

**Transport and Environment:
Vessels, aircrafts, trains and lorries – equal treatment before the law in
view of their environmental impact?**

Commissions: TLC and EEC

Munich, 2016

National Report of Switzerland

Christian Hochstrasser

ThomannFischer – Attorneys at Law and Notaries
Elisabethenstrasse 30
CH-4010 Basel
Switzerland
+41 (0)61 226 24 24
hochstrasser@thomannfischer.ch

General Reporters:

Dr. Nicoletta Kröger, CORVEL LLP Rechtsanwälte, Hamburg, Germany
Dr. Sarah Wolf, Dabelstein & Passehl, Hamburg, Germany

January 29th, 2016

INDEX

1. Description of the Workshop
2. Questionnaire
3. Disclaimer

DESCRIPTION OF THE WORKSHOP

Vessels, aircrafts, trains and lorries – Equal treatment before the law in view of their environmental impact?

The aim of the workshop is to verify whether the four main means of transport, vessels, aircrafts, trains and lorries, are treated reasonably equally before the law in view, inter alia, of their shipping volumes in relation to their emissions, their impact on/danger for the environment by accidents/collisions, the transport of hazardous goods etc., or if there is – for whatever reasons – a regulatory overkill with regard to one or few of the means of transport.

QUESTIONNAIRE

Legislation for Means of Transport regarding Emissions

1. *By which national rules is the normal operation of vessels, aircrafts, trains and lorries with respect to emissions governed?*

The fundamental national rules are contained in various federal acts, such as:

- Federal Act on the Protection of the Environment (Environmental Protection Act, EPA; “cornerstone” and overall regulation)
- OAPC: Air Pollution Control Ordinance
- NIRO: Ordinance on Protection against Non-Ionising Radiation
- NAO: Noise Abatement Ordinance
- SLO: Sound Levels and Laser Ordinance

- RNAO: Railway Noise Abatement Ordinance
- MaNO: Machine Noise Ordinance
- OMW: Ordinance on Movements of Waste
- ORRChem: Chemical Risk Reduction Ordinance
- CSO: Contaminated Sites Ordinance
- OIS: Ordinance relating to Impacts on the Soil
- MAO: Major Accidents Ordinance
- WPA: Waters Protection Act
- Ordinance on Emissions from Aircrafts
- Ordinance on Exhaust Gas Emissions from Ship's Engines on Swiss Territorial Waters
- Etc.

2. *Are international and/or European rules (if applicable) fully implemented in your country?*

Generally according to the constitutional law ratified international treaties are in some cases directly applicable if they include so called 'self-executing' regulations. Non self-executing international treaties/conventions and European regulations have to be incorporated into national statutory law.

Regarding emissions applicable/ratified international and European rules are generally fully implemented. Further Swiss environmental legislation is in many cases directly referring to respective Directives of the European Union.

3. *Do national rules provide stricter or less strict requirements than international and/or European regulations (if applicable)?*

Switzerland pursues an active and successful international environmental policy. Generally national regulations are equal or even stricter than international/European regulations.

Switzerland collaborates closely with the European Union on environmental matters. It has been a member of the European Environment Agency since April 1st, 2006 and has succeeded in consolidating its relations with the EU in various sectors. Switzerland's environmental legislation has already been harmonised with EU regulations to a significant extent in a number of sectors. In some subsectors the Swiss environmental law is less strict than European regulations.

4. *What are possible consequences if the requirements set forth in the rules are not fulfilled?*

Possible consequences are criminal liability provided for by administrative law or liability for damages (e.g. costs for removal of environmental contamination).

5. *If you compare the existing rules for the different means of transport, would you say that there are particularly strict rules for certain means of transport?*

From a quantitative point of view regulations on aircrafts and ships are more comprehensive than those for rail transport.

Legislation for Means of Transport regarding Accidents/Collisions (including Hazardous Goods)

1. *Which national rules apply to prevent accidents/collisions and in case an accident/collision happened to prevent and minimize their impact on the environment?*

Regarding the prevention of accidents/collisions the following national rules are applicable:

Road Transport: Road Traffic Act (and regulations under classified compilation No 741),
Federal Act on the Admission as Road Haulage Companies;

Railways: General Railways Act (and regulations under classified compilation No 742),
Federal Act on the Carriage of Goods by Railways and Shipping Companies;

Waterways: Act on Inland Navigation (and regulations under classified compilation No 747),

Federal Act on the Carriage of Goods by Railways and Shipping Companies,

in addition Switzerland is a member of the Central Commission for Navigation on the Rhine;

Aircrafts: Aviation Act (and regulations under classified compilation No 748).

For the prevention and the minimization of the impact on the environment various ordinance are applicable, such as:

- Ordinance on the Transport of Dangerous Goods by Rail and cable railway;
- Ordinance on the transport of dangerous goods on streets (SDR);
- Ordinance on containment systems for dangerous goods;
- Etc.

2. *Are international and/or European rules (if applicable) fully implemented in your country?*

The following conventions are ratified by Switzerland:

- European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR);
- Convention on International Rail Transport (COTIF), and especially its Annex C: the Convention in respect of the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID);
- European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN).

3. *Do national rules provide stricter or less strict requirements than international and/or European regulations (if applicable)?*

Generally national regulations are harmonised with international/European regulations.

4. *What are possible consequences if the requirements set forth in the rules are not fulfilled?*

Possible consequences are criminal liability provided for by administrative law, administrative consequences (e.g. withdrawal of a permission) or liability for damages.

5. *If you compare the existing rules for the different means of transport, would you say that there are particularly strict rules for certain means of transport?*

Due to the strict waters protection legislation transport on inland waterways might be more affected by environmental regulations than other means of transport.

DISCLAIMER

General Reporters, National Reporters and Speakers grant to the Association Internationale des Jeunes Avocats, registered in Belgium (hereinafter: “AIJA”) without any financial remuneration licence to the copyright in his/her contribution for AIJA Annual Congress 2015.

AIJA shall have non-exclusive right to print, produce, publish, make available online and distribute the contribution and/or a translation thereof throughout the world during the full term of copyright, including renewals and/or extension, and AIJA shall have the right to interfere with the content of the contribution prior to exercising the granted rights.

The General Reporter, National Reporter and Speaker shall retain the right to republish his/her contribution. The General Reporter, National Reporter and Speaker guarantees that (i) he/she is the sole, owner of the copyrights to his/her contribution and that (ii) his/her contribution does not infringe any rights of any third party and (iii) AIJA by exercising rights granted herein will not infringe any rights of any third party and that (iv) his/her contribution has not been previously published elsewhere, or that if it has been published in whole or in part, any permission necessary to publish it has been obtained and provided to AIJA.