

The Sustainable Finance Law Review: Switzerland

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Introduction

Sustainability is becoming more and more important in the Swiss financial sector. Although there is no overarching legislative framework on sustainable finance, various measures have been taken to promote sustainable finance.

The Draft CO2 Act, which has yet to pass the legislative process, provides for an explicit obligation of the Swiss Financial Market Supervisory Authority (FINMA) to review the climate-related financial risks for the financial institutions it supervises on a regular basis. Similarly, the Swiss National Bank (SNB) as per the Draft CO2 Act will regularly have to assess any risks to the stability of the financial system arising from climate change and its mitigation. FINMA has already partially implemented the proposed revision by strengthening climate risk-related disclosure requirements for large banks and insurance companies in July 2021 on the basis of its general mandate to protect creditors, investors and insured persons as well as the functioning of financial markets in Switzerland (see below). In addition, FINMA has published guidance on preventing and combating greenwashing. In FINMA Guidance 05/2021, FINMA sets out rules on sustainability-related information for Swiss collective investment schemes (funds); rules on the organisational structure of institutions that manage sustainability-related funds; and rules of conduct at the point of sale for sustainability-related products.

In addition, Swiss law has been recently amended to provide for certain reporting and disclosure obligations on environmental, social and governance (ESG) matters.

Year in review

Following the rejection of a first version of a revised CO2 Act providing for more stringent measures in light of the more ambitious targets under the Paris Agreement by a referendum in June 2021, the Federal Council presented in December 2021 (the Draft CO2 Act),² which has yet to pass the legislative process. The Draft CO2 Act provides for an explicit obligation of FINMA to review the climate-related financial risks for the financial institutions it supervises on a regular basis (see below).

On 1 January 2022, the CO was amended to provide for general reporting and disclosure obligations on non-financial matters (e.g., risks of business activities regarding environmental matters, social issues, employment-related issues, human rights and the combating of corruption), and applies to listed companies, companies supervised by FINMA and other large companies as of 1 January 2023. In addition, in the implementation of Measure 17 of the Action Plan 2021–2023 to its Sustainable Development Strategy, the Federal Council has issued an ordinance detailing the disclosure obligations of the aforementioned companies on climate matters on the basis of the recommendations of the TCFD. The ordinance will enter into force on 1 January 2024 (also see below).

Regulation and policy

i Governance regime

Switzerland is committed to the UN 2030 agenda and sustainable development goals (SDGs), and in June 2021 the Federal Council adopted its 2030 Sustainable Development Strategy and the corresponding Action Plan 2021–2023³ defining three priority themes (sustainable consumption and production; climate, energy and biodiversity; and equal opportunities and social cohesion) and a total of 22 implementing measures, respectively.

Furthermore, Switzerland has ratified the Paris Agreement and aims to reduce its greenhouse gas emissions to net zero by 2050. Switzerland's nationally determined contribution under the Paris Agreement is to reduce its greenhouse gas emissions by at least 50 per cent by 2030 compared with 1990 levels, corresponding to an average reduction of greenhouse gas emissions by at least 35 per cent over the period from 2021 to 2030. By 2025, a reduction of greenhouse gases by at least 35 per cent compared with 1990 levels is anticipated.

The primary instruments for achieving Switzerland's carbon emissions reduction targets are measures imposed under the Federal Act on the Reduction of CO2 Emissions (CO2 Act).⁴ However, the CO2 Act as currently in force focuses on measures in the building, transportation and energy sector as well as (other) emissions-intensive industries. It does not contain provisions specifically addressing the financial sector. A first version of a revised CO2 Act providing for more stringent measures in light of

the more ambitious targets under the Paris Agreement was rejected in a referendum held in June 2021. In December 2021, the Federal Council presented a second draft for a revised CO2 Act with measures for the time period between 2025 to 2030 (Draft CO2 Act),⁵ which has yet to pass the legislative process.

The Draft CO2 Act provides for an explicit obligation of FINMA to review the climate-related financial risks for the financial institutions it supervises on a regular basis. Similarly, the SNB as per the Draft CO2 Act will regularly have to assess any risks to the stability of the financial system arising from climate change and its mitigation.⁶ FINMA had already partially implemented the proposed revision by strengthening climate risk-related disclosure requirements for large banks and insurance companies in July 2021 on the basis of its general mandate to protect creditors, investors and insured persons as well as the functioning of financial markets in Switzerland (see below).

In addition, the Swiss Code of Obligations (CO)⁷ provides for general reporting and disclosure obligations on non-financial matters (e.g., risks of their business activities regarding environmental matters, social issues, employment-related issues, human rights and the combating of corruption⁸), which apply to listed companies, companies supervised by FINMA and other large companies as of 1 January 2023 (see below). In the implementation of Measure 17 of the Action Plan 2021–2023 to its Sustainable Development Strategy, the Federal Council has issued an ordinance detailing the disclosure obligations of the aforementioned companies on climate matters on the basis of the recommendations of the TCFD.⁹ The ordinance will enter into force on 1 January 2024 (also see below).

ii Regulators

In Switzerland, FINMA is tasked with the supervision of market participants such as banks, insurance companies, securities firms, financial market infrastructures, collective investment schemes and (other) financial service providers as well as the enforcement of financial markets regulations including the sector-specific disclosure obligations. However, in the absence of a specific binding sustainable finance framework, FINMA's leeway to issue (binding) regulatory guidance is limited.

Nevertheless, Swiss financial market authorities and governmental bodies are actively contributing to the development of ESG-related soft law in various international organisations. For example, both FINMA and SNB are part of the Network of Central Banks and Supervisors for Greening the Financial System,¹⁰ and in 2021, Switzerland joined the TCFD, which was founded by the Financial Stability Board to improve and increase reporting of climate-related financial information.

Sustainable finance instruments

i General trends regarding sustainable finance in Switzerland

Based on a market study prepared by Swiss Sustainable Finance (SSF) and the Centre for Sustainable Finance and Private Wealth at the University of Zurich, bringing sustainability matters into investment questions has become an overall trend in Switzerland, and sustainable investments (including sustainable funds, sustainable mandates and sustainable assets) increased by 30 per cent to 1,982.7 billion Swiss francs between 2020 and 2021. Sustainable funds now represent 53 per cent of the overall fund market in Switzerland and more than half of these sustainable funds qualify as funds under Articles 6, 8 or 9 of the EU Sustainable Finance Disclosure Regulation. Since the UN adopted its 17 SDGs in 2015, sustainably invested assets in Switzerland have grown by a factor of 10, from 140 billion Swiss francs to over 1,500 billion Swiss francs.¹¹

A closer look at the different investment approaches shows that the highest growth rate was achieved with regards to sustainable investments, that is, investments in businesses contributing to sustainable solutions, both for the environment and society. The main themes in 2021 were related to clean energy, followed by social themes such as community development and health and other environmental topics such as water and cleantech. Asset managers in Switzerland also held many multi-themed funds and mandates that addressed both social and environmental topics.¹²

ii Sustainable finance instruments

Bonds

With regards to types of sustainable finance instruments, the Swiss market is still largely driven by equity investments and the corporate bonds market, where sustainability-linked bonds, sustainable bonds, a vast variety of green bonds and even social bonds have been issued and listed on the Swiss Stock Exchange (SIX). Examples for these bond classes are the first green bond listed on SIX and issued by the European Investment Bank (2014), the first listed sustainability bond by Raiffeisen Schweiz (2019), the first listed sustainability-linked bond by Novartis (2020), and last year the first listed social bond issued by Central American Bank for Economic Integration.¹³ The Federal Council also decided to prepare a basis for the issuance of green sovereign bonds by instructing the Federal Finance Administration to prepare by the end of 2022 a framework for the issuance of such bonds in order to further contribute to the development of the sustainable finance market.¹⁴ In October 2022,

the Swiss Confederation issued its inaugural 766 million green Swiss francs confederation bond to fund projects that have a positive impact on the environment, primarily in the areas of public transport, biodiversity, international cooperation and research.¹⁵

Credit financings

In contrast, ESG-linked credit financing transactions are in most cases limited to corporate credit financing transactions. However, in a recent survey, 13 of the 24 Swiss cantonal banks indicated that sustainability will become a very high priority in the lending business within the next 10 years. The classic credit rating was expanded to include an ESG rating as part of the credit assessment and credit pricing. The ESG rating can be used to adjust the conditions for granting loans to the development of the sustainability of the company or to impose specific conditions in the loan agreement.¹⁶ Thus, ESG-linked credit financing transactions do usually not provide for a 'use of proceeds' concept where funds raised shall exclusively finance specific green, sustainable or social business transactions or assets, but instead the parties agree that the funds shall be applied towards the transformation of the business activities into more sustainable activities in general by agreeing on some key performance indicators (KPIs). These KPIs vary from industry to industry and leave the borrower with greater flexibility as to which corporate purposes the funds shall be used in contrast to use of proceeds clauses. Furthermore, there is typically no hard requirement to meet certain KPIs, but rather an adjustment in the form of a decrease or increase of the margin depending on whether the borrower meets (or even exceeds) or fails to meet the KPIs. Although ESG-linked credit financings are rapidly growing in number in Switzerland as well, one of the challenges is the monitoring, reporting and auditing of compliance with the ESG criteria defined in the respective documents.

The publication of the revised Sustainability-Linked Loan Principles of the Loan Market Association (LMA) in May 2021 might further boost an increase in ESG-linked loans in Switzerland since the LMA standards are widely recognised and help the involved parties to select the right KPIs for a successful ESG-linked credit financing transaction.¹⁷

Secondary market

To financial service providers who manage portfolios or give investment advice with regard to financial instruments to clients in Switzerland, the provisions of the Financial Services Act (FinSA) apply. Thus, the trading for clients of sustainable bonds may be subject to regulatory provisions under the FinSA, mainly the code of conduct obligations that must be observed when dealing with retail clients or professional clients (dealings with institutional clients are exempt). One obligation particularly relevant with regards to sustainable bonds is the duty to provide the client with information on the financial instruments offered by the service provider.¹⁸ An obstacle in providing the client with all the necessary information on such green products can be seen in the absence of a binding definition in Switzerland of what constitutes green, social or sustainable bonds (in contrast to the EU Taxonomy system; see below).

Sustainable disclosure requirements and taxonomy

i Sustainable disclosure and reporting requirements in Switzerland

General reporting requirements on non-financial matters

In November 2020, the popular 'responsible business initiative – protecting human rights and the environment' (responsible business initiative) was narrowly rejected, but the indirect counterproposal of the Swiss parliament (counterproposal) came into force at the legislative level. The counterproposal introduces general reporting and disclosure obligations for certain categories of companies on non-financial matters (e.g., risks of their business activities regarding environmental matters, social issues, employment-related issues, human rights and the combating of corruption¹⁹). The new regulations are to be found in the CO under the newly added section 'transparency on non-financial matters' (CSR reporting).²⁰

The provisions apply to (1) companies of public interest (i.e., companies listed on the stock exchange or companies supervised by FINMA)²¹ (2) with at least 500 full-time equivalent positions on an annual average in two consecutive financial years, taking into account Swiss and foreign subsidiaries, which (3) exceed at least one of the following amounts in two consecutive financial years: a balance sheet total of 20 million Swiss francs or sales revenue of 40 million Swiss francs, or both, taking into account Swiss and foreign subsidiaries.²² If those requirements are met, financial intermediaries must also comply with the reporting obligations under Article 964a et seqq. CO.²³ Exemptions apply to companies that are subsidiaries of companies to which the aforementioned requirements apply or to subsidiaries of companies that are under the obligation to prepare an equivalent report under foreign law.²⁴ For example, the ESG reporting obligations may be applicable to a non-listed Swiss subsidiary of a foreign company if the subsidiary has bonds outstanding, unless the direct or indirect parent company is subject to equivalent reporting obligations under foreign law, such as the EU Non-Financial Reporting Directive.²⁵

The report on non-financial matters must be produced for the first time for business year 2023 and requires the approval of the supreme management or governing body of a company, but must not be submitted for external review or audit. It must be published and remain publicly accessible for at least 10 years.²⁶ If a company does not pursue a concept in one of the areas of

non-financial matters mentioned above, the comply or explain approach applies, as is also the case under EU law, and is intended to enable investors and consumers in particular to assess the credibility of the company's justification.²⁷

As mentioned above, the reporting obligations under the CO cover the areas of environmental matters, social issues, employment-related issues, human rights and the combating of corruption. With respect to reporting on climate matters, Switzerland officially declared its support of the TCFD on 12 January 2021 and will implement the recommendations of the TCFD by means of an implementing ordinance issued by the Federal Council. On 23 November 2022, the Federal Council adopted the relevant implementing ordinance, which will come into force as of 1 January 2024.²⁸ The ordinance sets out requirements for climate reporting based on the recommendations of the TCFD and establishes a presumption that companies that make climate-related disclosures based on such recommendations comply with their respective reporting obligation under the CO. Companies can also opt for a different disclosure concept but must then establish that said concept complies with Article 964b(1) CO as regards climate matters.

Specific reporting requirements on child labour and conflict minerals of companies

The second significant change of law the counterproposal introduced concerns only companies that touch sensitive areas such as child labour and conflict minerals.²⁹ These companies must comply with special due diligence and reporting obligations, also introduced in the CO under the newly added section 'due diligence and transparency in relation to minerals and metals from conflict-affected areas and child labour' and regulated in further detail by the Federal Council in the corresponding ordinance. This ordinance is aligned with Regulation (EU) 2017/821 on conflict minerals by foreseeing the same thresholds on annual import quantities of minerals and metals up to which a company may qualify for an exemption from the due diligence and reporting obligations. The Federal Council may adjust the thresholds in accordance with future adjustments of the EU Regulation.³⁰

In principle, small and medium-sized enterprises are exempt from the due diligence and reporting obligations, whereby the Federal Council has adopted a catch-all provision in the ordinance for evidenced cases with regards to child labour. According to this, small and medium-sized enterprises are also subject to the due diligence and reporting obligations if they offer products or services that have obviously been produced with the use of child labour. This is an extension of the obligations compared to the rules in the EU, which only have specific due diligence obligations regarding conflict minerals.³¹

Specific disclosure requirements of banks and insurance companies

To achieve more transparency with regards to climate-related risks at supervised institutions, FINMA clarified the disclosure requirements for significant financial institutions (e.g., such as large banks and insurance companies) in July 2021 by amending its FINMA Circulars 2016/1 and 2016/2 regarding the public disclosure of banks and insurers. The specific disclosure requirements entered into force on 1 January 2022 and are largely based on the recommendations of the TCFD. The disclosure requirements require banks and insurance companies to describe their material climate-related financial risks and their impact on their business strategy, business model and financial planning. Furthermore, financial institutions are required to disclose their process for identifying, measuring and addressing these risks as well as describe the governance structure they have in place.³²

Investment product disclosure

On 3 November 2021, FINMA published FINMA Guidance 05/2021 on preventing and combating greenwashing. In FINMA Guidance 05/2021, FINMA sets out rules on sustainability-related information for Swiss collective investment schemes (funds); the organisational structure of institutions that manage sustainability-related funds; and rules of conduct at the point of sale for sustainability-related products.³³ For other financial instruments such as structured products, there is still no regulation in Switzerland (not even in the area of self-regulation), unlike, for example, the Disclosure Regulation in the EU.

Self-regulation of SIX and SIX-flagging

Since 2017, an issuer may report to SIX Exchange Regulation (the independent and autonomous entity within the SIX group monitoring compliance with the applicable regulations) that it is producing a sustainability report in accordance with an internationally recognised standard (opting in). SIX will publish such opting in on its website for the purpose of informing market participants. The issuer must publish such sustainability report on its website within eight months of the balance sheet date for the annual financial statements and the report must remain available for five years from the date of publication.³⁴ So far, almost 40 issuers have decided to report their producing of a sustainability report to SIX Exchange Regulation.³⁵

Furthermore, SIX has introduced a special flagging system for green bonds, social bonds, and sustainability or sustainability-linked bonds. The system was designed to strengthen sustainable investing and to give such bonds a higher visibility for investors. To be eligible and flagged, the bonds must meet relevant criteria of the relevant International Capital Market

Association principles and guidelines.³⁶ Among these principles are reporting duties of the issuer of such bonds. The annual report must contain information on the use of proceeds and include a list of the projects that shall be supported by such proceeds.³⁷

ESG guidelines from the Swiss Bankers Association

The Swiss Bankers Association issued in June 2020 minimum standards for financial service providers, clarifying the consideration of the ESG criteria in the context of the FinSA conduct rules. The guidelines are not legally binding but designed to assist financial service providers in advising their clients on the influence or impact their investments can have from an ESG perspective and to foster the application of ESG criteria in the market.³⁸

ii Taxonomy

In Switzerland, there is currently no taxonomy system in place comparable to that in the EU. However, the Swiss banking industry is in the process of comparing various international taxonomy approaches to determine whether the existing legislation in Switzerland needs to be amended or new regulations need to be adopted. For this purpose, the Swiss Banking Association has set up an interdisciplinary working group to compare the various international taxonomy approaches to identify whether there is a need for action on the part of the Swiss legislative authorities.³⁹ However, it is generally to be expected that the EU Taxonomy standards will also become established as the market standard in Switzerland, particularly because Switzerland is involved in international initiatives such as the Network for Greening the Financial System and the International Platform for Sustainable Finance, and therefore a separate regulation only with regard to Switzerland would not be expedient.⁴⁰ The Federal Council is also of the opinion that a separate Swiss taxonomy makes little sense for economic reasons in particular, as well as with regards to comparability with other taxonomy systems. However, the Federal Council welcomes cooperation between authorities and market participants at an international level and is closely following developments in the international environment and in the EU in particular.⁴¹

ESG data and reporting

i Scope of ESG reporting

The responsible business initiative would have gone much further than the now-adopted counterproposal by opening up Swiss companies to litigation in Swiss courts for alleged violations of international human rights or environmental laws abroad. The counterproposal places far fewer obligations on companies, but nevertheless raises various questions for companies in the concrete implementation of their reporting and due diligence obligations.

As mentioned above under Section V.i, the general due diligence and reporting obligations regarding non-financial matters are directed at those companies that meet the requirements as outlined above (Article 964a CO). The specific obligations, on the other hand, are only directed at companies that either import certain minerals or metals from conflict or high-risk areas into Switzerland or process them here, or companies for which there is reasonable suspicion that their products or services are manufactured or provided using child labour (Article 964j et seqq.).

The specific reporting and due diligence obligations apply to the company's entire supply chain (up to Scope 3 level emissions). Companies need to maintain a management system and stipulate therein their supply chain policy for minerals and metals that potentially originate from conflict-affected and high-risk areas; their supply chain policy for products or services in relation to which there is a reasonable suspicion of child labour; and a system by which the supply chain can be traced. Companies furthermore have to identify and assess the risk of harmful impacts in their supply chain and draw up a risk management plan as well as take measures to minimise the identified risks.⁴²

Although the obligations are very far-reaching, they are only based on a best-effort approach. In contrast to the responsible business initiative, the counterproposal does not provide for civil liability. In cases of non-compliance, however, companies are threatened not only with reputational damage, but also with criminal consequences.⁴³

ii Challenges in reporting

The main challenges companies face when it comes to collecting ESG data are that only a limited amount of the required data can be found in the companies' own records, whereas a large amount must be gathered from third parties such as direct and indirect suppliers of the company. To collect the necessary data, companies need to know their businesses' exact supply chains, which can be rather difficult since those can spread over many countries and involve a vast number of participants.⁴⁴

Sustainable finance incentives

i Incentive schemes

Based on the current CO2 Act, the government has created a technology fund offering loan guarantees to banks or other suitable lenders providing financing to Swiss companies whose novel products contribute to a sustainable reduction in greenhouse gas emissions. The technology fund is financed with up to 25 million Swiss francs in revenue from the CO2 levy on fossil fuels per year.⁴⁵ Given the scope and cap, the technology fund is primarily a financing instrument for start-up companies.

Furthermore, one-third of the revenue from the CO2 levy, but no more than 450 million Swiss francs per year, is used to finance measures to reduce long-term CO2 emissions from buildings.⁴⁶ The bulk of this revenue is passed on to the cantons under the Federal Energy Act for allocation to programmes and measures for the economic and efficient use of energy, the use of renewable energy and the use of exhaust heat in the buildings sector. According to a report commissioned by the Federal Department of Energy, a total of 2.3 billion Swiss francs in subsidies was paid out under the respective programmes between 2010 and 2020, triggering a total of 4.56 billion Swiss francs of sustainability-related investments and resulting in a reduction of energy consumption by Swiss buildings of 2.5 billion kWh and of CO2 emissions by 660,000 tonnes so far, which will accumulate to a reduction of 65.5 billion kWh and 16 million tonnes CO2, respectively, over the entire lifespan.

The Draft CO2 envisages additional financial assistance schemes, inter alia, for the installation of charging infrastructure for electric vehicles, cross-border passenger rail transport and the promotion of CO2-neutral propulsion technologies.

ii Transition frameworks

Switzerland does not currently have a comprehensive transition framework for the economy. In the energy sector, the energy strategy 2050 provides for a framework for the transition of the Swiss energy system towards renewable energy, including an exit from nuclear energy production, and the first package of implementing measures was approved in a referendum in 2017. However, the expansion of renewable energy production capacities has been slower than anticipated, and the energy strategy 2050 has drawn criticism for its lack of viability and over-reliance on energy imports in the wake of the ongoing energy crisis.

A growing number of private companies is committing to reduction targets and net zero goals on a voluntary basis. If the Draft CO2 Act is implemented, all companies will be able to be exempted from the CO2 levy on fossil fuels if, in return, they make a commitment to reduce their fuel emissions from oil and gas and demonstrate how they can reduce them to zero in the longer term. Under the current CO2 Act, the exemption option is limited to certain specific emissions-intensive industry sectors.

Green technology

The impact of the development of such technology for the sustainable finance market is not currently appreciable in Switzerland.

Climate change impact

i Enforcement action

FINMA has carried out investigations into the distribution of financial products and services of various providers and has carried out several on-site inspections of supervised financial institutions. While it does not comment on specific actions taken, FINMA subsequently issued its greenwashing guidance in May 2021 (see above).

ii Climate litigation

Climate-related litigation is still scarce in Switzerland with the bulk of cases relating to climate activists challenging protest-related criminal charges (e.g., for trespassing, damage to property, duress). The frequently used argument that protesters should be acquitted on the grounds that they had been acting to avert a state of (climate) emergency was ultimately dismissed by the Swiss Federal Supreme Court in two instances.

A group of senior women took a different approach to climate activism and, in 2016, filed a complaint against the government that it had violated Articles 10 (right to life), 73 (sustainability), and 74 (environmental protection) of the Swiss Constitution as well as Articles 2 and 8 of the European Convention on Human Rights, and demanding more ambitious emissions reduction targets as well as more stringent measures to reach such targets. The case is currently pending before the European Court of Human Rights.

In July 2022, four inhabitants of the Indonesian island of Pari, backed by three non-governmental organisations, instigated conciliation proceedings against Holcim, a major building materials group headquartered in Switzerland, requesting the reduction of the group's carbon emissions as well as financial compensation for climate change-related damage on Pari and financial contributions to adaptation measures. If the group of individuals are indeed to follow-up with a civil action, this would be the first publicly known case of a company being directly sued in Switzerland for its carbon emissions.

iii Impact on meeting climate targets

Switzerland missed its 2020 emissions reduction target of 20 per cent below 1990 levels, achieving a reduction of only 19 per cent despite emissions falling sharply in 2020 compared to the previous year as a consequence of the covid-19 pandemic and a warm winter.⁴⁷

Outlook and conclusions

To achieve its 50 per cent reduction target by 2030 and its 2050 net-zero goal, Switzerland will need to implement the long-term climate strategy adopted by the Federal Council in January 2021. The strategy builds on the measures of the Draft CO2 Act that, according to the Federal Council, are essential for achieving Switzerland's climate target,⁴⁸ but it has yet to pass the legislative process, and is unlikely to enter into force before 2025.

Furthermore, while providing for climate risk monitoring obligations of FINMA and SNB, financial market participants are not the primary addressees of the Draft CO2 Act. We therefore expect that the Swiss sustainable finance framework and market practice will continue to be predominantly shaped by international soft law and private initiatives in the near future, in particular in the areas of CSR reporting and disclosures as well as sustainable finance instruments.

Footnotes

¹ David Borer and Ramona Wyss are partners and Katrin Hagger is an associate at Walder Wyss Ltd.

² Draft of the Federal Act on the Reduction of CO2 Emissions (<https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-86492.html>).

³ Swiss Federal Council, Aktionsplan 2021-2023 zur Strategie Nachhaltige Entwicklung 2030, 23 June 2021 (<https://www.are.admin.ch/are/en/home/sustainable-development/strategy/sds.html>).

⁴ Federal Act on the Reduction of CO2 Emissions, SR 641.71.

⁵ Draft of the Federal Act on the Reduction of CO2 Emissions (<https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-86492.html>).

⁶ Article 40d Draft CO2 Act.

⁷ Federal Act on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations), SR 220.

⁸ Article 964b CO.

⁹ Ordinance on Climate Disclosures (<https://www.news.admin.ch/news/message/attachments/74006.pdf>).

¹⁰ <https://www.ngfs.net/en/about-us/membership>.

¹¹ Swiss Sustainable Investment Market Study 2022, p. 6 et seqq. and p. 20.

¹² Swiss Sustainable Investment Market Study 2022, p. 6 et seqq.

¹³ <https://www.six-group.com/en/products-services/the-swiss-stock-exchange/market-data/bonds/sustainable-bonds.html>.

- ¹⁴ Federal Council press release, 17 November 2021: Federal Council wishes to show its commitment to sustainability with green Confederation bonds (<https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-85932.html>).
- ¹⁵ Federal Finance Administration press release, 12 October 2022: The federal government has successfully issued the first green Confederation bond (<https://www.efv.admin.ch/efv/en/home/aktuell/a/greenbonds.html>).
- ¹⁶ SSF and VSKB survey, May 2022: Sustainability in credit financing, p.18, p. 31.
- ¹⁷ SSF and VSKB survey, May 2022: Sustainability in credit financing, p. 32.
- ¹⁸ Article 7 et seqq. FinSA.
- ¹⁹ Article 964b CO.
- ²⁰ Article 964a et seqq. CO.
- ²¹ Article 3 in conjunction with Article 24 of the Federal Act on the Swiss Financial Market Supervisory Authority (Financial Supervisory Act, FINMASA) and Article 9a of the Federal Act on the Licencing and Oversight of Auditors (Auditor Oversight Act, AOA).
- ²² Article 964a Paragraph 1 CO.
- ²³ Dusan Ivanovic/Yannik Wollhauser – 'Sustainable Finance in Switzerland': GesKR 2022, p. 171.
- ²⁴ Article 964a Paragraph 2 CO.
- ²⁵ Directive 2014/95.
- ²⁶ Article 964c CO.
- ²⁷ Federal Council, 30 March 2022: Explanatory report on the opening of the consultation procedure on the Ordinance on the Reporting on Climate Issues, p. 3.
- ²⁸ Federal Council press release, 23 November 2022: Federal Council brings ordinance on mandatory climate disclosures for large companies into force as of 1 January 2024 (<https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-91859.html>).
- ²⁹ Article 964j et seqq. CO.
- ³⁰ Article 964j Paragraph 2 CO.
- ³¹ Federal Council press release of 3 December 2021: Provisions for better protection of people and the environment apply from 1 January 2022.
- ³² FINMA press release 31 May 2021: FINMA specifies transparency obligations for climate risks.
- ³³ FINMA Guidance 05/2021 Preventing and combating greenwashing of 3 November 2021.
- ³⁴ SIX Directive on Information relating to Corporate Governance (entry into force: 1 October 2021), Article 9.
- ³⁵ <https://www.six-group.com/en/products-services/the-swiss-stock-exchange/market-data/shares/sustainability-reporting.html>, last visited 10 October 2022.
- ³⁶ See <https://www.icmagroup.org/sustainable-finance/>.
- ³⁷ <https://www.six-group.com/en/products-services/the-swiss-stock-exchange/market-data/bonds/sustainable-bonds.html>, last visited 12 October 2022.

³⁸ SwissBanking, June 2020: Guideline for the integration of ESG considerations into the advisory process for private clients.

³⁹ Swiss Banking Association, Disclosure and Taxonomy (<https://www.swissbanking.ch/en/topics/sustainable-finance/disclosure-and-taxonomy>, last visited 7 October 2022).

⁴⁰ Xenia Karametaxas, 'Sustainable Finance: Aktuelle Entwicklungen in der Gesetzgebung der EU und der Schweiz', in: *ex ante* 1/2021, p. 33.

⁴¹ Federal Council report: Sustainability in Switzerland's financial sector, 24 June 2020, p. 30.

⁴² Article 964k CO.

⁴³ <https://www.skmr.ch/de/themenbereiche/wirtschaft/artikel/der-gegenvorschlag-zur-konzernverantwortungsinitiative.html#:~:text=Der%20seit%201.,der%20Sorgfaltspflicht%20vor%20zahlreiche%20Fragen>, last visited 12 October 2022.

⁴⁴ Adrian Stoll, KPMG: ESG in your value chain (https://home.kpmg/ch/en/home/insights/2022/06/esg-supply-chain.html?s_kwcid=AL113704!3!614907193887!p!!g!!sustainability%20reporting&gclid=EAlal QobChMImOqF8KfV-glVDgOLCh3q_QveEAYASAAEgJwPPD_BwE, last visited 10 October 2022).

⁴⁵ Article 35 CO2 Act.

⁴⁶ Article 34 CO2 Act.

⁴⁷ Federal Office for the Environment FOEN, 2020 target achievement review, <https://www.bafu.admin.ch/bafu/en/home/topics/climate/info-specialists/emission-reduction/target-achievement-review/2020-target.html>.

⁴⁸ Swiss Federal Council, climate protection: Federal Council adopts Switzerland's long-term climate strategy, <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-82140.html>.

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