Latest environmental legislation in effect and in the pipeline – 2020 overview

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This article 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.

Reducing CO2 emissions

The revised CO2 Act(1) and the revised CO2 Ordinance(2) came into force on 1 January 2020. These revisions were necessary in order to link the Swiss and EU emissions trading systems (ETSs). Switzerland has set ambitious goals to respond to the global climate crisis. The Swiss ETS serves to reduce the greenhouse gas production of Swiss companies with particularly high emissions. Linking the Swiss and EU ETSs is based on a treaty between Switzerland and the European Union(3) and will bring both environmental and economic benefits.

The link allows Swiss companies to participate in the larger and more liquid EU emissions market and benefit from the same competitive conditions as EU companies. Like in the European Union, emissions from civil aviation and fossil power plants are now also included in the Swiss ETS. This will align the CO2 prices of Switzerland and the European Union and create a competitive level playing field for the participating companies.

Further, based on the revision of the Energy Efficiency Ordinance,(4) a new regulation on energy labels for selling passenger cars came into force on 1 January 2020. The adjustment will ensure that one-seventh of all new car models fall into the best efficiency Category A. The label must contain information such as fuel consumption or CO2 emissions, which enables energy and environmentally conscious car purchases.

Waste and recycling

On 1 January 2020 the Federal Department of the Environment, Transport, Energy and Communications (DETEC) Ordinance on the amount of the advance disposal charge for batteries(5) was revised. There is now a separate category for the disposal fee for lithium-ion batteries and salt batteries.

Further, the Waste Ordinance(6) is being revised. The general approach of the ordinance is to consider waste as a source of raw materials in a high-quality cycle. In order to further promote this approach, the Waste Ordinance is being revised and the updated provisions will enter into force on 1 April 2020. For example, the revision increases the reporting threshold for facilities treating metallic waste to 1,000 tonnes per year, which is particularly beneficial for smaller companies.

In addition, the revised Waste Ordinance contains an amended regulation on interim storage as well as a more precise regulation on the recovery of lightly contaminated excavated material at the site where it was excavated. The revision of the Waste Ordinance also contains amended provisions on the thermal treatment of harmful waste containing organically bound halogens and liquid waste with a low flash point.

The Ordinance on the Return, Take-Back and Disposal of Electrical and Electronic Equipment(7) is

also currently being revised. The main points of the revision are to ensure the financing arrangements for the recycling of equipment, to bring them into line with the latest state of the art in waste disposal and to harmonise them with the European Union in certain areas. The ordinance is expected to come into force on 1 November 2020.

Contaminated site and soil protection

Soils in home and family gardens, children's playgrounds and facilities where children play regularly must be remediated in accordance with the Contaminated Sites Ordinance**(8)** if their pollutant content exceeds certain concentration thresholds.

An examination by the Swiss Centre for Applied Human Toxicology has shown that the concentration thresholds for lead (Pb), polycyclic aromatic hydrocarbons (PAH) and benzo(a)pyrene (BaP) are clearly too high in these areas from a toxicological point of view. In order to exclude any risk to children when playing, the concentration values for the abovementioned substances will be reduced as part of a revision of the Contaminated Sites Ordinance.

In addition to the adjustment of these values, a concentration value for dioxins and dioxin-like substances (ie, groups of polychlorinated dibenzodioxins (PCDDs or 'dioxins'), polychlorinated dibenzofurans (PCDFs or 'furans') and dioxin-like polychlorinated biphenyls (dl-PCBs)) is introduced at the level of 20ng TEQ/kg. Further, as part of the revision, the concentration value for the sum parameter of BTEX (ie, highly volatile monocyclic aromatic hydrocarbons benzene, toluene, ethyl benzene and xylene) in the amount of 500mg/kg will be removed.

The revised ordinance will enter into force on 1 April 2020.

Chemicals

The export of five particularly harmful pesticide active substances that are banned in Switzerland (ie, atrazine, diafenthiuron, methidathion, paraquat and profenofos) will be subject to authorisation in accordance with the revised Annex to the Ordinance on Risk Reduction related to Chemicals.**(9)** An export authorisation can then only be granted if the importing country has given its explicit consent.

Further, substances whose marketing or use is prohibited or severely restricted (ie, carbendazim, flusilazole, ioxynil, isoproturon, triasulfuron, triflumuron and perfluorooctanoic acid) will be added to the Annex to the PIC Ordinance.**(10)** Both revised ordinances will enter into force on 1 April 2020.

Plant protection

The new Plant Health Ordinance**(11),** which contains fundamental provisions on plant health, came into force on 1 January 2020. With stricter regulations and a strengthening of preventive measures, the protection of plants against particularly dangerous harmful organisms has been strengthened.

In particular, the new rules increase the application of the precautionary principle. For example, more resources must be used at an early stage to prevent damage to agriculture and productive horticulture or impairment of forest functions by particularly dangerous harmful organisms.

On 6 September 2017 the Federal Council adopted the action plan for risk reduction and sustainable use of plant protection products. Risks are to be halved and alternatives to chemical plant protection promoted. To achieve these goals, the Federal Council has adopted 51 measures which are assessed annually. One measure consists in the re-evaluation of plant protection products authorised in Switzerland. It aims to reassess the risk of such products based on new scientific findings and adapt the authorisations accordingly. Plant protection products have been continuously reassessed and withdrawn from the market if the risks for humans and the environment are deemed unacceptable. In 2019 the Federal Office for Agriculture revoked all 12 authorisations for pesticides containing the active substances chlorpyrifos and chlorpyrifos-methyl. Many more substances, such as Alconifen, a common substance used in herbicides, are currently under review.

Organisms

The revised Containment Ordinance**(12)** came into force on 1 January 2020 and aims to strengthen biosafety for humans, animals and the environment against the misuse of pathogenic or harmful organisms.

The ordinance provides for simplifications to speed up the detection of organisms in exceptional situations. For example, in order to save valuable time, at the beginning of an epidemic it is possible to carry out an initial diagnosis of pathogens outside a closed system, provided that this does not endanger humans, animals or the environment. The ordinance further prevents the risk of using

harmful organisms for abusive purposes. Companies handling organisms with moderate to high risks must now check whether their activities might be abused. If this is the case, the companies must take additional security measures and inform the cantonal and federal authorities of any suspicious circumstances.

The Containment Ordinance has also been extended with a list of criteria for grouping invasive alien species. This list helps to assess whether alien organisms may pose a threat (eg, through uncontrolled dispersal). If so, even in closed facilities such as laboratories or greenhouses, they may only be used with additional safety measures.

Genetic engineering

In Switzerland there has been a moratorium on the use of genetic engineering in agriculture since 27 November 2005. The moratorium prohibits the cultivation of genetically modified organisms (GMOs) and the keeping of animals that have been genetically modified. Research and imports are excluded from the moratorium. Small areas of land subject to the provisions of the Release Ordinance**(13)** are permitted for research. Imports are only permitted under strict conditions, which also include an obligation to notify the relevant authorities (for further details please see "Regulations on genetic engineering").

The moratorium has been extended three times by the Swiss parliament (ie, for three years in 2010 and for four years in 2014 and 2017, respectively) and currently applies until the end of 2021. The Swiss Parliament will vote on it again this year and the moratorium is expected to be extended. However, whether or to what extent new technologies such as genome editing, which is far more precise than conventional genetic engineering, should also be covered by the moratorium and what provisions should apply to these new technologies remain to be discussed.

The Federal Council expressed a relatively liberal attitude towards modern genetic engineering, at least in comparison to other European countries. In 2018 the European Court of Justice passed a groundbreaking ruling that the new, modern technologies, such as conventional genetic engineering, fall within the scope of the EU GMO Directive (18/2001/EC) and are subject to the obligations set out therein.**(14)** In the context of the discussion in Switzerland, it is expected that genome editing – to whatever extent – will also be subject to the moratorium.

New statutory limitation periods

With a revision of the Swiss Code of Obligations,**(15)** new statutory limitation periods came into force on 1 January 2020. The main elements of the revision are:

- an extension of the relative limitation period from the previous one year to three years in the law of tort and enrichment; and
- a new 20-year absolute limitation period for personal injuries.

This also affects several federal environmental laws, in particular the Electricity Act,**(16)** the Pipelines Act,**(17)** the Water Protection Act**(18)** and the Animal Diseases Act.**(19)**

The Electricity Act and the Pipelines Act refer to the limitation periods outlined above under the Code of Obligations. The Water Protection Act and the Animal Diseases Act provide for new special limitation periods – namely, reclaim of unlawfully obtained benefits or compensation will become statute barred three years from the date on which the competent person was informed (ie, before five years) but no later than 10 years after the claim arose.

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Endnotes

(1) CO2 Act, SR 641.71.

(2) CO2 Ordinance, SR 641.711.

(3) Agreement between the Swiss Confederation and the European Union to link their respective systems for trading in greenhouse gas emissions, SR 0.814.011.268.

(4) Energy Efficiency Ordinance, SR 730.02.

(5) DETEC Ordinance on the amount of the advance disposal charge for batteries, SR 814.670.1.

(6) Waste Ordinance, SR 814.600.

(7) Ordinance on the Return, Take-Back and Disposal of Electrical and Electronic Equipment, SR 814.620.

(8) Contaminated Sites Ordinance, SR 814.680.

(9) Chemical Risk Reduction Ordinance, SR 814.81.

(10) PIC Ordinance, SR 814.82.

(11) Plant Health Ordinance, SR 916.20.

(12) Containment Ordinance, SR 814.912.

(13) Release Ordinance, SR 814.911.

(14) European Court of Justice (Grand Chamber) decision of 25 July 2018, Case C-528/16.

(15) Code of Obligations, SR 220.

(16) Electricity Act, SR 734.0.

(17) Pipelines Act, SR 746.1.

(18) Water Protection Act, SR 814.20.

(19) Animal Diseases Act, SR 916.40.
