Climate Protection in Switzerland and in the EU

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Key takeaways

- **Both Switzerland and the EU adhered to the Paris Agreement and its main goal to contain global warming. Both, therefore, are required to take action in some way. When it comes to defining their nationally determined contributions, their legislative approaches differ.**
- **With the "Fit for 55 package," the EU devised a comprehensive top-down programme to shape its legislation towards climate neutrality in a consistent way. The EU seems to be well on track.**
- **Switzerland, on its side, follows a more fragmented approach. Switzerland prefers imposing taxes versus relying on elaborate trading schemes and favours economic incentives before outright prohibitions. On 18 June 2023, the Swiss voters will have the opportunity to have their say on the next step for climate protection planned by their government.**

Introduction

Climate change is a global challenge. On 12 December 2015, at the UN Climate Change Conference (COP21) in Paris, 196 countries adopted the Paris Agreement as a legally binding international treaty to serve as continuation of the objectives and measures agreed upon in 1997 under the Kyoto Protocol. It entered into force on 4 November 2016 with the main goal to limit average global warming to considerably less than 2 degrees Celsius compared to the pre-industrial period while aiming for a maximum temperature increase of 1.5 degrees Celsius. In addition, the Paris Agreement aims to channel state and private financial flows into low-greenhouse-gas development and improving the capacity for adaptation to the changing climate. To work towards the Paris Agreement's main goal, participating parties must enact their own instruments in their national or supranational law. As of today, 195 parties have signed and ratified the Paris Agreement, including Switzerland, the EU and its 27 member states as well as the UK.

In this legal update, we present the Swiss and EU climate law approach and give an update on the latest Swiss and EU legislative developments.

The EU increases the pace

The "Green Deal" as driving force

Parties adhering to the Paris Agreement are required to develop and communicate national climate action plans (so-called nationally determined contributions or "NDCs"). They are also invited to formulate and submit long-term low greenhouse gas emission development strategies (so-called "LT-LEDs," which are not mandatory, contrary to the NDCs). In a first step, the EU committed to cutting greenhouse gas emissions in the EU by at least 40% below 1990 levels by 2030. When Ursula von der Leyen ran for the presidency of the Commission in 2019, she presented a roadmap called "European Green Deal," which, among other objectives, proposed to achieve zero net emissions, i.e., climate neutrality by 2050. Subsequently, the new Commission designed the so-called "Fit for 55 package" as a set of proposals to revise, update, and expand EU legislation to help the EU cut greenhouse-gas emissions by 55 % by 2030 against a 1990 baseline. The "Fit for 55 package" was formally adopted in 2021. One of its priorities was updating the European Climate Law to reflect the new ambitions.

Updating the European Climate Law

The European Climate Law is the abbreviated name of Regulation (EU) 2018/1999 of 11 December 2018 on the Governance of the Energy Union and Climate Action. This Regulation sets out the necessary legislative foundation for the EU's Energy Union and Climate Action (governance mechanism), which shall ensure the achievement of both the 2030 and long-term objectives and targets in line with the Paris Agreement. The Energy Union covers the five dimensions: energy security; internal energy market; energy efficiency; decarbonisation; and research, innovation, and competitiveness. An amendment effective 29 July 2021 updated the European Climate Law and incorporated the objectives of the Green Deal.

Revising the Emissions Trading Systems

The traditional governance instrument to curb certain activities or to influence people's behaviour is applying levies or taxes to attach a price to such activities or behaviour with negative consequences. The idea behind emissions trading lies in letting market participants determine themselves the price attached to polluting activities, incentivizing polluters to reduce their emissions where it costs the least to do so and, at the same time, providing funding for decarbonisation projects. The Kyoto Protocol had formalized this idea and many countries have since then introduced their own market locations for trading emission certificates (generally referred to as "carbon markets" – for an overview on the differences between the so-called "compliance markets" and the "voluntary markets," see our earlier Legal Update: "News on the CO2 Act: Standstill or departure for new shores?"). The EU's emissions trading system (the "EU ETS"), in its current form, covers about 45 % of EU greenhouse gas emissions.

The legal basis for the EU ETS (initially launched in 2005) is contained in Directive 2003/87/EC also called the EU ETS Directive. The last revision of the EU ETS Directive was adopted in 2018 and set the total quantity of emission allowances for phase 4 (2021-2030). At the time, the EU still aimed at reducing emissions by 40% below the 1990 levels by 2030. Therefore, to align the EU ETS Directive with the more ambitious emission reduction targets now enshrined in the European Climate Law, the Commission proposal of 14 July 2021 focuses on updating the conditions for the ongoing phase 4. The proposal consisted of five main elements:

1. a reduced cap and more ambitious linear reduction factor for greenhouse gas emissions in line with the Green Deal;
2. revised rules for free allocation of allowances and the market stability reserve;
3. the extension of the EU ETS to maritime transport (next to aviation);
4. the introduction of a separate emissions trading system for buildings and road transport; and
5. an increase of funding for the EU's funding programmes dedicated to climate change with new rules on the use of ETS revenues.

The European Parliament, on 18 April 2023, gave its final approval to revising the EU ETS Directive. In particular, market participants like power generators and heavy polluters from the existing EU ETS sectors (including the maritime sector) must now reduce their emissions by 62 % by 2030, compared to 2005 levels.

Possibly the most sallying novelty of the proposal was the establishment of a new, self-standing emissions trading system for fuel distribution for road transport and buildings (ETS II). This novelty was highly debated by politicians who feared disproportionate effects on vulnerable households, already under pressure from an unfavourable economic environment. To mitigate such effects, the Parliament approved a EUR 86.7 billion Social Climate Fund, to be available as of 2026, to help governments implement compensatory measures for vulnerable consumers. The ETS II is to start as of 2027.

The situation in Switzerland

CO2 Act and emissions trading

Switzerland implemented its obligations under the Paris Agreement with the CO2 Act of 23 December 2011, which came into force on 1 January 2013 (replacing an earlier 1999 version responding to the Kyoto Protocol). The CO2 Act includes a wide range of specific measures to achieve the reduction targets for greenhouse gas emissions. First, as of 2008, an incentive CO2 levy was levied on fossil thermal fuels such as heating oil or natural gas. Second, Switzerland established its own emissions trading system, which was connected to the EU ETS as of 1 January 2020. This connection enables Swiss regulated entities and other market participants to benefit from the greater liquidity and opportunities offered by the EU carbon market.

On 13 June 2021, the Swiss people voted to reject a revised version of the CO2 Act. To keep on track, at least with the strategic direction set by the Paris Agreement, the Swiss Parliament had to adopt a transitional law that allows continuing with the existing and proven instruments for reducing greenhouse gas emissions. The government (the Federal Council) introduced a proposal for a new CO2 Act for the period after 2024 on 16 September 2022, but Parliament has yet to begin debating this proposal. In the meantime, the Swiss voters will have to vote on a new climate protection act on 18 June 2023.

As stated above, the idea behind emissions trading lies in incentivizing polluters to reduce their emissions where it costs the least to do so. Emission trading only concerns certain sectors, however, such as power production, cement producers, or aviation. Other sectors must be addressed differently by different sets of rules. For example, the cantons achieve a certain reduction in CO2 emissions stemming from building construction by means of their public law regarding building regulations. For example, in the canton of Zurich, oil and gas heating systems must be replaced by climate-friendly heating systems at the end of their service life. Road vehicles are subject to specific CO2 regulations: Since 2015, an average target value of 130 g CO2 per km gets imposed on new cars, with a target value of 95 g CO2 per km since 2020. Fuel importers are obliged to offset part of their CO2 emissions from transport through Swiss or foreign compensation projects. Public procurement must comply with certain sustainability criteria. Finally, the Confederation's Technology Fund promotes innovations that reduce greenhouse gases or resource consumption, favours using renewable energies, and increases energy efficiency. State guarantees will make it easier for innovative firms to receive financing loans.

New Federal Law on Climate Protection Goals, Innovation and Strengthening Energy Security (KlG)

On 30 September 2022, the Swiss Parliament adopted the new Climate Protection Act as a counter-proposal to the so-called 2019 "Glacier Initiative." This popular initiative launched by the Swiss Climate Protection Association called for a reduction of net CO2 emissions to zero by 2050 and a ban on the consumption of fossil fuels such as gasoline, diesel, heating oil and gas as of that date. Unlike the initiative, the new act does not contain a ban on fossil fuels but rather intends to rely on both incentives and motivation. The new law is subject to the public vote (referendum) scheduled for 18 June 2023.

One of the goals of the new law would be for Switzerland to gradually reduce its consumption of crude oil and natural gas and thereby reduce its dependency on foreign countries for energy imports (as of today, Switzerland imports approx. 70% of the energy consumed within its borders). House owners who replace their oil, gas or electric heating systems will receive financial support. In addition, companies that invest in climate-friendly technologies will also be supported. The law does not require that capital flows are to be reoriented towards sustainable investments (as explicitly and strongly advocated by the EU's Green Deal). Rather, the government is invited to ensure that the Swiss financial marketplace contribute to a sustainable development. In particular, the government shall take measures to mitigate the climate impact of national and international capital flows. To this end, the government holds the competence but not the obligation to conclude with the financial industry ("mit den Finanzbranchen") agreements on reorienting investment flows in a climate-friendly way. The difference with the EU's stance might look to be more in style than in substance were it not for the overall Swiss reluctance to adopt interventionist measures.

Next steps

Both Switzerland and the EU (and its member states individually) adhered to the Paris Agreement and its main goal to contain global warming. Both, therefore, are required to take action in some way. When it comes to taking the necessary NDCs, their legislative approaches differ. With the "Fit for 55 package," the EU devised a comprehensive top-down programme to shape its legislation towards climate neutrality in a consistent way. Here, the EU seems to be well on track; Switzerland, on its side, follows a more fragmented approach. Switzerland prefers imposing taxes rather than relying on elaborate trading schemes, and it favours economic incentives before outright prohibitions. Time will tell which approach proves more sustainable and also whether there are materially relevant differences in the end.

See our earlier legal update: News on the CO2 Act: Standstill or departure for new shores?

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