

# Swiss foundation and association law

## 2024/2025 Legal Update\*

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### I. Introductory remarks

While 2023 and the first half of 2024 witnessed numerous legislative and regulatory changes affecting Swiss foundations and associations,<sup>1</sup> the second half of 2024 and the early months of 2025 have been comparatively quieter in this respect. The only significant exception relates to occupational benefits foundations, which saw an expansion of their activities, revised reference amounts, and the introduction of a new buy-in option under pillar 3a (II.).

However, late 2024 and early 2025 brought significant disruption to the sector due to geopolitical developments, notably the withdrawal of United States Agency for International Development (USAID), which had a major impact on International Geneva. The Geneva authorities responded swiftly by implementing two measures. In the short term, on 14 February 2025, the Grand Council adopted a law entitled *Loi relative aux aides financières extraordinaires de l'État destinées aux organisations non gouvernementales à Genève touchées par le gel de l'aide internationale* (LAFONG)<sup>2</sup> granting extraordinary state financial aid to non-governmental organizations in Geneva affected by the freeze in international aid, with the aim of protecting threatened jobs. In the longer term, a time-limited foundation called the *Fondation pour l'adaptation de la Genève internationale* (FAGI) was created, endowed with initial funding of CHF 50 million, equally contributed by its co-founders: the State of Geneva and the Hans Wilsdorf Foundation (CHF 25 million each, with the State's share funded through an additional credit).<sup>3</sup> These initiatives reflect the recognition

\* This update covers the period from 1<sup>st</sup> July 2024 to 30 June 2025. It includes only those court decisions that had been published or otherwise made public by 30 June 2025.

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<sup>1</sup> See *Neri-Castracane Giulia/Pfammatter Vincent, Swiss foundations and associations law: 2023/2024 Legal Update, RSDA 5/2024*, 601–618.

<sup>2</sup> rsGE/srGE D 1 07. It entered into force on 25 April 2025.

<sup>3</sup> Canton of Geneva, *Communiqué hebdomadaire du Conseil d'État* du 21 mai 2025, *Mesure de soutien à la Genève internationale*, available (in French only) at: <<https://www.ge.ch/document/communique-hebdomadaire-du-conseil-etat-du-21-mai-2025>> (last consulted: 24 July 2025).

of the sector's unique role and its regional and national significance.

Efforts to highlight specificities of this sector also paid off at the legislative level, notably by convincing the Federal Chambers to exclude “*qualified non-profit entities*” (i.e. notably foundations and associations of public utility) from the forthcoming transparency register for legal persons (IV.1 and IV.2). Similarly, the Council of States decided to exempt advisors involved in the creation and support of operational foundations and associations from anti-money laundering due diligence obligations, pending the decision of the National Council (IV.4).

Developments in the Canton of Zurich – aimed at enhancing its attractiveness as a philanthropy hub – have generated momentum and sparked discussions in other cantons (IV.5.1). By contrast, a parliamentary motion has been introduced seeking to tighten the conditions for tax exemption applicable to charitable organizations (IV.5.3). In addition, in response to a postulate, the Federal Council will prepare a report on how the cantons deal with the tax deductibility of donations to mixed-purpose associations, i.e. those pursuing both public-benefit and religious objectives (IV.5.2).

Other anticipated reforms, particularly those concerning family foundations, are awaited with great interest (IV.3).

In practice, two areas are increasingly at the forefront of the authorities' agenda: entrepreneurial support<sup>4</sup> and impact investment on the one hand (III.1, III.2 and III.3), and on the other, digitalization (III.4). Entrepreneurial support and impact investment by non-profit entities remain underdeveloped but are expected to expand significantly in the coming years, particularly in response to the growing shortage of external funding. Digitalization is extending beyond the non-profit sector and now also touches on social security aspects.<sup>5</sup>

<sup>4</sup> Despite the withdrawal on 18 December 2024 of parliamentary initiative 23.454, introduced by National Councilor Sophie Michaud Gigon and aimed at creating a legal status of sustainable enterprises, the issue remains topical. This withdrawal follows the decision taken in August 2024 by the National Council's Legal Affairs Committee (LAC-N) not to pursue the initiative.

<sup>5</sup> To speed up and standardize the process of determining employment status – notably self-employed status – the “eStatus” platform was launched on 11 November 2024, featuring an explanatory website to guide applicants and a

Another topic likely to engage authorities, lawmakers, and above all courts, concerns the right of associations to bring legal actions, as tensions exist between proposed legislative restrictions and a ruling by the European Court of Human Rights (ECHR)<sup>6</sup> that establishes a principle broader than the scope currently recognized by the Federal Supreme Court (IV.6).

Finally, a review of recent case law confirms that foundation and association law remains active and diverse, going beyond the traditional focus on tax exemption. Particularly noteworthy is the recent Federal Supreme Court decision that departs from earlier case law by giving precedence to the principle of equal treatment over freedom of association (V.11). In addition, other rulings have clarified the right of excluded members to be heard (V.2), underlining the limits placed on an association's freedom to exclude members.

These developments, which will be reviewed in more detail in the present article, confirm the dynamic evolution of Swiss associations and foundations' framework.

## II. Amendments to Swiss law in 2024/2025

In the second half of 2024 and the first half of 2025, no legislative reforms affected ordinary foundations; changes were limited to occupational benefits foundations.

Three amendments merit close consideration. One is the result of the approval by both parliamentary chambers of the National Councilor *Daniela*

centralized online registration form for AVS compensation funds; pension funds may also inform applicants about this online option. See Federal Council, Numérisation – Examen d'une flexibilisation dans le droit des assurances sociales (“Flexi-Test”). Rapport du Conseil fédéral du 27 octobre 2021, available (in German and French) at: <<https://www.news.admin.ch/fr/nsb?id=85609>> (last consulted: 24 July 2025). For the online registration form, see <<http://www.ahv-iv.ch/p/318.146.f>> (in French), <[www.ahv-iv.ch/p/318.146.d](http://www.ahv-iv.ch/p/318.146.d)> (in German), <[www.ahv-iv.ch/p/318.146.i](http://www.ahv-iv.ch/p/318.146.i)> (in Italian), or <<http://www.ahv-iv.ch/p/318.146.e>> (in English). For the general information website, see <<https://selbststaendig-erwerbend.ch/fr>> (last consulted: 24 July 2025).

<sup>6</sup> European Court of Human Rights (ECHR), case 53600/20, judgment of 9 April 2024.

*Schneeberger's* parliamentary initiative.<sup>7</sup> Article 89a paragraph 8 (4) of the Swiss Civil Code (SCC)<sup>8</sup> was consequently amended<sup>9</sup> to allow the allocation of benefits in other specific situations that go beyond strict occupational pension fund purposes (Art. 89a para. 8 (4) SCC 1<sup>st</sup> sentence), implementing thus a practice supported by the Conference of cantonal supervisory authorities for pension funds, which was also outlined in a note dated 2021.<sup>10</sup> The amendment also allows the payment of benefits in distress situations, benefits in case of illness, accident, and disability, benefits in case of unemployment, benefits for training and continuing education measures, benefits for measures to reconcile family and professional life, and benefits for health promotion and prevention measures (Art. 89a para. 8 (4) SCC 2<sup>nd</sup> sentence).

Secondly, threshold amounts in occupational pension schemes (second pillar) have also been adjusted, effective from 1<sup>st</sup> January 2025. The changes include increasing the coordination deduction from CHF 25,725 to CHF 26,460 and raising the entry

threshold for mandatory insurance to CHF 22,680 (Art. 5 and 3a of the Ordinance on Occupational Retirement, Survivors, and Disability Pension Plans [OPP 2]<sup>11</sup>). The maximum tax-deductible amount for tied individual pension provision (pillar 3a) will also increase (Art. 5 OPP 2). These adjustments follow the rise in the minimum AVS retirement pension from CHF 1,225 to CHF 1,260, ensuring proper coordination between the first and second pillars.<sup>12</sup>

Lastly, retroactive contributions into the pillar 3a are possible as of 1<sup>st</sup> January 2025 for up to ten years with possibility to deduct these catch-up payments from the taxable income.<sup>13</sup>

### III. Evolution of practices in 2024/2025

#### 1. New practices of tax administration: Zurich and Vaud new guidelines (Brief overview of first experiences)

In January 2024, the Vaud cantonal tax administration (AFC-VD) published guidelines clarifying compensation and reimbursement of expenses for members of governing bodies of tax-exempt entities.<sup>14</sup> These guidelines distinguish between members devoting (i) fewer than 60 hours per year, (ii) more than 60 hours per year, and (iii) those (or their close relatives) holding additional mandates. Rapidly implemented by numerous foundations and associations, this initiative has enhanced transparency and is viewed positively for its pragmatic approach.

Shortly after Vaud, in February 2024, the Zurich tax authority issued new guidelines which confirmed that reasonable compensation for board members of tax-exempt foundations should no longer face obsta-

<sup>7</sup> Schneeberger Daniela, Initiative parlementaire 19.456 “Les prestations versées à des fins de prévention sont une tâche importante des fondations patronales de bienfaisance”, 20 June 2019, available (in German, French and Italian) at: <<https://www.parlement.ch/fr/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20190456>> (last consulted: 24 July 2025).

<sup>8</sup> RS/SR 210.

<sup>9</sup> Social Security and Health Committees of the National Council (SSHC-N), Initiative parlementaire 19.456, “Les prestations versées à des fins de prévention sont une tâche importante des fondations patronales de bienfaisance”, Rapport de la Commission, 31 August 2023, FF 2023 2078, available (in German, French and Italian) at: <<https://www.fedlex.admin.ch/eli/fga/2023/2077/fr>> (last consulted: 21 July 2025); Federal Council, Initiative parlementaire ad 19.456, Les prestations versées à des fins de prévention sont une tâche importante des fondations patronales de bienfaisance, Rapport du 31 août 2023 de la Commission de la sécurité sociale et de la santé publique du Conseil national, Avis du Conseil fédéral, 1<sup>st</sup> November 2023, FF 2023 2481, available (in German, French and Italian) at: <<https://www.fedlex.admin.ch/eli/fga/2023/2481/fr>> (last consulted: 24 July 2025).

<sup>10</sup> Conférence des autorités cantonales de surveillance LPP et des fondations, Note d'information relative aux prestations des fonds de bienfaisance, April 2021, available (in French only) at: <[https://www.konferenz-bvg-aufsichts-stiftungen.ch/fileadmin/konferenz-bvg/user\\_upload/pdf/merkblaetter\\_und\\_formulare/2021\\_Note\\_d\\_information\\_relative\\_aux\\_prestations\\_des\\_fonds\\_de\\_bienfaisance.pdf](https://www.konferenz-bvg-aufsichts-stiftungen.ch/fileadmin/konferenz-bvg/user_upload/pdf/merkblaetter_und_formulare/2021_Note_d_information_relative_aux_prestations_des_fonds_de_bienfaisance.pdf)> (last consulted: 24 July 2025).

<sup>11</sup> RS/SR 831.441.1.

<sup>12</sup> Federal Social Insurance Office (FSIO), Bulletin de la prévoyance professionnelle n°165, 5 December 2024, 2, available (in German and French) at: <<https://www.bsv.admin.ch/bsv/fr/home/assurances-sociales/bv/grundlagen-und-gesetze/grundlagen/wichtige-aenderungen-ab-1-januar-2025.html>> (last consulted: 24 July 2025).

<sup>13</sup> FSIO (n. 12), 6.

<sup>14</sup> Administration cantonale des impôts (AFC-VD), Directives en matière d'indemnisation des membres d'organes d'entités exonérées d'impôts en raison de leur but de pure utilité publique (PUP), 29 January 2024, available (in French only) at: <<https://www.vd.ch/etat-droit-finances/impots/impots-pour-les-societes/exoneration-fiscale>> (last consulted: 17 July 2025).

cles.<sup>15</sup> At the same time, they announced two further measures: (i) allowing new models of entrepreneurial support by foundations and (ii) applying the same evaluation standards to charitable activities abroad as to those within Switzerland,<sup>16</sup> thus strengthening Zurich's position as an international philanthropy hub.

Complementing these tax measures, the Federal Supervisory Authority for Foundations (FSAF) and the Zurich's Cantonal Authority for the Supervision of Occupational Pension Funds and Foundations (*BVG- und Stiftungsaufsicht des Kantons Zürich*, "BVS") issued joint model regulations for individual and lump-sum compensation of board members.<sup>17</sup> The FSAF also revised its model statutes, now stating:

*"[...] The foundation board may provide for appropriate compensation of its members. Details shall be specified in a regulation to be submitted to the supervisory authority for review. (Attention should be paid to the potential tax implications for the foundation.) Actual costs/expenses shall be reimbursed. Lump-sum expense allowances may also be provided. [...]".<sup>18</sup>*

To further encourage the creation of public-benefit foundations, the Canton of Zurich launched a co-ordination and contact center, along with an online platform<sup>19</sup> to notably guide founders through the establishment and registration process. In addition, the Canton, together with academic, private partners and other stakeholders launched an association – the *Verein Stiftungsstandort Zürich* – which purpose is to strengthen Zurich as location for actors of the non-profit sector, to further develop the ecosystem for

foundations, and to foster the dialogue between the foundation sector, the cantonal government, the administration, the academia, and the business community.<sup>20</sup>

## 2. Geneva's action plan for enhancing its attractiveness as a philanthropy hub

In autumn 2024, the Geneva Centre for Philanthropy at the University of Geneva (GCP) delivered a report commissioned by the State of Geneva.<sup>21</sup> Based on 90 interviews with key stakeholders (foundations, philanthropists, experts, and authorities), the report highlights Geneva's strength as a philanthropy hub: home to 1,367 foundations (out of 13,721 in Switzerland), holding over CHF 25 billion in assets and distributing CHF 8,9 billion yearly.<sup>22</sup>

Stakeholders praised Geneva's international dimension, favorable tax regime (especially for activities abroad), and active government engagement. Yet, the report recommends improvements, including greater administrative flexibility, digital services, and more transparent interactions with tax and supervisory authorities. Key proposals include:

- more transparency across the philanthropic sector;
- a permanent strategic working group;
- streamlined administrative processes;
- tax incentives to boost grants;
- support for social entrepreneurship and sustainable investments; and
- stronger promotion of Geneva as a philanthropy hub.<sup>23</sup>

<sup>15</sup> Canton of Zurich, *Steuerbefreiung wegen Gemeinnützigkeit (Praxishinweis)*, Nr. 61.1, 1<sup>st</sup> February 2024, available (in German only) at: <[https://www.zh.ch/de/steuerbuch/steuerbuch-definition/zstb-61-1.html](https://www.zh.ch/de/steuern-finanzen/steuern/treuhander/steuerbuch/steuerbuch-definition/zstb-61-1.html)> (last consulted: 17 July 2025).

<sup>16</sup> Canton of Zurich (n. 15).

<sup>17</sup> Federal Supervisory Authority for Foundations (FSAF), *Règlement sur les rémunérations et le remboursement de frais (indemnisation forfaitaire)*; Federal Supervisory Authority for Foundations (FSAF), *Règlement sur les rémunérations et le remboursement de frais (rémunération individuelle)*, both available (in German, French and Italian) at: <<https://www.esa.admin.ch/fr/modeles>> (last consulted: 17 July 2025).

<sup>18</sup> Federal Supervisory Authority for Foundations (FSAF), *Modèle de statuts*, 3<sup>rd</sup> May 2024, 3, available (in German, French and Italian) at: <<https://www.esa.admin.ch/fr/modeles>> (last consulted: 17 July 2025).

<sup>19</sup> See <<https://foundations.zuerich/en/>> (last consulted: 17 July 2025).

<sup>20</sup> For more details, see <<https://www.swissfoundations.ch/aktuell/der-verein-stiftungsstandort-zuerich-uebernimmt-die-initiative/>> (last consulted: 17 July 2025).

<sup>21</sup> Peter Henry/De Monte Mara/Freiburghaus Aline, *Le secteur philanthropique à Genève/État des lieux et recommandations pour l'État de Genève*, September 2024, available (in French) at: <<https://www.ge.ch/document/secteur-philanthropique-geneve>> and (in English) at: <<https://www.ge.ch/document/philanthropy-sector-geneva>> (last consulted: 17 July 2025).

<sup>22</sup> Peter et al. (n. 21), 2 and 11. For completeness, certain associations can also sometimes be encompassed in the broad definitions of "philanthropy". The same statistics would mean approximately 3000 associations in Geneva, of which 1941 were registered in the Commercial Register as of 30 June 2025. Peter et al. (n. 21), 16 et seq; Canton of Geneva, *Register of Commerce*, available at: <<https://app2.ge.ch/ecoahrinternet/>> (last consulted: 24 July 2025).

<sup>23</sup> Peter et al. (n. 21), 53 et seq.

Based on this report, the State's Department of Economy and Employment is now preparing an action plan,<sup>24</sup> which should soon be published and implemented through various measures.

### 3. Swiss initiatives on impact investing

Beyond the above-mentioned cantonal initiatives of Zurich and Geneva,<sup>25</sup> several private and academic initiatives have recently emerged, with the objective of fostering the development of impact investing in Switzerland, by promoting greater transparency and collaboration in this field.

The association SwissFoundations launched an initiative called *Future-Proof Funding Initiative* in spring 2025, designed to guide member foundations through a transformation process by providing tools, frameworks, and shared best practices, developed in collaboration with key stakeholders. Building on an initial survey of its members, the organization opened a dedicated “*Entrepreneurial support*” hotline to offer tailored advice on implementing entrepreneurial funding models like impact investing, microfinance, and social impact bonds.<sup>26</sup>

In December 2024, Swiss Sustainable Finance (SSF) launched the *Swiss Platform for Impact Investing* (SPII)<sup>27</sup> which further supports investors, foundations, and other stakeholders by sharing best practices, case studies, and research to strengthen the ecosystem for measurable social and environmental impact. SPII recently joined the Global Steering Group for Impact Investment (GSG Impact)’s network of national partners.<sup>28</sup>

Lastly, in the second half of 2024, two professors from the GCP launched a four-year research project on the barriers to and incentives for impact investing in Switzerland. The project is funded by a grant from the Swiss National Science Foundation (SNSF).<sup>29</sup>

### 4. Digitalization of supervisory authorities for foundations – the Geneva case

Driven by the digitalization efforts of the FSAF, cantonal authorities are following suit. In Geneva, the *Autorité cantonale de surveillance des fondations et des institutions de prévoyance* (ASFIP) has launched a new platform offering users a choice between a public platform and a personalized private platform.<sup>30</sup> The private portal is dedicated to each foundation and features a two-factor authentication system for enhanced security.

The private portal also enables long-term storage and management of foundation documents,<sup>31</sup> which facilitates smooth transitions during leadership changes or major reorganizations of the foundation board. Additionally, a dedicated e-mail address has been provided for users to enhance communication and support.<sup>32</sup>

## IV. In the legislative pipeline

### 1. Automatic exchange of information (Update AEOIA)

Following the first update of the Organization for Economic Co-operation and Development (OECD)’s common reporting standard (CRS) and due diligence for

<sup>24</sup> Département de l’économie et de l’emploi (DEE)/Geneva Centre for Philanthropy (GCP), Genève veut renforcer le secteur de la philanthropie, Press release of 25 March 2025, available (in French only) at: <<https://www.ge.ch/document/genève-veut-renforcer-secteur-philanthropie>> (last consulted: 17 July 2025).

<sup>25</sup> See above Sections III.1 and III.2.

<sup>26</sup> For more details, see <<https://www.swissfoundations.ch/fr/actualites/swissfoundations-lanciert-initiative-zu-future-proof-funding-und-startet-anlaufstelle-zur-unternehmfoerderung/>> (last consulted: 17 July 2025).

<sup>27</sup> Swiss Sustainable Finance (SSF), SSF launches new Swiss Platform for Impact Investing, Press release of 12 December 2024, available at: <<https://www.sustainablefinance.ch/api/rm/4B2RR225TQFGYQE/2024-12-12-ssf-press-release-launch-swiss-impact-p.pdf>> (last consulted: 17 July 2025).

<sup>28</sup> Adamkiewicz Karolina, Chair of Switzerland’s new impact platform highlights potential for impact investing in the

country, Impact Investor, 20 February 2025, available at: <<https://impact-investor.com/chair-of-switzerland-new-impact-platform-highlights-potential-for-impact-investing-in-the-country/>> (last consulted: 17 July 2025).

<sup>29</sup> For more details, see the description of the project at: <<https://data.snf.ch/grants/grant/10001563>> (last consulted: 17 July 2025).

<sup>30</sup> See <<https://www.asfip-ge.ch/myasfip/>> (last consulted: 17 July 2025).

<sup>31</sup> See Autorité cantonale de surveillance des fondations et des institutions de prévoyance (ASFIP), FAQ pour portail, available (in French only) at: <<https://www.asfip-ge.ch/myasfip/faq-pour-portail/>> (last consulted: 17 July 2025).

<sup>32</sup> The designated email address is available at: <<https://www.asfip-ge.ch/myasfip/faq-pour-portail/>> (last consulted: 17 July 2025).

financial account information issued in October 2022,<sup>33</sup> Switzerland committed to adapting its legal framework to implement the new standards, including the new Crypto-Asset Reporting Framework (CARF).

After consultation on the preliminary draft of the Federal Act on the International Automatic Exchange of Information in Tax Matters<sup>34</sup> (P-AEOIA) and the related draft Ordinance<sup>35</sup> (P-AEOI Ordinance),<sup>36</sup> the Federal Council submitted the draft Federal Act (P-AEOIA) to Parliament on 19 February 2025 for an entry into force on 1<sup>st</sup> January 2026.<sup>37</sup>

As a result of the advocacy of the relevant stakeholders, the revised legal framework now provides exemptions from the automatic exchange for non-profit entities that meet the conditions set by the OECD and the Federal Council.<sup>38</sup> Pursuant to article 3 paragraph 9<sup>bis</sup> P-AEOIA, a Swiss-resident entity is considered a “qualified non-profit entity” – and thus a non-reporting financial institution – if (i) it meets the five criteria established in article 6a P-AEOI Ordinance and (ii) it

holds a corresponding certificate of compliance issued by a competent Swiss tax authority.

Concretely, under article 6a P-AEOI Ordinance, “qualified non-profit entities” must:

- i. be established and operated exclusively in Switzerland<sup>39</sup> for religious, charitable, scientific, artistic, cultural, sports, educational purposes, or are professional associations, economic associations, chambers of commerce, trade unions, agricultural or horticultural organizations, civic organizations, or entities promoting social welfare (let. a);
- ii. be exempt from income or profit tax in Switzerland (let. b);
- iii. have no shareholders or members with ownership rights over their income or assets (let. c);
- iv. be prohibited by Swiss law or their founding documents from distributing income or assets to individuals or profit-oriented entities, except for charitable activities or reasonable compensation for services rendered or payment for goods acquired at fair market value (let. d); and
- v. ensure that, upon liquidation, their assets are transferred to a public entity, to another entity meeting these criteria, or devolved to the Swiss government, a canton or a municipality (let. e).

Departing from the preliminary draft, the certificate of compliance may now be issued by any Swiss authority rather than exclusively by the competent tax authority, thereby providing greater flexibility while remaining consistent with international standards.

On 24 March 2025, the Economic Affairs and Taxation Committee of the Council of States (EATC-S) backed the draft bill but found the extension of pun-

<sup>33</sup> Organization for Economic Co-operation and Development (OECD), International Standards for Automatic Exchange of Information in Tax Matters: Crypto-Asset Reporting Framework and 2023 update to the Common Reporting Standard, Paris (OECD Publishing) 2023, available at: <[https://www.oecd.org/en/publications/international-standards-for-automatic-exchange-of-information-in-tax-matters\\_896d79d1-en.html](https://www.oecd.org/en/publications/international-standards-for-automatic-exchange-of-information-in-tax-matters_896d79d1-en.html)> (last consulted: 22 July 2025).

<sup>34</sup> The current AEOIA is found in RS/SR 653.1.

<sup>35</sup> The current AEOI Ordinance is found in RS/SR 653.11.

<sup>36</sup> The draft and related documents published for consultation 2023/98 are available (in German, French and Italian) at: <[https://fedlex.data.admin.ch/eli/dl/proj/2023/98/cons\\_1](https://fedlex.data.admin.ch/eli/dl/proj/2023/98/cons_1)> (last consulted: 17 July 2025).

<sup>37</sup> Federal Council, Message concernant l'approbation de l'addendum à l'accord EAR comptes financiers et de l'accord EAR crypto-actifs, et la modification de la loi fédérale sur l'échange international automatique de renseignements en matière fiscale, 19 February 2025, FF 2025 883, available (in German, French and Italian) at: <<https://www.fedlex.admin.ch/eli/fga/2025/883/fr>> (last consulted: 17 July 2025). On the entry into force, see Federal Council adopts dispatch on extending international automatic exchange of information in tax matters, Press release of 19 February 2025, available at: <<https://www.news.admin.ch/en/nsb?nid=104195>> (last consulted: 27 August 2025).

<sup>38</sup> Schönenberger Katja/Jakob Dominique/von Schnurbein Georg, Rapport sur les fondations en Suisse 2025, CEPS Forschung und Praxis – Volume 33, Basel 2025, 22, available (in German and French) at: <<https://www.swissfoundations.ch/fr/publications/rapport-sur-les-fondations-en-suisse-2025/>> (last consulted: 17 July 2025).

<sup>39</sup> What this condition will imply in practice is yet to be clarified. Most international Non-Governmental Organizations (NGOs) and non-profit organizations based in Switzerland operate in some capacity abroad – whether through local offices, remote consultants, or field operations. The Explanatory Report dated 15 May 2024, concerning the consultation procedure 2023/98 states that the conditions set out in article 6a P-AEOI Ordinance are, in substance, aligned with those governing exemption from direct taxes (e.g., Art. 56 let. g and h of the Federal Act on Federal Direct Tax). Accordingly, despite some differences in wording, it is to be hoped that international NGOs and non-profit organizations based in Switzerland but operating outside Switzerland will not be excluded from the scope of article 6a P-AEOI Ordinance.

ishable conduct for negligent violations excessive.<sup>40</sup> On 10 June 2025, the Council of States approved the draft while removing that provision.<sup>41</sup> On 24 June 2025, the corresponding committee of the National Council supported this position, though a minority still favors liability for negligence.<sup>42</sup> The matter will be discussed in the autumn 2025 parliamentary session.

## 2. Federal register of beneficial owners (Update LTPM)

The Federal Council's preliminary draft of the Law on the Transparency of Legal Entities and the Identification of Beneficial Owners (P-LTPM)<sup>43</sup> aims to strengthen measures against money laundering and terrorist financing in line with Financial Action Task Force (FATF) Recommendations 8 and 24 and the Global forum standard.

On 18 December 2024, the Council of States proposed to exclude foundations and associations already required to register in the commercial register (formerly Art. 2 para. 1 (b) P-LTPM),<sup>44</sup> arguing that the LTPM's obligations were overly burdensome for these entities and largely redundant given their registration requirements.<sup>45</sup> The majority of the Legal Affairs Committee of the National Council (LAC-N) endorsed this

view in its statement of 14 February 2025.<sup>46</sup> At its deliberation on 12 June 2025, the National Council confirmed this position by 117 votes to 63, thereby formally excluding foundations and associations from the scope of the draft LTPM.<sup>47</sup>

This result is meaningful since, from a legal standpoint, foundations and associations do not have an economic beneficiary (or beneficial owner). It was also a recognition of the fact that the existing oversight mechanisms – such as registration in the commercial register, oversight by the supervisory authority, and mandatory auditing of financial statements – are appropriate regarding the fight against money laundering and the financing of terrorism.

## 3. Family foundations

On 15 December 2022, Councilor of States Thierry Burkart submitted motion 22.4445 entitled “*Strengthening Swiss family foundations by removing the ban on maintenance foundations*”.<sup>48</sup>

Currently, article 335 paragraph 1 SCC allows the establishment of a family foundation “[...] meet the costs of raising, endowing or supporting family members or for similar purposes”. However, paragraph 2 of the same article prohibits fee tail arrangements: family foundations may only be created for very limited purposes, and purely maintenance foundations are not permitted. As a result, many individuals turn to foreign legal structures, such as Anglo-Saxon trusts or Liechtenstein family foundations, for family wealth and succession planning.

<sup>40</sup> Federal Council, item 25.029, see Press releases, available (in German, French and Italian) at: <<https://www.parlement.ch/fr/ratsbetrieb/suche-curia-vista/geschaef?AffairId=20250029>> (last consulted: 17 July 2025).

<sup>41</sup> Federal Council, item 25.029, see Summary of dispatch / Report, available (in German, French and Italian) at: <<https://www.parlement.ch/fr/ratsbetrieb/suche-curia-vista/geschaef?AffairId=20250029>> (last consulted: 17 July 2025).

<sup>42</sup> Federal Council (n. 41).

<sup>43</sup> Federal Council, item 24.046, 22 May 2024, available (in German, French and Italian) at: <<https://www.parlement.ch/fr/ratsbetrieb/suche-curia-vista/geschaef?AffairId=20240046>> (last consulted: 17 July 2025). The text of the proposed law is available (in German, French and Italian) at: <<https://www.fedlex.admin.ch/eli/fga/2024/1608/fr>> (last consulted: 17 July 2025).

<sup>44</sup> Council of States, 24.046, Deliberation, 18 December 2025, available at: <<https://www.parlement.ch/fr/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=66697>> (last consulted: 17 July 2025).

<sup>45</sup> See for instance the intervention Councilor of States Matthias Michel, 18 December 2024, BO 2024 E 1368, available (in German only) at: <<https://www.parlement.ch/fr/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=66697>> (last consulted: 17 July 2025).

<sup>46</sup> Legal Affairs Committee of the National Council (LAC-N), *Registre de transparence: la Commission suit la ligne du Conseil des États*, Press release of 14 February 2025, available (in German, French and Italian) at: <<https://www.parlement.ch/press-releases/Pages/mm-rk-n-2025-02-14.aspx?lang=1036>> (last consulted: 17 July 2025).

<sup>47</sup> National Council, 24.046, Deliberation, 12 June 2025, available (in German only) at: <<https://www.parlement.ch/fr/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=68263#votum33>> (last consulted: 17 July 2025).

<sup>48</sup> Thierry Burkart, Motion 22.4445 “*Renforcer les fondations de famille suisses en supprimant l’interdiction des fondations d’entretien*”, 15 December 2012, available (in German, French and Italian) at: <<https://www.parlement.ch/de/ratsbetrieb/suche-curia-vista/geschaef?AffairId=20224445>> (last consulted: 17 July 2025).

After the failure of the Swiss trust project,<sup>49</sup> the motion to revise the rules governing family foundations was ultimately adopted by both chambers of Parliament in 2023 and 2024.<sup>50</sup> The Federal Council has now been tasked with submitting to Parliament a draft amendment to article 335 paragraph 2 SCC to remove the current ban on establishing so-called maintenance family foundations or fee tail. One key issue that will likely determine the success of this reform is its tax treatment.<sup>51</sup>

#### 4. Advisory activities and anti-money laundering

The Federal Council's message of 22 May 2024 on the bill to strengthen the fight against money laundering initially proposed addressing two issues together:<sup>52</sup> the introduction of a federal beneficial ownership register and the inclusion of certain advisory activities under the due diligence obligations of the Anti-Money

Laundering Act (AMLA)<sup>53</sup>. However, on 18 December 2024, the Council of States decided to separate these two matters.<sup>54</sup>

On 17 June 2025, the Council of States reviewed the advisory services component, substantially scaling down the initial proposal. The National Council has yet to decide, but if it approves the proposed text<sup>55</sup>, individuals fulfilling the following criteria will be considered as *advisers*, namely if, in a professional capacity, they participate in financial transactions related to the sale or purchase of real estate, the creation or establishment of a non-operating entity headquartered in Switzerland or abroad, the management or administration of a non-operating entity, the sale or purchase of an entity by a non-operating entity (Art. 2 para. 3<sup>bis</sup> P-AMLA), or those providing an address or premises for more than six months (Art. 2 para. 3<sup>ter</sup> P-AMLA)<sup>56</sup>.

The concept of a non-operating entity is understood to include legal entities, companies, institutions, foundations, trusts, fiduciary firms, and similar entities that are not established or maintained to conduct or support the operational activities of a business or corporate group, especially shell companies created solely for domiciliation purposes.<sup>57</sup>

In other words, advisory services related to the creation of foundations or associations would generally fall outside the scope of the law, except when they concern branches of foreign entities or representative offices.<sup>58</sup> Pure holding foundations (without any ideal purpose) could potentially also be considered as non-operating entities. Furthermore, domiciliation services must be limited to a six-month period, non-renewable.<sup>59</sup>

<sup>49</sup> See Legal Affairs Committees (LAC), Motion 18.3383 "Introduction du trust dans l'ordre juridique suisse", 26 April 2018, text and results available (in German, French and Italian) at: <<https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20183383>> (last consulted: 17 July 2025); Regazzi Fabio, Initiative parlementaire 16.488 "Codifier le trust dans la législation suisse", 13 December 2016, available (in German, French and Italian) at: <<https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20160488>> (last consulted: 17 July 2024); Regazzi Fabio, Interpellation 23.4076 "Trust Suisse. Suite des travaux?", 27 September 2023, available (in German, French and Italian) at: <<https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20234076>> (last consulted: 17 July 2025); Federal Council, Le trust suisse n'est pas susceptible de rassembler une majorité politique, Press release of 15 September 2023, available (in French, German and Italian) at: <<https://www.admin.ch/gov/fr/accueil/documentation/communiques.msg-id-97717.html>> (last consulted: 17 July 2025).

<sup>50</sup> The motion was adopted on 12 December 2023 by the Council of States and on 27 February 2024 by the National Council.

<sup>51</sup> On this question and with possible solutions, see *Opel Andrea/Oesterhelt Stefan, Besteuerung der Schweizer Familienstiftung jetzt und in Zukunft, in Sprecher Thomas/ von Orelli Lukas (ed.), Tagungsband 2024 Familienstiftung – neue Perspektiven, Zurich 2024*, 67 et seq.

<sup>52</sup> Federal Council, Message concernant la loi sur la transparence des personnes morales, 22 May 2024, FF 2024 1607, available (in German, French and Italian) at: <<https://www.fedlex.admin.ch/eli/fga/2024/1607/fr>> (last consulted: 17 July 2025).

<sup>53</sup> RS/SR 955.0.

<sup>54</sup> Council of States, 24.046, 18 December 2024, BO 2024 E 1365, available (in German and French) at: <<https://www.parlament.ch/fr/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=66697>> (last consulted: 17 July 2025).

<sup>55</sup> See Council of States, Loi fédérale sur la transparence des personnes morales et l'identification des ayants droit économiques, Dépliant 2025 II S, 24.046s: S2-11 F, Projet 2 Session d'été 2025 Décision du Conseil des États, 17 June 2025, 4, available (in French, German and Italian) at: <<https://www.parlament.ch/centers/eparl/curia/2024/20240046/S2-11%20F.pdf>> (last consulted: 22 July 2025).

<sup>56</sup> Council of States (n. 55), 4.

<sup>57</sup> Council of States (n. 55), 8, see Art. 2a para. 6 P-AMLA.

<sup>58</sup> Council of States (n. 55), 4, see Art. 2 para. 3<sup>bis</sup> let. b P-AMLA.

<sup>59</sup> Council of States (n. 55), 4, see Art. 2 para. 3<sup>ter</sup> P-AMLA.

Lawyers and notaries acting within the scope of judicial, criminal, administrative, or arbitral proceedings are excluded (Art. 2 para. 4 let. f P-AMLA)<sup>60</sup>. Similarly excluded are activities as governing bodies of operational legal entities or of public utility foundations or operational associations headquartered in Switzerland (Art. 2 para. 4<sup>ter</sup> let. f P-AMLA)<sup>61</sup>. The creation of foundations due to death is also excluded (Art. 2 para. 4<sup>ter</sup> let. g P-AMLA)<sup>62</sup>. The Federal Council is empowered to provide further exceptions by ordinance (Art. 2 para. 5 P-AMLA).<sup>63</sup>

As for real estate transactions, those with a price below CHF 5 million, where the purchase sum is transferred to a Swiss bank or to a financial intermediary subject to AMLA, are excluded (Art. 2 para. 4<sup>ter</sup> let. b P-AMLA)<sup>64</sup>. Similarly, transfers of real estate for reasons of inheritance or donation are also excluded (Art. 2 para. 4<sup>ter</sup> let. a P-AMLA).<sup>65</sup>

These series of exclusions are largely welcomed by professionals and stakeholders of the non-profit sector, as it would otherwise represent a significant additional burden of compliance on advisers, increasing both complexity and fees, which would certainly result in excluding professional advice and assistance for smaller organizations.

## 5. Parliamentary motions and interpellations

### 5.1 Strengthening the attractiveness of cantons for foundations

Following the declaration by Zurich, and then also Geneva, of their intention to enhance the cantons' attractiveness as philanthropy hubs,<sup>66</sup> several parliamentarians in other cantons have submitted interpellations and postulates at cantonal level to boost their own canton's appeal:<sup>67</sup>

- **Canton of Basel-Stadt:** On 6 March 2024, Cantonal Councilor *David Jenny* submitted an interpellation, stating that Basel-Stadt, traditionally known as Switzerland's Foundation capital, should address

<sup>60</sup> Council of States (n. 55), 5.

<sup>61</sup> Council of States (n. 55), 6.

<sup>62</sup> *Ibidem*.

<sup>63</sup> Council of States (n. 55), 7.

<sup>64</sup> Council of States (n. 55), 6.

<sup>65</sup> *Ibidem*.

<sup>66</sup> See above Section III.1 and III.2.

<sup>67</sup> *Schönenberger et al.* (n. 38).

growing competition from Zurich in attracting foundations. The Council of State replied that it still considered the current tax framework as well as other applicable rules (notably as to activities abroad, entrepreneurial funding models and board compensation) attractive but would nevertheless carry out a more in-depth review.<sup>68</sup>

- **Canton of Lucerne:** On 19 March 2024, Cantonal Councilor *Sarah Arnold* submitted a postulate to enhance Lucerne's attractiveness for foundations (for both public utility and family foundations), which has, compared to other cantons, unexploited potential.<sup>69</sup> The Council of State identified areas for improvement and optimization, and tasked the Department of Finance with reviewing the regulatory framework.<sup>70</sup>

### 5.2 Tax deductibility of donations to mixed-purpose associations

On 14 June 2024, National Councilor *Marc Jost* submitted postulate 24.3708 requesting that the Federal Council prepares a report on cantonal practices regarding the tax deductibility of donations to mixed-purpose associations (i.e. those pursuing both public utility and religious purposes). The report is expected to address the following points:

- Assess whether cantonal practices diverge regarding the interpretation of the terms "worship" and "public utility" in relation to religious communities;
- Compare the treatment of donations to mixed-purpose associations with that of donations to national churches;
- Examine Swiss practice in comparison with that of other European countries;
- Consider the appropriateness of amending Article 33a of the Federal Act on the Federal Direct Tax

<sup>68</sup> See the text of the interpellation, the position of the Basel-Stadt Council of State and Councilor *David Jenny*'s reply, available (in German only) at: <<https://grosserrat.bs.ch/ratsbetrieb/geschaefte/200113040>> (last consulted: 17 July 2025).

<sup>69</sup> See the text of the postulate, available (in German only) at: <<https://www.lu.ch/kr/parlamentsgeschaefte/CdwsFiles?fileid=e4119e270ea64abeb12f88550c3fd39f>> (last consulted: 17 July 2025).

<sup>70</sup> See the position of the Lucerne-Stadt Council of State is available (in German only) at: <<https://www.lu.ch/-/klu/ris/cdws/document?fileid=3befc41486704fd39c5419efd52065b8>> (last consulted: 17 July 2025).

(FDTA) to exempt donations to mixed-purpose or worship associations from tax.

On 28 August 2024, the Federal Council proposed to partially adopt the postulate by accepting points 1, 2 and 4, while rejecting point 3. Following this proposal, the National Council adopted the postulate on 27 September 2024<sup>71</sup>.

### 5.3 Public utility character of organizations and its reinforcement

On 19 December 2024, National Councilor *Beat Walti* introduced motion 24.4514 to tighten tax exemption rules for organizations claiming public utility status under article 56 letter g and h of the Federal Act on the Federal Direct Tax (FDTA)<sup>72</sup>.<sup>73</sup> The motion proposes that such organizations must:

- prepare annual financial statements distinguishing between charitable and other activities (at both income and expenditures levels);
- submit annual tax return; and
- lose tax exemption if, as entities subject to article 76c paragraph 1 of the Federal Act on Political Rights (PRA)<sup>74</sup>, they regularly contribute over CHF 50,000 to political campaigns.

The Federal Council considers the current legal framework adequate<sup>75</sup>, citing the principle – also reflected in the Federal Tax Administration (FTA) Circular No. 12 of 8 July 1994<sup>76</sup> – that partial public utility organizations cannot be fully tax-exempt. The motion

is currently under review by the competent National Council committee.

Several stakeholders oppose the motion, warning it could stifle political debate and weaken the philanthropic sector's contribution to social cohesion.<sup>77</sup>

### 6. Restriction of the right to appeal for associations

In 2023, the Federal Council initiated a revision<sup>78</sup> of the Energy Act (LEne).<sup>79</sup> Among the measures proposed in its report was a limitation of the right of appeal for local and cantonal organizations in planning and construction projects for solar, wind, and hydropower plants. Under the new proposal, only national organizations with a nationwide presence – such as World Wide Fund for Nature (WWF), Pro Natura, or the *Stiftung Landschaftsschutz Schweiz* – would retain this right.

Since then, the National Council has deliberated and agreed to restrict the right of appeal for cantonal associations. In addition, regarding a project involving the construction of sixteen hydropower plants, the National Council decided that appeals would only be admissible if submitted jointly by at least three organizations.<sup>80</sup> The matter now rests with the Council of States, which will determine both the limitation of the right of appeal for cantonal associations and the additional restriction concerning hydropower plants.

The LEne is not the only legislation moving in this direction. The Federal Act on the Protection of Nature and Cultural Heritage (NCHA)<sup>81</sup> will soon include a new provision (Art. 12 para. 1<sup>bis</sup> NCHA) that removes the

<sup>71</sup> See the text of the postulate, available (in German, French and Italian) at: <<https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaef?AffairId=20243708>> (last consulted: 28 August 2025).

<sup>72</sup> RS/SR 642.11.

<sup>73</sup> FDP. The Liberals Group (RL), Motion 24.4514 “Renforcer le caractère d’utilité publique des organisations exonérées de l’impôt”, 19 December 2024, available (in German, French and Italian) at: <<https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaef?AffairId=20244514>> (last consulted: 17 July 2025).

<sup>74</sup> RS/SR 161.1.

<sup>75</sup> Federal Council, Opinion of 19 February 2025 on Motion 24.4514 “Renforcer le caractère d’utilité publique des organisations exonérées de l’impôt”, available (in German, French and Italian) at: <<https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaef?AffairId=20244514>> (last consulted: 29 August 2025).

<sup>76</sup> Available (in German, French and Italian) at: <<https://www.estv.admin.ch/estv/fr/accueil/impot-federal-direct/infor>>

mations-specialisees-ifd/circulaires.html> (last consulted: 23 July 2025).

<sup>77</sup> See proFonds, Motion PLR: Une fois de plus, les organisations d’utilité publique sont exclues du discours politique, 14 May 2025, available (in German and French) at: <<https://www.profonds.org/fr/aktuell/motion-walti-une-fois-de-plus-les-organisations-dutilite-publique-sont-exclues-du-discours-politique/>> (last consulted: 17 July 2025).

<sup>78</sup> Federal Council, Message relatif à la modification de la loi sur l’énergie, 21 June 2023, FF 2023 1602, available (in French, German and Italian) at: <<https://www.fedlex.admin.ch/eli/fga/2023/1602/fr>> (last consulted: 17 July 2025).

<sup>79</sup> RS/SR 730.0.

<sup>80</sup> See National Council, 4 March 2025, BO 2025 N 56 et seq., available (in German and French) at: <<https://www.parlament.ch/fr/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=670322>> (last consulted: 17 July 2025).

<sup>81</sup> RS/SR 451.

right of associations to appeal decisions on residential buildings under 400 square meters within construction zones.<sup>82</sup> This restriction includes two exceptions: buildings of national, cultural, or historical importance (Art. 12 para. 1<sup>bis</sup> let. a NCHA), and biotopes of national, regional, or local significance (Art. 12 para. 1<sup>bis</sup> let. b NCHA). The new article originates from a parliamentary initiative.<sup>83</sup> No implementation date has yet been set.

This restrictive stance contradicts the broader approach recognized by the ECHR in its decision against Switzerland.<sup>84</sup> Given the Federal Council's principled decision not to implement this ECHR ruling,<sup>85</sup> it will be necessary to await initial case law to understand its practical implications for Swiss law and the future standing rights of associations.

## V. Case law review

### 1. Tax exemption and group of beneficiaries

An association operating a private school challenged the decision of the Bern tax authority to revoke its tax exemption, which had been in place since 1990 on account of its public service character. The tax administration withdrew the exemption retroactively to 2017, arguing that the school's tuition fees were set at market rate.

The Federal Supreme Court<sup>86</sup> dismissed the association's appeal, stating that to obtain a tax exemp-

tion for public service, the group of beneficiaries must encompass a substantial part of the population. However, the Court found that the high tuition fees (up to CHF 1335 per month) restricted access for middle-income families and effectively excluded low-income families, even after reductions and occasional financial aid. The Court thus ruled that the group of beneficiaries was not sufficiently broad to justify maintaining the tax exemption.

### 2. The excluded member's right to be heard

The question of the right to be heard of an excluded member was addressed both by the Federal Supreme Court<sup>87</sup> and the Geneva Court of Justice<sup>88</sup> in two separate decisions. While the Federal Supreme Court focused on the exhaustion of internal remedies and limited its review accordingly, the Geneva Court of Justice emphasized that members must be given a genuine opportunity to present their arguments before any exclusion decision is finalized.

The Federal Supreme Court case involved a garage and bodywork company challenging the decision to exclude it from the association of which it was a member, on the grounds of conduct deemed inappropriate. The company argued that its rights to be heard and of the association's internal rules had been violated. The Federal Supreme Court dismissed the appeal. It acknowledged that the committee had indeed infringed the excluded member's right to be heard; however, the appellant had been able to present its arguments before the exclusion was definitively confirmed by the general assembly, which had full power of review over both facts and law in the context of the internal appeal.

Moreover, the Federal Supreme Court declared inadmissible the question of whether the association's right to exclude a member should be limited – to protect the member's right to economic self-development (Art. 28 SCC) – by allowing the court to review whether just cause for exclusion existed through a balancing of interests, given that the appellant had exhausted all internal remedies.

In contrast, the Geneva Court of Justice annulled an association's decision to exclude a member on the

<sup>82</sup> Final version of the legal text available (in German, French and Italian) at: <<https://www.fedlex.admin.ch/eli/fga/2024/2490/fr>> (last consulted: 17 July 2025). It entered into force on 1<sup>st</sup> August 2025.

<sup>83</sup> Bregy Philipp Matthias, Initiative parlementaire 19.409 "Droit de recours des organisations. David contre Goliath", 14 March 2019, available (in German, French and Italian) at: <<https://www.parlement.ch/fr/ratsbetrieb/suche-curia-vista/geschaef/AffairId=20190409>> (last consulted: 17 July 2025).

<sup>84</sup> European Court of Human Rights (ECHR), case 53600/20, judgment of 9 April 2024.

<sup>85</sup> Federal Council, Le Conseil fédéral clarifie sa position sur le verdict de la Cour européenne des droits de l'homme concernant la protection du climat, Press release of 28 August 2024, available (in German, French and Italian) at: <<https://www.news.admin.ch/fr/nsb?id=102244>> (last consulted: 17 July 2025).

<sup>86</sup> Federal Supreme Court, case 9C\_234/2024, judgment of 12 August 2024.

<sup>87</sup> Federal Supreme Court, case 5A\_942/2022, judgment of 24 September 2024.

<sup>88</sup> Geneva Court of Justice, case ACJC/893/2024, judgment of 8 July 2024.

grounds that his right to be heard had not been respected. The Court recalled that, before a final decision is taken by the competent body, the member must be given an opportunity – by any appropriate means – to present arguments, even in case of exclusion without indication of grounds. In this case, nullity was justified because the member had been excluded without being informed that such a measure was taken into consideration, based on alleged misconduct.

### 3. No protected interest in the reinstatement of board members after the foundation's bankruptcy opening

The Zurich Administrative Court<sup>89</sup> struck off as moot the appeal lodged by two former board members of a foundation who challenged their dismissal by the Zurich foundation supervisory authority (BVS).

Although the dismissal occurred prior to the opening of the foundation's bankruptcy, the Court recalled that, once the bankruptcy is declared open by the judge, board members lose the power to dispose of assets forming part of the bankruptcy estate, pursuant to article 204 para. 1 of the Federal Debt Enforcement and Bankruptcy Act (DEBA)<sup>90</sup>. From that point onward, the role of board members is limited to providing the bankruptcy office with necessary documentation or information, regardless of whether they remain in office, have resigned, or have been dismissed. As such, the appellants no longer had a legally protected interest in being reinstated as board members and failed to demonstrate any such interest that could persist despite the foundation's bankruptcy.

### 4. Tax exemption and commercial activity

An association operating both a non-profit inn and a hotel had its tax-exempt status for public utility purposes revoked by the St. Gallen tax authority for the years 2020-2021. The Federal Supreme Court<sup>91</sup> upheld this decision, finding that the operation of the hotel did not satisfy the altruistic criteria required for tax exemption. The hotel's revenues represented a significant share of the association's total income – at

times nearly half – showing that it was not merely an ancillary activity. Moreover, by directly competing with taxable businesses, the hotel infringed the principle of competitive neutrality.

### 5. Sanction powers of supervisory authorities

A foundation supervised by the Geneva foundation supervisory authority (ASFIP) appealed against a decision imposing a CHF 1,000 fine for failing to submit the required annual documents within the prescribed deadlines, as well as a threat of sanctions under article 292 of the Swiss Criminal Code. The foundation argued that ASFIP lacked a sufficient formal legal basis to impose such a sanction, thus violating the principle of legality. The Geneva Court of Justice<sup>92</sup> partially upheld the appeal: it annulled the fine, holding that it was not founded on any formal legal or regulatory provision derived from an explicit legislative delegation under cantonal law. However, the Court confirmed ASFIP's competence to accompany its decisions with the threat of sanctions under article 292 of the Swiss Criminal Code, noting that the authority holds the requisite legal standing to do so.

### 6. Dismissal of a foundation board member

The Federal Administrative Court<sup>93</sup> upheld the appeal of a foundation board member against the board's decision to dismiss him for good cause – a decision that had been subsequently confirmed by the FSAF, which viewed the dismissal as an essential step towards improving the foundation's governance.

Disagreeing with this view, the Court emphasized that dismissing a foundation board member is an *ultima ratio* measure, justified only in cases of proven incapacity, objective incompetence, or persistent inaction. In the case at hand, the Court found that the FSAF had exceeded its discretionary powers and infringed the principle of proportionality by upholding the immediate dismissal despite the existence of less intrusive alternatives. Such alternatives include appointing a commissioner to assist the board in fulfilling its duties, initiating a conciliation procedure

<sup>89</sup> Zurich Administrative Court, case VB.2023.00755, judgment of 24 September 2024.

<sup>90</sup> RS/SR 281.1.

<sup>91</sup> Federal Supreme Court, case 9C\_165/2024, judgment of 28 October 2024.

<sup>92</sup> Geneva Court of Justice, case ATA/1283/2024, judgment of 5 November 2024.

<sup>93</sup> Federal Administrative Court, case B-3859/2022, B-3901/2022, judgment of 26 November 2024.

among board members, or the Supervisory Authority's actively helping to recruit new independent members to strengthen the board's governance.

The Court ordered the member's reinstatement, further highlighting the disadvantage of having a board composed of an insufficient and even number of members, particularly when there are close family ties between them. Such a configuration tends to encourage emotionally driven rather than professionally grounded dispute resolution, ultimately undermining the board's capacity to ensure the sound governance of the foundation.

Finally, the Court recalled that under article 68 SCC – applicable by analogy to foundations unless otherwise provided in the statutes – a board member subject to dismissal may not take part in deliberations or vote on the matter but retains the right to be heard. Moreover, other board members who are related to the member concerned (such as a spouse or a lineal relative), or who have a significant personal interest in the outcome, must likewise refrain from participating in the decision-making process.

## 7. Appointment of an administrator in violation of the principle of proportionality

The Zurich Administrative Court<sup>94</sup> upheld the appeal of a holding foundation against the decision of the Zurich foundation supervisory authority (BVS) to appoint an administrator. The foundation, which holds a majority stake of 80% in a company (C AG) established by its deceased founder, pursues two distinct and independent purposes: (i) the financial support of the founder's other foundations; and (ii) the financial and administrative support of C AG and its current and former employees, with the aim of ensuring the continuity of the company and its jobs. The foundation could be labelled as mix-purposed holding foundation.

For economic reasons, C AG's board of directors – three of whose four members also sit on the foundation's board – decided to close C AG's primary business operations "D" and to dismiss its employees. Following this decision, the BVS appointed an administrator, arguing that the closure violated the foundation's purpose and raised concerns of conflict of interest.

<sup>94</sup> Zurich Administrative Court, case VB.2024.00295, judgment of 5 December 2024.

The central legal issue was whether the foundation board members, acting in their capacity as directors of C AG, had breached the foundation's purpose in doing so. The Court emphasized that, in the supervision of holding foundations (*Unternehmensstiftung*), supervisory authorities must exercise restraint and avoid interfering in corporate management. Upon a detailed analysis of the foundation's purpose, the Court held that any obligation to pursue a specific activity – such as operating the business line D – must be clearly set out in the foundation's statutes to be considered as a purpose *per se*. This was not the case here, nor could such an obligation be inferred from additional interpretative materials reflecting the founder's intent.

Given the substantial financial losses incurred by business D, the Court held that requiring the foundation to continue financing such a deficit-generating activity would sooner or later deplete its assets and jeopardize the achievement of its other purposes. Furthermore, the mere fact that foundation board members also serve on the company's board does not constitute a conflict of interest.<sup>95</sup>

Overturning BVS's decision, the Court concluded that BVS had breached the principle of proportionality by appointing an administrator. The closure of Company D had already occurred and was irreversible. Moreover, there was no concrete indication that the foundation's purpose would be threatened in the future in any way.

## 8. Criminal mismanagement and attempted coercion by foundation board members

The Federal Supreme Court<sup>96</sup> upheld the convictions of two members of a foundation board for aggravated criminal mismanagement under article 158 of the Swiss Criminal Code<sup>97</sup> and for attempted coercion under article 181 of the Swiss Criminal Code. The Court found no arbitrariness in the reasoning of the Cantonal Court, which had concluded that the appellants had acted in furtherance of their own interests at the

<sup>95</sup> While this argument may be surprising in the context of a charitable holding foundation, it may be justified given the peculiar and dual nature of the foundation.

<sup>96</sup> Federal Supreme Court, cases 6B\_20/2024, 6B\_34/2024, judgment of 17 December 2024.

<sup>97</sup> RS/SR 311.0.

expense of the foundation. In particular, the appellants had breached their managerial duties by authorizing two irrecoverable loans unrelated to the agreed use of the funds and lacking any direct connection to the foundation's purpose, as well as by granting undue salary-related benefits.

A central element of the Federal Supreme Court's reasoning concerned the qualification of the board members as managers within the meaning of article 158 of the Swiss Criminal Code. This qualification was deemed appropriate for a board member who holds individual signatory power and exercises a sufficient degree of independence and autonomous control over the foundation's assets. Moreover, the Federal Supreme Court upheld the lower instance's conclusion that the appellants had abused debt enforcement proceedings by issuing unfounded payment orders to exert illegitimate pressure, conduct which amounted to attempted coercion under article 181 of the Swiss Criminal Code.

## 9. Time limit for filing a complaint with the supervisory authority

The Federal Administrative Court<sup>98</sup> addressed the time limit for a complaint filed by the Municipal Council of Winterthur against decisions of the foundation board of the city's pension fund. In December 2017, the board reduced the interest rate on insured members' savings as part of recovery measures. This reduction was maintained for 2019 and later incorporated into revised pension regulations that entered into force in January 2020.

Before seizing the Court, the Municipal Council lodged a complaint with the Zurich foundation supervisory authority (BVS) in June 2020, challenging the legality of these measures and requesting both annulment of the interest cuts and amendment of the new regulation. The BVS dismissed the complaint as inadmissible for lateness.

As neither the law nor the pension fund's statutes provided a rule on time limits, the Court applied by analogy the case law on social insurance, which recognizes a reasonable period of 30 to 90 days from the time a party becomes aware of the contested decision, depending on the circumstances. The Court held that,

contrary to the Municipal Council's argument, the mere existence of doubts as to the legality of the board's measures is not decisive for the start of the time limit. What matters is knowledge of the specific facts, not their legal assessment.

Since municipal representatives sat on the pension fund's board, the Municipal Council was deemed to have been aware of the contested reductions at the time of their adoption or, at the latest, when they took effect in 2018 and 2019. Preparatory work on the revision of its own legal framework in mid-2019 further confirmed the Municipal Council's awareness of the revised regulations.

The Court therefore found the complaint manifestly late, upheld the BVS's decision, and emphasized that belated complaints must be treated only as denunciations.

## 10. Revocation of a municipal subsidy

A sports association was deprived by the City of Geneva, with immediate effect, of its free access to a sports center's facilities, due to breaches of its duty to provide information and its insolvency. Arguing that this measure would *de facto* force it to cease operations and dissolve, the association requested the reinstatement of suspensive effect from the lower authority. After this request was denied, the association appealed to the Federal Supreme Court,<sup>99</sup> claiming that the decision would cause it irreparable harm. It contended that, being unable to pay market-rate rental fees, the loss of access to training and match facilities – particularly at the start of the season – would deprive the club of its *raison d'être*, its members and, consequently, its purpose.

The Federal Supreme Court found the appeal inadmissible, holding that the association had failed to demonstrate the existence of irreparable harm. The Court considered the temporary suspension of junior training to be merely a factual inconvenience, especially since the City of Geneva had offered an immediate provisional solution to safeguard the players' interests, even if the association regarded it as suboptimal.

<sup>98</sup> Federal Administrative Court, case C-4131/2021, judgment of 5 February 2025.

<sup>99</sup> Federal Supreme Court, case 2C\_125/2025, judgment of 5 March 2025.

## 11. Non recognition of the Zofingue student association

The Federal Supreme Court<sup>100</sup> upheld the appeals of the University of Lausanne (UNIL) and the Swiss Federal Institute of Technology in Lausanne (EPFL), confirming their right to deny formal recognition to the Vaud section of Zofingue. The association's exclusively male membership was deemed incompatible with the core institutional commitments of both entities – particularly their obligation to uphold and implement gender equality under article 8 paragraph 1 and article 35 paragraph 2 of the Federal Constitution of the Swiss Confederation (Cst.)<sup>101</sup>.

In overturning its previous ruling in ATF 140 I 201, the Federal Supreme Court acknowledged that significant political and social developments, along with the unanimous doctrinal criticism levelled at this 2014 leading case, constitute serious and objective grounds warranting a reassessment of the balancing of interests previously undertaken. The Court thus re-examined the matter in light of the principle of proportionality under article 36 Cst., emphasizing that the importance of gender equality and its implementation in all aspects of society has increased, including in Switzerland, since the 2014 precedent.

The Federal Supreme Court further clarified that excluding certain categories of students from association membership based on gender does not necessarily preclude recognition. However, such discriminatory practice may only be justified if it is objectively linked to the legitimate purpose pursued by the association. In these cases, the association's purpose – including networking and training – did not provide any objective justification for limiting such advantages to its exclusively male members. Accordingly, the interests of UNIL and EPFL in promoting gender equality (Art. 8 Cst.) prevailed over the Vaud section of Zofingue's claim to freedom of association (Art. 23 Cst.).

## 12. A foundation does not qualify as a securities dealer

The Federal Supreme Court<sup>102</sup> upheld the appeal of a foundation managing employee participation plans for a holding company, thereby overturning the decision of the Federal Administrative Court and ordering the FTA to reimburse the amounts already paid.

The case arose after the FTA reassessed the foundation's liability for securities transfer stamp duty, arguing that the foundation qualified either as an intermediary under article 13 paragraph 3 letter b (2) of the Federal Stamp Duty Act (SDA)<sup>103</sup> or as a professional securities dealer under article 13 paragraph 3 letter b (1) SDA. The central issue before the Federal Supreme Court was whether the foundation's activities in connection with two employee share plans justified its classification under either provision.

The Federal Supreme Court rejected this characterization. It held that the foundation could not be qualified as a professional intermediary under article 13 paragraph 3 letter b (2) SDA, as it had carried out the relevant transactions in its own name, and there was no evidence of other transactions indicating an intermediary function. Likewise, it could not be classified as a professional securities dealer under article 13 paragraph 3 letter b (1) SDA, since it had acquired and sold the taxable securities on its own account and had not pursued such activities on a professional basis.

## 13. Tax exemption and political activity

The Federal Supreme Court<sup>104</sup> dismissed the appeal of an association seeking tax exemption on the grounds of public utility, finding that its activities were essentially political in nature. Although the association's statutes defined its purpose as promoting democracy in Switzerland through increased political participation and public debate, in practice its activities were limited to drafting and supporting a cantonal popular initiative. The Court recalled that, under tax law, political activity has never been recognized as serving a public utility purpose. The collection of signatures for a popular initiative does not constitute a disinterested

<sup>100</sup> Federal Supreme Court, case 2C\_72/2024, judgment of 25 March 2025; Federal Supreme Court, case 2C\_441/2024, judgment of 25 March 2025.

<sup>101</sup> RS/SR 101.

<sup>102</sup> Federal Supreme Court, case 9C\_41/2024, judgment 26 March 2025.

<sup>103</sup> RS/SR 641.10.

<sup>104</sup> Federal Supreme Court, case 9C\_430/2024, judgment of 31 March 2025.

activity but rather seeks to advance the association's own political views. While political actors often claim that their proposals serve the common good, it is not for tax authorities or the courts to assess whether this is the case.<sup>105</sup>

#### **14. Foundation contributions qualified as public subsidies under the VAT Act**

The Federal Supreme Court<sup>106</sup> confirmed that contributions made by the *Zürcher Filmstiftung* to a company active in the production and distribution of audiovisual works qualified as subsidies under article 18 paragraph 2 letter a of the Federal Act on Value Added Tax (VAT Act)<sup>107</sup>. As a result, these subsidies triggered a proportional reduction of the input tax deduction pursuant to article 33 paragraph 2 VAT Act, a conclusion the company contested.

Although the contributions were granted by a private foundation, the funds originated almost entirely from public authorities. The Canton and City of Zurich had effectively delegated their film funding mandate to the *Zürcher Filmstiftung*, which managed the entire process – from evaluating applications to disbursing funds. The indirect nature of this mechanism, via a foundation, did not transform a public subsidy into a private donation. Moreover, the funding agreement included clawback provisions: if a supported film achieved commercial success, the contributions had to be repaid to the foundation; otherwise, they were definitively granted (*à fonds perdu*). This structure bore no resemblance to a donation within the meaning of the VAT Act. The Federal Supreme Court therefore dismissed the appeal.

<sup>105</sup> To put this decision in context, it is worth noting that, on 19 December 2021, the National Council rejected motion 20.4162 “*L'exonération fiscale pour utilité publique des personnes morales qui poursuivent des objectifs politiques est-elle justifiée?*”, introduced by Councilor of States Ruedi Noser, which aimed to restrict – or even prohibit – the support of political projects by tax-exempt entities on grounds of public utility. The boundary between what is permissible and what is not in terms of political support remains a fine one, as also reflected in this case law. For more details on the motion, see <https://www.parlement.ch/fr/ratsbetrieb/suche-curia-vista/geschaef?AffairId=20204162> (last consulted: 17 July 2025).

<sup>106</sup> Federal Supreme Court, case 9C\_149/2024, judgment of 14 April 2025.

<sup>107</sup> RS/SR 641.20.