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Insight

Proposed sustainability rules: Switzerland slipstreaming the EU CSRD

Authors

Daniel Lucien Bühr
Partner
Zurich

Anton Vallélian
Counsel
Geneva

Nicola Noth
Senior Associate
Zurich

Christelle Comeche
Associate
Geneva

On 26 June 2024, the Federal Council launched a consultation process to revise the Swiss non-financial reporting regime. Essentially, Switzerland will closely align to the EU Corporate Sustainability Reporting Directive (CSRD). As a result, the number of subjected Swiss undertakings will increase significantly, and reporting will *de facto* be based on the EU Standards.

Key take-away: *In Switzerland, the EU corporate sustainability reporting framework is emerging as the authoritative benchmark. Swiss undertakings should update their sustainability strategy, organisation and processes. Effective sustainability compliance and the seizure of opportunities the green transition offers will depend on timely educated decisions by senior management.*

Significant extension of the scope (from 200 to >3,500 undertakings)

The current non-financial reporting obligations apply to Swiss companies of public interest, i.e. publicly listed companies and Swiss regulated financial institutions, which meet certain numeric thresholds. Under Art. 964*a* revised Code of Obligations ("revCO"), this scope of application will be significantly expanded to include:

- Swiss companies of public interest (irrespective of numeric thresholds, but subject to Art. 964*b*(1) revCO); *and*
- Swiss undertakings exceeding two of the following thresholds: 250 full-time employees, turnover of CHF 25m, or balance sheet total of CHF 50m.

The Federal Council estimates that this will bring 3,500 undertakings into scope (compared with the current estimated figure of 200). We believe the actual figure may be even higher, given the important number of FINMA regulated undertakings subject to auditing under Art. 24 of the Financial Market Supervision Act, and bond issuers (over 1,000), all of which are companies of public interest.

Exemptions apply to small undertakings and undertakings controlled by a parent company publishing a report under Swiss or equivalent foreign reporting rules (Art. 964*b*(1) revCO).

Significant changes (upgrade from NFRD to CSRD…)

The proposed rules now exclude the "*comply or explain*" approach, while expanding the material scope and depth of the non-financial reporting obligations. Essentially, the Swiss legislation will be upgraded from the level of the EU Non-financial Reporting Directive (NFRD) to the current level of the EU CSRD:

- **Double materiality** – the revised rules now expressly state the application of the double materiality principle: the report must address both the material adverse impact of an undertaking's activity on sustainability matters *and* the

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material impact of sustainability matters on the undertaking's development, performance and position.

- **Entire value chain** – reporting obligations are not limited to the upstream supply chain but cover an undertaking's entire value chain, "*from the extraction of raw materials to the disposal of waste products.*"[1]
- **Environmental factors** – reporting must include the status of the undertaking's efforts to achieve the mandatory net-zero greenhouse gas emission level by no later than 2050.
- **Time-bound targets** – undertakings must set time-bound targets related to sustainability aspects, including, where appropriate, absolute greenhouse gas emission reduction targets until 2050.
- **Governance aspects** – undertakings must also disclose information on sustainability-related roles, expertise and skills at the level of the board of directors and management, including relevant incentive schemes.
- **Reporting standards** – undertakings must either report under the European Sustainability Reporting Standards (ESRS), or equivalent standards to be defined by the Federal Council; our assessment is that *de facto* the ESRS will be the reporting benchmark.
- **Audit requirement** – reporting is subject to audit by external auditors, or specifically accredited conformity assessment entities. The audits are subject to audit standards. Logically, auditors must not advise the companies they audit.

… and importantly, what does NOT change?

- Criminal sanctions for violation of reporting duties (Art. 325ter Swiss Criminal Code); and
- Due diligence and transparency obligations on conflict minerals and child labour.

What's next and how we can assist?

Although we do not expect the revision to enter into force before 1 January 2027, Switzerland will continue aligning its legislation to the EU sustainability framework. Since many Swiss companies are suppliers to EU companies, they already need to consider EU sustainability standards, including supply chain due diligence duties. With the EU Corporate Sustainability Due Diligence Directive (CSDDD), the next task is already *ante portas*, so Swiss undertakings should update their sustainability strategy, organisation and processes in line with the Swiss and the EU legal frameworks.

LALIVE's ESG Focus Group can assist companies to achieve focused and efficient compliance with sustainability rules, from governance through to due diligence, allowing them to effectively meet their obligations and best capitalise on opportunities created by the green transition.

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[1] Federal Council's explanatory report on the revision of the Swiss non-financial reporting regime dated 26 June 2024, p. 21 (free translation).