



Regulation, Sustainability

Message on Corporate Responsibility: The Federal Council Makes Corrections, ***but Significant Risks Remain***

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At a glance

- The Federal Council's message on the Federal Act on Sustainable Corporate Governance (NUFG), the counterproposal to the Corporate Responsibility Initiative, is much more closely aligned with current EU law than the previous proposal.
- However, when it comes to liability, the bill goes beyond what the EU requires. This creates new legal uncertainty.
- The most problematic elements of oversight have been removed. But there is also no need for bureaucratic oversight of companies operating internationally.
- Crucially, the counterproposal does not go beyond EU law in any respect. Now it's up to Parliament.

The Federal Council today adopted the message on the Federal Act on Sustainable Corporate Governance (NUFG), the indirect counterproposal to the second Corporate Responsibility Initiative. Responsible corporate governance is a key priority for the Swiss economy. Companies operating internationally, in particular, have a strong interest in effective, practical, and internationally coordinated rules for the protection of human rights and the environment. And SMEs must be protected from excessive bureaucracy. In times of global upheaval and economic uncertainty, appropriate regulation is needed for such an important issue. The message takes a step in the right direction but does not yet achieve the goal.

Corporate Responsibility: The criticism raised during the consultation process has had an impact

The Federal Council is no longer guided primarily by the demands of the initiative—which have become outdated since the EU's policy shift—but rather by current EU law. This is the right approach.

The due diligence process is now more risk-based and proportionate. This allows companies to focus more specifically on the key risks and place less of a burden on their business partners, many of which are SMEs. Several excessive regulatory interventions—such as those concerning the organization of subsidiaries and the exclusion from public contracts—have been removed. Reporting requirements have also been partially reduced. Liability has also been mitigated: there is no separate liability provision, no automatic liability for subsidiaries, and no longer any special connection under international private law provided for by law.

Liability in the Counterproposal on Corporate Responsibility: More Than a Reference to Existing Law

However, alignment with EU law has not been achieved, particularly with regard to liability. The Federal Council presents the reference to Article 41 of the Swiss Code of Obligations (OR) as a limitation on liability. In fact, however, this expands liability: the new due diligence obligations are explicitly designated as so-called protective standards. This means that a breach of these obligations can directly give rise to a duty to pay damages. As a result, Swiss liability law indirectly extends into global supply chains: Swiss parent companies can be held liable for damages abroad, including purely financial losses. The EU does not require such a provision; it has deliberately refrained from harmonizing liability rules. Even the Federal Council acknowledges that without this provision, the risk of litigation would be lower.

Furthermore, the explanatory memorandum leaves open whether Swiss law should also apply mandatorily to damages incurred abroad. In doing so, the Federal Council leaves the most sensitive issue of its liability regime—of all things—to the courts.

A Regulatory Authority as a Potential Bureaucratic Monster

The Federal Council has removed the most problematic elements of the originally proposed regulatory framework. Nevertheless, it remains questionable whether a new supervisory authority for internationally active companies is necessary. It would create additional bureaucracy and costs without any proven need for such regulation and despite the existence of leaner and more effective alternatives, such as indirect supervision.

Internationally Coordinated Corporate Responsibility: Taking the Federal Council at Its Word

In its message, the Federal Council states that, with the exception of child labor, the bill does not go beyond EU requirements in any area. This standard must also apply to liability. economiesuisse will therefore conduct an in-depth review of the bill to assess its proportionality, practicality, and international alignment. Switzerland must not become a preferred international venue for litigation.

The business community fundamentally questions whether a counterproposal is even necessary at this point in time. The legal provisions of the counterproposal to the most recent Corporate Responsibility Initiative—which was rejected by the Swiss people—have only been in force for a few years. At the same time, the implementation of the EU rules, which have since been significantly streamlined, is still pending in most member states. The Federal Council is thus missing an opportunity to wait and see how developments in the EU unfold, to evaluate the experience with the existing Swiss regulations, and to determine any additional regulatory needs on that basis. Instead, it is rushing ahead with new regulations without sufficiently demonstrating their necessity.

Within the framework of the Federal Council's proposal, it would clearly be preferable to forgo a specific liability provision and, at most, make selective adjustments to current law. Parliament must make it clear that damages incurred abroad cannot suddenly be assessed under Swiss law. Furthermore, it must ask the fundamental question of which additional regulations and supervisory structures are actually necessary. Switzerland is not legally obligated to adopt EU law. This makes it all the more important to limit regulation to what is absolutely necessary and to avoid pursuing a separate regulatory path.



Erich Herzog

Head of Department Competition & Regulatory Affairs, General Counsel, Member of the Extended Executive Board



Alexander Keberle

Head domestic development, Member of the Executive Board

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