

# ESG Regulatory Essentials Switzerland

07/2024



The fourth instalment of our ESG Regulatory Essentials Switzerland shines light on the newly launched consultation around major changes to the Swiss sustainability-related reporting scheme and an overhaul of the self-regulations on combating greenwashing.

## Transparency

### Consultation on new non-financial reporting scheme in Switzerland

The Federal Council announced back in 2023 that an update of the Swiss sustainability-related reporting regulation was due, mainly because the EU and its Corporate Social Reporting Directive (CSRD) had set more ambitious parameters for companies in Europe. The [Federal Council now launched the consultation](#) (available in German, French and Italian) on changes to the Code of Obligations. The changes aim at bringing the Swiss legislation up to speed.

Main changes proposed by the Federal Council are the expansion of the reporting obligation in line with the scope of the EU's CSRD and the introduction of a mandatory external assurance for sustainability-related reports published in compliance with the new regulation.

This will therefore affect all Swiss companies or groups that exceed two of the three size criteria in two consecutive financial years, regardless of their status as public interest entity:

- a) Balance sheet of CHF 25m;
- b) Turnover of CHF 50m; or
- c) 250 FTE.

The Federal Council estimates that this will increase the number of in-scope companies from currently about 300 to 3'500. This is especially noteworthy since the comply or explain mechanism of the current regulation will no longer be an option.

The second major change proposed in the consultation is the introduction of an assurance obligation. Public interest entities

will need to mandate an audit firm under state oversight or a conformity assessment body under state oversight for this assurance, whereas other in-scope companies, notably most of the newly affected, non-listed, SMEs, may also engage a licensed audit expert or an equivalent conformity assessment body. The yet to be published implementing ordinance will clarify what level of assurance will be required. We expect that this will align with the EU's approach, e.g., limited assurance, at least for the time being.

In contrast to the CSRD's European Sustainability Reporting Standards (ESRS), the Swiss regulation will not require a single standard to be used for reporting on sustainability-related aspects. The Federal Council will determine which internationally recognised standards will be admitted in addition to the ESRS. We expect that at least the new International Financial Reporting Standards' sustainability standards (IFRS S1 and IFRS S2) will be a recognized as an alternative reporting standard.

The Federal Council is currently assessing how the Federation may be able to assist in-scope companies bear the costs of these new obligations. The consultation on the changes to the Code of Obligations is open until 17 October 2024. Once they enter into force, a two-year transition period will apply.

The EU's new rules on due diligence (Corporate Sustainability Due Diligence Directive, CSDDD) have also recently been finalized and the Federal council has announced (together with the above consultation) that it is evaluating the impacts of this new regulatory regime on Swiss companies until fall 2024.

Please also refer to our recently published article on the subject to get a better understanding of our view on potential challenges [here](#).

## Climate & Sustainability Risk

No updates since the last instalment.

## Net Zero

### Consultation on changes to Ordinance on the Reduction of CO<sub>2</sub> Emissions

A generally overhauled version of the Act on the Reduction of CO<sub>2</sub> Emissions had been narrowly declined by the electorate in 2021. The original act therefore had to be extended until 2024 and was now updated again early in 2024. The new act will enter into force 01 January 2025 and clarifies Switzerland's goal of halving its CO<sub>2</sub> Emissions until 2030, compared to the 1990 baseline. Two thirds of this reduction must occur within Switzerland and the law outlines several sector specific goals. Accordingly, the [Federal Council also updated the implementing ordinance](#) (available in German, French and Italian), for which the consultation is now running until 17 October 2024.

The updated ordinance mainly addresses the various means of subsidising different sectors and industries in their efforts to meet the emission reduction goals. The financial industry is not the focus of this regulation, but especially in the real estate sector (reduction target of 50% until 2030) banks, insurers and asset managers may have a substantial stake. The new ordinance leaves the current subsidy structure for real estate largely as-is. Notably, the updated act and ordinance now include geothermal energy as eligible for subsidies.

## Investor Protection

### Updates of the self-regulations of major industry organisations AMAS, SBA and SIA

The Federal Council notes financial sector's progress in preventing greenwashing in [its press release dated 19 June 2024](#). Towards the end of 2022, the Federal Council had initially clarified its position on preventing greenwashing and tasked the Federal Department of Finance (FDF) to plan the next steps. After discussions with NGOs, the Asset Management Association Switzerland (AMAS), the Swiss Banking Association (SBA) and the Swiss Insurance Association (SIA) as well as the industry at large, the FDF decided to draft an implementing ordinance to reflect the Federal Council's position on combating greenwashing but also left the door open for the industry's main associations (AMAS, SBA and SIA) to update their self-regulation regime instead of adding a new implementing ordinance.

The [AMAS](#) and the [SBA](#) have updated their already published self-regulations in line with most requirements the Federal Council had set out. The SIA, which previously did not have its own sustainable finance self-regulation, [has followed suit](#).

Although the self-regulations do not reflect all aspects of its initial position paper, the Federal Council has decided to refrain from introducing state regulation to combat greenwashing for the time being.

The updated / new self-regulations will have several common themes:

- Definition of sustainable investments throughout the three self-regulations are aligned with the Federal Council position (e.g., consideration of double materiality, alignment with or contribution to specific sustainability goals, measurement of progress towards the investment's goals).
- Minimum quota: Sustainable collective investment schemes must invest at least 70% of their assets in accordance with the sustainable investment strategy (AMAS). Sustainable investing solutions must invest 100% of their assets in accordance with their sustainable investment strategy, or, if that is not the case, explain the non-compliant quota (SBA). Sustainability-related unit-linked life insurance products can only be advertised as sustainable if all investment options are classified as sustainable under the AMAS self-regulation (SIA).
- Reporting: Annual sustainability reporting for all sustainable products will be mandatory and must reflect the character of the product's goal (alignment goal or contribution goal).
- External assurance: Implementation and compliance of the self-regulations must be assured by an external audit firm or audit expert. The assurance obligation extends to the entire body of the self-regulation, not just the updated / amended sections.

All three self-regulations, including the newly published self-regulation on the prevention of greenwashing in sustainability-related unit-linked life insurance, also contain more technical requirements both on product and organizational level. You can read more about the contents of the AMAS and SBA self-regulations [here](#).

The self-regulations will enter into force 1 September 2024 (AMAS and SBA) and 1 January 2025 (SIA) respectively, with respective transitional periods. For the new AMAS self-regulation, that means an additional two years (until 1 September 2024) to make the necessary changes to fund documents and prospectuses. When new funds are launched, fund documents and the prospectus should be compliant from 1 September 2025 onwards.

For the SBA self-regulation, training of personnel will have to be carried out until 1 September 2025, new client relationships must comply by 1 September 2026 and existing client relationships must be repapered and compliant until 1 September 2027.

Lastly, the SIA self-regulation expects full implementation by in-scope institutions by 31 December 2026.

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## Contact

### KPMG AG

Badenerstrasse 172  
PO Box  
CH-8036 Zurich

[kpmg.ch](https://www.kpmg.ch)

### Patrick Schmucki

Director, Co-Lead FS  
Climate & Sustainability,  
Financial Services

+41 58 249 27 35  
[pschmucki@kpmg.com](mailto:pschmucki@kpmg.com)

### Owen Matthews

Director, Co-Lead FS  
Climate & Sustainability,  
Financial Services

+41 58 249 75 28  
[omatthews@kpmg.com](mailto:omatthews@kpmg.com)

### Alexander Jahn

Senior Consultant,  
FS Climate & Sustainability,  
Financial Services

+41 58 249 60 27  
[alexanderjahn@kpmg.com](mailto:alexanderjahn@kpmg.com)

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