

Latest environmental legislation in effect and in the pipeline

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This update summarises key amendments to Swiss environmental laws which either came into effect in recent months or which will come into effect in the foreseeable future.

Energy

Revised Energy Act

On January 1 2018 the revised Energy Act,⁽¹⁾ as well as three new and six revised ordinances, came into effect.⁽²⁾ The revised act implements the first steps of the Energy Strategy 2050 for the period up until 2035. The new law includes extensive measures to:

- reduce energy consumption;
- increase energy efficiency; and
- promote and exploit the potential of new renewable energies (eg, water, solar, wind and geothermal energy).⁽³⁾

A substantial change has been made with respect to the nuclear energy supply by reconsidering its production and introducing a nuclear phase out. Therefore, existing nuclear power plants may continue to operate as long as they run safely, but they will not be replaced. Further, the construction of new nuclear power plants will be prohibited.

To increase the production of renewable energy, especially from domestic sources, and thereby to promote the construction and expansion of power plants, the revised Energy Act declares the use of renewable sources as a national interest equal to the protection of nature and heritage. Therefore, an objection against the construction of power plants for the use of renewable sources will become more difficult in the future. Moreover, the cantons must also provide fast approval procedures with respect to the construction, expansion and renewal of power plants.

Further, the revised act also sets forth several specific goals and measures in order to target energy saving and efficiency, including:

- a substantial reduction in energy and electricity consumption by 2035 (compared to 2000):
 - energy consumption per person is to be reduced by 16% by 2020 and 43% by 2035; and
 - electricity consumption is to be reduced by 3% by 2020 and 13% by 2035;
- an extension of the existing subsidy programme for energy building refurbishments, which is funded by revenues of the carbon dioxide (CO₂) tax – as of 2020, at the latest, the reinstatement costs for a replacement building may also be deducted in the two subsequent tax periods; and
- a reduction of the average CO₂ emission of new passenger cars to 95 grams (g) of CO₂ per

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kilometre (km) and a reduction of the CO₂ emission of delivery vans and light-duty vehicles to 147g per km by 2021.

Energy label for new automobiles

On January 1 2018 the Ordinance on Information on the Energy Label of New Passenger Cars⁽⁴⁾ came into effect. The Department of the Environment, Transport, Energy and Communication (DETEC) annually adapts the energy label on passenger cars to the latest technical developments.

As usual, each new car sold must have an energy label indicating fuel consumption, CO₂ emissions and energy efficiency in order to heighten the transparency and support the reduction of average fuel consumption. As in previous years, the efficiency categories have been adapted to ensure that only one-seventh of all passenger cars may be part of Category A. Since January 1 2018, the statutory average CO₂ emission of passenger cars is 133g per km.

Further, and as a significant change, the hydrogen factor has been added to the ordinance. As a result, fuel cell automobiles may also be labelled with the energy label.

Energy use in freight transport

The Railways Arbitration Commission has decided that, as of 2019, infrastructure operators must add to infrastructure services an additional relative consumption value for the train category 'long-distance freight trains', including:

- freight trains with accompanied and unaccompanied combined transports;
- long-distance freight trains;
- entire trains; and
- short-distance single wagonload trains.

The purpose of this change is to avoid discrimination in network access resulting from the uniform flat-rate tariff for all freight trains which applied previously.

Water protection

On April 11 2018 the Federal Council approved amendments to the revised Water Protection Ordinance⁽⁵⁾ with respect to discharging cooling water into rivers and streams. The revised ordinance will enter into effect on June 1 2018.

Generally, pursuant to the ordinance, the temperature of a body of water must not exceed 25 degrees Celsius and the introduction or withdrawal of heat may not change the temperature by more than 3 degrees Celsius above or below the temperature in its most natural state. An even stricter limit applies to trout water stretches (1.5 degrees Celsius).

Due to global warming, the heat load on water bodies is increasing and the maximum water temperature regularly exceeds 25 degrees Celsius without human influences. The main reason for this is solar radiation on large lakes.

The planned amendments aim to modify certain requirements with respect to water temperature in two different ways:

- adjustments with respect to heat input (eg, from refrigeration systems of nuclear power plants) – in this regard, the revised ordinance will still provide a maximum water temperature of 25 degrees Celsius; however, in the case of water temperatures above 25 degrees Celsius, certain heat discharges into waters may be allowed under strict conditions; and
- specification of exceptions in the event of minor exceedances of the maximum cooling water temperature – such exceptions will no longer be limited to the summer, but will apply as a general exception. Further, the decisive factor will be the temperature of the water body from which the water is withdrawn. The permissible excess of the maximum cooling water temperature will be limited to 3 degrees Celsius.

Chemicals

Minamata Convention on Mercury

On August 16 2017 the Minamata Convention on Mercury(6) entered into effect in Switzerland. Mercury is a highly toxic heavy metal which is hazardous to health and the environment. The convention's aim is to protect people and the environment from mercury and to avoid, wherever possible, the use of mercury. Exports and imports are to be strictly regulated, particularly the authorisation requirement for mercury exports.(7)

In light of the strict legislation already in force before the ratification of the convention, Switzerland previously complied with most of the convention's requirements for eliminating mercury-containing products and phasing out mercury in industrial processes. In order to achieve the convention's overall aim, the following amendments to the Chemical Risk Reduction Ordinance(8) entered into force on November 1 2017:

- the restriction of the import and export of mercury, mercury compounds and mercury-containing preparations by implementing a controlling system;
- the implementation of a licensing procedure for the introduction of mercury, mercury compounds and mercury-containing preparations; and
- the application of certain exceptions to the use of mercury for research, analysis and development purposes.

Further, the Ordinance on the Prevention and the Disposal of Waste,(9) the Ordinance on the Transport of Waste,(10) the DETEC Ordinance on Lists for the Movements of Waste(11) and the Ordinance on the Incentive Tax on Volatile Organic Compounds(12) were slightly amended on January 1 2018.

Plant protection substances

On September 6 2017 the Federal Council adopted an action plan for risk reduction and sustainable use of plant protection products. The action plan sets goals to reduce risks relating to the use of pesticides and their undesirable impact on humans, animals and the environment. In particular, the action plan aims to promote alternative measures to chemical plant protection.

To achieve these goals, existing measures must be expanded and integrated pest management must be improved to further reduce the use of pesticides. Therefore, certain amendments to the relevant DETEC ordinances regarding the use of plant protection substances are expected in the course of 2019.

Air protection

Oil, gas and wood combustion systems

On April 1 2018 certain amendments to the Ordinance on Air Pollution Control(13) came into effect regarding the use of wood stoves by private individuals. The amendments were requested by a parliamentary initiative.

Before the amendments, it was prohibited to burn residual wood and untreated wood from gardening and agriculture in private stoves and fireplaces. Such wood had to be disposed of separately. With the revision of the Ordinance on Air Pollution Control, private individuals may now burn certain residual wood and untreated wood from gardening and agriculture in their own stoves and fireplaces.

The new regime applies only to untreated wood that is free of paint, varnish or other substances. If it is unclear whether the wood fulfils this requirement, it should not be burned and must be disposed of separately to avoid the risk of toxic combustion products.

Volatile organic compounds

Volatile organic compounds (VOCs) are used as solvents in numerous industries. They are, for instance, contained in paints and cleaning products. If such compounds become airborne, they form nitric oxides and contribute to the excessive formation of summer smog (ground-level ozone). For this reason, and in order to reduce VOC emissions, an incentive tax on VOCs has been levied in Switzerland since January 1 2000.

On January 1 2018 certain amendments to the Ordinance on the Incentive Tax on Volatile Organic

Compounds,(14) including less restrictive provisions and supplements to the substance list, came into force. The amendments include, in particular, the following points:

- a legal basis has been introduced to extend the time limit for the implementation of individual measures in cases of economic hardship;
- a legal basis has been introduced to exempt new plants from the tax during the fiscal year; and
- the scope of the VOC tax has been extended by adding the two additional VOCs – benzyl alcohol (phenyl methanol) and cyclopentane – to the list of substances subject to the tax.

Reduction of CO2 emissions

On November 5 2017 the Paris Climate Agreement came into effect in Switzerland. The agreement seeks to maintain the increase in global temperatures well below 2 degrees Celsius, or even limit it to 1.5 degrees Celsius, by seeking a commitment from all states to reduce their greenhouse gas emissions.(15)

By ratifying the Paris Climate Agreement, Switzerland has committed itself to reduce its greenhouse gas emissions by at least 50% by 2030, in comparison to the measured values in 1990.

The details of Switzerland's domestic reductions for the period beginning in 2020 will be set out in the revised CO2 Act.(16) In its draft of the revised act, the Federal Council proposes to achieve 30% of the reduction goal by domestic measures and up to 20% by measures abroad, corresponding to the above mentioned 50% reduction by 2030 and to a 60:40 ratio of domestic and foreign greenhouse gas emission reductions.

The draft revision of the CO2 Act was submitted to Parliament in December 2017.

Protection against major accidents

On October 17 2017 the DETEC opened the consultation procedure regarding certain amendments to the Ordinance on Protection against Major Accidents(17) with respect to the coordination obligation between authorities. With the increase in urban densification near to accident facilities (eg, chemical plants, transport routes or natural gas and oil pipelines), more people are endangered by potential incidents.

Under the current regime, the obligation of authorities to coordinate applies only to superior land use planning (ie, structure plans and utilisation plans). With the proposed amendments, such obligation will be extended to existing building zones.

The purpose of the amendment is to promote early coordination in all spatial planning processes affected by accident prevention. In particular, it is planned to introduce an obligation for building permit authorities to consult with the competent authorities for major accidents when assessing building applications for projects in existing construction zones alongside accident facilities carrying relevant risks.

The deadline for the consultation expired in February 2018 and the amendments are expected to come into effect towards the end of the year.

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Endnotes

(1) The Energy Act, SR 730.0.

(2) For further details please see "[Swiss voters adopt revised Energy Act](#)".

(3) *Ibid.*

- (4) The Ordinance on Information on the Energy Label on New Passenger Cars, SR 730.011.1.
- (5) Water Protection Ordinance, SR 814.201.
- (6) The Minamata Convention on Mercury, SR 0.814.82.
- (7) For further details please see "[Government announces support for Minamata Convention on Mercury](#)".
- (8) The Chemical Risk Reduction Ordinance, SR 814.81.
- (9) The Ordinance on the Prevention and the Disposal of Waste, SR 814.600.
- (10) The Ordinance on the Transport of Waste, SR 814.610.
- (11) The DETEC Ordinance on Lists for the Movements of Waste, SR 814.610.1.
- (12) The Ordinance on the Incentive Tax on Volatile Organic Compounds, SR 814.018.
- (13) The Ordinance on Air Pollution Control, SR 814.318.142.1.
- (14) The Ordinance on the Incentive Tax on Volatile Organic Compounds, SR 814.018.
- (15) For further details please see "[Revision of Federal Act on the Reduction of CO2 Emissions](#)".
- (16) The Federal Act on the Reduction of CO2 Emissions, SR 641.71.
- (17) The Ordinance on Protection against Major Accidents, SR 814.012.

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