Response of the International Cocoa Initiative to the consultation on the indirect counterproposal to the popular initiative "For responsible large companies – for the protection of people and the environment"

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The International Cocoa Initiative (ICI) welcomes the indirect counterproposal to the popular initiative "For responsible large companies – for the protection of people and the environment" (Federal Act on Responsible Business Management), published on 1 April 2026. In particular, we welcome the Federal Council's efforts to strengthen the coherence of the Swiss legal framework on the respect for human rights and the protection of the environment, while ensuring alignment with other legislation in place abroad, especially the European Union Omnibus Directive of 26 February 2025 on sustainability reporting and on human rights due diligence for companies.

We would also like to thank the Federal Council for its willingness to gather feedback on the draft law as part of the public consultation opened on 2 April 2026. In this document, we present ICI's general appreciation of the draft law, as well as several observations and recommendations based on our field experience and operational work within cocoa value chains.

Alignment with existing international and regulatory frameworks

The proposed law is based on international guidelines, such as the United Nations Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises, which have been in place for about ten years and are widely applied by most companies. In this regard, we consider the extension of the draft bill to all human rights and environmental impacts as a considerable step forward, unlike the current law which is limited to minerals from conflict areas and to child labour. This evolution ensures a stronger coherence between the Swiss law and international frameworks while providing more robust protection against the diversity of actual risks observed in global business chains.

We also welcome the consistency of the draft law with recent legislative developments at the EU level, in particular the European Corporate Sustainability Due Diligence Directive ("CS3D"), which will also apply to Swiss multinationals as of 2029. In this sense, the proposed counterproposal helps to avoid competitive disadvantages and to limit unnecessary administrative burdens for companies operating in several jurisdictions (especially since the provision of Art. 5 provides for exemptions from the implementation of due diligence procedures for companies complying with recognized and equivalent international due diligence regulations).

Reach and scope of application

Although it would have been preferable to impose the same requirements on all companies - both large and small, while taking into account the principle of proportionality as enacted in the international frameworks of the UN and the OECD, we welcome the Swiss government's effort to align with other legislation in force abroad, especially the EU's CS3D. In this respect, the proposed **scope of application** seems coherent.

In addition, we acknowledge the fact that the duty of vigilance covers not only the company's own operations, but also those of its chains of activity. This is essential to ensure the effectiveness of the text in terms of **scope**, and its alignment with existing international frameworks and regulations, as the most serious risks are often upstream in value chains.

Due diligence requirement

In general, due diligence requirements are broadly formulated in a clear and consistent manner, following a logic of continuous risk-based improvement, in accordance with international standards. We note several strong points and points that, in our opinion, should be strengthened or clarified.

<u>The highlights:</u>

- **Requirement of duty of care without exception:** In contrast to the text currently in force[1], the proposed Federal Act on Responsible Business Conduct no longer provides for exceptions to the duty of care. This is a positive development, as it eliminates the ambiguity created by the current text and ensures greater clarity and consistency in its application. In fact, the proposed federal law requires the implementation of a due diligence that aligns with internationally recognized frameworks and covers all key steps: establishing a strategy and a code of conduct; identifying, assess and prioritizing actual and potential adverse impacts; preventing potential adverse impacts and establishing corrective action plans; eliminating real adverse impacts; applying corrective measures to address adverse impacts; involving stakeholders; establishing and operating a grievance mechanism and legal remedies for interested persons; and monitoring the effectiveness of these measures.

- **Penalties:** Although the introduction of a civil liability regime would have allowed for greater deterrence and accountability, an approach already adopted in certain foreign national legislations, the provision of financial penalties proportionate to the company's turnover nonetheless helps ensure alignment and consistency with European law.

[1] Art. 9 of the Ordinance on the Duties of Vigilance and Transparency in Conflict Minerals and Metals and Child Labour (ODiTr): Companies that comply with equivalent internationally recognised frameworks are exempt from due diligence and reporting.

Weaknesses:

- **Requiring information from trading partners with less than 5000 full-time equivalents only if it cannot access otherwise:** Although aligned with the CS3D, we consider this provision to be problematic. In risk-based due diligence approach, the identification and assessment of adverse impacts should focus on where they are most likely to occur and most severe, regardless of the legal status or size of the entity concerned. Yet, many severe human rights and environmental risks arise precisely at the level of small and medium-sized actors, particularly in agricultural value chains further downstream. As such, this restriction risks encouraging companies to rely on superficial standardized questionnaires rather than conducting genuine due diligence processes based on actual risks. We therefore recommend removing this limitation or, at the very least, revising it to ensure the mechanism remains relevant and effective.

- **Monitor the effectiveness of measures:** This requirement is fundamental, but its scope remains limited due to the absence of clear provisions on its frequency. We therefore recommend that the text specify a minimum periodicity, for example by aligning at least with the European Union's CS3D, which provides for an evaluation every five years, while allowing for more frequent evaluations based on the level of risk identified. This said, a more frequent evaluation, ideally on an annual basis, would further strengthen the effectiveness of the approach.
  Along similar lines, the text could also request a regular update of the company's human rights policy, for example every two years as is the case for the CS3D, to ensure it remains in line with evolving operational realities.

- **Stakeholder involvement:** The text requires stakeholder involvement throughout the due diligence process, yet without providing more details. As such, the text would benefit from further specifying what this requirement covers. A minimum of clarification, specifying types of stakeholders involved, the objectives of engagement and key involvement would be expected would support a consistent and meaningful implementation of the law.

- **Grievance mechanisms and legal remedies:** Similarly, the requirement to establish grievance mechanisms and legal remedies would benefit from being further clarified, including through an explicit reference to the criteria of effectiveness defined by the UNGPs (legitimate, accessible, predictable, equitable, transparent, rights-compatible).

- **Disengagement as a last resort:** In order to avoid unintended negative effects on SMEs and producers, the text should clearly state that the disengagement or suspension of a business relationship must only take place at last resort, when serious and proven violations could not be prevented, mitigated or ceased despite the implementation of appropriate actions, and only if such a decision does not risk exacerbating the situation of the affected individuals.

About ICI

ICI is a foundation under Swiss law, and multi-stakeholder organization whose mission is to prevent and address child labour and forced labour in the cocoa sector. Founded in 2002, it operates in Switzerland, Ivory Coast, Ghana and Cameroon.

Contact person: Sarah Dekkiche, Director of Policy and Partnerships -
s.dekkiche@cocoainitiative.org