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Environment - Switzerland

Legal Measures Against Smog

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In many parts of Switzerland smog is a common occurrence. Smog is the overload of the atmosphere with particulate matter during the winter months and with ozone during the summer months, respectively. Many people suffer from the effects of such atmospheric conditions. Winter smog occurs less frequently than summer smog - that is, when there is no exchange between the different layers of air, especially during prolonged periods of thick fog. As a consequence, harmful substances accumulate above plains. A major cause of winter smog is the exhaust emitted from agricultural vehicles, construction equipment and the increasingly popular diesel-engine vehicles. Most of these vehicles and machines are not yet equipped with the state-of-the-art diesel particulate filter. Other causes of winter smog are wood-fired heaters and volatile solvents. In contrast, summer smog occurs during long periods of fair weather. There are few ways to combat summer smog, but one such action that is occasionally taken is to reduce speed limits on motorways.

From a medical point of view, it is impossible to establish a connection between air pollutants and particular diseases. When considering protective measures, the extent to which certain persons are exposed to air pollutants is relevant. Certain measures are taken to protect people with high exposure. These are politically motivated, are based on scientific analyses and aim to prevent smog by determining certain limit values, especially for particulate matter. Since no significant studies of long-term implications are available, the legislature works from approximations and focuses on temporary measures to limit air pollution, particularly to protect elderly people and those who suffer from allergies and breathing difficulties.

Legal Measures

The air pollution controls based on the Federal Act on the Protection of the Environment focus on long-term measures. Due to the constitutional allocation of competences between the Swiss Federation and the cantons, the Federation is responsible for taking measures to combat air pollution;⁽¹⁾ the same applies to legislation on road traffic.⁽²⁾ The cantons may legislate on this issue only to the extent that the Federation does not exercise its powers or with regard to short-term measures. In any case, the federal laws determine the measures that the cantons may take.⁽³⁾ The most important measures are the determination of limit values as well as traffic and plant regulations.

From a constitutional perspective, measures on air pollution control are not insignificant, especially because they affect economic freedoms⁽⁴⁾ and private property rights.

⁽⁵⁾ According to the principle of commensurability,⁽⁶⁾ a particular measure must affect air

pollution in a manner that results in a noticeable improvement of air quality. In addition, the equality principle requires that a measure cover all similar cases - for instance, that a restriction applies to all diesel-powered engines and vehicles. Any exceptions require objective justification.

The Swiss Conference of the Head Officials of Construction, Planning and Environmental Matters has resolved on short-term measures. In September 2006 the conference issued an initial concept of intervention measures. The updated version that followed dates from October 18 2007.⁽⁷⁾ The concept provides for staggered limit values; accordingly, the measures are also staggered. On the information level, the authorities will appeal to the population to take voluntary measures to reduce air pollution. Only if such measures are insufficient will the authorities order additional measures to reduce the emission of air pollutants in the short term (ie, intervention levels). In the case of winter smog, the additional measures require a weather forecast of inversion for more than three days. The mandatory measures can be summarized as follows:

- If the limit value of particulate matter⁽⁸⁾ is exceeded by 50%, then the information level is triggered and the authorities issue recommendations - for instance, to reduce time outdoors and to refrain from outdoor sports.
- If the limit value of particulate matter is exceeded by 100%, then Intervention Level 1 is triggered and on freeways, the maximum speed of all vehicles is reduced to 80 kilometres per hour and trucks may not overtake other vehicles. In private apartments, the use of wood stoves is prohibited. The same applies to outdoor fires.
- If the limit value of particulate matter is exceeded by 200%, then Intervention Level 2 is triggered and the use of diesel-powered engines in agriculture and forestry, as well as on construction sites, is prohibited. The use of such engines remains allowed only if they are equipped with a diesel particulate filter.

As to combustion plants in general, more restrictive regulations have been applicable since 2005. These regulations require the use of particular technology in order to reduce the emission of exhaust gases as much as possible.⁽⁹⁾ Since 1992 a prohibition on burning waste outdoors has also been in force and in September 2007 the regulations on waste burning were again tightened.⁽¹⁰⁾

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Endnotes

(1) Article 74 of the Federal Constitution (SR 101).

(2) Article 82 of the Federal Constitution (SR 101).

(3) Articles 11 and 12 of the Federal Act on the Protection of the Environment (SR 814.01).

It remains unclear whether the Federal Supreme Court tends to grant the cantons more extensive powers based on their general police power, especially with regard to air pollution control (BGE 121 I 334 ff, S 343 E 4c). For instance, the Canton of Zurich referred to the Cantonal Law on Health Protection (LS 810.1) and issued a short regulation on measures to reduce smog (Cantonal Smog Regulation, LS 713.12).

(4) Article 27 of the Federal Constitution (SR 101).

(5) Article 26 of the Federal Constitution (SR 101).

(6) Article 5(2) of the Federal Constitution (SR 101).

(7) *Schweizerische Bau-, Planungs- und Umweltdirektoren-Konferenz BPUK, Informations- und Interventionskonzept bei ausserordentlich hoher Luftbelastung.*

(8) The limit value of particulate matter amounts to 50 micrograms per cubic metre.

(9) Article 20 of the Federal Regulation on Air Pollution Control (SR 814.318.142.1).

(10) Articles 26a and 26b of the Swiss Federal Regulation on Air Pollution Control (SR 814.318.142.1).

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