

SWITZERLAND

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I OVERVIEW

The relevant statutory law affecting the manufacture, sale and marketing of foodstuffs, beverages and cosmetics is organised in several legal layers.

Under current Swiss law, food, beverages and cosmetics are primarily regulated by the Federal Act on Foodstuffs and Utility Articles (the Foodstuffs Act (FSA)) of 20 June 2014.²

The aims of the FSA are:

- a* to protect the health of consumers from foodstuffs and utility articles (such as cosmetics) that are unsafe;
- b* to ensure that foodstuffs and utility articles are handled hygienically;
- c* to protect consumers from deception relating to foodstuffs and utility articles; and
- d* to provide consumers with the information required when purchasing foodstuffs or utility articles (Article 1 FSA).

In accordance with the above principles, regulations may be found for each respective product category in the FSA and corresponding ordinances, such as the most relevant Federal Ordinance on Foodstuffs and Utility Articles (FSO) of 16 December 2016. In addition, foodstuffs and utility articles are regulated by four ordinances of the Federal Council (i.e., FSO, VSFK, MNKPV and LMVV), 23 ordinances of the Federal Department of Home Affairs (FDHA) and four ordinances of the Federal Food Safety and Veterinary Office (FSVO).

Cosmetics are specifically regulated in the Ordinance of the FDHA on Cosmetic Products of 16 December 2016 (VKos). Most relevant are the provisions dealing with:

- a* the product safety assessment and the product information file (Article 4 et seq. VKos);
- b* prohibited and partially permitted ingredients (Article 6 et seq. VKos, in which reference is made to an annex and thereby to the corresponding regulations in the EU);
- c* the mandatory product information as well as marketing and promotion (Article 8 et seq. VKos); and
- d* manufacturing and hygiene requirements (Article 12 VKos).

Beverages are mainly regulated in the Ordinance of the FDHA on Beverages of 16 December 2016. The Ordinance describes different beverages, such as mineral water, soft drinks, juices, coffee, tea, alcoholic beverages (beer and wine, etc.) and liquors.

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2 An English translation of the FSA can be found at <https://www.fedlex.admin.ch/eli/cc/2017/62/en>.

These laws and regulations relevant to foodstuffs and utility articles are furthermore supplemented by generally applicable decrees, such as the Federal Act against Unfair Competition (UCA) of 19 December 1986.

Furthermore, Article 4 of the Federal Law on Technical Barriers to Trade (TBTL) stipulates that Swiss technical regulations also in the areas of food law and utility articles must ensure that they do not act as technical barriers to trade – namely, that they must be aligned with the technical regulations of Switzerland’s most important trading partners, in particular the EU. Swiss law therefore refers to European law on many points in the food and utility articles sectors.

i Food market

Many well-known food manufacturers have their headquarters in Switzerland. In terms of turnover, as of 2019, the largest Swiss companies in the food industry include Nestlé (92.57 billion Swiss francs), Lindt & Sprüngli, and the frozen and convenience bakery group Aryzta. In the Swiss food industry, the manufacture of confectionery as well as cocoa and chocolate products is among the most important segments.³

Retailers achieved a new record turnover of just under 30 billion Swiss francs in 2020 (11.3 per cent higher than the previous year). For 2021, the Swiss retail sector recorded a provisional nominal increase in sales of 4.2 per cent compared with 2020.⁴ However, after the record years 2020 and 2021, a decline in sales of around 4 per cent is expected for 2022. In this connection, food retailers seem to be slightly more affected than non-food retailers.⁵

On average, a Swiss private household spent 7,680 Swiss francs per annum on food and beverages (numbers for 2020).⁶ It is likely that this increase was due to the covid-19 pandemic. Some consumers have also consciously paid more attention to the origin of food due to the pandemic. In general, consumption habits have changed. For the first time, the Federal Office for Agriculture has compiled a detailed overview of food expenditure in shops for 2020. Online purchases have, however, not been considered. With sales of 10.6 billion Swiss francs, animal products accounted for 35.6 per cent of total retail food sales. This includes products such as meat, milk and eggs. Fruits, vegetables and potatoes reached a share of 13.7 per cent with a turnover of 4.1 billion Swiss francs.⁷

The upswing of organic products is particularly noteworthy. The market share of organic products in Switzerland increased from 10.3 to 10.8 per cent in 2020 compared with 2019. Consequently, the per capita consumption rose to 445 Swiss francs, which is higher than in any other country. According to the umbrella organisation in organic agriculture Bio Suisse, sales of organic products grew by 19.1 per cent in 2020 compared with 2019. Again, Bio Suisse sees the grounds for this development in the covid-19 pandemic and noted that lockdown and work from home arrangements have changed consumption habits.⁸

3 See Eva Schultz, ‘Grösste Schweizer Unternehmen in der Nahrungsmittelindustrie nach Umsatz 2019’, *Statista* 4 September 2020.

4 See Federal Statistical Office, Retail sales in 2021, to be found at <https://www.bfs.admin.ch/bfs/en/home/news/whats-new.assetdetail.21304964.html>.

5 *Schweizer Bauer*, ‘Lebensmittel-Umsatz über Vorkrisenniveau’, 5 January 2022.

6 See press release of the Federal Council from 11 February 2021, viewable at: <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-82290.html>.

7 *Schweizer Bauer*, ‘Rekordumsatz mit Lebensmitteln’, Detailhandel, 11 February 2021.

8 Jürg Vollmer, ‘Der Marktanteil von Bio-Produkten in der Schweiz beträgt 2020 neu 10.8 Prozent’ *die grüne*, 31 March 2021.

The onset of the covid-19 crisis has also had an impact on sales statistics. In March 2020, demand for bread and baked goods in the Swiss retail trade increased by over 38 per cent compared with the previous month. Sales of dairy products were also 22 per cent higher compared with February 2020. Moreover, sales of sugar in Swiss retail trade increased by 64.2 per cent in March 2020 compared with the previous year. Sales of milk and dairy products also increased by over 22 per cent compared with March 2019 due to the temporary closing of restaurants and the increase in household consumption. Sales of storable foodstuffs such as flour, pasta, rice, and mashed and canned potatoes saw a high growth rate in February 2020 compared with the same month in the previous year.⁹

In general, the price level index is high in Switzerland. In 2019, for example, this stood at 164 points, making the purchase of food and non-alcoholic beverages around 64 per cent more expensive than the European average. Consequently, Switzerland is a rather expensive country for food and non-alcoholic beverages compared with the rest of Europe.¹⁰

Overall, in 2021, private households in Switzerland primarily spent – based on their average food budget – 23 per cent on meat products; 17 per cent on milk, eggs and cheese products; 16 per cent on grain products; 13 per cent on vegetable and potato products; and 10 per cent on fruits (the rest on fish products and other food products).¹¹

ii Beverage market

The largest share of sales on the Swiss beverage market is generated in the soft drinks and mineral water sector. In this regard, mineral springs and the producers of natural mineral waters form the most important subsector. Mineral water consumption is about 931 million litres per year. The most popular mineral water brand in Switzerland is Aproz (a brand of the Swiss retailer Migros), followed by Valser (a Coca-Cola brand) and Henniez. The Swiss fruit juice industry has an annual turnover of almost 230 million Swiss francs. Sales volumes of orange, apple and multi-fruit juices are particularly high. According to the Association of the Swiss Beverage Industry, sales of alcoholic beverages in Switzerland fell by approximately 4.9 per cent in 2020 to around 758.9 million litres compared with the previous year. Quantitatively, the most frequently consumed alcoholic beverage is beer. In contrast, sales of wine fell by 5.1 per cent to around 267 million litres in the same year, whereas sales of spirits recorded a drop of 9.5 per cent to 28.9 million litres. The largest company in the Swiss beverage trade is Coca-Cola HBC Switzerland, with annual sales of more than approximately 1 billion Swiss francs in 2019, followed by Feldschlösschen Getränke and Ramseier Suisse.¹²

However, the covid-19 pandemic has also had an impact on the beverage market. The brewery Feldschlösschen, for example, sold 14 per cent less beer and beverages in 2020 and its turnover fell by 18 per cent. Nonetheless, non-alcoholic beers are trending and the Feldschlösschen brand is still the best-selling beer in Switzerland. Feldschlösschen Getränke was able to grow by 13 per cent with non-alcoholic beers.¹³

9 Schweizer Bauer, 'Rekordumsatz mit Lebensmitteln', Detailhandel, 11 February 2021.

10 Eva Schultz, 'Statistiken zum Thema Getränkemarkt Schweiz', Statista 16 November 2020.

11 Statista Research Departement, 'Gesamtausgaben der Schweizer Bevölkerung für Nahrungsmittel 2021', Statista 5 May 2022.

12 Eva Schultz, 'Statistiken zur Lebensmittelindustrie in der Schweiz', Statista 21 December 2020; Eva Schultz, 'Statistiken zur Lebensmittelindustrie in der Schweiz', Statista 21 December 2020.

13 Eva Schultz, 'Statistiken zum Thema Getränkemarkt Schweiz', Statista 16 November 2020.

iii Cosmetics market

The global market for cosmetics has been growing steadily for years. However, the Swiss market for cosmetics and personal care showed a turnover in 2019 of around 1.92 billion Swiss francs, whereas three years prior the turnover amounted to almost 1.97 billion Swiss francs. In 2020, compared with prior years, the turnover for the Swiss cosmetics and body care market amounted to less than 1.81 billion Swiss francs.¹⁴

The Swiss cosmetics market is divided into local and foreign players, though the market is strongly dominated by the latter. Accordingly, the five major players include L'Oréal SA, Shiseido Co Ltd, Estée Lauder Inc, Oriflame Holding AG and Unilever. Regarding Swiss companies, Mibelle AG (belonging to the group of companies of the Swiss retailer Migros) is the largest firm in the market for cosmetics and personal care. In 2018, the company's turnover amounted to 525 million Swiss francs. In second and third place are L'Oréal Suisse with 237 million Swiss francs and Trisa Holding with 219.6 million Swiss francs. As demand for cosmetics products is comparatively high in Switzerland, the Swiss market contributes significantly to the European cosmetics market.¹⁵

Facial care products deliver the highest turnover in the Swiss cosmetics and personal care market. With sales of 370.7 million Swiss francs in 2019, this sector accounted for 19.3 per cent of total sales of all cosmetics and personal care products in Switzerland. Other significant sectors in terms of sales are fragrances with 17.7 per cent and decorative cosmetics with 16.1 per cent. Although there is no clear trend in the sales of fragrances and facial care products, a downward trend in decorative cosmetics has been observed for several years.¹⁶

However, the rising consumer awareness leads to a trend of natural and organic cosmetics products. Furthermore, there is also increasing consumer demand in the hair colouring and styling sector. Again, chemical-free products are in demand.

II YEAR IN REVIEW

The legal and regulatory framework has not significantly changed in the past year. This is because the revised FSA and the Ordinances thereto only entered into force on 1 May 2017. Based on experience with the revised foodstuffs regulation, on 27 May 2020, the Federal Council announced some amendments to the FSO. The following developments and discussions are noteworthy:

- a Prevention of food waste is becoming more and more relevant. In addition to initiatives by different players of the foodstuffs cosmos (manufacturers, retailers and gastronomy), there are also regulatory developments. Urged by members of Parliament, on 6 April 2022, the Federal Council created an action plan concerning certain measures to reduce food waste by implementing Chevalley Postulate No. 18.3829 (i.e., reducing food waste by 50 per cent until 2030).¹⁷ The action plan is aimed at all companies

14 Statista Research Departement, 'Umsatz mit Kosmetik- und Körperpflegeprodukten in der Schweiz bis 2020', *Statista* 21 January 2020.

15 Statista Research Departement, 'Statistiken zum Kosmetik- und Körperpflgemarkt in der Schweiz', *Statista* 29 June 2020; Statista Research Departement, 'Vertrauenswürdigste Kosmetikmarken in der Schweiz 2021', *Statista* 16 April 2021.

16 M Hohmann, 'Jährliche Wachstumsrate des globalen Kosmetikmarktes bis 2020', *Statista* 17 March 2021.

17 Cf. Action Plan Report of the Federal Council dated 6 April 2022, to be found at file:///P:/Downloads/Chrome/Aktionsplan%20gegen%20die%20Lebensmittelverschwendung.pdf; also see the SNE 2030

and organisations in the food industry along the supply and value chains, as well as at the federal government, cantons and municipalities. Currently, most measures and actions are still voluntary and (mostly) based on an incentive basis.¹⁸ With the action plan against food waste, measures are to be implemented in three directions in the first phase from 2022 to 2025: industry initiatives and innovations, public sector measures, and information and education. It is a cross-sectoral agreement with stage-specific reduction targets along the supply or value chain (i.e., for trade, gastronomy, the processing industry and agriculture) that form a core element of the action plan. In the second phase, the Federal Council may take further measures if necessary to achieve the goals. Accordingly, for the first phase from 2022 to 2025, the Federal Council proposed a total of 14 measures (which can be taken and implemented primarily on a voluntary basis by the market players).¹⁹ The action plan will further strengthen the economy's own responsibility for reducing food waste and build on existing initiatives and experience. In 2025, the Federal Council will analyse whether the measures in the action plan are sufficient to achieve the targets in the 2030 time horizon. If by 2025 not enough broad impact has been achieved and the reduction of food reduction in food losses in Switzerland is progressing too slowly, the Federal Council reserves the right to take further measures. Prior to the action plan, on 4 May 2020, a member of Parliament asked the Federal Council to create a tax incentive that compensates donating companies for part of this expense to make food donation more attractive. Tax incentives, such as those in place in some Member States (e.g., France, Spain and Portugal), have been shown to have a positive impact on the donation of surplus food by industry players, according to the EU Commission (note: the motion was ultimately rejected on 1 March 2021). In France, for example, 60 per cent of the value of donated food can be directly deducted from profit tax, and in Spain, 35 per cent.²⁰ The Federal Council responded on 1 July 2020 and asked to dismiss the motion. The Federal Council mentioned that it is currently developing an action plan against food waste (see above), with the aim of halving food losses by 2030. In parallel, a basis is being created in the FSA that will enable the Federal Council to issue special provisions for the distribution of food.²¹ Nonetheless, on 22 September 2020, the Council of States decided to support tax incentives for companies that do not waste food but rather donate it (Measure No. 12 of the recently implemented action plan against

Action Plan, to be found at <https://www.are.admin.ch/are/de/home/nachhaltige-entwicklung/strategie/sne.html>.

- 18 More information on existing measures and private industry initiatives can be found at www.bafu.admin.ch/bafu/en/home/topics/waste/guide-to-waste-a-z/biodegradable-waste/types-of-waste/lebensmittelabfaelle.html.
- 19 Cf. Annex 1 of the Action Plan Report of the Federal Council dated 6 April 2022, to be found at <file:///P:/Downloads/Chrome/Aktionsplan%20gegen%20die%20Lebensmittelverschwendung.pdf>; see also the SNE 2030 Action Plan, to be found at <https://www.are.admin.ch/are/de/home/nachhaltige-entwicklung/strategie/sne.html>.
- 20 EU Commission Notice C 2017/6872 of 16 October 2017, 'EU Guidelines on Food Donations', para. 7.2.
- 21 The motion and the response of the Federal Council can be found at www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20203267.

food waste). At its meeting on 29 June 2022, the Federal Council adopted temporary simplifications to the declaration requirements on food packaging. This is due to the supply bottlenecks for some ingredients of food products caused by the war in Ukraine.

- b* Meatless food and meat substitutes are trending. There are a significant number of start-ups in Switzerland producing such foodstuffs. One main legal topic in connection with such foodstuffs is the name of the product. A meatless foodstuff often uses the same or similar designations as a meat-containing foodstuff (e.g., ‘sausage’, ‘schnitzel’, ‘burger’ or ‘steak’). On 2 July 2020, the FSVO issued Information Letter 2020/3 regarding vegan and vegetarian alternatives to foods of animal origin; the document was updated on 30 September 2021.²² When assessing the designations of vegan and vegetarian foods as alternatives to the corresponding animal products, protection against deception pursuant to Article 18 of the FSA must be considered. The document compiles criteria for the uniform designation of vegan and vegetarian foods and is largely based on the German Guiding Principles for Vegan and Vegetarian Foods Similar to Foods of Animal Origin. Most relevant is the Ordinance on Foodstuff of Animal Origin of 16 December 2016. The use of a circumscribed material designation according to this Ordinance for alternative vegetarian or vegan products is not permitted, even if this material designation is accompanied by a statement referring to the plant origin of the foodstuff. Therefore, designations such as ‘vegan white chocolate’ or ‘vegan mayonnaise’ are non-compliant and prohibited. The Ordinance also lists designations that are reserved for meat products and meat preparations, such as ‘salami’, ‘ham’ and ‘wiener’. It is prohibited to use such designations for vegan or vegetarian products. The same applies to designations protected by ordinances, cantonal legislation or other binding treaties, such as Protected Designations of Origin (PDOs) and Protected Geographical Indications (PGIs) for food and wine such as ‘Gruyère’, ‘feta’ and ‘Gorgonzola’. Designations for vegan and vegetarian foods in reference to foods of animal origin may not be supplemented by the naming of the animal species. The designation ‘vegan beef fillet’ is therefore not permitted, but the name ‘vegan fillet’ is permissible. Designations that are not circumscribed in the Ordinance, such as ‘tenderloin’, ‘steak’, ‘schnitzel’, ‘chopsticks’, ‘hamburger’ and ‘sausage’, are permitted in vegetarian or vegan alternatives to animal products if the plant origin of the product is clearly indicated. Finally, the Information Letter also deals with phonetically similar terms with different spelling, such as ‘vegannaise’ (instead of ‘mayonnaise’).
- c* On 13 June 2021, the Swiss electorate dismissed two initiatives at the ballot. The Clean Drinking Water Initiative required that agricultural subsidies be allocated only to agricultural practices that do not harm the environment and do not pollute drinking water, and the For a Switzerland Free of Synthetic Pesticides Initiative called for a ban on these products in agriculture and in the public sphere and would also have applied to imports of products from abroad. After months of heated campaigning, it was a clear ‘no’ on 13 June 2021 for both proposals, which would have made Switzerland an organic farming pioneer by becoming the first European country to ban products such as artificial weedkillers and fungicides.

22 The Information Letter (in German) can be found at www.blv.admin.ch/dam/blv/de/dokumente/lebensmittel-und-ernaehrung/rechts-und-vollzugsgrundlagen/hilfsmittel-vollzugsgrundlagen/informationsschreiben-neu/infos-2020-3.pdf.download.pdf/Informationsschreiben%202020_3.pdf.

III FOOD AND COSMETIC SAFETY

i Regulatory framework

Generally, the principle of self-regulation applies in Switzerland (see Article 26 FSA). According to the principle of self-regulation, every business that produces, handles, stores, transports, places on the market, imports, exports or transports foodstuffs or utility articles has a legal obligation to ensure that the legal requirements applying to foodstuffs and utility articles are met.

Companies active in the foodstuffs and utility articles industry must document on a regular basis whether the legal measures in connection with product conformity have been complied with or what measures the respective business has taken to this end. In addition to the principle of self-regulation, there are official controls and inspections. The competent enforcement authorities examine the extent to which food and utility articles businesses have fulfilled their responsibility to provide safe food and utility articles.

The responsibility of the federal government is limited to the control of goods in cross-border traffic, whereas the relevant control authorities of the Swiss cantons are responsible for controls and inspections within the territory of Switzerland.

In the event of any non-compliance, the enforcement authorities may order all measures that they deem necessary and proportionate to restore the legal situation or to ensure consumers' safety. The complaints of the enforcement authorities may be product-related (e.g., elimination, rendering harmless, ordering of conditions or recall) as well as non-product-related (e.g., duty to clarify and elaborate on concrete circumstances, ordering of measures to remedy process deficiencies or clarification of causes). In addition, enforcement authorities report punishable violations of Swiss foodstuffs and utility articles law provisions to the cantonal criminal prosecution authority. In minor cases, the authorities may refrain from filing such criminal charges. In the case of intentional infringements that result in a health danger for consumers, the criminal sanction can be prison or a penalty of up to 540,000 Swiss francs (Article 63 FSA). In the case of other specifically listed infringements, the criminal sanction is a penalty of up to 40,000 Swiss francs (Article 64 FSA).

ii Food additives and contaminants

A maximum value concept was introduced under the Swiss foodstuffs and utility articles law. Accordingly, maximum values are defined for certain substances existing in foods. However, exceeding them does not necessarily make foodstuffs unfit for human consumption. Foodstuffs that do not comply with the maximum levels may be further processed or mixed to avoid non-compliance with the maximum levels if this is in accordance with good practice or if food law explicitly provides for this.

Maximum levels result from various legal sources such as, for example, the:

- a* FDHA Ordinance of 16 December 2016 on the maximum levels for pesticide residues in or on products of plant and animal origin;
- b* FDHA Ordinance of 25 November 2013 on the maximum levels for residues of pharmacologically active substances and feed additives in foodstuffs of animal origin;
- c* FDHA Ordinance of 16 December 2016 on maximum levels for contaminants;
- d* FDHA Ordinance of 16 December 2016 on the addition of vitamins, minerals and other substances to food; and
- e* FDHA Ordinance of 16 December 2016 on food supplements.

iii Recalls

Anyone who discovers that foodstuffs or utility articles placed on the market by them may endanger health must ensure that consumers are not harmed (see Article 27, Paragraph 1 FSA). In this context, the Federal Council has regulated the measures for withdrawal and recall (see Article 27, Paragraph 3 FSA). The withdrawal and recall provisions are supported by the principle of traceability (see Article 28, Paragraph 1 FSA; Article 83 FSO). Accordingly, all stages of production, processing and distribution must be traceable for (1) foodstuffs, food-producing animals and all substances intended or foreseeable to be incorporated into foodstuffs; (2) consumer goods; (3) cosmetics; and (4) toys.

Withdrawal and recall are regulated in Article 84 of the FSO. If the responsible person of an establishment detects or has reason to believe that foodstuffs or utility articles imported, manufactured, processed, handled, dispensed or distributed by the establishment have endangered or may endanger health, and if the foodstuffs or utility articles concerned are no longer under the direct control of the establishment, they must immediately:

- a* inform the competent cantonal enforcement authority;
- b* take the necessary measures to withdraw the products concerned from the market (withdrawal); and
- c* if the products may already have reached consumers, recall the products (recall) and inform consumers of the reason for the recall.

The competent control authority must be informed immediately about a withdrawal or recall of a harmful product. The authority must be informed about the product defects as well as the envisaged measures and provided with appropriate evidence (e.g., customer letters, warning notices, contact details and references to platforms with further information on the recall). The competent authorities provide corresponding public news platforms for recall actions, on which not only the authorities themselves but also the respective companies can publicly announce their recalls (public warnings).²³ Finally, the establishment must document the recall process itself and inform the competent authority about the success rate of all conducted measures (e.g., the recall rate for defective products).

In the case of non-compliance with these obligations, the competent enforcement authorities are entitled to carry out the necessary measures at the expense of the responsible establishments. In addition to the consequences under administrative law, the business or the responsible person may also be threatened with consequences under criminal law if product safety is not ensured due to non-compliance with these obligations. Finally, there is a liability risk under private law. Relevant is the Federal Statute on Product Liability of 18 June 1993. Conduct in relation to the implementation of a withdrawal or recall cannot alter the conditions of liability. If necessary, the court can consider a possibly exemplary conduct of a company in the context of the withdrawal or recall.

23 See the official publication platform of the Federal Bureau for Consumer Affairs (only available in German, French and Italian, www.konsum.admin.ch/bfk/de/home/produktessicherheit/produkterueckrufe/produkterueckrufe-und-sicherheitsinformationen-2020.html); see furthermore the official publication platform of the Federal Food Safety and Veterinary Office, www.blv.admin.ch/blv/de/home/lebensmittel-und-ernaehrung/rueckrufe-und-oeffentliche-warnungen.html.

IV SUPPLY CHAINS

i Labour and immigration

There are no specific issues surrounding labour and immigration laws in the foodstuffs and utility articles industry. The general labour and immigration laws apply to Swiss companies.

More relevant are political initiatives, such as the Fair Food Initiative, which was rejected by the Swiss voters on 23 September 2018.²⁴ The aim of the initiative was, among others, to prevent the import of foodstuffs produced under unfair labour conditions. The Federal Council was ultimately not urged to implement respective regulations. The political parties that supported the initiatives are, however, keeping the pressure on the Federal Council. These parties, for example, accepted a free trade agreement with Indonesia only because it included provisions supporting fair trade. Labour topics might therefore continue to be discussed in other free trade agreements.

On 29 November 2020, Swiss citizens had to vote on the For Responsible Businesses – Protecting Human Rights and the Environment Initiative.²⁵ The initiative would have required Swiss companies to examine whether they can comply with internationally recognised human rights and environmental standards when carrying out their business operations. They would have to consider not only their own activities but also the activities of their subsidiaries, suppliers and business partners. Human rights would also have included certain labour laws. The initiative was rejected. However, the Federal Council decided to implement certain documentation obligations required by the initiative. The topic of fair food will certainly continue to be relevant, although no significant adjustments have been made by the Federal Council since the rejection of the initiative.

ii Processing and certifications

Swiss foodstuffs and utility articles law is fundamentally based on the free marketing of foodstuffs and utility articles. However, the Federal Council is authorised to provide for appropriate exceptions. In this context, the Federal Council may introduce a licensing or notification requirement for (1) novel foods, (2) foods intended for people who have special nutritional needs for health reasons, (3) foods that are advertised with a reference to special nutritional or other physiological effects, and (4) foods derived from animals that have been administered medicinal products in clinical trials that were not authorised.

The most significant authorisation requirements are found in the regulation of novel foods – namely, products that were not used for human consumption to any significant extent in Switzerland or in an EU Member State before 15 May 1997, and that can be assigned to one of the subordination categories according to Article 15 of the FSO. The implementing provisions may be found in the Ordinance of the FDHA on Novel Foods of 16 December 2016.

There is also an authorisation requirement for genetically modified organisms. Under Swiss foodstuffs and utility articles law, these are organisms whose genetic material has been modified in a way that does not occur under natural conditions through cross-breeding or natural recombination. Foodstuffs that are, contain or are derived from genetically modified

24 www.admin.ch/gov/en/start/documentation/votes/20180923/volksinitiative--fuer-gesunde-sowie-umweltfreundlich-und-fair-he.html.

25 www.admin.ch/gov/en/start/documentation/votes/20201129/iniziativa-popolare-per-impres-responsabili-a-tutela-dell-essere-umano-e-dell-ambiente.html.

organisms and are intended for sale to consumers require authorisation by the FSVO. Relevant provisions in this context may be found, for example, in the Federal Act on Non-Human Gene Technology of 21 March 2003 and the Federal Ordinance of the FDHA on Genetically Modified Foodstuffs of 27 May 2020.

Without a respective premarket authorisation given by the competent authority, novel food products as well as genetically modified food may not be legally marketed on the Swiss market.

As a rule, establishments handling the above-mentioned food categories must have detailed documentation for at least five years. These documentation obligations apply in principle to all levels of operation (e.g., manufacturer, wholesaler and retailer). However, there are generally no separate certification obligations.

iii Sustainability

There are neither specific environmental nor sustainability rules that exist in the context of supply chain management in the food, beverage and cosmetics industries. However, in the food and beverage industry, sustainability and corporate responsibility have become increasingly important in the past few years. In this regard, corporate responsibility aims at identifying the areas of activity in which social responsibility supports the goals of the company. Furthermore, successful business relationships frequently depend on corporate responsibility. Corporate responsibility is also a decisive unique selling proposition.

Initiatives on environmental and sustainability rules are common in the food industry. Inter alia, the Swiss National Science Foundation, which has funded the national research programme Healthy Eating and Sustainable Food Production, recommends that the government develops a Swiss Food Strategy for 2050. This strategy shall foster nutrition obtained from sustainable production, processing and distribution systems, such as by reducing waste and progressing on new approaches to 'intelligent packaging' that indicate the freshness of the food.²⁶

Several major players have committed themselves to developing sustainability schemes. These include Nestlé, which announced in 2010 that by 2020 none of its products globally would be associated with deforestation. At the end of 2020, Nestlé claimed that 90 per cent of its supply chain is deforestation-free. It further states that it expects to meet the target by 2022.²⁷

Sustainability is also a current concern in the cosmetics industry. In recent years, various companies have undertaken steps to improve their environmental footprint, such as by introducing reusable and refillable packaging.²⁸

As is mentioned above, the Swiss electorate dismissed two sustainability initiatives at the ballot on 13 June 2021. The arguments of the opponents of the two initiatives prevailed. Opponents said the aims of the initiatives were unrealistic, would lead to higher

26 See Swiss National Science Foundation (SNSF), 'Towards a Swiss Food Strategy for 2050', published on 25 June 2020, www.snf.ch/en/Qd6rU8cU5KsvCTEV/news/news-200625-press-release-towards-a-swiss-food-strategy-for-2050.

27 See Nestlé Report, 'Nestlé verifies three-quarters of its supply chain as deforestation-free', published on 30 April 2019, www.nestle.com/media/pressreleases/allpressreleases/nestle-three-quarters-supply-chain-deforestation-free.

28 Ellen Thomas, 'Unilever Tests News Sustainable Packaging', WWD, 24 January 2019, www.com/beauty-industry-news/beauty-features/unilever-sustainable-packaging-davos-1202986587/.

production costs and consumer prices, and would result in more imports of agricultural products. If pesticide-free standards were imposed, thousands of jobs in agriculture and the food production sector would be cut and Switzerland would not be able to maintain current production levels and hygiene rules, according to the prevailing opponents.

iv Anti-corruption rules

There are no specific anti-corruption rules for the foodstuffs and utility articles industry.

The main statute regarding anti-money laundering is the Federal Act of 10 October 1997 on Combating Money Laundering and Terrorist Financing in the Financial Sector (the Anti Money Laundering Act (AMLA)). Subject to the AMLA are financial intermediaries and any natural and legal persons who trade commercially in goods and accept cash in the process (traders) (Article 2 AMLA). Financial intermediaries can be anybody who professionally accepts or holds assets belonging to others or helps to invest or transfer them. Companies in the foodstuffs and utility articles industry may therefore be subject to the AMLA. The AMLA sets out different obligations, such as identification duties, documentation duties and organisational measures (Article 3 et seq.). The respective duties are triggered for traders only if they accept more than 100,000 Swiss francs in cash. Financial intermediaries and traders must report to the Swiss Money Laundering Reporting Office if there is a suspicion that assets or cash derives from bribery or money laundering, is controlled by a criminal organisation, or might be used for terrorism financing (Article 9 et seq.).

Anti-corruption is mainly dealt with in Article 322 *ter* et seq. of the Swiss Criminal Code of 21 December 1937:

- a* Any person who offers, promises or gives a member of a judicial or other authority, a public official, an officially appointed expert, translator or interpreter, an arbitrator, or a member of the armed forces an undue advantage, or offers, promises or gives such an advantage to a third party to cause the public official to carry out or to fail to carry out an act in connection with his or her official activity that is contrary to his or her duty or dependent on his or her discretion, is sanctioned with prison of up to five years or a penalty (Article 322 *ter*). Article 322 *quater* of the Criminal Code sanctions the taking of bribes by persons listed in Article 322 *ter* of the Criminal Code.
- b* Any person who offers, promises or gives a member of a judicial or other authority, a public official, an officially appointed expert, translator or interpreter, an arbitrator or a member of the armed forces an undue advantage for that person or for a third party in order that the person carries out his or her official duties shall be liable to a custodial sentence not exceeding three years or to a monetary penalty (Article 322 *quinquies*). Article 322 *sexies* of the Criminal Code sanctions any person listed in Article 322 *quinquies* who takes an undue advantage.
- c* Article 322 *septies* of the Criminal Code sanctions the bribing of foreign officials. The relevant persons are circumscribed in a similar way to the Swiss officials in Article 322 *ter* and 322 *quinquies* of the Criminal Code.
- d* Any person who offers, promises or gives an employee, partner, agent or any other auxiliary of a third party in the private sector an undue advantage for that person or a third party in order that the person carries out or fails to carry out an act in connection with his or her official activities that is contrary to his or her duties or dependent on his or her discretion shall be liable to a custodial sentence not exceeding three years or to a monetary penalty (Article 322 *octies*). Article 322 *novies* sanctions the taking of bribes by persons listed in Article 322 *octies* of the Criminal Code.

In addition, private bribery is dealt with in Article 4a of the UCA. The respective provisions are identical to Article 322 *octies* and *novies* of the Criminal Code. The difference is, however, that affected competitors can also file civil lawsuits in the case of Article 4a of the UCA.

v Due diligence and monitoring

Many companies in the foodstuffs and utility articles industry are resorting to products or ingredients and suppliers from other countries. Sometimes companies are not even aware of such suppliers as they are further away in the supply chain. Consequently, it is becoming more and more difficult for foodstuffs and utility articles companies to assess the conformity, quality and reliability of their suppliers and distributors and to fulfil their duty of care.

Supply chains spanning many suppliers in different countries are difficult to monitor. Most companies have implemented some sort of supply chain audits or distributor audits. However, even smaller companies have many suppliers or distributors. It would therefore be too costly to audit all suppliers or distributors on a regular basis and with the same degree of care. Given the severe competition in the market, companies must find a balance between due diligence and monitoring and profitability.

It is certainly easier to monitor suppliers in the agricultural industry, which are, due to the products, often within closer reach of the companies than other foodstuffs or utility articles, which contain ingredients or elements from all over the world. In that constellation, companies in Switzerland often do not have any direct relationship with all suppliers.

Due diligence and monitoring are facilitated if there are standardised norms, such as International Organization for Standardization norms, or accepted best practices that can be audited by accredited organisations. Companies may then request copies of the respective audit reports. However, the quality of such audits may differ in the different countries, or there might not be any accredited organisations in a country that could perform the audit.

V SALES AND MARKETING

i Regulatory framework

As is mentioned above, the Swiss foodstuffs and utility articles law is fundamentally based on the free marketing of foodstuffs and utility articles.

The legal requirements for cosmetics products are primarily regulated by the FSA, the FSO and the Ordinance of the FDHA on Cosmetic Products of 16 December 2016. In principle, no special authorisation is required for the marketing of cosmetics products in Switzerland. Rather, the marketing of cosmetics products follows the generally applicable principle of self-regulation.

Alcoholic beverages are primarily regulated by the FSA and the FSO, which mainly stipulate age restrictions for the sale and distribution of such beverages as well as several advertising restrictions. For example, advertising for alcoholic beverages must not be specifically aimed at people under 18 years of age. The sale of alcoholic beverages to young people under the age of 16 is generally prohibited.

Similar rules apply to tobacco and tobacco-like products for which the relevant age limitation is set at 18 years. Tobacco products, compared with foodstuffs and utility articles, are mainly regulated by the Tobacco Ordinance of 27 October 2004 (for current legislative developments, see below).

ii Consumer protection and false advertising

All information on foodstuffs, consumer articles and cosmetics products must correspond to the facts (see Article 18, Paragraph 1 FSA); in other words, they must not be inaccurate, deceptive or misleading. In addition, Article 3, Paragraph 1(b) of the UCA contains a more general prohibition on false advertising. Article 3, Paragraph 1(e) of the UCA specifically deals with false comparative advertising. For numerous categories of products, such as alcoholic beverages, certain articles of daily use, tobacco products and the like, there are additional specific advertising regulations. These provisions usually refer, for example, to age requirements or content requirements or determine in which locations advertising may be displayed.

In the event that the regulatory requirements for a product are not complied with by the manufacturer or distributor, the competent enforcement authorities may order administrative measures against the offending companies, which can lead, for example, to a product being seized, its advertising material and brochures being prohibited, or it being completely withdrawn from the market (including destruction measures). All measures in this context may be taken at the expense of the responsible company. The distribution of products that do not comply with the law may also trigger criminal liability.

Measures are ordered by decree. Decisions on measures, as well as certificates of compliance with Swiss food law, can, in the first instance, be appealed to the decreeing authority. Any such decision – as a next level – may then be appealed to cantonal or federal courts (see below).

VI PRODUCT LIABILITY

Civil liability concerning foodstuffs and utility articles results from the fact that product suppliers put defective products into circulation and thereby cause harm to consumers. The potential for damage may affect all participants throughout the entire distribution chain, starting with the producer and ending with the retailer itself. The basis of liability for possible lawsuits arises from the general liability law according to the Federal Act on the Amendment of the Swiss Civil Code (the Code of Obligations) of 30 March 1911 or may result from the more specific Federal Act on Product Liability of 18 June 1993.

Liability under Swiss liability law presupposes that damage has been caused unlawfully and is causally attributable to the conduct of the tortfeasor. Depending on the claim, either fault on the part of the tortfeasor is required in addition or, if it is a matter of causal liability, action can also be taken against the tortfeasor without such fault. In principle, it can be stated that damage in connection with products that do not comply with Swiss law generally lead to civil liability of the company without further ado; in these cases, it would be very unlikely for a company to prove exculpation.

Non-compliance with advertising regulations equally affects the legal responsibility of a company. If advertising regulations are violated, the company is exposed to liability under administrative law and possibly also under criminal law. In addition, consumers may have civil law claims for damage caused by illicit advertising of a product or information provided for a specific product and its use or application.

The Anglo-American and procedural construct of a class action does not exist under Swiss civil procedure law. The closest resemblance to this legal instrument is the civil procedural possibility of the joinder of parties, whereby several plaintiffs can become involved in the same proceedings and assert their claims in court.

VII INTELLECTUAL PROPERTY

The protection of intellectual property in Switzerland (i.e., trademark law, copyright law, design law and patent law) plays an essential role in the production, packaging, labelling and marketing of food and consumer goods (such as cosmetics).

Special attention must be paid to the provisions of trademark law regarding the admissibility of geographical indications of source, since foodstuffs and utility articles are regularly advertised to consumers using certain characteristics of source to suggest a certain quality feature. Under Swiss law, provisions on the admissibility of geographical indications of source can be found in Articles 47 to 51 of the Trademark Protection Act of 28 August 1992 (the 'Swissness legislation').

For the cosmetics industry and for the watch industry, there are special regulations for the protection of the geographical designation 'Swiss' or 'Switzerland' for these products.

On 17 June 2016, the Federal Council approved the revised Ordinance on the Use of the Name 'Swiss' for Watches. This revision, which entered into force on 1 January 2017, aims at strengthening the geographical indication 'Swiss' for watches and watch movements in line with the new Swissness legislation.

The second industry-specific regulation for the protection of Swiss geographical indications of source is the 'Swiss Made' Ordinance for Cosmetics. It regulates the use of Swiss geographical indications of source for cosmetics products and for certain cosmetics ingredients. If a Swiss indication of source is used, not only must a minimum of 60 per cent of the manufacturing costs for cosmetics arise in Switzerland but also at least 80 per cent of the research, development and production costs. In addition, the Ordinance stipulates the specific activities that particularly influence the quality of a cosmetics product, which, as a result, must take place in Switzerland.

In addition to simple designations, which exclusively refer to the origin of products (e.g., 'Swiss furniture'), Swiss law particularly protects qualified indications of source (e.g., 'Gruyère'). They identify products that, due to their geographical origin, have particular characteristics and qualities when compared with similar goods that are produced elsewhere. There are two categories of qualified geographical indications of source that are worth being mentioned in this context:

- a* PGIs – for example, dry-cured beef from the Grisons PGI; and
- b* PDOs – for example, Bernese Alp Cheese PDO.

PGIs and PDOs are specially protected quality signs that are entered in a register. If a name is protected, it may be used only by producers who are from the defined geographical area and who meet the requirements of a detailed product specification.

Geographical names of non-agricultural products are registered with the Swiss Institute of Intellectual Property, and agricultural products are registered with the Federal Office for Agriculture.

According to Swiss case law, it might not be sufficient to fulfil the requirements of the specific regulations concerning the use of Swiss geographical indications of source. However, in light of a recent ruling of the Swiss Supreme Court, such indications may still be deceptive. For example, if the designation 'beer' is supplemented with a geographical reference in such a way that, although the country of production Switzerland would be correct under the Swiss Trade Mark Protection Act, the entire presentation (including product marketing, design and

company name) points to a certain geographical place that, if the product is not produced in this place, is to be regarded as unlawful under the prohibition of deception under Swiss foodstuffs and utility articles law.²⁹

This means that when using indications of origin (which can be very common, especially in terms of beverages), both the provisions of intellectual property law and the prohibition of deception under foodstuffs law must be observed.

VIII TRADE ORGANISATIONS

There are several trade organisations in the foodstuffs and utility articles industry.

The Federation of Swiss Food Industries (Fial) is the federation of the trade associations of the Swiss food industry in the form of an association. The purpose of Fial is to safeguard the common economic and political interests of the affiliated sectors and their member companies.³⁰ Fial strives for active public relations work and is mainly concerned with:

- a* general issues of food legislation and enforcement;
- b* agricultural policy concerns of the processing industry;
- c* questions of European integration and foreign trade (World Trade Organization, etc.);
- d* import and export modalities and customs legislation;
- e* joint research projects;
- f* issues relating to nutrition and obesity;
- g* professional education and training in the food industry; and
- h* carrying out statistical surveys of the affiliated branches.

Bio Suisse is the main trade organisation for organic producers and organic gardeners.³¹ A total of 7,450 organic producers and organic gardeners in Switzerland are members of Bio Suisse. In addition, more than 2,300 operations and producer groups worldwide are certified according to the Bio Suisse standards. Their products appear on store shelves under the Bio Suisse Organic label.

Founded in 1957, the Association of the Swiss Beverage Industry (ASG) is the umbrella organisation of the Swiss beverage industry.³² It represents around 30,000 companies and has a total turnover of approximately 14 billion Swiss francs. The following sectors are represented in the ASG: beer, wine, mineral water, soft drinks, spirits and fruit juice. The ASG provides a forum for the sector organisations and the members of their sectors to freely exchange ideas on current issues affecting the beverage industry, to address problems between the sectors and to coordinate with a view to taking joint action. Members include the Swiss Brewery Association, Swiss Liquors, Association of Swiss Wine Traders, and the Association of Swiss Mineral Springs and Soft Drink Producers.

The Swiss Cosmetic and Detergent Association (SKW) is the leading national association of the cosmetics, detergent and cleaning products industries. The approximately 100 members it represents achieve domestic sales of about 4 billion Swiss francs (consumer prices).³³ SKW was set up in 2001 from the merger of the Association of Swiss Soap Producers

29 See decision *Lozärner Bier Lager* of the Federal Supreme Court 2C_761/2017 of 26 June 2018.

30 The website and more information about Fial can be found at www.fial.ch.

31 The website and more information about Bio Suisse can be found at www.bio-suisse.ch/en.html.

32 The website and more information about ASG can be found at <https://getraenkebranche.ch>.

33 The website and more information about SKW can be found at www.skw-cds.ch/en/association/about-us.

and the Association of the Swiss Soap and Detergent Industry. SKW is a knowledge exchange platform for the cosmetics industry. One of the main tasks of SKW is to inform about current issues, engage in media activities and furnish members, media and consumers with statistics and information. SKW, in particular, informs members about legal developments. In the cosmetics industry there is also a smaller association called Association for the Protection of the Origin of Swiss Cosmetics, which aims to enforce the Swiss Rules for the protection of geographical sources of origin for cosmetic products.

Under the name Swiss Cigarette, an association exists in the sense of Article 60 ff. of the Swiss Civil Code with the members British American Tobacco Switzerland SA, Japan Tobacco International AG and Philip Morris SA.³⁴ Swiss Cigarette supports comprehensive regulation of tobacco products based on reducing the harms associated with smoking and the use of tobacco products. Most important for tobacco manufacturers are the Swiss Cigarette Guidelines, which are issued by Swiss Cigarette together with the Swiss Fair Competition Commission. The guidelines deal with advertising and promotion by the members of Swiss Cigarette.

Trade organisations must in any case be aware of antitrust laws. There is no exception for trade organisations. The exchange of information such as prices or quantities, or even strategic information such as future investments or product launches, is highly sensitive under antitrust law and generally not permitted. Events organised by the association can also be problematic as they permit an immediate information exchange between the members. Other problematic items are benchmarking analysis of template terms and conditions provided by the trade organisations to their members.

IX FINANCING AND M&A

The financing and M&A structures used in the food, beverage and cosmetics industries do not differ from those in other industries. The legal environment in Switzerland is rather favourable for public and private M&A transactions. In addition, low interest rates and favourable borrowing conditions facilitate funding of such transactions and press investors to invest. Private equity investors play a large role in M&A transactions in Switzerland.³⁵ Most M&A transactions are structured as share deals. The legal framework for private share deals is rather liberal in Switzerland regarding pricing mechanism and exit clauses in the case of private equity investment. Swiss law is also quite liberal regarding shareholder agreements, which is beneficial for private equity investments alongside other (existing) shareholders. There are also no specific restrictions for such deals, and, except for antitrust reasons, there is generally no need to obtain governmental approval. Asset deals are not that common. However, there are certain constellations – for example, that only a specific division of a company should be sold – where deals are structured as asset deals. To prevent asset deals, selling companies sometimes divest certain divisions into separate entities so that the buying company may then purchase the respective business in the form of a share deal.

In respect of financing, there is also no common or specific structure. More mature companies are usually using credit financing structures, whereas start-ups tend to finance themselves with seed and Series A financing rounds.

34 The website and more information about Swiss Cigarette can be found at www.swiss-cigarette.ch.

35 www2.deloitte.com/ch/en/pages/mergers-and-acquisitions/articles/swiss-smes.html#.

There were few M&A deals in Switzerland in 2020, particularly in the food, beverage and cosmetics industries. This was due to the covid-19 crisis. The years 2021 and 2022 (up to now) were different and involved several relevant Swiss market players successfully conducting M&A transactions. The following deals in this connection are noteworthy.

On 5 January 2021, Capricorn Holding AG and Forster Früchte & Gemüse AG announced that the latter had, together with Migros Aare, purchased all shares of Capricorn Holding AG. Capricorn Holding AG, which includes GEISER agro.com ag, agroSmart ag and holdings in Terralog ag and vs.fruits sa, is one of the leading independent agricultural service providers in Switzerland. As part of the succession plan, the previous owners sold their shares to Forster Früchte & Gemüse AG, which is successfully established in the fruit and vegetable trade, and the Migros Aare cooperative, which acts as a minority shareholder.

On 12 March 2021, ARYZTA AG (SWX: ARYN) announced that it had signed a definitive agreement to sell its North American business to Lindsay Goldberg LLC for a total enterprise value of US\$850 million.³⁶

In March 2021, Swiss foodtech company Planted announced the completion of its Series A financing round, raising 17 million Swiss francs. The plant-based meat company skips the animal in the value chain to produce meat directly from plants to save animals, water, land and the climate.³⁷

On 31 March 2021, One Rock Capital Partners LLC, in partnership with Metropoulos & Co, announced completion of the earlier announced (cf. communication of One Rock Capital Partners LLC dated 16 February 2021) acquisition of Nestlé Waters North America (purchase price of US\$4.3 billion), which was a leading provider of bottled water in North America from the Swiss Nestlé SA, and was ultimately renamed BlueTriton Brands.

On 2 September 2021, the Emmi Group announced that it would acquire the number one company in the US feta market, thus strengthening the important pillar of specialty cheese in Emmi's most important foreign market. With the acquisition of the Athenos business from the Lactalis Group, Emmi has extended its position in the US market and hand created additional export opportunities for Swiss cheese. The Athenos business is managed by Emmi Roth USA, which has been part of the Emmi Group since 2009.

On 19 November 2021, it was announced that the global food conglomerate Nestlé has invested in Sundial Foods, which is a Californian plant-based meats company specialising in vegan chicken wings including skin, muscle and bone. Sundial Foods has completed a US\$4 million seed round led by Nestlé.

In February 2022, the Swiss retailer Migros announced its intention to establish a joint venture with the leading manufacturer of flavours and fragrances Givaudan and the engineering company Bühler to build a pilot plant for cultured meat. At the new innovation centre for cultivated meat in Kempthal, the development of products from bioreactors will be driven forward starting in 2022.

On 5 July 2022, it was announced that Fomento Económico Mexicano SAB de CV (Fomento) with its headquarters in Monterrey, Mexico, and listed on the Mexican and New York stock exchanges, has reached an agreement with Valora Holding AG (SIX: VALN), headquartered in Muttenz, Switzerland, being one of the leading foodvenience platforms

36 www.businesswire.com/news/home/20210312005429/en/Lindsay-Goldberg-to-Acquire-ARYZTA-AG%E2%80%99s-North-American-Bakery-Business.

37 <https://vegconomist.com/investments/planted-foods-raises-17m-swiss-francs-from-investors-including-football-star-yann-sommer/>.

with convenience stores and food service operations in Switzerland and several countries across Europe. Fomento and Valora agreed on the acquisition of Valora Holding AG by Fomento by way of public tender cash offer. Fomento will fund the up to US\$1.2 billion all-cash acquisition.

X SPECIAL ISSUES FOR CERTAIN PRODUCTS

i Alcohol

Alcoholic beverages are subject to special regulations regarding the admissibility of advertising and promotional material. Furthermore, there are certain age limits that may be considered when selling alcoholic beverages. In this context, there is an absolute ban on the sale of alcoholic beverages to young people under the age of 16. However, certain alcoholic beverages may be sold to young people under the age of 18.

ii Cannabis

Since the individual substances of cannabinoids, as well as hemp extracts containing cannabinoids, have historically not been consumed to any significant extent in connection with foodstuffs, either in Switzerland or in the EU, or since such consumption as foodstuffs before 15 May 1997 cannot be proven as a rule, products (foodstuffs) constituted in this way are regularly to be qualified as 'novel food'. Accordingly, cannabinoids or hemp extracts, as well as foodstuffs to which these components are added as an ingredient, are subject to Swiss foodstuffs law about novel food within the meaning of Article 16 f of the FSO. In this context, hemp extracts containing cannabinoids are explicitly listed as novel foods in the European Commission's Novel Food Catalogue.

iii 'Cosmeceuticals'

In Switzerland, cosmetics are generally considered to be 'articles of daily use' (or utility articles) and are therefore freely marketable. There are no gaps in the regulation of foodstuffs, utility articles and therapeutic products such as medicinal products and medical devices. Accordingly, each such product can be covered only by the legislation on therapeutic products or, alternatively, by Swiss foodstuffs and utility articles law. However, as the Cassis de Dijon principle applies to the marketing of utility articles such as cosmetics products, products may be marketed in Switzerland without being fully compliant under Swiss law. This means that products that meet the requirements of EU law or those of an EU Member State and are legally marketed in the respective territory may also be sold in Switzerland (see Article 16a TBTL). This applies even if the Swiss requirements (e.g., for cosmetics) are not met. However, certain exceptions are provided for by this principle. For example, medicinal products are exempt (see Article 16a, Paragraph 2 TBTL). Foodstuffs are subject to further authorisation (see Article 16c TBTL).

XI OUTLOOK AND CONCLUSIONS

Current revision developments in Swiss foodstuffs and utility articles law and in Swiss product law in general concern, in particular, the genetically modified food sector, as well as tobacco products and tobacco-like products such as e-cigarettes or snus.

On 11 November 2020, the Federal Council submitted an amendment to the Federal Act on Non-Human Gene Technology for consultation. The subject is the extension of a moratorium, which has been intended to ensure that agriculture in Switzerland is free of genetic engineering. This moratorium continues to this day and suspends certain parts of the Federal Act on Non-Human Gene Technology, which also affects food production. The Federal Council intended to extend the moratorium on the cultivation of genetically modified organisms in agriculture by four years, which in the meantime – compared with the first edition of this contribution – has been confirmed by the Swiss Parliament. Therefore, the moratorium now extends until the end of 2025. The moratorium also applies to products from new genetic engineering processes. With the amendment of the Gene Technology Act, further changes are expected to be made, which will have a particular impact on the gene technology processes known today.

In addition, there are currently significant changes regarding artificially manufactured nicotine products such as e-cigarettes and oral nicotine products. Until now, such products qualified under Swiss law as articles of daily use or utility articles (according to Swiss foodstuffs and utility articles law). This meant that – at least from a legal point of view – age requirements and, to a large extent, advertising requirements under the Swiss tobacco regulation were not applicable for such products. This fact made the protection of minors much more difficult and has been regulated only by soft law so far. With the planned introduction of the new Federal Tobacco Products Act, such products – even if they do not contain tobacco and thus do not involve a combustion process – will be included in the scope of the new Tobacco Products Act. Currently, the new Tobacco Products Act is expected to enter into force in the summer of 2023. Due to the recent confirmation of a public initiative concerning the regulation of more rigorous advertising regulations for tobacco and similar products, the new Tobacco Products Act will have to go through a first revision (i.e., existing advertising rules as intended by the Swiss Parliament have to be adjusted).

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