Update

Responsible Business Initiative
Switzerland

September 2017

urs.rybi@publiceye.ch
Key developments at national and international level
Authoritative new international guidance documents on implementation of the UNGP

- **2011: UNGP**
- **2016: Council of Europe**, Recommendations by the Committee of Ministers, March 2016
- **2017: UN CESCR**, General Comment No. 24 on Business & Human Rights, June 2017

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<tr>
<th>Country</th>
<th>Text</th>
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| CoE     | «20. Member **States should** apply such measures as may be necessary to encourage or, **where appropriate, require** that:  
  - business enterprises domiciled within their jurisdiction apply human rights **due diligence** throughout their operations;» |
| UN CESCR| «The obligation to protect entails a **positive duty to adopt a legal framework requiring** business entities to exercise human rights **due diligence** (...)»
«Because of how corporate groups are organized, business entities routinely escape liability (...)» «This requires States Parties to remove substantive, procedural and practical barriers to remedies, including by establishing **parent company or group liability regimes** (...)» |
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<tr>
<th>Country</th>
<th>Status</th>
<th>Details</th>
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<tbody>
<tr>
<td>France</td>
<td>✓</td>
<td>• law adopted 2017</td>
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</table>
| Germany   | under discussion | • commitment in [National Action Plan](#) to monitor HRDD practice and consider legislation by 2020 if not >50% of large corporations compliant  
• mHRDD included in [SPD](#) election program and introduced by the [Greens](#) in parliament, supported by some CDU MPs  
• NGO coalition published [detailed legal proposal](#)                                                                 |
| Switzerland | under discussion | • [parliamentary motion](#) in 2015 first narrowly accepted, then narrowly dismissed  
• [citizen initiative](#) filed 2016, currently in parliament, public vote expected 2018/2019                                                                 |
| UK        | under discussion | • [UK Parliament](#) Joint Committee on Human Rights April 2017 calls for a duty to prevent modelled after UK Bribary Act (mHRDD, incl. parent companies, civil + criminal liability)  
• NGO coalition discussing proposal                                                                 |
| Netherlands | issue-specific law expected end 2017 | • law for mandatory due diligence on child labour in 2nd chamber of [parliament](#)  
Enforcement includes administrative and criminal law provisions  
• [government](#) advises to check support at EU level and «if there is support, it is logical to apply for a general due diligence obligation in line with the French law, rather than an obligation specifically aimed at child labor. This is more consistent with the (...) UNGPs and the OECD Guidelines (...)»                                                                 |
| Italy     | under discussion | • Italian [law 231/2001](#) on administrative liability of companies already entails duties in respect to selected human rights issues (e.g. trafficking, slavery). Commitment in [National Action Plan](#) to review the law for possible extension and introduction of general mHRDD.                                                                 |
| Canada    | discussion starting | • international [conference](#) hosting John Ruggie, co-organized by NGOs and MPs of all major parties, end September                                                                 |
The Swiss Responsible Business Initiative
Coalition of 80 NGOs

Supported by over 60 personalities

Dick Marty
Former MP and CoE special investigator
Co-Chair (Initiative Committee)

Micheline Calmy-Rey
Former Foreign Minister
(Initiative Committee)

Prof. Monika Roth
Co-Chair (Initiative Committee)

Dietrich Pestalozzi
Entrepreneur (Supporter)

Klaus Leisinger
Supporter

Dominique Biedermann
ETHOS Fund (Supporter)

Cornelio Sommaruga
President International Committee of the Red Cross 1987-99
(Initiative Committee)

Fuisep Nay
former president of the Federal Supreme Court
(Initiative Committee)

Florian Wettstein
University of St. Gallen (Initiative Committee)
Profile

Goal
Swiss business respects human rights and international environmental standards/ PREVENTION

Instrument
Due Diligence (according to the UNGP)

Enforcement
Refinement of civil liability
The Responsible Business Initiative

The Federal Constitution will be amended as follows:

Art. 101a Responsibility of business

1 The Confederation shall take measures to strengthen respect for human rights and the environment through business.

2 The law shall regulate the obligations of companies that have their registered office, central administration, or principal place of business in Switzerland according to the following principles:

a. Companies must respect internationally recognized human rights and international environmental standards, also abroad; they must ensure that human rights and environmental standards are also respected by companies under their control. Whether a company controls another is to be determined according to the factual circumstances. Control may also result through the exercise of power in a business relationship.

b. Companies are required to carry out appropriate due diligence. This means in particular that they must: identify real and potential impacts on internationally recognized human rights and the environment; take appropriate measures to prevent the violation of internationally recognized human rights and international environmental standards, cease existing violations, and account for the actions taken. These duties apply to controlled companies as well as to all business relationships. The scope of the due diligence to be carried out depends on the risks to the environment and human rights. In the process of regulating mandatory due diligence, the legislator is to take into account the needs of small and medium-sized companies that have limited risks of this kind.

c. Companies are also liable for damage caused by companies under their control where they have, in the course of business, committed violations of internationally recognized human rights or international environmental standards. They are not liable under this provision however if they can prove that they took all due care per paragraph b to avoid the loss or damage, or that the damage would have occurred even if all due care had been taken.

d. The provisions based on the principles of paragraphs a-c apply irrespective of the law applicable under private international law.

Guiding ideas for the formulation
- as concrete as possible
- reference to international standards
- take existing law provisions as models, targeted supplements to Swiss law

Bruxelles I/ Lugano on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

UNGPs principal liability
The Responsible Business Initiative

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Different Scopes of Due Diligence and Liability in the Swiss Responsible Business Initiative!

Due Diligence obligation: all business relationships (whole supply chain)

Civil liability: controlled companies

Example:
- Swiss company (own conduct)
- Subsidiary in Ghana (controlled)
- Supplier in China (not controlled)
- Security Company of supplier
Snapshots of debate in Switzerland in September 2017

Press conference of the Swiss government on the initiative
September 15, 2017

Public Conference with 200 participants organized by main Swiss supermarket chain MIGROS
September 15, 2017

Event for MPs in Switzerland
September 13, 2017

"92 percent of respondents supported the statement, that private companies have a responsibility to contribute to the public good. (...) According to the Public Value Atlas the demand [the Responsible Business Initiative] has definitely chances to pass: 83 percent of respondents think that organizations that harm the public good should be penalized"

Sonntagszeitung September 24, 2017

Evening news in German and Italian Swiss TV stations
September 15, 2017
we are here

2016

Filing 10.10.2016

11.1.2017 Government pre-decision dismissal (as usual with citizen initiatives)

15.9.2017 Government „message“ detailed reasoning, acknowledging need for action but focusing on voluntary measures. Announces to review need for regulation if progress unsatisfactory.


2018/2019 Popular vote

max. 12 months

max. 30 - 54 months
Resources

- Detailed legal commentary by SCCJ in **French** & **German** (Sept. 2017)
- Swiss government’s dispatch to parliament in **French** & **German** (Sept. 2017)
- SCCJ analysis of government’s dispatch in **French** & **German** (Sept. 2017)
- Dedicated issue of Swiss law journal AJP (most articles in **German**) (Sept. 2017)
- Background on the process of a Swiss citizen/popular initiative (**English**)