

# Proceedings of The Institute of Acoustics

## ENVIRONMENTAL NOISE - BARRIERS TO TRADE AND HOW THE EEC ATTEMPTS TO REMOVE THEM

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### INTRODUCTION

It is with some trepidation that I have prepared this paper for the Institution of Acoustics Spring Conference because I am aware that my subject has only a passing association with the science of acoustics. Indeed what I am going to say applies to an extremely wide range of manufactured products and really only has an acoustical connotation if the products are particularly noisy. Nevertheless in instances where the noise emitted creates a safety or environmental problem there is frequently a need for legislation, and when there is legislation it frequently creates barriers to trade. So my subject is barriers to trade caused by environmental noise, and what I propose to discuss is how these barriers arrive and how within the EEC we attempt to overcome them. As I have already said you will find it has only a passing association with acoustics, but I hope people will find it interesting, and instructive in the working of the EEC.

### THE BARRIERS

It is an accepted fact that one of the duties of Government is to protect people from hazards even if at times these arise from their own actions. In order to fulfil this duty Governments have developed over the years diverse rules and procedures for ensuring the safety of their nationals. Because these rules and procedures differ within the EEC from one Member State to another, manufacturers in any one particular State have to meet a wide variety of requirements if they are to be able to trade freely in other States. These difficulties are referred to as "non-tariff barriers" and the system devised within the EEC for their removal is the so-called "harmonisation (approximation) of the Laws of the Member States relating to .....".

In the context of noise emission there is of course not only the danger to hearing aspect, but also the question of nuisance, and in many instances national regulations have been formulated to reduce such nuisance. These also form barriers to trade and are dealt with in the same way as true safety matters.

Within the EEC the authority that is used for this harmonisation work is Article 100 of the Treaty of Rome.

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#### ARTICLE 100

At the present moment this Article reads:-

"The Council shall, acting unanimously on a proposal from the Commission, issue Directives for the approximation of such provisions laid down by law, regulations or administrative action in Member States as directly affects the establishment or functioning of the Common Market.

The Assembly and the Economic and Social Committee shall be consulted in the case of Directives whose implementation would, in one or more Member States, involve the amendment of legislation".

#### THE COMMISSION AND ITS PROPOSALS

The Commission comprises 22 Directorates-General each dealing with a different aspect of the Common Market. For example, DGIII deals with the Internal Market and Industrial Affairs: DGXI deals with Environment, Consumer Protection and Nuclear Safety.

In matters pertaining to the use of Article 100 the Commission has right of initiative, and exercises this right by making the "proposal" referred to in the first line of the Article. In formulating a proposal the Commission is not bound to consult anybody. In practice it generally consults quite widely amongst European user and manufacturing organisations, recognised seats of expertise, Government departments and representatives of organised labour. Once ideas begin to crystallise it is also common for the Commission to hold formal meetings of national experts and Government representatives.

The Commission finally makes its formal proposal to The Council. However before being discussed by the Council the proposal has to be considered by both the Economic and Social Committee and the European Parliament.

#### THE ECONOMIC AND SOCIAL COMMITTEE (ECOSOC)

This Committee comprises representatives of all interested parties - users, workers, manufacturers, professional organisations, etc - with the exception of Government officials. Its terms of reference appear in Articles 193 to 198 of the Treaty. Its role is strictly advisory, but it is required to give an opinion on any Commission proposals that might involve amendment to any Member State's legislation.

This Committee represents quite a good path for manufacturers and users to put their views to the Commission. A useful entree to this Committee can be made in the UK via the Confederation of British Industries.

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### THE EUROPEAN PARLIAMENT (THE ASSEMBLY)

The European Parliament comprises representatives of the people of the Member States, and its establishment is via Articles 137 to 144 of the Treaty. Its role is advisory and supervisory, but it can also form a useful line of lobby for manufacturers and users via the various UK elected Members.

### THE COUNCIL

It is important to understand that in practice "The Council" takes the form of a number of "Councils of Ministers". These Councils meet on a fairly regular basis and comprise the appropriate Ministers for the topic to be considered. For example the Council that deals with Article 100 Directive is generally "The Internal Market Council" on which the UK would be represented by Mr Alan Clark.

The Council is served by a Secretariat, which is really the only part of it that resides permanently in Brussels.

When a Commission proposal is presented to The Council it does not go immediately to "A Council of Ministers" meeting, but to the Secretariat who hold it until the opinion of both ECOSOC and the European Parliament have been received.

Discussion of a Directive at the so called "Council level" takes place in "Economic Questions Working Groups" (CEQ) which comprise only appropriate officials from the Member States together with representatives from the Commission. They are chaired by a representative of the Member State that at the time holds the Presidency of the Council. Procedures in these GEQ meetings vary to an extent, but the common purpose is to consider in as much detail as is necessary the Commission proposal, taking note of the opinion given by the ECOSOC and the European Parliament, and to reach a consensus. The original Commission proposals can be radically changed in the course of these considerations.

If complete accord can be reached at GEQ the agreed text will be passed to the next appropriate meeting of a Council of Ministers for ratification, but agreement has to be unanimous. If near agreement is reached at GEQ it is customary to pass the remaining points of dispute to meetings of representatives from the permanent delegations of the Member States (COREPER) where an attempt is made to reach an agreement by more formal means. In rare instances matters of dispute can be considered at a full Council of Ministers meeting.

### SPECIFIC AREAS OF HARMONISATION

Having spoken in general and at some length about the procedures for removing barriers to trade let me now turn to the specific and explain how these procedures are being used in situations where noise is a problem.

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These situations arise when the noise emitted by particular types of equipment is considered to be either a general environmental nuisance, or "hazard to the operator", or both. The method of harmonisation is to specify a test procedure by which the noise either emitted or perceived is measured; an administrative procedure for ensuring that the tests are correctly carried out; and a procedure for marking individual pieces of equipment to show that the noise level is below a given value.

### The test procedures

These are designed to allow the sound power level to be established for the purpose of environmental protection, and sound pressure level to be established at the operation position to protect hearing. There are two basic problems. The first is how to position the microphones to allow correct readings to be made, and sound power accurately calculated. The second is how the machines shall be run in order to give truly representative operating conditions.

The second is generally the most difficult to solve because it may involve allowing the machine to move, which increases the actual measurement difficulties.

### The certification procedures

Correct testing is sought by appointing impartial test houses to make measurements and to certify that certain values have been obtained. This is done in the first instance on the basis of tests carried out by the test house on a prototype, and can be followed by individual or sample testing of production items. However more generally on-going production is covered by self certification by the manufacturer, which is to say that the manufacturer certifies on his own responsibility that production items conform to the values measured on the prototypes.

### The acceptable noise levels

The harmonized requirement is that items shall produce no higher than stated sound power or pressure levels. The determination of what these levels shall be is perhaps the most difficult part of the negotiations of any Directive. It will however be appreciated how very closely tied will be the finally agreed levels, the test method, what manufacturers consider they can economically achieve, what can be accepted as a "safe" level, and the expectations of the environmentalists.

### The marking procedure

These are generally straight forward. Items shall be labelled in one of a number of varying ways to show that they comply, and shall be accompanied by a certificate produced by the

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manufacturer. If there is a dispute the manufacturer must be able to produce the original test house certificate for the tests on the prototype.

### Total versus optional harmonization

Finally mention must be made of the difference between the so called "optional solution" to harmonization and the "total" solution. The terms can be misleading for in no way is there any option for a Member State not to implement an Article 100 Directive.

A Directive is a "total harmonisation" if it requires that "Member States must ensure that equipment is put onto the market only if it complies with the requirement of the Directive".

A Directive is an "optional harmonisation" if it says that "Member States may not prohibit or restrict the marketing of equipment that complies with the Directive".

It is open to any particular Member State to convert an optional Directive to a total one within its own jurisdiction when it implements it. Member States may not however convert a total to an optional.

Most Directives that deal with noise are total, but for household appliances the solution is likely to be optional.

### THE FUTURE

Returning finally to the Brussels procedures, what of the future? Work will continue on harmonization of Member State laws in respect of noise, but at the present moment a "wind of change" is blowing through the procedures created by the realisation that the achievement of a truly common market has been painfully slow, and is still far from complete. Two attempts are being made to set up a system that will move more swiftly. The first is the "New Standards Initiative" which make proposals that are not altogether new, but which are an attempt to speed the process of formulating Article 100 Directives. It is based on the following four corner stones:-

- a) As wide an equipment coverage as possible should be made in each Directive.
- b) The harmonisation should be "total" but the requirement should be only "the basic safety requirements".
- c) As a temporary measure national Standards can be offered as meeting these "basic safety requirements".
- d) For the long-term the European Standards Making Bodies should be mandated to produce standards that meet the "basic safety requirement".

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The second is an amendment to the Treaty which is intended to speed up decision making by allowing for qualified majority voting in more areas. In particular this will be applied to the use of Article 100 where under existing unanimity requirements decisions have been frequently blocked for long periods by one or two Member States holding out against particular aspects of a Directive. This amendment for the more frequent use of qualified majority voting was agreed at this Luxembourg Summit Meeting in December 1985 but has still to be ratified by National Parliaments.