SIX Swiss Exchange

Sustainability Handbook

for listed companies

Introduction

Dear readers

In our rapidly changing world, where there is an urgent need to tackle sustainability issues, legislators worldwide are having to get increasingly involved. Regulatory requirements for companies to disclose their sustainability activities and figures are expected to keep growing. Companies should not view this merely as a piece of bureaucracy but, rather, as a transformative journey.

The standards and guidelines on sustainability reporting still vary considerably and constitute a mosaic of different norms. The lack of harmonization makes comparison difficult and confusing for companies and investors. At the same time, companies must communicate comparable key figures in such a way that they meet the needs of all stakeholders.

We want to accompany you on this journey in your capacity as a listed company and support you as effectively as possible with your sustainability reporting activities. We also campaign for the harmonization of standards and guidelines in this field by representing your interests toward standard-setters and regulators wherever possible.

Our Sustainability Handbook contains a selection of specialist articles that are relevant to you as a listed company. These have been written by several sustainability experts. The thematic focus of the articles was chosen to answer questions that have emerged from numerous conversations with company representatives.

We hope you will find this Handbook useful.

Christian Reuss
Head SIX Swiss Exchange

Contents

1.1 Why is Sustainability Relevant for Investor Relations?

What is Sustainability?

In today's markets, sustainability is often referred to by the term ESG, which is short for Environmental, Social and Governance and is widely used to mean any performance criteria other than standard financial and operational metrics. ESG evolved from Corporate Social Responsibility (CSR) values as a way for investors and the companies themselves to measure the outcomes of corporate sustainability efforts. The term ESG has become increasingly challenged, however, as it suggests that each of the three criteria (E, S, and G) can be considered individually and also separately from a company's general organization and activities. ESG also ignores G's particular role as an overarching factor determining how E and S should be embedded in a company's business activities, strategy, corporate culture and, at the most basic level, in its day-to-day operations. This view is widely shared among market participants, as Figure 1 shows.

How Important is Governance for E&S Policies?
SWIPRA Survey 2021

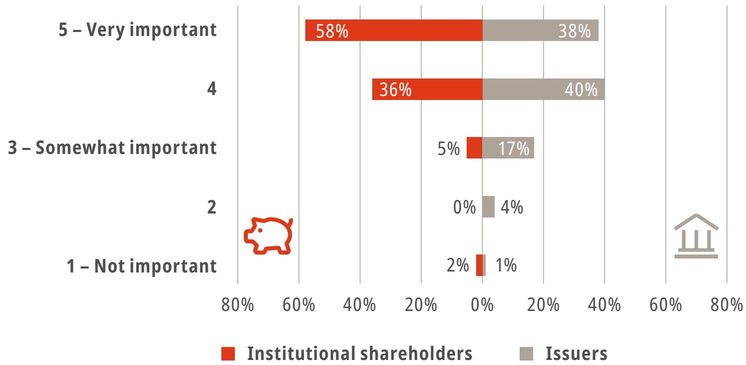

Figure 1: The majority of institutional investors, including the largest equity investor in Switzerland, and listed SPI® companies consider G to be a very important factor for credible E&S strategies (Source: SWIPRA Survey 2021)

So, rather than getting lost in details and confusion by focusing too much on specific frameworks, companies should keep their eye on the main idea at the core of it all, and that is sustainability, or simply put, the aim to generate long-term value for the company and society at large.

Focus

The concept of sustainability in strategy and management is not new. Some of the wording in today's GRI reporting echoes annual reports from 20 years ago, and some concepts date back even further, all the way to the beginnings of economics as a social science. What has changed, though, is the level of awareness and sense of urgency about sustainability issues among politicians and the general public, spurred by climate events such as heavy rainfall, droughts and fast-melting glaciers, and by global societal inequalities driving migration and human rights issues.

For individual businesses, sustainability factors such as climate change may not be felt as a direct hit to their bottom line, but the risks and opportunities these come with will have an impact on their strategic success and reputation.

With society's growing expectations for businesses, companies have become exposed to a broader group of stakeholders. At the same time, these stakeholders increasingly engage directly and indirectly with companies, demanding more sustainable business development and good corporate citizenship (see Figure 2 for an overview of some of the most important stakeholders embracing sustainability).

Besides investors, a company's employees, customers and suppliers also have expectations regarding the sustainability credentials of their business counterparts, not least to ensure they do not run any reputational risk by doing business with the "wrong" partners. The company's supply chain may present reputational risks and issues of its own, such as child labor and political exposure.

Some of these stakeholders, such as NGOs, may have extensive leverage, wielding their influence through social media, activism, and capital providers. The potential negative or positive impacts felt across the value chain are manifold and often hit companies from different, and sometimes rather unexpected, angles.

New Challenges for Investor Relations

Even as stakeholders grow more active and demanding overall, the key focus of Investor Relations (IR) should remain on the company's stakeholders in the capital markets, such as equity and bond investors, and analysts from banks, rating agencies and proxy advisory firms. IR should be aware, though, that sustainability will continue to impact their interactions with stakeholders in two ways:

Sustainability Dialogue

IR has a key role to play in the sustainability and governance discussion. It has become part of the job to ensure investors understand the relevance of a company's sustainability strategy to (i) the company itself, (ii) its stakeholders, and (iii) how it – in particular, its board and management – executes the strategy to ensure a long-term, sustainable business. These expectations substantially extend the role of IR from its traditional focus on results communication, reporting and guidance. More and more, governance and sustainability topics affecting the company's future will be front and center for IR and its interactions with the financial community. Across the largest institutional investors, these topics will increasingly be addressed via two separate, dedicated channels.

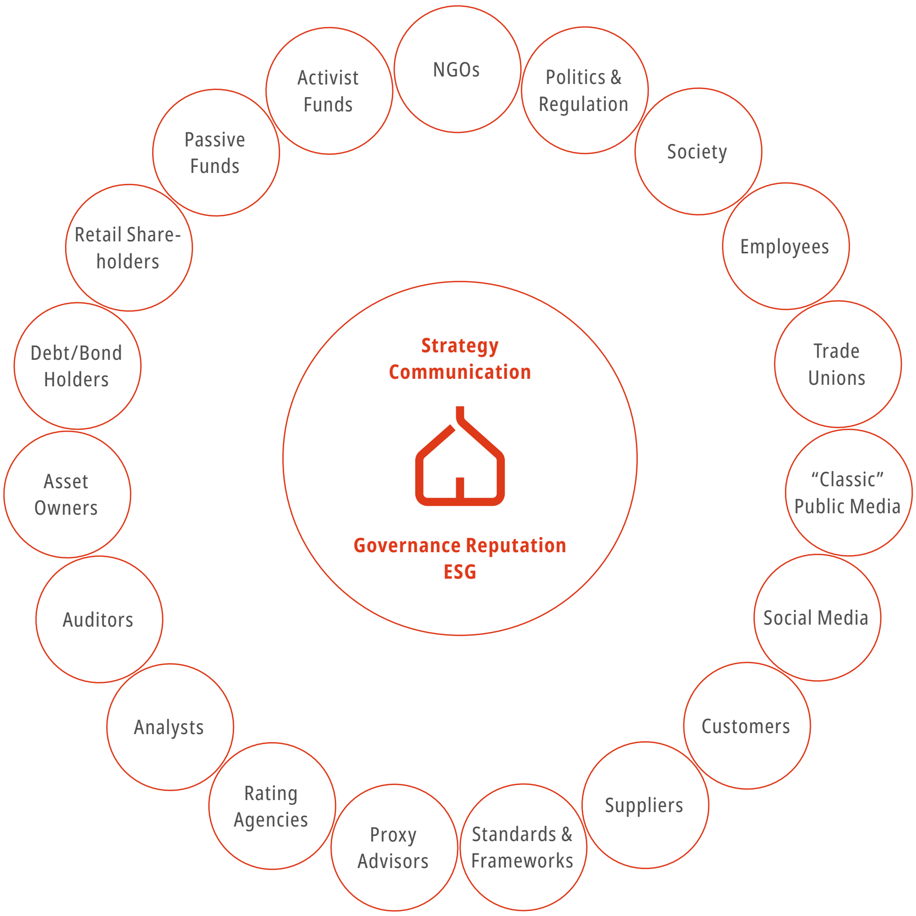

Figure 2: How a company deals with sustainability matters impacts how it is perceived in the market and across a broad set of stakeholders that have become more active in interacting with the company as a consequence of the increased attention on sustainability matters.

The first is the long-established dialogue between the company's executives and financial analysts and portfolio managers following the publication of results, which is short-term in nature. The second is the evolving stewardship dialogue between members of the board of directors (mainly its chair and board committee chairs) and investors' stewardship teams. This dialogue covers a company's business and sustainability strategy and its corporate governance framework. The interaction is process-related and medium- to long-term in nature. Investors' stewardship teams are responsible for AGM voting decisions.

The IR department needs to extend the scope of its activities and develop a stakeholder management strategy in order to guarantee consistent communication across both dialogues. To lead the second dialogue, IR must be aware of the company's key governance and sustainability strategy and their impact on the company's goals and actions.

Stakeholder Impact on Investors

Parts of the stakeholder community are increasingly extending their initiatives into the financial services industry. The same stakeholders who are calling for additional sustainability disclosure and commitments to net-zero carbon pledges and minimum social values from companies are demanding that the financial services industry live up to the same standards. Regulators, for example, are requiring investors to become much more transparent in their sustainability initiatives, a standard they can only meet if they receive the necessary information from companies. Similarly, NGOs apply many of the same reputational channels they use with companies when they approach institutional investors.

Due to its key role for companies, the financial services industry has become a means for other stakeholders to indirectly reinforce expectations on specific sustainability topics (see Figure 3).

Consequently, to better understand, accommodate or even pre-empt requests from the financial services industry, particularly with respect to sustainability, IR should look beyond institutional investors and also seek to understand how the company's key capital providers and analysts, in turn, are influenced by their stakeholders. Operationally, this means being able to cope with new stakeholders, new requirements from various sides, new ESG data, and a whole new industry of service providers and rating agencies.

Role of IR in Sustainability Management

IR has an important role to play in the sustainability and governance discussion. The role has come to include ensuring that investors understand the impact of a company's sustainability strategy on the company itself and its stakeholders, and on how the company – especially its board and management – executes its strategy to generate a long-term, sustainable business. This is part of a joint effort between IR and the corporate communications and public relations teams (see Figure 4).

Due to a significantly broader scope compared to the financial dimension and the broad impact across the entire company, sustainability poses additional challenges:

1) The messaging on sustainability needs to be consistent across all channels, relying on the same data and the same targets and definitions. This includes a close alignment of the financial and sustainability narratives.

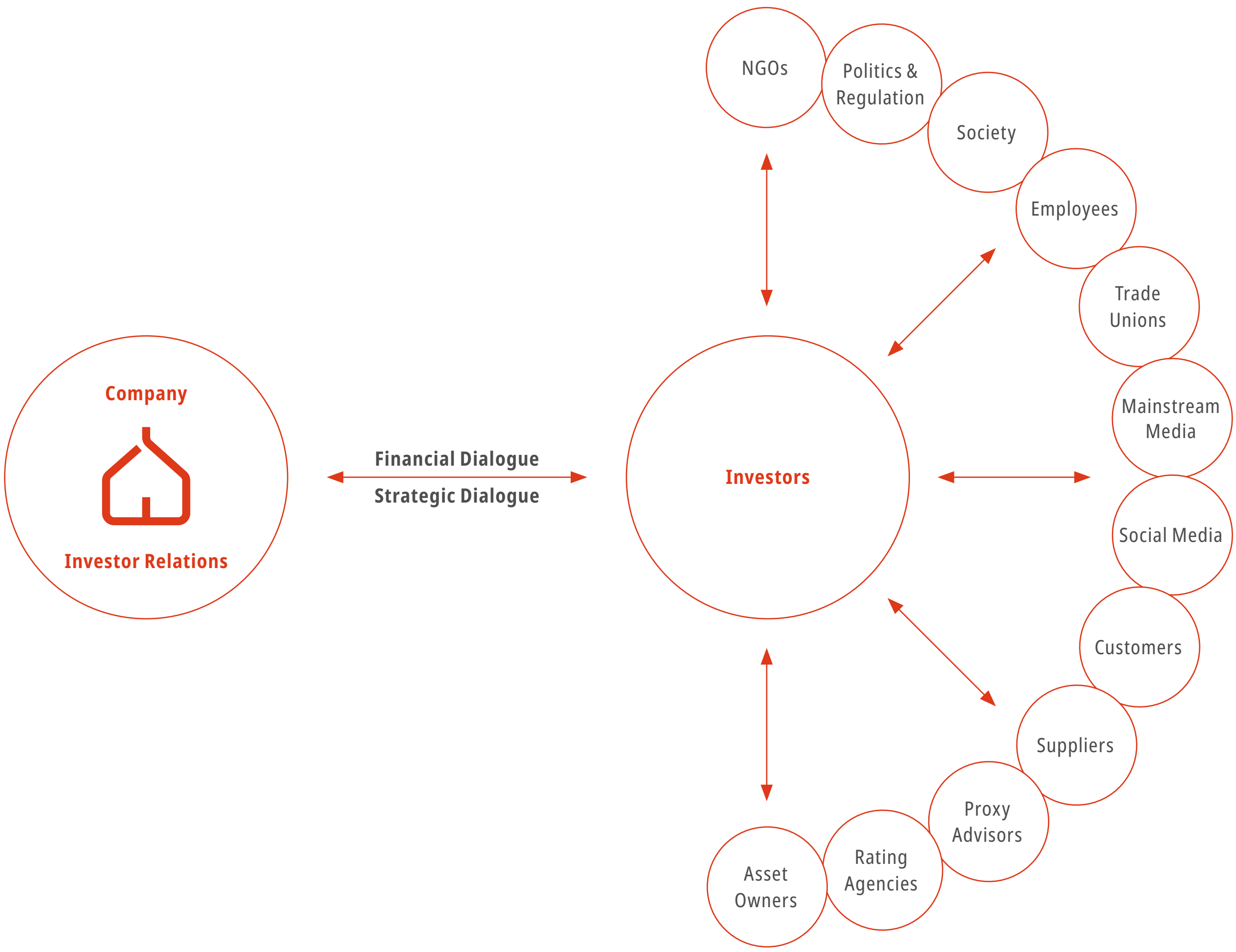

Figure 3: Stakeholders' sustainability expectations are increasingly raised indirectly as well through a company's key stakeholders, its investors. These governance and sustainability topics have made it necessary to extend the existing financial dialogue to include a strategic discussion.

2) Stakeholders have different priorities in sustainability matters and often look for different specific pieces of information. Prioritizing and providing the right information to each key stakeholder, while ensuring consistency with the overall communication (see 1), is the second challenge to overcome.

In transforming from an investor relations into a stakeholder relations unit, IR needs to understand which sustainability topics are relevant for which stakeholders, how different stakeholders influence each other, and how stakeholders can impact the company's reputation.

Being at the center of financial and sustainability communication, IR should also ensure that the board of directors and management are aware of key investor and other stakeholder expectations. This is important for reputational reasons and communication with capital providers.

Figure 4: Sustainability has added an additional layer of information that a company has to communicate. IR should take on an important role in this communication process by ensuring consistency of messaging across stakeholders and across channels.

Concluding Remarks

Sustainability influences not only a company's strategic success but also its internal and external communications. Established short-term-oriented capital markets communication must be complemented with a long-term discussion about sustainability to make the company's sustainability efforts more measurable and decision-makers more accountable. The extended conversation addresses a broader group of company stakeholders, not just investors.

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1.2 Double Materiality Analysis and KPIs

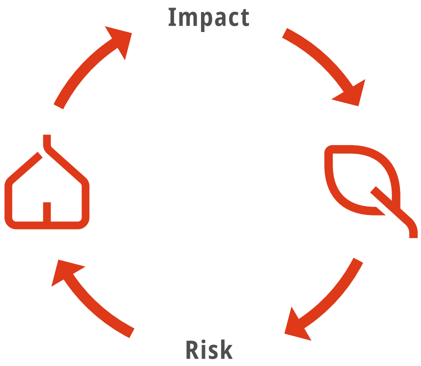
Definition of Materiality Analysis and the Concept of Double Materiality

The **double materiality** principle assesses the material outward impact of a company on the economy, environment, and people, including human rights, as well as the sustainability components that are financially material to the company and its stakeholders.

The double materiality principle was introduced by the European Union in its Non-Financial Reporting Directive (NFRD). For more details, see ➔ Chapter 1.5.

➔ Chapter 1.4 explains that to comply with regulatory requirements in Switzerland, a company's disclosures must fulfill the double materiality principle with effect from the 2023 reporting period.

Impact and Risk in the Concept of Double Materiality



Material topics from both perspectives are defined by each company individually by conducting a materiality and risk analysis.

Process of a Double Materiality Analysis

To start and guide the process of gathering relevant information and defining material topics for the sustainability report, the company needs to appoint a dedicated team. This process can be led or managed internally or, at least in part, delegated to a consultancy. For an efficient and effective process, it is critical for the board and executive management to acknowledge and communicate the strategic importance of this process to fulfill the company's non-financial reporting requirements.

Process of Materiality Analysis

1. Context	2. Impact/Risk	3. Stake-holders	4. Validation	5. Reporting	6. Review
– Regulatory requirements – Market and business model – Supply chain – Stakeholders	– Long list of impacts – Long list of risks – Long list of material topics	– Internal and external stakeholder engagement	– Validate and focus on short list of material topics	– Process description – Matrix presentation	– Review on a regular basis (moving target)

Dedicated sustainability team with strategic relevance

Process Description

The process to produce a materiality matrix or list for the company consists of six steps. These involve the sustainability reporting team as well as internal stakeholders and external stakeholders:

1. Context

The process starts with a context analysis. This includes knowing and understanding the relevant regulatory requirements for the sustainability reporting, understanding the sustainability topics in the relevant markets, and describing the business model, supply chain and stakeholders. These components define what kind of impact the company has, and which stakeholders are or could be affected and thus need to be involved in the process.

2. Impact and Risk

As a next step, a long list of impacts on and exogenous risks to the company needs to be worked out. If grouped in clusters, the list will consist of material topics. It is usually compiled from workshops or surveys involving a group of people from various business units and, often, external stakeholders too. The list will also feature topics that are regularly discussed in reports and documents by the company and its industry peers.

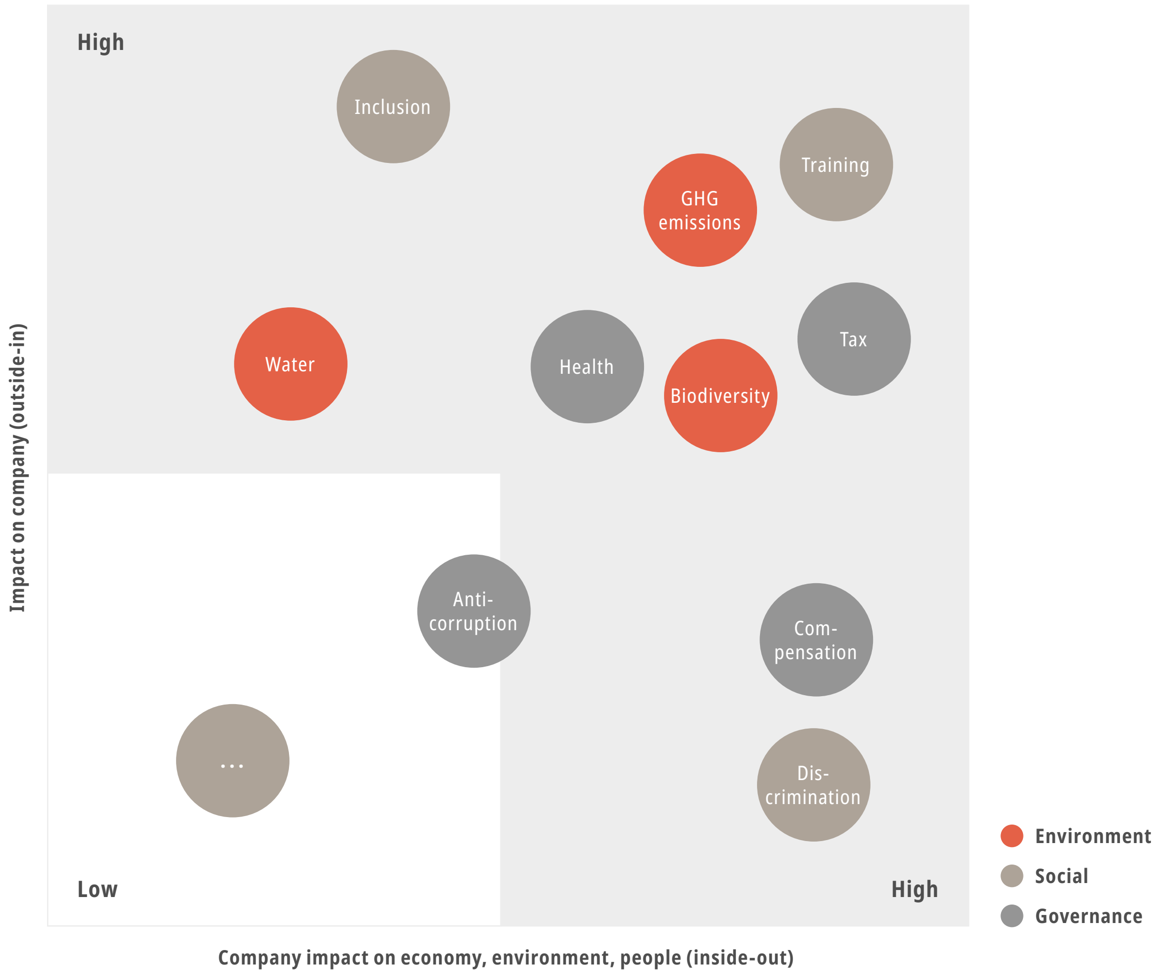
3. Stakeholders

It is important to engage with the stakeholders defined in the context analysis (see step 1) to ensure that any significant impact on the economy, environment and society and any risks are being taken into full consideration – including the outside-in view of external stakeholders. This can take the form of an online survey for stakeholders, or stakeholder focus group discussions, for example. A given topic may become material for the simple reason that a significant share of external stakeholders classifies it as such. Thus, engaging with stakeholders gives the materiality analysis an additional dimension and completes the double materiality matrix or list. The result should be a short list of material topics, including risks ranked according to their importance for the stakeholders and the company.

4. Validation
Once the short list of material topics is assessed, the sustainability team and other specialists in the company, including the board and executive management, will validate it and include their ranking of material topics in the matrix. The outcome of the validation is a double materiality matrix or material topic list (see example below) that is the basis for the sustainability reporting.

5. Reporting
To help stakeholders such as investors, rating agencies, financial analysts, employees, and suppliers understand the process of non-financial reporting and to ensure credibility, the company must describe how the list of material topics was drawn up and how stakeholders were engaged in the process. Additionally, this includes disclosing a double materiality matrix or material topics list that discusses not only the topics but also their ranking and importance for the company and stakeholders and therefore gives a holistic view of the entire process. The process description is itself a reporting requirement.

Example of a Materiality Matrix:



Example of a Materiality List (extract of the impact on people):

Material Topics	Subtopics
People	
Client experience	– Excellence – Above-average performance – Best services
Diversity, equity, inclusion	– Diverse workforce – Fair and inclusive workplace – Equal employment conditions and opportunities
Digital transformation	– Cyber risks – Front-to-back digitalization to deliver a seamless client experience – Technology as differentiator – Digital culture and workspaces – Integrated digital product and service offering – Data management
Talent management	– Employer branding and talent attraction – Employee training – Internal mobility – Management of talent pipeline and succession planning – Talent and leadership development
Workplace culture and environment	– Purpose and cultural framework – Hybrid and flexible work arrangements – Occupational health and well-being – Employee listening and engagement – Volunteering
Compensation and performance management	– Compensation framework – Executive pay – ESG in performance management and compensation – Pay equity

6. Review
Reviewing the material topics on a regular basis ensures accuracy over time. Especially as regulatory requirements and reporting standards change or become relevant to the company, it is important to revalidate the material topics on a yearly basis. A full materiality assessment from step 1 should be run every three to four years or within the regular strategy cycle of the company.

Methods of Stakeholder Engagement

Depending on the nature of its business and markets, there will be many different ways for the company to engage with its stakeholders. One may be running regular online or offline surveys with staff, suppliers and clients, for example. Another may involve meetings and onsite visits with supply chain partners. Or the company may sit down regularly with local authorities and non-governmental organizations (NGOs), interview key stakeholders or focus groups such as major shareholders or an employee association, or it may take some other approach.

Recommendations

- **Planning:** For a successful process, you will do well to kick off your materiality assessment early in the year, ideally six to nine months before the end of the financial year.
- **Strategic relevance:** Make the process of sustainability reporting one of strategic relevance, ensure board and executive management support. At least one member each of the board and the executive management team should be on the steering committee.
- **People:** Assign the tasks to a focused and engaged group of people reporting to the top level.
- **Laws and requirements:** Before you start, know the applicable laws and requirements. They are a moving target and need to be monitored on a regular basis.
- **Interconnection:** Be aware that non-financial and financial reporting interconnect. Negative impacts and risks have the potential to be relevant to sustainability reporting as well as risk reporting in the financial report.

Connecting KPIs and Material Topics

Appropriate and accurate key performance indicators (KPIs) measure the company's material topics over time. Requirements for these KPIs vary from company to company as material topics do. It is best to apply a framework like SMART to define KPIs that will be meaningful and will work over the years. KPIs are SMART if they are specific, measurable, attainable, relevant and time-based. After KPIs are put in place and data gathering can start, these KPIs are combined with goals and measures for comparison reasons over time and for documenting measures taken for improvement.

Example of a KPI scorecard framework for the material topic of personnel safety:

	Material Topic	Strategic Goal	KPI	Target Value 20XY +3	Value 20XY	Measures	Data Source	Owner	Remarks
Environment									
Social	Personnel safety	Provide a safe work environment	Accident frequency rate	0	3	– Employee instructions – Machine improvements – Safety gear improvements	Reporting office HR	XYZ, HR	
			Rating by external control	ABC	XYZ	– Semi-annual external safety control	XYZ	XYZ, HR	
			Number of near misses/ accidents	0	18	– Evaluation of events incl. improvement proposals	Personnel safety feedback channel	XYZ, HR	
Governance									

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1.3 Swiss Law: Overview of Sustainability Requirements

Sustainability requirements are lightly regulated in Swiss law compared to other jurisdictions, particularly the EU. In recent years, however, the Swiss legislature has enacted several ESG provisions to catch up with international developments, especially with the requirements under EU legislation. Indeed, while say-on-pay rules came into effect almost ten years ago, non-financial reporting obligations and due diligence obligations regarding child labor and conflict minerals were not introduced until 2022.

ESG stands for **E**nvironmental, **S**ocial and **G**overnance. It is not a defined term under Swiss law and commonly refers to companies' sustainability reporting (i.e., non-financial reporting in particular) and related due diligence obligations.

The main sustainability rules for Swiss listed companies are laid out in the Swiss Code of Obligations (SR 220; the **CO**). Certain obligations are further detailed in ordinances that accompany the CO.

This chapter gives a very brief high-level overview of the main sustainability duties for listed companies. It outlines say-on-pay rules, diversity requirements for board and executive management appointments, non-financial reporting, and due diligence obligations regarding child labor and conflict minerals. These duties are explained in generic and simplified terms and are not meant to be an exhaustive list.

Say-on-Pay Rules

With the adoption of the constitutional amendment on say-on-pay rules in 2014, Swiss listed companies became subject to a number of additional duties (cf. Articles 732 et seq. CO). As the name already suggests, these say-on-pay rules govern the approval of compensation paid to the members of the board of directors and executive management (and the advisory board, if applicable) of a Swiss listed company. Most Swiss listed companies have chosen a prospective compensation model, whereby board and executive management compensation (fixed and variable components) is approved in advance, in order to have legal certainty on the payments to the members of these bodies. The say-on-pay rules further require the publication of a remuneration report disclosing the payments to members of the board of directors and executive management, which has to be audited. In addition, the rules prohibit certain payments to board and executive management members, such as severance payments, mergers and acquisitions (M&A)-related remuneration, and advance payments if these do not compensate for lost benefits.

Despite the name, the Swiss say-on-pay rules go beyond the mere regulation of payments: They require Swiss listed companies to elect the chairperson and each member of the board of directors every year and to appoint an independent proxy and members of a remuneration committee, also on a yearly basis. Swiss law requires listed companies, among other things, to include provisions on the maximum number of permitted external board mandates and the maximum term and termination period for employment agreements of the members of the board of directors and executive management. Furthermore, the principles of performance-based remuneration for the board of directors and executive management are not valid unless defined in the articles of association (company bylaws); the same rule applies to principles underlying the allocation of equity securities (including equity-linked and option rights relating to equity securities) to the board and executive management. A remuneration committee is mandatory for Swiss listed companies, unlike other committees, such as the audit or nomination committee.

The say-on-pay rules include provisions that criminalize certain conduct, such as any payment of remuneration prohibited under these rules.

Diversity

For listed companies above a certain size, Swiss law requires gender quotas for the board of directors and executive management. Companies fall into the scope of application if they exceed the thresholds set in Article 727 (1) (2) CO, i.e., if in any two consecutive financial years, they meet two of the following three criteria: (i) total assets of more than CHF 20 million; (ii) sales revenue of more than CHF 40 million; (iii) an annual average of more than 250 full-time employees (FTEs).

The quotas for the underrepresented gender (typically women) are 30% for the board of directors and 20% for executive management. If a subject company does not meet either quota, it is required to disclose the reasons for non-compliance in the remuneration report, along with the measures implemented to promote the underrepresented gender. Swiss law is very generous in allowing long transition periods before these gender quotas take effect – until 2026 for the board of directors and 2031 for executive management. However, several proxy advisors expect compliance now already, and non-compliant companies will have to be prepared to make a compelling case, irrespective of the law's timeline.

Sustainability Reporting

Swiss law provides for three different sustainability reporting obligations. The following table gives a high-level overview of the scope of application and the extent of the transparency obligations:

	Reporting	Scope of Applicability	Scope of Reporting
1	Non-financial reporting (Art. 964a-964c CO)	Swiss listed companies exceeding certain size criteria and prudentially supervised companies	Reporting on environmental, social and employee matters, human rights and anti-corruption measures
2	Transparency obligations for commodity firms (Art. 964d-964i CO)	Companies subject to ordinary audits and either directly or indirectly (via controlling interests) active in the extraction of minerals, oil or natural gas or harvesting of timber in primary forests	Reporting on payments (cash or in kind) to governmental agencies with a value of at least CHF 100,000 (by one-off payment or several payments with an aggregate value)
3	Reporting and due diligence obligations regarding child labor and conflict minerals (Art. 964j-964l CO)	In principle, any company with a registered office, head office or principal place of business in Switzerland and in the business of importing, processing or offering products involving conflict minerals or products or services potentially involving child labor; exemption applies to SMEs and companies with low risk exposure	Supply chain policy and supply chain traceability system but no systematic checks of all products or services required

For more details on the above reporting obligations, see → **Chapter 1.4**.

Switzerland's Climate Commitment

On June 18, 2023, Swiss voters accepted the "Federal Act on Climate Protection Targets, Innovation and Strengthening Energy Security". The law formalizes Switzerland's commitment to climate mitigation and adaptation, with three main objectives:

1. Reduction of greenhouse gas emissions and use of negative emission solutions:
The law mandates a net-zero emissions target by 2050, not just by means of compensation but by reducing greenhouse gas (GHG) emissions to a minimum before compensating the remaining emissions using negative emission technologies. This approach emphasizes taking active steps to reduce emissions.

2. Adaptation to the effects of climate change and protection against such effects:
Switzerland is committed to adapting to the challenges of climate change and protecting itself against their effects. This includes measures to prepare for and tackle climate-related effects.

3. Orientation of financial capital flows towards climate-resilient development:
The law aims to orientate financial investments towards low-carbon technologies development and measures to enhance climate resilience. This acknowledges the role of the financial sector in supporting sustainability initiatives.

Supported by the Paris Climate Agreement (2017) and the nationally adopted ordinance on climate disclosures (2022), Switzerland is reinforcing its commitment to climate change action. The law defines specific medium- and long-term targets, and focuses on incentives rather than prohibitions. This development highlights the urgency for companies to develop and strengthen their climate strategy to be in line with the targets set by the Federal Council.

What Does it Mean for Swiss Companies?

Swiss companies are called on to take individual steps:
1. Develop a decarbonization roadmap: Companies (whether listed or not) should develop clear roadmaps for reducing their carbon emissions. This requires an understanding of technical, economic and legal aspects of decarbonization.
2. Take advantage of commercial opportunities: Sectors with defined reduction goals offer commercial opportunities for technologies that support these objectives.
3. There is no time to lose: The law emphasizes rapid action, particularly before 2030, when many support measures enter into force. Companies that act early can benefit from incentive schemes.
4. Take future changes into account: While this law is an important milestone, global and national climate policies are expected to intensify. Swiss companies with international activities should prepare for evolving climate regulations.

To summarize, Switzerland's commitment to climate protection and mitigation is clearly defined. This means that companies have the opportunity and the responsibility to take steps to decarbonize and become more resilient. This chapter underlines that transformative path that Switzerland has embarked upon and the effects on companies that operate in this evolving landscape.

The text on the new Climate Act is a summary of the following text: Swiss companies need to develop a decarbonization plan – KPMG Switzerland

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1.4 Swiss Law: Deep Dive into Articles 964a-l CO

After years of political debate and a referendum on a popular initiative billed as "The Responsible Business Initiative – Protecting human rights and the environment", which Swiss voters rejected, new statutory provisions came into force on January 1, 2022, that introduced non-financial reporting and supply chain due diligence obligations and specific reporting duties for the prevention of child labor and the ethical sourcing of conflict minerals.

The new provisions are part of the Swiss Code of Obligations (CO) and are modeled on the EU Non-Financial Reporting Directive (NFRD), the EU Conflict Minerals Regulation and the Dutch Child Labor Due Diligence Act. The new supply chain due diligence and reporting obligations are further subject to the Ordinance on Due Diligence and Transparency in Relation to Minerals and Metals from Conflict-Affected Areas and Child Labor, or the Swiss Conflict Minerals and Child Labor Ordinance for short, dated December 3, 2021 (DDTrO).

This chapter provides an overview of these reporting and due diligence standards to facilitate issuers' compliance with the new requirements. First reporting in accordance with the new standards will be required in 2024 for the 2023 financial year. The policies underlying these reports will need to be defined and in effect as early as January 1, 2023.

Intentional non-compliance with the reporting duties can result in fines of up to CHF 100,000 (negligence is subject to fines of up to CHF 50,000, pursuant to Article 325ter of the Swiss Criminal Code). Non-compliance with the due diligence obligations is not subject to criminal fines. There are no new statutory provisions as regards civil liability. Also, it is not apparent that the lawmakers intended to introduce special duties of care to enable individuals to bring claims for damages in tort in the event of non-compliance with the due diligence obligations and specific reporting duties. In particular, the duties of care pursuant to Article 964k CO or the policies established under Article 964b CO cannot be used as a protective norm in the case of a pecuniary loss or the violation of absolute legal interests through omission.

1.4.1 Non-Financial Disclosure Pursuant to Articles 964a-c CO

Companies within the Scope of Application

Swiss companies (i.e., companies which have their registered office in Switzerland) are subject to (in scope of) the non-financial reporting duties if they are listed on a Swiss stock exchange or abroad and, combined with their controlled companies in Switzerland and abroad, (i) have an annual average of at least 500 full-time equivalent employees

(FTEs) in two successive financial years, and (ii) exceed in two successive financial years either total assets of CHF 20 million or revenues of CHF 40 million. Foreign companies whose shares are listed on SIX Swiss Exchange (SIX) are not subject to the new reporting obligations pursuant to Articles 964a-c CO.

Swiss companies are exempt from the new non-financial reporting obligations if they are controlled by another company subject to the new regulations, or by a company subject to reporting requirements under foreign law that are considered equivalent to the new Swiss non-financial reporting standard. The CO does not provide any guidance on the relevant equivalency standard. As the Swiss regulations have been modeled on the NFRD, we believe that any reporting required under that standard should be considered equivalent. The same should apply to the new EU Corporate Sustainability Reporting Directive (CSRD), which is expected to replace the NFRD in January 2024. Other foreign reporting standards may also be equivalent, but issuers will need to make a case-by-case analysis.

1.4.2 Content of Annual Non-Financial Reporting

Content Required Pursuant to Articles 964b CO

The non-financial report must cover:
- Environmental matters, particularly the applicable CO_2 goals;
- Social issues;
- Employee-related issues;
- Respect for human rights; and
- Combating corruption.

The report must also contain the information required to understand the business performance, the business result, the state of the undertaking and the effects of its activity on the above non-financial matters. More specifically, the report should include the following:

a) A description of the issuer's business model;
b) A description of the policies pursued in relation to the above matters, including the due diligence standards applied;
c) A presentation of the measures taken to implement these policies and an assessment of the effectiveness of these measures;
d) A description of the main risks related to the matters referred to above and how the company is dealing with these risks; in particular, the report should cover:
   a. Risks that arise from the company's own business operations, and
   b. Where relevant and proportionate, risks that arise from the company's business relationships, products or services.
e) The main performance indicators for the company's activities in relation to the above matters.

Climate Reporting

In relation to climate matters, the regulations in Articles 963a–c CO will be supplemented by a new ordinance of the Federal Council which will enter into force in 2024.[1] The ordinance recommends that issuers report on climate matters (as part of the reporting on environmental matters required under Article 964b para. 1 CO) in accordance with the Recommendations of the Task Force on Climate-related Financial Disclosures (TCFD), the current version of which dates from June 2017, and the annex Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures of October 2021. The initial reports in accordance with TCFD recommendations need to be published in 2025. For the financial year 2023, reporting on climate matters will be governed by Articles 963a–c CO only.

One of the key features of reporting under the ordinance and indirectly under the TCFD recommendations is a requirement for issuers to publicly disclose quantitative information on CO_2 targets and, where applicable, targets for other greenhouse gases and quantitative information regarding all greenhouse gas emissions. Furthermore, issuers are required to disclose their basic assumptions and methods in order to increase comparability among market participants. In line with the requirement under the CSRD, the report on climate matters must be published at least in a human-readable (e.g., pdf) and a machine readable format (e.g., XBRL). Since the report on climate matters is to be included in the non-financial report, the requirement of machine-readable will de facto be extended to the entire non-financial report.

Double Materiality

Reporting must generally follow the double materiality principle: Issuers must provide non-financial information if it is either material to the issuer from a financial perspective, i.e., it influences the value of the issuer (outside-in perspective), *or* it is material from environmental and social perspectives,[2] i.e., it is necessary for an understanding of how the issuer's activities impact people and the environment (inside-out perspective).

Comply or Explain

The new non-financial reporting follows a comply-or-explain approach (Article 964b para. 5 CO): If an issuer does not report on one or more non-financial matters to be reported pursuant to Article 964b para. 1 CO, it is allowed not to report thereon, provided the issuer offers a clear reasoning and explanation for not adopting a particular policy on matters otherwise subject to the non-financial reporting obligations.

Importantly, Article 964b para. 5 CO only provides a comply-or-explain option for the reporting of matters that are being pursued, the measures being taken, and their effectiveness. As such, there is no comply-

[1] Verordnung über die Berichterstattung über Klimabelange (draft), available at www.newsd.admin.ch/newsd/message/attachments/73997.pdf.

[2] BJ (Ed.), Bericht über Transparenz bezüglich nichtfinanzieller Belange und Sorgfaltspflichten und Transparenz bezüglich Mineralien und Metallen aus Konfliktgebieten und Kinderarbeit vom 19. November 2019, p. 13, available at www.parlament.ch/centers/documents/de/bericht-kinderarbeit-bj-2019-11-19-d.pdf (25.11.2021).

or-explain option for the reporting of material non-financial matters in accordance with the double materiality principle, nor is there such an option for reporting the risks and performance indicators on the relevant non-financial matters – both must be addressed in the non-financial report.

Relation to International Disclosure Frameworks

Under Article 964b para. 3 CO, the report may be based on national, European or international reporting standards, particularly, the standards of the Global Reporting Initiative (GRI). At the time of publishing the 4th edition of the handbook, all but one of the SIX-listed Swiss issuers that already publish sustainability reports follow the GRI standard. If a reporting standard does not cover all aspects required under the Swiss non-financial reporting standard, those aspects must be addressed in a supplemental report. If an international standard is applied, then the international standard or the applicable regulations applied must be expressly named in the report.

The Swiss non-financial reporting rules have been modelled on the NFRD. Therefore, the scope of the European and Swiss non-financial reporting regulations should be equivalent. The NFRD will soon be significantly amended by the CSRD. While the Swiss regulations do not expressly refer to the new CSRD standard, we believe compliance with that standard should also satisfy the Swiss standard.

Based on our assessment, using the GRI standard should generally satisfy Swiss statutory standards, but we recommend that issuers conduct a detailed analysis, particularly as the GRI standards gives issuers broad discretion as to how the standard is implemented. Additional disclosure may be necessary in relation to the human rights and anti-corruption topics, where references to the relevant Swiss statutory provisions and the international treaties Switzerland is a party to must be included in the report. Based on their own assessment, the GRI standard provides disclosure requirements largely in line with the TCFD recommended disclosures.

Reporting Format

Article 964b CO does not specify whether the report must be published as a standalone report or whether it can be part of the annual report. According to the legislative materials, reporting should be made in a separate report.[3] A separate report is also possible under the NFRD (cf. Article 19a of the NFRD), but under the CSRD, issuers will be required to include their non-financial report in their annual report. We believe the rules of Articles 964a et seq. CO also permit integrating the non-financial report in the annual report. Given the developments in the EU, we expect there to be a shift over time to the EU standard. Non-EU issuers (including Swiss issuers) with net sales revenue of more than

[3] BJ (Ed.), Bericht über Transparenz bezüglich nichtfinanzieller Belange und Sorgfaltspflichten und Transparenz bezüglich Mineralien und Metallen aus Konfliktgebieten und Kinderarbeit vom 19. November 2019, p. 8, available at www.parlament.ch/centers/documents/de/bericht-kinderarbeit-bj-2019-11-19-d.pdf (25.11.2021).

EUR 150 million in the EU at consolidated level and at least one subsidiary (large or listed) or branch (net sales revenue of more than EUR 40 million) in the EU are required to produce a sustainability report at the consolidated level of the ultimate third-country (meaning non-EU) company. The sustainability reports of the third-country company must be prepared in accordance with a separate EU reporting standard, the standard applicable to EU issuers or a standard deemed equivalent (as per the EU Commission's decision). It is not yet clear whether the Swiss standard pursuant to the rules of Articles 964a et seq. CO will be deemed equivalent. Reporting under CSRD for non-EU issuers is expected to take effect in 2028, with first reporting due in 2029.

Article 964b para. 6 provides that the report may also be published in English (or in any official language of Switzerland). An English-only report is permissible.

Approval by Shareholders

As a practical matter, the report will need to be produced in accordance with the schedule for preparing the annual report and the annual financial statements. The main reason for this schedule is that Article 964c CO requires that the report be approved by the issuer's shareholders. We therefore recommend that the issuer's board of directors approve and recommend the report for approval by shareholders at the meeting at which it also approves the remaining items on the agenda for the annual general meeting.

Shareholders can approve or reject the report, but cannot submit a proposal to amend or change the report. If the vote on the report is negative, this does not have any immediate legal consequences. The board will need to review the reasons for the rejection and then take the appropriate measures in view of the reasons. The board will not be required to resubmit the report for approval. It is sufficient if the board addresses the issues that have led to a negative vote in the next report.

No Audit Requirement

The Swiss non-financial reporting regulations do not require issuers to have an audit firm provide an assurance opinion on the report. This contrasts with the CSRD, under which sustainability reports, including those of third-country companies, will have to be published with an assurance opinion.

Publication of Non-Financial Report

The report must be published electronically immediately upon approval and must remain accessible for at least ten years. Our reading of Article 964c para. 2 no. 1 is that publication is only required after shareholders have approved the report. However, as a practical matter, the report will need to be made available prior to the annual general meeting so that shareholders can vote on the report on an informed basis.

1.4.3 Due Diligence and Transparency Obligations in Connection with Conflict Minerals and Child Labor pursuant to Articles 964j-l CO

Companies within the Scope of Application

The new supply chain due diligence obligations and specific reporting duties regarding the prevention of child labor and the ethical sourcing of conflict minerals, as defined in Articles 964j-l CO, are applicable to companies with a registered office, head office or principal place of business/headquarters in Switzerland that:

a) Import minerals and metals containing tin, tungsten, tantalum or gold from conflict and high-risk areas into Switzerland or process these minerals and metals in Switzerland, or
b) Offer products or services that may reasonably be suspected to have been produced using child labor. Companies must prove that they have carried out the necessary verification to establish whether such suspicion is warranted regarding their products/services.

Entities that would be subject to (in scope of) Articles 964j-l CO include, in addition to a Swiss group, all Swiss direct and indirect subsidiaries of a foreign parent, in each case, however, *only* if they meet the above requirements. Swiss holding companies would generally not be subject to Articles 964j-l CO. Also, the new supply chain due diligence obligations and specific reporting duties *do not* apply on a consolidated basis, i.e., they only apply to the entity within a group that satisfies the relevant criteria.

Companies with their registered office abroad could fall within the scope of the new regulation if their head office or principal place of business is in Switzerland. “Head office” refers to the place where the business management of the company takes place. The “principal place of business/headquarters” is deemed to be the place where there is a recognizable, actual center of business activity.

The new provisions regarding child labor are not limited to an offering of products or services in Switzerland. If a company has its registered office, head office or principal place of business/headquarters in Switzerland and only offers products and/or services abroad, such as through foreign subsidiaries or third-party distributors, then the new provisions on child labor still apply.

Exemptions

Exemptions from the conflict minerals and metals due diligence obligations apply for companies that, on a consolidated basis, do not reach certain import thresholds for conflict minerals and metals. For companies that do reach the threshold but only import or process *recycled* conflict minerals or metals, only limited due diligence obligations apply.[4]

The following are exempted from the child labor due diligence obligations: (i) companies that are considered to have a low risk of exposure to child labor in their supply chains, based on whether they source products from or primarily provide/procure services in countries classified as low risk, i.e., countries in the Basic category of the UNICEF Children's Rights in the Workplace Index, and (ii) small and medium-sized enterprises (SMEs). SMEs are defined as entities that fall below two of the following three criteria (when assessed in conjunction with their controlled entities) for two consecutive financial years:

a) Total assets of CHF 20 million;
b) Sales revenue of CHF 40 million; and
c) An annual average of 250 full-time employees (FTEs).

However, where the risk of child labor involvement is evident, the two exemptions above are not available, regardless of the UNICEF rating and whether the company meets the criteria of an SME. The SME and low-risk exceptions apply only to the child labor due diligence obligations and, as such, an SME that imports minerals from conflict or high-risk areas (at a volume above the import threshold exemption) will still be subject to (in scope of) Articles 964j-l CO. No industry-specific exemptions apply.

There is a more general exemption for companies that comply with equivalent frameworks that are internationally recognized, e.g., the OECD Due Diligence Guidance on Promoting Responsible Supply Chains for Minerals and ILO Conventions Nos. 138 and 182. To qualify for this exemption, companies have to name the relevant international framework in a public report and apply that framework's regulations in their entirety (see Annex 2 to DDTrO), in lieu of Articles 964j et seq. CO.

Due Diligence Obligations

The due diligence obligations defined in Article 964j CO and the DDTrO include:

a) Implementing a management system that, in particular, includes a supply chain policy addressing the matter of (i) possible conflict minerals and/or (ii) products/services potentially involving child labor; and
b) Implementing a supply chain traceability system (conducting onsite checks; seeking information from public authorities, international organizations and civil society; consulting experts and specialist literature; obtaining assurances from economic operators in the supply chain and other business partners, using recognized standards and certification systems);
c) Communicating the supply chain policy to the general public and to suppliers;

[4] See Annex 1 to the DDTrO and Article 12 para. 3 DDTrO.

d) Assessing risks regarding adverse effects relating to conflict minerals or products where there is a risk of child labor in the supply chain;
e) Preparing a risk management plan to address those risks, including risk mitigation measures and establishing a complaints procedure; and
f) Documenting these procedures effectively.

Report on Implementation of Due Diligence Obligations

The new regulations require companies that are subject to the due diligence obligations to annually report on the fulfilment of these due diligence obligations. There is no shareholder approval requirement.

Where a Swiss company is controlled by a legal entity domiciled abroad and this legal entity prepares a report that is equivalent to requirements under Swiss law, the Swiss company will be exempt from that particular reporting requirement. There is no guidance as to what constitutes an equivalent standard. Reporting under the EU Conflict Minerals Regulation would likely qualify. On the other hand, reporting on Form SD under applicable US SEC regulations may not, as the scope of these regulations is geographically much more limited than the worldwide scope of the Swiss regulations.

If a reporting company is required to establish consolidated financial statements, then it must also prepare a consolidated report. Any entity included in a consolidated report is exempt from preparing its own report. As many ultimate group parent companies will be holding companies, the practical effect of this consolidated reporting requirement may be limited. If the group parent company does prepare a consolidated report, even though not required by the statute, we believe the exemption should also apply.

Audit Requirement

According to Article 964k para. 3 CO, compliance with due diligence requirements on conflict minerals and metals must be audited by an independent expert. There is no auditing obligation with regard to compliance with the due diligence obligations on child labor.

According to Article 16 para. 1 DDTrO, the audit must be performed by a licensed audit expert that meets the independence requirements of Article 728 CO. The audit firm does not necessarily have to be the statutory auditor. The audit firm must review whether there are facts from which it can be concluded that the due diligence obligations pursuant to Article 964k para. 1-2 CO have not been complied with (negative assurance; see Article 16 para. 2 DDTrO).

Publication of Report

The report must be published electronically within six months of the end of the financial year and must remain accessible for at least ten years.

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1.5 EU Regulatory Framework on Sustainability Reporting

EU Regularity Framework on Sustainability Reporting
The Non-Financial Reporting Directive **(NFRD)** has been in effect since 2018 and requires large EU companies to disclose information on how they operate and manage social and environmental challenges. Under the NFRD, large companies must publish information related to

- environmental matters,
- social matters and treatment of employees,
- respect for human rights,
- anti-bribery and anti-corruption, and
- diversity on company boards (in terms of age, gender, educational and professional background).

The NFRD introduced a **double materiality perspective:**
While single materiality refers to a reporting approach that merely considers how sustainable elements affect a company's financial value, double materiality also considers the company's own impact on the environment and society as a whole.

It describes a reporting approach that accounts for the implications on a firm's **financial** value and also its **impact** on the world at large, particularly with regard to climate change and other environmental impacts.

The principle therefore builds on both dimensions of sustainability, namely **impact materiality** and **financial materiality** perspectives, both of which are to be applied without ignoring their interactions.

a) **Impact materiality** means sustainability matters that are material in terms of the impacts of the reporting entity's own operations and its value chains.
b) **Financial materiality** means sustainability matters that are financially material for the reporting entity based on evidence that such matters are reasonably likely to affect its value beyond what is already recognized in financial reporting.

Apart from this, the NFRD does not require the use of a non-financial reporting standard or framework, nor does it impose any detailed disclosure requirements. This has led to great reporting flexibility for in-scope companies. However, as a result, investors are not given a truthful picture of the sustainability risks facing the reporting companies.

As investors are becoming more and more dependent on information on how businesses affect society and the environment, mainly to meet their own legal obligations, the provisions of the NFRD have been deemed as no longer fit for purpose and do not ensure the necessary comparability for the matured sustainability landscape.

In this context, the European Commission adopted a proposal for a Corporate Sustainability Reporting Directive (CSRD) in April 2021 which strives to update the existing regulations and harmonize EU initiatives on sustainable finance. Most significantly, it increases comparability and accessibility of information by establishing mandatory EU reporting standards that specify how businesses should report on ESG aspects and their sustainability performance.

Extended Scope

A central element of the proposal is the extension of the scope of the reporting requirements. Under the current NFRD framework, only large public-interest companies in the EU are subject to the obligation of non-financial information disclosure. This includes listed companies as well as banks and insurance companies exceeding the threshold of 500 employees. The CSRD expands the scope of companies by imposing the reporting requirements on the following companies:

- All **listed** companies, regardless of size (including entities established outside the EU but listed on EU regulated markets)
- All **large** companies, regardless of listing (meeting at least two of three criteria: more than 250 employees, more than EUR 40 million in sales revenue, and/or more than EUR 20 million in total assets)
- **Third-country (meaning non-EU) companies** with consolidated net sales revenue of EUR 150 million in the EU and at least one subsidiary or a branch in the EU generating more than EUR 40 million in sales revenue

For (listed) small and medium-sized enterprises (SMEs), the European Commission proposes drafting separate standards that are proportionate to the limited resources of those companies. Listed SMEs have until January 1, 2026 to comply with the reporting requirements but can decide not to provide sustainability reporting until 2028, if they include a justification of its absence in the management report.

The generally extended scope of disclosure accounts for the fact that both retail and institutional investors, such as asset managers, are increasingly dependent on sustainability information. They refer to it to reliably invest according to their individual sustainability preferences or, in the case of asset managers, to meet the increasing requirements under the Sustainable Finance Disclosure Regulation (SFDR).

Mandatory Third-Party Assurance

The CSRD also introduces an EU-wide requirement for independent external assurance on sustainability information to enhance the credibility of the information reported. For the time being, only a limited assurance engagement is required, which provides for less extensive procedures than reasonable assurance. However, reasonable assurance is expected to be required six years after the CSRD enters into force.

Reporting Standards

The mandatory EU sustainability reporting standards are being developed by the European Financial Reporting Advisory Group (EFRAG), which is working closely with organizations that have advanced the cause of sustainability reporting, such as the Global Reporting Initiative

(GRI) and the IFRS Foundation. The EFRAG aims to ensure that the newly developed standards are building on and compatible with leading international initiatives but at the same time also consider EU specifications.

Based on the current drafts, the sustainability reporting architecture consists of *three layers,* namely *sector-agnostic, sector-specific* and *entity-specific standards.* The sector-agnostic standards are divided into cross-cutting standards, which focus on strategy, governance, impacts, risks, and opportunities, and topical standards, which cover a detailed list of sustainability matters in all three dimensions: Environmental, Social and Governance.

In this context, it is worth mentioning the ongoing international movement around sustainability reporting: The International Sustainability Standards Board (ISSB), which published its draft standards on March 31, 2022, aims to contribute to the standardization of climate disclosures at the global level. It remains to be seen how the European standards and the upcoming ISSB standards will complement one another and whether businesses will be required to report in accordance with both standards. Regarding the definition of materiality, however, there may be inconsistencies between the ISSB criteria and the European drafts. The ISSB standards define materiality from a financial standpoint, basing themselves on frameworks like the Sustainability Accounting Standards Board **(SASB)**, whereas the EFRAG follows the principle of double materiality.

Initial efforts are also underway in the United States. On March 21, 2022, the Securities and Exchange Commission **(SEC)** proposed rule changes that would require registered companies to disclose certain climate-related information. The proposal would apply to both domestic and foreign companies registered with the SEC.

Management Report and European Single Access Point

An important factor that will significantly change the current reporting practice is the central location of the required sustainability information in the management report. Under the former NFRD framework, EU member states can allow companies to report outside of the management report, such as within a separate sustainability report. The new proposal removes this option. Thus, the CSRD intends to place sustainability information on an equal footing with financial information to standardize sustainability reporting.

Since non-financial information will be disclosed in the management report, the new directive requires that in-scope companies provide the sustainability information in a digital machine-readable format, meaning an XHTML format following the ESEF Regulation. Furthermore, the directive requires digitally tagging the reported sustainability information to make it easy to find and use. This requirement also helps to create a European single access point (ESAP) for public corporate information, as proposed by the European Commission in November 2021. The goal behind this is to centralize and improve public access to entities' financial and sustainability information through a data platform, in line with the EU's digital finance strategy. Under the proposal, the disclosures according to the CSRD would be submitted to collection bodies, meaning the national authorities or bodies that collect and store information submitted by entities in each country. Once the collection bodies receive the information, it would be forwarded to the ESAP by automated means through a single application programming interface. Data would need to be stored in each of the national collection bodies and with the European Securities and Markets Authority (ESMA) in Paris.[5]

The CSRD within the Sustainable Finance Framework and Taxonomy

The CSRD ensures alignment with other EU initiatives on sustainable finance, the SFDR and the Taxonomy Regulation (Taxonomy), which are the key pillars of the package of measures implementing the EU Action Plan on Sustainable Finance and the EU Green Deal.

By introducing sustainability-related disclosure obligations for financial market participants and advisors, the aim of the SFDR is to provide greater transparency, prevent greenwashing and ensure comparability in the European financial markets. While the first requirements were already introduced in March 2021, further technical standards relating to presentation, the content and the methodologies of the SFDR framework principles will be applicable from the beginning of 2023. The SFDR is highly interconnected with the EU Taxonomy, which introduces additional Taxonomy-related transparency obligations for SFDR funds.

The EU Taxonomy describes a uniform European classification system that calls for a common understanding of “green”, or environmentally sustainable, economic activities under the new reporting requirements in the EU. In this regard, environmentally sustainable economic activities need to:

1. **Substantially contribute** to one of the six defined environmental objectives pursued by the Taxonomy, based on detailed technical screening criteria (in delegated acts);
2. **Not significantly harm** the other five objectives (with criteria and thresholds defined in the delegated acts);
3. Be carried out in compliance with the **minimum safeguards** (including the OECD Guidelines for Multinational Enterprises, the International Labor Organization, etc.).

The Taxonomy Regulation establishes six environmental objectives:

1. Climate change mitigation
2. Climate change adaptation
3. The sustainable use and protection of water and marine resources
4. The transition to a circular economy
5. Pollution prevention and control
6. The protection and restoration of biodiversity and ecosystems

(It is also important to note that the EU intends to complement the existing green taxonomy with a) an additional Environmental Transition Taxonomy for economic activities that do not have a significant impact on environmental sustainability, b) one for economic activities

[5] ESMA will officially establish the ESAP by December 31, 2024. Following its creation, the ESMA will have the task of operating and monitoring the functioning of the ESAP.

that significantly harm environmental sustainability and, most importantly, d) an EU Social Taxonomy for economic activities that contribute to the EU's social objectives, such as decent work along the entire value chain, adequate living standards and wellbeing for end users, and inclusive and sustainable communities. However, because the two new Taxonomies are still in their infancy and there is a lot still to be done, it is unclear whether the EU Commission will move forward on these until the end of this mandate in 2024.)

Under the Taxonomy, companies that fall within the scope of the current NFRD – and the additional companies brought under the scope of the proposed CSRD – are required to report on the extent to which their activities are sustainable. Therefore, the Taxonomy report will be part of the annual CSRD disclosure.

This resulting data will then be made available to banks and asset managers, basically the SFDR scoped entities, enabling them to disclose on the portion of their investments in environmentally sustainable economic activities. This disclosure would be conducted at both the entity level and the funds level: It covers Articles 8 and 9 SFDR funds (excluding Article 6 products) and requires disclosure on how and to what extent the investments underlying these funds are in economic activities that qualify as environmentally sustainable under the Taxonomy Regulation.

Timeline

The application of the CSRD will take place in the following stages:
- January 1, 2024 for companies already subject to the NFRD;
- January 1, 2025 for listed and large companies that are not presently subject to the NFRD;
- January 1, 2026 for listed SMEs, small and non-complex credit institutions and captive insurance companies; and
- January 1, 2028 for third-country companies.

Recommended Key Steps

- **Check if you meet the CSRD reporting requirements.** Companies should conduct a scoping assessment across all their entities at an early stage to clarify which (if any) entities fall under the scope of the regulation and to make the strategic decision on whether to publish the required information at group level or country-by-country.
- **Assess the importance of CSRD reporting data for current/ potential investors and clients.** CSRD reporting data makes for a great support tool for investors, who are increasingly interested in their social and environmental impact. Furthermore, investors and other financial market participants are themselves subject to disclosure obligations under different EU initiatives on sustainable finance, such as the SFDR and Taxonomy. CSRD disclosures provide investors and other financial market participants with the data they need to meet their own reporting obligations. Companies unable to provide the necessary information may find themselves excluded from investment portfolios.

Besides investors, clients – especially those with significant buying power – will increasingly expect their suppliers to commit to ESG goals and publish sustainability information in order to increase their own sustainability footprint in their procurement processes and input to their value chain.

- **Start early.** Although the CSRD is not yet applicable, substantial regulatory changes and challenges regarding the preparation phase as well as the update of the reporting and sustainability strategy are to be expected. As a result, SIX-listed companies need to start preparing for reporting in a timely manner, as they need to compare the data with that of the previous year.
- **Conduct a gap analysis between current reporting information and the new requirements.** This is to help you identify the differences between your current state of reporting versus where you would like to be and what the new CSRD proposal expects.
- **Set up an ESG reporting database** that best suits your company.
- **Check dependencies and quick wins with other applicable reporting standards.**
- **Confirm ESG data sources and address ESG data gaps.** For your sustainability report to be credible, it must be based on reportable, auditable, and high-quality data.
- **Start setting up reporting processes and a robust ESG reporting framework.**
- **Establish ESG reporting governance.** To guarantee its long-term ESG success, your company should provide a clear governance, structure, and accountability system.
- **Ensure greenwashing risk is mitigated.** Greenwashing risks emerge in a variety of risk categories, such as strategic, legal, compliance, and reputational risks. It is therefore important to identify such risks in a timely manner.
- **Align with key investors and finance providers.** Investor perspective is important to identify ESG priorities and the most crucial disclosure areas.

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1.6 How to Approach Disclosure Requirements across Jurisdictions

Revised and Improved Sustainability Disclosure Regulations

Regulations and reporting requirements for sustainability and climate disclosures are rapidly evolving. In Switzerland, the non-financial disclosure requirements are stated in Article 964 SCO and came into force on January 1, 2022, and are applicable as of the 2023 financial year. In Europe, the Corporate Sustainability Reporting Directive (CSRD) takes effect on January 1, 2024. The relevant European Sustainability Reporting Standards (ESRS) first previewed by the European Commission (EC) and the European Financial Reporting Advisory Group (EFRAG) are currently under public consultation. Also published for consultation are the climate disclosure rules by the Securities and Exchange Commission (SEC) in the US and the IFRS S1 and S2 Standards issued by the International Sustainability Standards Board (ISSB). The following three sections describe the envisaged reporting requirements based on geographical scope, the proposed next steps and instances where external support might be beneficial.

Reporting Scenarios Based on Geographical Scope

For SIX-listed companies, various disclosure requirements apply depending on where a company is headquartered and where its operations are, and whether it is also listed on another stock exchange. There are four possible scenarios, as follows:

A) **SIX-listed companies operating in Switzerland:** Most SIX-listed Swiss companies are legally required to report on various non-financial matters. (Chapters ➔ **1.3** and ➔ **1.4** describe the disclosure requirements and the companies in scope.) Similarly, companies not in scope of Article 964 SCO need to be prepared to answer any non-financial information requests from other stakeholders in their supply chains, such as customers or financial institutions like insurers or banks. It is therefore in these companies' best interests to report on material ESG matters identified in their stakeholder materiality assessment.

The GRI is a widely accepted and therefore appropriate disclosure framework to apply as a basis. In addition, the 77 sector-specific disclosure standards presented by SASB can support the company in reporting on material industry-specific topics. Other widely accepted and popular frameworks include the four pillars of the TCFD[6] framework and the four-pillar set of World Economic Forum Stakeholder Capitalism Metrics (WEF SCM).[7]

[6] Recommendations | Task Force on Climate-Related Financial Disclosures (fsb-tcfd.org)
[7] Measuring Stakeholder Capitalism: Towards Common Metrics and Consistent Reporting of Sustainable Value Creation | World Economic Forum (weforum.org)

B) SIX-listed companies operating in the EU: SIX-listed companies operating in the EU may need to comply with the CSRD and apply the ESRS issued by the EFRAG. The CSRD replaces the less stringent NFRD. (➔ **Chapter 1.5** describes the disclosure requirements, the scope of applicability, and which out-of-scope companies should nonetheless meet the disclosure requirements.)

C) SIX-listed companies with dual listing in the US: The SEC released its proposed rules on climate-related disclosure in March 2022. Public companies listed on a US stock exchange will need to comply with these rules once it is published. The rules are expected to be applicable from the 2023 financial year.

D) SIX-listed companies operating in other countries: The ISSB released two exposure drafts (EDs) of proposed standards on general sustainability and climate reporting in March 2022 (IFRS S1 and IFRS S2). The standards are aligned with the TCFD recommendations and intended to encompass and cover wider jurisdictional requirements where IFRS standards have been adopted as generally agreed accounting standards.

Ultimately, it is up to the individual jurisdiction to decide whether to mandate the use of the IFRS S1 and S2 disclosure standards. The UK, for example, has confirmed its adoption of the standards, but the shape and nature of the endorsement is yet to be determined.[8] In the UK, the TCFD is already mandatory[9] for listed companies, banks and insurers with more than 500 employees. Also required to disclose will be UK-based Alternative Investment Market (AIM) companies with 500 or more employees, limited liability partnerships (LLPs) with 500 or more employees and sales revenue of more than GBP 500 million, and non-listed companies with 500 employees or more and sales revenue of more than GBP 500 million.

As the regulatory landscape for non-financial disclosure is currently being shaped in many countries, companies will need to carefully observe what regulations and standards the different countries choose to adopt, whether it will be the CSRD in the EU, the IFRS S1 and S2 of the ISSB, or the SEC's climate disclosure requirements.

[8] UK to adopt ISSB's new international sustainability standards
[9] TCFD mandate

Article 964 SCO – Switzerland

EU	US	Other countries
> 250 / 40 / 20*	Publicly listed	Publicly listed applying IFRS
13 ESRS (CSRD) – EC	**Climate disclosures – SEC**	**IFRS S1 and S2 – ISSB**
Focus – ESG – Industry-tailored	**Focus (investor focused)** – Climate – Common across industries	**Focus (investor focused)** – Sustainability & climate – Industry tailored
Level of implementation – Mandatory for large companies	**Level of implementation** – Mandatory for public companies	**Level of implementation** – Mandated by jurisdictions
Assurance – Mandatory	**Assurance** – Mandatory	**Assurance** – Mandated by jurisdictions
Structure – ESG & cross-cutting	**Structure** – TCFD	**Structure** – TCFD

**> 250 employees, > EUR 40m turnover, > EUR 20m in total assets

Figure 5: Reporting Requirements at a Glance

Proposed Steps to Compliance

In order to manage the various requirements and the varying timelines in a structured manner, companies should first identify under which of the above regulatory requirements they fall due to their geographical scope and what the potential gaps are compared to their current disclosures (regulatory gap assessment). Next, they should perform a materiality analysis, evaluate their data management approach, and establish a robust reporting framework. In a final step, companies should develop the reporting structure, write the report, and obtain external assurance. It is common to report on all sustainability matters in one sustainability report, or cover all matters in the integrated report.

Getting it Right from the Start

Given the immense speed at which regulatory requirements are evolving, a structured and comprehensive approach from the start is necessary to minimize the implementation costs of additional disclosure requirements that the future will likely bring.

External specialists can support companies when the necessary expertise is not readily available in-house. This may lead to reduced costs and less effort in the long run, while providing a solid foundation for efficient and continuous stakeholder management.

Gap Assessment

Companies should ensure that they stay up-to-date on the latest regulatory changes. If choosing to centralize sustainability reporting in its group report, a group should ascertain that the global report covers regional differences, including variations in material topics. If many differing local requirements need to be monitored, external support may be beneficial and more efficient to ensure compliance.

Materiality

Every company should perform a materiality analysis to identify and define material sustainability topics. The assessment should describe topics that reflect the company's significant impact on the environment and society, and sustainability topics that create or erode enterprise value and are therefore financially material. The ESRS in the EU will require disclosure on this double materiality concept, and companies should plan and execute a structured process of identifying industry and benchmark-specific topics and independently interviewing stakeholders.

(For more details on how to conduct a materiality analysis, see ➔ **Chapter 1.2**.)

Data

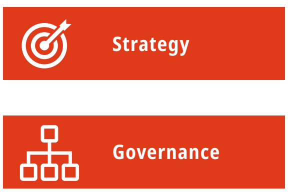
Data management and data quality should be a top priority. To ensure transparency, data completeness and integrity are key. Reporting on Scope 1, 2 and 3 greenhouse gas emissions, for example, requires access to accurate and complete data, including an understanding of emission sources and emission calculation methodology.

Reporting

The reporting process requires timely planning and an appropriate governance framework. Robust processes and controls over non-financial reporting are critical to ensure materially correct disclosures. Companies should ensure that adequate resources are available for the company reporting cycle and that processes and controls are ready for external scrutiny. This especially applies when managing new regulatory requirements on a busy schedule.

Assurance

Assurance of sustainability disclosures is mandatory for large companies operating within the EU and for public companies in the US, according to the CSRD and the SEC. Third-party assurance increases credibility and supports longstanding trust among companies, stakeholders, and the capital markets.



All company decisions and tasks related to sustainability reporting should be aligned with the company strategy and supported by a sound governance model – including top-level support and committed resources. The intention of the regulations is to create transparency of the impact of ESG topics, to incentivize resilient business models and to enable a viable transition toward a sustainable economy. ESG reporting is no longer a nice-to-have, but a must-have, in order to survive and succeed.

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1.7 Greenwashing from a Legal Perspective

What is the Problem?

Listed companies in particular can no longer keep silent on the subject of sustainability. When they speak about it, however, they expose themselves to the general suspicion of greenwashing. At the same time, numerous studies show that only a fraction of the companies and investments referred to as sustainable today actually meet the sustainability standards applied. Greenwashing affects not just marketing but the entire value chain – from senior management to operations to the financial and product markets.

The reputational and legal risks faced by public companies are exacerbated by the fact that the definition of "greenwashing" is just as open to interpretation as that of "sustainability", the concentration of sustainability-related standards and regulations is increasing exponentially and the data situation is notoriously difficult. Finally, regulators the world over – especially in the EU [1] and also in Switzerland [2] – have declared war on greenwashing in order to channel capital flows into sustainable activities and boost trust among investors.

The following sections explain (1) the key parameters that emerge for a definition of greenwashing (2), the legal risks (3) and the resulting prevention measures for public companies in Switzerland (4), and finally summarize the results.

Key Parameters for Defining Greenwashing

1. Key Parameters of FINMA's Greenwashing Prevention Practice for Funds

At present, the only specific government regulation in Switzerland against greenwashing can be found in the practice of the Swiss Financial Market Supervisory Authority (FINMA) for approving and supervising collective investment schemes. It is based, among other things, on the ban on deception with regard to collective investment schemes (Art. 12 of the Collective Investment Schemes Act). The key parameters of FINMA's fund supervision practice also provide a reference point for other areas.

FINMA takes into account any reference to sustainability. Such a reference is always deemed to exist if "investors or clients might get the impression that sustainability is an essential characteristic of the financial product." This is the case when terms like "green", "environmentally friendly" or "ESG" are used, for example. Given the wide

[1] See EU Taxonomy Regulation (EU) 2020/852, Considerations 8, 9, 11.
[2] Swiss Federal Council, "Position on the prevention of greenwashing in the financial sector" of December 16, 2023, p. 1.

range of definitions, FINMA leaves the precise meaning of the term "sustainability" open.

In relation to greenwashing, FINMA refers to the "risk that investors and clients will be consciously or unconsciously misled about the sustainable characteristics of financial products and services."[3] In other words, greenwashing does not have to be deliberate.

FINMA primarily assumes that greenwashing is occurring in the following cases, if there is a reference to sustainability in the aforementioned sense:[4]

- In reality, no sustainable strategy is actually pursued.
- A stated sustainability approach (e.g., best-in-class, integration of ESG criteria, stewardship) is not implemented.
- Some activities are inconsistent with the stated sustainability approach.
- The strategy only excludes sustainability risks. This corresponds to the self-regulation of the Asset Management Association Switzerland (AMAS), under which the application of purely exclusionary criteria and the mere integration of ESG considerations cannot per se be regarded as sustainable.[5]
- Terms like "impact" or "zero carbon" are used "without the stated impact or savings being capable of being measured or verified." In most cases, FINMA currently takes the view that statements like "net zero" or "impact with active ownership" are not measurable.
- There may be a strategy and this strategy may be implemented, but "investors are not able to gain an impression of how sustainability is taken into account due to the lack of detail or transparency." FINMA also mentions inadequate retrospective reporting on implementation in this context.

Where collective investment schemes include a reference to sustainability, FINMA imposes certain requirements – (i) disclosure: the documentation should enable investors to make an informed investment decision; (ii) organization: integration of the strategy into the processes, definition of sustainability strategy by the board of directors, guarantee of specialist expertise at all levels of the organization, data management, risk management; and (iii) marketing as well as advice at the point of sale.[6]

In this way, the Financial Market Supervisory Authority is establishing a standard for greenwashing prevention.

[3] FINMA Guidance 05/2021, "Preventing and combating greenwashing" of November 3, 2021, p. 1 with footnote 1, p. 3
[4] See FINMA Guidance 05/2021, p. 4 f.
[5] AMAS, "Self-regulation on transparency and disclosure for sustainability-related collective assets" of September 26, 2022, p. 6.
[6] FINMA Guidance 05/2021, S. 3 et seq.

2. The Federal Council's Key Parameters for Greenwashing Regulation
The Swiss Federal Council has defined the following requirements for future regulation of greenwashing in the financial sector/a corresponding self-regulation:[7]

- For the Federal Council, "Greenwashing occurs in the financial sector when, for example, a financial instrument or service is portrayed as having sustainable characteristics or pursuing sustainability goals and this portrayal does not adequately reflect reality." Accordingly, the mere "appearance" of sustainability is sufficient. What matters is that the appearance differs from the actual business practices. With the words "for example", the Federal Council reserves the right to define the term "greenwashing" even more broadly.
- Financial products or services portrayed as sustainable must either align with one or more sustainability goals, specifically the 17 Sustainable Development Goals ("SDG") in the UN 2030 Agenda for Sustainable Development (e.g., by investing in companies with transition plans that are aligned with the Paris Agreement) or contribute to achieving one or more such sustainability goals (e.g., by means of impact investment or active ownership).
- As in the FINMA practice and the AMAS self-regulation, an approach that is aimed solely at reducing ESG risks for the investment or optimizing financial performance may not be described as sustainable.

The Federal Council also stipulates: (i) an obligation to provide a detailed description of the sustainability approaches used, their implementation and the key performance indicators for measuring them; (ii) periodic reporting using relevant indicators (the Federal Council recommends the climate label Swiss Climate Scores for funds); (iii) verification by independent third parties; and (iv) the legally binding nature and enforceability of the obligations.

In contrast to the EU regulations, the Federal Council relies on principle-based regulation rather than an official definition of what qualifies as sustainable. However, the announced anti-greenwashing regulation was then shelved until August 2024 in favor of a self-regulation drafted by the financial industry.[8] It will be interesting to see what the outcome is. AMAS already has rules on disclosure,[9] and the Swiss Bankers Association has issued guidelines on integrating sustainability preferences into investment advice and portfolio management.[10]

[7] See Swiss Federal Council, "Position on the prevention of greenwashing in the financial sector" of December 16, 2023, p. 1, 3 et seq.
[8] "Further efforts to prevent greenwashing", Federal Council press release of October 25, 2023.
[9] See footnote 6 above; also AMAS, Recommendations on Minimum Requirements and Transparency for Sustainable Investment Approaches and Products of December 2021.
[10] SBA, "Guidelines for the financial service providers on the integration of ESG-preferences and ESG-risks into investment advice and portfolio management" of July 2022.

3. Key Parameters of the EU Greenwashing Regulations

The Swiss approaches do not exist in a vacuum. They are being developed against a backdrop of extensive EU regulations that are also important for Swiss companies engaging in cross-border activities.

Specific regulations aimed at combating greenwashing are the Sustainable Finance Disclosure Regulation (EU) 2019/2088 **("SFDR")** for funds, the Taxonomy Regulation (EU) 2020/852, which defines sustainability for the purposes of the SFDR and the Corporate Sustainability Reporting Directive (CSRD), and the revised Regulatory Technical Standard **("RTS")** on the Markets in Financial Instruments Directive MiFID II.[11] The following key parameters for the definition of greenwashing can be derived from these regulations:

- EU Taxonomy defines greenwashing as *"the practice of gaining an unfair competitive advantage by marketing a financial product as environmentally friendly, when in fact basic environmental standards have not been met."*[12] With this definition, it creates a link to the combating of unfair competition and judges general environmental claims according to "basic" environmental standards.
- When they use the term *"marketing",* the RTS on the SFDR (in relation to funds) and the revised RTS on MiFID II[13] (in relation to financial instruments in general) mean in particular the *"recommendation"* of a financial product and expand the definition to include other sustainability standards in addition to environmental ones.[14]
- The EU Sustainable Finance Strategy also includes *"unsubstantiated sustainability claims"* with regard to products, activities and policies under the term "greenwashing".[15] FINMA has adopted the practice of qualifying unverifiable sustainability claims as greenwashing from the EU Regulation.
- The EC SFDR Q&A also includes the following activities: *"Conveying a false impression, or providing misleading information about how a financial product is performing in terms of ESG sustainability."*[16] The definition is thus expanded to include the mere impression of sustainability, which was adopted by the Federal Council. It also encompasses retrospective reporting on performance and goes further than the EU Taxonomy Regulation, taking the broad field of international ESG standards as a benchmark.
- An investment instrument may only be marketed as sustainable if it invests in a sustainable economic activity for the purpose of achieving an environmental objective (*"dark green"*, Art. 2(17) and Art. 9 SFDR). An economic activity is classified as sustainable if it contributes to a defined environmental or social sustainability objective and does not significantly harm any of the other sustainability objectives. The economic activity must also follow good governance practices (including compliance with tax regulations).[17] It must also

[11] See Tadas Zukas/Uwe Trafkowski, Sustainable Finance: The Regulatory Concept of Greenwashing under EU Law, EuZ 02/2022, C 2 et seq.
[12] EU Taxonomy Regulation (EU) 2020/852, Consideration 11.
[13] RTS on MiFID II Delegated Regulation (EU) 2021/1253.
[14] RTS on SFDR Delegated Regulation (EU) 2022/1288, Consideration 16.
[15] COM (2021) 390, July 6, 2021, 3 footnote 11.
[16] SFDR EC Q&A 7/2021, 7.
[17] Art. 2(17) SFDR.

implement minimum social safeguards in accordance with the OECD Guidelines for Multinational Enterprises, the ILO Declaration and the UN International Bill of Human Rights in order to adhere to the principle of doing no significant harm.[18] In contrast to the Federal Council's approach, a purely environmental sustainability claim that does not involve corporate governance and social sustainability at all or harms another sustainability objective may not be described as sustainable.
- If the sustainability of an investment or economic activity is not being promoted but merely environmental or socially sustainable characteristics of a financial product alongside other characteristics (*"light green"*), it must be disclosed how these sustainable characteristics are met and that the companies being invested in follow good governance practices (Art. 8 SFDR). If the Federal Council's definition of sustainability does not make reference to good governance practices, it is also incompatible with the EU approach.
- The mere avoidance of sustainability risks in the investment may not be described as sustainable. There is now consensus on this point in Switzerland, too.
- The EU Taxonomy Regulation and numerous delegated regulations/RTSs define in detail which economic activities may be described as environmentally sustainable. This is where the greatest difference can be found to the Swiss approach, which aims for principle-based regulation and has most recently focused on self-regulation.
- Finally, there is also a draft regulation on sustainability claims and greenwashing outside the financial sector (the Green Claims Directive) and a proposal for an EU Ecolabel for financial instruments.

Legal Risks

1. Greenwashing in the Context of Sustainability Reporting Under the Swiss Code of Obligations and the SIX Regulations

Sustainability-related disclosure obligations initially aim to combat greenwashing by standardizing communications and making them comparable and ensuring data reliability.[19] As mentioned in ➔ **chapter 1.4**, large Swiss companies that have listed shares or bonds on a stock exchange in Switzerland or elsewhere are subject to a general reporting requirement with regard to environmental issues in accordance with Art. 964a et seq. of the Swiss Code of Obligations **("CO")** and on climate-related issues in particular in accordance with the Climate Reporting Ordinance.

By law, the board of directors is responsible for reporting. Responsible people who deliberately or negligently report incorrect information or fail to provide the necessary reports face prosecution (Art. 325ter Swiss Criminal Code (StGB)).

[18] Art. 18(1) and (2) EU Taxonomy.
[19] See the EU Corporate Sustainable Reporting Directive ("CSRD") (EU) 2022/2464, Consideration 13; EU Taxonomy Regulation (EU) 2020/852, Consideration 20.

Although foreign companies listed on the SIX Swiss Exchange **("SIX")** are not subject to the Swiss Code of Obligations, Art. 7a of the SIX Directive on Information relating to Corporate Governance obligates them to provide similar information in their annual corporate governance report, provided that they do not issue an equivalent report under foreign law. Breaches of this rule are sanctioned by SIX Exchange Regulation, the regulatory arm of SIX. Potential penalties include fines of up to CHF 10 million, or up to CHF 1 million in the event of negligence, suspension of trading and, in extreme cases, de-listing. A non-anonymized press release on the process will be published in all cases *("naming and shaming")*.

Companies listed on SIX can voluntarily notify SIX that they have opted in to sustainability reporting systems under an internationally recognized standard (e.g., SASB or GRI).[20] As a result, they will be added to the list of reporting companies on the SIX website, where their reports will also be linked, and will become subject to supervision by SIX with regard to their compliance with the relevant reporting requirements.

2. Greenwashing as Unfair Competition and Fraud

According to the Swiss Federal Act on Unfair Competition **("UCA")**, it is unfair to provide false information for oneself or others about, for instance, a company, product, service or business relationship (Art. 3 b UCA).

Fraudulent concealment of, among other things, the properties, benefit or hazardous nature of goods or services also qualifies as unfair (Art. 3 i UCA).

As part of "the CO_2 law for the period after 2024", Parliament is currently considering an addition to the UCA according to which the following will also be deemed unfair in the future: *"Statements about oneself or one's goods, work or services in relation to the impact they have on the environment [...], which cannot be substantiated according to objective, verifiable principles."* (Art. 3 para. 1 x E-UCA). This corresponds to the definition of greenwashing used by the EU and FINMA.

If greenwashing involves the provision of incorrect information or fraudulent concealment, it can be subject to prosecution (Art. 23 UCA) and lead to civil action for cessation and desistance or removal or compensation claims (Art. 9 UCA). Criminal charges and civil action may be brought by consumers, competitors and the State Secretariat for Economic Affairs **("SECO")**.

The SECO takes action in particular in response to notifications from consumer protection organizations and the public prosecutor's office. Various initiatives related to greenwashing are already pending with the SECO. The decisive factor in criminal proceedings is whether statements of fact were made that can be proven to be false. Deviations from sustainability standards can play a role here. A further requirement is that of "dolus eventualis", i.e., that the risk of deception was at least accepted.

[20] Art. 9 Six Directive on Information relating to Corporate Governance

In extreme cases, deliberate greenwashing may ultimately qualify as fraud under criminal law. For this to be the case, a person must have willfully prejudiced another's financial interests by false pretenses or concealment of the truth with a view to securing an unlawful gain for himself or herself (Art. 146 StGB). It is entirely conceivable that financial losses may occur due to greenwashing, especially on the capital market. An action is assumed to be "willful" if a lie is hardly verifiable or is based on false evidence such as scientific studies or certificates.

3. Practice of the Swiss Commission for Fairness
As a self-regulatory organization run by the communication industry, the Swiss Commission for Fairness *(Schweizerische Lauterkeitskommission)* assesses complaints relating to unfair competition. Its decisions, which it publishes and which regularly attract considerable media attention, are recommendations rather than binding rulings. In general, however, companies implement them immediately. If the Commission assesses a piece of advertising as being unfair, this entails reputational risks and – because the Commission makes reference to the Swiss Federal Act on Unfair Competition (UCA) – can also be a starting point for civil, criminal or supervisory proceedings.

The standards and practice of the Commission for Fairness contain a wealth of information. In its evaluations, the Commission relies both on its own principles of "fairness in commercial marketing", which are derived from the UCA, and on section D, "Environmental Claims in Marketing Communications", of the Advertising and Marketing Communications Code of the International Chamber of Commerce (ICC).

Art. D1 of the ICC Code prohibits misleading environmental claims or visual depictions of products or activities. The following in particular are prohibited:

i. Overstatement
ii. Misleading use of statistics
iii. The implication that individual environmental aspects extend to the whole product or company
iv. Insufficient clarity regarding what an environmental claim relates to
v. Naming environmental aspects that do not exist, are not relevant for the product or are not likely to apply for the entirety of the product's life
vi. Making non-specific environmental claims if they are not generally valid
vii. Claiming that a product or activity has no environmental impact or only a positive impact unless a very high standard of proof is available
viii. Claiming to have accomplished sustainability objectives if there are no definitive, generally accepted methods for measuring or implementing them
ix. Pursuant to Art. D2: using environmental jargon or referring to scientific findings related to the environment inappropriately, without reliable scientific evidence or in a way that cannot be readily understood by the intended audience

In Art. D2–D7, the ICC Code contains additional, specific regulations and also refers to ISO 14021 on “Self-declared environmental claims” and the ICC Framework for Responsible Environmental Marketing Communications with further examples, definitions of common terms and a check list of environmental claims. Public companies should take these regulations into account when formulating internal policies.

The Swiss Consumer Protection Foundation *(Stiftung für Konsumentenschutz)* recently submitted numerous complaints about greenwashing, in some cases involving well-known companies, to the Commission for Fairness. The Commission has already qualified sustainability-related marketing as unfair in a number of cases. In individual cases, the Consumer Protection Foundation simultaneously submitted a request to the SECO to file criminal charges with the responsible public prosecutor’s office.

4. Greenwashing as Price-Sensitive Information – Ad Hoc Publicity, Insider Trading Law, Market Manipulation

Sustainability claims and, above all, scandals involving potential greenwashing can influence investors’ investment decisions and thus have an impact on market prices. As non-public, significant, price-sensitive information, they are subject to the ad hoc publicity requirement defined in Art. 53 of the SIX Listing Rules **(“LR”)** and must be disclosed to the market immediately via the prescribed channels.

Examples of price-sensitive information might include the internal issue of a new sustainability strategy with far-reaching consequences for the company, the failure to achieve a key sustainability objective, or the discovery of greenwashing within the company or by the most important contractual partner. SIX has already sanctioned the announcement at a media conference of a new strategy that was not being seriously pursued as a breach of ad hoc publicity obligations. Delayed publication or selective notification of relevant information to individual investors or in an interview also violates ad hoc publicity requirements. The possibility to postpone disclosure permitted in Art.54 LR is likely to be unavailable in such cases.

A failure to provide factual, clear and complete information in the ad hoc announcement as stipulated in Art. 15 para. 2 of the Guideline of SIX on Ad Hoc Publicity, i.e., if the ad hoc announcement itself constitutes greenwashing, would also be a breach of the ad hoc publicity requirement.

If the ad hoc publicity obligation has been contravened, SIX Exchange Regulation can impose the sanctions mentioned above in section 2.

Insider trading law prohibits significant, price-sensitive, non-public, sustainability-related information or information on potential greenwashing from being passed on or exploited for transactions with shares or derivatives (Art. 142 and 154 of the Financial Market Infrastructure Act, **“FinMIA”**).

Furthermore, sustainability claims that give false signals to the capital market can, in certain circumstances, constitute market manipulation, which is penalized under supervision law, or price manipulation, which is prosecuted under criminal law (Art. 143 and 155 FinMIA).

In cases involving a breach of insider trading law or violation of the ban on market manipulation, FINMA can impose various sanctions including issuing a declaratory ruling, publishing such a ruling and confiscating any profits. In cases of intent or where there is a desire to gain a pecuniary advantage, the Office of the Attorney General may initiate criminal proceedings, which can lead to either custodial sentences or monetary penalties (Art. 154 and 155 FinMIA).

5. Prospectus Liability and Marketing Regulation Under Financial Market Law

The provision of false sustainability-related information or the withholding of sustainability-related facts in a prospectus for a public offer of securities or for their admission to trading or in a key information document on certain financial instruments may trigger prospectus liability if it leads to a loss on an investment (Art. 69 of the Financial Services Act, **"FinSA"**). Willful provision of false information or the withholding of material facts in a prospectus are subject to prosecution under criminal law (Art. 90 para. 1 a. FinSA).

Sustainability claims in the investor information must correspond to the details in a published prospectus or a key information document supplied (Art. 68 para. 3 FinSA). FINMA can penalize breaches of this rule by supervised financial institutions under supervision law. For other market participants, a violation of this principle can have consequences under civil law, which are not discussed in further detail here.[21]

6. Liability of the Company, the Board of Directors and Senior Management

The company, the board of directors and senior management can all be held accountable for greenwashing under various titles *(climate litigation),* such as in the form of liability for unfair competition (Art. 9 para. 3 UCA). There are further liability risks outside of Switzerland. One that can be singled out is responsibility under company law.

If a false or misleading sustainability-related communication is attributable to a breach of corporate responsibilities on the part of the board of directors or senior management, the members of these bodies risk being held personally liable (Art. 754 et seq. CO).[22] In addition to general due diligence requirements, this may also constitute of breach of the duties of overall management, overall supervision, organization, risk controlling or reporting (Art. 716a, 717, 964c para. 1 CO). Claiming the pursuit of sustainability objectives or compliance with internal

[21] See Daniel Dedeyan, comm. on Art. 68 FinSA N 54 et seq., 62 et seq., in: Rolf Sethe et al. (publishers), comments on the FinSA, Zurich 2021.
[22] For more details, see Daniel Dedeyan, "Haftung für fehlerhafte Unternehmenskommunikation: Neue Risiken im Zuge der Nachhaltigkeitsregulierung", in: Peter R. Isler/Rolf Sethe, "Managerhaftung bei Unternehmenszusammenbrüchen", Zurich 2023, p. 67 et seq.

processes that are not really implemented is likely to indicate a breach of the duty of due diligence on a regular basis. The usual judicial protection of the business judgment rule is hardly likely to safeguard against liability, especially with breaches of disclosure obligations.

However, not every false statement in marketing materials or a report constitutes a relevant breach of corporate responsibilities under liability law. Liability then constitutes damage to the company or, as is more typical with greenwashing, to the shareholders, such as in the form of later price losses, and at least minor negligence. The hurdles for lawsuits may be high, but the process risks are likely to increase as public pressure intensifies and sustainability standards are established. Suitable prevention measures are therefore essential.

Prevention Measures

The preceding sections reveal key factors for preventing greenwashing at public companies:

- Greenwashing prevention must be an integral component of the sustainability strategy and must be integrated into the company's processes – from the definition of the strategy by the board of directors via the due dilligence, control processes, data and risk management and employee qualification, to marketing and management of information flows between all links in the value chain.
- This includes an internal anti-greenwashing policy that is compatible with multiple international regulations in the relevant jurisdictions, including rules for marketing and investor relations that are specified for the respective markets.
- Such a policy must stipulate that sustainability claims must make reference to the sustainability approaches used, their implementation and the key performance indicators by which their accomplishment is measured. They should be verifiable and measurable and accompanied by periodic reporting based on relevant indicators for implementation.
- Implementation requires internal and external corporate communications, sustainability management, risk management, compliance and the legal function to converge within senior company management.
- Sustainability-related communications must be harmonized with all other voluntary and mandatory communications, specifically the sustainability report, accounting, current and previous ad hoc announcements and any prospectus.
- The best form of prevention is good corporate governance. Not only is box-ticking inadequate – it also poses the risk of greenwashing itself if the company loses sight of its goal of sustainable economic activity. External assessment (audit, certificates, labels) further enhances trust and reduces liability risk of the company, its board of directors and the executive management.

Summary

The **greenwashing definitions** from the various fields have the following **point of intersection** (see section 2 above):

– The starting point is a market identity that appears to investors or clients to involve sustainable characteristics or activities (investor perspective) or gains an unfair competitive advantage with claims to this effect (market perspective).
– To qualify as sustainable from a Swiss perspective, compatibility with a generally recognized sustainability goal or a contribution to implementing such a goal are the minimum requirements. In both cases this falls short of the EU standard, however.
– Greenwashing is deemed to have occurred when the impression created is not adequately reflected by reality or "basic" standards are not met.
– This is the case, for example, if (i) a corresponding strategy does not exist; (ii) the strategy is not implemented; (iii) it does not cover all activities; (iv) it only focuses on reducing sustainability risks or optimizing financial performance; (v) stated impacts cannot be measured or verified; (vi) stated claims are too vague or non-transparent; (vii) target achievement is not reported on.
– International advertising rules and the associated practice of the Swiss Commission for Fairness provide specific examples on the basis of typical cases (see section 3.3 above).

Legal risks of greenwashing include:

– The provision of incorrect or misleading information and the withholding of information in the sustainability report is subject to prosecution (section 3.1).
– Greenwashing in the aforementioned sense constitutes unfair competition in certain circumstances and as such can result in civil litigation or criminal prosecution. The State Secretariat for Economic Affairs (SECO) is one body that initiates criminal proceedings of this kind (section 3.2). The non-governmental Swiss Commission for Fairness offers a decision-making practice for evaluating greenwashing as unfair competition (section 3.3).
– If sustainability claims can affect investors' investment decisions, the requirements of ad hoc publicity, breaches of which are sanctioned by SIX, and insider trading law and the ban on market manipulation, which are penalized by FINMA and the Office of the Attorney General, must be complied with (section 3.4). Furthermore, such claims must be harmonized with any prospectus or key information document, subject to the threat of liability and prosecution (section 3.5).
– After all, in the event of a loss, both the company and its managers in Switzerland and abroad risk the consequences of liability. Ultimate responsibility for sustainability-related communications therefore lies with the members of the board of directors and senior management, who can become liable for damages if they breach their organizational, reporting and due diligence obligations (section 3.6).

As far as **greenwashing prevention** goes, it is not sufficient for it to merely address marketing – it must integrate all communication and management processes within the company and the value chain to ensure that sustainability-related statements are based on a sustainability strategy that is put into practice transparently and verifiably (section 4).

Despite all the bureaucracy, however, it is also crucial not to lose sight of the ultimate objective: the long-term flourishing of the company and its environment.

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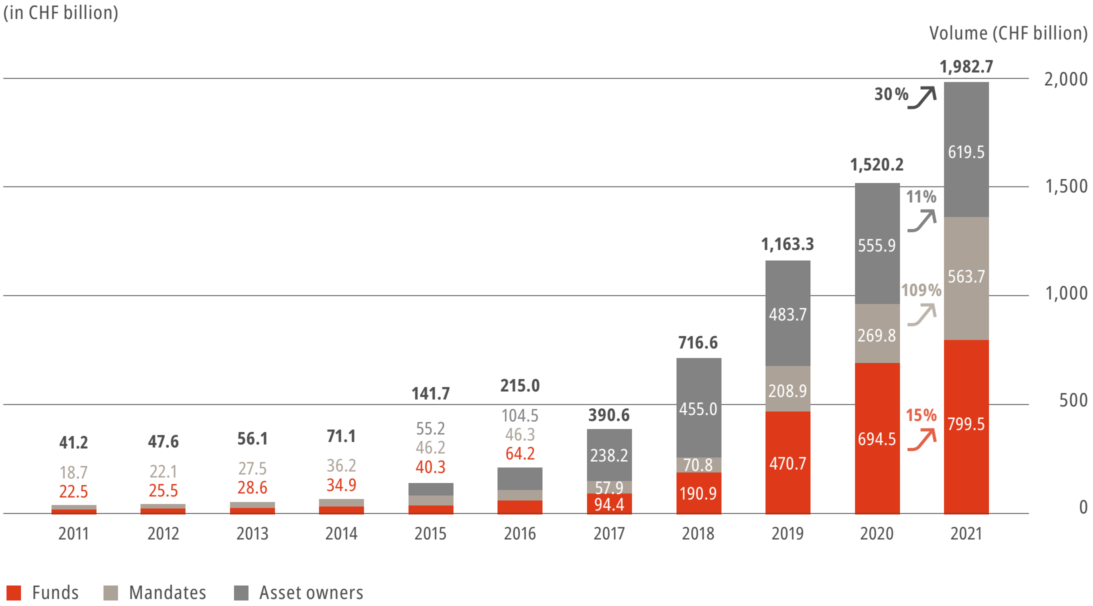
1.8 Expectations of International Investors

Sustainability is no longer considered a mere "nice-to-have" or a marketing exercise, but is now an integral part of risk/opportunity considerations and corporate strategies. Investors want to know how companies add value over the long term and how ESG issues influence a company's financials.

In recent years, sustainable investments in Switzerland have achieved massive growth, reaching a volume of almost CHF 2,000 billion by the end of 2021. The decrease to around CHF 1,600 billion in 2022 is primarily attributable to market trends. Some 52% of Swiss fund volume includes a sustainability component. Institutional investors account for 73% of sustainable investments.[1]

Development of sustainable investments in Switzerland

(in CHF billion)



Source: Swiss Sustainable Finance

The most common approach in this area is to exclude certain securities from the investment universe that are not considered sustainable, such as the tobacco and arms industries. The second most common approach is the integration of ESG in the investment process as well as shareholder engagement with management on ESG issues. Thematic sustainable investments and impact investing continue to see the largest growth, with environmental issues in general and energy, water and cleantech in particular, but also social issues such as health, living

[1] Swiss Sustainable Finance (SSF), Swiss Sustainable Investment Market Study 2023.

and community development leading the pack. Fifty-eight percent of sustainable investments in Switzerland include standard-based screening. Here, most investors are guided by the criteria of the UN Global Compacts, followed by the ILO Conventions, the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights.[2]

Between 2018 and 2021, the number of institutional investors incorporating a structured, methodical evaluation of non-financial factors into their investment processes increased from approximately 30% to almost 80%, followed by a slight decrease in 2022. Almost all investors take ESG factors into account in their investment decisions. This requires sufficiently indepth disclosures on the part of companies. While Europe has traditionally led the field in ESG investing, investors in the US and in Asia Pacific have now adopted similar priorities.

The motivation behind sustainable investing is primarily financial performance, that is, optimization of the risk-return profile. Stocks with good ESG ratings tend to perform just as well as or even better than their peers in the market, and do so with less volatility. The most important thing here is a long-term perspective. A global study of institutional investors shows a certain mismatch between investors and companies; while 78% of investors stated that they would make business-relevant ESG investments even if this reduced their profits in the short term, only 55% of companies were willing to do this. This is probably due to the perceived pressure from short-term-oriented investors and sell-side analysts in the context of quarterly reporting. This perspective is particularly prevalent in North America, above all in the US. At the same time, many investors are concerned about companies cherry-picking and only disclosing information very selectively. In the opinion of 80% of the investors surveyed, many companies are unable to convincingly explain the reasons for a long-term investment in sustainability, with the available ESG disclosures only being of limited assistance for decision-making.[3]

[2] Swiss Sustainable Finance (SSF), Swiss Sustainable Investment Market Study 2023.
[3] EY, Global Corporate Reporting and Institutional Investor Survey, November 2022.

The "Big Three" Asset Managers View ESG as a Key to Financial Success
BlackRock's CEO Larry Fink is already known for his annual ➔ **Letter to CEOs,** which in recent years has highlighted the importance of ESG and demanded reporting in line with TCFD and SASB or equivalent industry-specific, investor-oriented standards. The bottom line with regard to stakeholder capitalism is that ESG is vital to a company's sustainable, long-term financial success.
In their proxy voting guidelines, BlackRock, Vanguard and State Street Global Advisors define clear requirements with a focus on the climate and a transition to a net-zero economy, diversity across boards of directors and staff, as well as human capital management. Proxy advisors, such as ISS and Glass Lewis, also have similar requirements in place. The focus on long-term shareholder value creation is key.

Investors continue to pay special attention to the issue of climate change, one of the most urgent challenges of our time, and they analyze their portfolios' exposure to physical and transition risks. This includes taking advantage of opportunities, the use of robust climate scenario analyses and the focus on net-zero targets based on ambitious decarbonization strategies. Health and safety, security, diversity and inclusion, human rights and labor issues are just as much a part of a balanced ESG discussion as energy and emissions, water and biodiversity.

Top ESG Issues
- Corporate governance and business ethics
- Climate change (TCFD reporting)
- Energy and emissions (net-zero targets)
- Biodiversity (TNFD reporting)
- Client satisfaction
- Diversity and inclusion
- Impact on local communities
- Health and security
- Labor standards and human rights in the value chain (due diligence)

Source: Based on EY, Sixth global institutional investor survey, November 2021 and Swiss Sustainable Finance (SSF), Swiss Sustainable Investment Market Study 2023.

Institutional investors want to see robust governance on sustainability issues, including oversight by the board of directors, and are demanding more consistent, comparable and reliable sustainability reporting.

The following three priorities can be identified:
- Investors want better-quality ESG data. On the one hand, they have concerns over whether companies are actually as sustainable as they make out to be ("greenwashing"). On the other hand, there is a need to improve the analysis of sustainability data so that it can be properly presented in discussions with investors. This includes a discussion about the relevant data collection processes and IT systems.
- The vast majority of investors miss a clear focus on the issues that are financially important (financial materiality). Long-winded reports with no clear focus can often conceal key information. The key factor here is the link to a company's core business, but investors observe a disconnect between ESG reporting and financial reporting.
- Investors want a standardized global reporting framework as well as mandatory ESG reporting requirements, including independent assurance so as to ensure the consistency and comparability of the information disclosed.

At present, the frameworks provided by the International Business Council of the World Economic Forum (WEF IBC) and the IFRS-Stiftung/International Sustainability Standards Board (ISSB) cover investors' needs as they focus on sustainability through the lens of financial performance. By consolidating TCFD, SASB and Integrated Reporting, the IFRS Foundation has taken a big step towards creating a globally consistent basis for sustainability reporting. The first standards (IFRS S1 and S2) were published in mid-2023.

In addition to this, it is also recommended that companies report their external impact. In this regard, the GRI standards are most commonly used as a framework for sustainability reporting. At least in Europe, the double materiality approach will establish itself over the medium term with the entry into force of the Corporate Sustainability Reporting Directive (CSRD), which explicitly considers the impact on a company and the company's own external impact. Furthermore, the EU Taxonomy promises a uniform classification system for investors that determines which business activities – and thus companies – can be rated as sustainable.

Even though a Swiss company should not be directly affected by corresponding EU regulations, these may well be relevant, either because of investors who have to report under the EU Sustainable Finance Disclosure Regulation (SFDR) and need information about their underlying instruments, for example, or because clients may request certain information. Global capital markets are not constrained by national borders, and issuers should carefully monitor these international regulatory developments.

ESG Ratings Measure the Impact of Sustainability Risks and Opportunities on the Bottom Line
Alongside their own analyses, asset managers, financial institutions and investors increasingly look at ESG ratings issued by agencies to assess the performance of companies. However, the lack of standardization in the area of sustainability reporting is also reflected here. The same company can receive completely different ratings from different providers depending on how sustainability is defined, meaning which ESG criteria are considered and the weighting they are given. One thing they usually have in common is a focus on the impact of ESG on the company's financial bottom line. Below is a list of the most important providers at present:

- Inrate (basis for ESG indices from SIX: SXI Switzerland Sustainability 25 Index, SPI ESG, SPI ESG Weighted, SPI ESG Multi and Single Premia indices, SBI ESG and subindices, SBI ESG Screened AAA–BBB)
- Sustainalytics (belongs to Morningstar)
- S&P Global ESG Scores (basis for the Dow Jones Sustainability Index)
- MSCI ESG
- Bloomberg ESG
- FTSE Russell ESG
- ISS ESG
- Refinitiv (belongs to the London Stock Exchange Group)
- Moody's ESG Solutions Group
- RepRisk
- CDP
- GRESB (for Real Estate)

Responses to requests for data from these ESG rating agencies can be extremely time-consuming. Companies should therefore reach out to their core investors to understand which ESG ratings are the most important for them.

Ultimately, investors want transparency and balanced reporting on a company's performance, rather than mere lip service and glossy brochures. With regard to the level of credibility required, investors also take into account governance aspects, such as ESG components in senior management remuneration systems, external independent audits of sustainability performance or whether the sustainability team reports directly to the executive board and how the board of directors is involved with this issue. A subpar ESG performance can lead to shareholder activism aimed at influencing management and improving a company's performance. If this is unsuccessful, investors might even consider a divestment of shares.

Conclusion

In recent years, ESG has become a key issue in the investor community. Experience has shown that the following helpful tips should be followed to ensure that an effective and targeted system for sustainability reporting can be put in place:

- Avoid greenwashing/SDG-washing by providing transparent, balanced and credible reporting.
- Perform robust climate scenario analyses and quantify the financial impact (TCFD reporting).
- State the role the company plays with its decarbonization strategy regarding net-zero targets (ideally Science Based Targets-aligned).
- From an investor's perspective, consider ESG primarily from the point of view of financial materiality.
- Do not just focus on environmental sustainability; also consider social factors.
- A materiality analysis that includes external stakeholders helps to focus on the right areas. From an investor-relations perspective, the focus in this regard should also be on financially significant ESG issues.
- ESG should be part of the company's integrated equity narrative and long-term value creation. This means integrating sustainability into the company's strategy and involving the entire value chain.
- Involving the CFO and finance functions with sustainability reporting helps to connect and reconcile non-financial information with financial data, and also improves other processes and quality by building upon tried-and-tested financial reporting processes.
- External assurance for sustainability reporting helps to bring it up to the same level as financial reporting and to boost its credibility.

A company should communicate with its shareholders and key investors in order to understand their expectations with regard to sustainability – after all, they may have differing views and priorities in this regard.

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1.9 Development of a Sustainability Strategy and General Guidelines for Sustainability Reporting

The Path to Sustainability – Ten Recommendations

Regular changes to the regulatory requirements mean that the integration of sustainability into the company agenda is a continuously evolving process. However, there is a series of fundamental criteria that all companies can use as a guide regardless of which stage they have reached in the development of their sustainability strategy. The following ten recommendations are designed to help listed companies reflect on their sustainable practices and find ways to keep on improving them.

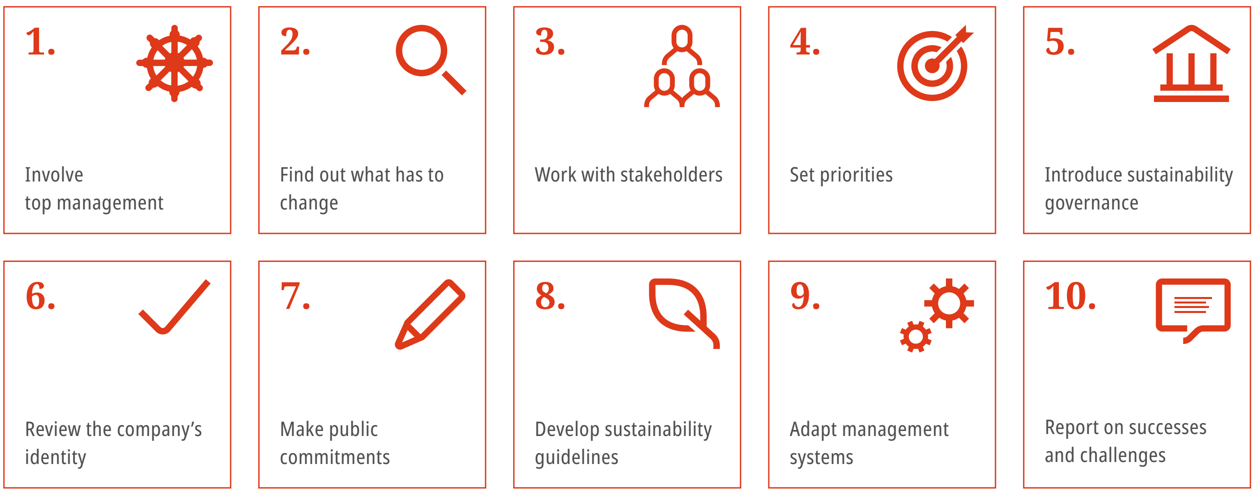

Figure 1: Ten recommendations for the path to sustainability at a glance

1. Involve top management

For a company's sustainability agenda to be effective, top management must decide on its implementation. The executive board is responsible for defining the most important issues and performance indicators, promoting cultural change and ensuring that employees understand and accept the targets set and the requirements agreed.

2. Find out what has to change

A regular sustainability diagnosis is crucial for identifying gaps and drawing up an action plan for achieving short-, medium- and long-term goals. As part of the diagnosis, existing structures, processes and systems that need to be either adapted or maintained are identified. A review of the company's documents, organizational structure and management system is a good starting point, but surveys of management in all divisions are also important. This sustainability diagnosis may be performed by consulting firms or internal committees.

3. Work with stakeholders

Companies' sustainability reporting must meet the needs of many stakeholders with different requirements and expectations. Dialogue with stakeholders and the identification of key topics are therefore crucial when adapting the company's strategy to the needs of society and changing values. In addition, sustainability information should be actively disclosed and communicated via established communication channels in order for it to have added value, especially for investors.

4. Set priorities

The next step should be to set priorities according to the principle of materiality, so that reporting does not contain excessive or irrelevant information. Companies should identify four to eight material topics and review them regularly. Reports should be brief and concise and concentrate on the most important issues, while secondary information can be provided on the company's website. Finally, material information should be published in an integrated report in order to do justice to the interdependence between financial and non-financial information.

5. Introduce sustainability governance

To achieve a good balance between economic, social and environmental results, a governance structure for sustainability is required at all levels of the organization. The number of involved units depends on the size of the company, but the board of directors should have ultimate responsibility. The involvement of outsiders such as stakeholders and/or experts is recommended. A sustainability committee, consisting of members of the board of directors, should develop and monitor the implementation of the sustainability strategy and guidelines. Division heads and management are responsible for the coordinated implementation of the sustainability measures defined by the committee and the exchange of information between departments and business units.

6. Review the company's identity

When companies reach this phase, the integration of sustainability into strategy and management will doubtless have an impact on the company's goals and its relationships with stakeholders. A review should therefore be conducted to assess whether the company's identity – i.e., its mission, vision and values – complies with the new commitments. If this is not the case, now is the time to make changes.

7. Make public commitments
A series of general and/or sector-specific commitments can help companies to formulate a sustainability strategy and integrate themselves into a network of learning and interaction with stakeholders. Examples include joining initiatives like Sustainable Stock Exchanges (SSE) and the United Nations Global Compact.

8. Develop sustainability guidelines
The development of sustainability guidelines is a key step in the process of implementing strategies through binding targets and management guidelines. The guidelines should define the organization's sustainability management targets and processes in order to ensure that all divisions and departments plan and carry out the relevant measures. A good set of guidelines is brief and objective and is forwarded to all internal and external stakeholders. Economic incentives can also be created by including social and environmental targets in performance appraisal systems. Departments and management should ensure a good balance between sustainability goals and economic targets. These initiatives should encourage employees at all hierarchy levels to suggest and implement sustainable solutions.

9. Adapt management systems
The sustainability strategy must be integrated into all areas of the company and include targets with quantifiable indicators. These key performance indicators (KPIs) are based on the strategic sustainability goals and must be realistic, achievable and time-limited. To integrate sustainability, it is also necessary to adapt company commitments, management systems and guidelines. This process serves to institutionalize the implementation of sustainability goals in the company's day-to-day activities, strengthen the corporate culture and reduce compliance risk. KPIs should be monitored at both an operational and a management level. The data must be presented to the board of directors on a regular basis.

10. Report on successes and challenges
Transparency is crucial for gaining stakeholders' trust. The best way to demonstrate transparency and accountability is to publish reports. In addition to annual reports, more and more companies are also publishing sustainability reports that contain non-financial information. However, the importance of integrated reports is also increasing, including from a regulatory perspective. To be credible, reporting must be balanced, comparable, reliable and precise.

Best Practice: A Five-Step Guide

In addition to the ten recommendations for the path to sustainability, companies can also take five practical steps in their sustainability reporting. These are intended to help them develop a unified, integrated approach to reporting with the goal of achieving effective capital market communication. The first three steps relate to the content of the disclosures (what to report), while the last two focus on the principles of reporting (how to report).

1. Concentrate on a handful of key indicators and explain the link between non-financial data and financial performance

2. Focus on a “risk and return” approach

3. Give preference to quantitative data

4. Refer to international and national standards

5. Pay attention to presentational issues

1. Concentrate on a handful of key indicators and explain the connection between non-financial and financial data

In their reporting, companies should focus on a limited number of KPIs and measures that are relevant to management and all stakeholders, linked to the corporate strategy and illustrate the impact on the financial results. They should also be underpinned by a clear description. Consideration and/or prioritization of the most important KPIs can highlight the company’s unique features. The more companies emphasize the connection between non-financial and financial data and the impact on company value, the more practical ESG factors will become for investors.

2. Focus on an “Opportunities and Risks” approach

When analyzing companies, investors consider not only key financial figures and economic advantages but also the quality of the ESG-related content. Companies should therefore provide reliable information on key components of their value creation (financial and non-financial) and their integration into the strategy, company management and operations. It is important to understand opportunities and risks in connection with ESG topics and communicate them transparently in order to strengthen investors’ trust. Responsible business practices and risk management are crucial as they can have a positive effect on the company’s performance and valuation. Companies should also communicate sustainable products and innovative solutions in order to set themselves apart and remain competitive.

3. Favor quantitative data
In order to meet investors' needs when drawing up reports, companies should provide clear and well-structured information. The objective is to illustrate the financial value of the sustainability strategy. For that reason, it is important to define specific, measurable sustainability goals and link them to financial performance. An outlook on future challenges, opportunities and achievements also plays a key role in sustainability reporting. In this context, companies should try to evaluate the impact that their industry and market trends will have on their future sustainability performance. ESG ratings are also relevant to companies and investors.

4. Refer to international and national standards
There are many sustainability reporting standards on the market. To facilitate valuation and comparability for investors, it makes sense to use internationally and nationally recognized standards as a basis. Internationally recognized standards, such as those of the Global Reporting Initiative (GRI), the Sustainability Accounting Standards Board (SASB) and the Task Force on Climate-related Financial Disclosures (TCFD), serve as a guide for companies, enabling them to identify and prioritize key topics and relevant KPIs.

5. Pay attention to presentation
Rather than publishing a separate sustainability report, companies should produce a coherent depiction of financial and non-financial information, as this offers investors and analysts a comprehensive source of information. ESG data should be presented in a clear, compressed form, ideally together with the financial report. A consistent and clear reporting methodology is crucial. Changes to the selection or development of KPIs should be communicated in an open, easily understandable way.

Concluding Remarks
ESG issues are now a fixed part of investment decisions. A comprehensive picture of a company helps investors to evaluate its current risk profile and shows how the company is prepared for future challenges. Active communication of sustainability-related key figures and business opportunities and how they are translated into the company's unique features raises awareness of the company's strengths and competitive standing. With this information, investors can make a more precise, in-depth assessment of a company and its opportunity and risk profile. It also provides additional arguments for investing in the company and strengthens trust. The disclosure of sustainability information is becoming an important principle of modern corporate communications that ensures a well-balanced capital market narrative.
The ten recommendations and five practical steps above offer an approach that facilitates more holistic corporate reporting and enables companies to use limited resources in such a way that the needs of the capital markets are effectively met.

The challenge is to:
- Identify a limited number of KPIs that are relevant for stakeholders and valuation purposes;
- Present key figures that are as quantifiable as possible, provide a relevant context and illustrate the connections between financial and non-financial information;
- Concentrate systematically on the information that conveys the most important messages to investors and analysts.

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