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Environment - Switzerland

New Initiatives to Tackle Air Pollution

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Certain regions in Switzerland suffer from air pollution caused by motor vehicles and other sources of air pollutants. This applies in particular to large metropolitan areas with high amounts of nitrogen oxide emissions. In these areas air pollutants frequently exceed legally permitted limits.

To find a remedy, public authorities have developed a number of approaches to improve air quality by controlling the volume of individual traffic. These approaches focus in particular on shopping malls, large sports facilities and similar places which frequently attract high numbers of visitors, causing heavy individual traffic as in many cases public transport is insufficient.

Legal Framework

Two provisions of the Federal Environmental Protection Statute⁽¹⁾ regulate traffic-related measures to improve clean air. Article 11 generally regulates the emission of air pollutants as follows:

- Emissions must be limited by measures at their source;
- According to the precautionary principle, emissions must be limited as far as is technically and economically possible, irrespective of existing environmental pollution; and
- Emission restrictions may be tightened if, in light of existing pollution, the impact on the environment becomes or is expected to become inconvenient or harmful.

In addition, Article 12 of the statute allows for the limit of traffic emissions.

Control of Traffic Volume

In the case of large facilities, traditional approaches - such as specified minimum and maximum numbers of available parking spaces - proved insufficient to control effectively the volume of individual traffic. This was also the case as regards the imposition of charges where certain legal provisions could not be observed.

More recent approaches obliged operators of large facilities to allocate parking spaces to neighbouring facilities and to charge fees for the use of their car parks. The Federal Supreme Court approved these obligations. Again, however, these approaches did not sufficiently improve air quality in affected areas.

In the latest stage of the campaign against air pollution, the canton of Berne has adopted a new approach focusing on the number of trips generated by large facilities. Under this approach, a utilization plan allocates certain contingents for trips to such facilities. These contingents result from clean air-focused calculations and allow for a certain number of trips, depending on the length of the journeys to such facilities and back. Construction permits may be issued only if the zoning directive correctly defines the relevant facility's location, and if a trip contingent is available and has been allocated to the facility in the utilization plan. In combination with a cap on the number of parking spaces, the trip-focused approach is intended to have a direct influence on traffic volumes.

The canton of Zurich has followed suit with an approach specifying the maximum permissible number of

trips to and from particular facilities which generate heavy individual traffic. This number takes into consideration the air quality and road capacity of the relevant area. The approach has been combined with parking guidance systems which inform motorists in real time about available parking spaces, thus reducing traffic created by motorists searching for free spaces. It allows for more extensive planning of industrial development and is more project-focused and site-oriented than the Berne solution.

Case Law

The Federal Supreme Court has approved both the Berne and the Zurich approach. With regards to the latter, the court concluded that the current legal framework is a sufficient basis for the introduction of trip-focused measures.⁽²⁾ The court opined that such measures are:

- suitable to reduce air pollutant emissions at source;
- more effective than mere limitations on the number of available parking spaces; and
- adjustable if conditions change.

However, in both cases in which the Zurich approach has been implemented thus far, the parties involved agreed to this solution.

With regards to the Berne approach, the Federal Supreme Court addressed the amount of permissible potential trips to a particular facility per day and per parking space. In this regard, the court conceded a considerable amount of discretion to the authorities concerned.⁽³⁾

In a decision on a shopping mall, the Federal Supreme Court ruled that the proposed expansion of this facility must be based on a special utilization plan.⁽⁴⁾ For this purpose, the whole expanded mall is to be treated as a new facility. The authorities may limit the number of parking spaces, but must regulate in the special utilization plan any duties of the facility operators on how to manage its car parks. Moreover, limitations on the number of parking spaces are to be counterbalanced so that the mall remains easily accessible for its customers.

Comment

Swiss environmental protection laws provide a sufficient legal basis for trip-focused approaches to reduce air pollution. However, whether these measures effectively enhance air quality is still controversial. The ultimate focus of these measures is the limitation of parking spaces. This method has so far not achieved satisfactory results, might not be generally accepted and could easily deter investors from financing future projects. In the first instance, trip-focused approaches affect the operators of the relevant facilities. They are not addressed directly at the customers visiting those facilities by motor vehicle. Limitations on parking spaces and the charging of fees for the use of car parks might not be a sufficient incentive to use public transport. Also, under the trip-focused approaches, it might be difficult to monitor a particular facility's compliance with the applicable regulations. Finally, in case of non-compliance, it is essential that no sanctions are imposed without explicit legal basis.

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Endnotes

(1) October 7 1983 (*Bundesgesetz über den Umweltschutz* [USG], SR 814.01).

(2) Federal Supreme Court Decision 1A 189/2004, December 3 2004 (BGE 131 II 81).

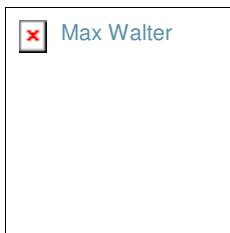
(3) Federal Supreme Court Decision 1 27/2005, May 27 2005 (BGE 131 II 470).

(4) Federal Supreme Court Decision 1A 144/2003, January 4 2005 (BGE 131 II 103).

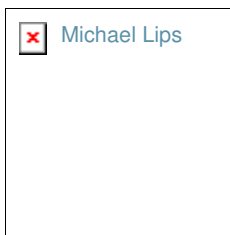
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