

## Switzerland is not liable for all the world's evils



**On November 29, we will vote on the popular initiative « Responsible companies – for the protection of people and nature ». An enticing title, but a text which is a bad answer to real problems. The counterproposal voted by Parliament, which will apply if the initiative is rejected, will be more effective, and at the same time less dangerous for Swiss companies.**

Yves Mirabaud, President, Association of Swiss Private Banks

November 11, 2020

According to the text of the initiative, companies must exercise « reasonable care » in all their activities, but also in those of « all of their business partners » (in particular their whole supply chain), to avoid or end « any violation of human rights and of international environmental rules ». To this vast obligation is added an automatic liability for any damage caused by these violations, unless the company proves that it exercised « all the care » described above or that this « would not have prevented the damage from happening ».

Such a reversal of the burden of proof runs afoul of the Swiss legal order. Presumed guilty of all the world's evils, Swiss companies will be sued without respite to milk indemnities from them. And contrary to what supporters of the initiative state, nothing will prevent Parliament from voting a law that will impose this liability to all Swiss companies, as the text of the initiative only allows to tune down the care of certain SME, but not their liability.

Swiss companies are already among those most respectful of people and nature. Making them liable for actions of their suppliers and sub-suppliers will have only two effects: either they will move their corporate seat outside of Switzerland, which will then lose the jobs and tax revenues they generate, or they will stop their activities in countries where they cannot control their suppliers, then leaving the field open to Chinese, Indian or American companies, which have many less scruples (and obligations!). And for those that will remain, unending trials in Switzerland will do nothing to better the situation in the relevant countries.

On the opposite, the counterproposal voted by Parliament requires from large Swiss companies (and SME are clearly exempted) to draft an assessment of their activities undertaken to avoid the aforementioned violations, as well as a duty of care to avoid child labour and conflict minerals. By targeting the companies' reputation, the counterproposal sets the bar as high as the most advanced foreign legislations. Furthermore, the counterproposal modifies the law directly and will thus be applicable as from next year; as it does not change the federal constitution, it is not subject to the vote of the people and the cantons.

This is why on November 29, we must not fall prey to a feeling of false guilt, and vote NO to the initiative on responsible companies.