SUISSENÉGOCE

Federal Department of Justice
Mr. Adrian Tagmann
Mr. Valerio Di Sauro
Bundesrain 20
3003 Bern

Geneva, July 7th 2026

Dear Sirs,

We thank you for the consultation on the indirect counterproposal (Federal Act on Corporate Sustainability) to the federal popular initiative "For Responsible Corporations – For the Protection of People and the Environment".

SUISSENÉGOCE represents the interests of companies active in Switzerland in the trading of agricultural products, metals/minerals and energy, as well as banks active in trade finance. We support regulations that are proportionate, pragmatic, and do not disadvantage the Swiss commodity trading hub in Switzerland.

Our members are committed to conducting business responsibly and to contributing positively to sustainable development, respect for human rights, environmental protection, and high standards of corporate governance. Many companies in our sector have already implemented extensive due diligence, compliance, traceability, and risk management systems across global supply chains.

In its current state, **we are unfortunately unable to support the counterproposal and therefore reject it in its entirety** as it would have an adverse effect on the Swiss-based commodity trading industry and the Swiss economy. The current overregulation trends are already endangering the attractiveness of Switzerland, and this project would reinforce this matter.

We believe that the content of the counter-project does in fact go beyond current EU law, in particular in view of the fact that the EU Corporate Sustainability Due Diligence Directive (CS3D) has not yet been transposed by EU member states and as such, various aspects of how this regulation will be implemented in practice remain as yet unclear.

The commodity trading industry has established itself in Switzerland for several reasons, including the stability and security offered by Switzerland, as well as a pragmatic approach to regulation, close relationships with the banks that finance them and highly qualified employees. This still allows this entire ecosystem to continue to expand and make an essential contribution to the Swiss economy and tax revenues.
To ensure Switzerland remains a competitive location to do business and minimise administrative burden, it is important that the Swiss obligations are deemed to be met by compliance with equivalent international standards such as CS3D and CSDDD.

SUISSENÉGOCE

What has contributed significantly to Switzerland's economic strength in recent years is its commitment to a liberal economic framework and a pragmatic approach to regulation. In our view, the Federal Council's counterproposal marks a notable departure from this approach by introducing a more administratively burdensome framework, potentially at the expense of economic flexibility, entrepreneurship, and innovation.

We are concerned that such a shift in policy orientation could have far-reaching implications for the Swiss economy, particularly if it results in increased constraints on entrepreneurial activity and innovation, which have long been key drivers of Switzerland's competitiveness and prosperity.

The current version of the counter-project poses a clear and significant threat to the Swiss economy and its regulatory approach.

Please find below a more detailed explanation of the reasons underlying our opposition to the counter-project:

1. Civil liability

We oppose the two civil liability options in the counter-project. We note that the first option for Article 16 of the counter-project introduces a specific liability regime for breaches of due diligence obligations relating to damage caused abroad. By contrast, the EU-wide harmonised civil liability regime in CS3D has been removed, with civil liability now left to Member State discretion. In our view, Switzerland should seek close alignment with internationally applicable standards in order to avoid creating legal uncertainty and disproportionate competitive disadvantages for Swiss-based companies.

We also reject the second option, as this would mean that judges could apply art. 55 of the Swiss Code of Obligations on employer responsibility, **which would entail a reversal of the burden of proof.**

In addition, the 2 options in the counter-project go further than current EU law. In effect, the EU Directive CS3D says the following:

- The requirement for EU Member States to establish a civil liability regime for breaches of the due diligence obligation has been removed, this matter is now left to the discretion of national law.

  Consequently, we do not support a "Swiss finish" that penalizes businesses.

- The burden of proof must be defined by the EU Member States.

  We oppose any change to the burden of proof as currently provided under Swiss law, which clearly stipulates (CO art. 42, para. 1) that the burden of proof is the responsibility of the plaintiff. Amending current Swiss law to facilitate the disclosure of information for the plaintiff also constitutes a "Swiss finish" to which we are opposed.

Finally, Swiss law defines the statute of limitations as 10 years. Article 18 of the counter-project aims to increase this to 20 years from the date on which the harmful conduct occurred or ceased. <u>This is clearly a "Swiss finish" to penalize Swiss companies, as EU law does not impose any modification of the statute of limitations</u>.

2. <u>Due diligence obligations and reporting</u>

The counter-project states that due diligence reports must be audited with limited assurance. However, the counter-project also mentions reasonable assurance. **We oppose this** for the following reasons:

- The EU standard (CS3D) does not impose reasonable assurance, which puts Swiss companies at a disadvantage.
- Reasonable assurance would incur very high auditing costs for companies compared to limited assurance.

<u>This requirement is, once again, a clear "Swiss finish" impacting the competitiveness of Swiss companies.</u>

3. <u>Sustainability reporting</u>

The Swiss draft sustainability reporting obligations under Articles 9–14 are closely inspired by the EU Corporate Sustainability Reporting Directive (CSRD) framework, including reporting on environmental, social, human rights and governance matters.

The counter-project requests that the report be published immediately after the annual financial statements are approved by the General Meeting. However, for financial reasons (such as the distribution of dividends), the General Meeting may not be held until several weeks after the end of the fiscal year.

We therefore recommend clarifying that sustainability reports should be approved and published within six months following the end of the fiscal year, without requiring simultaneous approval with the financial statements. Such an approach would provide companies with greater legal certainty and operational flexibility while maintaining robust reporting standards.

4. <u>Supervisory authority</u>

We reject the establishment of a supervisory authority, as the powers envisaged for the supervisory authority under the Swiss draft appear broader than the general framework currently set out in the CS3D. Moreover, except for Germany, no such authority exists in most of the EU Member States that will be required to transpose the CS3D Directive into their national legislation by 2028/2029.

SUISSENÉGOCE

Similarly to the civil liability options, the EU's CS3D Directive includes general provisions concerning the supervisory authority responsible for monitoring due diligence obligations and assessing companies' reports. The new Federal Act introduces numerous changes to current Swiss law and goes far beyond these general provisions. This is another "Swiss finish" that is unacceptable for the economy.

By implementing the attributions of the supervisory authority mentioned in the counter-project, Switzerland will be at a disadvantage compared to:

- **Many countries outside the EU**, since they will not implement such legislation. As all competitors in the Swiss commodity trading industry are based outside the EU, SUISSENEGOCE members will clearly face a loss of competitiveness.
- **EU member states:** We do not know how the Directive CS3D will be implemented into national law by Member States yet, and there is a major risk of fragmented implementation as well as unequal competitive conditions within the EU.

We oppose the establishment of a new supervisory authority for the following reasons:

- **Costs**: we are surprised that the Federal Council is urging Parliament and the administration to cut costs while at the same time seeking to establish a new supervisory authority that will represent a significant expense for the federal administration and the Swiss economy.
  This jeopardizes Switzerland's economic framework conditions.

- **Penalties based on turnover:** We reject this revenue-based penalty. Commodity trading is a low-margin, high-turnover activity. Penalizing companies based on their turnover would undermine the attractiveness of the Switzerland as a commodity trading hub, benefiting competing hubs.

- **Disproportionate investigative powers**: Unlike the EU's Directive CS3D, which focuses on the concept of 'substantiated concerns' and enforcement powers are yet to be defined by Member States, the Swiss supervisory authority contains more prescriptive requirements.
  This is another example of a "Swiss finish", as the authority can intervene on its own initiative.

More specifically, we consider the following powers of the supervisory authority to be particularly disproportionate:
- Confiscation of illicit gains
- Liquidation and closure of subsidiaries
- "Naming and shaming" by the supervisory authority in case of serious infringements and violations of human rights and environmental protection.
- Statutes of limitations: 10 years for supervisory measures and sanctions

Conclusion

At a time of great geopolitical uncertainty and competition among OECD states for economic attractiveness and given the growing pressure on companies and the U.S. tariffs on the Swiss economy, this counterproposal runs counter to the Federal Council's commitment to reduce the administrative burden on businesses and keep Switzerland attractive and competitive.

From a broader perspective, we would like to draw your attention to two significant consequences that will result from the provisions of the counter-project:

1. Extraterritorial effects:
   Switzerland's trade partners will be affected either through their State-owned companies or their subsidiaries in Switzerland, - such as those from the United States, Brazil and others - or due to the counter-project's extraterritorial effect, particularly regarding producing countries such as Brazil (Mercosur), Canada, Chile, China, Gulf Cooperation Council, India, Indonesia and Mexico with which we have free trade agreements.
2. European law:
   Since the content of the EU Directives CSRD and CS3D is not included in the Bilateral III package negotiated with the European Union, Switzerland is not obligated to implement their content.

We thank you for taking the above points into consideration and reiterate our opposition to the current version of the counter-project as drafted by the Federal Council.

At the same time, we remain fully available to engage constructively with the administration on a revised proposal and to contribute to practical solutions aimed at mitigating potential negative impacts on the Swiss economy while appropriately addressing concerns relating to corporate sustainability and due diligence obligations.

Yours sincerely,

Florence Schurch
Secretary General

Contact person: Mr. Coronel, Regulatory and public affairs Manager
gael.coronel@suissenegoce.ch , +41227152999