

Supply chains and the modern law of responsibility

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The history of Basel's colonial entanglements has a direct relevance to a question that occupies the modern law of business: the responsibility of companies and financial institutions for the effects of their activities and of the activities they finance on human rights and the environment. The merchants of the eighteenth century who traded in slave-grown sugar, the investors who held shares in slave ships and the manufacturers who used slave-grown cotton were, in modern terms, participants in supply chains whose earlier links involved grave violations of human rights.

The modern international framework for business responsibility was set out in the United Nations Guiding Principles on Business and Human Rights, adopted in 2011, which state that businesses have a responsibility to respect human rights, to exercise due diligence to identify and prevent adverse impacts, and to provide remedies. The OECD Guidelines for Multinational Enterprises, revised in 2023, contain similar principles and establish National Contact Points, including one in Switzerland, which handle complaints against companies.¹

In Switzerland, the Responsible Business Initiative, a popular initiative that sought to make Swiss companies liable for human rights and environmental violations committed by their subsidiaries abroad, was put to a vote in November 2020. It obtained a majority of the popular vote but failed to obtain a majority of the cantons, which is required for constitutional amendments, and was therefore rejected.² The indirect counter-proposal of Parliament entered into force instead. It introduced into the Code of Obligations an obligation for large companies to report on non-financial matters, including human rights and environmental issues, and due diligence and reporting obligations for companies that deal in conflict minerals from conflict-affected areas or in products suspected of being made with child labour.³

The European Union has gone further. Its Corporate Sustainability Due Diligence Directive, adopted in 2024, requires large companies to identify, prevent and remedy adverse human rights and environmental impacts in their own operations and their chains of activities, subject to civil liability, although its application has been postponed and its scope reduced by subsequent legislation.⁴ Swiss companies operating in the European Union, and Swiss banks and asset managers that serve European clients, are affected by these rules.

For the practitioner in Basel, the history of the colonial goods trade and the slave trade thus bears directly on present practice. The due diligence that modern law requires of companies and financial institutions, the obligation to know the origins of the goods they trade and the effects of the activities they finance, is a response to the moral failures that this history reveals. Modern law requires the successors of the Basel merchants who traded in sugar and financed slave ships to ask where their profits come from, a question that the law of the eighteenth century left to the conscience of the merchant.

1 Notes

1. United Nations Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council on 16 June 2011; OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, revised 2023; the Swiss National Contact Point is located at the State Secretariat for Economic Affairs (SECO). To be verified. ↩
2. Popular initiative "For responsible businesses – protecting human rights and the environment" (Konzernverantwortungsinitiative), vote of 29 November 2020: accepted by 50.7 per cent of voters but rejected by the majority of cantons. To be verified. ↩
3. Art. 964a–964c CO (transparency on non-financial matters) and Art. 964j–964l CO (due diligence and transparency in relation to minerals and metals from conflict-affected areas and child labour), in force since 1 January 2022 with application from the financial year 2023; Ordinance on Due Diligence and Transparency (DDTrO, SR 221.433). To be verified. ↩

4. Directive (EU) 2024/1760 on corporate sustainability due diligence (CSDDD), and the subsequent postponement and simplification measures adopted in 2025 (Omnibus package). To be verified. ↩

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