



WengerPlattner

Ready for ESG 2.0?

How GCs of Swiss Companies prepare their Boards for the next ESG wave

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Basel | Zürich | Bern

A. «ESG 1.0» - The current Swiss legal framework

Sustainability Reporting

- Art. 964a – 964c CO
- In scope: «**Public interest**» companies + **quantitative criteria** (500 FTE + (a) balance sheet > CHF 20m or (b) revenues > CHF 40m)
- Reporting on «non-financial matters» (environmental matters; social matters; employment matters; human rights; anti-corruption)
- Reporting standards: «*National, european or international standards*» → ESRS; GRI; UN PRI; ISO 26000; SASB Standards; OECD Guidelines
- «**Comply or explain**»
- «*Double Materiality*» → Art. 1 para. 2 TCFD ordinance (climate change related impacts)
- **No audit** required

CSR Due Diligence

- Art. 964j – 964l CO
- In scope: Companies with statutory seat, main administration or main establishment in Switzerland
- Focus on **ESG-sensitive activities** related to (a) **conflict metals/minerals** or (b) **child labour**
- **Conflict metals/minerals**: Sourcing of metals/minerals containing gold, tin, tungsten, tantalum from «*conflict affected or high risk areas*» (→ 'CAHRA' list) in relevant quantities
- **Child labour**: Product or service involving a country with a «*enhanced*» or «*heightened*» risk rating (UNICEF Children's Rights in the Workplace Index)
- Diligence obligations: Implement **management system** (policies, processes, tools) for **own operations** and **supply chain**
- Reporting obligations
- **Audit**: Only required in the area of conflict metals/minerals
- **No specific liability**: CSR due diligence obligations considered as duty «*to make an effort*», not a duty «*to achieve/prevent*»

B. «ESG 2.0» – The future Swiss legal framework?

1. Sustainability Reporting

- **Legislative status:** Draft revision regarding «transparency on sustainability aspects» launched on 26 June 2024
- **Driver:** EU **CSRD** (in force since 5 January 2023; implemented at member state level by 6 July 2024) with Delegated Regulation (EU) 2023/2772 as regards sustainability reporting standards (Annex 1: **ESRS**)
- Major proposed **changes**:
 - **Scope:** Massive **extension** of ‘*in scope*’ companies (340 → 3’500) by de-connecting (a) «*public interest*» requirement from (b) the quantitative criteria (250 FTE / balance sheet > CHF 25m / revenues > CHF 50m) [two out of three]
 - «Sustainability aspects»: (1) Environmental, with focus on achievement of ‘net zero’ objective by 2050; (2) social aspects, including employment matters; (3) human rights aspects; (4) governance aspects (incl. anti-corruption)
 - «**Double materiality**» applies to all sustainability aspects
 - Reporting standard: **ESRS** or (ESRS-)equivalent → IFRS S1 excluded for different «materiality» concept (re addressees)?
 - Increased reporting focus on the **BoD**: Sustainability related «**role**» and «**incentives**»
 - Reporting extends to entire «**value chain**» → Upstream and downstream
 - «*Comply or explain*» concept **abandoned**
 - Report subject to **audit**

B. «ESG 2.0» – The future Swiss legal framework?

2. CSR Due Diligence

- **Legislative status:** Federal popular initiative «*Für verantwortungsvolle Grossunternehmen – zum Schutz von Mensch und Umwelt*» launched on 7 January 2025. By January 21, the promoters claim to have collected over 183'000 signatures in support → Initiative will come to the vote
- **Driver:** EU **CSDDD** (in force since 25 July 2024; to be transposed to national law by 26 July 2026 with staggered implementation '27/'28/'29)
- **In scope:** (a) Large companies (FTEs > 1'000 + Revenues > CHF 450m) and (b) companies active in «*high risk areas*» subject to ordinary audit (FTE > 250 / Balance sheet > CHF 20m / Revenues > CHF 40m)
- Requirements: (a) Implement **due diligence obligations** to respect internationally recognized human rights and international environmental protection standards; (b) operate their business in line with **temperature goals** of the Paris Agreement by defining and implementing CO2 reduction goals
- **Civil liability for damages** resulting violations of DD obligations caused by «controlled entities»
- Administrative enforcement by state **supervisory authority** (with the power to impose revenue based fines)
- State implements measures in support of indirectly affected SMEs (also to prevent the «*pass-through of duties*» by large companies)