where one can not comply.

Given the difficulties we face in terms of legal compliance with the noise legislation, we saw the need, through dialogue, to pass proposals to amend it accordingly.

To this purpose, APCAP directed and promoted the creation of a work group set up by transport infrastructure managers or tutelary entities that included representatives from the following entities:

- ANA (airports)
- APCAP (road transport infrastructure with tolls: AEA, ASCENDI, BRISA, LUSOPONTE)
- ASCAS (road transport infrastructure without tolls)
- EP (managing entity of the State roads)
- InIR (regulator of road transport infrastructure)
- NAER (new Lisbon airport)
- REFER (managing body of the railway transport infrastructure)

This group has played a key role within the collaborative activity of APCAP. It must be stressed that this group was constituted by concessionaires represented in APCAP and also other transport infrastructure managers (airports, railways) as well as the Supervisory Body of road transport infrastructure.

SUMMARY OF PROPOSED CHANGES

The proposed revision of the General Noise Regulations (GRN), which resulted from the Work Group presented earlier, briefly points to the following amendments:

- Introduction of the concept of "acoustic protection zone";
- Restricting the scope of the Municipal Plans for Noise Reduction to the strict competence of municipalities;
- Clarification of noise legal limits applied to acoustic protection zones (65/55);

- Reinforce the responsibilities of municipalities as entities licensors and link them to law enforcement;
- The changes aim to clarify the concept of proximity to transport infrastructure to the limits contained in the Noise Maps or a range of 250 m from the edge of the platform;
- Adjustment of noise reduction measures to the regulation of the sector and the introduction of a cost-benefit analysis of the investments to reduce noise;
- Introduction of the criterion of “who comes later” should be responsible for the implementation of all measures to reduce noise (and not only for the sound insulation of facades);
- In modernizations / improvements involving changes in cross-sections the criterion mentioned above and the cost-benefit analysis must be observed;
- Introduction of the timing of investments, given the impossibility of achieving them in the immediate term and of the condition of making these investments in line with the opportunity to intervene in the pathways and rolling stock, favouring the principle of source reduction;
- Introduction of a clause allowing the operation of the infrastructure, while not fulfilling the legislated limits in cases of proven public interest and where the conformation to these limits is not technically and economically feasible.

CONCLUSIONS

The proposed revision of the General Noise Regulations prepared by the Work Group was presented to the Government, who showed responsiveness to the issues raised. The Work Group is now awaiting a response (which is expected to be positive).

The Work Group demonstrated that certain issues, which are not an exclusive concern of the concessionaires, can benefit from an extended discussion and a close collaboration with other partners, strengthening and enriching APCAP positions.