



# The initiative text with explanations

English is not an official language of the Swiss Confederation. In case of doubt, please refer to any of the official German, French or Italian versions of the text. This translation is provided for information purposes only.

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.**

*This is the general principle of the initiative. As a result, the government is empowered and entrusted with taking measures in all legal fields, so that business respects human rights and the environment.<sup>1</sup>*

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:

*This provision regulates the scope of the initiative: the companies affected by the initiative are those domiciled in Switzerland. This definition is based on private international law in accordance with the **Lugano Convention**.*

- *The registered office is derived from the company statutes.*
- *The central administration is located where the decision-taking and management of the business takes place. This differs particularly in the case of domiciliary companies ("shell companies") from the registered office.*
- *The principal place of business is where a recognizable, real business focus exists or where important staff and material resources can be found. It is therefore possible that a company may have multiple principal places of business.<sup>2</sup>*

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.**

*To determine which fundamental rights companies must respect abroad, the initiative relies primarily on the UN Guiding Principles on Business and Human Rights. According to Principle 12, **internationally recognized human rights** include at a minimum the Universal Declaration of Human Rights together with its most important implementing instruments:*

- *the International Covenant on Civil and Political Rights (UN Covenant II)*
- *the International Covenant on Economic, Social and Cultural Rights (UN Covenant I)*
- *as well as the eight core conventions from the International Labour Organization (ILO).<sup>3</sup>*

**International environmental standards** refer to norms that have been concluded outside legislative processes at the national level, such as International Public Law (e.g. the Montreal Protocol for the protection of the ozone layer), international organizations (e.g. the Environmental and Social Performance Standards of the International Finance Corporation) as well as non-governmental standards (e.g. ISO standards).<sup>4</sup>

**Controlled companies** are generally subsidiaries of parent companies. However, in certain cases, a multinational company could also de facto control another company outside its strict legal structure through the exercise of economic control. For example, a relationship of control may exist if a Swiss company is the only purchaser from a supplier even if the latter is not a direct subsidiary.<sup>5</sup>

The following footnotes refer to the Explanatory report on the initiative (in French). The report can be downloaded here: [www.konzern-initiative.ch/telecharger/?lang=fr](http://www.konzern-initiative.ch/telecharger/?lang=fr).

<sup>1</sup>Cf. Explanatory report (in French), ch. 3.1.1 Article définissant le but et mandat général à la Confédération (alinéa 1).

<sup>2</sup>Cf. Explanatory report (in French), ch. 3.2.2.2 Champ d'application territorial.

<sup>3</sup>Cf. Explanatory report (in French), ch. 3.2.3.1 « Droits de l'homme internationalement reconnus ».

<sup>4</sup>Cf. Explanatory report (in French), ch. 3.2.3.3 « Normes environnementales internationales ».

<sup>5</sup>Cf. Explanatory report (in French), ch. 3.2.5 La responsabilité pour le manque de diligence dans une relation de contrôle (lettre c), paragraphe D) Le contrôle.



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.**

*The introduction of mandatory **due diligence** is the heart of the Responsible Business Initiative. The UN Guiding Principles for Business and Human Rights and the OECD Guidelines for Multinational Enterprises define human rights due diligence as taking the following three steps : risks must be identified, measures taken, and both the risks and measures taken must be accounted for. In addition, the initiative adopts this instrument and extends it to the environment in accordance with international norms. Accordingly, assessments of environmental sustainability, as established by the OECD Guidelines, meet the requirements of a due diligence process.*

***Small and medium companies** are generally exempted from the initiative's obligations, unless they operate in high-risk sectors such as the mining sector or those companies who trade in raw materials like copper or gold, diamonds or tropical wood. The Federal Council should periodically evaluate which sectors are considered high-risk.<sup>6</sup>*

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.

*Whoever controls a company should exercise this control to prevent violations of human rights and environmental damage. Accordingly, the initiative provides for the liability of Swiss companies for damages caused by companies they control (typically subsidiaries) abroad.*

*The text of the initiative has been modelled on the Swiss civil liability provision concerning **principal liability**, Article 55 of the Swiss Code of Obligations. The result is such that, where a subsidiary of a Swiss company commits human rights violations, the victims can seek remedy in Switzerland for damages suffered abroad. The injured party must be able to prove the damage, its unlawfulness and a sufficient causal relationship between the damage and the company's action or inaction. Even if this has been successfully proven, the parent company may still be able to exonerate itself from liability if it can demonstrate it carried out appropriate due diligence to prevent the damage from occurring. This mechanism is modelled on the principal liability provision, also found elsewhere in Swiss liability law.<sup>7</sup>*

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

*International civil liability cases are common in Swiss courts' rulings. In such cases, Swiss courts often apply foreign law, specifically the law of the State in which the damage has occurred. Subsection (d) therefore ensures that, even where foreign law applies, the provisions of the initiative are taken into account by Swiss courts in every case. Other elements that are not dealt with in the initiative (such as the amount of compensation) are not impacted and foreign law can apply (in accordance with the provisions of private international law).<sup>8</sup>*

<sup>6</sup>Cf. Explanatory report (in French), ch. 3.2.4 Le devoir de diligence raisonnable (lettre b).

<sup>7</sup>Cf. Explanatory report (in French) ch. 3.2.5 La responsabilité pour le manque de diligence dans une relation de contrôle (lettre c).

<sup>8</sup>Cf. Explanatory report (in French, ch. 3.2.2.2 Champ d'application territorial, paragraphe B) Droit applicable.