



LEGAL CONSIDERATIONS REGARDING THE IMPLEMENTATION OF A NEW "SUSTAINABLE ENTERPRISE" QUALIFICATION IN SWISS LEGISLATION

Introduction and Summary

Unlike other countries such as France, Italy, Spain, and the United States, Switzerland does not have a specific legal form or particular status for commercial entities that choose to commit to environmental, social, and governance objectives in the interest of all stakeholders. Swiss legislation already allows companies to amend their statutes to reflect multiple objectives. However, without a specific framework, the flexibility offered by Swiss law results in a wide variety of practices. There is a lack of consistency in the quantity and quality of disclosed information, the level of assurance from voluntary reports, the extent of commitment to stakeholders, and the meaning of positive impact. Establishing a legal framework creating a voluntary status of "Sustainable Enterprises" would bring clarity and legal certainty.

This document presents an assessment of the legal changes necessary to introduce a new legal framework establishing the status of a "Sustainable Enterprise" in Swiss legislation. It aims to assist Swiss policymakers in evaluating different possible interventions. It has been prepared by the Alliance for Sustainable Enterprises, in consultation with several independent legal experts. This document is a preliminary report and will be followed by a more in-depth analysis to be published before the end of the year.

Current Swiss Legislation

Le Swiss law already allows the vast majority of legal forms to pursue both economic or non-economic purposes and engage in economic activities concurrently. The flexibility offered by Swiss law also implies the possibility of pursuing a dual purpose (economic and non-economic). The boundaries of the economic purpose, the concept of "company interests", and the societal role of businesses are not clarified by law. The Federal Supreme Court has recognized on several occasions the possibility for for-profit entities to prioritize certain stakeholders' interests over shareholders on a case-by-case basis. However, there remains legal uncertainty regarding the (material) validity and scope of statutory clauses and statements that would place shareholders (or associates) and stakeholders on an equal footing.

Codes of conduct, value charters, and even statutes, in practice, become the foundation of a certain understanding of the economic purpose and the *raison d'être* of a company. This results in a lack of clarity and homogeneity that hinders comparison and measurement: formulations remain vague, objectives and methods are unclear and divergent, and disclosure is partial; standards and reference norms are highly (overly) diversified, and third-party assurance is rare. The proliferation of private labels confirms and contributes to this lack of uniformity.

In this context, legislative intervention would provide a reference framework useful to all stakeholders in society (e.g., entrepreneurs, investors, consumers, and public authorities). The adoption of a specific legal form, as chosen in the United States or England, is not desirable as it suggests that other legal forms are not concerned with the implementation of the 2030 Agenda and sustainability issues. An open legal qualification, without constraints, for all companies aligns with the principles of universality and economic freedom.

The proposed new status should serve to recognize and identify "sustainable" companies, which expressly commit, in their statutory purpose, not only to profit but also to pursue social, environmental, and governance objectives in the interest of all stakeholders, and are registered as such in the commercial register.

Companies should regularly report on the achievement of announced objectives and their related impacts in a range of specific focus areas, such as:

- Mission and governance
- Ethical practices and anti-corruption
- Health and well-being
- Human rights
- Climate management
- Environmental management
- Equal opportunities
- Fair wages and equitable incomes
- Community engagement

Compliance with the commitments made by "sustainable" companies would be ensured through the acceptance of the following obligations by the concerned companies:

1. An annual commitment statement on defined environmental, social, and governance themes and according to a concrete and measurable annual action plan.
2. An annual external audit regarding the existence of a sustainability strategy and the achievement of annual objectives as indicated in the statutory purpose.
3. Annual publication of the results of the external audit and a report on non-financial issues covering at least nine planned action areas.

Law Modifications

The proposed legal framework would be available to any company, regardless of its legal form, but would only obligate companies that voluntarily agree to adhere to the prescribed obligations. Its integration into the law is necessary to ensure compliance with the resulting obligations and to ensure that concerned companies, which voluntarily submit to it, receive the desired legitimacy and recognition.

The development of the legal framework for the creation of the "sustainable enterprise" status necessarily requires the amendment of an existing federal law (or, if necessary, the creation of a new federal law) that establishes its principle. Provisions for the implementation of the newly created framework could then be included in a more dynamic instrument such as an implementing ordinance.

The starting point could be a modification of the accounting and auditing provisions of the Swiss Code of Obligations, to which all legal forms refer. A modification of the

Commercial Register Ordinance would also be necessary, along with the adoption of a separate implementing ordinance. If incentives or benefits were subsequently linked to the qualification (based on the fulfillment of additional conditions), certain specific laws could then be amended.

Alliance for Sustainable Enterprises

The Alliance for Sustainable Enterprises is a coalition of forward-thinking businesses and organizations that recognize the central role of the private sector in addressing society's most urgent issues. The Alliance strongly believes in policies and standards that encourage sustainable business practices, benefiting society as a whole. With over 150 active member companies in Switzerland and recognized organizations such as Swiss Leaders and the Swiss Business Federation, the Alliance demonstrates the power of collective action. The Alliance is coordinated by B Lab Switzerland, a nonprofit

organization whose mission is to contribute to transforming the economic system into a more inclusive, equitable, and regenerative global economy. For more information, please visit the website <https://www.alliance-sustainable-enterprises.ch/en>.

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