AFBS News November 2022

Legislation and Regulation: Switzerland

Depositor Protection

With the entry into force of the revision of the Bank Act, the revised depositor protection scheme becomes effective. The key novelties concern the increase of secured assets equivalent to 1.6% of protected client assets; duty for banks to deposit 50% of their contribution in liquid assets or cash with SNB or SIX; shortened payout periods from 20 to seven working days. Esisuisse organises webinars presenting the financing mechanism. **Info**: DE FR IT EN and webinars: 12.12.: DE and 13.12.: FR and Bank Act: **Info**: DE FR IT EN

Anti-Money Laundering Ordinance

FINMA published the revision of its Anti-Money Laundering Ordinance. The revision is based upon revision of the Anti-Money Laundering Act. The Ordinance enters into force on 1 January 2023. The transition for implementation is of six months. **Info**: DE FR IT EN

Identification of beneficial owners

On 12 October 2022 the Federal Council decided to draft legislation in view of increasing transparency on and simplifying identification of beneficial owners of legal entities. There shall be a central register for identification of beneficial owners and new obligations regarding the risk-based updating of information on effective ownership. The register shall be accessible to relevant authorities but not the public. **Info**: DE FR IT EN

Climate Disclosures for large companies

On 23 November 2022 the Federal Council adopted the implementing ordinance on climate disclosures for large Swiss companies. Public companies, banks and insurance companies with 500 or more employees and at least CHF 20 million in total assets or more than CHF 40 million in turnover are obliged to publish climate-related disclosures according to the recommendations of the Task Force on Climate-related Financial Disclosure (TCFD). The ordinance will come into force as of 1 January 2024. **Info**: DE FR IT EN

Data Protection

The Data Protection Ordinance has been published and will enter into force on 1 September 2023. The Federal Council adapted the draft upon comments received by simplifying the regulation on duties and responsibilities as well as modalities governing the right to information. It offers 12 months for implementation. **Info**: DE FR IT and translation in EN: Ordinance: EN and Law: EN

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Energy Shortage

In a recent AFBS Event with speakers from Swisscom it became apparent that the proposed cyclical interruption of energy supply is not feasible for Swiss-wide grids such as electricity or telecommunication. They are interlinked and cannot be switched off in some regions independently from others. Banks need to bear in mind that even work-from-home cannot in all instances assure business continuity as it requires availability of telecommunication networks.

Legislation and Regulation: International

MiFID II

On 3 January 2022 ESMA had published new guidelines that are aimed at enhancing clarity and fostering convergence in the application of Certain Aspects of the MiFID II Appropriateness and Execution-Only Requirements. The Guidelines became applicable as of 12 October 2022. **Info**: ESMA: LINK (entry dd 12 April 2022); PwC: LINK

Russia-Ukraine Conflict: Sanctions

SECO confirmed that Switzerland does not apply sanctions adopted by Ukraine. Ukraine is said to subject to sanctions third country firms for the mere fact that the have operations in Russia.

Digital

Cloud Usage

The usage of cloud-based IT services expands continuously. Banks need to bridge the gap between data security obtained through state-of-the-art cloud storage services and privacy protection. Clients increasingly accept data storage in the cloud as a matter of fact. Safety of the storage facility and effective control of the data is more important than the effective place of storage.

Even though the Federal Data Protection Commissioner defends a more restrictive view in a recent exchange with a Swiss public insurance company (SUVA/, it recommends in its conclusive remarks to follow the Confederations' approach to assessing appropriateness of cloud storage. This operates a step-by-step approach which attributes different levels of sensitivity to data upon which eligibility of them to be stored in the cloud is determined. **Info**: SUVA: DE FR and Confederation's Strategy for Cloud Usage: DE FR IT

Cyber Security

The National Centre for Cyber Security observes a strong increase in cyber-attacks. Fake business emails, emails used to extort ransom or pretend false payment orders and emails distributing malware continue to be frequent. A second major threat consists in attackers downloading sensitive data and threatening to make it public or to block access to it. NCSC expects an increase in attacks as a consequence of the Ukraine war; parties can use cyber attacks to access funding. **Info**: DE FR IT EN

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The Federal Council started a national campaign on cybersecurity. The new webpage wishes to raise awareness on the dangers of scams through mails and messenger services. **Info**: Press release: DE FR IT EN; Webpage: DE FR IT EN

EU Cyber Resilience Act

The EU Commission proposes regulation on cybersecurity of products in view of enhancing security of digitally connected products. It aims at increasing protection at the product level and at raising awareness among users. Key targets are to improve product security, facilitate compliance, make security properties apparent, ease safe use of devices. **Info**: EU: LINK

EU Digital Operational Resilience Act DORA

In May 2022 the Council of the EU published a provisional agreement on the Digital Operational Resilience Act (DORA). The Council of the EU justifies the DORA with the cross-border nature of ICT risks. The proposal aims at creating a consistent incident reporting mechanism which shall help reduce administrative burdens for financial entities, especially those operating cross-border, and strengthen supervisory effectiveness. The ESAs, the ECB and ENISA will explore the feasibility of a central EU Hub who directly receives reports and automatically notifies national competent authorities. **Info**: EU Council: LINK and text of act: LINK – PWC: LINK

Open Banking

On 23 September openbankingproject.ch and the Business Engineering Institute St. Gallen have published a study on Open Banking in Switzerland. According to the respondents, Open Banking has the main goal of creating a more positive user experience as well as innovating the business models. The study bases on the 183 answers of an online survey mainly conducted among persons in Swiss companies with frequent contact to the topic of the future of the financial system and interviews with six experts. **Info**: LINK

Swiss Secure Finance Network

In a recent seminar SBA presented the Swiss Secure Finance Network SSFN, a fully independent communication network that builds upon existing internet technology but adds an additional layer of security. It offers secure data exchange among any participants without focusing on a central network provider. It is intended to be used for all secure communication on the Swiss financial centre, involving SNB, SIX, banks and other market participants. It can also be used by individual entities for the creation of a private high-security network such as for work from home. **Info**: LINK

Sustainable Finance

PACTA report

On 24 November 2022 Paris Agreement Capital Transition Assessment (PACTA) published its climate test for Switzerland prepared in cooperation with the Federal Office for the Environment of Switzerland and Wüest Partner. The PACTA tool allows assessment of portfolio alignment to various climate scenarios. For listed equities and corporate bonds Swiss financial institutions have lowered their exposure to high-carbon technologies. In

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terms of forward-looking net-zero alignment of the production plans of the companies in the portfolio, Swiss financial institutions are mostly misaligned in high-carbon technologies. The authors conclude that institutions should either start acting or improve the effectiveness of their climate action in order to reduce emissions in the real economy – not only in portfolios. **Info**: DE FR IT (study in English at the bottom)

Annual TCFD report

On 13 October 2022 the Financial Stability Board (FSB) published its annual TCFD-report. All regions increased their levels of disclosure but only about 40% of companies are in line with five out of the eleven disclosures. In 2021 the TCFD-report has gotten more recognition from regulators around the world – as for example in Switzerland. Nevertheless, the Task Force is concerned that not enough decision-useful climate-related financial information is disclosed. Especially banks have increased the level of reporting compared to the previous years. **Info**: LINK

Banks' Self-Regulation

SwissBanking and Asset Management Association Switzerland AMAS published their self-regulatory guidance in relation to ESG compliance. The guidelines focus on the wealth management advisory process, sustainability in mortgage business, and transparency of collective investment products. they enter into force from 1.1.2023 with transition periods. **Info**: SBA: DE FR IT EN and AMAS: DE FR IT EN

The Association of Swiss Private Banks and the Association of Wealth and Asset Management Banks developed an initiative allowing asset management banks to measure their road towards achievement of a set of goals. The goals can be determined individually according to the bank's specific situation; they focus around 12 priorities and their achievement can be measured annually. **Info**: LINK (VAV/ABG); LINK (ABPS)

Usage of ESG standards

A group of legal counsels of AFBS Members discussed challenges arising in relation with transparency on ESG application in the client advisory process. The multitude of sets of reference makes it difficult to choose the appropriate one; each has its strengths and weaknesses. Banks should, however, make their choice upon clear criteria and stick to it to avoid exposing themselves to the criticism of greenwashing. No standard is perfect, each has its flaws.

EU Commission

On the platform on sustainable finance the EU Commission has published a “Final report on Minimum Safeguards”. It has identified four core topics for which compliance with minimum safeguards should be defined: * Human rights, including workers’ rights; * Bribery/corruption; * Taxation; * Fair competition.

Info: LINK

G20 Indonesia

In view of the G20 summit in Indonesia, a roadmap for sustainable finance has been published. The roadmap consists of five Focus Areas which are then further specified in 19 actions. **Info**: LINK

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Study on sustainable public funds

The Institute for financial services in Zug, published its yearly report on Sustainable Investments. The Study reports that private investors in Switzerland have access to 9,563 authorised mutual funds out of which 1,858 or nearly 20% are perceived as sustainable with their method. The number of sustainable funds has risen by 44% compared to the previous year. The trend is mainly driven by newly created ESG-funds and pre-existing funds positioned as ESG-funds. The sustainable funds manage private assets of CHF 956 billion. This corresponds to a 23% increase from 2021, even though the total assets in all mutual funds have decreased by 14% due the market volatility. **Info**: LINK (Study is solely available in German)

AFBS Events

6.12.2022: AFBS Conference on FinTech in Switzerland presenting the state of play and latest developments.

11.1.2023: AFBS Conference: FINMA Circular Operational Risks: presentation and introduction

Last Minute

- AvenirSuisse makes recommendations to Confederation and Cantons on how to respond to the OECD Minimum Tax: DE FR IT EN

- The Europainstitut of University Zürich published a study on the institutional questions related to a potential Swiss adhesion to the EU: DE

- SBA Comments on Swiss Ordinance on OECD Minimum Taxation: DE

- BAK Economics publishes the latest study on the Swiss financial sector: DE FR EN (summary)

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