

ESG Regulatory Essentials Switzerland

01/2024



We want to use this first issue of Switzerland's dedicated ESG Regulatory Essentials to create a solid baseline on which future releases can rely. We will therefore provide a more cursory overview of the Swiss regulatory landscape as it is today rather than just updating you on the most recent developments. To guide you through the publication, we have grouped the regulations into four topics, transparency, climate risk, carbon emission reduction and investor protection.

Transparency

Non-financial Reporting based on the Code of Obligations

Public interest companies that meet certain size thresholds (more than 500 FTEs and either CHF 20m balance sheet or CHF 40m sales revenue) are required to disclose non-financial information such as environmental concerns, social & labor concerns, respect for human rights and anti-corruption measures. It is worth noting that for financial institutions, the FTE threshold is often the deciding factor on whether a report is mandatory or not.

These amendments to the Code of Obligations have entered into force on 1 January 2022, the first non-financial report for in-scope companies must be published for the FY 2023.

Ordinance on Climate Reporting

The Federal Council has already specified through the Ordinance on Climate reporting that for climate-related issues, the industry is advised to use the well-known and internationally recognized TCFD standards (taskforce on climate-related financial disclosures) to fulfil their non-financial reporting obligation on climate concerns (part of the environmental concerns of the general non-financial reporting obligation based on the Code of Obligations). Regardless of the standard used, the report has to take a double-materiality view. The size thresholds of the Code

of Obligations non-financial reporting obligation apply. The Ordinance has entered into force on 1 January 2024, the first TCFD-based report will have to be published on the FY 2024.

The report on climate matters will have to be published in a machine-readable, internationally accepted standard from FY 2025 onwards.

Future Amendments to Swiss Non-financial Reporting

The Federal Council is currently debating if the size threshold for FTEs should be lowered from 500 to 250 to align with European regulation (e.g. CSRD). Additionally, the introduction of a mandatory audit of the report is also on the table. The possible timeline for these changes is currently still open.

Child Labor Due Diligence based on the Code of Obligations

Similarly, the Code of Obligations also puts forward due diligence obligations regarding minerals and metals from conflict areas as well as child labor. For financial institutions, the latter being of more interest. Companies had to finalize their assessment regarding child labor risk in their supply chain by the beginning of 2023, the first report (if one is needed) is due for the FY 2023. If none of the exemptions apply (preliminary assessment, risk assessment and assessment of suspicions), the company in question would need to set up a due diligence & transparency framework on child labor. The assessments have to be documented in any case. These requirements apply to all companies with operations in Switzerland but are also subject to size requirements (more than 250 FTEs and either CHF 20m balance sheet or CHF 40m sales revenue).

AMAS Self-regulation for ESG Transparency

The AMAS Self-Regulation for Transparency and Disclosure of ESG Funds has entered into force end of September of this year. Entity-level requirements have already taken effect and now Asset Managers and Manufacturers of Collective Investment Schemes are preparing for product-level requirements which will become mandatory after end of September 2024.

In scope are members of AMAS only, others may voluntarily join the self-regulation scheme. Products governed by these requirements are those that follow one or several of AMAS' recognized sustainable investment approaches, outlined in the Annex of the self-regulation. The only exemption to this are products that only follow an exclusion or ESG integration approach; these do not qualify as a sustainable product. If a sustainable investment approach is not in the list of AMAS, the product may still qualify as sustainable, but all deviations must be properly explained in the fund documents.

Main challenges with this regulation are its demands towards data provider due diligence and data validation, external communication and marketing as well as bringing together the product-level requirements with the reporting standards for pension assets that have recently been updated to cover sustainability-related key performance indicators. Keep in mind that this self-regulation's future is currently uncertain since the Federal Council is debating whether a government-led solution is necessary.

For more on this subject, refer to our recent blog post ["AMAS self-regulation – Lessons learned"](#).

Federal Council's Position on the Prevention of Greenwashing

The Federal Council will decide mid-2024 whether it will adopt a new ordinance and/or build on the existing self-regulations from the industry associations (AMAS, SBA and SVV). It had already laid out its general position in a publication in December 2022. Key points that will need to be reflected in the future anti-greenwashing regulatory landscape are therefore:

- Double materiality: products and services can only qualify as sustainable if they address one or several sustainability targets. Pure (ESG) risk management is regarded as part of the fiduciary duty and therefore mandatory for any discretionary money manager or advisor.
- Sustainability targets: although specific frameworks or targets are unlikely, it will be mandatory to provide transparency on the targets and how they are measured.
- Alignment and contribution: sustainable investment products need to be either aligned with or need to contribute to the defined sustainability target(s).

For more on this subject, refer to our recent blog post ["The Federal Council addresses greenwashing – what now?"](#)

AMAS Self-regulation for Environmental Indicators

AMAS has also prescribed two environmental indicators and their calculation methods for all Swiss real estate funds. These indicators will need to be published sometime between the end of 2023 and end of 2024, based on the accounting cut-off of the fund. AMAS has recently released more information regarding the calculation method and the indicators are already widely used in the industry. The requirements based on self-regulations (both from AMAS and SBA) are currently only applicable to members of those associations but give other institutions the option to join voluntarily.

The Swiss Climate Scores as Portfolio Reporting Standards

Besides these transparency-related regulations, we want to point out one non-binding standard which has garnered a lot of popularity in recent years – the Swiss Climate Scores. They provide institutional and private investors in Switzerland with comparable and meaningful information on the extent to which their financial investments are compatible with international climate goals. The Federal Council recommends that Swiss financial market players apply the Swiss Climate Scores to financial investments and client portfolios where appropriate.

Climate & Sustainability Risk

The Swiss Financial Market Supervisory Authority ("FINMA") is the main author of climate risk-related regulation in Switzerland, the main tools being the FINMA Guidance 01/2023 regarding developments of management of climate risks, FINMA Guidance 03/2022 on Implementation of climate-related risk disclosures, FINMA Circular 2016/01 "Disclosure – Banks" and FINMA Circular 2016/2 "Disclosure – Insurers".

FINMA Guidance 01/2023

FINMA considers climate-related risks (in form of physical, transitional, legal and reputational risks) not as a separate risk category but as risk drivers for existing risk categories. Therefore, financial institutions have an obligation under already applicable law to identify their climate-related financial risks as part of their normal risk management processes. As all such risks, they have to be adequately managed and disclosed. Whenever possible, financial institutions should use internationally recognized standards. FINMA mainly references the Network for Greening the Financial System (NGFS), the Basel Committee on Banking Supervision (BCBS) and the International Association of Insurance Supervisors (IAIS).

The guidance addresses supervised institutions in general but puts special focus on institutes in supervisory categories 1 and 2. The document was published on 24 January 2023.

FINMA Guidance 03/2022

The largest banks and insurance companies must describe the significant climate-related financial risks, their impact on the business and risk strategy and any effects on existing risk categories based on the two Circulars outlined below.

FINMA had analyzed such disclosures since the first round of publications in 2021 and with this guidance shares its insights, conclusions and areas of improvement with all supervised banks for their consideration. Main areas identified were the form of disclosure, explaining the main features of the governance system, outlining specific impacts on the bank, giving more details on the implemented risk management structures and processes, point out the method of establishing materiality within the risk landscape and adding more quantitative information to the disclosures.

The guidance addresses institutes in supervisory categories 1 and 2. The document was published on 29 November 2022.

FINMA Circular 2016/01

Besides new guidance, FINMA has also amended two Circulars, one for banks and one for insurers. This Circular requires banks to disclose certain minimal information about climate related risks:

- Central characteristics of the governance structure for identifying, assessing, managing, monitoring and reporting climate-related risks;
- Description of the short-, medium- and long-term climate-related risks, their impact on the business and risk strategies as well as on the existing risk categories;
- Risk management structures and processes;
- Criteria and methods for assessing the materiality of climate-related financial risks;
- Quantitative information (key metrics and goals) regarding climate-related financial risks as well as the methods used.

The Circular addresses banks and financial conglomerates; however, climate risk related requirements are only applicable to institutes in supervisory categories 1 and 2. The updated Circular was published in May 2021 and has been in force since 1 July 2021.

FINMA Circular 2016/02

This Circular mirrors the contents of its bank-focused equivalent 2016/01 above and is applicable to insurers and insurance conglomerates.

Future FINMA Circular on Environmental Risk

FINMA is currently drafting a new Circular on nature-related financial risks which will apply to banks and insurance companies. The circular will incorporate international standards as outlined in FINMA Guidance 01/2023. Consultation on a draft version will start in Q1 2024.

Additionally, FINMA has also planned to assess climate risks in the Swiss financial sector. For this purpose, FINMA will undertake a data collection with larger institutions (supervisory category 1 – 3) in 2024 for the first time.

Carbon Emissions Reduction

Federal Act on Climate Protection Goals

2023 saw the adoption of the new Federal Act on Climate Protection Goals, Innovation and Strengthening Energy Security. Although many see this mainly as a new subsidy regime, the law also contains tangible targets for the financial industry. Financial service companies should, if they have not already done so, start to develop a concrete plan how to reduce their Scope 1 and 2 GHG emissions to Net-Zero by 2050. The Confederation will make available a number of subsidies and grants, so companies are advised to stay actively involved and look out for opportunities to make use of this offer. The details of this new regulatory regime will likely be fleshed out over the course of 2024, with the consultation for the respective ordinance expected in Q1. If you are interested to better understand how Swiss companies are affected by the new law, refer to our blog [“Swiss companies need to develop a decarbonization plan”](#).

Investor Protection

FINMA Guidance 05/2021

On the product side FINMA has addressed greenwashing in a guidance released back in 2021. Although the AMAS self-regulation on ESG transparency (mentioned above under Transparency) regulates similar topics, the FINMA guidance is very relevant for all asset managers, due to its official character. FINMA has provided the industry with a number of scenarios which it considers greenwashing. It has also suggested suitable organizational principles for fund managers with ESG products in their portfolio such as sufficient specialist expertise, sound and well documented investment decision making and risk management processes.

SBA's Guidelines on ESG Preferences and ESG risks application starts

The SBA's Guidelines for financial service providers on the integration of ESG-preferences and ESG-risks into investment advice and portfolio management – in short, the SBA Guidelines on ESG integration – cover greenwashing risks at the point of sale. Member institutions of the SBA need to ask their clients for their ESG preferences when engaging in investment advice or portfolio management activities and then reflect those preferences in their services. These guidelines are closely aligned with FINSA and expand on the existing investor protection framework. The self-regulation is already in force and in scope institutions should be prepared to meet the requirements from the beginning of 2024 onwards at the latest.

SBA's Guidelines for Mortgage Providers

Furthermore, the SBA has also set in place guidelines for providers of mortgages to promote energy efficiency. Here, member institutions are mandated to discuss the topic of energy efficiency and what funding options are available with clients. Notably, this only applies to private individuals and when financing an owner-occupied property. The self-regulation is already in force and in scope institutions should be prepared to meet the requirements from the beginning of 2024 onwards at the latest.

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