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Federal Council plans to expand corporate sustainability reporting obligations

On September 22, 2023, the Swiss Federal Council announced its key guiding principles for amending the Swiss corporate sustainability reporting obligations. After previously signaling its ambition to align the Swiss reporting requirements with international standards, it does not come as a surprise that the Federal Council affirmed its intention to further align the Swiss reporting obligations with the European Union's Corporate Sustainability Reporting Directive (CSRD), notably by extending the current rules' scope of application and by introducing an audit requirement. A detailed draft of the proposed changes is anticipated by mid-2024.

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Background and current regulatory framework

Large Swiss publicly listed companies and large Swiss regulated financial institutions (such as banks, securities firms, or insurance companies) are currently preparing their first statutory report on non-financial matters, covering the 2023 financial year. In this report, in-scope Swiss companies are required to report on material environmental matters (including CO_2 goals), social and employment issues, as well as aspects related to the respect of human rights and combatting corruption. The non-financial matters report must be submitted for shareholder approval and published in the first half of 2024. In the coming years, these reporting obligations will intensify in relation to environmental issues, encompassing more detailed disclosures on climate matters in line with the recommendations of the Task Force on Climate-related Financial Disclosures, such as granular emissions data and climate goals. Climate disclosures will also soon require a machine-readable format. Furthermore, since 2023, Swiss companies are required to conduct supply chain due diligence with respect to child labor and conflict minerals and metals.

Meanwhile, in the European Union, the Corporate Sustainability Reporting Directive (CSRD) has recently entered into force. The CSRD enhances the existing European non-financial reporting framework, both in terms of affected companies and the content of their reporting obligations. Moreover, European authorities are in the process of drafting the Corporate Sustainability Due Diligence Directive (CSDDD). This proposed directive aims to institute a comprehensive corporate due diligence responsibility, centering on identifying, assessing, preventing, mitigating or minimising and accounting for adverse human rights and environmental impacts within a company's operations, its subsidiaries, and their value chains.

Federal Council's guiding principles for amending the Swiss corporate sustainability framework

On September 22, 2023, the Swiss Federal Council announced its key guiding principles for future amendments to the Swiss corporate sustainability reporting and due diligence framework, reflecting recent developments in the European Union and in pursuit of harmonising Swiss sustainability rules with international benchmarks. These key guiding principles encompass:

- **Expanding the scope of affected companies**: Current Swiss non-financial reporting rules require only "public interest companies" (those listed and/or regulated) to report on sustainability matters if they meet certain size benchmarks. Specifically, in addition to exceeding determined turnover and/or total balance sheet thresholds, companies must have a minimum annual average of 500 FTE (on a consolidated basis and for two successive financial years) to be subject to these reporting obligations. The Swiss Federal Council intends to reduce this threshold to 250 FTE, in line with European standards. It remains uncertain, based on the announcement, whether the "public interest company" designation will continue as a primary criterion or if, mirroring European regulation, the scope of affected companies will be expanded to encompass a broader set of companies beyond just "public interest companies".

- **Audit requirement**: Current Swiss corporate sustainability reporting rules do not require an audit of the report on non-financial matters. However, the European CSRD does incorporate such an audit requirement. Aligning with European rules, the Swiss Federal Council communicated its intention to introduce an audit requirement. Consequently, Swiss companies would need to engage external auditors to audit their non-financial disclosures.
- **Reporting standards**: The Federal Council aims to maintain flexibility in terms of the applicable reporting standards. Specifically, Swiss companies will retain the choice to report either in accordance with European standards or following equivalent recognised international standards (like those of the OECD).

- **Corporate sustainability due diligence**: The Federal Council took note of the European authorities' advancements on the Corporate Sustainability Due Diligence Directive (CSDDD). The Federal Council is evaluating the CSDDD's potential impact on Swiss companies. This assessment is expected to be completed by the end of 2023. It thus remains to be seen if the Federal Council will propose further amendments to the Swiss corporate sustainability framework.

A specific legislative proposal has not been released at this time. The draft bill for consultation is expected to be published by mid-2024. While the guiding principles provide a general sense of the intended direction – namely alignment with European regulations – it is still uncertain how closely the final legislative proposal will mirror European rules.

Actions required by Swiss companies

While the Swiss Federal Council has clearly signaled its intention to align the Swiss corporate sustainability reporting rules with international, in particular European, standards, the entry into force of corresponding amendments to the current Swiss reporting and due diligence framework will still be a few years ahead. Thus, no immediate action is required by Swiss corporates.

However, until a higher level of interoperability can be achieved, navigating the range of applicable local, regional and international standards can be challenging, particularly for Swiss firms also operating in the European Union. These Swiss firms should continue to proactively evaluate the implications of the European sustainability reporting and due diligence obligations on their operations (see also our January 2023 Newsflash), without waiting for further alignment between the Swiss and EU sustainability reporting regimes. In fact, many Swiss corporate groups might find themselves within the scope of the European CSRD and/or the proposed new CSDDD. This could be a result of having securities listed on an EU regulated market, a qualifying EU-based subsidiary (or branch) or substantial EU business activities (i.e. an annual net turnover in the EU exceeding EUR 150 million). Given the phased implementation of the CSRD, some non-EU groups might fall within the scope of European reporting obligations as early as the 2025 financial year (either due to listing on an EU regulated market or having a large subsidiary in the EU).

To avoid having to produce multiple separate disclosures, to streamline internal processes such as data collection or risk management, and to reduce the overall administrative burden, Swiss companies should aim to harmonise their various reporting and due diligence obligations across the entire corporate group. The current Swiss rules do offer "substituted compliance" concepts, which recognise specific international standards, including certain European regulations. The Federal Council's September announcement emphasised a continued flexibility towards alternative yet equivalent reporting and due diligence frameworks in the forthcoming rules. As a result, Swiss companies should assess how they can, both now and in the future, leverage European and international standards to optimise and streamline their reporting and due diligence processes, ensuring they align with Swiss sustainability requirements.

Please do not hesitate to contact us if you have any further questions on this subject.

Legal Note: The information contained in this Smart Insight newsletter is of general nature and does not constitute legal advice.

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