SUSTAINABILITY

FEB. 2022

Beyond regulatory requirements: How sustainability-related regulations affect Swiss companies – and why they should do more than what is mandated

An article of the Swiss Association of MBAs

CHIARA RINALDI
Author

TOBIAS STALDER
Author

Today's societies face unprecedented global challenges such as climate change or biodiversity loss. Increasingly, stakeholders expect companies to be part of the solution to these global challenges. Along with the increasing expectations on companies to act more sustainably, sustainability-related regulations are sharply increasing in Switzerland and internationally. These regulations directly affect companies located in Switzerland.

Swiss regulations

Following many other countries and most notably the European Union, the Swiss regulator recently introduced two sustainability-related regulations that directly affect companies located in Switzerland.

In November 2020, the Swiss people rejected the responsible business initiative (RBI). As a consequence of this rejection, an indirect counterproposal automatically entered into force[i]. The counterproposal to the RBI includes a **reporting obligation for non-financial matters** as well as an obligation for **due diligence on conflict minerals and child labor**.

[i] Swiss Federation: *Obligationenrecht (Indirekter Gegenvorschlag zur Volksinitiative «Für verantwortungsvolle Unternehmen – zum Schutz von Mensch und Umwelt»)*

The reporting obligation for non-financial matters will apply starting from the reporting year 2023 to any public interest company (PIC) located in Switzerland with more than 500 employees (full-time) and more than CHF 20 million in total assets and/or more than CHF 40 million in turnover. The companies in scope will have to disclose information about environmental and social topics, human rights, and anti-corruption activities on a yearly base.

The obligation for due diligence on conflict minerals and child labor applies to companies that have their registered office or principal place of business in Switzerland and are engaged in the import or processing of conflict minerals in Switzerland or offer products or services which may have been produced or rendered using child labor. It requires the affected companies to have a management system in place to identify and assess such risks, as well as to have a risk management plan with measures to mitigate the identified risks.

In addition to the counterproposal to the RBI, the Swiss Federal Council introduced a climate reporting obligation in summer 2021[i]. The climate reporting obligation for climate related risks applies to the same companies that are subject to the non-financial reporting obligation of the counterproposal to the RBI. For the implementation of the reporting obligation for climate related risks, the Swiss Federal Council mandates the use of the recommendations of the Task Force on Climate Related Financial Disclosures (TCFD).

The TCFD recommendations have been issued by the Financial Stability Board and provide guidance for reporting on impacts of material climate-related risks and opportunities[ii].

EU regulations

Beyond Swiss regulations, various international sustainability-related regulations affect Swiss companies, most notably regulations in the European Union. In particular, the Non-Financial Reporting Directive (NFRD) requires public interest companies with more than 500 employees, banks and insurance companies to disclose information about environmental and social matters, human rights, anti-corruption, bribery and board diversity. Starting from the reporting year 2023, the NFRD will be replaced by the **Corporate Sustainability Reporting Directive** (CSRD)[iii].

For the implementation of the reporting obligation for climate related risks, the Swiss Federal Council mandates the use of the recommendations of the Task Force on Climate Related Financial Disclosures (TCFD).

[i] Swiss Federation: *Federal Council sets parameters for binding climate reporting for large Swiss companies*
[ii] TCFD: *Task Force on Climate-related Financial Disclosures*
[iii] European Commission: *Corporate sustainability reporting*

In comparison to the NFRD, the CSRD will affect any company with more than 250 employees in an EU country and will no longer include a public interest criterion. While the NFRD affected around eleven thousand companies in Europe, the CSRD will increase the number of companies that have to report sustainability matters to more than fifty thousand[i]. The CSRD is expected to affect the subsidiaries of Swiss companies in the European Union that meet the threshold of 250 employees in an EU country.

In addition to the CSRD, the European Union recently introduced several other sustainability-related regulations in the context of the European Green Deal which has the objective of making the EU climate neutral by 2050. On the one hand, the EU taxonomy for sustainable activities requires companies to **disclose green revenues and expenditures**[ii]. The EU taxonomy applies to the same scope of companies that are currently affected by the NFRD. In the years to come, the taxonomy will be expanded to additionally cover social aspects and further environmental aspects and to include smaller companies as well. The **Sustainable Finance Disclosure Regulation** (SFDR) on the other hand requires disclosures related to sustainable investments and sustainability risks at an entity and product level[iii]. Swiss based managers of EU investments are directly affected by the SFDR.

"In comparison to the NFRD, the CSRD will affect any company with more than 250 employees in an EU country and will no longer include a public interest criterion."

COMPANIES SHOULD GO BEYOND THE REGULATORY MINIMUM REQUIREMENTS, AND TAKE THIS AS AN OPPORTUNITY TO CREATE LONG-TERM VALUE FOR A BROAD RANGE OF STAKEHOLDERS

Beyond regulatory requirements

Regulatory pressures related to sustainability topics are increasingly affecting companies located in Switzerland. Despite the increase in sustainability-related regulatory requirements, Swiss companies should not view sustainability as a mere compliance topic. Regulators are just one of a broad range of stakeholder groups with growing expectations on companies' sustainability performance. To be successful in the long-term, companies should go beyond the regulatory minimum requirements, and take this as an opportunity to create long-term value for a broad range of stakeholders, including most notably customers, employees, investors and the broader public.

Chiara Rinaldi
Co-Founder, Sustainaccount

Tobias Stalder
Climate Change and Sustainability Services, EY

[i] EFRAG: *Status report - Five months into the elaboration phase of draft European sustainability reporting standards (ESRS)*
[ii] European Commission: *What is the EU Taxonomy and how will it work in practice?*
[iii] European Commission: *Sustainability-related disclosure in the financial services sector*