

Horizontal audit of the Confederation's handling of problematic substances

Federal Office for the Environment, Federal Office of Public Health, Federal Office for Agriculture and Federal Food Safety and Veterinary Office

Key facts

In this audit, problematic substances are defined as toxic, i.e. mostly carcinogenic, mutagenic or toxic to reproduction, and accumulate in the environment and in organisms. There is no overview of which problematic substances are found where, nor in what levels of concentration.

The Swiss Federal Audit Office (SFAO) audited the Confederation's handling of problematic substances. The audit results are based on case studies conducted by the SFAO for the selected substances asbestos, polychlorinated biphenyls (PCBs), dioxins, per- and polyfluoroalkyl substances (PFAS), mercury and radium. The substances have some of the properties mentioned above as well as different statuses in the product life cycle.

While the responsibilities are defined and appropriate, there is no basis for comprehensively determining the extent to which problematic substances are present in the environment and in humans. The Confederation is therefore unable to adequately implement the precautionary principle set out in the Federal Constitution.

The Confederation takes risk-orientated, substance-specific measures. These measures are financed according to the polluter-pays principle, which is applied differently. The case studies carried out show that, for example, the public purse and property owners are responsible for financing the clean-up of contaminated sites. Manufacturers and importers contribute marginally to the costs of repairing the damage caused. The polluter pays principle should therefore be applied more rigorously.

Lessons for the future should be institutionalised

The Confederation's responsibilities in dealing with problematic substances are based on the protection objectives set out in the Federal Constitution.

The Federal Office for the Environment is responsible for the protection of the environment and the protection of health from environmental pollution (indirect health protection), the Federal Office of Public Health and the Federal Food Safety and Veterinary Office for the protection of health, the Federal Office for Agriculture for the protection of agricultural crops and the State Secretariat for Economic Affairs for the protection of employees.

The administrative units involved coordinate their activities in the interdepartmental enforcement organisation for chemicals legislation. With a view to future cases, there is not enough of an institutionalised learning process to be able to learn from previous measures taken in connection with problematic substances.

A systematic survey of the extent of problematic substances is required

Due to the spread of problematic substances in all environmental media (soil, water and air) and their accumulation in living organisms, the economic risk is high and should be systematically analysed. However, there is currently no basis for this: there is a need for a monitoring system that observes problematic substances in all environmental media as well as in humans on a representative basis.

The administrative units responsible for the enforcement of Swiss chemicals legislation have a defined process for notifying the existence of new substances. However, there is no systematic problem-solving process that regulates the handling of undesirable incidences of problematic substances in the environment and in humans.

A monitoring system is needed to systematically monitor occurrences. A minimum set of monitoring structures must therefore be established in order to identify worrying concentration levels at an early stage.

International dialogue in expert committees also plays an important role when it comes to taking measures.

The Federal Administration's joint Notification Authority for Chemicals operates a "Chemicals product register" in which around 234,000 substances and preparations are listed as "on the market". The preparations in turn are based on around 31,000 substances. Substances registered with the European Chemicals Agency can be placed on the market in Switzerland directly, without the need to register under self-regulation. When a substance is registered in Switzerland, the administrative units involved in the joint Notification Authority for Chemicals carry out a risk analysis. If problematic properties are discovered in a substance after it has been registered or placed on the market, this does not trigger systematic screening for substances on the market with the same ecotoxicological profile (i.e. the same effects on the living environment).

No incentive system for the safe-by-design approach

The Confederation has a Strategy for Chemical Safety that defines the goal of *sustainable chemistry* and the measure *promoting sustainable chemistry*. However, although there are initiatives, there is no comprehensive incentive system to promote the safe-by-design approach – i.e. a substance has no problematic properties – for new chemicals. Yet this would offer the greatest leverage to avoid new chemicals with problematic properties, in line with the precautionary principle. The Confederation should adopt measures to develop and introduce safe-by-design substances.

Clean-up costs are usually borne by the current owners, who are not necessarily the polluters

Measures to clean up sites contaminated with problematic substances are usually financed by the current owners. This is the case regardless of whether they were responsible for the use of the problematic substances or not.

If the site falls under the Contaminated Sites Ordinance, the Confederation can contribute up to 40% of the clean-up costs. The cantons also contribute to the clean-up costs of contaminated sites.

The enforcement authorities reach the limits of their expertise when determining the origin of the problematic substances in order to identify the polluter. This may be due, for

example, to the long periods of time between use and recognition of the problematic properties. For reasons of practicability, the principle of common burden is then applied.

Manufacturers and importers are not liable as long as they do not violate their due diligence obligations and fulfil any requirements imposed when the substance was first registered. As soon as the problematic properties of a substance or group of substances are known, the polluter pays principle should also apply to manufacturers and importers.

Using good practices to shorten response times when dealing with problematic substances

Based on the case studies conducted, the SFAO identified good practices that the competent authorities can use to standardise the procedure for dealing with problematic substances.

In this way, they could shorten response times and promote comprehensive recording of problematic substances.

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