**Response of Switzerland to the Questionnaire of the Special Rapporteur on human rights and hazardous substances and wastes, on the right of access to information in the field of hazardous substances and wastes**

26. March 2015

**Scope of the Questionnaire:**

In paragraph 5 of resolution 27/23, the Human Rights Council requested the Special Rapporteur on human rights and hazardous substances and wastes, Mr. Baskut Tuncak, to "present to the Council [...] annual reports on the implementation of the resolutions that it has adopted". In 2015, the Special Rapporteur intends to focus his thematic report to the Human Rights Council on the issue of the right of access to information with respect to hazardous substances and wastes.

The Special Rapporteur seeks to explore the importance of the right of access to information in the field of hazardous substances and wastes. He is interested in examining the legal framework, identifying information gaps, and analysing how this right is implemented at various levels (e.g., at the national, local and municipal levels) and by different government bodies (e.g., Ministries of environment, health, labour, etc.) in practice. He also intends to identify barriers to realizing the right of access to information, with the aim of mitigating the adverse impacts of hazardous substances and wastes on human rights.

The results of this questionnaire will be used by the Special Rapporteur to prepare his annual report to the Council. Unless otherwise requested, all submissions will be posted on the webpage of the Special Rapporteur". The Special Rapporteur will present his report to the Human Rights Council at its 30th session.

**Questions:**

**1.** What obligations does your Government have to ensure the right of access to information under international, regional and national laws? Please provide, in detail, the relevant legislation that guarantees the right of access to information on hazardous substances and wastes, as well as the mechanisms, including grievance mechanisms, which may be used by individuals and groups.

*Rights to information are described in various environmental treaties to which also Switzerland is a Party, such as the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (art. 15), the Stockholm Convention on Persistent Organic Pollutants (art. 10), and the United Nations Framework Convention on Climate Change (art. 6(a)).*

*Aarhus Convention: Since 1 June 2014, Switzerland is a Party to the Aarhus Convention. Article 4 of the convention requests access for all citizens to documents of public authorities related to environmental information. Only a limited number of reasons, listed in article 4 of the convention (e.g. negative effect on international relations), allow the State to refuse the access.*

*Pollutant Release and Transfer Register (PRTR): The legal basis of SwissPRTR is the ordinance on the register relating to pollutant release and the transfer of waste and of pollutants in waste water OPRTR of December 15, 2006. The ordinance implements the protocol on „Pollutant Release and Transfer Registers (PRTRs)“ of the United Nations Economic Commission for Europe (UNECE).*

*According to the Federal Law on Transparency in Administration (Öffentlichkeitsgesetz (BGÖ), 17. December 2004), all citizens have the right to access to documents of federal authorities. Grounds for refusal are determined in article 7 to 9 of the Federal Law on Transparency in Administration. For cases where provisions are not compatible with the Aarhus Convention, Article 10e of the Environmental Protection Law (Umweltschutzgesetz (USG), 7. October 1983) provides for specific regulations with regard to access to environmental information at national level.*

*Based on the Aarhus Convention and article 10g of the Environmental Protection Law, also Cantons have to ensure access to environmental information. Almost all Cantons have a Transparency Act that regulates the access to environmental information. Cantons that do not yet have such a law in place can apply the federal law by analogy (Art. 10g Abs. 4 USG).*

**2.** Please provide, in detail, the scope and characteristics of hazardous substances and wastes-related information that is or may be accessible to the public? More specifically, please explain what type(s) of information is produced, by whom, based on what criteria, and the time frame/frequency of data production including whether data collected is, disaggregated by gender, age, disability Status, etc.

*Environmental Protection Act (EPA): Based on paragraph 1 of article 10e of the EPA* *the authorities shall inform the public adequately about environmental protection and levels of environmental pollution; in particular: they shall publish studies on environmental pollution and on the success of measures under this Act; they may, provided it is of general interest and having consulted those concerned, publish: the results of the conformity assessment of series-produced installations (Art. 40), the results of inspections of installations, the information under Article 46. Based on paragraph 2 overriding private and public interests in confidentiality and manufacturing and business secrecy are reserved in every case. Based on paragraph 3 the environmental protection agencies shall advise the authorities and private individuals. They shall advise the public on environmentally sound behaviour and recommend measures to reduce environmental pollution.*

*Ordinance on the movements of wastes: Based on the ordinance of movements of wastes, which applies to movements of waste in Switzerland, transboundary movements of waste and movements of wastes between other countries that are organized by Swiss businesses (art. 1 para 2), the Federal Office for the Environment (FOEN) publishes every year statistics concerning dangerous wastes (Art. 42 para 1). These statistics contain information relating the type and the quantity (letter a), the disposal operations (letter b) as well as the type and the quantity of imported and exported dangerous wastes (letter c). Moreover the FOEN publishes periodically statistics concerning the type and the quantity of other disposed wastes that have to be controlled (Art. 42 para 2). Finally the FOEN publishes a list in the Internet that contains the names and the address of the Swiss businesses that transfer dangerous wastes and the names and the address of the Swiss disposers who dispose dangerous and other wastes that have to be controlled with specifications concerning the type of the wastes and the relevant disposal operations (art. 42 para 3).*

Internetlinks:

Timeseries:

* Sonderabafallaufkommen in der Schwiez (1992-2013)

<http://www.bafu.admin.ch/abfall/01517/01519/01524/index.html?lang=de&download=NHzLpZeg7t,lnp6I0NTU042l2Z6ln1acy4Zn4Z2qZpnO2Yuq2Z6gpJCEfX99gGym162epYbg2c_JjKbNoKSn6A-->

* Sonderabfälle nach Abfallgruppen (1992-2005)

<http://www.bafu.admin.ch/abfall/01517/01519/01524/index.html?lang=de&download=NHzLpZeg7t,lnp6I0NTU042l2Z6ln1acy4Zn4Z2qZpnO2Yuq2Z6gpJCEfX99gmym162epYbg2c_JjKbNoKSn6A-->

* Sonderabfälle nach Abfallgruppen (2006-2013)

<http://www.bafu.admin.ch/abfall/01517/01519/01524/index.html?lang=de&download=NHzLpZeg7t,lnp6I0NTU042l2Z6ln1acy4Zn4Z2qZpnO2Yuq2Z6gpJCFfX15fmym162epYbg2c_JjKbNoKSn6A-->

* Export von Sonderabfällen nach Länder (2000-2013)

<http://www.bafu.admin.ch/abfall/01517/01519/01524/index.html?lang=de&download=NHzLpZeg7t,lnp6I0NTU042l2Z6ln1acy4Zn4Z2qZpnO2Yuq2Z6gpJCEfX9,fmym162epYbg2c_JjKbNoKSn6A-->

* Import von Sonderabfällen (2002-2013)

<http://www.bafu.admin.ch/abfall/01517/01519/01524/index.html?lang=de&download=NHzLpZeg7t,lnp6I0NTU042l2Z6ln1acy4Zn4Z2qZpnO2Yuq2Z6gpJCEfX9,gGym162epYbg2c_JjKbNoKSn6A-->

* Statistik andere kontrollpflichtige Abfälle (2007-2013)

<http://www.bafu.admin.ch/abfall/01517/01519/01524/index.html?lang=de&download=NHzLpZeg7t,lnp6I0NTU042l2Z6ln1acy4Zn4Z2qZpnO2Yuq2Z6gpJCHdYR8fGym162epYbg2c_JjKbNoKSn6A-->

Annual statistics (e.g. 2013):

* Sonderabfallstatistik 2013 (Zusammenfassung und Kommentar)

<http://www.bafu.admin.ch/abfall/01517/01519/13508/index.html?lang=de&download=NHzLpZeg7t,lnp6I0NTU042l2Z6ln1acy4Zn4Z2qZpnO2Yuq2Z6gpJCHd3t8fmym162epYbg2c_JjKbNoKSn6A-->

* Sonderabfallstatistik 2013 (Inland)

<http://www.bafu.admin.ch/abfall/01517/01519/13508/index.html?lang=de&download=NHzLpZeg7t,lnp6I0NTU042l2Z6ln1acy4Zn4Z2qZpnO2Yuq2Z6gpJCHd3t8f2ym162epYbg2c_JjKbNoKSn6A-->

* Sonderabfallstatistik 2013 (Export)

<http://www.bafu.admin.ch/abfall/01517/01519/13508/index.html?lang=de&download=NHzLpZeg7t,lnp6I0NTU042l2Z6ln1acy4Zn4Z2qZpnO2Yuq2Z6gpJCHd3t8gGym162epYbg2c_JjKbNoKSn6A-->

* Sonderabfallstatistik 2013 (Import)

<http://www.bafu.admin.ch/abfall/01517/01519/13508/index.html?lang=de&download=NHzLpZeg7t,lnp6I0NTU042l2Z6ln1acy4Zn4Z2qZpnO2Yuq2Z6gpJCHd3t8gmym162epYbg2c_JjKbNoKSn6A-->

* Statistik der übrigen notifizierungspflichtigen Abfälle (2013)

http://www.bafu.admin.ch/abfall/01517/01519/13508/index.html?lang=de&download=NHzLpZeg7t,lnp6I0NTU042l2Z6ln1acy4Zn4Z2qZpnO2Yuq2Z6gpJCHd3t8hGym162epYbg2c\_JjKbNoKSn6A--

*PRTR: The SwissPRTR (*[*www.prtr.admin.ch*](http://www.prtr.admin.ch)*) is Switzerland’s publicly accessible Pollutant Release and Transfer Register. It provides information on releases of specific pollutants to air, water or land, as well as on transfer of waste and of pollutants in waste water.*

**3.** Please explain, in detail, how the information on hazardous substances and wastes is made available to the general public. In addition, what actions does the Government take to disseminate this information and to raise awareness about the adverse impacts of hazardous substances and wastes on human rights? How is this information tailored to the different constituencies?

*EPA: Based on paragraph 4 of Article 10e of the EPA environmental information must if possible be made available as open digital data records. Based on article 10f of the EPA the Federal Council shall assess the state of the environment in Switzerland at least every four years and shall submit a report on the results to the Federal Assembly.*

[*http://www.bafu.admin.ch/umwelt/10822/index.html?lang=en*](http://www.bafu.admin.ch/umwelt/10822/index.html?lang=en)

*PRTR: Articles & Press Communications are tailored to be easily accessible for the interested public; more detailed information as well as quantitative data are available via the correspondent links on the Swiss-PRTR-WebSite:*

<http://www.prtr.admin.ch/PRTRPublicWebSite/Abfrage.aspx>

[*http://www.bafu.admin.ch/dokumentation/umwelt/12512/12547/index.html?lang=de*](http://www.bafu.admin.ch/dokumentation/umwelt/12512/12547/index.html?lang=de)

**4.** Please provide examples of how Information on hazardous substances and wastes has been used to:

• monitor human rights affected by hazardous substances and wastes (e.g. rights to health, safe and healthy working conditions, water and sanitation; healthy environment, etc.);

• protect the human rights of individuals and groups from the adverse impacts of hazardous substances and wastes; promote other human rights (e.g., rights to health, safe and healthy working

conditions, water and sanitation, healthy environment, etc.);

• prevent potential human rights violations caused by the improper management of hazardous substances and wastes; and

• hold perpetrators accountable and seek remedy for victims

*The Swiss legislation on the environment is guided by securing the protection of a healthy environment and indirectly also the protection of human-health, relevant thresholds are accordingly included in the legislation.*

*Information provided, be it as part of an Environmental Impact Assessment or as part of the monitoring of an already existing installation, therefore directly reflects on the relevant human rights.*

*Perpetrators are pursued and prosecuted in the appropriate legal fora.*

**5.** Which businesses are required to provide information on hazardous substances and wastes (e.g. size, sector, operational context, ownership and structure, etc.)? Please explain, in detail, the obligations of these businesses have with regard to the type of information they are obliged to provide, to whom the information is made available, and what measures may be taken if businesses fail to meet these obligations

*Ordinance on the movements of wastes: Based on the ordinance of movements of wastes all the businesses involved in these movements have various obligations with regard to provide specific information relating to their activities to the cantons or the federal office for the environment. The businesses involved are generators, exporters, importers, transporters and disposers of wastes. Information is provided about the types of wastes, the quantities of wastes, the disposal operations, the date of the shipment and so far. If a business fails to meet these obligations, it is liable for a custodial sentence or a monetary penalty.*

*PRTR: All details regarding the type of business sectors that are obliged to provide information on hazardous substances are stipulated in the ordinance on the register relating to pollutant release and the transfer of waste and of pollutants in waste water OPRTR of December 15, 2006 along with an unequivocal description of the type of information required.*

**6.** When does the Government limit the right of access to information on hazardous substances and wastes? Are these criteria on limitation provided by law? Who has the authority to make decisions on the disclosure/non-disclosure of such information?

*Public authorities decide on the release of information. Such decisions can be contested through a judicial procedure. E.g. the access to information can be constrained in matters of business secrets. Only constrains that are supported by national law or regulation are allowed.*

*PRTR: Legal processes and criteria assuring justified confidentiality while guaranteeing the right to access relevant information are stipulated in the ordinance on the register relating to pollutant release and the transfer of waste and of pollutants in waste water OPRTR of December 15, 2006.*

**7.** How does the Government ensure that the right of access to this information is fulfilled while also respecting the confidentiality of business information? If available, please indicate relevant cases and attach copies of relevant judgements.

*According to provisions of application, business secrets are confidential (Art. 7 Abs. 1 Bst. g BGÖ).*

*PRTR: Legal processes and criteria assuring justified confidentiality while guaranteeing the right to access relevant information are stipulated in the ordinance on the register relating to pollutant release and the transfer of waste and of pollutants in waste water OPRTR of December 15, 2006.*