Federal Council proposes stricter rules for sustainability reporting in Switzerland following EU law

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Key takeaways

- **The Federal Council has published a preliminary draft for an amendment to the provisions on sustainability reporting (previously: reporting on non-financial matters).**
- **The full-time equivalent threshold is to be reduced from 500 to 250 full-time employees in line with the EU.**
- **Not only public companies but all companies that exceed two of the following three thresholds in two consecutive financial years would be covered: 250 full-time employees, CHF 25 million balance sheet total, and CHF 50 million sales revenue.**
- **The "comply-or-explain approach" would no longer apply.**
- **The report's scope of the information on sustainability aspects would be expanded and specified.**
- **Reporting on sustainability aspects would now have to be reviewed by an external auditing company or a conformity assessment body.**

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Introduction

In view of international developments and Switzerland's efforts to align itself internationally in terms of sustainable corporate governance, the Federal Council published the preliminary draft for the amendment of the transparency provisions on non-financial matters, in accordance with Art. 964a - Art. 964c CO and opened the consultation process. The new provisions would lead to stricter rules for sustainability reporting and are intended to bring the existing provisions of the Code of Obligations into line with the stricter EU standards (in particular the Corporate Sustainability Reporting Directive (CSRD)).

Main proposed changes to the rules on sustainability reporting

The application's extended scope

While a report on non-financial matters is currently only required if the thresholds are met cumulatively, the Federal Council's preliminary draft states that it should be sufficient if the requirements are met alternatively. Thus, in future not only public companies and supervised entities under Article 3 FINMASA will be subject to the reporting obligation, but also unlisted companies that reach two of the following three thresholds during two consecutive financial years:

- balance sheet total of CHF 25 million (previously CHF 20 million);
- sales revenue of CHF 50 million (previously CHF 40 million);
- 250 full-time positions on an annual average (previously 500 full-time positions).

The reporting obligation should also apply to companies that must prepare consolidated financial statements according to Art. 963 of the Swiss Code of Obligations and which, together with the controlled companies, exceed two of the listed thresholds for two consecutive financial years.

However, the following companies are to be excluded from the scope of sustainability reporting:

- Companies that are controlled by another company that already prepares a report on sustainability aspects according to the provisions of the Swiss Code of Obligations or an equivalent report under foreign law; or
- (Listed) micro-enterprises that, alone or together with the domestic or foreign companies they control, do not exceed at least two of the following in two consecutive financial years:
- balance sheet total of CHF 450,000;
- sales revenue of CHF 900,000;
- 10 full-time positions on an annual average.

Introduction of an audit obligation

In line with EU law, an auditing company or a conformity assessment body must verify the information provided in the report on the sustainability aspects. The Federal Council will define the applicable depth of review (positive/reasonable assurance or negative assurance) in an ordinance, guided always by international developments.

Extended report requirements on sustainability aspects

The Federal Council also proposes changing certain terminology and expanding the scope of the sustainability aspects to be covered in the report. Companies should report on environmental factors, social aspects including employee concerns, human rights issues, and new governance considerations including organizational measures to combat corruption. When reporting on environmental factors, information should now be provided especially on the status regarding achieving the net-zero greenhouse gas emissions target by 2050 for limiting global warming to 1.5°C compared to pre-industrial levels.
According to the preliminary draft, the scope of the report content is also to be expanded, for example, to include a description of the time-bound sustainability targets that the company has set for itself or information on any incentive systems linked to sustainability aspects and offered to members of the highest management or administrative body.

Double materiality

The "principle of double materiality", which is already applicable, is now to be stated even more explicitly. Accordingly, the report must state the impact of the company's activities on sustainability aspects (so-called "inside-out perspective") as well as the impact of sustainability aspects on the course of business, the business results, and the situation of the company (so-called "outside-in perspective"). In addition, it must be clarified, in line with EU law, that information is disclosed that is material under both aspects as well as information only material under one aspect.

Abolition of the comply-or-explain approach

The current legal provisions stipulate that a company that does not pursue a concept on one or more issues in accordance with Art. 964b para. 1 CO must explain this thinking clearly and justifiably in the report (so-called comply-or-explain approach). This option to waive sustainability reporting if certain conditions are met should no longer be possible in the future.

Reporting standards

When choosing a standard for sustainability reporting, companies should have the choice between the standards used in the European Union (European Sustainability Reporting Standards (ESRS)) and another equivalent standard for sustainability reporting (e.g., Global Reporting Initiative (GRI) or IFRS Sustainability Disclosure Standards (IFRS SDS)). The Federal Council will determine (via an ordinance) which standards are considered equivalent.

Approval of the report on sustainability aspects

The report on sustainability aspects must be approved by the highest management or administrative body and by the Annual General Meeting, as is already the case under the current provisions. It should also be made clear that the resolution of the Annual General Meeting is binding and therefore no consultative vote is possible.

Transitional provisions

Once the new provisions come into force, companies would have two years to implement the new sustainability reporting regulations. During this transition period, and for the financial years that run from the date of entry into force, the previous law will apply.

Conclusion and outlook

With the preliminary draft, the Federal Council intends to adapt the transparency provisions on non-financial matters, in accordance with Art. 964a - Art. 964c CO, to the provisions of EU law. By expanding the provisions' scope of application, the Federal Council intends to expect around 3,500 companies to report on sustainability aspects in the future (current provisions are around 300 companies). In addition, the reports on sustainability aspects are now to be audited; thus, the previous comply-or-explain approach would cease to apply. The report's information on sustainability aspects to be disclosed is also to be expanded and specified.

The consultation on the preliminary draft will continue until October 17, 2024, after which the Federal Council will decide on the draft law for Parliament's attention.

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