

Corporate sustainability reporting: Revision proposal

On 26 June, 2024, the Swiss Federal Council opened the consultation procedure on an amendment to the Swiss non-financial reporting rules, aimed at tightening transparency rules on non-financial matters to align them with European law. Most notably, the preliminary draft considerably extends the regulation's scope to apply to public interest companies (i.e., those listed and FINMA-regulated) generally, as well as to 'large' privately held companies. It also extends and clarifies the disclosure requirements for sustainability matters. Additionally, the draft requires obtaining assurances from an auditor or a conformity assessment body on sustainability information.

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AUTHORS	Valérie Menoud Roman Graf Patrick Schärli	Partner, Head of Investigations Partner, Head of Insolvency and Restructuring Partner
EXPERTISE	Banking and Finance Corporate and M&A ESG	

1. Background

The current Swiss framework mandates transparency on non-financial matters only for large Swiss public interest companies and is primarily inspired by the EU's Non-Financial Reporting Directive (2014/95/EU). Recently, the EU has significantly strengthened its reporting requirements with the adoption of the Corporate Sustainability Reporting Directive (EU) 2022/2464 (CSRD), which took effect on 5 January, 2023. As the CSRD gradually applies to more companies, it is expected to significantly impact Swiss companies, particularly those with large EU subsidiaries or material European revenues and a significant presence in the EU.

The Federal Council's proposed revision of the Swiss non-financial reporting framework, now designated as sustainability reporting, aims to align Swiss requirements with those of the EU. This effort seeks to ease the difficulties created by a potential overlap between EU and Swiss regulations.

2. Proposed key enhancements to the existing framework

The key features of the draft issued for consultation by the Swiss Federal Council can be summarised as follows:

Scope of application

Current Swiss non-financial reporting rules require only Swiss ‘public interest companies’ (those listed and/or regulated) to report on sustainability matters if they meet certain size benchmarks. The revised rules would expand the scope of application to capture a significantly broader set of companies, namely:

- Swiss ‘public interest companies’ (*i.e.*, publicly listed companies and Swiss regulated financial institutions) irrespective of their size, except micro-enterprises (see below).
- Swiss (privately held) companies that exceed two of the following thresholds for two consecutive financial years (on a solo or consolidated basis):
 - annual average of 250 FTE;
 - total balance sheet of CHF 25 million; or
 - turnover of CHF 50 million.

Exemptions are, however, available for:

- *Micro-enterprises*, *i.e.*, companies that meet at least two of the following criteria (on a consolidated basis and for two successive financial years): annual average of 10 or fewer FTE; total balance sheet of CHF 450,000 or less; turnover of CHF 900,000 or less.
- *Group companies* controlled by a parent company that issues a report under Swiss or equivalent sustainability reporting rules. Equivalent rules will include the EU's CSRD, as implemented in Member States, as well as other reporting regimes that the Federal Council deems equivalent in its implementation regulation.

Contents of the sustainability report

In line with the current regime, the preliminary draft outlines the **four sustainability topics** that must be covered in the report, with only slight refinements to the terminology: environmental issues (particularly the outcomes of the company's efforts to achieve net-zero greenhouse gas emissions by 2050); social (including employee) matters; issues related to human rights; and governance matters (including anti-corruption processes).

The new rules confirm that, similar to the EU's CSRD, the adopted approach is one of ‘**double materiality**’. This means that both the impact of sustainability matters on the company's development, performance and position, and the impact of the company's activities on sustainability matters, are considered material perspectives.

The preliminary draft aims to clarify the **minimum content** required in the sustainability report. As currently mandated, the report should describe, for each sustainability topic, the company's policies, due diligence processes, implementation, potential risks, risk management strategies, and relevant indicators (KPIs). Additionally, the Federal Council's draft proposal specifies that the report should include the company's sustainability objectives and associated timelines, details on its sustainability governance, and information on any incentive systems linked to sustainability for senior managers or directors. The report should also outline the principal actual or potential negative impacts of the company's activities, including those in its value chain, along with the measures taken to identify and monitor these impacts and their outcomes.

Currently, if a company lacks this formalised approach for any of the mandatory sustainability topics, its report must transparently acknowledge this and explain why (**‘comply or explain’**). Under the revised rules, in line with the EU regime, this option will no longer be available.

Standards

Under the revised rules, in-scope companies can choose to base their reporting on either EU standards (specifically the European Sustainability Reporting Standards, (ESRS), developed by the European Financial Advisory Group, EFRAG) or other equivalent national or international standards, which will be specified by the Federal Council in its implementation regulation. The Federal Council notes in its report accompanying the preliminary draft that, since all ESRS have not yet been released and approved (particularly those for certain sectors or third-country companies), it is currently difficult to determine which standards could be considered equivalent. Nonetheless, the report suggests that a combination of the ISSB's IFRS Sustainability Disclosure Standards as base standards, supplemented by the GRI standards, may be viewed as equivalent.

Assurance requirement

Aligning with European rules, the preliminary draft introduces a requirement to obtain assurances on the sustainability report from an external auditor or a conformity assessment body. The draft leaves it to the Federal Council to decide in its implementation regulation whether the assurance will need to be ‘reasonable’ (the disclosures are comprehensive and correct) or ‘limited’ (no indications have been uncovered indicating that disclosures might be incomplete or incorrect). This should allow the Federal Council to align with EU practices, depending on the timing of the entry into force of the revised Swiss rules. In the EU, assurance requirements will progressively transition from ‘limited’ assurance to a more comprehensive ‘reasonable’ assurance by 2028.

Companies subject to an ordinary audit (under Article 728a CO) will also be required to obtain confirmation from their statutory auditor that there are no inconsistencies between the information included in the sustainability report and the information included in the financial statements.

Format and process

The preliminary draft retains most of the existing requirements for the format, approval process, publication, and preservation of the sustainability report. As currently mandated, the sustainability report – whether integrated into the annual report or presented separately – must be written in a national language or in English. It requires approval from both the Board of Directors and, in contrast to the CSRD, the shareholders – similar to the annual report process. To ensure comparability, the report must be prepared in a widely recognised electronic format, such as XHTML.

Importantly, the explanatory report on the preliminary draft clarifies that the vote by the shareholders on the sustainability report is binding, not merely consultative. This contrasts with the approach currently chosen by many impacted companies.

3. Next steps

The consultation period for the preliminary draft will run until 17 October, 2024. Once the results are compiled and assessed, the Federal Council will prepare a revised draft for discussion in Parliament, likely in the second half of 2025. If Parliament approves the revision, companies will

have a transitional period of two years to comply with the new rules and thus to adjust their practices and to align their reporting systems with the updated requirements.

Given the probable timeline, it is likely that a misalignment with the CSRD schedule will persist. For Swiss groups or companies that will be subject to both Swiss and EU regulations, addressing the overlap to avoid 'double' reporting may still be challenging, as the question of equivalence remains unresolved. In this context, the EU's decision to delay the adoption of certain sector-specific or third-country ESRS standards is regrettable, as it might prevent the voluntary application of EU standards in anticipation of future rules. Depending on a group's specificities and its sector of activities, overcoming these challenges will require a thorough analysis of both EU and Swiss regulations and careful strategic planning.

CONTACTS	Valérie Menoud	Partner, Head of Investigations, Geneva valerie.menoud@lenzstaehelin.com Tel: +41 58 450 70 00
	Roman Graf	Partner, Head of Insolvency and Restructuring, Geneva roman.graf@lenzstaehelin.com Tel: +41 58 450 70 00
	Astrid Waser	Partner, Zurich astrid.waser@lenzstaehelin.com Tel: +41 58 450 80 00
	Patrick Schärli	Partner, Zurich patrick.schaerli@lenzstaehelin.com Tel: +41 58 450 80 00
