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Competence Center of Sustainability: Finance, Law, Sciences, and the Humanities

Green Investing?
Preventing and Combating Greenwashing in Swiss Collective Investment Schemes

Faculty of Law Master Thesis

Juliette Meier

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Table of Abbreviations

ACLA	Federal Act on Administrative Criminal Law of 22 March 1974 (SR 313.0)
AG	Die Aktiengesellschaft, Zeitschrift für deutsches, europäisches und internationales Aktien-, Unternehmens-und Kapitalmarktrecht
AJP	Aktuelle Juristische Praxis
AMAS	Asset Management Association Switzerland
AMF	Autorité des Marchés Financiers
AOA	Federal Act on the Licensing and Oversight of Auditors (Auditor Oversight Act, AOA) of 16 December 2005 (SR 221.302)
Art.	article
BaFin	Bundesanstalt für Finanzdienstleistungsaufsicht
BB	Betriebs Berater
BSK	Basler Kommentar
c.	consideration
CCZ	Corporate Compliance Zeitschrift
CHF	Swiss franc
cit.	cited
CISA	Federal Act on Collective Investment Schemes (Collective Investment Schemes Act, CISA) of 23 June 2006 (SR 951.31)
CISO	Ordinance on Collective Investment Schemes (Collective Investment Schemes Ordinance, CISO) of 22 November 2006 (SR 951.311)
CO	Federal Act on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations) of 30 March 1911 (SR 220)
DWS	DWS Asset Management
EBOR	European Business Organization Law Review
ed.	edition
eds.	editors
e.g.	exempli gratia
EF	Expert Focus
ESG	Environmental, Social, and Governance
ESMA	European Securities and Markets Authority
EU	European Union
et al.	et alii
etc.	et cetera
f./ff.	and following page(s)

FDF	Federal Department of Finance
FDFA	Federal Department of Foreign Affairs
FinIA	Federal Act on Financial Institutions (Financial Institutions Act, FinIA) of 15 June 2018 (SR 954.1)
FINMA	Swiss Financial Market Supervisory Authority
FINMASA	Federal Act on the Swiss Financial Market Supervisory Authority (Financial Market Supervision Act, FINMASA) of 22 June 2007 (SR 956.1)
FinSA	Federal Act on Financial Services (Financial Services Act, FinSA) of 15 June 2018 (SR 950.1)
FinSO	Ordinance on Financial Services (Financial Services Ordinance, FinSO) of 6 November 2019 (SR 950.11)
fn.	footnote
GesKR	Zeitschrift für Gesellschafts- und Kapitalmarktrecht
ibid	ibidem
IOSCO	International Organization of Securities Commissions
let.	letter
L-QIF	Limited Qualified Investor Fund
n.	note
NG	Novità giuridiche
no	number
o.o.	other opinion
p.	page
para.	paragraph
RR-COMP	Recht relevant. für Compliance Officers
SBA	Swiss Bankers Association
SCC	Swiss Criminal Code of 21 December 1937 (SR 311.0)
SECO	State Secretariat for Economic Affairs
sic!	Zeitschrift für Immaterialgüter-, Informations- und Wettbewerbsrecht
SIF	State Secretariat for International Finance
SJZ	Schweizerische Juristen-Zeitung
SR	Systematic Compilation of Federal Legislation
SSF	Swiss Sustainable Finance
SSRN	Social Science Research Network
SZW	Schweizerische Zeitschrift für Wirtschafts- und Finanzmarktrecht
UCA	Federal Act on Unfair Competition (Unfair Competition Act, UCA)

	of 19 December 1986 (SR 241)
UN	United Nations
ZSR	Zeitschrift für Schweizerisches Recht
ZZZ	Schweizerische Zeitschrift für Zivilprozess- und Zwangsvollstreckungsrecht
ZBl	Schweizerisches Zentralblatt für Staats- und Verwaltungsrecht

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SIA, Self-regulation on the prevention of greenwashing in sustainability-related unit-linked life insurance (cit. SIA Self-Regulation).

UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, 25 September 2015, available at <https://docs.un.org/en/A/RES/70/1> (accessed 1 May 2026) (cit. UN Agenda for Sustainable Development).

A. Introduction

Climate change has long become an omnipresent reality. The Swiss financial markets are not immune to its far-reaching consequences. Over a decade ago, CARNEY, who at the time served in the dual capacity of Governor of the Bank of England and Chair of the Financial Stability Board, posited that "the combination of the weight of scientific evidence and the dynamics of the financial system suggest that, in the fullness of time, climate change will threaten financial resilience and longer-term prosperity."[1] The fact that this combination continues to be a major concern today is demonstrated by both political initiatives and procedural requests[2] as well as a "regulatory tsunami"[3] regarding sustainability in financial centers. There is a burgeoning consensus that the financial sector bears a pivotal responsibility in achieving international climate targets and mitigating environmental impact.[4] Accordingly, it is hardly surprising that the market share of sustainable financial products has increased significantly.[5] Especially collective investment schemes, as FINMA states, "occupy a central position among sustainability-related financial products".[6]

Therefore, this thesis focuses on greenwashing in the area of Swiss collective investment schemes. Its core objective is to critically evaluate whether the current Swiss legal and regulatory framework including self-regulation is sufficient to prevent and combat greenwashing in said area. The analysis primarily examines Swiss supervisory law, with particular emphasis on the CISA, the FinSA, and the supervisory expectations set out in FINMA Guidance 05/2021. While issues relating to criminal and civil liability, as well as unfair competition law (especially the newly introduced art. 3 para. 1 let. x UCA) are essential for a complete overview, they are addressed for the sake of completeness but are not analysed in depth. Given that the EU is one of Switzerland's most significant trading partners,[7] this thesis incorporates a peripheral comparative analysis contrasting the Swiss approach with that of the EU. Furthermore, it aims to identify and propose potential de lege ferenda approaches.

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1 CARNEY MARK, Breaking the tragedy of the horizon – climate change and financial stability, Speech given at Lloyd's of London, 29 September 2015, available at <https://www.bankofengland.co.uk/speech/2015/breaking-the-tragedy-of-the-horizon-climate-change-and-financial-stability> (accessed 1 May 2026).

2 Finanzplatz-Initiative; Interpellation Andrey; Interpellation Michaud Gigon; Motion Clivaz; Motion Matter; Motion Michaud Gigon; Postulate Widmer etc.

3 DEDEYAN, Versprechen der Nachhaltigkeit, p. 196.

4 WEBER/HÖSLI, p. 575.

5 KOUMBARAKIS/JACCARD/BLUMER, p. 62.

6 FINMA Guidance 05/2021, p. 2.

7 FDFA, Switzerland-EU in figures, 7 July 2025, available at <https://www.europa.eda.admin.ch/en/switzerland-eu-in-figures> (accessed 1 May 2026).

The thesis is structured as follows: Part A provides an introduction. In Part B, the concept of greenwashing and outlines its manifestations on the product as well as distribution level are examined. Part C introduces the institutional and political framework and then surveys the legal and regulatory framework in Switzerland and in the EU. It concludes with a critical evaluation of the existing framework and a comparative analysis. Following an assessment of potential approaches to combating greenwashing in collective investment schemes in Switzerland in Part D, Part E closes with a conclusion and an outlook on future developments.

B. The Phenomenon of Greenwashing in Collective Investment Schemes

I. Terminology

The term "greenwashing" was coined in 1986 by environmentalist Jay Westerveld in an essay critiquing the hospitality industry's "save the towel" campaigns. While hotels urged guests to reuse towels under the guise of environmental preservation motivated by cost-reduction strategies rather than genuine ecological concern. This seminal observation highlights the fundamental discrepancy between corporate rhetoric and underlying commercial intent that remains central to the legal discourse on greenwashing today.[8]

In recent years, the phenomenon of "greenwashing" has come under intense public and media scrutiny. This shift is primarily driven by a growing societal awareness regarding ecologically detrimental corporate practices.[9] To date, a globally recognised, uniform definition for "greenwashing" remains elusive.[10] The Federal Council posits that greenwashing within the financial sector manifests "when, for example, a financial instrument or service is portrayed as having sustainable characteristics or pursuing sustainability goals, and this portrayal does not adequately reflect reality."[11] The concept of greenwashing extends to deceptive and misleading practices within the investment advisory process. Consequently, greenwashing occurs when financial institutions mislead clients, whether knowingly or unknowingly, regarding the sustainable attributes of financial products or advisory services. Therefore, such conduct is not limited to deliberate deception; it may also manifest in the absence of specific intent or knowledge by the parties involved.[12] According to FINMA, greenwashing occurs when misleading statements are being made to investors (knowingly or unknowingly) concerning the sustainability aspects of financial products or services.[13] This conceptual interpretation aligns, in large part, with the regulatory approach adopted within the Taxonomy Regulation. As defined under the Taxonomy Regulation, "greenwashing refers to the practice of gaining an unfair competitive advantage by marketing a financial product as environmentally friendly, when in fact basic environmental standards have not been met."[14]

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8 BACHMANN, p. 42.
9 WENK/LEHMKUHL, p. 463.
10 FISCHER, p. 257; MÄCHLER, p. 33.
11 Federal Council's position 2022, p. 1.
12 FISCHER, p. 257.
13 FINMA Annual Report 2025, p. 33; FINMA Guidance 05/2021, p. 2.
14 Recital 11 Taxonomy Regulation.

Various indicators are frequently identified as characteristic of greenwashing. These include the employment of vague terminology, such as "environmentally friendly", as well as the disproportionate emphasis on negligible ecological benefits. Furthermore, the concealment or trivialisation of non-ecological product features is equally indicative. Such deceptive practices extend to the use of fraudulent labels, misleading associations, and suggestive colour coding, often accompanied by an intent to deceive or, at the very least, a reckless disregard for the truth. Consequently, these indicators exacerbate the information asymmetry between the actual quality of the financial product and its professed sustainability credentials.[15] Therefore, greenwashing may cover a broad range of practices, all of which share the common element of deception, whether intentional or negligent.[16]

The conceptualisation of sustainability is inherently subjective and susceptible to temporal fluctuations. Scholarly discourse maintains that sustainability is undergoing continuous evolution as emerging scientific insights and shifting political and economic realities inevitably recalibrate its parameters.[17] Consequently, any definition established today may be rendered obsolete by future developments.

II. Collective Investment Schemes

In 2021, Swiss financial market law underwent a fundamental restructuring, resulting in a cross-sectoral regulatory approach. As a consequence of this reform, the norms governing Swiss collective investment schemes law are no longer consolidated within a single piece of legislation; instead, a clear distinction is now maintained between the institutional and product level and the point of sale.[18]

CISA establishes the primary legal framework governing collective investment schemes. Investor protection, as well as the transparency and proper functioning of the relevant market, are the main purposes of the CISA.[19] As a framework act,[20] the CISA is clarified by an ordinance but also leaves sufficient space for self-regulation.[21]

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15 MÄCHLER, p. 33.
16 SCHWARZ/SCHIEFFER, p. 345; WENK/LEHMKUHL, p. 467.
17 ALEXANDER, p. 149; FISCHER, p. 266; IVANOVIC/WOHLHAUSER, p. 181.
18 NIETO, p. 201; for a more in-depth look at the so-called "Kleeblatt-Reform", see KUNZ, p. 18 ff.
19 BRUNNER, n. 55.
20 BBI 2012 3639, p. 3666; BRUNNER, n. 59; NIETO, p. 213.
21 BRUNNER, n. 59.

Under art. 7 CISA, collective investment schemes are defined as assets raised from and managed collectively for investors on an equal basis,[22] covering both open- and closed-ended structures.[23] In accordance with the principle of "same business, same risks, same rules", the legal definition under art. 7 CISA is intended to encompass all forms of collective investment schemes.[24]

Collective investment schemes are subject to a dual supervisory system: beyond the requirement for institutional authorisation, collective investment schemes are subject to mandatory product-level approval.[25]Additional regulatory requirements include organisational duties, disclosure obligations, and rules on documentation and governance.[26]

There are currently no specific legal provisions that directly target the prevention of greenwashing in Swiss collective investment schemes law.[27] Existing rules must therefore be interpreted in an ESG context, with FINMA Guidance 05/2021 serving only as a non-binding interpretative aid.[28] At the point of sale, while financial advisers must address greenwashing risks, the FinSA does not require consideration of clients' sustainability preferences.[29]

III. Manifestation of Greenwashing

In the context of collective investment schemes, greenwashing risks may arise at three distinct regulatory levels. At the entity level, financial institutions are subject to prudential and organisational supervisory requirements. At the product level, risks relate to compliance with transparency obligations and ongoing disclosure duties. Finally, at the point of sale, financial service providers must adhere to conduct of business rules, in particular suitability and appropriateness assessments, which serve investor protection purposes given the generally limited level of expertise among Swiss retail investors regarding sustainable financial products.[30] In my opinion, the manifestations at the product level and the point of sale constitute the primary areas of concern. Consequently, the present thesis focuses its analytical scope on these two dimensions.

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22 Art. 7 para. 1 CISA.
23 Art. 7 para. 2 CISA.
24 BBI 2005, p. 6413 ; BSK CISA-RAYROUX/DU PASQUIER, art. 7, n. 3 f.
25 JUTZI/WESS, Selbstregulierung, p. 23.
26 ibid, p. 23.
27 JUTZI/WESS, Greenwashing, p. 93.
28 DARBELLAY, law and regulation, p. 5.
29 FINMA Guidance 05/2021, p. 5 f.
30 BACHMANN, p. 41 ff.; YERLY, p. 54 f.

1. Manifestation at the Product Level

At the product level, the main risk of greenwashing is the discrepancy between a collective investment schemes' advertised sustainability profile and its actual investment composition.[31] Under art. 12 CISA, the designation "collective investment scheme" must not be confusing or deceptive; however, in the absence of a binding legal definition of "sustainable", providers may market products using terms such as "green", "ESG", or "sustainable" without meeting investors' legitimate expectations.[32] Risks particularly arise where a fund claims a sustainability focus but lacks a genuine sustainable investment strategy, fails to implement the strategy described in its documentation, or uses terms such as "Impact", "Net Zero", or "Zero Carbon" without measurable and verifiable evidence. Greenwashing may also occur where sustainability claims rely solely on basic exclusion criteria without further ESG integration, or where a significant share of non-sustainable assets undermines the stated sustainability objective. [33]

2. Manifestation at the Point of Sale

At the point of sale, greenwashing risks emerge during the advisory and distribution process. A central issue is the failure to properly assess, document, and implement an investor's sustainability preferences. This creates the so-called "matching problem", where the recommended investment product does not genuinely correspond to the client's ESG expectations.[34] Although the FinSA governs conduct obligations at the point of sale, it does not contain explicit statutory duties regarding sustainability preferences, leaving this area largely dependent on self-regulation.[35] Additional risks arise through exaggerated or vague marketing statements during client consultations, where advisors may overstate the environmental or social benefits of products, particularly taking advantage of the generally limited ESG literacy of retail investors.[36] Therefore, greenwashing occurs in the advisory context, whether deliberately or unintentionally, when a client's sustainability preferences are not properly identified or are recorded incorrectly, making their effective consideration impossible.[37]

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31 FISCHER, p. 265.
32 DARBELLAY, law and regulation, p. 7; JUTZI/WESS, Greenwashing, p. 90; MEYER, p. 20.
33 FINMA Guidance 05/2021, p. 4.
34 FISCHER, p. 258 ff.; KOUMBARAKIS/JACCARD/BLUMER, p. 73.
35 FINMA Guidance 05/2021, p. 5; BERTSCHINGER, p. 742; Fischer, p. 258; JUTZI/WESS, Greenwashing, p. 94.
36 BACHMANN, p. 43; BERTSCHINGER, p. 742; NIETO, p. 400 f.
37 FISCHER, p. 265.

IV. Risks and Impacts

Investor protection shall be achieved through safeguarding individuals from deceptive practices regarding the sustainability profiles of financial instruments and related advisory processes.[38] Investors are demanding enhanced transparency and granular data to facilitate the comparability of financial instruments based on standardised sustainability metrics. Such disclosures are essential to enable market participants to conduct informed assessments and execute evidence-based investment decisions.[39] In terms of market integrity, a landscape saturated with misleading product disclosures and inefficient capital allocation fundamentally undermines public confidence in the financial system. In terms of reputational integrity, greenwashing poses a dual threat: it endangers the standing of individual financial institutions while simultaneously jeopardising the prestige of the Swiss financial centre as a whole.[40]

The Federal Council identified four main risks associated with greenwashing: (i) misleading of clients, investors and insured persons, (ii) legal and reputational risks, (iii) smooth functioning of financial markets and the reputation of the Swiss financial centre, and (iv) diversion of capital flows to non-sustainable activities, thereby complicating the achievement of international sustainability goals.[41]

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38 FISCHER, p. 257; JUTZI/WESS, Greenwashing, p. 87.
39 ibid.
40 BERTSCHINGER, p. 744; GAUDERON/BEÇA, p. 236 f.; SIEBER-GASSER, p. 4 f.
41 Federal Council's position 2022, p. 1.

C. Status de lege lata

I. Institutional and Political Framework

1. Federal Council

The promotion of sustainability within the financial sector constitutes an integral part of the Swiss Federal Council's commitment to achieving the seventeen UN Sustainable Development Goals.[42] The 2015 Paris Agreement is often seen as the primary catalyst for the following regulatory and paradigm shift.[43] The Paris Agreement's overarching objective is to maintain the "increase in the global average temperature to well below 2°C above pre-industrial levels" while simultaneously pursuing efforts "to limit the temperature increase to 1.5°C above pre-industrial levels."[44] Art. 2 para. 1 let. c of the Paris Agreement mandates that the international response to climate change must include "making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development."

In December 2022, the Federal Council elucidated its stance on the prevention of greenwashing within the financial sector in a position paper, providing essential clarity on its regulatory expectations. It established a definition of greenwashing: "Greenwashing occurs in the financial sector when, for example, a financial instrument or service is portrayed as having sustainable characteristics or pursuing sustainability goals, and this portrayal does not adequately reflect reality".[45] In essence, an analysis of the policy paper reveals four core guiding principles: (i) the primacy of market-based solutions, whereby the industry is expected to assume autonomous responsibility; (ii) the subsidiarity of state intervention, stipulating that regulatory action is taken only where strictly necessary; (iii) transparency and risk-adequate pricing, ensuring the provision of comprehensive and comparable information; and (iv) a long-term orientation, focused on the generation of sustainable value over time. [46]

In October 2023, the FDF decided to draw up a draft for principle-based government regulation at ordinance level in order to implement the Federal Council's established position; however, the Department would suspend the further legislative process should the financial sector introduce a self-regulatory framework that effectively meets the Federal Council's requirements.[47] Half a year later, the Federal Council acknowledged the financial sector's progress in

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42 Federal Council report 2022; UN Agenda for Sustainable Development; APPENZELLER, p. 97.
43 KOUMBARAKIS/JACCARD/BLUMER, p. 62.
44 Art. 2 para. 1 let. a Paris Agreement.
45 Federal Council's position 2022, p. 1.
46 ibid, p. 3 f.
47 Federal Council, Further efforts to prevent greenwashing, 25 October 2023, available at <https://www.admin.ch/en/nsb?id=98351> (accessed 1 May 2026).

preventing greenwashing through new self-regulatory efforts. Considering these developments, the European Union's ongoing work to amend the Sustainable Finance Disclosure Regulation (SFDR) and the significant relevance of the European market for the Swiss financial centre, the Federal Council has decided not to enact state regulation against greenwashing in the financial sector at this stage. Nevertheless, it has tasked the FDF to reassess the need for action regarding the full application of the Federal Council's position as soon as the European Union has released any amendments to its SFDR, but no later than the end of 2027.[48] In June 2025, the Federal Council has taken the decision to put the revision of the ordinance on climate disclosures for companies on hold for the time being, until there is clarity regarding changes to the provisions on sustainability reporting and regulatory developments in the European Union.[49]

In March 2026, SIF reaffirmed Switzerland's commitment to sustainable financial services in a policy paper. Sustainability remains a key factor in the quality and competitiveness of Switzerland as a financial centre. The aim is for Switzerland to be able to maintain and build on its leading position in sustainable investment.[50]

2. Swiss Financial Market Supervisory Authority

In accordance with art. 4 FINMASA, FINMA has the objectives of protecting creditors, investors, and insured persons as well as ensuring the proper functioning of the financial market. It thus contributes to sustaining the reputation, competitiveness and sustainability of Switzerland's financial centre. FINMA is a member of IOSCO, a global body including supervisory authorities from more than 100 jurisdictions, that issues guidelines aimed at preventing greenwashing.[51]

In November 2021, FINMA issued guidance on preventing and combating greenwashing in the collective investment schemes segment. It outlines FINMA's expectations and current practice regarding the management of sustainability-related collective investment schemes at fund and institutional level. Sustainability-related information for Swiss collective investment schemes must provide a clear and concrete description of the sustainable investment strategy and its

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48 Federal Council, Federal Council notes financial sector's progress in preventing greenwashing, 19 June 2024, available at <https://www.news.admin.ch/en/nsb?id=101489> (accessed 1 May 2026).

49 Federal Council, Federal Council decides on next steps with regard to companies' climate disclosures, 25 June 2025, available at <https://www.sif.admin.ch/en/newnsb/o-9C-JRLbzdn2YfnJFzh7> (accessed 1 May 2026).

50 SIF, Sustainable Finance, 27 March 2026, available at <https://www.sif.admin.ch/en/sustainable-finance> (accessed 1 May 2026).

51 FINMA, International Organization of Securities Commissions, available at <https://www.finma.ch/en/finma/international-activities/policy-and-regulation/iosco/> (accessed 1 May 2026).

implementation methods. Transparency and consistency between the product's advertised profile and its actual characteristics are the key objectives.[52] As a non-binding regulatory instrument, FINMA guidance provides targeted communication to supervised institutions to promote the effective implementation of existing rules. These documents, issued on an occasional or ad hoc basis, are designed to raise awareness of current risk constellations and encourage a forward-looking compliance culture. While they lack the formal status of ordinances or circulars, they are essential for clarifying supervisory expectations and facilitating the transparent, practical operationalisation of legal requirements.[53]

According to FINMA's strategic goals for the periods 2021–2024 and 2025–2029, FINMA incorporates climate-related financial risks into its supervisory activities. It monitors the management of these risks by financial institutions and regulates the corresponding transparency requirements. Furthermore, FINMA oversees the implementation and compliance of these measures within the framework of its risk-oriented supervisory approach.[54]

On 17 December 2024, FINMA Circular 2026/1 on nature-related financial risks was published. Although the circular primarily targets banks and insurers and does not directly apply to entities governed by FinIA and CISA, such as fund management companies and managers of collective assets, FINMA recommends that these actors use it as a benchmark for best practices. The circular focuses on institutional risk management and corporate governance concerning nature-related financial risks. FINMA also highlights that greenwashing creates significant legal and reputational risks and encourages institutions to integrate potential greenwashing-related litigation, particularly arising from advisory or marketing activities, into their internal risk assessment processes.[55]

In its Annual Report 2025, FINMA emphasises that sustainability claims in Swiss funds and at banks' point of sale must be transparent, verifiable, and not misleading. It reviewed sustainability-related fund approvals to ensure investors were not deceived and required additional disclosures where necessary. Through on-site inspections at banks, FINMA also identified shortcomings in governance, risk management, and internal controls, noting that greenwashing risks

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52 FINMA Guidance 05/2021, p. 3 f.
53 FINMA communication policy, p. 6 f.
54 FINMA's strategic goals 2021 to 2024, p. 13; FINMA's strategic goals 2025–2028, p. 7.
55 JUTZI/WESS, Greenwashing, p. 123.

were often insufficiently addressed by senior management and that some institutions could not adequately substantiate their sustainability impact claims.[56]

3. Self-Regulation

In Switzerland, regulatory gaps are often filled by self-regulatory frameworks when legal rules are missing or incomplete. These instruments operate outside the formal legal system and therefore cannot be recognised as supervisory minimum standards under art. 7 para. 3 FINMASA. They are typically used as interim solutions, especially when legislative alignment with international (e.g. European) standards is delayed. [57]

In the absence of comprehensive legislation on sustainability in finance, Swiss industry associations such as AMAS, the SBA and SIA have developed voluntary self-regulatory regimes to address issues like greenwashing.[58] These frameworks emerged with the Federal Council's support, which initially preferred industry-led solutions over immediate state regulation.[59] Even though formal legal rules were considered, the authorities emphasised the continued importance of private-sector governance, provided that self-regulation is sufficiently strengthened.[60] The relevant financial sector associations have subsequently complied with this expectation.[61] Self-regulation is a core element of the Swiss supervisory model under art. 7 para. 3 FINMASA,[62] which allows FINMA to support and, in some cases, recognise industry standards.[63] A key legal issue is whether, and to what extent, a supervisory authority may enforce private self-regulations law. However, in the area of greenwashing prevention, FINMA has no direct rulemaking or enforcement authority, meaning these voluntary standards remain purely private-law arrangements without formal supervisory recognition or monitoring.[64]

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56 FINMA Annual Report 2025, p. 33.
57 SCHÄREN, p. 614.
58 ibid.
59 BRÄNDLI, p. 47.
60 Federal Council, Further efforts to prevent greenwashing, 25 October 2023, available at <https://www.admin.ch/en/nsb?id=98351> (accessed 1 May 2026).
61 Federal Council, Federal Council notes financial sector's progress in preventing greenwashing, 19 June 2024, available at <https://www.news.admin.ch/en/nsb?id=101489> (accessed 1 May 2026).
62 JUTZI/WESS, Selbstregulierung, p. 11.
63 ibid, p. 11 f.
64 DARBELLAY, law and regulation, p. 13; JUTZI/WESS, Greenwashing, p. 105.

II. The Swiss Framework

1. Supervisory Regulations/Financial Markets and Supervisory Law

There are currently no explicit legal provisions specifically aimed at preventing greenwashing in the area of collective investment schemes.[65] Nonetheless, several provisions are particularly important, among them the following: the protection against confusion or deception (art. 12 CISA), the minimum content of the contract or prospectus (art. 35a CISO and Annex 6 FinSO), the principles of management (art. 20 CISA), and the organisational requirements for managing institutions (art. 9 FinIA and art. 14 CISA). Furthermore, there are FINMA Guidance 05/2021 on preventing and combating greenwashing and self-regulatory associations that have addressed transparency regarding ESG criteria.[66]

a) Regulation at the Product Level

Art. 12 para. 1 CISA is of central importance, stating that the designation "collective investment scheme" must not provide any grounds for confusion or deception, in particular in relation to the investments. The provision is preventive in nature and constitutes a requirement for licensing; consequently, if the designation of a collective investment scheme fails to meet the requirements of art. 12 para. 1 CISA, FINMA will refuse to grant the license. Since changes to the designation require approval from FINMA under art. 16 CISA, a certain degree of subsequent control is ensured.[67] Nonetheless, its practical scope is narrow; following the abandonment of the "two-thirds rule",[68] the authority now only performs abuse control[69]. Consequently, art. 12 CISA only triggers in cases of obvious or intentional deception.[70]

Further requirements arise from fund documentation standards under art. 35a CISO, art. 102 CISA, and Annex 6 FinSO.[71] Although fund contracts and their amendments require FINMA approval,[72] the lack of legally binding sustainability standards allows funds to define "sustainability" autonomously.[73] This lack of a uniform definition hinders comparability between

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65 BACHMANN, p. 43; DARBELLAY/CABALLERO CUEVAS, p. 56; EGGEN, Grüne Finanzprodukte, p. 698; JUTZI/WESS, Greenwashing, p. 97.
66 JUTZI/WESS, Greenwashing, p. 89 f.; MEYER, p. 20.
67 BSK CISA-DE ZORDI, art. 12, n. 22; JUTZI/WESS, Greenwashing, p. 90.
68 Between 1993 and 2008, collective investment schemes were required to ensure that at least two-thirds of their assets reflected their stated designation. This rule was later repealed as supervisory intervention became limited to clear cases of abuse or deception. Nonetheless, the former two-thirds threshold is still considered a useful guiding benchmark, despite no longer being legally binding.
69 BSK CISA-DE ZORDI, art. 12, n. 20 f.; JUTZI/WESS, Greenwashing, p. 90; DARBELLAY, law and regulation, p. 7.
70 BSK CISA-DE ZORDI, art. 12, n. 6 und 14; JUTZI/WESS, Greenwashing, p. 90; MEYER, p. 20.
71 JUTZI/WESS, Greenwashing, p. 91.
72 Art. 15 para. 1 in conjunction with art. 35a para. 2 CISA and art. 16 CISA.
73 JUTZI/ABBÜHL, p. 14; JUTZI/WESS, Greenwashing, p. 91.

products, but it likely facilitates matching with customer preferences and serves to minimize liability risks.[74]

According to art. 48 ff. FinSA in conjunction with annex 6 of the FinSO, collective investment schemes are subject to a mandatory prospectus requirement. The prospectuses of Swiss collective investment schemes, along with any amendments, must be submitted to FINMA.[75] While prospectuses must detail (sustainable) investment policies and ESG concepts,[76] they are, according to art. 51 para. 3 FinSA, not subject to substantive material review by the reviewing body. From a liability perspective, misleading prospectus information may trigger prospectus liability under art. 69 FinSA, yet this requires proof of a financial loss. Demonstrating such loss is particularly difficult in ESG cases, as non-sustainable investments may even outperform "green" ones.[77]

While art. 90 FinSA provides criminal sanctions for intentional misstatements, according to art. 92 FinSA in conjunction with art. 3 FINMASA, it primarily targets non-supervised issuers rather than prudentially supervised entities like collective investment schemes.[78] Persons responsible for managing or representing collective investment schemes, as well as those entrusted with the custody of their assets and their agents, are required to comply with duties of loyalty, due diligence, and disclosure under art. 20 para. 1 CISA. However, the information duties under art. 20 para. 1 let. c CISA in conjunction with art. 34 CISO are considered only of secondary importance for greenwashing prevention by JUTZI and WESS.[79]

In sum, CISA contains various provisions to prevent greenwashing at the product level, though their effectiveness remains limited.[80]

FINMA places particular emphasis on the disclosure of the promoted sustainability characteristics during both the approval and supervisory process, especially regarding the naming and description of funds with sustainability-related terms such as "sustainable", "green" or "ESG" as these designations can significantly influence investors' decisions. Its objective is to ensure that these features are communicated transparently and that investors are not misled about the

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74 JUTZI/WESS, Greenwashing, p. 91.
75 Art. 48 para. 4 FinSA.
76 JUTZI/WESS, Greenwashing, p. 91.
77 BACHMANN, p. 44; FAHRLÄNDER/JOST, p. 136; JUTZI/WESS, Greenwashing, p. 92.
78 JUTZI/WESS, Greenwashing, p. 92.
79 JUTZI/WESS, Greenwashing, p. 92 f.
80 ibid, p. 92.

fund's sustainability profile.[81] Fund documents[82] must contain the relevant information for investors to make an informed investment decision.[83]

FINMA considers greenwashing risks to arise, for example, where a collective investment scheme claims a sustainability focus without pursuing a genuine sustainable investment strategy, where stated sustainability approaches are not effectively implemented, or where significant non-sustainable investments are not in line with the declared sustainability objective. Vague exclusion criteria without further sustainability elements, as well as, the use of terms such as "impact" or "zero carbon" without measurable/verifiable effects, may also constitute greenwashing. A lack of detailed or transparent disclosure is likewise seen as a potential greenwashing risk.[84] FINMA recommends transparent retrospective sustainability reporting showing clearly to what extent sustainability-related Swiss collective investment schemes have achieved their sustainability goals.[85]

b) Regulation at the Entity Level

Institutional regulation governs the actual activity of financial entities. While explicit legal provisions for the direct prevention of greenwashing are absent, specific obligations may arise from general organisational requirements, notably under art. 14 CISA and art. 9 FinIA, depending on the firm's specific business model.[86]

At the core of these requirements are mandates directed at the persons entrusted with administration and management, as well as the institution itself.[87] Internal regulations and an appropriate operational structure must ensure compliance with legal duties, scaled according to the risks and complexity of the business activities.[88] Risk management plays a pivotal role here, as it must identify, assess, and control ESG risks.[89] Furthermore, clearly defined investment policies and guidelines might help mitigate discrepancies between client sustainability expectations and the actual products offered.[90]

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81 FINMA Guidance 05/2021, p. 3.
82 Such as the fund contract, the investment regulations, the articles of association or the prospectus.
83 FINMA Guidance 05/2021, p. 3 f.
84 ibid, p. 4.
85 ibid, p. 4.
86 JUTZI/WESS, Greenwashing, p. 93.
87 ibid, p. 93.
88 WALTER/MEYER, p. 804.
89 Art. 12a para. 2 CISO and art. 12 para. 4 FinIO; JUTZI/WESS, Greenwashing, p. 93.
90 JUTZI/WESS, Greenwashing, p. 93 with reference to AMAS/SSF, How to Avoid the Greenwashing Trap: Recommendations on Transparency and Minimum Requirement for Sustainable Investment Approaches and Products,

Moreover, the assurance of proper business conduct[91] under art. 14 Abs. 1 let. a CISA and art. 11 FinIA requires that the governing body possesses relevant expertise in sustainability, particularly when defining the sustainability strategy and risk management processes. This requirement includes adherence to legal laws, professional codes of conduct, contractual duties, and internal policies. Consequently, severe or systemic breaches of industry standards can constitute a violation of the proper business conduct requirement.[92]

In Guidance 05/2021, FINMA specifies that a suitable[93] organisation for collective investment schemes with a sustainability focus requires that the fund's sustainability strategy is effectively ensured and that risk management captures not only traditional investment risks but also sustainability-related risks. These risks must be integrated into investment decision-making, investment controlling, and independent risk controls. FINMA also expects the governing body to possess sufficient sustainability expertise and to define the corresponding strategy. In addition, the selection and use of sustainability-related data, tools, and ratings must be subject to appropriate review, monitoring of providers, and validation of the underlying information.[94]

Under the relevant provisions of the FinSA, the legal consequences of greenwashing also extend to individuals in leadership roles and advisory positions. According to art. 33 FINMASA, high-level executives can face professional bans, while client advisors can be subject to activity bans under art. 33a FINMASA. This framework ensures that deceptive sustainability practices are not merely treated as institutional failures but can lead to direct regulatory action against the natural persons responsible, effectively turning greenwashing into a personal career risk.[95]

c) Regulation at the Financial Service Level (Point of Sale)

FinSA serves as the supervisory framework for financial services in Switzerland, standardizing the relationship between providers and clients[96] through uniform information, conduct, and organisational duties. The remarks in the FINMA Guidance regarding greenwashing risks at the

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December 2021, available at <https://www.sustainablefinance.ch/upload/cms/user/RecommendationsforSustainableInvestmentProducts_AMAS_SSF.pdf> (accessed 1 May 2026).

91 "Gewährserfordernis".

92 JUTZI/WESS, Greenwashing, p. 93.

93 In particular art. 9 FinIA and art. 14 para. 1 let. c CISA as well as art. 20 para. 1 CISA.

94 FINMA Guidance 05/2021, p. 5.

95 BERTSCHINGER, p. 744.

96 For an in-depth analysis of the relationship between supervisory law and private law in the provision of financial services, see JUTZI/EISENBERGER, p. 14 ff. and JUTZI/MEIER, p. 919 ff.

point of sale are notably brief.[97] This regulatory stance on the point of sale raises several questions. [98] Although the legislature deliberately refrained from including explicit ESG mandates and FINMA does not discern specific requirements at the point of sale, the following FinSA provisions could be significant for preventing greenwashing.[99] This was confirmed by the Federal Council, which stated in 2022 that Switzerland currently lacks specific transparency requirements or sustainable development obligations for financial services at both the legal and regulatory levels.[100]

The information duties under art. 8 f. FinSA[101] require financial service providers to inform clients about the market offering considered,[102] the available ESG investment solutions, and whether only proprietary financial instruments or also third-party instruments are taken into account.[103] Any economic ties to providers of ESG financial instruments must likewise be disclosed.[104] In addition, the duty to provide risk information also extends to ESG-related risks, insofar as these may have financial implications, such as transition risks resulting from climate change.[105] The failure to fulfill or the inadequate performance of the disclosure obligations set forth in FinSA can be classified as greenwashing if the omission or inaccuracy concerns ESG-relevant information.[106]

The assessments of appropriateness and suitability of financial services under art. 10 ff. FinSA are intended to ensure that recommended or managed financial products correspond to the client’s knowledge and experience, financial situation and investment objectives.[107] In this context, the “type of business”[108] serves as the primary point of reference, which specifically encompasses the sustainability profile of an investment requested by the client as a distinct business characteristic.[109] Sustainability objectives or the exclusion of certain sectors may form part

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97 FINMA Guidance 05/2021, p. 5: “Currently, the Financial Services Act (FinSA) contains no specific regulations to combat greenwashing. In particular, no specific obligations can be derived from FinSA regarding how clients' sustainability-related preferences should be accounted for at the point of sale.”
98 BERTSCHINGER, p. 742.
99 FAHRLÄNDER/JOST, p. 129; JUTZI/WESS, Greenwashing, p. 94.
100 Federal Council's position 2022, p. 1.
101 For an in-depth analysis of the duties to provide information, see JUTZI/WESS, Informationspflichten, p. 146 ff.
102 Art. 8 para. 2 let. c FinSA.
103 Art. 10 para. 1 FinSO.
104 Art. 8 para. 2 let. b FinSA; FISCHER, S. 261.
105 ECKERT/TEVES/LAUPER, p. 412 ff.; EGGEN, Grüne Finanzprodukte, p. 791; JUTZI/WESS, Greenwashing, p. 94.
106 JUTZI/WESS, Greenwashing, p. 94.
107 Art. 11 and 12 FinSA in conjunction with art. 16 and 17 FinSo.
108 “Geschäftsart”.
109 BERTSCHINGER, p. 741, JUTZI/WESS, Greenwashing, p. 95; FISCHER, p. 261.

of the client's (ESG) investment preferences and must therefore be incorporated into the advisory process.[110]

Pursuant to art. 15 FinSA, financial service providers are also subject to documentation obligations, requiring them to document both the financial services agreed with clients and the information collected about them, as well as the reasons for each recommendation leading to the acquisition or disposal of a financial instrument, including any ESG preferences.[111]

Finally, the duty of best execution pursuant to art. 1 FinSA requires that the agreed investment strategy, including sustainability-related client preferences, be implemented in the best possible manner and monitored on an ongoing basis. If a financial instrument acquired for the client is subsequently found to constitute greenwashing, this necessitates an adjustment of the client's portfolio.[112]

Failure to comply with regulatory obligations when providing financial services, offering collective investment schemes, or advertising such schemes may trigger supervisory measures by FINMA.[113] Criminal sanctions in cases of greenwashing may arise (i) in cases of breaches of duties in connection with the provision of financial services, (ii) in the offering of collective investment schemes, and (iii) in the advertising of collective investment schemes. In the provision of financial services, violations of the code of conduct may lead to criminal liability und art. 89 FinSA.[114] In the offering of collective investment schemes, criminal consequences may arise under art. 90 FinSA when obligations relating to the regulations on prospectuses and key information documents are breached. Criminal sanctions may also arise under art. 89 let. a FinSA where collective investment schemes are advertised, particularly if the requirement of truthful and non-misleading communication is breached.[115] Accordingly, greenwashing at the distribution level, whether in the provision of financial services, the offering of collective investment schemes, or the advertising of collective investment schemes, may constitute a criminal offence under FinSA, if inaccurate information is provided regarding a collective investment schemes' sustainable impact. Such actions constitute providing false information or

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110 FAHRLÄNDER/JOST, p. 132; FISCHER, p. 261; JUTZI/WESS, Greenwashing, p. 96.
111 For a differentiated overview, see FISCHER, p. 261.
112 FISCHER, p. 261 f.; JUTZI/WESS, Greenwashing, p. 94.
113 NIETO, p. 387 ff.
114 ibid, p. 398.
115 BBI 2015, p. 9003; NIETO, p. 399.

withholding material facts, which is punishable under art. 89 let. a in conjunction with art. 8 para. 2 let. a FinSA.[116] FinSA further provides for civil liability in this context.[117]

Legal scholarship invokes the so-called "Biber Case"[118] to illustrate that a financial provider obtains an undue informational advantage when it portrays an investment as more sustainable than it truly is, or knowingly recommends a product that does not align with the client's specific ESG preferences. This not only constitutes a breach of its contractual obligations toward the client but may also undermine the requirement of proper business conduct. The potential loss of this regulatory standing serves as a significant additional incentive for financial service providers to take the fight against greenwashing seriously.[119]

FINMA merely refers to ongoing work by the Federal Council regarding potential legislative amendments to financial market law. Finally, FINMA points to the previously mentioned SBA guidelines for integrating ESG criteria into the advisory process for private clients; welcoming this initiative as a means of addressing greenwashing risks at the point of sale.[120]

The SBA guidelines provide further clarification of the FinSA requirements at the point of sale, particularly with regard to the prevention of greenwashing. In addition, art. 68 FinSA in conjunction with art. 95 para. 1 FinSO on the advertising of financial instruments must be carefully complied with. Prospect liability under art. 69 para 1 FinSA applies to information in the prospectus or similar communications that is inaccurate, misleading, or in violation of legal requirements in prospectuses, key information documents or similar communications.[121] Prospect liability is triggered even by ordinary negligence. Unlike general corporate communications, this standard is justified for prospectuses, given that they are documents meticulously prepared by experts upon which investors should be able to rely when making investment decisions.[122] Only false statements made intentionally in prospectuses or key information documents are punishable under art. 90 FinSA; inaccurate advertising regarding specific financial products is not covered. The offense constitutes a felony punishable by a fine of up to CHF 500,000.[123]

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116 NIETO, p. 400 f.
117 See Part C.II.3. "Civil and Criminal Liability" and NIETO, p. 394 f.
118 BGE 131 III 306.
119 BERTSCHINGER, p. 743 f.; FISCHER, p. 265.
120 BERTSCHINGER, p. 742.
121 For a detailed discussion of prospectus liability, see GERICKE/SCHIFFERLE, p. 189 ff.
122 DEDEYAN, Haftung für Unternehmenskommunikation, p. 92.
123 BACHMANN, p. 55; JUTZI/WESS, Greenwashing, p. 97.

In sum, at the point of sale, investors may be led to believe they are investing in a sustainable product, even though this is not the case to the extent promised through financial services, offering, or advertising. If efforts to implement sustainable investment strategies are exaggerated for marketing purposes, investors can be misled, thereby potentially constituting greenwashing.[124]

With respect to the point of sale, FINMA emphasizes that FinSA currently does not impose any specific obligations to consider clients' sustainability preferences during the advisory process. However, financial service providers are still expected to mitigate greenwashing risks, particularly in light of potential civil liability. Until a legal framework is introduced, FINMA therefore refers primarily to self-regulation in this area.[125]

2. Self-Regulation

Reflecting the Federal Council's policy of regulatory subsidiarity and the primacy of market autonomy, the Swiss landscape is characterised by self-regulation of the industry. These self-regulatory measures aim to formalise the disclosure of sustainability factors, harmonising ESG integration across corporate governance, product development, and conduct of business rules at the point of sale.[126] In October 2023, the Federal Council announced that the FDF drafted a proposal for state regulation at the ordinance level, based on the principles outlined in its position paper. This decision signalled that the existing self-regulatory frameworks were deemed insufficient to meet the requirements of that position. In response, SBA and AMAS further refined their self-regulations, and SIA enacted a new self-regulatory framework.[127]

a) Swiss Bankers Association

SBA published the "Guidelines for the financial service providers on the integration of ESG-preferences and ESG-risks and the prevention of greenwashing in investment advice and portfolio management" in June 2022 and updated it on 26 November 2025. The Guidelines establish binding, principle-based minimum standards for Swiss financial service providers in investment advice and portfolio management. Their main objective is to prevent greenwashing by ensuring that ESG preferences of clients are systematically aligned with the sustainability characteristics

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124 NIETO, p. 391 f.
125 FINMA Guidance 05/2021, p. 5 f.
126 FISCHER, p. 264; JUTZI/WESS, Selbstregulierung, p. 28; MEYER, p. 21.
127 JUTZI/WESS, Greenwashing, p. 106 and 119 f.; JUTZI/WESS, Selbstregulierung, p. 28; KOUMBARAKIS/JACCARD/BLUMER, p. 69.

of financial products and properly disclosed at the point of sale.[128] The Guidelines are mandatory for SBA members and complement duties under the FinSA, particularly regarding information, disclosure, documentation, and reporting obligations.[129] They require banks to integrate ESG considerations into client advisory processes, including client segmentation, suitability assessments, documentation, training, and compliance controls.[130] While aligned in part with AMAS Self-Regulation, they do not rely on a fully uniform sustainability definition and remain deliberately principle-based, allowing institutions flexibility in implementation.[131]

b) Asset Management Association Switzerland

The AMAS Self-Regulation establishes a principle-based framework to enhance transparency and governance of sustainable collective investment schemes in Switzerland.[132] AMAS Self-Regulation seeks to support federal sustainability goals, enhance transparency and quality, and strengthen the Swiss financial centre. As a private regime, it lies outside FINMA's supervisory scope.[133]

The framework sets minimum standards that must be operationalised by individual institutions, allowing reference to other industry guidelines. It introduces qualitative and quantitative criteria for sustainability-related products,[134] requiring that at least 70% of assets (excluding liquid assets and derivatives) contribute to defined sustainability objectives or transitions.[135] At the product level, the framework introduced comprehensive rules governing sustainability policies, data management, investment methodologies, risk monitoring, marketing communications, and periodic reporting.[136]

The regime applies only to AMAS member institutions managing sustainability-related collective investments in Switzerland and does not extend to traditional asset management activities.[137]

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128 JUTZI/WESS, Greenwashing, p. 113; JUTZI/WESS, Selbstregulierung, p. 29; MEYER, p. 21; WALTER/MEYER, p. 807.
129 Art. 2 para. 3 SBA Guidelines.
130 JUTZI/WESS, Greenwashing, p. 114.
131 DARBELLAY, law and regulation, p. 14; JUTZI/WESS, Greenwashing, p. 114.
132 A comprehensive analysis of the pivotal components within the AMAS Self-Regulation: JUTZI/WESS, Greenwashing, p. 109.
133 Preamble, art. 1 and art. 2 AMAS Self-Regulation.
134 JUTZI/WESS, Greenwashing, p. 109.
135 Art. 3 AMAS Self-Regulation.
136 KOUMBARAKIS/JACCARD/BLUMER, p. 70.
137 Art. 4 AMAS Self-Regulation; DARBELLAY, law and regulation, p. 14.

c) Swiss Insurance Association

The Swiss Insurance Association self-regulation establishes a standardised framework for sustainability-focused unit-linked life insurance products and the integration of client sustainability preferences in advisory processes.[138] It introduces minimum sustainability thresholds requiring products to align with or contribute to defined environmental or social objectives, thereby strengthening transparency and comparability of ESG-related insurance offerings.[139]

The framework also sets out requirements for risk management, third-party verification, and staff qualifications, aiming to ensure accountability across the insurance value chain.[140] It is principle-based, voluntary, and operates outside FINMA supervision, applying only to participating institutions listed in a public SIA register.[141] Substantively, it aligns closely with AMAS terminology to ensure consistency across Swiss self-regulatory regimes.[142]

3. Civil and Criminal Liability

The UCA, supported by the SCC, can be viewed as the main legal framework against greenwashing. It is primarily of civil nature; however, it also contains criminal provisions, such as art. 23 UCA, which regulates the criminal liability for intentional unfair competition within the meaning of art. 3 UCA.[143] Competitors, consumers, trade associations, consumer protection organisations, and the SECO may initiate proceedings.[144] Traditionally, misleading environmental claims were prosecuted under art. 3 para. 1 let. b and i UCA.[145] Since 1 January 2025, however, following an amendment to the CO2 Act, art. 3 para. 1 let. x UCA was introduced, which explicitly classifies as unfair any conduct whereby a person makes claims about themselves, their goods, works or services relating to the climate impact that they cause that cannot be substantiated on the basis of objective and verifiable criteria.[146] According to some authors, art. 3 para. 1 let. x UCA appears to effectuate a reversed burden of proof, because the

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138 JUTZI/WESS, Greenwashing, p. 115.
139 Art. 2 SIA Self-Regulation.
140 KOUMBARAKIS/JACCARD/BLUMER, p. 71.
141 Art. 3 SIA Self-Regulation.
142 JUTZI/WESS, Greenwashing, p. 115.
143 JUTZI/WESS, Greenwashing, p. 89; WOLF, p. 113 f.
144 DEDEYAN, Haftung für Unternehmenskommunikation, p. 80 f.; ECKERT, p. 13; ECKERT/PEYER, p. 18; SIEBER-GASSER, p. 8; JEAN-RICHARD-DIT-BRESSEL, p. 149; WOLF, p. 114.
145 For a detailed examination of differentiation issues between art. 3 para. 1 let. b, i and x UCA, see JEAN-RICHARD-DIT-BRESSEL, p. 143 ff.; for further assessment see also BACHMANN, p. 52 ff.; ECKERT, p. 13; MÄCHLER, p. 35 f.; WENK/LEHMKUHL, p. 475 ff.
146 SCHWENNINGER, p. 503 f; WOLF, p. 113.

undertaking must now proactively substantiate the factual basis of its sustainability claims.[147] However, such a reversal can be controversial in criminal proceedings, where it may conflict with the presumption of innocence and the right against self-incrimination.[148] In conclusion, it is no longer necessary to prove that a claim is false; it may be sufficient to show that the company failed to verify it properly.[149] Criminal liability under art. 23 UCA in conjunction with art. 12 para. 2 SCC requires at least conditional intent[150] and may lead to imprisonment of up to three years or monetary penalties,[151] although such sanctions are rarely imposed in practice,[152] since dolus eventualis can be difficult to prove, especially within complex corporate structures.[153] Negligence is not subject to criminal prosecution; however, under certain circumstances, civil liability may apply in cases of negligence.[154] As a result, while typical forms of greenwashing can be prosecuted under Swiss unfair competition law, not all manifestations are fully covered by existing criminal provisions.[155]

From a criminal law perspective, financial offenses such as fraud (art. 146 SCC),[156] misappropriation (art. 138 para. 2 SCC), and unfaithful management (art. 158 SCC) could be considered in the context of greenwashing. However, these require a financial loss, which may not necessarily be present in every case of greenwashing.[157] BACHMANN states that it cannot be completely excluded that the Federal Supreme Court could adopt a broad interpretation and recognize financial loss in the context of a major greenwashing scandal in Switzerland. She criticizes such a possibility in view of criminal law's ultima ratio function and its fragmentary character.[158] Art. 152 SCC (misleading statements on commercial business) is more relevant, as it does not require actual financial loss but only the risk of financial harm caused by false or incomplete commercial information.[159] Required is at least conditional intent.[160] Therefore,

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147 ECKERT, p. 13; LA SPADA, p. 649; NERI-CASTRACANE, p. 79; ROMY, p. 38 f.; RUUD/WEISER, p. 136; SIEBER-GASSER, p. 9.
148 JEAN-RICHARD-DIT-BRESSEL, p. 157.
149 ibid, p. 157.
150 BSK UCA-KILLIAS/GILLIÉRON, art. 23, n. 21; JEAN-RICHARD-DIT-BRESSEL, p. 148 f. and 158.
151 Art. 2 and 3 in conjunction with art. 23 UCA in conjunction with art. 34 para. 1 and 2 SCC.
152 WEBER/VOLZ, n. 4.538 ff.; WOLF, p. 113, fn. 19.
153 JEAN-RICHARD-DIT-BRESSEL, p. 158.
154 BACHMANN, p. 52.; PEDRAZZINI/PEDRAZZINI, n. 26.05.
155 JEAN-RICHARD-DIT-BRESSEL, p. 159.
156 For a more in-depth examination of the individual elements of the offense, see WENK/LEHMKUHL, p. 463 ff.; JEAN-RICHARD-DIT-BRESSEL, p. 159 ff. and BACHMANN, p. 44 ff., who analyses the existence of a loss based on the concepts of individualized loss assessment and failure of purpose, while drawing upon legal scholarship and case law under art. 146, art. 138 no. 1 para. 2 and 158 SCC.
157 BACHMANN, p. 44 ff.; JEAN-RICHARD-DIT-BRESSEL, p. 163; JUTZI/WESS, Greenwashing, p. 89.
158 BACHMANN, p. 47 f.
159 DARBELLAY/CABALLERO CUEVAS, p. 57; WENK/LEHMKUHL, p. 463.
160 DARBELLAY/CABALLERO CUEVAS, p. 57; DEDEYAN, Regulierung der Unternehmenskommunikation, p. 647.

criminal liability for greenwashing practices appears fundamentally conceivable on the basis of art. 152 SCC.[161] Concurrently to art. 152 SPC applies art. 155 FinMIA.[162]

The fulfilment of the objective elements of art. 155 para. 1 let. a FinMIA (price manipulation) in cases of greenwashing is possible but the fulfilment of the subjective elements is likely rare in practice due to the lack of intent to influence the market price, as sustainability advertising primarily serves to attract clients or enhance corporate.[163] BACHMANN points out that the courts have not yet addressed the required degree of intent regarding price manipulation. It cannot be dismissed out of hand that, depending on the magnitude of the impact of a potential greenwashing scandal in Switzerland, the courts might follow the minority opinion[164] and deem conditional intent sufficient regarding the intent to influence market prices.[165]

While substantive criminal law fundamentally provides a basis for addressing greenwashing, the feasibility of its enforcement against corporations remains highly deficient. This holds true despite the existence of art. 102 SCC and art. 7 ACLA, which allow for the prosecution of companies or, at the very least, hold them liable on a subsidiary basis.[166]

However, liability is limited to failures of corporate governance and management duties rather than every inaccurate sustainability statement. Swiss law does not create a general "prospectus liability" for sustainability reporting, since these reporting duties are not considered protective norms. Liability therefore focuses on intentional deception, unfair competition, and breaches of directors' and officers' duties rather than on every incorrect ESG disclosure.

In addition, art. 325ter para. 1 SCC[167] sanctions intentional false or missing sustainability reporting under Arts. 964a ff. CO, including misleading disclosures on environmental matters such as CO2 targets, with fines of up to CHF 100,000. Negligence under art. 325ter para. 2 SCC is punishable by fines of up to CHF 50,000. Art. 325bis SCC in conjunction with art. 106 para. 1 SCC and art. 964d ff. CO similarly applies to false reporting by raw material companies, provided they acted with intent. The requirements for corporate sustainability reporting are set

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161 WENK/LEHMKUHL, p. 463.
162 DARBELLAY/CABALLERO CUEVAS, p. 57
163 BACHMANN, p. 50; o.o. DARBELLAY/CABALLERO CUEVAS, p. 57.
164 HANSLIN, p. 161; PETROPOPOULOS, p. 99 ff.
165 BACHMANN, p. 50.
166 WENK/LEHMKUHL, p. 486.
167 Art. 325ter SCC was introduced as part of the indirect counter-proposal to the so-called "Konzernverantwortungsinitiative".

out in the CO as obligations under private law and are based on the NFRD.[168] They seek to improve transparency on ESG issues, their scope remains limited (as they mainly affect companies of public interest)[169] and often insufficient to effectively prevent greenwashing.[170]

Swiss law does not create a general prospectus liability for sustainability reporting, because reporting duties are not considered protective norms. Liability of directors and managers arises mainly for breaches of corporate duties, intentional deception, unfair competition, violations of protective norms such as fraud, or breaches of pre-contractual duties. Shareholders, creditors, and investors may therefore still claim damages in serious greenwashing cases, particularly where deliberate misrepresentation can be proven.[171] Moreover, corporate liability does not arise for every incorrect sustainability statement or misleading advertisement. It is limited to failures of corporate governance, such as missing control, decision-making, and reporting processes, or systematic market deception.[172] Sustainability communication must therefore be integrated into top-level management, risk management, and internal control systems.[173]

Civil law elements are only selectively incorporated into FinSA. However, this does not exclude civil liability. Although FinSA is a public law statute, it has a so-called "spillover effect" on private law and must be taken into account when interpreting and concretising private law rights and obligations.[174] The main challenge at the interface between regulatory and civil law in distribution lies in the fact that civil liability cannot be derived from a single legal framework alone, and the extent of FinSA's spillover effect into private law remains, at present, uncertain.[175] Overall, FinSA does not establish a comprehensive civil liability regime; however, it nonetheless enhances client protection to some extent through the enforcement of private law remedies.[176]

Furthermore, civil liability may arise under several provisions of private law, including defects in consent (art. 23 ff. CO), prospectus liability (art. 69 FinSA), faithful performance (art. 398

168 DARBELLAY, law and regulation, p. 13.
169 Art. 964a CO in conjunction art. 2 let. c AOA and art. 3 as well as art. 24 FINMASA.
170 For further elaboration on art. 964a ff. CO, see DARBELLAY, law and regulation, p. 3 f.
171 DEDEYAN, Haftung für Unternehmenskommunikation, p. 95.
172 ibid, p. 94 f.
173 ibid, p. 94 f.
174 BBI 2015, p. 8920.
175 NIETO, p. 393 f.
176 BBI 2015, p. 8919 f.; NIETO, p. 395.

para. 2 CO), and obligations in tort (art. 41 CO[177]). However, the application of these provisions to prevent and combat greenwashing encounters considerable challenges regarding the proof of causality and the conceptualisation of damage. These issues will not be examined, as they lie beyond the scope of this thesis, which maintains a deliberate focus on regulatory and supervisory law.[178]

III. The EU Framework

1. Existing Regulation

Through the European Union's European Green Deal and the Action Plan on Financing Sustainable Growth, the EU has established itself as a global pioneer in sustainability regulation.[179] The Actions Plans objectives are to redirect capital flows toward sustainable investments, integrate sustainability into risk management, and enhance transparency and long-termism in financial markets. It has yielded three cornerstone interconnected legislative pillars: the Taxonomy Regulation, the Sustainable Finance Disclosure Regulation, and the Corporate Sustainability Reporting Directive.[180]

The Taxonomy Regulation created the world's first uniform and legally binding classification system for environmentally sustainable economic activities.[181] To evaluate the environmental sustainability of products or corporate activities, market participants require a shared understanding of what constitutes environmental sustainability and what specifically defines an environmentally sustainable economic activity.[182] It defines six environmental objectives[183] and uses science-based technical screening criteria[184] to determine whether an activity qualifies as sustainable, thereby providing investors with a common sustainability standard.[185] The SFDR complements this by imposing extensive disclosure obligations on financial market participants

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177 According to art. 9 para. 3 in conjunction with art. 2 and art. 3 UCA, anyone whose economic interests are threatened or injured by unfair competition may sue for damages "in accordance with the Code of Obligations", specifically pursuant to art. 41 para. 1 CO.

178 To avoid making the burden of proof excessively difficult for the plaintiff, the Federal Supreme Court only requires preponderant probability ("überwiegende Wahrscheinlichkeit"), BGE 132 III 715 c. 3.

179 KARAMETAXAS, Sustainable Finance, p. 167; KOUMBARAKIS/JACCARD/BLUMER, p. 62; MEYER, p. 17; SIEBER-GASSER, p. 3.; WALTER/MEYER, p. 808; WEBER/HÖSLI, p. 579 f.

180 BAISCH/WEBER, p. 177 ff.; EGGEN, Greenwashing, p. 4 f.; IVANOVIC/WOHLHAUSER, p. 167; MEYER, p. 17; WALTER/MEYER, p. 808; WEBER/HÖSLI, p. 580.

181 KARAMETAXAS, Sustainable Finance, p. 38; SIEBER-GASSER, p. 18.

182 EGGEN, Grüne Finanzprodukte, p. 709.

183 The objectives being climate change mitigation, climate change adaptation, the sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control and the protection and restoration of biodiversity and ecosystems: art. 9 - 16 Taxonomy Regulation.

184 Art. 19 Taxonomy Regulation.

185 Recital 6 Taxonomy Regulation; ALEXANDER/DARBELLAY, p. 261; MEYER, p. 17; WALTER/MEYER, p. 808.

and advisers regarding sustainability risks, adverse impacts, and the sustainability characteristics of financial products.[186] Its purpose is to reduce information asymmetries and enable investors to distinguish between sustainable and conventional investment products.[187] The CSRD strengthens corporate sustainability reporting by expanding its scope to more companies, including certain third-country companies active in the EU, and by requiring more reliable, standardised, and audited ESG data.[188] This provides the necessary informational basis for the effective functioning of both the SFDR and the Taxonomy Regulation.[189] In addition, the CSDDD, adopted in 2024, requires large companies to identify, prevent, and mitigate environmental and human rights risks across their value chains and to align their business models with climate transition goals.[190]

2. Omnibus I

With the Omnibus I, the EU announced in January 2025 a far-reaching simplification of sustainability regulation, aimed in particular at aligning obligations with the scale and scope of the activities of different undertakings. Although the achievement of the strategic objectives of the Green Deal must be maintained, it is essential to simplify the rules in order to strengthen the proportionality of the regulatory framework and enhance the competitiveness of European companies.[191] Omnibus I does not inherently advocate for the existing EU regulatory framework, as the latter is already subject to (necessary) simplification measures.

IV. Analysis: Evaluation of Regulatory Sufficiency

1. Effectiveness of the Existing Swiss Framework

The Swiss regulatory framework for preventing greenwashing in sustainable finance is predominantly disclosure-based and lacks substantive, legally binding sustainability standards.[192] In the area of collective investment schemes, existing rules mainly regulate naming, documentation, and disclosure obligations. Sustainability-related requirements focus on describing the investment approach and disclosing ESG risks where financially material.[193] At the point of sale,

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[186] Recital 10 SFDR.

[187] IVANOVIC/WOHLHAUSER, p. 173; KARAMETAXAS, Sustainable Finance, p. 38 f.; MEYER, p. 16; SIEBER-GASSER, p. 16; WALTER/MEYER, p. 809.

[188] DEDEYAN, Haftung für Unternehmenskommunikation, p. 71; KARAMETAXAS, Nachhaltige Entwicklung, p. 266; POZZATO, p. 187.

[189] Recital 37 ff. CSRD, see also WALTER/MEYER, p. 809; ROTH/EKKENGA, p. 410.

[190] BUSCH/LIEVERSE, p. 606 f.; DARBELLAY, pacte vert, p. 88.

[191] BUSCH/LIEVERSE, p. 587; DARBELLAY, green deal, p. 89; KARAMETAXAS, Nachhaltige Entwicklung, p. 267.

[192] JUTZI/WESS, Greenwashing, p. 95 f.; MEYER, p. 21.

[193] JUTZI/WESS, Greenwashing, p. 97.

ESG risks must be communicated if relevant, and client sustainability preferences must be identified and considered, reflecting a risk-oriented approach centred on investor protection rather than impact-based regulation.[194]

FINMA states that the applicable statutory basis is incomplete and contains gaps. It further notes that combating greenwashing in an effective manner requires uniform definitions, cross-sectoral rules as to conduct at the point of sale, and binding minimum requirements with respect to product transparency and reporting.[195] FINMA perceives its legal mandate primarily within the authorization process for Swiss collective investment schemes, excluding foreign products, and explicitly does not see its role as steering capital flows toward sustainable objectives. It focuses instead on preventing misleading claims and ensuring that sustainability representations are internally substantiated.[196] Due to the absence of specific ESG legislation, FINMA relies on general legal principles such as fraud prevention and disclosure duties, resulting in a reactive, case-by-case enforcement approach with limited systemic effectiveness.[197]

A key regulatory instrument is FINMA Guidance 05/2021, which sets supervisory expectations for preventing greenwashing. Although formally non-binding, it extends beyond mere interpretation by detailing expectations on disclosure, governance, and conduct.[198] However, it does not introduce new legal obligations and leaves existing legal gaps intact.[199] Its sometimes terminology has been criticised for reducing legal certainty and creating implementation challenges, with JUTZI and WESS suggesting that a FINMA circular would have provided clearer and more consistent guidance. [200]

At the policy level, the Federal Council has opted against introducing binding legislation and instead favours self-regulation, complemented only by limited legal intervention such as art. 3 para. 1 let. x UCA.[201] This approach reflects Switzerland's tradition of industry-led regulation, valued for its flexibility and proximity to market practice, particularly in rapidly evolving sectors like sustainable finance.[202] Recent revisions of self-regulatory standards by industry

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194 IVANOVIC/WOHLHAUSER, p. 180; JUTZI/WESS, Greenwashing, p. 95; JUTZI/WESS, Selbstregulierung, p. 27 f.; WEBER/HÖSLI, p. 580.
195 FINMA Annual Report 2025, p. 33. 21
196 DEDEYAN, Versprechen der Nachhaltigkeit, p. 194; JUTZI/WESS, Greenwashing, p. 99.
197 MEYER, p. 20; SIEBER-GASSER, p. 6 f.
198 JUTZI/WESS, Greenwashing, p. 103.
199 DARBELLAY, law and regulation, p. 5.
200 JUTZI/WESS, Greenwashing, p. 103.
201 ECKERT, p. 13; LA SPADA, p. 649; NERI-CASTRACANE, p. 79; ROMY, p. 38 f.; RUUD/WEISER, p. 136; SIEBER-GASSER, p. 9.
202 BOHRER *et al*., Entwicklungen 2023, p. 1; JUTZI/WESS, Selbstregulierung, p. 11 ff.; ZYSSET, n 217.

associations have improved consistency, documentation, and external verification mechanisms, and have helped align industry practice with governmental expectations.[203]

Despite these developments, self-regulation remains legally weak. It applies only to association members,[204] lacks enforceability,[205] and is not uniformly recognised as a supervisory standard by FINMA.[206] Courts may nonetheless use such standards as interpretative benchmarks for professional conduct.[207] However, the absence of a legal sustainability taxonomy and binding minimum standards leads to fragmented definitions, limited comparability, and persistent uncertainty regarding what qualifies as "sustainable"; the distinction between marketing narratives and genuine substantive control mechanisms becomes increasingly blurred.[208] This undermines investor trust and weakens the credibility of sustainable finance claims.[209] Criticism further concerns democratic legitimacy and effectiveness.[210] Self-regulatory standards are developed without public consultation and may reflect industry interests, raising concerns about greenwashing through self-regulation (a phenomenon often referred to as "greenwashing trap").[211] Their enforcement mechanisms are limited,[212] and sanctions are rare and largely internal.[213] In conclusion, it can be established that the existing self-regulatory frameworks lack sufficient effectiveness, as the distinction between marketing narratives and substantive control mechanisms becomes increasingly blurred.[214] In principle, the existing self-regulatory frameworks are helpful and their content is qualitatively satisfactory; however, their deficiencies are inherently attributable to the concept of self-regulation as such.[215]

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[203] BOHRER *et al.*, Entwicklungen 2024, p. 1; JUTZI/WESS, Greenwashing, p. 121; DARBELLAY, law and regulation, p. 13; JUTZI/WESS, Selbstregulierung, p. 29.

[204] JUTZI/WESS, Greenwashing, p. 121; JUTZI/WESS, Selbstregulierung, p. 16; MEYER, p. 21. It should be noted that the proportion of entities affiliated with organisations such as AMAS, the SBA, or the SIA is substantial; consequently, the most significant market participants are bound by these self-regulatory frameworks, which serves to partially mitigate the criticism.

[205] DARBELLAY, law and regulation, p. 12; JUTZI/WESS, Greenwashing p. 108 and 119 ff.; JUTZI/WESS, Selbstregulierung, p. 13 and 31; ZYSSET, n 235.

[206] JUTZI/WESS, Greenwashing, p. 105.

[207] DARBELLAY, law and regulation, p. 7 and 12; FAHRLÄNDER/JOST, p. 135.

[208] BACHMANN, p. 43; DARBELLAY, law and regulation, p. 14; EGGEN, Grüne Finanzprodukte, p. 698; JUTZI/ABBÜHL, p. 8 f.; JUTZI/WESS, Greenwashing, p. 97 f. and 124; MEYER, p. 20 f.

[209] DARBELLAY, law and regulation, p. 14; EGGEN, Grüne Finanzprodukte, S. 607; JUTZI/WESS, Greenwashing, p. 98; MEYER, p. 21; WALTER/MEYER, p. 807.

[210] JUTZI/ABBÜHL, p. 19 f.; JUTZI/WESS, Selbstregulierung, p. 13; MARTI, p. 562; ZYSSET, n. 107.

[211] DARBELLAY, law and regulation, p. 14.; JUTZI/ABBÜHl, p. 19; JUTZI/WESS, Selbstregulierung, p. 13; MARTI, p. 580 f.; MORSCHER, p. 139 f.

[212] DARBELLAY, law and regulation, p. 12 f; EGGEN, Grüne Finanzprodukte, p. 707; JUTZI/ABBÜHl, p. 19; WALTER/MEYER, p. 808.

[213] DARBELLAY, law and regulation, p. 13; FAHRLÄNDER/JOST, p. 130 f.; JUTZI/WESS, Greenwashing, p. 119; JUTZI/WESS, Selbstregulierung, p. 29.

[214] DARBELLAY, law and regulation, p. 14; EGGEN, Grüne Finanzprodukte, p. 607; JUTZI/WESS, Greenwashing, p. 98 and 119.

[215] JUTZI/WESS, Greenwashing, p. 124.

In conclusion, it should be observed that Swiss jurisprudence has thus far not specifically dealt with greenwashing in the context of collective investment schemes.

2. Comparative Analysis

The EU sustainable finance framework is widely regarded as ambitious and globally pioneering, but it is also strongly criticised for practical shortcomings. Legal scholars point to rushed legislative processes, weak empirical foundations, data gaps, and unclear links between sustainability factors and financial performance, which undermine legal certainty and regulatory credibility.[216] In addition, implementation across Member States remains fragmented, and extensive reporting obligations create significant compliance burdens, especially for SMEs.[217]

Key instruments such as the SFDR and the EU Taxonomy are criticised for definitional ambiguity, which can itself facilitate greenwashing through inconsistent disclosures.[218] ESMA has warned that divergent interpretations may lead to misleading and non-comparable sustainability claims.[219] Furthermore, it is critised that some classifications (e.g. the inclusion of natural gas and nuclear energy in the EU Taxonomy) appear politically motivated rather than purely science-based.[220] The complexity of the regime has also contributed to "greenhushing", where companies avoid sustainability claims to reduce legal and reputational risks.[221]

Despite these weaknesses, the EU has developed a comprehensive and preventive framework based on mandatory disclosure, product governance, substantiation duties, and standardised sustainability reporting.[222] This highly centralised and interventionist approach contrasts with Switzerland's more flexible, market-based,[223] and self-regulatory model,[224] where state intervention remains limited and FINMA supervision is constrained by a narrower risk-based mandate.[225]

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216 ZETZSCHE/ANKER-SØRENSEN, p. 42; ZETZSCHE/BODELLINI, p. 32.
217 BODELLINI, p. 9 f.; DARBELLAY, pacte vert, p. 94; DEDEYAN, Versprechen der Nachhaltigkeit, p. 195; HELLERINGER/SKINNER, p. 90; KARAMETAXAS, Nachhaltige Entwicklung, p. 267; KOUMBARAKIS/JACCARD/BLUMER, p. 74.
218 BODELLINI, p. 6; JUTZI/ABBÜHl, p. 19; MARTI, p. 580 f.; MORSCHER, p. 139 f.
219 ESMA Sustainable Finance Roadmap 2022-24, p. 7.
220 HELLERINGER/SKINNER, p. 90; JUTZI/WESS, Greenwashing, p. 98; OCH, p. 370 f.; SIEBER-GASSER, p. 18.
221 BUSCH/LIEVERSE, p. 605 f.; SCHWENNINGER, p. 506; SIEBER-GASSER, p. 17.
222 KARAMETAXAS, Nachhaltige Entwicklung, p. 266 f.; MEYER, p. 16; SIEBER-GASSER, p. 5 ff.
223 DARBELLAY, law and regulation, p. 2; IVANOVIC/WOHLHAUSER, p. 165; KOUMBARAKIS/JACCARD/BLUMER, p. 68.
224 BOHRER *et al.*, Entwicklungen 2023, p. 1; JUTZI/WESS, Selbstregulierung, p. 11 ff.; ZYSSET, n 217.
225 IVANOVIC/WOHLHAUSER, p. 180; JUTZI/WESS, Greenwashing, p. 95 ff.; JUTZI/WESS, Selbstregulierung, p. 27 f.; WEBER/HÖSLI, p. 580.

Overall, the EU offers a more coherent but administratively burdensome system, while Switzerland prioritises flexibility at the expense of consistency and enforceability. It is also worth noting that EU regulations exert strong extraterritorial influence through the so-called "Brussels Effect", as Swiss companies operating in EU markets are required to comply with EU standards. This shows a fundamental tension between regulatory autonomy and economic interdependence. Given the close integration of Swiss financial markets with those of the EU, a certain degree of convergence appears unavoidable. However, such alignment should be pursued in a manner that preserves proportionality and ensures the practical operability of regulatory requirements. In this context, the development of clear, principle-based baseline standards - capable of reconciling flexibility with legal certainty - may offer a viable path forward for the Swiss regulatory landscape.[226]

[226] DARBELLAY, law and regulation, p. 2; DARBELLAY, pacte vert, p. 94; KARAMETAXAS, Nachhaltige Entwicklung, p. 266 f.

D. Potential Approaches de lege ferenda

As demonstrated by the foregoing analysis, greenwashing in collective investment schemes requires stronger regulatory attention. Switzerland's traditionally market-based approach can no longer justify insufficient intervention, as the competitiveness of the Swiss financial centre depends not only on flexibility, but also on credibility, investor confidence, and market integrity. De lege ferenda, the aim should be to establish a legal and regulatory framework that prevents greenwashing at an early stage while also providing effective ex post deterrence through credible enforcement mechanisms.

A central question concerns institutional responsibility. Although the creation of a specialised "Greenwashing Commission" with powers of preventive guidance, supervision, and sanctions is conceivable, its practical implementation would face significant institutional, financial, and legal challenges, particularly regarding staffing, funding, and the lack of a clear statutory basis for binding measures. A similar body has been proposed within the framework of the Finanzplatz-Initiative.[227] While such an authority could help prevent and detect greenwashing by advising market participants and monitoring sustainability claims, its feasibility remains doubtful. It therefore appears more realistic to strengthen the existing supervisory role of FINMA rather than creating a new authority. Given that FINMA is already the appropriate institution, as its legal mandate of investor protection necessarily includes protection against deception concerning allegedly sustainable products. Against this background, FINMA's rather cautious position regarding its own competence in the field of greenwashing appears difficult to justify. One may legitimately ask whether such regulatory restraint approaches a form of institutional reluctance incompatible with its supervisory function. Nevertheless, it must also be acknowledged that FINMA's powers remain closely tied to the principle of legality. If the legislator aims to establish uniform and cross-sectoral regulations to combat greenwashing, the creation of a statutory basis for FINMA's regulatory and supervisory activities is indispensable. In particular, a legal definition of greenwashing[228] and legally binding sustainability criteria should be introduced, ideally through a cross-sectoral and principles-based federal ordinance, which could certainly be supplemented by (voluntary) self-regulation or, alternatively, by self-regulation recognized as a minimum standard.[229] Neither art. 12 CISA, art. 4 FINMASA nor the UCA

[227] Finanzplatz-Initiative, Über die Volksinitiative, available at <https://finanzplatz-initiative.ch/zur-initiative/> (accessed 1 May 2026).

[228] In this context, reference is made to the forthcoming article by MARIOLI, who is developing criteria for a potential legal definition based on an analysis of existing conceptualisations of greenwashing, intended to serve as a foundation for future legislative initiatives.

[229] JUTZI/WESS, Greenwashing, p. 125; JUTZI/WESS, Selbstregulierung, p. 29 f.

currently provide a sufficient basis for legal basis for such an ordinance.[230] Consequently, corresponding amendments to financial market legislation are likewise conceivable. The legislature should therefore establish a standardised taxonomy and clear minimum sustainability standards applicable across financial products and institutions, while ensuring sufficient flexibility to accommodate evolving sustainability concepts. Such a framework should improve the comparability, reliability, and auditability of sustainability disclosures and may also justify structural product requirements, such as minimum thresholds for sustainable assets, exclusion criteria, or official labelling mechanisms for qualifying products. From a pragmatic perspective, and particularly in light of the Brussels Effect, it is advisable to avoid adopting a legal framework that would directly conflict with European regulatory standards.[231]

JUTZI and WESS discuss a "hybrid" solution: delegating enforcement powers to state authorities could combine the flexibility of self-regulation with the enforcement strength of state oversight, thereby mitigating the democratic deficit. Furthermore, regulating emerging sectors through self-regulation can foster industry innovation while simultaneously relieving the state of regulatory pressure, thus maintaining a lower regulatory density. However, they call out the risk that increased state involvement may dilute the character of self-regulation, effectively transforming it into disguised state regulation. This could diminish the original advantages of flexibility and adaptability while restricting the agility of market participants.[232]

Collective investment schemes using terms such as "sustainable", "ESG" or "impact" should be required to substantiate their claims through scientifically sound and verifiable methodologies before being permitted to market the product. In addition, mandatory independent third-party verification should be introduced, with certifying bodies themselves being subject to strict liability for negligent or misleading assessments. Such a model would be comparable to regulatory frameworks in sectors like pharmaceuticals, where products must prove their effectiveness before entering the market.[233]

Additionally, fund management companies and managers of collective assets should be required to demonstrate sufficient expertise regarding sustainability risks, ESG disclosures, and greenwashing prevention as part of the FINMA authorisation process, supplemented by

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230 JUTZI/WESS, Greenwashing, p. 122; Jutzi/Wess, Selbstregulierung, p. 29.
231 EGGEN, Grüne Finanzprodukte, p. 714.
232 JUTZI/WESS, Selbstregulierung, p. 31.
233 Compare with JUTZI and WESS, who advocate for a standardized labeling system: JUTZI/WESS, Greenwashing, p. 124.

continuing education obligations where appropriate. The Federal Council has acknowledged the imperative to significantly intensify initial and ongoing professional training in environmental, and sustainability matters within financial institutions.[234]

Another approach could involve the creation of a new category of collective investment scheme specifically designed for sustainable investments. The example of the L-QIF demonstrates that Swiss law is capable of introducing new forms of collective investment schemes despite the traditionally rigid numerus clausus structure. This model could be subject to stricter sustainability requirements, enhanced disclosure obligations, and intensified FINMA scrutiny as a condition for approval. Supervisory attention would be preventive and concentrated on the approval process: applications must include additional information on sustainability objectives, implementation, and intended impact, enabling FINMA to assess potential deception and intervene where necessary. It would improve legal certainty and create clearer differentiation between genuinely sustainable investment vehicles and products using sustainability merely as a marketing tool.

Enforcement mechanisms should also be strengthened. FINMA's supervisory instruments[235] could be expanded through the introduction of an administrative competence to impose fines directly for misleading sustainability claims.[236] Personal accountability should extend beyond institutions to senior executives, portfolio managers, and board members, particularly where negligence or intent can be established. In severe cases, temporary or permanent bans from the financial industry could be imposed. By directly linking sustainability claims to personal risk, the issue would shift from a reputational concern to a core element of fiduciary duty and risk management. Complementary instruments such as whistleblower protection regimes, institution-wide warning systems, and notification duties regarding suspected greenwashing products could further improve detection and investor protection. For instance, the investigation into DWS gained momentum after the former Head of Sustainability at the asset management firm disclosed potential instances of greenwashing.[237] Nonetheless, reputational sanctions may also serve as enforcement tools. A public "blacklist", as proposed by FISCHER, would ensure that misconduct remains visible over the long term and significantly increase market discipline. If

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[234] Federal Council, Nachhaltigkeit im Finanzsektor, p. 33 f.
[235] Art. 24 ff. FINMASA.
[236] As FINMA itself calls for: FINMA Risk Monitor 2021, p 20.
[237] "At Deutsche Bank's DWS, Issues With Data Were at Heart of Sustainable-Investing Problems", Wall Street Journal of 25 September 2021, available at <https://www.wsj.com/finance/investing/at-deutsche-banks-dws-mistrust-of-data-was-at-heart-of-sustainable-investing-problems-11632574801> (accessed 1 May 2026).

these lists were integrated into distribution systems, greenwashing at the product level would be rapidly identified within the institution. This would serve both individual and systemic protection.[238]

Proposals such as a "greenwashing tax" (on collective investment schemes that fail to meet sustainability thresholds despite related marketing claims) may create useful economic disincentives, but they do not directly address the primary goal of prevention and should therefore remain secondary. Greater emphasis should instead be placed on greenwashing within ESG risk reporting obligations in order to strengthen awareness of sustainability-related misrepresentation as a genuine financial and supervisory risk.

In my estimation, the implementation of "sandbox thinking", a concept examined by ZETZSCHE and BODELLINI, constitutes a sophisticated strategy. This paradigm is characterized as a collaborative learning framework wherein supervisory authorities and financial market participants collaborate to devise effective legal and regulatory solutions for the complexities of innovative sustainable finance, thereby serving as a critical mechanism for preventing and combating greenwashing.[239]

238 FISCHER, p. 267.
239 ZETZSCHE/BODELLINI, p. 32.

E. Conclusion and Outlook

This thesis has examined the prevention and combating of greenwashing in Switzerland in the context of collective investment schemes, focusing on the interplay between industry self-regulation and state-led requirements against the backdrop of EU law. Although the risks of greenwashing are widely recognized, the legal and regulatory landscape harbors many uncertainties.

A key challenge lies in the inherently fluid nature of sustainability, whose meaning evolves with scientific, political, and societal developments. Conceptual uncertainty complicates legal regulation and contributes to the current "regulatory tsunami," reflecting both the urgency of environmental concerns and the difficulty of translating them into coherent legal standards. A notable shift has emerged, particularly in the EU, from a fragmented system relying on broad definitions and reactive prohibitions of greenwashing toward a more preventive regulatory approach. Companies are increasingly subject to concrete obligations, including verification, substantiation, and transparent communication of sustainability claims. This development is also becoming visible in Switzerland, for example through art. 3 para. 1 let. x UCA. Yet, the Swiss framework remains reliant on principles and self-regulation. While this ensures flexibility, it also leads to notable shortcomings, particularly weak enforcement and the risk that voluntary standards reduce sustainability to a marketing tool rather than a binding norm.

In the area of collective investment schemes, the lack of a clear definition of sustainability and the fragmentation of applicable standards create further uncertainty. Existing rules focus primarily on product designation rather than substantive investment strategies. Transparency, while essential, is not sufficient, effective governance, internal controls, and reliable data are crucial to ensuring credible sustainability claims. Against this background, the current Swiss approach appears insufficient to provide a robust legal and regulatory basis for preventing and combating greenwashing in collective investment schemes effectively. By contrast, the EU framework provides greater legal certainty and enforceability, but entails substantial administrative burdens that may undermine competitiveness, particularly in an international context.

Recent geopolitical developments demonstrate that sustainability objectives are no longer pursued with the same political intensity as in previous years. In particular, the policy shift in the United States under renewed political support for Donald Trump reflects a broader countertrend away from ambitious sustainability commitments and towards short-term economic and industrial priorities.[240] This development is concerning, as it risks weakening international momentum in the fight against climate change and may indirectly reduce pressure for effective anti-greenwashing regulation. At the same time, Europe is increasingly confronted with criticism regarding regulatory overreach and excessive administrative burdens. The complexity of the EU framework calls for deregulation, as reflected in Omnibus I. In this context, the Swiss principles-based approach and the advantages of self-regulation deserve recognition. Given the close economic ties between Switzerland and the EU, a gradual alignment with EU standards might be inevitable, despite concerns over regulatory autonomy. A balanced approach is therefore required: one that avoids unnecessary overregulation while ensuring clear, enforceable, and credible minimum standards for sustainability claims.

Looking ahead, more adaptive approaches, such as “sandbox” models fostering cooperation between state and industry, could offer promising solution. At the same time, improved data quality, and greater standardisation are essential to enhance clarity and comparability. Switzerland’s traditional reliance on self-regulation can no longer justify insufficient intervention, as investor confidence, market integrity, and the credibility of the financial centre are equally decisive for long-term competitiveness. Consequently, the most viable path forward involves strengthening FINMA’s supervisory mandate through a definitive legal basis, including a binding definition of greenwashing and enforceable sustainability standards. This framework must integrate enhanced corporate governance, requiring boards to embed sustainability risks within risk management and internal control systems, alongside a dual enforcement strategy: ex ante product approval and substantiated claims, supported and controlled by credible ex post mechanisms such as personal accountability and deterrent sanctions. The Finanzplatz-Initiative, submitted on 16 April 2026, is likely to revive the debate on how to shape a sustainable and future-oriented Swiss financial sector. The coming years, and in particular the Federal Council’s anticipated policy decisions by the end of 2027, will be decisive for determining which path is taken. Given its previous satisfaction with the current system, despite its evident limitations, substantial reform may appear politically unlikely. It is submitted that the legislative framework serves as a decisive factor in determining whether the financial sector fulfils its obligation to contribute to the attainment of sustainability objectives and the advancement of a sustainable future, predicated on the principle that “if you are not part of the solution, you are part of the problem”.[241]

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[240] BUSCH/LIEVERSE, p. 587.

[241] This “principle“ is a misquotation of Eldridge Cleaver from 1968. The correct version is: “There is no more neutrality in the world. You either have to be part of the solution, or you're going to be part of the problem.”.