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18<sup>th</sup> January 2018

Subject: "Incomplete application of the EU Secondary legislation"

Introduction

### **Noise Pollution**

Noise pollution has reached alarming levels in the Maltese Islands. This concern was voiced on several occasions by the Minister for the environment.

The consequences of noise pollution was first discussed during the WHO Conference on Environment and Health in Parma in 2010.<sup>1</sup>

The EEA, in 2016/17, placed the Maltese Islands, at the head of the noisiest places in Europe.<sup>2</sup> Furthermore; EEA emphasized that, "It is unlikely that noise pollution will decrease significantly by 2020, given that transport demand is expected to increase."<sup>3</sup>

In fact, we are of the opinion that, the percentage of Maltese exposed to Road Traffic noise is increase yearly; this is explained in Annex 1

### **Maltese Legislation**

The Maltese noise legislation does not provide the means to separate noise sources from sensitive noise receivers. Nor does it provide the standards for the assessment of Environmental Noise.

The noise Legislation has various pieces of legislation, several of which, do not include any metrics for assessing noise. The noise nuisance is subjectively evaluated; examples in [Annex 3]. For this reason, the authorities are inept to evaluate the harmful effects of noise on the community.

Nevertheless and meanwhile, not professing to be legal experts the Society would point out that of the few regulations which specify a noise level limit, at least one, seems to be in clear breach of the EU regulations, we refer to Regulation S.L. 65.15, which approves exhaust noise levels excessively higher than those recommended by the EU Regulations.

That being the case, we are of the opinion that the 'competent authorities' are in breach of the Union Law: Secondary Legislation – Regulations<sup>5</sup>

- a. "A Member State has no power to apply a Regulation incompletely or to select only those provisions of which it approves as a means of ensuring that an instrument which it opposed at the time of its adoption or which runs counter to its perceived national interest is not given effect. Nor can it set up provisions or practices of domestic law to preclude the mandatory application of a Regulation."

With respect we do not understand how at least in this regard there is no link to any infringement of EU Legislation by the 'competent authorities.'

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In reference to the comments, hereunder, posted in the memo "GROW/MTR/ob (2017) 4939815", of 30<sup>th</sup> Nov 2017; quote:

- A. "The European Commission has not been made aware of any measure, taken at national level by Malta, that run counter the provisions on sound emissions as set out in the above mentioned Regulations"
- B. "Finally, as regards vehicles that are already in circulation on public roads, compliance with noise requirements, *inter alia*, should be checked during the periodic VRT in accordance with Directive 2014/45/EC5."

We are of the opinion that:

- B. "Malta did not take any measures at all"** to apply the EU regulations in their entirety; or seek to implement the EU policy and legal obligations through the use of alternatives that would effectively reduce road traffic noise. On the contrary, the 'competent authorities' preferred method of application was that of, "**Pick and Choose.**"<sup>5</sup>

**C. Sources of the Union Law: Secondary Legislation – Regulations**<sup>5</sup>

- a. "A Member State has no power to apply a Regulation incompletely or to select only those provisions of which it approves as a means of ensuring that an instrument which it opposed at the time of its adoption or which runs counter to its perceived national interest is not given effect. Nor can it set up provisions or practices of domestic law to preclude the mandatory application of a Regulation."

- D. Dir. 2014/45/EC does not specify the **noise levels limits**. Moreover the **local VRT Noise Levels** [Annex 3] **infringes** the levels set in the EU Regulations.[Tables 1&2]
- E. Furthermore Dir. 2014/45/EC **is irrelevant** to the subject of the NGO's complaint.

*Conclusion:*

We are of the opinion that the Authority's method of, 'pick and choose',<sup>5</sup> the preferred parts of the regulations to implement, runs counter to the application of the Secondary Legislation of the 'Union Law.'<sup>5</sup>

We reason that, without the appropriate methodology and standards,<sup>2</sup> the replaced exhaust system of the vehicles in circulation, 'could not be of the **same quality and safety as when placed on the market.**' This situation is further exacerbated by the National Policy; which **sanctions a much higher vehicle's noise level** than that stipulated by the EU Legislation.<sup>8</sup>

This state of affairs is jeopardising the quality and safety of the vehicle in service and endangering the wellbeing of those exposed to traffic noise.

**Proposal:**

Therefore, we suggest that, the necessary steps should be taken, to ensure that the values embodied by the 'Union Law' are upheld; to protect the reliability and safety of the vehicles, but above all, protect the health and wellbeing of the Maltese Citizens, as prioritised in DECISION No 1386/2013/EU.

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## Appendix 1

### **Road Traffic Noise in the urban areas.**

- a. Road Traffic is the dominant noise source in urban areas; noise level greater than 55 dB (A)  $L_{den}$ .
- b. 98% of the Maltese live in urban areas
- c. The EEA, in its annual reports [2016/17], indicated that 90%, of the urban areas in the Maltese Islands, are exposed to high noise levels.<sup>2</sup>
- d. Registered vehicles for the last quarter of 2017 was > 369,260<sup>6</sup>
- e. The Vehicle stock is increase by an average of 9500 per annum<sup>6</sup>
- f. Average Daily Road Traffic in urban areas – peaks at 181,000 vehicles
- g. Average Vehicles/Km 158
- h. Roads in Urban areas carry, an average, >  $10^6$  vehicles /annum [2013]<sup>7</sup>
  - i. Traffic volumes last revised in 2012

### **Consequence:**

**More than 70%** of the population is exposed to noise level  $L_{den}$ . >55 dB (A)<sup>4</sup>

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Annex 2

## The subsequent information is not implemented in the Maltese legislation

*Regulation 540/2014:*

- A. **EU Regulation Provisions for replacement & testing:** Procedures for the replacement of the exhaust systems or their components, to assure that, the safety and quality of the vehicle will be maintained during its **service life**.
- B. Exhaust Noise Limits Metrics, **for assessing the noise level of the replacement exhaust system or their components during the vehicle service life**

**Recitals:** extracts

9 "it is important to ensure that the sound emission of a vehicle under street-driving conditions does not differ significantly from what can be expected from the type-approval test result for the specific vehicle."

10: "highlighting the annoyance and adverse health effects resulting from road traffic noise and the associated costs and benefits should also be taken into account."

13: "best practice guides on technological road quality development and a classification of road surface types, if appropriate."

14: "That programme called for actions in the field of noise pollution to substantially reduce the number of people regularly affected by long-term average levels of noise, particularly from traffic. "

**Articles:** extracts

3: "(21) 'replacement silencing system' means any part of the silencing system, or components thereof, intended for use on a vehicle, other than a part of the type fitted to the vehicle when submitted for EU type-approval pursuant to this Regulation;"

5: "3.The manufacturer shall be responsible to the approval authority for all aspects of the approval process and for ensuring conformity of production, whether or not the manufacturer is directly involved in all stages of the construction of a vehicle, system, component or separate technical unit."

Annex III:

II: Methods and instruments for measuring the noise made by motor vehicles

1. METHODS OF MEASUREMENT

III: Limit values [Table 1]

IX: EU type-approval in respect of the sound level of silencing systems as separate technical units (replacement of silencing systems)

### **5.2.2. (b) Measure the noise emissions of the stationary vehicle**

*Regulation 168/2013*

The rules and procedure laid in Reg 168/2013 were summarised into a Maltese two page Regulation; L.N. 328 of 2015. Logically, crucial info is missing from the Maltese Regulation, such as:

- ❖ Metrics for measuring the noise level of Motorcycles, which are in service
- ❖ Annex IV (D) Sound-level limits — [Table 2]
- ❖ Annexes that outline the obligations of the economical operators and the national authorities

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Annex 3

## **Maltese Traffic Legislation** - related to the Association's complaint

### Motor Vehicle & Motor Cycle Regulations

#### A. S.L. 65.15

First Schedule [page 35]

C. Exhaust sound level testing

*Class I Vehicles* - shall be tested to an exhaust sound level rating not exceeding **119 dB (A)** when the engine revolutions are at three-fourths of the maximum rated speed.

Class II Vehicles and Class III Vehicles - shall be tested to a sound level as listed below for various engines when revolutions are at three-fourths of the maximum rated speed:

- ❖ *all petrol engines at **100 dBA**;*
- ❖ *all diesel engines less than 150KW (200bhp) at **101 dBA**;*
- ❖ *all diesel engines equal to or in excess of 150KW (200bhp) at **105 dBA**.*

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9200>

#### B. S.L. 65.19 Motor Vehicles (Carriage of Goods by Road) Regulations

[Noise emissions for the vehicle\_(Euro 3) Safe Lorry Scheme: Noise Level revised - page 47]

- |                                   |                    |
|-----------------------------------|--------------------|
| * 78 dB (A) for vehicles < 150 kW | } Directive 70/157 |
| * 80dB (A) for vehicles > 150 kW  |                    |

\*Sound levels decreased [Reg. 540/2014]

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9204&l=1>

#### C. S.L. 65.11 Motor Vehicle Regulations [ Subjective evaluation of noise ]

- **105. Noise:** No person shall drive or run the engine of a motor vehicle in such a manner as to cause undue noise.
- **106. Silencer:** No person shall drive a motor vehicle unless it is provided with an efficient silencer affixed to the exhaust pipe of such motor vehicle in such a manner that the exhaust shall be projected through the silencer, or which has a cut-out attached thereto or any mechanism or device for cutting out the silencer affixed to such vehicle.

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9196>

#### D. L.N 328/2015 [EU Regulation 168/2013]

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=27105&l=1>

#### E. L.N. 62/2016 [EU Regulation 540/2014]

<http://justiceservices.gov.mt/LegalPublications.aspx?pageid=32&year=2016&type=4&chapter=&p=15>

#### MCCAA Circular

Regulation (EU) No 168/2013 of the European Parliament and of the Council of the 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles.

<http://www.mccaa.org.mt/en/two-or-three-wheeled-motor-vehicles-and-quadracycles>

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Note:

Sound Level Limits set in S.L. 65.15 runs counter to Reg.540/2014 [Tables 1 and 2]

**Table1: Annex III [REG. 540/2014] Sound Limit Values**

LIMIT VALUES				
The sound level measured in accordance with the provisions of Annex II, mathematically rounded to the nearest integer value, shall not exceed the following limits:				
Vehicle category	Description of vehicle category	Limit values expressed in dB(A) [decibels (A)]		
		Phase 1 applicable for new vehicle types from 1 July 2016	Phase 2 applicable for new vehicle type from 1 July 2020 and for first registration from 1 July 2022	Phase 3 applicable for new vehicle type from 1 July 2024 and for first registration from 1 July 2026
M	Vehicles used for the carriage of passengers			
M <sub>1</sub>	power to mass ratio ≤ 120 kW/1 000 kg	72 (1)	70 (1)	68 (1)
M <sub>1</sub>	120 kW/1 000 kg < power to mass ratio ≤ 160 kW/1 000 kg	73	71	69
M <sub>1</sub>	160 kW/1 000 kg < power to mass ratio	75	73	71
M <sub>1</sub>	power to mass ratio > 200 kW/1 000 kg number of seats ≤ 4 R point of driver seat ≤ 450 mm from the ground	75	74	72
M <sub>2</sub>	mass ≤ 2 500 kg	72	70	69
M <sub>2</sub>	2500 kg < mass ≤ 3 500 kg	74	72	71
M <sub>2</sub>	3500 kg < mass ≤ 5 000 kg; rated engine power ≤ 135 kW	75	73	72
M <sub>2</sub>	3500 kg < mass ≤ 5 000 kg; rated engine power > 135 kW	75	74	72
M <sub>1</sub>	rated engine power ≤ 150 kW	76	74	73 (2)

**Note:**

The condition as laid down by Directive 70/157, including the sound levels for vehicles before 2016, remain in force; Regulation 540/2014: Article 4 (2&4)

Comparing Sound Limit Values

Motor Vehicle Legislation \_\_ S.L. 65.15

Prescribed Requirements:

C. Exhaust sound level testing

Class II Vehicles and Class III Vehicles

- ❖ all petrol engines at **100 dBA**;
- ❖ all diesel engines less than 150KW (200bhp) at **101 dBA**;
- ❖ all diesel engines equal to or in excess of 150KW (200bhp) at **105 dBA**.

**Table2: Annex VI [REG. 168/2013] Sound Level Limits**

(D) Sound-level limits — Euro 4 and Euro 5

Vehicle category	Vehicle category name	Euro 4 sound level <sup>(14)</sup> (dB(A))	Euro 4 test procedure <sup>(16)</sup>	Euro 5 sound level <sup>(15)</sup> (dB(A))	Euro 5 test procedure
L1e-A	Powered cycle	63 <sup>(14)</sup>	Delegated act/UNECE regulation No 63		UNECE regulation No 63
L1e-B	Two-wheel moped $v_{max} \leq 25$ km/h	66			
	Two-wheel moped $v_{max} \leq 45$ km/h	71			
L2e	Three-wheel moped	76	Delegated act/UNECE regulation No 9		UNECE regulation No 9
L3e	Two-wheel motorcycle Engine capacity $\leq 80$ cm <sup>3</sup>	75	Delegated act/UNECE regulation No 41		UNECE regulation No 41
	Two-wheel motorcycle $80$ cm <sup>3</sup> < Engine capacity $\leq 175$ cm <sup>3</sup>	77			
	Two-wheel motorcycle Engine capacity > 175 cm <sup>3</sup>	80			
L4e	Two-wheel motorcycle with side-car	80			
L5e-A	Tricycle	80	Delegated act/UNECE regulation No 9		UNECE regulation No 9
L5e-B	Commercial tricycle	80			
L6e-A	Light on-road quad	80	Delegated act/UNECE regulation No 63		UNECE regulation No 63
L6e-B	Light quadrimobile	80	Delegated act/UNECE regulation No 9		UNECE regulation No 9
L7e-A	Heavy on-road quad	80			
L7e-B	Heavy all terrain quad	80			

2.3.2013

EN

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### Comparing the Sound Limit Values

Motor Vehicle Legislation S.L. 65.15 [page 7]

FIRST SCHEDULE [page 35]

Prescribed Requirements:

C. Exhaust sound level testing

Class I Vehicles - shall be tested to an exhaust sound level rating not exceeding **119 dB (A)**

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## References:

<sup>1</sup>WHO: Environment Health Inequalities

<http://www.euro.who.int/en/search?q=Health+enequalities+Parma>

<sup>2</sup>EEA: Noise in Urban Areas

EEA: Potential for quiet (QSI) by country and aggregated for Europe

Malta Lowest percentage of quiet areas > 0.01

<https://www.eea.europa.eu/publications/quiet-areas-in-europe>

<sup>3</sup>EP/EEA: *Decision No. 1386/2013/EU*

Priority objective 3: To safeguard the Union's citizens from environment-related pressures and risks to health and well-being:

Available data on long-term average exposure show that 65 % of Europeans living in major urban areas are exposed to high noise levels <sup>1</sup>, and more than 20 % to night time noise levels<sup>2</sup> at which adverse health effects occur frequently: [ $>55\text{dB (A)}^1$  Lden and  $>50\text{dB}^2$  (A) Lnight.]

<https://www.eea.europa.eu/publications/environmental-indicator-report-2017>

<sup>4</sup>WHO: *Guidelines for Community Noise (London 1999)*

During daytime, few people are highly annoyed at LAeq levels below 55 dB (A), and few are moderately annoyed at LAeq levels below 50 dB (A). Sound levels during the evening and night should be 5–10 dB lower than during the day.

<http://apps.who.int/iris/handle/10665/66217>

<sup>5</sup>The ABC of European Union law By *Professor Klaus-Dieter Borchard: Sources of the Union Law*

<https://publications.europa.eu/en/publication-detail/-/publication/f8d9b32e-6a03-4137-9e5a-9bbaba7d1d40>

<sup>6</sup>NSO: *Registered vehicles*

[https://nso.gov.mt/en/News\\_Releases/View\\_by\\_Unit/Unit\\_B3/Environment\\_Energy\\_Transport\\_and\\_Agriculture\\_Statistics/Pages/Motor-Vehicles.aspx](https://nso.gov.mt/en/News_Releases/View_by_Unit/Unit_B3/Environment_Energy_Transport_and_Agriculture_Statistics/Pages/Motor-Vehicles.aspx)

<sup>7</sup>MEPA: Noise action plan January 2013- Major Roads. \*[Action plans not implemented]  
Vehicle per annum in Major Roads- Appendix VII \*[info not revised since 2012 although registered vehicles increased by 48,000]

[https://era.org.mt/en/Documents/noise%20action%20plan\(2\).pdf](https://era.org.mt/en/Documents/noise%20action%20plan(2).pdf)

<sup>8</sup>EU Regulations; 168/2013 and 540/2014