



The Liability Paradox – or when everyone loses

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At a glance

Why the new Corporate Responsibility Initiative and the counterproposal jeopardize the very due diligence they aim to enforce.

The goal is undisputed: Swiss companies should respect human rights and environmental standards in their business relationships worldwide. With the new Federal Act on Sustainable Corporate Governance (NUFG), the Federal Council aims to further expand regulation in Switzerland—in response to developments in the EU and, at the same time, as a counterproposal to the new Corporate Responsibility Initiative (KVI). However, the two issues are difficult to reconcile, as both the counterproposal and the new KVI go far beyond EU standards. This represents a significant shift in course that jeopardizes the progress Switzerland has made over the years in the area of global corporate responsibility.

No Going It Alone for Switzerland

In the future, Swiss parent companies will be liable for damages caused by their subsidiaries worldwide if they have breached their due diligence obligations. Because they must disclose their internal documents in the event of a dispute, the company is effectively required to prove its due diligence—a reversal of the burden of proof in all but name. Plaintiffs would have significantly easier access to evidence—similar to the U.S. legal system (discovery). In addition, a significantly extended statute of limitations of 20 years would apply, which is considerably longer than the typical 3- to 10-year periods under civil law. Finally, Swiss law would be mandatorily applied to foreign cases as well, and a new supervisory authority would be granted far-reaching powers of intervention and sanction, including the ability to skim profits and order compulsory dissolution.

It is particularly troubling that this rigorous approach runs counter to international trends. Germany and the EU have significantly streamlined their sustainability rules and made them more practical, without experimental liability systems. What the Federal Council presents as a balanced alignment with EU regulation turns out to be a consistent “Swiss Finish,” which adopts the KVI’s key demands. This is not a compromise, but a regulatory misstep.

A regulatory déjà vu

The new avenues for litigation remain at the heart of the problem. Lawsuits against companies are already possible today. However, the proposed new liability instruments would lead to a monitoring and auditing industry that primarily consumes resources without eliminating the actual problems: Instead of using a risk-based approach to improve internal processes with an eye toward the future, these instruments would be used for backward-looking legal protection and defensive documentation.

Swiss companies would increasingly question or even avoid foreign investments and engagements in high-risk markets. At the same time, with this new liability provision, Switzerland would be asserting the right to apply its laws worldwide—an extraterritorial approach that could be perceived as overreaching abroad and backfire in terms of foreign policy.

Right now, in particular, companies need more planning certainty—not an additional gateway for lawsuits. Instead, with its counterproposal, the Federal Council is increasing the legal risks for internationally active companies and SMEs—without any discernible added value, contrary to the international trend, and using measures that have already been rejected at the ballot box.

The business community has done its part and will continue to do so in the future

The business community has always supported the moderate further development of regulation in Switzerland. In recent years, its companies have invested heavily in expanding their due diligence processes, thereby integrating international standards into their governance. Sustainability must not become a vehicle for ideological objectives. What matters is which measures have a demonstrable impact. This requires international coordination, legal certainty, and a risk-based approach—not additional liability rules that primarily encourage new legal disputes.

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