

## New law on noise nuisance and business operators' legal certainty

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In recent years, several major changes have taken place in the Planning and Building Act ("Act"). One of these, as we previously reported, was the introduction of the term *background noise* and new rules on residential developments in areas with high background noise levels, which applied from 2 January 2015. Greater harmonization of the Act with the Environmental Code ("Code") has also been sought. These changes have, however, raised the question of legal certainty for business operators, who may be affected by residential development nearer to their businesses than was previously the case and whether this might lead to restrictions in permits for existing operations. For these reasons, parliament has recently decided on three new provisions in the Code that are to enter into force from and including 1 January 2016.

### **New provisions regarding new or amended permits**

Under the new provision in section 2b, chapter 16 of the Code, the supervisory authority may not apply section 2b, chapter 16 of the Code (new permit) to impose conditions on background noise merely on the basis of there being a residential development in the vicinity if the homes are in a zoning area or are covered by planning permission pursuant to the Act, and the planning description in the zoning plan or permit sets background noise levels, and the conditions would carry more stringent demands on background noise than those which follow from those levels. It will be possible, however, to impose conditions that carry more stringent demands if there are overriding reasons for doing so with regard to the health of the residents.

There is also a new provision in section 5a, chapter 24 of the Code to the effect that the supervisory authority may

not apply section 5, chapter 24 of the Code (amended permit) to impose more stringent conditions on background noise merely on the basis that since permission was granted or most recently amended, a new home has been constructed in the vicinity, if the home is in a zoned area or is covered by planning permission under the Act and the planning description in the zoning plan or in the permit set a noise level and the background noise from the operation does not exceed that level. It will be possible, however, to impose tighter conditions if, with regard to the health of the residents, there is overriding reason to do so.

### **Limitation and liability**

These new provisions have also led to the introduction of an exemption from liability for unlawful environmental activities in chapter 24, section 4 of the Code. The exemption applies in the event a residential building is exposed to background noise in excess of a noise level set in such a permit or decision as is covered by paragraph 1, section 4, chapter 29 of the Code. The exemption applies if the building is in a zoned area or is covered by planning permission under the Act, the planning description in the zoning plan or the permit has set noise levels, and the background noise does not exceed these levels, and the noise levels have been computed with regard to the interest of preventing nuisance to human health.

### **What do the new provisions mean?**

All these new provisions are based upon the new provisions on background noise in the Act. This means that the new rules in the Code will apply only in matters of

residential development (zoning or planning permission) commenced after 2 January 2015. The rules are not to be applied to existing housing. Thus, it is currently unlikely that a particularly large proportion of housing in the country will be covered by the rules. This is, however, something that may change over time.

This also means that business operators about to seek new environmental permits may, for a long time to come, be granted permits containing different noise level conditions depending on whether it is a matter of a new or old development. This also entails that the exemption from liability for having exceeded a noise limit is not applicable to older developments, i.e. developments before 2 January 2015.

There is, however, reason to stress that the new rules do not mean that more stringent noise levels may not be imposed at all, even if the residential development is near an environmentally hazardous operation. The rules only mean that more stringent conditions may not be imposed merely on the basis of the fact that homes have been constructed near to the operation. There may, therefore, be other reasons to impose stricter conditions on background noise than those that follow from the planning permission or zoning plan, e.g. an assessment of the best possible technique pursuant to the general rules of consideration in the Code.

From the perspective of a business operator, the new rules convey a degree of greater legal certainty in respect of new residential development. It is our view, however, that this is undermined by the fact that for a long while we will live with parallel regulatory systems and bases for assessing background noise. This risks complicating rather than simplifying assessment and making it more difficult both for the business operator and the resident to get an overview of the situation. It remains to be seen whether the new provisions will lead to the desired effect.