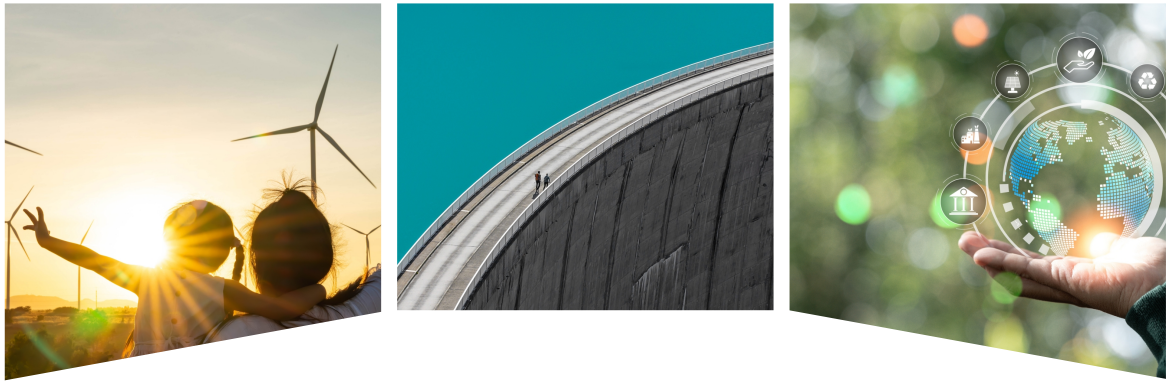




Sustainability, Regulation

Counterproposal to the new Corporate Responsibility Initiative: Switzerland's unique approach with ***high costs for the economy***

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At a glance

- The proposed Federal Act on Sustainable Corporate Governance (NUFG) is not a moderate refinement of sustainability law—it is a regulatory anomaly that burdens Swiss companies with a liability, oversight, and reporting regime that is unique worldwide.
- The burden is massive and affects far more than the approximately 30 large companies directly covered by the law: Regulatory pressure is being exerted through the supply chain, effectively forcing SMEs to absorb their customers' documentation, auditing, and reporting obligations—resulting in significant additional costs and competitive disadvantages.

- economiesuisse clearly rejects the preliminary draft. It is not a counterproposal, but rather an implementation law for the new Corporate Responsibility Initiative.

Since the adoption of the parliamentary counterproposal to the first Corporate Responsibility Initiative in 2020, Switzerland has had a sustainability framework in place that is internationally compatible, grounded in the rule of law, and designed without general corporate liability. Since then, companies have invested heavily in sustainability functions, compliance structures, due diligence processes, and reporting systems. The business community has borne these costs because the framework was proportionate.

The preliminary draft of the NUFG fundamentally changes this starting point. It is not a logical continuation of the path taken so far—it represents a break with the existing system. And it comes at a time when the Swiss economy is under significant international pressure and the EU itself is in the process of fundamentally rolling back its own sustainability rules.

A Swiss "special path" with no international precedent

The NUFG is presented as an approximation to EU law. In fact, the EU has significantly weakened its sustainability regulations with the Omnibus I package and, in particular, has eliminated the liability regime that was originally envisaged. To date, no EU member state has implemented the directive.

In contrast, the NUFG selectively adopts the strictest elements of the original, now-outdated regulation (CSDDD), tightens them with unique Swiss solutions, and combines them with a supervisory framework that has no parallel in European sustainability law. This becomes particularly clear when compared to Finland, the only EU member state with a concrete draft implementation plan: Finland has deliberately opted not to impose special liability and adheres to the EU minimum standard. The NUFG goes significantly further.

A massive and difficult-to-quantify effort

The Federal Council's assertion that only about 30 large companies are directly affected is misleading. It ignores the structural mechanism that characterizes any regulation of this kind: the trickle-down effect. Companies directly subject to the regulation are required to involve their business partners throughout the entire value chain in due diligence and compliance processes, to pass on the relevant requirements contractually, and to monitor compliance with them. Experience from Germany shows that such obligations are regularly passed on to suppliers and business partners—especially to SMEs.

The effort involved is considerable: new risk and due diligence processes, extensive reporting, time-consuming audits, and decades-long documentation and archiving requirements result in high costs and significant legal uncertainty.

Special Liability: What Failed at the Polls in 2020 Is Making a Comeback Through the Back Door

The liability regime is particularly problematic. It effectively introduces special liability for parent companies for events occurring along global value chains and combines this with group-wide joint and several liability, far-reaching disclosure requirements, and an extraterritorial intervention provision that mandatorily extends Swiss law to foreign circumstances.

This marks the return of the very concept that voters rejected at the polls in 2020 as part of the first Corporate Responsibility Initiative. And it is the very framework that the EU deliberately chose not to adopt with Omnibus I. The NUFG is now introducing it on its own and declaring it a counterproposal to an initiative that calls for exactly the same thing. This is inconsistent both politically and under the rule of law.

At the same time, the EU has now deliberately opted not to adopt such a liability model. The NUFG thus establishes a unique Swiss approach, without this being required by European law or the Bilateral Agreements III.

An interventionist regulatory framework for previously unregulated companies

The planned Audit and Sustainability Supervisory Authority (RNAB) will be granted exceptionally broad powers that are unprecedented in European sustainability law: heavy administrative penalties of up to 3 percent of global revenue, removal of board members, profit confiscation, compulsory dissolution, exclusion from public procurement procedures for up to five years, and “naming and shaming” even while proceedings are still ongoing.

A particularly critical issue is that these sanctions are tied to obligations that are only to be specified later by the Federal Council. Companies would thus be subject to sanctions even though key requirements have not yet been finalized when the law takes effect. This undermines legal certainty and complicates long-term investment and location decisions.

economiesuisse therefore clearly rejects the preliminary draft. It is not a counterproposal, but rather a law implementing the new Corporate Responsibility Initiative.



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