

Newsletter **ESG Update**

Federal Council Proposes Revision of Swiss Sustainability Reporting Regime

On 26 June 2024, the Federal Council launched a public consultation on a draft bill to amend the current non-financial reporting obligations for companies in Switzerland. Seeking to align Swiss law with the EU Corporate Sustainability Reporting Directive (CSRD), the draft bill proposes several important changes and new requirements for Swiss companies.

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Switzerland planning to largely align its sustainability reporting regime with EU law



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Following the recent entry into force of the EU Corporate Sustainability Reporting Directive (CSRD), the Swiss Federal Council has proposed to amend the current non-financial reporting requirements under Swiss law. Aiming for a 'partial' transposition, the proposal largely follows the CSRD, but also contains some deviations.

I. Context

On 1 January 2022, Switzerland enacted, in its Code of Obligations (CO, Art. 964a et seq.), new requirements for companies concerning the transparency of non-financial information. These obligations are based on the model of the EU Non-Financial Reporting Directive of 2014 (NFRD) and were introduced following the rejection of the Responsible Business Initiative in 2020. Reporting on a range of environmental, social, and governance (ESG) matters is mandatory for large publicly traded companies and large companies supervised by the Financial Market Supervisory Authority (FINMA). In-scope companies have reported for the first time this year (2024) in line with the new requirements. In relation to climate change disclosures, Switzerland has enacted the Ordinance on Climate Disclosures (TCFD-Ordinance; see our [Newsletter](#)) on 1 January 2024. In addition to reporting requirements, there are specific **due diligence** requirements concerning conflict minerals and metals as well as child labour (Art. 964j et seq. CO; Ordinance on Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas and Child Labour, **DDTrO**; see our [Newsletter](#)).

In the meantime, on 5 January 2023, the EU Corporate Sustainability Reporting Directive (CSRD) entered to force, which substantially expands the scope of companies covered and standardizes the way in which sustainability information

must be disclosed. Due to the extraterritorial reach of CSRD, large Swiss companies with significant business in the EU may be directly in scope of CSRD, while many other Swiss companies are indirectly affected as business partners or suppliers of in-scope companies (see our [Newsletter](#)). EU member states have until July 2024 to transpose the Directive into national law.

II. The Draft Bill: From Non-Financial to Sustainability Reporting

In September 2023, the Swiss Federal Council took the strategic decision to bring Swiss law into alignment with international developments and, accordingly, to amend the Swiss non-financial reporting and due diligence requirements in line with EU law. At the same time, the Federal Council already determined certain cornerstones of such a revision (see our [Newsletter](#)) and commissioned a regulatory impact assessment.

On 26 June 2024, the Swiss Federal Council published a draft bill entitled 'Transparency on Sustainability Aspects' (**Draft Bill**) and opened a public consultation. The aim of the Draft Bill is to align Swiss law with the recently enacted CSRD, but with certain deviations. In that sense, the Swiss Federal Council proposes a 'partial' transposition of EU law into Swiss law. Under the amendments proposed by the Federal Council, a significantly larger number of Swiss companies will be obliged to make sustainability disclosures than is currently the case (below, III.1).

Rather than a mere terminological adjustment, the Draft Bill reflects the paradigm shift from non-financial to sustainability reporting (see our [Newsletter](#)).

In addition to amendments to the CO (rev. Art. 964a et seq. CO), the Draft Bill also proposes to revise certain related provisions in the Auditor Oversight Act and the Criminal Code. In addition, the Federal Council is currently examining how Swiss companies could be supported in implementing the new requirements. The public consultation is open until [17 October 2024](#).

III. Key Points

1. Scope of Application

Like CSRD, the Draft Bill substantially increases the number of companies that are required to disclose sustainability information. At present, it is estimated that approximately 200 companies fall within the scope of the current Swiss non-financial reporting obligations and that 140 Swiss companies will be directly in scope of CSRD as third-country undertakings (see our [Newsletter](#)). The Federal Council estimates that around **3,500 Swiss companies** would fall into the scope of the proposed new Swiss sustainability reporting requirements. Further, an estimated 3,000 to 14,000 Swiss companies are already indirectly affected by reporting obligations (for example, as suppliers to large companies), a number that could increase to as many as 50,000 with the introduction of CSRD.

The Draft Bill proposes that publicly traded companies (Article 727 CO) and FINMA-supervised companies are in scope (as under current law, but without size threshold in the Draft Bill). In addition, economically important companies (cf. CSRD: 'large undertakings') that exceed two of the following three thresholds in two consecutive financial years are also in scope (rev. Art. 964a CO; see Art. 727 para. 2 CO):

- balance sheet total of CHF 25 mio;
- (net) turnover of CHF 50 mio;
- 250 full-time equivalents (employees) on annual average.

The above thresholds also apply to companies that are required to prepare consolidated financial statements (groups) pursuant to Art. 963 CO (cf. CSRD: 'large groups').

The Draft Bill provides for two exemptions (rev. Art. 964b CO). As under current law, a **group exemption** applies to companies (typically, subsidiaries) that are controlled by another company (typically, a parent) that either (i) is itself subject to the reporting requirements or (ii) publishes an equivalent report under foreign law. According to the Draft Bill, equivalent standards include EU standards and other standards to be determined by the Federal Council in an Ordinance (rev. Art. 964c para. 5 CO; below, III.3). For example, a Swiss subsidiary of a parent reporting under CSRD would be exempt from separate reporting under Swiss law. In addition, a new **de minimis exemption** is proposed for small companies (cf. CSRD: 'micro undertakings'), i.e. companies that (together with the domestic and foreign companies they control) do not exceed two of the following three thresholds in two consecutive financial years:

- balance sheet total of CHF 450,000;
- (net) turnover of CHF 900,000;
- 10 full-time equivalents (employees) on annual average.

In contrast to CSRD, the Swiss requirements do not contain any requirements for third-country companies (no extraterritorial reach).

2. Disclosures

In comparison to the current law, the Draft Bill expands and specifies the scope of the information on sustainability aspects to be disclosed. The information to be disclosed is largely the same as that required under the CSRD. Companies are required to report on a

range of environmental, social (and human rights) and governance (**ESG**) matters (rev. Art. 964c para. 1 CO). As under current law, but now formulated more clearly in the law, reporting must be based on the principle of **double materiality**, meaning that both the risks to (outside-in) and the impacts of (inside-out) the company's activities on relevant ESG issues must be made transparent (rev. Art. 964c para. 1 CO). In line with CSRD, companies must report information that is material from either perspective (outside-in/inside-out) or from both perspectives. Information provided must cover the risks and impacts of the company's own operations as well as its **value chain**, which includes information on products and services, business partners and the supply chain (rev. Art. 964c para. 4 CO). The comply-or-explain option available under current law (Art. 964b para. 5 CO) is abandoned.

Topics for reporting include:

- **Environment** ("E"): in particular, climate change (including Scope 1, 2, and, where adequate, Scope 3 greenhouse gas emissions, based on the GHG Protocol Corporate Accounting and Reporting Standard, and resilience to climate change), water and marine resources, use of resources and circular economy, pollution of air, water and soil, and biodiversity;
- **Social and Human Rights** ("S"): in particular, stakeholder engagement and protection, child labour, inclusion and diversity, etc;
- **Governance** ("G"): in particular, corruption, role of the board, internal control and risk management system (ICS), whistleblowers protection, animal welfare, and lobbying.

In particular, information must be provided on (rev. Art. 964c paras. 2-3 CO):

- **business model, strategy and policies** in relation to sustainability (including resilience, sustainability opportunities, exposure to coal-, oil-

- and gas-related activities) and their implementation;
- time-bound **sustainability targets**, in particular, greenhouse gas reduction targets (and any progress against these targets);
- status in terms of achieving the **net zero greenhouse gas emissions target** by 2050 at the latest to limit global warming to 1.5°C above pre-industrial levels (see the TCFD-Ordinance as well as the Swiss Climate and Innovation Act);
- **role of the board** in relation to sustainability issues (including expertise), including any relevant incentive schemes;
- principal actual or potential adverse **impacts** on sustainability issues throughout the value chain (upstream and downstream);
- **due diligence** in relation to sustainability (including any measures taken to prevent, mitigate, remediate or end adverse impacts);
- exposure to sustainability **risks**;
- relevant **indicators** used for the above disclosures.

3. Reporting Standard

Disclosures must be made in accordance with a recognized reporting standard (below, III.3). Different from CSRD, the Draft Bill proposes that companies can choose to report in accordance with the EU-Standard (**ESRS**, see our [Newsletter](#)) or a standard deemed **equivalent** by the Federal Council. Which standards are considered equivalent is yet to be specified by the Federal Council in an Ordinance. The Explanatory Report to the Draft Bill states that equivalence means no or only minimal deviations from ESRS. Possible equivalent standards include, in particular, the IFRS Sustainability Disclosure Standards (**ISSB Standards**; outside-in perspective) and the Global Reporting Standard (**GRI**; inside-out perspective). Further, although not explicitly mentioned in the Draft Bill (in contrast to

current law, see Art. 964b para. 3 CO), the **OECD Guidelines for Multinational Enterprises on Responsible Business Conduct** (see our [Newsletter](#)) may provide an equivalent standard in terms of the inside-out perspective.

Unless otherwise provided in the articles of association or decided by the general assembly, the responsibility for the choice of standard rests with the board (rev. Art. 964c para. 7 CO).

4. Assurance/Audit

In contrast to the current law, where this is voluntary, the Draft Bill stipulates that sustainability information must be assessed by an auditor or an accredited conformity assessment body (rev. Art. 964c^{bis} CO). In an Ordinance, the Federal Council will determine the required level of assurance in an Ordinance, taking into account international developments (rev. Art. 964c^{bis} para. 2 CO). As with CSRD, this will most likely entail **limited assurance** initially, and **reasonable assurance** at a later stage (see our [Newsletter](#)). Auditors and accredited conformity assessment bodies are subject to public supervision and must meet several criteria, in particular with regard to independence (rev. Art. 964c^{bis} paras 3-4 CO).

The Draft Bill further proposes that for companies subject to an ordinary audit (Art. 728 CO), the external auditor must examine whether there are any (material) inconsistencies between the annual (or consolidated) financial statements and the report on sustainability aspects (rev. Art. 728a para. 5 CO). This is to ensure that the principle of double materiality is also implemented in the audit.

5. Formalities (Approval, Publication)

The disclosures may be made either in a separate report or as part of the management report. The report may be written either in one of the four official Swiss languages or in English

(rev. Art. 964c para. 8). As under current law, the report must be approved by the **board** and the **general assembly** and be published electronically immediately (i.e., no later than 2-3 weeks) after the approval of the annual accounts (rev. Art. 964c^{ter} paras 2-3 CO). The Explanatory Report to the Draft Bill clarifies that the vote of the general assembly is **binding** (not advisory).

6. Criminal Liability

As under current law, a criminal fine of up to CHF 100,000 (up to CHF 50,000 in case of negligence) may be imposed (on an individual) in the event of false information in the sustainability report, failure to report, or failure to retain the report (Art. 325^{ter} Criminal Code).

7. Entry into force

Subject to the approval by the Parliament and a possible popular referendum, the Federal Council will determine the date of entry into force. The Draft Bill provides for a **transitional period** of two years after the entry into force, during which companies may report on the basis of the current law. This likely means that the amended obligations would come into force on 1 January 2026 at the earliest, subject to a two-year transition period.

IV. Conclusion and Outlook

The Draft Bill, which aims to create a level playing field for businesses within Switzerland and the EU market, entails an expansion and standardization of sustainability reporting.

On the one hand, the proposed requirements entail a **significant efforts** for companies - especially those not already preparing to disclose sustainability information in line with CSRD/ESRS - in terms of data collection and analysis, as well as substantial costs (in particular, for obtaining assurance). In addition, compliance risks are generally increased because of potential civil and criminal liability for

misstatements. On the other hand, the Explanatory Report recognizes **positive effects** for companies (such as improved financial performance in the longer term and better access to financial markets), investors, and civil society, as well as positive effects for the economy as a whole through the reduction of information asymmetries and increased competitiveness.

As indicated, the Draft Bill leaves several aspects to be decided by Federal Council at a later stage. This makes sense, as there are several moving targets (e.g., in relation to the ongoing development of sustainability reporting standards). Further, it remains to be seen how EU member states will implement CSRD within their domestic legal framework.

Looking further ahead, the issue of **sustainability due diligence** has moved forward at EU level. On 24 May 2024, after a long political process, the European Council gave its final approval to the Corporate Sustainability Due Diligence Directive (CSDDD). The Federal Council is currently assessing the impact of the CSDDD on Swiss companies and will announce further steps in autumn 2024.

Environmental, Social and Governance (ESG) & Sustainability have become key strategic issues for companies and their boards. The transition to more sustainable business practices presents both challenges and opportunities for companies. Walder Wyss can help you navigate the complex and rapidly evolving ESG & Sustainability landscape. [See here](#) for more information.

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