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Latest environmental legislation in effect and in pipeline – 2022 overview

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

Air protection

As of 1 January 2022, the revised Ordinance on Air Pollution Control⁽¹⁾ (OAPC) provides for regulations that require the reduction of air pollution from cement plants. These regulations were introduced because cement plants in Switzerland are responsible for about 4% of the country's nitrogen oxide emissions. Technology to reduce this air pollutant has been developed further in recent years. With the new OAPC, this technology will also be used in cement plants, so that pollutant emissions are reduced in accordance with the latest state of the art. The ordinance sets stricter emission limits for nitrogen oxide and other air pollutants such as volatile organic compounds as well as dust and requires continuous monitoring of ammonia emissions. This new technology for staggered reduction of pollutant emissions will be implemented by 2031.

The production of particleboard and fibreboard causes significant emissions of organic substances, nitrogen oxides, dust and formaldehyde, which is why waste gas purification technologies are necessary.

With a planned revision of the OAPC, the regulations for the production of particleboard shall be adapted to the requirements of the European Union and supplemented with specific regulations for the production of fibreboard. In addition, the amendment also removes the ban on using waste wood in the production of particleboard and fibreboard. The reason for this is that it is possible to use waste wood to generate process heat in a way that protects the climate and conserves resources. The consultation period ended on 5 April 2022. These changes will likely take effect on 1 November 2022.

Chemicals

In agreement with the Federal Office for the Environment (FOEN) and the State Secretariat for Economic Affairs, the Federal Office of Public Health (FOPH) adapted the Chemicals Risk Reduction Ordinance⁽²⁾ (ORRChem) to the EU requirements as of 1 February 2022. The ORRChem regulates the handling of certain particularly dangerous substances, preparations and objects in 36 annexes.

In annex 1.10 of the ORRChem, 26 carcinogenic, mutagenic or reprotoxic substances (CMR substances) have been added. These substances may no longer be supplied to the general public as of the end of the transitional period on 1 March 2022. The ban also applies to substances that contain such CMR substances and exceed the relevant limit. Regarding the entries for substances newly included in annex 1.10 ORRChem as part of this revision, the FOPH has made a rough estimate of around 2,000 public products affected, though this figure overestimates the actual situation. However, according to the explanations provided by the FOPH, there already seems to be no use for 18 of the 26 newly included substances in products intended for the general public. There is no obligation to place an "out of commerce" notification in the product register for these products if they are no longer placed on the market.

Furthermore, the ORRChem now specifies the conditions for special licences for the use of plant protection products in agriculture, horticulture and silviculture, as well as in special locations such as railway infrastructures, military sites or sports fields. The special licence is now only granted after a mandatory examination and lasts eight years. The licence is only extended in case of further training. Plant protection products for professional use can now only be purchased by persons with a special licence, which will be stipulated in the revised Plant Protection Products Ordinance.⁽³⁾ A register will be kept of the holders of special licences. The consultation period ended on 5 April 2022. These changes will then likely take effect on 1 November 2022.

Genetic engineering

The moratorium on the cultivation of genetically modified plants in agriculture was generally extended by four more years until the end of 2025. This amendment to article 37a of the Gene Technology Act⁽⁴⁾ (GTA) is expected to enter into force on 1 August 2022. Therefore, genetically modified organisms may only be cultivated in Switzerland for research purposes.

The federal government will have to clarify issues relating to the coexistence of traditional and genetically modified agriculture in the next four years. In particular, they must provide answers on responsibilities in the event of possible contamination by genetically modified organisms.

The federal Parliament has decided that the government must draft a bill by mid-2024 that addresses a risk-based, authorisation regime for plants, plant parts, seeds and other plant propagation materials that have been produced using new breeding methods and to which no transgenic genetic material has been inserted (genome editing). Furthermore, authorisation for such genetically modified organisms

without transgenic genetic material shall only be given if they bring added value for agriculture, the environment and consumers compared with conventional breeding methods.

Waste and recycling

Since 1 January 2022, the revised Ordinance on the Return, Take-Back and Disposal of Electrical and Electronic Equipment⁽⁵⁾ (ORDEE) has been in force.

Thanks to the separate collection and recycling of old appliances, valuable materials (such as gold, copper, aluminium and iron) or recyclable plastic components can be recovered using appropriate recycling technologies. The revision is intended to strengthen the recycling of old appliances and thus close the resource cycle. Rare technology metals such as neodymium or tantalum are now to be recovered when the necessary processes exist.

The scope of the ORDEE has been extended to all electrical and electronic equipment. In particular, this includes medical devices, monitoring and control instruments, dispensing machines and photovoltaic modules. The fact that the requirements of the ORDEE now also apply to equipment from vehicles, buildings and objects, the removal of which is possible with a reasonable amount of effort, increases the potential for the recovery of recyclable components.

Currently, consultations are underway on a parliamentary initiative called "Strengthening the Swiss Circular Economy". Therefore, aspects relating to the future financing solution for the collection and disposal of electrical and electronic equipment in the ORDEE have been postponed. As soon as this discussion in Parliament is finished, a possible revision of the ORDEE regarding the financing system will be resumed.

Reducing CO₂ emissions

The total revision of the CO₂ Act⁽⁶⁾ was rejected in a public vote after a referendum in June 2021. (for further details please see "[Voters reject three environmental bills](#)"). The current CO₂ Act was consequently extended until 2024. The federal government has submitted a new bill for consultation until 4 April 2022, in which the existing CO₂ tax is to be supplemented with effective incentives as well as targeted promotion and investment and with support for ongoing developments. The aim of the revision is to enable the population to reduce CO₂ emissions in everyday life.

With the revised CO₂ Act, the federal government aims to halve Switzerland's greenhouse gas emissions by 2030 compared to 1990.

The planned amendments include measures for the years 2025 to 2030. To take account of the failed bill of last June, the bill does not include any new levies. The planned entry into force of the revised CO₂ Act is set for 1 January 2025.

Up to half of the existing CO₂ tax levied on fossil fuels such as oil and gas is now to be invested in climate protection measures. The other half will be distributed back to the population and the economy. These funds, which will flow into the building programme, the technology fund and the promotion of geothermal energy as before, will benefit homeowners who purchase fossil-free heating systems. An additional 40 million Swiss francs per year will be available until 2030 for the replacement of old oil and gas heating systems with renewable systems.

With the revision, more efficient vehicles will have to be imported in the future to adapt to the further lowered CO₂ target values of the European Union. If these targets are not met, penalties will be imposed. This is intended to create an incentive to sell climate-friendly vehicles. The proceeds from the penalties will be used to promote charging stations for electric cars.

In the public transport sector, the tax privilege for diesel buses will be abolished. The revenues will be invested in buses with electric or hydroelectric propulsion.

In the freight transport sector, electric and hydrogen trucks will remain exempt from the heavy vehicle fee. This serves as an incentive to increasingly use climate-neutral alternatives for trucks.

The revised CO₂ Act further requires suppliers of aviation fuels to blend renewable aviation fuels with the kerosene refuelled in Switzerland in order to be in line with EU requirements.

Importers of diesel and gasoline are still obliged to compensate a part of the CO₂ emissions of these fuels with climate measures. The share can be increased up to 90% and can also include climate protection projects abroad. The maximum surcharge that fuel importers can demand at the gas pump remains 0.05 Swiss francs per litre of gasoline or diesel. Importers are to directly reduce 5-10% of CO₂ emissions from fuels by bringing renewable fuels into circulation. This regulation is to replace the temporary relief on the mineral oil tax.

Further measures stipulate that all companies will be exempted from the CO₂ tax if, in return, they commit to reducing their fuel emissions from oil and gas and demonstrate how they can reduce them to zero in the long term.

Finally, the law requires regulators such as the Swiss Financial Market Supervisory Authority and the Swiss National Bank to report on the risks from climate change for Swiss financial institutions and for the stability of the financial market.

Wood harvesting and trading

On 1 January 2022, the revised Environmental Protection Act⁽⁷⁾ (EPA) and the new Ordinance on Placing Timber and Wood Products on the Market⁽⁸⁾ (TTO) came into force. The TTO, which is based on the EPA, creates regulation equivalent to that of the European Union. The aim of the ordinance is to ensure that no timber or timber products that have been illegally harvested or traded are placed on the market in Switzerland. The ordinance will curb deforestation and loss of biodiversity and will also help in the fight against climate change. It also reduces trade restrictions between Switzerland and the European Union.

The core of the regulation is the duty of care for those who place wood and wood products on the market for the first time. They must be able to demonstrate that they have systematically assessed risks and, where necessary, reduced them to a negligible level. This requires a due diligence system that must be applied and regularly updated.

Traders must now document from whom they buy or to whom they sell wood that has already been placed on the market. This traceability will make it possible to identify the initial distributors. Forest owners who harvest timber in the Swiss forest are also subject to this regulation. They can assume that the cantonal forest use permits contain the necessary information to be considered as proof of legal harvesting.

The FOEN is responsible for the control of the first distributors and the traders.

Minerals and metals from conflict areas and child labour

Since the popular initiative "For responsible companies – to protect people and the environment" was rejected in November 2020, Parliament's indirect counterproposal has been further pursued. (for further details please see "[Voters reject popular initiative to tighten responsibilities of Swiss-based companies](#)"). In this proposal, the liability provision envisaged that popular initiative was not adopted but, rather, new reporting obligations for companies are introduced. These new due diligence obligations for companies are based on EU regulations and in some cases go beyond them.

To implement the counterproposal, two reporting obligations were introduced in the Swiss Code of Obligations⁽⁹⁾ (CO). First, large Swiss companies will be required by law to report on the risks of their business activities in the areas of environment, social concerns, employee concerns, human rights and the fight against corruption. They must also report on the measures taken against these risks, thus creating transparency. Second, companies with risks in sensitive areas of child labour and so-called "conflict minerals" must comply with special and far-reaching due diligence and reporting obligations.

The second obligation is further set out in the new Ordinance on Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas and Child Labour⁽¹⁰⁾ (DDTrO). These regulations specify which companies must fulfil the new due diligence requirements. They must also, analogous to the EU directive, determine the import and processing quantities for minerals and metals up to which a company is exempt from the due diligence and reporting requirements regarding conflict minerals. The federal government may adapt these threshold values anytime according to developments in the European Union. With regard to child labour, it is stated that small and medium-sized enterprises also fall under the due diligence and reporting obligation if they offer products or services that were obviously produced using child labour. By introducing regulations regarding the reporting on child labour, Switzerland thus goes a step further than the European Union, which only has due diligence requirements in relation to conflict minerals.

The new provisions in the CO and DDTrO came into force on 1 January 2022. However, companies are given one year to adapt to the new obligations, which is why the new regulations will apply for the first time to the 2023 financial year.

For further information on this topic, please contact [Michael Lips](#) or [Melanie von Rickenbach](#) at [Pestalozzi Attorneys at Law](#) by telephone (+41 44 217 91 11), fax (+41 44 217 92 17) or email (michael.lips@pestalozzilaw.com or melanie.vonrickenbach@pestalozzilaw.com). The [Pestalozzi Attorneys at Law](#) website can be accessed at www.pestalozzilaw.com.

Endnotes

- (1) Ordinance on Air Pollution Control, SR 814.318.142.1.
- (2) Chemical Risk Reduction Ordinance, SR 814.81.
- (3) Plant Protection Products Ordinance, SR 916.161.
- (4) Gene Technology Act, SR 814.91.
- (5) Ordinance on the Return, Take-Back and Disposal of Electrical and Electronic Equipment, SR 814.620.
- (6) Federal Act on the Reduction CO₂ Emissions, SR 641.71.
- (7) Environmental Protection Act, SR 814.01.
- (8) Ordinance on Placing Timber and Wood Products on the Market, SR 814.021.
- (9) Swiss Code of Obligations, SR 220.
- (10) Ordinance on Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas and Child Labour.