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Should Swiss laws be tougher on environmental and human rights violations?

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Will an additional law need to be imposed on companies, or is self-regulation and voluntary measures to prevent environmental and human rights violations enough? In April 2015, a Swiss referendum was introduced to change the Federal Constitution and impose additional responsibilities and liabilities for Swiss-based companies.^[1] As of May 2020, the constitution has not yet been amended.

Proponents of such an initiative^[2] recognize that whereas most companies implement environmental, social, and governance standards in their business practices, some companies might put greater emphasis on profits over environmental and human rights. Because of the misalignments in companies' self-regulation priorities, they believe that a change of law is now required for each company to be responsible and accountable for violations of environmental and human rights laws.

What is happening across the Swiss border?

In 2011, the United Nations issued its *Guiding Principles on Business and Human Rights*.^[3] Within the defined framework, in order to meet their responsibility to respect human rights, companies should have strong enforcement protocols, including, but not limited to, the following:

- “A policy commitment to meet their responsibility to respect human rights;
- “A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- “Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute” within their organization, as well as with suppliers;
- Procedures that enable the processes to be performed for each and every role affected; and
- Trained staff that acknowledge the policies, processes, and procedures for environmental and human rights violations and ethically practice these principles in their respective department, including throughout the company.

In January 2012, the California Transparency in Supply Chain Act^[4] went into effect. The law applied to all manufacturers or retailers that conducted business in the state of California with annual sales in excess of \$100 million.^[5] Companies were required to disclose information regarding their efforts to eradicate human trafficking and slavery within their supply chains on their website or, if a company did not have a website, through written disclosures.

In 2015, the UK introduced the Modern Slavery Act. Companies with an annual turnover of £36 million were required to show in their annual report the steps taken to ensure that slavery and human trafficking were not taking place in any of their supply chains or in any part of their businesses.^[6] If a company failed to publicly disclose slavery and human trafficking statements, the secretary of state could seek an injunction through the high court requiring the organization to comply. If a company failed to comply, then the court could impose an unlimited fine.

In 2017, the French Parliament adopted the Corporate Duty of Vigilance Law, which applies to:

- “French companies headquartered in France that employ at least 5,000 employees worldwide (including through direct and indirect subsidiaries); or
- “Foreign companies headquartered outside France, with French subsidiaries, as long as they employ at least 10,000 employees worldwide (including through direct and indirect subsidiaries).”^[7]

If one or more of the aforementioned criteria applied, then companies were required to establish and effectively implement due diligence measures identifying and preventing environmental and human rights violations in connection with their operations. Companies were expected to make their due diligence plans and implementation public, with documentation included in their annual reports.

With this new law, affected individuals and communities could require judicial authorities to order a company to establish, publish, and implement a due diligence plan. Those adversely affected could also ask for compensation and even damages if the company failed to implement a due diligence plan.

In 2019, the Netherlands enacted the Child Labor Due Diligence Act, which established that companies that were not following defined standards to prevent child labor in supply chains would be fined and penalized. The maximum penalty for failure to comply with the underlying provisions of the law would be set at imprisonment of the company’s director and a fine of €750,000 or 10% of the company’s annual turnover.^[8]

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