

# Sustainability regulation balancing efficiency and bureaucracy

## 1 Background and current developments

In Switzerland, larger companies are already required to report on sustainability. Political pressure to increase requirements further remains high, however. At the same time, the legal risks are growing. Interplay with developments in other (EU) countries, climate lawsuits and the general market-driven demand for sustainable investments are all playing an important role in this area. In particular, progress in the EU, which is working tirelessly on its Green Deal, is putting Switzerland under legal and political pressure to act.

### 1.1 The counter-proposal to the RBI as the basis for sustainability reporting in Switzerland

The Swiss Parliament's **counter-proposal to the Responsible Business Initiative (RBI)** has been in force since January 2022. Its provisions are essentially modeled on previous EU reporting regulations. Accordingly, large Swiss companies are required by law to report on environmental and social issues, employee rights, human rights and anti-corruption measures. Companies with risks relating to child labor and conflict minerals must submit additional reports, and thereby document their due diligence duties, in accordance with Article 964 of the Swiss Code of Obligations and the Ordinance on Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas and Child Labor (DDTrO).

In contrast to the EU regulation in effect at the time, the counter-proposal to the RBI was supplemented with a corresponding provision and then **an ordinance on climate reporting for large companies** (in accordance with the international TCFD recommendations), which has been in force since 1 January 2024. The ordinance requires companies to submit a transition plan outlining how they will move toward a low-carbon economy.





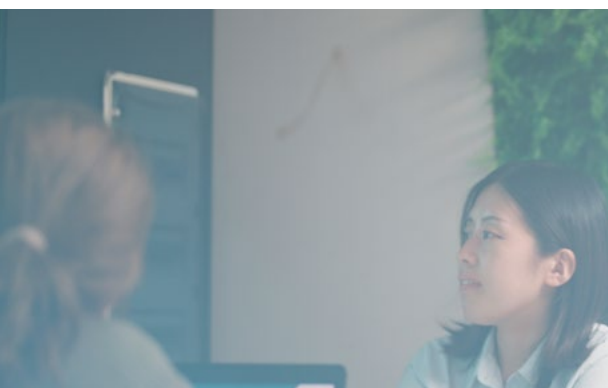
Political attention has shifted focus in recent years amid the debate on climate matters. Currently, there is less emphasis on issues relating to the protection of human rights, as was the case during the RBI campaign, and more on climate protection and accusations of “**greenwashing**.” The financial sector has taken self-regulatory measures to prevent greenwashing in the financial market. The “Swiss Climate Scores,” which provide indicators for assessing the climate friendliness of financial investments, were introduced as a voluntary instrument in 2022. Clearly, the economy is doing a lot to address the topic. Nevertheless, as part of the parliamentary deliberations on the CO2 Act, a new provision was included in the **fair trading law (UWG/LCD)**, which is intended to prevent unfair statements on climate.

## 1.2 Sustainability regulation in the EU and further developments in Switzerland

The EU has been very active in the area of sustainability regulation since 2019 as part of its Green Deal. Alongside programmatic goals, it also focuses on industrial interests. It is precisely the EU’s focus on industrial policy, particularly its authoritative definition of sustainability criteria (e.g. in taxonomies), that makes it an unattractive prospect for Switzerland to align itself too closely with regulatory ESG developments in the EU. Nevertheless, EU regulations always have a considerable direct and indirect impact on Switzerland and its economy – so intertwined with Europe’s as it is – economy in the medium term. There are two main developments to consider in this regard:

- The **Corporate Sustainability Reporting Directive (CSRD)** came into force on 5 January 2023. The group of companies affected will be gradually expanded until 1 January 2028. In fall 2023, the Federal Council adopted the key points to guide further development of the rules on sustainable corporate governance in Switzerland so that Swiss regulation is EU-compatible. It has already been decided that in future, companies with as few as 250 employees will be affected as in the EU.
- The “**Supply Chain Directive**” (CSDDD), the EU directive on corporate sustainability due diligence, was the subject of intense debate for several years. It was adopted on 24 April 2024 in the plenary session of the European Parliament with 374 votes in favor, 235 against and 19 abstentions. The text adopted by Parliament contains the following points:

- Scope of application: Setting the size of in-scope companies to those with 1,000 employees and turnover of EUR 450 million in revenue, with deletion of the high-risk sector approach (reducing the original scope by 70%). Staggered application of the directive, starting with companies with 5,000 employees and turnover of EUR 1.5 billion, which will be affected for the first time within three years.
- Companies must identify and manage human rights and environmental risks in their so-called activity chain. This includes both the upstream (suppliers) and downstream (distribution, transport, storage) value chain.
- Inclusion of provisions on prioritization, risk-based approach and group due diligence.
- Liability provisions limit the responsibility of companies to cases of negligence and intent.





The new EU rules will involve massive additional effort for companies in third countries such as Switzerland as well. According to a study commissioned by the Federal Department of Justice and Police and the Federal Department of Economic Affairs, Education and Research, the directive would affect several hundred companies in Switzerland directly and several thousand indirectly (e.g. as suppliers).

The Federal Council was already clear last year that it wanted to await developments in the EU as well as any initial implementation steps at the level of EU member states with regard to the CSDDD rules before deciding on independent Swiss regulation.

## 2 Challenge: Avoiding red tape for sustainability

From the perspective of the Swiss economy, there is a three-way challenge in the area of sustainability reporting:

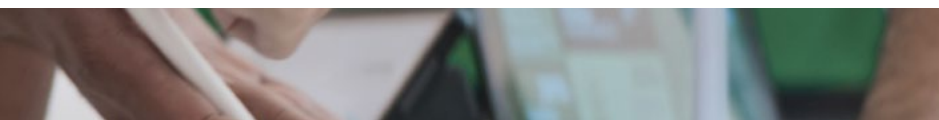
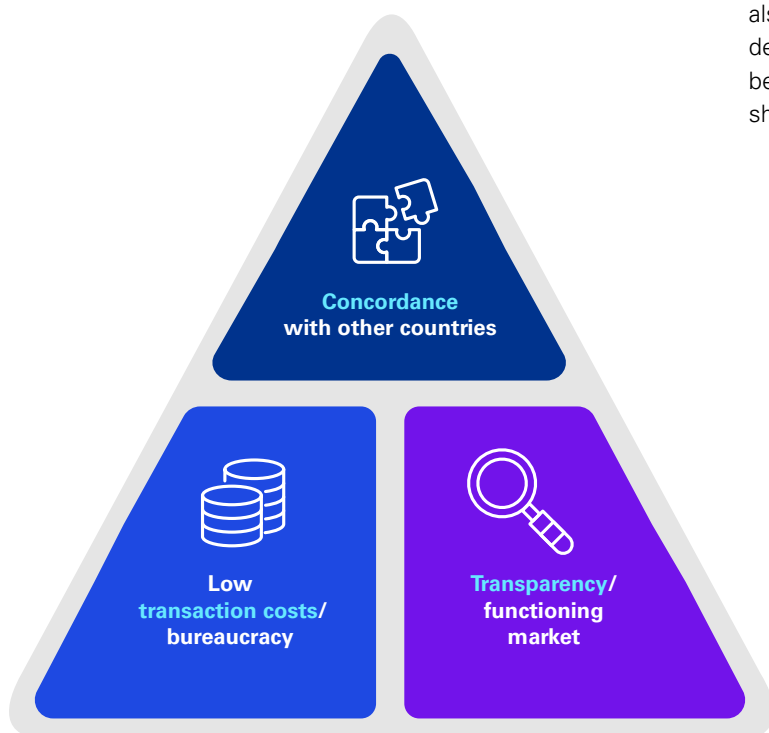
### 2.1 Reduce transaction costs/bureaucracy

Practitioners are already sending a signal that the CSRD in particular is not simply a refinement but a huge expansion of EU regulation. The challenges are great, as detailed reporting structures and corresponding processes for data collection must first be established at great cost and effort.

### 2.2 Strengthen the focus on transparency

To enable market-driven decision-making in the area of sustainability, appropriate transparency is required in all areas of sustainability. Existing rules on (non-)financial reporting and the fair trading law in Switzerland respond to one of the fundamental interests of the economy as a whole and lay the central foundation for Swiss sustainability regulation.

Standards that ensure comparability and credibility are also important. Given the dynamics of international developments, however, state-administered standards lag behind reality or – as the example of the EU taxonomy shows – risk being taken over by (industrial) politics.





### 3 Needs of the overall economy

From a macroeconomic perspective, it is crucial to solve the three-way conundrum mentioned above with a sense of proportion and moderation. The most important priorities in terms of content are as follows:

#### 3.1 Establish sound conditions for appropriate transparency

Transparency is a key requirement for a well-functioning market. In principle, the market provides the necessary transparency. Where this is not possible, the business community calls for proportionate, feasible and reasonable minimum regulations. The business community also supports the development of standards, although the role of the state should be kept to a minimum (e.g. in ensuring fair competition). Standards should not be enshrined in law, but allow companies to be guided by established, internationally recognized standards that they deem appropriate.

#### 3.2 Do not rush to comply with foreign developments

It is often, but not always, in the interests of Switzerland to implement foreign law. While compatibility with mandatory European law must be ensured, the extent to which companies wish to apply foreign rules should, where possible, be left to their discretion. Companies should also be free to follow global developments (including those of the OECD or the International Sustainability Standards Board ISSB). In this context, it is important that in implementing legal requirements, Switzerland:

- is reserved, i.e. implementation only takes place once developments have been consolidated and not as they are just emerging.
- permits full compliance with foreign law, but sets the standard from a Swiss perspective.
- avoids a Swiss finish, i.e. does not introduce any elements that add to or deviate from the relevant foreign rules.

#### 3.3 Consider time needed to adapt, slow down and safeguard investments

In light of increasingly stringent framework conditions and an economic slowdown, it is important to relax the pace of regulatory efforts. Swiss companies should not be overwhelmed by a steady stream of new rules.

Implementing the existing rules is already proving a challenge for companies. Against the backdrop of the considerable expenses already incurred to implement the provisions of the counter-proposal to the RBI, it would not be appropriate to force a hasty system change. This risk arises in particular with the Federal Council's intention to harmonize Swiss sustainability reporting with the new EU rules.

### 3.4 Avoid regulatory overload

Contradictory, redundant and politically or ideologically motivated regulations need to be opposed, and activist polemics countered. Today, Switzerland already has a regulatory framework in the area of sustainability that can easily hold its own internationally.

NGOs continue to fight to tighten the thumbscrews on companies through legislation and also to be able to sue for the behavior of third parties such as suppliers and buyers. The final rules of the CSDDD introduce the concept of the "chain of activities," although it remains to be seen how this concept will be implemented in practice. In the area of liability in particular, however, the EU has not gone nearly as far with the CSDDD as the initiators in Switzerland had demanded as part of the RBI campaign. In particular, instruments such as the reversal of the burden of proof have been omitted. However, it is important to keep an eye on developments, especially in the area of climate lawsuits. It must not be allowed to come to a situation where companies that have been sued are forced to behave in a way that suits the plaintiffs, even if this goes against the company's conviction of a good sustainability strategy.

---

Author:



**Erich Herzog**

LL.M., Attorney-at-Law  
Member of the executive board  
economiesuisse

## 4 Conclusion

Since rejecting the RBI Switzerland has had strict regulations in place for large companies, with mandatory sustainability reporting introduced by the counter-proposal. However, the risk is growing that regulators will get heavy handed with red tape for sustainability. In the context of developments abroad (especially in the EU), climate lawsuits and market-driven demand for sustainability, the Swiss economy is facing **three key challenges**:

- Reduction of transaction costs and bureaucracy:  
Reporting obligations entail an enormous amount of work for companies. The burden is particularly high for SMEs and may even lead to competitive disadvantages.
- Greater focus on transparency: there is stronger market demand for sustainability – across environmental, social and economic aspects. But there is a risk of information imbalances.
- Need for convergence with international standards:  
Switzerland's highly interconnected global economy requires sustainability reporting to be compatible with international standards.

Overcoming these challenges hinges on the creation of appropriate transparency rules and careful alignment with EU standards. At the same time, it is vital to strike a balance between considering global developments and avoiding new legal risks. The EU cannot be the measure of all things. The speed of new regulations must be slowed down to give companies more time to adapt, and to reduce the risk of excessive strain. A direct or indirect state definition of the term "sustainability" should be avoided.

---

This article is part of KPMG's Board Leadership News. To receive this newsletter three times per year, please [register here](#).

### About the KPMG Board Leadership Center

The KPMG Board Leadership Center offers support and guidance to board members. We equip you with the tools and insights you need to be highly effective in your role, enabling you to focus on the issues that really matter to you and your business. In addition, we help you to connect with peers and exchange experiences.

Learn more at [kpmg.ch/blc](https://www.kpmg.ch/blc)

---

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received, or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. The scope of any potential collaboration with audit clients is defined by regulatory requirements governing auditor independence. If you would like to know more about how KPMG AG processes personal data, please read our [Privacy Policy](#), which you can find on our homepage at [www.kpmg.ch](https://www.kpmg.ch).

© 2024 KPMG AG, a Swiss corporation, is a subsidiary of KPMG Holding AG, which is a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.