
Switzerland

Julie Wynne¹

Market Overview and Impact Investing Developments

Switzerland has become a leading location for sustainable financial services based on its being an international financial center and having a long private banking tradition. Swiss authorities, the financial sector, and civil society are all committed to maintaining this leadership role by developing private and public sustainable initiatives.

Sustainability can even be found in the Swiss Constitution, which states the Confederation shall “promote the common welfare, sustainable development, internal cohesion and cultural diversity of the country.”² More specifically it also provides that “the Confederation and the Cantons shall endeavor to achieve a balanced and sustainable relationship between nature and its capacity to renew itself and the demands placed on it by the population.”³

Since 2016, sustainable finance has been an integral part of the Swiss Federal Council’s financial market policy. Swiss policy encourages a bottom-up approach, market incentives and corporate responsibility, open dialogue between government authorities and industry, and collaboration through a growing sustainability network.

At the market level, since the early 2000s, Swiss players such as BlueOrchard, responsAbility, Symbiotics, and Fundo were among the first players in the field of sustainable finance. Switzerland also became

1. Partner, MLL, Geneva, Switzerland.

2. Preamble, <https://www.fedlex.admin.ch/eli/cc/1999/404/en>.

3. Art. 2, <https://www.fedlex.admin.ch/eli/cc/1999/404/en>.

a market leader in microfinance, with Switzerland now managing around 41 percent of global microfinance funds (US\$6.8 billion).

In 2018, assets in Switzerland worth around CHF (Swiss Francs) 720 billion were managed according to environmental, social, and governance (ESG) criteria, equivalent to around 21 percent of total assets under management in Switzerland. These figures highlight the leading role and expertise of Swiss institutions, given that the global average for sustainable investments stands at 11 percent.⁴

In 2020, the market for sustainable investments (SI) in Switzerland continued its double-digit growth. The volume increased to CHF 1,520.2 billion. This figure covers SI funds, sustainable mandates, and sustainable assets of asset owners.⁵

On the level of sustainable funds, volumes increased to CHF 694.5 billion and now represent 52 percent of the overall Swiss fund market (compared to 38 percent in 2019). As such, funds adopting sustainable investment approaches now exceed conventional investment funds for the first time. The amount of SI reported by asset owners (CHF 555.9 billion) corresponds to approximately 33 percent of the total assets managed by Swiss pension funds and insurance companies.⁶ All these numbers show the progressive mainstreaming of sustainable investments and their success in Switzerland.

Organizations such as Swiss Sustainable Finance (SSF) and Sustainable Finance Geneva (SFG) bring together various types of players, including banks, external assets managers, lawyers, trust companies, and family offices, who are keys to developing synergies and empowering the sector. As an example, Building Bridges conference, held for the second time in December 2021, was for financial stakeholders, the United Nations, nongovernmental organization (NGOs), academia, and government to work on a common vision of advancing sustainable finance. The Swiss financial center sees sustainability as an opportunity and benefits from the support of the government to establish the necessary framework conditions.

Developments at the legal and regulatory levels focus on transparency for investors through dedicated reporting and framework conditions that enable the pricing of relevant risks. Such measures help to reduce information asymmetries and enable the market to function in a more effective manner that takes long-term effects into account.

4. Swiss Sustainable Finance, Swiss Sustainable Investment Market Study, 2019.

5. Swiss Sustainable Finance, Swiss Sustainable Investment Market Study, 2021.

6. *Id.*

Policy Framework and Government Initiatives

Contrary to the European Union's legislative approach to sustainability, in Switzerland, there is no general legal or regulatory framework regarding sustainability in general or impact investing in particular. The absence of such a coherent framework is because the Swiss Federal Council, the government, wants to rely on existing legal and regulatory frameworks based on the subordination of government to private action. Notwithstanding, the Federal Council recognizes sustainable finance as a key factor for competitiveness of Swiss financial sector as well as a meaningful way for financial sector to effectively contribute to the UN's 2030 agenda.⁷

The following overview gives the reader a better understanding of the fragmented statutory landscape and ongoing legal developments, and market-based solutions favored by the Federal Council, that is, the self-regulatory and industry initiatives, as well as the main stakeholders in the field.

Statutory Landscape

Swiss statutory landscape in the field of sustainable finance is fragmented, as reflected in the most important statutory developments over the last several years.

From an international perspective, Switzerland is a party to numerous treaties (e.g., United Nations Framework Convention on Climate Change (UNFCCC), Kyoto Protocol, Paris Agreement) as well as signatory to many private and public initiatives (e.g., EU International Platform on Sustainable Finance, and Network for Greening Financial Systems (NGFS)). In 2011, Switzerland implemented the Kyoto Protocol by enacting the Federal Act on the Reduction of CO₂ Emissions of 2011 (CO₂

7. Federal Council Report: Sustainability in Switzerland's Financial Sector, Situation Analysis and Positioning with a Focus on Environmental Aspects, Berne (June 24, 2020), Executive Summary in English: <https://www.newsd.admin.ch/newsd/message/attachments/61905.pdf>. Full report in French <https://www.newsd.admin.ch/newsd/message/attachments/61903.pdf> Relevant Swiss Action Plans of the government include:

- October 2019: Adaptation to Climate Changes in Switzerland—Action Plan 2020–2025 by Federal Office for the Environment (FOEN);
- January 2020: Publication of Action Plan on Corporate Social Responsibility (CSR) and on Business and Human Rights by the Federal Council;
- August 2020: Federal Council adoption of FOEN action plan on the implementation of the adaptation strategy in the period 2020–2025.

Act),⁸ which was subsequently revised in October 2017 to implement the Paris Agreement. Another revision of the CO2 Act is likely to enter into force soon, including a duty for the Swiss National Bank and the Swiss Financial Market Supervisory Authority (FINMA) to review and consider climate among financial risks. More generally, the revised CO2 Act will explicitly include the financial sector as a stakeholder in reducing Switzerland's greenhouse gas emissions. It aims at aligning investment flows with the goal of making investment and financing activities compatible with low greenhouse gas emissions and establishing a climate-resilient development profile.

Among the different approaches identified for the integration of ESG/sustainability aspects, the Federal Act on War Materials⁹ prohibits financing of and investing in companies that produce, trade, and/or store controversial weapons. This negative screening/exclusion approach is commonly considered a minimum standard for sustainably managed assets.

In November 2020, Switzerland rejected a Responsible Business Initiative (*Konzernverantwortungsinitiative*), inspired by the French Duty of Vigilance law, aiming at holding businesses liable for their activities abroad. Instead, new rules, based on the parliamentary alternative, entered into force on January 1, 2022, and are less far-reaching but include a transparency obligation to report on ESG issues as well as a duty of diligence for mining companies and activities prone to using child labor. The law grants companies one year to adjust to the new obligations. This initiative is only one of many sustainability-related topics that have been adopted by the Swiss parliament. The CO2 Act, the Responsible Business Initiative, as well as other theme-driven pieces of legislation confirm sustainability considerations are of increasing interest to Swiss legislators.¹⁰

The Financial Market Supervisory Authority (FINMA) considers climate-related financial risks within the traditional risk categories of credit, market, insurance, or operational risks. Put differently, they are accelerators for other risks instead of being a new risk category. This regulatory interpretation allows Swiss financial institutions to incorporate them into their existing risk management framework. The supervisory authority recently revised two of its circulars for banks and insurance companies to

8. Federal Act of 23 December 2011 on the Reduction of CO2 Emissions (CO2 Act), SR 641.71.

9. Federal Act on War Material (War Material Act, WMA), SR 514.51.

10. Swiss Sustainable Finance, *Swiss Sustainable Investment Market Study* (2020), at 49.

explicitly include climate risks in their transparency duties.¹¹ On November 3, 2021, FINMA published its guidance 05/2021 on preventing and combating greenwashing, wherein FINMA sets forth principles as well as its practice pertaining to the management of sustainability-related collective investment schemes at fund and institutional levels.¹²

The recently enacted Federal Act on Financial Services (FinSA)¹³ contains a duty to inform clients about risks related to financial instruments, as well as a duty to assess the appropriateness and/or suitability for portfolio advisory and discretionary asset management.¹⁴ A majority of legal commentators and practitioners are of the view that ESG/sustainability risks and opportunities are to be identified, assessed, managed, and disclosed at the level of each product or investment strategy and in the relevant internal directives. Banks, insurance companies, asset managers, and pension funds should thus consider material climate-related risks as part of their fiduciary duty toward clients. However, there are no legal duties to take into account adverse climate impacts on an investment, or disclose such impact in a transparent manner unless this has been requested by the investor specifically or the product has been labeled to that effect.¹⁵ Even though there are no legal duties to monitor the impact of an investment, some service providers go beyond the mere risk-approach suggested by FINMA and adopt as best practice the assessment not only of ESG/sustainability preferences of their clients but also of the adverse impact of their services/products.

11. *Transparency Obligations for Climate Risks—FINMA Opens a Consultation* (Nov. 10, 2020), *Proposals to amend Circulars 2019/1 (“Disclosure—banks”) and 2016/2 (“Disclosure—insurers”)*, <https://www.finma.ch/en/news/2020/11/20201110-mm-transparenzpflichten-klimarisiken/>.

12. *FINMA Publishes Guidance on Preventing and Combating Greenwashing* (Nov. 3, 2021), <https://www.finma.ch/en/news/2021/11/20211103-finma-aufsichtsmittelung-05-21/>.

13. Federal Act on Financial Services (FinSA), SR 950.1; Art. 8 and 12 FinSA, art. 398 (2) Swiss Code of Obligations.

14. In discretionary and advisory mandates sustainability risks are part of the financial institution’s obligation to clarify the client’s risk profile as well as to inform the client about sustainability risks associated with investment objectives and strategy. While providing discretionary services, such risks must be considered when executing orders in accordance with the client’s risk profile. As opposed to such mandates, for bank deposits obligations are limited to the conscientious handling of the customers’ instructions.

15. Legal Opinion on the incorporation of climate risks and impacts in the financial market (*Rechtliches Gutachten «Berücksichtigung von Klimarisiken undwirkungen auf dem Finanzmarkt»*), Dr. Mirjam Eggen & Dr. Cornelia Stengel, <https://www.bafu.admin.ch/bafu/de/home/themen/klima/recht/rechtsgutachten.html>.

Self-Regulation and Industry Initiatives

Pursuant to the SIX Directive on Information relating to Corporate Governance,¹⁶ companies listed on the SIX Swiss Exchange Ltd. may voluntarily opt to produce a sustainability report in accordance with internationally recognized standards. SIX Swiss Exchange Ltd. publishes a list of international standards to this effect. In the future, a legal obligation for all public-interest companies, including companies and financial institutions, will replace this voluntary-based opt-in approach. Similar to the Non-Financial Reporting Directive of the European Union,¹⁷ large companies must report annually on nonfinancial matters, including their concepts and monitoring of environmental issues (particularly CO2 targets), social and labor issues, respect for human rights, and fight against corruption.¹⁸ Large companies are defined as those on an aggregate group basis with (1) annual average of at least 500 full-time employees (FTEs) and (2) either total assets exceeding CHF 20 million or revenues of CHF 40 million. They must also report based on the principle of comply or explain, as well as disclose their reporting standards. Moreover, Swiss companies that (1) import or process minerals or metals from conflict or high-risk areas as defined by the Swiss Federal Council, or (2) offer products or services where there is a suspicion of child labor, are subject to special due diligence and related reporting obligations with respect to their supply chain.¹⁹

In June 2020, the Swiss Bankers Association published a guideline for the integration of ESG considerations into the advisory process for private clients.²⁰ The guideline concludes that sustainability considerations are fitted into the existing regulatory framework under FinSA. It requires banks, as part of their discretionary portfolio management, not only to outline the range of ESG investments available but also to build investment solutions aligned with their clients' expectations. Without adding

16. Directive on Information Relating to Corporate Governance (DCG) (Jan. 2, 2020), <https://www.ser-ag.com/dam/downloads/regulation/listing/directives/DCG-en.pdf>.

17. Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, Official Journal of the European Union, L 330 (Nov. 15, 2014).

18. Revised art. 964bis *et seq.*, Swiss Code of Obligations (CO).

19. *Id.*

20. Guideline for the integration of ESG considerations into the advisory process for private clients (June 2020), <https://www.swissbanking.org/en/services/library/guidelines>.

an additional binding regulatory burden on banks, the guideline sets the standard of explicitly integrating ESG preferences into the investment process and providing the client with adequate information. As a consequence, the guideline urges banks to give their client advisors appropriate training regarding ESG considerations and investment solutions in order for them to be able to match characteristics of ESG investment solutions with client expectations. It also requires them to document their advice as well as any deviation from the client's ESG preferences, for example, should an ESG alternative meeting suitability test under FinSA not be available.

Swiss Sustainable Finance (SSF), an association organized to strengthen the position of Switzerland as a leader for sustainable finance, issued in summer 2021 Reporting Recommendations on Portfolio ESG Transparency²¹ with the goal of creating more comparability and credibility through recommendations for portfolio ESG transparency for both asset owners and asset managers. In addition, SSF launched on December 1, 2021, an ambitious Roadmap with recommended actions for the Swiss financial services industry.²² It includes concrete measures targeted at various financial market players such as banks, asset managers, insurance companies, and institutional investors.

Along with the Swiss Asset Management Association (AMAS), on June 16, 2020, SSF published nonbinding Recommendations on Sustainable Asset Management²³ on the integration of sustainability considerations into asset management. It was directed at companies in the early stage of ESG implementation. As a follow-up to these recommendations, on November 26, 2021, AMAS and SSF published their Recommendations on Minimum Requirements and Transparency for Sustainable Investment Products.²⁴ The recommendations are focused on sustainable products developed by the fund and asset management industry and sold to investors by financial service providers. Their three main aims are

21. 2021_06_22_SSF_Reporting_Recommendations_on_Portfolio_ESG_Transparency_full_report_EN_FINAL.pdf (sustainablefinance.ch).

22. https://www.sustainablefinance.ch/upload/cms/user/SSF_Roadmap_for_SwissFinancial_Market_Players_Dec_2021.pdf.

23. *Sustainable Asset Management: Key Messages and Recommendations of SFAMA and SFF* (June 16, 2020), https://www.sustainablefinance.ch/upload/cms/user/EN_2020_06_16_SFAMA_SSF_key_messages_and_recommendations_final.pdf.

24. *Recommendations on Minimum Requirements and Transparency for Sustainable Investment Products* (Dec. 2021), https://www.sustainablefinance.ch/upload/cms/user/RecommendationsforSustainableInvestmentProducts_AMAS_SSF.pdf.

to (1) define the various sustainable investment approaches more precisely and set minimum requirements for implementing each of them; (2) set minimum requirements for informing investors about the various investment approaches and instruments; and (3) explain which sustainable investment approaches are best suited to meeting investors' different objectives.

Common Funding Products and Vehicles

Impact-oriented investments are on the rise in Switzerland. However, while impact investing has been growing rapidly, it only makes up for about 4 percent of all sustainable investments. Institutional investors drive the impact investment market, operating with a strong focus on listed equity.²⁵

A total of 41 green bonds, one sustainability bond, and one sustainability-linked bond were listed on SIX Swiss Exchange Ltd. in 2021.²⁶ Even though the term “green bond” is not defined under Swiss law, issuers in practice rely on the terminology adopted in the Guidelines of the International Capital Market Association (ICMA). To be flagged by SIX Swiss Exchange Ltd. as “green bond,” the bonds must be certified under the Climate Bonds Standard set out by the Climate Bonds Initiative (CBI) and aligned with the nonbinding international standards such as the Green Bond Principles, the Social Bond Principles of ICMA. Sustainability bonds on the other hand are certified under the CBI Climate Bonds Standard and aligned with the ICMA Sustainability Bond Guidelines.²⁷

In sum, so far, green and sustainability bonds are still a niche investment in Switzerland.

25. Swiss Sustainable Finance, *Swiss Sustainable Investment Market Study* (2020), at 27.

26. Sustainable Bonds, SIX Swiss Exchange Ltd., <https://www.six-group.com/en/products-services/the-swiss-stock-exchange/market-data/bonds/green-bonds.html> (last visited May 2, 2022).

27. <https://finance.swiss/en/sustainable-finance>; the ICMA principles are available under <https://www.icmagroup.org/sustainable-finance/resource-centre/> (last visited May 2, 2022).

Sourcing Opportunities

Swiss leaders in impact investing rely on global expertise, including the resources of the Global Impact Investing Network (GIIN), and follow international recommendations on sourcing and deal due diligence.²⁸

There are different dedicated financial institutions, such as banks and investment managers, active in the field of impact investment. They cover a wide range of asset classes, including Swiss collective investment schemes, equity, debt, public, and private, as well as listed and private assets with underlying companies in many countries.

There are also various public–private partnerships and initiatives aiming at promoting sustainable finance, including impact investing. One of the initiatives is the previously discussed Building Bridges Summit. As noted, it is a unique landmark summit, held for the first time in Geneva in 2019, with the aim of bringing together the finance industry, public leaders, and international organizations to accelerate the achievement of the 2030 UN Agenda as well as of the implementation of the UN Sustainable Development Goals (SDGs) by redirecting financial flows toward sustainable investments.²⁹

Challenges and Opportunities for a Growing Sustainable Finance Sector in Switzerland

While there are still some challenges, such as the difficulty in measuring impact and therefore having a common grammar for market players, insufficient investment-ready opportunities, and lack of highly specialized employees, Switzerland with its sustainability ethos appears committed to excelling in sustainable finance and to contribute to sustainable development globally. To succeed even further and strengthen its leadership position, the Swiss financial sector will have to continue mobilizing and increasing its high-level endorsement, leadership, and decisive action by all the major players in the Swiss financial sector.

Synergies have developed between the players who now take decisive actions. In the spirit of consensus, which has long existed, the financial sector and the authorities are likely to develop further by supporting resources and by developing and keeping a flexible framework so the market can freely evolve and innovate.

28. *The Global Impact Investing Network GIIN, A Guide for Impact Investment Fund Managers, Deal Sourcing and Selection*, <https://thegiin.org/deal-sourcing-and-selection> (last visited May 2, 2022).

29. <https://www.buildingbridgesweek.ch/>.

