



PUBLIC PARTICIPATION AS AN EFFECTIVE INSTRUMENT TO PROTECT AGAINST ENVIRONMENTAL NOISE IN GERMANY – OPPORTUNITIES AND CHALLENGES

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Abstract

An essential part of a modern noise reduction strategy is the involvement of the public. This important approach is implemented in the European Environmental Noise Directive. According to this Directive, noise action plans will be developed with the participation of the public. In Germany, the individual participation in planning processes is increasingly in the focus of public interest and in political discussions. The goal-oriented implementation of the participation process and the challenges of an effective participation are demonstrated at prominent examples. Moreover, proposals for a further development of the legal requirements of the public participation at EU as well as international level will be presented. In this context special consideration is given to measures of a clear and effective participation. The aim of these activities is to achieve a higher acceptance for official decisions of great importance. The involvement of the public in the decision-making process could also have a positive effect on their annoyance reaction because noise is often perceived as less loud if people are directly involved in the process. In Leipzig takes place a modern citizen participation process. A model of the future. In contrast to the noise action plan of the city of Leipzig, the project is not based primarily on calculations of noise exposure, but on proposals submitted for noise reduction. In the focus are short-term operational measures.

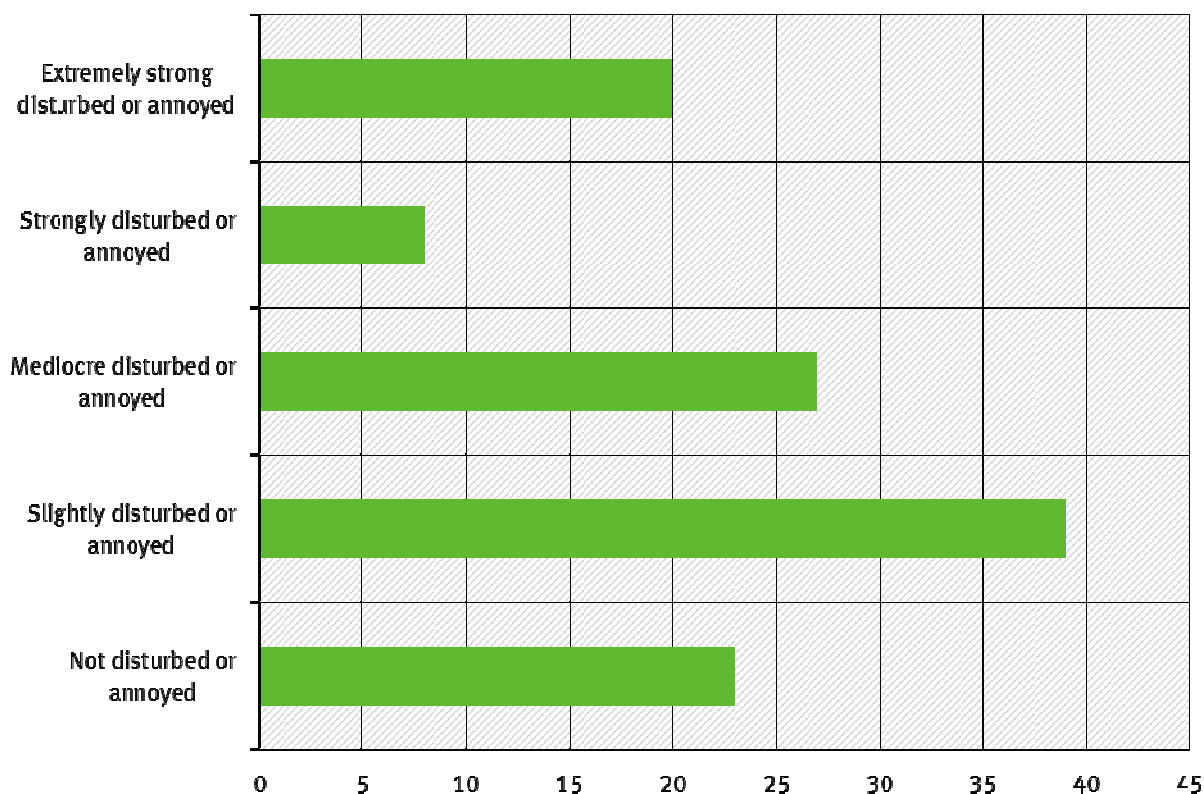
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1 Introduction

Noise is an important issue causing one of the most common public complaints in Germany. According to a representative survey carried out in 2014, around 54 % of those interviewed

complained of being disturbed or annoyed by road traffic in the vicinity of their homes. Air traffic was the second most common source of noise generated by transport. In Germany, 21 % complained of being affected by aircraft noise. 17 % of the population feel disturbed by rail traffic noise. According to the survey, however, noisy neighbors are also an important source of noise. 40 % of the interviewed people complained of being affected by noise from their neighbors. Further details can be obtained from Figure 1.



Question: Thinking about the last 12 months, when you were here, how much does noise from (noise source) disturb or annoy you: not at all, slightly, moderately, very, or extremely?

N=2.000, Online interviews, sample from 14 years for the inquiry in 2014 sample from 18 years for the inquiry in 2014

Figure 1: Extent of noise annoyance in 2014 in Germany in % [1]

2 European environmental noise Directive and its implementation into German law

To improve the noise situation in Europe, the EU issued the Directive 2002/49/EC “relating to the assessment and management of environmental noise” (Environmental Noise Directive) in 2002 [2]. It became law in Germany in 2005. The aim of the Directive is to avoid and to reduce

environmental noise and prevent an increase in noise in quiet areas. The strategic instruments of the Directive are the creation of noise maps and subsequently action plans.

The Environmental Noise Directive contains a so-called management approach which aims to develop a long-term action concept as the basis of a dynamic noise action plan. This approach has been adopted into German law. In contrast to the traditional noise abatement approaches is not directed to implement fixed noise limits but rather targets and objectives are placed. Existing noise control instruments of various legal areas, such as land-use planning, public road law, railway law and aviation law are also integrated. The practical relevance has shown to be high. For the municipalities, the second noise mapping process according to the Environmental Noise Directive was completed in 2013. It primary serves as a basis for the preparation of noise action plans according to § 47d of the German Federal Immission Control Act (BImSchG) [3].

Within the framework of noise action plans the communities targeting the most widespread source of noise, road traffic (see Fig. 2). The range of measures adopted is very broad. Measures range from long-term strategic approaches to traffic reduction to measures that can be taken in the short term such as local speed limits or bans on heavy freight vehicles driving through specific areas.

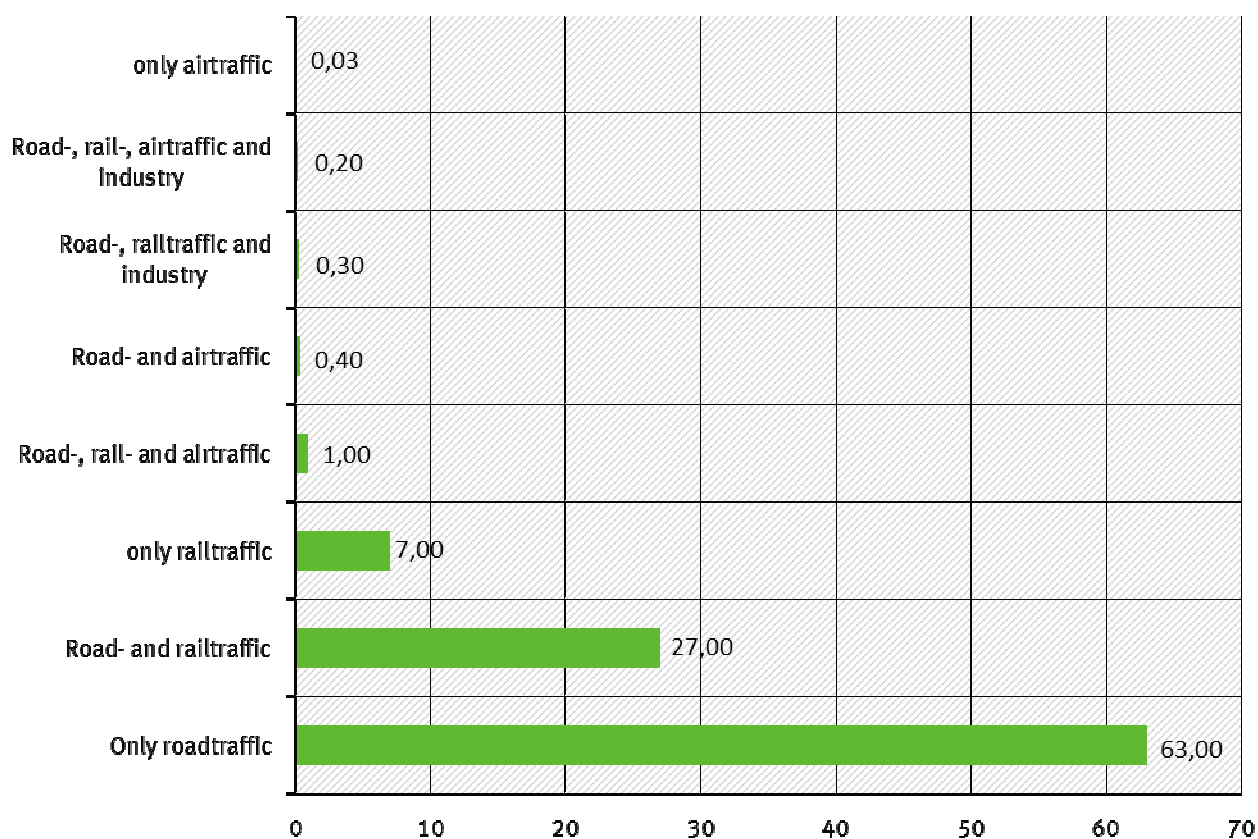


Figure 2: Noise mapping source in German municipalities [...]



3 Public participation in Germany

A particular concern of EU bodies is an appropriate public participation. For this reason the Directive requires Member States to ensure that the public is consulted about proposals for action plans and that they receive the documents in time and have effective opportunities to participate in the process. Moreover, the public must be informed of the decisions taken.

In Germany, there exists no comprehensive environmental law, which deals with all relevant aspects for environmental protection. However, there is an act in which all significant provisions to mitigate the impacts of noise and air pollutants are concentrated. This act is called Federal Immission Control Act (BImSchG) [4]. Within the framework of the transposition of the Environmental Noise Directive into national law in Germany the Federal Immission Control Act has become the central law for noise abatement planning. Provisions on technical details are laid down at the sub-legislative level [5].

On the basis of §§ 47 of the Federal Immission Control Act the involvement of the public into the decision-making process is carried out in four steps:

- Firstly, the public will be consulted about proposals for noise action plans. This hearing shall be documented in accordance with point 1 of Annex V of the European Environmental Noise Directive and accompanied by the particulars and documents of noise action plan.
- In a second step, the public has an early and effective opportunity to participate in the preparation and review of the noise action plans. This participation involves not only the initial installation of the noise action plan, but also its review and if necessary a revision after five years in accordance with § 47 d V p 5 d BImSchG. The extent to which the public makes use of her right is theirs. In addition, the provision contains stipulations about the type of investment: There is still enough time left until decisions are to be made, and it shall be performed effectively.
- According to the Federal Immission Control Act, the results of public participation are to be taken into account. The competent authority shall adjust the results of the participation so far in the decision on the content of the noise action plans. But it is not necessarily tied by the results, but may also - ignore it - under the leadership of reasons.
- After the competent authority has decided on the consideration of the results of public participation, the public will be informed according to § 47 d III BImSchG about the decisions taken.

Before the Environmental Noise Directive came into force in Germany the involvement of the public was voluntary for the municipalities. It is now integrated within the above mentioned regulations and therefore an important process step. For instance, the development between 2010 and 2015 shows an increase by 1/3 with respect to the reported noise action plans, the information and the public participation (see Fig. 3).

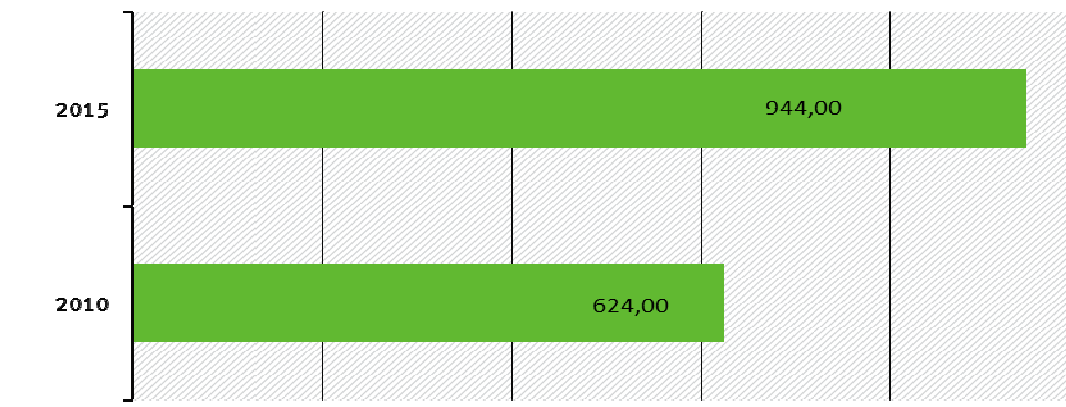


Figure 3: Development between 2010 and 2015 in public participation in context with the Environmental Noise Directive in Germany

However, a problem is that some municipalities not completely fulfill their obligation of public participation. It is varyingly seen in case law and also discussed in literature whether the individual may have a subjective right to create a noise action plan and participate in the decision-making process [6]. The question remains whether from the lack of participation it is allowed to proceed further [7].

The German administrative law generally assumes that the right to adopt an act of the administration for the protection standard is theoretically given when the individual has subjective-public rights [8]. Therefore it is questionable, whether the rights of individuals are also protected within the instrument of noise action plans. These plans develop no individual protection, but contain an overall concept for the protection against noise. Within the framework of public participation there is a right of individuals to specific measures of the noise action plan.

For a clean air plan a subjective claim has already been purposed in the judiciary. The Administrative Court of the German City Hannover [9] has come to the conclusion: "...that the measures of an action plan are subject to judicial review". So there are decisions with external impact. According to the decision of the European Court of 25.07.2008 (- C-237/07) an action plan should be prepared if there exists a risk of exceeding the noise limits. In the decision, the European Court has thus explained how individuals can undergo an action plan of a substantive judicial review.

The variety of local refinements in the implementation of public participation within the noise action planning is quite wide. Although the statutory authorization in § 47 f BImSchG lists other potential regulatory issues the legislator has issued no further specific ordinances for noise action planning. Neither any thresholds for planning obligation nor detailed requirements for public participation have been set. This means that every municipality has in compliance with § 47d para. 6 in combination with § 47 para. 6 BImSchG a maximum freedom in the realization of an action plan.



4 Examples of public participation in Germany

In Germany, public participation is handled differently depending on the size of the community. The social science research has developed constructive ways to involve the public in the decision-making process [10]. For this purpose a portfolio for each type of problem and planning activity exists which can be applied. Often-used tools are information about the preparation of the noise action plan in local press releases publications via the Internet, discussions with residents as well as a public hearing in an Environmental Committee. Moreover, scenario workshops, round tables and mediation could be used.

The German Environment Agency has supported these important activities by two model projects [11]. In this first project, a novel cooperation procedure was tested at the city of Leipzig, which followed a bottom-up approach. Within the project various workshops and citizens forums have been successfully performed.

The second project indicates that, unlike the noise action plan of Leipzig, the calculations of noise exposure, are based on proposals submitted for noise reduction. Leipzig citizens identify concrete problems and noise protector rest areas and work out practicable solutions. The focus will be implemented at short notice traffic calming measures such as Tempo 30, on crosswalk or road markings. The project is supported by an advisory board composed of representatives from the government and transport, civil associations and the Promoters and sponsors which support our cause. In this project many stakeholders are involved, the assertiveness discussed and agreed measures speak against the background of the financing and budgeting.

5 Conclusions

Public participation is an important element of modern noise abatement strategy. The goal-oriented implementation of the participation process and the challenges of an effective participation are demonstrated at two important Leipzig model projects. These projects show that the involvement of the public in the decision-making process could lead to better quality results and increases the acceptance of noise reduction measures. Moreover, it has a positive effect on the annoyance reaction of the people affect by noise because noise is often perceived as less loud if people are directly involved in the process. For these reasons public participation is of great importance and hopefully will be applied to other processes in the future.

6 References

[1] Environmental awareness study of the Federal Environment Ministry and the Federal Environment Agency 2014

[2] 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, Official Journal EC L 189 of 17.07.2002, p. 12, last amended on 22 October 2008, Official Journal EC L 311, p. 1



- [3] App. V No. 1, point 10 of the European Environmental Noise Directive 2002/49/EC
- [4] Feldmann, Franz-Josef, Change in Noise Protection: The European Environmental Noise Directive and the implementation in German law, ZUR 2005, 352 ff.
- [5] Landmann/Rohmer, Environmental Law, § 47 d Rn. 20 ff.
- [6] Holm, NuR 2003 144, 147
- [7] affirmative (directly from the European Environmental Noise Directive):
Schulze-Fielitz, GK-BImSchG (Stand 2007)
- [8] BVerwG NJW 1967, 532; BVerwG UPR 1990, 28
- [9] VG Hannover, Decision of 16.02.2010 – 4 B 533/10; VG Stuttgart, 31.05.2005 – 16 K 1120/05 and 1121/05
- [10] Webler/Tuler, Energy Policy 2010, 2690
- [11] T. Supplies, R. Elsässer, F. Mothes: Noise reduction through citizen participation, the model project: Mach's quieter - Assist with the noise action planning in Leipzig, texts 23/2013, Federal Environment Agency, Dessau-Roßlau