

SOURCES

- Magnusson, Å (editor), *Det globala ansvaret – Sjutton röster om internationellt företagande och etik*, Ekerlids förlag, 2003. The publication contains 17 chapters drafted by 17 different authors.
- Magnusson, Å & Norén, G, *Globala affärer – Etniska koder för internationell affärsverksamhet*, Näringslivets Internationella Råd, 2001.
- Löhman, O, & Steinholtz, D, *Det ansvarsfulla företaget, Corporate Social Responsibility i praktiken*, Ekerlids Förlag, 2003.
- Amnesty International, *Mänskliga rättigheter – företagens ansvar?*, SNS Förlag, 2001.
- Corporate Social Responsibility (CSR) – Svenskt näringslivs förhållningssätt. Adopted by the Confederation of Swedish Enterprise on 22 February 2002.
- Heilberg, H, & Knutsson, T, *Folkkräten och företagets samhällsansvar*. Article in the magazine *Adbookaten*, no. 1 2004, page 14-19.
- Flening, B, *Nya krav på revisorers kunskap om miljö och sociala förhållanden*. Article in the magazine *Balans*, no. 10 2004, page 19-20.
- SOU 2004:46, *Swedish Code of Corporate Governance*. A proposal by the Code Group. (Also available at www.sou.gov.se/).
- SOU 2004:47, *Näringslivet och förtroendet*. Betänkande från Förtroendekommissionen. (Also available at www.sou.gov.se/).
- SOU 2004:130, *Swedish Code of Corporate Governance*. Report of the Code Group. (Also available at www.sou.gov.se/).
- Information regarding the Governmental project Globalt Ansvar is available on www.regeringen.se/sb/d/3087/a/18334. The website www.regeringen.se contains several links to governmental publications regarding CSR issues and other important CSR websites.

Switzerland

Bär & Karrer Urs Brügger and Dr Till Spillmann

CORPORATE SOCIAL RESPONSIBILITY IN GENERAL

1. CSR values and practices, including levels of support from government, business and the general public

Following the green paper of the European Union we understand CSR essentially as a concept whereby companies decide voluntarily to contribute to a better society and a cleaner environment (Promoting a European Framework for Corporate Social Responsibility – Green Paper, July 2001, page 5). The concept primarily involves not promoting new mandatory rules but rather postulating increasing awareness by companies of social and environmental issues, beyond mere compliance with mandatory legislation. CSR is therefore to be understood not as a substitute for (mandatory) legislation, but rather as an appreciation of the role of a company or institutional investor in its social and ecological environment. Awareness of CSR is mainly relevant, and necessary, where mandatory provisions are lacking, or have not yet reached a level that accords with prevalent ethical perceptions. In a nutshell, while legislation and regulations set a minimum standard of behaviour, CSR sets out to influence companies and investors not only to comply with the legally binding provisions – which could be described as the most basic corporate responsibility – but also to act beyond this minimum standard, in order to meet society's ethical expectations.

Switzerland's new Federal Constitution, adopted in 1999, was a milestone of governmental concern for sustainable development. The Constitution's Preamble refers to the responsibility of the Swiss people and the Cantons towards future generations, and Article 2 defines as national objectives of the Confederation (i) sustainable development and efforts to safeguard long-term conservation of natural resources and (ii) the promotion of peace and international development co-operation. These goals are reflected in the following constitutional provisions:

- ◆ Article 54 defines as foreign policy goals key elements of sustainable development, i.e. to contribute to alleviate poverty in the world, to promote respect for human rights, democracy, the peaceful coexistence of nations and the preservation of natural resources.
- ◆ Article 73 provides that the Confederation and the Cantons shall endeavour to establish a sustainable equilibrium of nature, in particular its capacity to renew itself, and its use by human beings.
- ◆ Article 104 requires the Confederation to ensure that agriculture contributes substantially to a sustainable and market-oriented production.
- ◆ Article 126 addresses the economic dimension of sustainability insofar as the Confederation shall keep its expenditures and receipts in balance in the long term (the so-called 'Debt Brake').

After the UN Conference on Environment and Development in Rio de Janeiro in 1992 (the so-called Earth Summit), the Swiss government established in 1993 the Interdepartmental Rio Committee (IDARio), which was recently renamed the Interdepartmental Sustainable Development Committee (ISDC). Under its sustainable development responsibilities, the ISDC is mandated, *inter alia*, with the co-ordination of

Confederation policy, interdepartmental and interagency co-ordination of Confederation activities, joint development of strategies and action plans for Switzerland's implementation of Agenda 21 (on the federal, cantonal and communal level), co-ordination of the stance taken by Switzerland in international processes, and reporting to international bodies such as the UN.

Moreover, the Swiss Federal Council rendered in 2002 its Sustainable Development Strategy 2002 (Swiss Federal Council, Sustainable Development Strategy 2002, www.are.admin.ch/are/en/nachhaltig/strategie), in which eight action areas in the field of sustainability have been addressed.

The above-mentioned obligations set out in the Swiss Federal Constitution, and the various activities and strategic concepts, have impacted several laws, eg Spatial Planning Law, the Environmental Protection Law etc. However, as stated above, we understand CSR not as a concept covering all aspects of society and sustainable development but rather as specifically addressing and challenging companies and investors to act respectively to invest in a socially responsible manner. Within this narrowed focus there is in Switzerland no public legal framework directly addressing CSR values and practices. There have been some attempts to introduce mandatory CSR provisions into business law, but all of these have been rejected by parliament. One of these attempts (Interpellation Reimann (00.3314), 21 June 2000) intended implicitly to revise pension fund legislation, in order to oblige fund managers using the voting rights of shares in their portfolios not only to maximise financial performance but also to use social and ecological criteria in investment decisions. Various governmental bodies argued, with respect to the above case among others, that the implementation and enforcement of such mandatory provisions would be difficult and trigger costly administrative expenditure. So for the time being there are no mandatory provisions in Switzerland that explicitly oblige institutional investors or companies to implement CSR.

Beyond government, there is lively debate among NGOs, politicians, companies, interest groups and academics in Switzerland about CSR and its importance. High public awareness may originate partly from the annual World Economic Forum in Davos. The Forum has given rise to enormous controversies; there have even been violent demonstrations against it and in 2002 it was relocated to New York. The World Economic Forum is an independent international organisation that provides a collaborative framework for world leaders to address global issues and for its corporate members to engage in global citizenship. Nonetheless, among its opponents it has become a symbol of globalisation, egoistic and excessive management and the corporate exploitation of the environment and human beings.

Because Switzerland hosts the World Economic Forum, and it is home to the headquarters of a large – and, in the international context, a far above average – number of multinational companies (so-called 'global players') and because of the position of its financial institutions and services, CSR-related discussions and controversies mainly focus on multinational companies' relationships with environment and society.

We believe that CSR-related disclosure is ultimately a key to understanding the performance and risks of a business in the long term, and it is encouraging to see that Swiss companies and investors are increasingly aware of CSR. Out of the 27 blue chip companies in the Swiss Market Index (SMI), 18 had by 2003 provided a CSR report or published CSR-related information in their annual report or on their website.

However, in the last two years, listed companies have focused more on compliance with corporate governance disclosure requirements than on CSR-specific disclosure. New disclosure requirements are set forth in the SWX Directive on Information Relating to Corporate Governance (Corporate Governance Directive, DCG, www.swx.com/admission/being_public/governance_en.html) rendered by the SWX Swiss Exchange on 1 July 2002 (SWX Directive on Corporate Governance). This directive has to

be understood in connection with the Swiss Code of Best Practice for Corporate Governance (Code of Best Practice, www.economiesuisse.ch/) adopted in March 2002 by economiesuisse, Switzerland's largest business organisation. In contrast to other corporate governance codes, eg the OECD Principles for Corporate Governance, neither the SWX Directive on Corporate Governance nor the Code of Best Practice require disclosure of specific stakeholder or other CSR-related information. The declared aim of the Code of Best Practice and the SWX Directive on Corporate Governance is the aligning of the interests of management and shareholders through enhanced disclosure and recommendations for sound business organisation. The inclusion of other stakeholders (ie employees, creditors or public authorities) in the Code of Best Practice was not deemed appropriate, because it would bear the danger of further diluting responsibilities of the management rather than diminishing agency costs (Corporate Governance in Switzerland – Final Report of the Panel of Experts on Corporate Governance, July 2002; www.economiesuisse.ch/).

Even though it seems that corporate Switzerland has only recently engaged in the CSR debate, it should be pointed out that Switzerland has one of the most mature fair trade labelling organisations, ie Max Havelaar Switzerland. It also has the highest market penetration of fair trade products, with an unprecedented 15 per cent market share for bananas in mainstream retailing (EFTA, Fair Trade in Europe 2001). One reason for these successes, and for the popularity of fair trade products, is the fact that the two largest Swiss food retail distributors, Migros and Coop, who account for about half of the Swiss food retailing market, have been supporting and promoting fair trade products from the beginning.

2. Laws, statutes, government publications or other significant framework documents

Switzerland's CSR framework is primarily set out in the Constitution, as mentioned above. A report by the Swiss Federal Council, the Sustainable Development Strategy 2002, refined and extended earlier policy formulated in 1997. This current strategy covers the legislative period up to 2007 and is focused on eight action areas: economic policy and public services; financial policy; education, research and technology; social cohesion, health, environment and natural resources; spatial and settlement development; mobility; international development co-operation; and promotion of peace, methods and instruments. This strategy report also provides an overview of current legislation and governmental practice in the area of sustainable development. In January 2004 the IDARio rendered a first review and outlook on the Federal Council's Sustainable Development Strategy 2002 (Swiss Activities for Sustainable Development: Review and Outlook for 2004, January 2004, www.are.admin.ch/are/en/nachhaltig/strategie/index.html). However, as already indicated, attempts to introduce specific CSR values and practices into law have repeatedly been rejected. The Federal Council's strategy report does not encourage the introduction of direct duties for companies and investors, but promotes indirect measures by setting the appropriate incentives for market participants. The Federal Council also emphasises the implementation and supportive measures in order to achieve the goals outlined. Sustainable benchmarking is on the political agenda and each new law and implementing provision is benchmarked against these goals.

In the area of environmental legislation, the Energy Law and the CO₂ Law are both based on the concept of voluntary action by business. The Energy Law prescribes the aim that by the year 2010 the consumption of fossil fuels must be reduced by 10 per cent from the 2000 level and electricity consumption in 2010 must be limited to a 5 per cent increase from the 2000 level. The CO₂ Law, which ensures Switzerland's compliance with the Kyoto Protocol, aims to achieve a 10 per cent overall reduction of CO₂ emissions by 2010 compared with 1990.

3. International treaties, conventions or standards

Even though Switzerland only acceded to the UN in 2002 (one of the last states to do so), it had long before started ratifying many UN treaties and conventions, most of which relate to CSR values and practices – for example, the UN convention on economic, social and cultural rights of 16 December 1966. Switzerland was until February 2005 a member of the Commission for Social Development, a functional commission of the Economic and Social Council (ECOSOC) of the UN. Moreover, as a member of the European Council and the Organisation for Economic Co-operation and Development (OECD), Switzerland is party to various additional agreements, conventions and recommendations on CSR.

So Switzerland has a long tradition of being involved in international efforts to increase social, labour and environmental protection. But since international treaties generally bind governments rather than legal entities or individuals, most of the CSR-related provisions can be found in national law. Here we present a brief overview of the most prominent international treaties, conventions or standards that somehow affect Swiss national laws touching on CSR issues or helping to promote such values in Switzerland.

Labour

Switzerland has been a member of the International Labour Organisation (ILO) since 1919 and has ratified 56 ILO conventions including the eight fundamental (core) conventions (No 29, Forced Labour Convention, 1930; No 87, Freedom of Association and Protection of the Right to Organise Convention, 1948; No 98, Right to Organise and Collective Bargaining Convention, 1949; No 100, Equal Remuneration Convention, 1951; No 105, Abolition of Forced Labour Convention, 1957; No 111, Discrimination (Employment and Occupation) Convention, 1958; No 138, Minimum Age Convention, 1973; No 182, Worst Forms of Child Labour Convention, 1999).

Recently, Switzerland started to support various projects of ILO, eg the project in the People's Republic of China in order to assist the Chinese authorities to improve human resource development and management practices and labour-management relations in the special economic zones of Shanghai, Chongqing and Dalian. The project's aim is to contribute to better working conditions in these zones. The background of this and other similar projects is the development of outsourcing, and multinational companies' relocation of operations to less developed parts of the world. Even though such projects intend to improve working conditions and CSR values and practices abroad, they also affect Swiss companies and investors. High public awareness and expectations by Swiss customers with respect to CSR-related values mean greater reputation risk for Swiss companies that have operations in Third World countries that do not comply with working conditions required in Switzerland or stipulated by international treaties. The above-mentioned ILO projects thus enhance the possibility of investing in regions with better working conditions and, therefore, reduce reputation risks for Swiss companies and investors. In any case, many Swiss companies have internal codes of conduct that implicitly or explicitly refer to the fundamental human rights conventions (eg ILO standards on child labour, forced labour etc). Some listed companies even pro-actively support programmes to abolish child labour in a manner consistent with the child's basic interests. Such internal codes of conduct preclude doing business with counterparties that breach fundamental human rights conventions.

Environment

Switzerland participated in the Earth Summit in Rio de Janeiro in 1992, and ratified the Rio Declaration and the Agenda 21, and participated in the Johannesburg Summit 2002 (the World Summit on Sustainable Development). Switzerland signed and ratified the Kyoto Protocol to the UN Framework Convention on Climate Change in July 2003, one of the most prominent results of the international efforts for a sustainable development, and

introduced national legislation to comply with the Kyoto Protocol's aims (see below, section 10, for comments relating to the Energy Law and the CO₂ Law).

Stephan Schmidheiny, a Swiss industrialist, has since the early 1990s worked very actively on sustainable development issues, and had significant impact in several national and international organisations. He served as one of the principal business advisors to the Secretary General of 1992 UN conference on Environment and development in Rio de Janeiro and he was the founder of the World Business Council for Sustainable Development (WBCSD).

Companies

The UN Global Compact applies in Switzerland as in all countries. It originated at the World Economic Forum in Davos in 1999, at which UN Secretary-General Kofi A Annan launched the compact, which is intended to bring together the UN and the world's largest economic players. It was adopted in 2000, and set out nine principles relating to human rights, labour, environment; a tenth principle, on anti-corruption standards, was added in 2004. Since then 16 Swiss companies, including ABB Ltd, Adecco, Credit Suisse Group, Holcim Ltd, Nestlé SA, Novartis International, Serono and UBS AG, voluntarily decided to comply with and support this set of minimal standards. Even though the Global Compact primarily concerns multinational companies, trade unions and NGOs, rather than states, the Swiss government explicitly appreciates and welcomes the Global Compact.

Also noteworthy are the UN Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights ('UN Norms'). The UN Sub-Commission for the Promotion and Protection of Human Rights unanimously approved these Norms on 13 August 2003, which constitute a comprehensive guide to CSR. The UN Norms directly address transnational corporations and other businesses. Even though the UN Norms are not binding (yet), they should be taken into consideration by Swiss multinational companies since they mainly consist of a confirmation of existing international laws on human rights, humanitarian issues, labour, environment, anti-corruption and consumer protection standards, either contained in legally binding treaties or in non-binding guidelines adopted by such international organisations as the OECD (see below) or the ILO (see above). In contrast to most CSR initiatives, the UN Norms, once enforceable, set out implementation mechanisms in such areas as corporate internal rules of conduct, self-assessment and monitoring. More controversially, it imposes duties to make reparations to persons, entities and communities adversely affected by failures to comply with the UN Norms.

As indicated above, the OECD also adopted in 2000 revised Guidelines for Multinational Enterprises. These OECD Guidelines are non-binding recommendations by governments to multinational enterprises operating in or from the adhering OECD countries, and are an integral part of the Declaration on International Investment and Multinational Enterprises. According to its preface, the guidelines "aim to ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises". The OECD Guidelines contain recommendations regarding disclosure, employment and industrial relations, environment, anti-corruption, consumer protection, science and technology, competition and taxation.

The International Organisation for Standardisation (ISO) provides within its ISO 14000 family for various standards with respect to environmental management (ISO 14001), life cycle assessment (ISO 14040), design for environment (ISO 14062), environmental labels and declarations (ISO 14020), environmental communication (ISO 14063), environmental performance evaluation (ISO 14030) and environmental management systems auditing (ISO 19011). In Switzerland as per June 2004, 1266 companies were ISO 14001 certified

which makes Switzerland – measured per capita – a country with one of the highest numbers of ISO certificates. Moreover, ISO is about to develop guidelines for social responsibility, which will affect Swiss companies and investors as well (press release as at 29 June 2004 published on ISO's corporate website, www.iso.org).

The Global Reporting Initiative (GRI, www.globalreporting.org) is an independent institution, founded in 1997 and affiliated with the UN through its status as a Collaborating Centre of the UN Environment Programme, whose mission is to develop and disseminate globally applicable Sustainability Reporting Guidelines. These aim to complement and strengthen traditional financial reporting by providing critical non-financial information that helps users assess the reporting organisation's current and future performance, and is intended to increase transparency of, and comparability between, CSR practices in different companies. Currently 11 Swiss companies are listed in the official GRI database – but since there is no obligation to notify GRI if one follows its guidelines, there may be more companies tracking the reporting standards. The Guidelines are not standards aimed at influencing companies' behaviour; but rather they aim to increase transparency and comparability in order to improve the information efficiency of the capital markets what itself will have a feedback on behaviour.

Launched in 1999, the Dow Jones Sustainability Indexes (DJSI, www.sustainability-index.com) were the first global indices tracking the financial performance of the leading sustainability-driven companies worldwide. Although the indices are not standards themselves, they animate listed companies to implement CSR values and practices into corporate management. Currently there are 13 Swiss companies in the DJSI World Index. Other noteworthy indices are the FTSE4Good Index Series (www.ftse.com/ftse4good), which aims (i) to provide a tool for socially responsible investors to identify and invest in companies that meet globally recognised corporate responsibility standards, (ii) to provide asset managers with a CSR benchmark and a tool for socially responsible investment products, and (iii) to contribute to the development of responsible business practice around the world.

According to a World Bank-sponsored survey dated October 2003, asking managers of multinational companies which of the global CSR instruments were the "most influential on practice at their companies", the most named standard was ISO 14000 (46 per cent) followed by the Global Reporting Initiative (36 per cent), the ILO Core Conventions (35 per cent), the UN Global Compact (33 per cent) and the OECD Guidelines (22 per cent). For multinational companies located in Western Europe, the ILO Core Conventions, the UN Global Compact and the OECD Guidelines are the most influential standards (see The World Bank Group, Corporate Social Responsibility Practice (ed.), Race to the top: Attracting and enabling global sustainable business, Business Survey Report, October 2003).

4. Non-statutory sources of liability for companies

There are no non-statutory sources of liability for companies with respect to CSR. However, companies not following generally accepted CSR standards may face reputation risk.

5. Principal institutions, government agencies and/or major non-governmental organisations (NGOs)

The Swiss government has not appointed a body or an authority with specific responsibility on CSR. At the UN Conference on Environment and Development in Rio de Janeiro in 1992, Switzerland was one of 179 countries that pledged to formulate and implement a policy of sustainable development at both national and international level. To fulfil this pledge, the Swiss Federal Council set up the Interdepartmental Sustainable Development Committee (ISDC), which is supposed to co-ordinate projects and tasks on

sustainable development run by various government agencies, including the Swiss Agency for the Environment, Forests and Landscape (SAEFL) on the environment, the State Secretariat for Economic Affairs (SECO) on labour-related issues and the Swiss Federal Statistical Office (SFSO) with respect to setting up an indicator system to monitor sustainable development.

There is also a wide range of private initiatives, institutions, networks and panels domiciled in Switzerland that promote CSR values and practices on a corporate level, the most prominent of which are:

- ◆ The World Economic Forum (WEF, www.weforum.org), an independent, international organisation incorporated as a Swiss non-profit foundation. It is driven by its belief that "economic progress without social development is not sustainable, while social development without economic progress is not feasible". Its members include the world's 1,000 leading companies, plus 200 smaller businesses, many from the developing world, that play an important role in their industry or region. Moreover, WEF works closely together with communities of leaders from academia, government, religion, the media, non-governmental organisations and the arts. Various international initiatives, such as the Global Compact mentioned above, have emanated from the WEF.
- ◆ Philias (www.philias.org), a Swiss non-profit foundation whose mission is to promote CSR in Swiss companies. Philias is part of the European movement CSR Europe. So far 22 Swiss companies, including Novartis, Zurich, Nestlé, BNP Paribas, Orange, SAM Sustainable Asset Management, Syngenta and Ethos have joined Philias.
- ◆ The World Business Council for Sustainable Development in Geneva (www.wbcsd.ch), a coalition of 120 international companies united by a shared commitment to the environment and to the principles of economic growth and sustainable development. The WBCSD programme covers eco-efficiency, CSR, technology, innovation and sustainability, climate and energy, and natural resources. The WBCSD also maintains a portal with an overview on Sustainable Development Reports prepared by multinational companies (www.sdportal.org).
- ◆ The Sustainability Forum Zurich (www.sustainability-zurich.org), maintained by the Symposium Sustainability Zurich association. It promotes international and regional dialogue on sustainability. Its members from the private sector include Swiss Re and PricewaterhouseCoopers. In September 2003 the Sustainability Forum decided to establish the Center for Corporate Responsibility and Sustainability (CCRS, www.ccrs.ch) at the University of Zurich. CCRS aims to enhance, mainly on an academic level, the contribution of the corporate sector in realising sustainability. Its members are public authorities, universities, private companies and other CSR-related organisations.
- ◆ Novatlantis (www.novatlantis.ch), the CSR initiative of the Swiss Federal Institute of Technology Zurich (ETH). It intends to apply results of research with respect to sustainability into practical life.
- ◆ The Forum for Corporate Sustainability Management (CSM, www.imd.ch) is a research initiative by the International Institute for Management Development (IIMD). Companies participate in CSM to build a sustainable business advantage through social and environmental strategic action. Its members include ABB, Coca-Cola HBC, Daimler-Chrysler, Hoffmann La-Roche, Holcim, Nestlé, Philip Morris, Swiss Re and Unilever.
- ◆ Finally, several companies have incorporated their own CSR-related foundations, such as the Novartis Foundation for Sustainable Development (www.novartisfoundation.com) or the Holcim Foundation for Sustainable Construction (www.holcimfoundation.org).

SPECIFIC AREAS OF CORPORATE SOCIAL RESPONSIBILITY

6. Human rights

In Switzerland all fundamental human rights are enshrined in the Federal Constitution. In addition to that, the Cantonal constitutions also grant human rights – but, since the Federal Constitution derogates Cantonal law, the Cantonal protection may only exceed human rights protection.

On the international level, the Universal Declaration of Human Rights of 10 December 1948 laid the foundation stone of the universal human rights protection. The declaration was not legally binding originally, but today may be assessed as 'worldwide common law'. Switzerland signed and ratified a vast range of international treaties, covenants and conventions on human rights based on the Universal Declaration of Human Rights, including: the International Covenant on Economic, Social and Cultural Rights of 16 December 1966 (Covenant I), the International Covenant on Civil and Political Rights of 16 December 1966 (Covenant II), the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, the Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979 and the Convention on the Rights of the Child of 20 November 1989.

On the European level, Switzerland signed and ratified various conventions aiming at the protection of human rights such as the Convention for the Protection of Human Rights and Fundamental Freedoms of 14 November 2004, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 26 November 1987 and the Framework Convention for the Protection of National Minorities of 1 February 1995. Additionally, Switzerland signed (but has not ratified yet) the European Social Charter of 18 October 1961, and the revised version of 2 May 1996.

Since the system of human rights protection mainly applies to governments and not individuals or legal entities, the above-mentioned provisions in the Federal and Cantonal constitutions, international conventions and agreements do not directly bind private individuals or legal entities. However, there are various national laws directly requiring, among others, companies to respect human rights, eg the Federal Law on Equality between Women and Men (Gender Equality Law) of 24 March 1995, or the so called Anti-Racism Law included as article 261^{bis} in the Swiss Criminal Act. These and other acts will be considered in more detail below (see section 9).

The Swiss government did not yet appoint a special department, commission or agency responsible for human rights. Instead, various governmental authorities are involved in human rights issues, each in its scope of competence, for example the Federal Office for Equality of Women and Men, the Federal Office of Justice, the Federal Office for Refugees, the Federal Office of Public Health, Migration and Health, the Swiss Agency for Development and Co-operation and many more. There is currently a political debate whether a centralised commission should be established in order to oversee and co-ordinate all human rights-related projects within Swiss government. While the general observance of human rights in Switzerland seems to be at a fairly high level, concern is repeatedly expressed by human rights organisations and governmental authorities as regards violence against women, equality of women and men and the treatment of foreign persons.

7. Corruption

On the national level, provisions combating corruption are included in the Swiss Penal Code. It mainly distinguishes between active and passive corruption and between the granting and acceptance of an advantage.

A person commits active corruption or bribery if he "offers, promises, or gives a Swiss public official an advantage which is not due to him or her, or offers, promises or gives such an advantage to a third party, in order to cause the public official to carry out or fail

to carry out an act relating to his or her official activity that is contrary to his or her duty or subject to his or her discretion". Conversely, a Swiss public official "who asks for, lets him or herself be promised, or accepts an advantage in return for an official service" is guilty of passive corruption, or the acceptance of bribes. The granting to a public official and the acceptance of a public official of an improper advantage are subject to penalty as well. Moreover, in 2000 the Swiss Penal Code was revised in accordance with the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The amendments included the introduction of a new criminal offence punishing persons who actively corrupt foreign public officials. Additionally, Switzerland is due to join the Criminal Law Convention on Corruption of the European Council (signed in 2001 but not yet ratified). Once the convention comes into force in Switzerland, passive corruption committed by a foreign public official will also be subject to penalty, as well as passive private corruption. The Swiss Federal Council has only recently published a proposal to amend the Swiss Penal Code and fair trade legislation accordingly.

The primary subjects of the Swiss Penal Code are natural persons. However, under the new Article 100^{quater} of the Swiss Penal Code, amended in 2003, a crime or offence may be attributed to a company if the individual in question commits it while undertaking a business activity for the company and if, due to the company's inadequate organisation, the act cannot be attributed to a specific natural person (if, however, there is evidence of all the subjective and objective elements of the crime). In such case, the company can be punished with a fine of up to five million Swiss francs.

Moreover, if a crime is committed under Article 100^{quater} paragraph 2 (which covers, *inter alia*, active corruption of Swiss and foreign public officials and granting of an advantage to a Swiss public official), the company may be punished, regardless of whether a natural person could be held responsible (ie regardless of whether a subjective element of the crime is determined).

According to the Transparency International Corruption Perception Index 2003, Switzerland ranks as the eighth least corrupt country in the world.

8. Corporate governance and business ethics

Corporate governance guidelines and codes of best practice offer one way to respond to poor corporate performance and a perceived lack of effective board oversight. As mentioned above, the Swiss Code of Best Practices of Corporate Governance was adopted in 2002 by *économiesuisse*, Switzerland's largest business organisation. Subsequently, the SWX Directive on Corporate Governance was adopted by the SWX Swiss Exchange and provides for complementary disclosure requirements. However, neither of these documents specifically cover CSR issues; only the SWX Directive on Corporate Governance is binding for listed companies, and it is restricted to corporate governance disclosure, based on the principle 'comply or explain'. Practice has shown that most companies comply with the SWX disclosure requirements and shareholder activists expect actual corporate governance standards that go beyond the Code of Best Practice (eg in the area of independence criteria of non-executive Board members). However, it is implicitly acknowledged in the Code of Best Practice that companies need to consider other stakeholders' interests and demands, in order to maximise shareholder interest. In particular, CSR-related disclosure is a key to understanding the performance of a business in the long term, and it is encouraging to see that Swiss companies are increasingly aware of the significance of such non-traditional corporate disclosure.

9. Corporate responsibility to employees

On a national level, relevant statutes for employee protection such as protection against wrongful dismissal, working hours, holidays, health, safety and social security are set out in the Swiss Code of Obligations, the Employment Law, the Federal Law on Equality between

Women and Men (Gender Equality Law) and the so called Anti-Racism Law. Various Acts and ordinances provide for social security provisions. The two most important are the Old-age and Survivors' Insurance and the Federal Law on Occupational Old-age Survivors' and Disability Benefit Plan. Recently, the Swiss people supported a referendum to establish paid maternity leave of 14 weeks. According to the amended Income Compensation Law, which will take effect on 1 July 2005, employed women in Switzerland will be eligible for 14 weeks' paid maternity leave. Women in full-time employment will receive 80 per cent of the salary they were earning before becoming pregnant, up to a maximum of 172 Swiss francs per day.

In certain business sectors so-called generally binding employment contracts, applicable to all employees of the respective business sector, are in place.

As already mentioned, Switzerland signed and ratified a vast range of international conventions and treaties with regard to labour law including, in particular, the ILO Core Conventions. However, given our starting point, and following the EU Green Paper, CSR is essentially about going "beyond mere compliance with the legally binding provisions". Hence these sources of employee protection actually fall outside our subject matter. Nevertheless, since most Swiss companies aspire to be 'employers of choice', they act in a socially responsible manner and therefore treat employees far better than they are required to by employee protection provisions. Thus, employees are often offered a stimulating working environment that allows them to achieve their full potential; attractive training and development opportunities; flexible annual working hours; flexible pension schemes; family support, particularly in the form of day nurseries; maternity leave and even paternity leave; and competitive compensation, including contributions above the mandatory level to pension funds, the so-called 'second pillar' of the social security system. Some employers, such as Swiss Re, have especially focused on facilitating the employment of physically handicapped people. And most of the large Swiss employers have an increasing awareness for respecting cultural differences particularly with regard to cultural issues at the workplace.

All these additional initiatives and benefits are undertaken on a voluntary basis, and there is as yet no industry standard specifically related to CSR towards employees. Ultimately, initiatives in this field are guided by the conviction that highly motivated and qualified employees are crucial to successfully run a business.

10. Corporate responsibility towards the environment

As with the law relating to the protection of employees, there exists a vast range of provisions concerning corporate (and individual) responsibility towards the environment, most of which, however, is not relevant to the present article. By way of a very brief overview of the legal framework of environmental protection in Switzerland, we mention regulations on the following: *air protection* (Geneva Convention on Long-Range Transboundary Air Pollution, Environmental Protection Law (USG) and various implementing ordinances); *electro pollution* (Environmental Protection Law (USG), Ordinance on Ordinance relating to Protection from Non-Ionising Radiation); *biotechnology* (Convention on Biological Diversity (CBD), Cartagena Protocol on Biosafety to the Convention on Biological Diversity (CP), Federal Law relating to Non-human Gene Technology (Gene Technology Law), Environmental Protection Law (USG), and various other acts including implementing ordinances); *substances* (PIC Rotterdam Convention (Prior Informed Consent), Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention), Vienna Convention for the Protection of the Ozone Layer, Montreal Protocol on Substances that deplete the Ozone Layer, Ordinance on Substances with its annexes listing restricted and prohibited substances); *water protection* (Environmental Protection Law (USG), Prevention on Water Pollution Law (GSchG)); *waste* (Basel Convention on the Control of Transboundary Movements of Hazardous

Wastes and their Disposal, Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal (signed but not yet ratified by Switzerland), Council Regulation (EEC) No 259/93, Commission Regulation (EC) No 2557/2001, Environmental Protection Law (USG), Prevention on Water Pollution Law (GSchG) and various ordinances); and *spatial planning* (Law on Spatial Planning (RPG)), and provisions in many more areas.

Returning to our subject, the Swiss Energy programme of the Federal Council is noteworthy, directed at achieving Swiss energy and climate policy objectives. These involve the transition to sustainable energy use and the efficient use of energy, and include support for the introduction of renewable energy. Collaboration with the Cantons, local authorities, the energy industry, and environmental and consumer groups forms an integral part of the programme. Swiss Energy is the follow-up to the Federal Council's Energy 2000 Programme, which likewise covers a period of ten years until the end of 2010. The programme is administered by the Swiss Federal Office of Energy (www.energie-schweiz.ch).

The Swiss Energy programme is mainly based on the Energy Law and the CO₂ Law, and is one of the main forums for the Swiss government's environmental concerns. The Energy Law, which came into force in January 1999, puts a strong emphasis on voluntary measures to be taken by the industry. The strategy of the Swiss Energy action programme, which was adopted by the Federal Council in January 2001, outlines the current situation, objectives and principle measures of Swiss energy policy for the coming decade. An important feature is the reduction in fossil fuels and electricity consumption mentioned above in section 3.

The CO₂ Law, which came into force in May 2000, aims to achieve a 10 per cent overall reduction in CO₂ emissions by 2010 compared with 1990. It forms the core element of the Swiss climate change policy. Under the Federal Council's Sustainable Development Strategy the reduction of CO₂ emissions is a top priority for Swiss government: the strategy sets specific targets for combustible fuels (15 per cent reduction), and for engine fuels (8 per cent reduction); aviation fuels for international flights are excluded. The targets are to be met, in the first instance, voluntarily.

As indicated above, both the Energy Law and the CO₂ Law are based on the concept of voluntary action to be taken by the industry. In July 2001 the Federal Office of Energy released CO₂ emissions implementation guidelines, which outline desirable voluntary measures and assist companies to determine targets and set up energy accounting systems. However, if it appears that the measures with respect to CO₂ emissions reduction will not suffice, the Federal Council is authorised to introduce a CO₂ tax any time after 2004. The tax rate will depend on the shortfall in meeting targets and has to be approved by the Federal Parliament. Whether the CO₂ tax proves to be necessary, and its rate, will depend on the effects of voluntary measures. If the CO₂ tax has to be introduced, large companies, groups comprising several consumers, and energy-intensive companies may be exempted from the tax if they make a formal commitment to limit their CO₂ emissions.

Recently, the Federal Council has announced that the voluntary measures did not prove sufficient to reach the CO₂ objectives. Therefore, the Federal Council is examining, together with interested organisations and companies, four potential mechanisms. Three of these four mechanisms provide for a mandatory CO₂ tax.

The CO₂ Law is not only a national undertaking to ensure CO₂ emissions reduction; it also serves to comply with international obligations under the International Climate Convention (ratified by Switzerland in 1993) and the Kyoto Protocol (signed in 1998 and ratified by Switzerland in 2003). The Kyoto Protocol, having now been ratified by Russia, finally entered into force on 16 February 2005, providing for a worldwide reduction of 5.2 per cent for six of the climate-relevant gases. Switzerland and the European Union have undertaken to achieve an 8 per cent reduction. The CO₂ Law, however, concentrates specifically on the reduction of carbon dioxide from fossil fuels, since these account for the major part of all climate-relevant gases emitted in Switzerland.

As mentioned above, section 3, the International Organisation for Standardisation (ISO) provides standards with respect to environmental management. More than 1,200 Swiss companies are currently ISO 14001 certified which makes Switzerland a country with one of the highest numbers of environmental ISO certificates per capita. The European System EMAS (Eco-Management and Audit Scheme) is of little significance in Switzerland. The Swiss Agency for the Environment, Forests and Landscape (SAEFL, www.umwelt-schweiz.ch), part of the Federal Department of the Environment, Transport, Energy and Communications UVEK, is promoting environmental management systems such as ISO 14000 and EMAS. Together with the Federal Office for Spatial Development (ARE; www.are.admin.ch), which also reports to UVEK, the SAEFL is responsible, for issues relating to CSR towards the environment.

11. Corporate responsibility to communities

There is no legislation that includes standards for companies' involvement in their local communities. However, most Swiss companies of any size believe in the importance of company involvement and investment in local community. Such involvement includes responsibility for education and skills training and ensuring that proper health and safety systems are in place to protect the community. Partnerships are seen as an important part of corporate social responsibility, where companies and local governments mutually assist each other in achieving a better situation for the community.

Examples are regional centres for the professional education of apprentices (*Lernlingsausbildungszentren*) sponsored by one or more large companies, where apprentices of other (smaller) companies can also study. This trend was set by ABB that even established an independent company for such purpose and this model was copied in several other regions.

The overriding principle of good corporate responsibility towards communities is, in our view, to maintain regular contacts with the local communities and ample opportunity for dialogue. Even if companies believe that they already have become part of the community, there is in many cases still much work to be done.

12. Corporate responsibility for overseas activities

In Switzerland there is no applicable legal framework as regards activities of multinational companies abroad. However, there have been various efforts on an international level, such as the UN Norms mentioned above, section 3, to prevent companies applying double standards. The UN Norms directly address multinational companies and – although they are not binding yet – should be taken into consideration by Swiss companies.

In addition, other standards, such as the OECD Guidelines for Multinational Enterprises, see section 3, and indices such as the FTSE4Good Index Series, put pressure on companies not to practice double standards at home and abroad. As indicated, such pressure does not originate from legal liabilities but rather from public opinion, and increasingly from investors and buy or sell side analysts considering sustainable criteria. Companies that fail to follow at least minimal CSR standards may face significant reputation risks. Various Swiss multinational companies have come to realise the significance of these reputation risks and therefore frequently publish information on the standards applied in their activities abroad. For example, multinational companies often explicitly pledge not to exploit children and not to deal with suppliers using child labour.

13. Procurement

Swiss government bodies (ie the Confederation, Cantons and municipalities) purchase goods and services worth about 30 billion Swiss francs every year. The Federal Council has expressed in its Sustainable Development Strategy 2002 the view that the federal government's responsibilities include setting an example in its own procurement activities. This huge potential should be fully exploited to steer the market in the direction of better

products and services. A department for sustainable procurement (*Fachstelle umweltorientierte öffentliche Beschaffung*) was established within the Swiss federal government as early as 1996, one of the responsibilities of which was to implement an integrated product policy. Through the creation of a more favourable national and international framework, the Federal Council is seeking to shift public sector and consumer demand towards products that meet high economic, environmental and social standards. According to a Review and Outlook for 2004 published by the ISDC (formerly IDARio), efforts have been made to increase awareness among officials responsible for public-sector procurement of sustainable purchasing issues, including the training and further education of such officials and the updating of interactive manuals of the federal government's Centre of Competence for Public Procurement (www.gimap.ch) to give sustainability a central place.

Companies dealing with authorities therefore have to take into account this high awareness of sustainability and social responsibility issues in the public sector. According to the Federal Public Procurement Law, acceptance criteria for a tender are, among others, quality, price and sustainability. Moreover, suppliers are requested to sign a declaration on meeting employee protection standards and on their obligation to spare no efforts in order to avoid corruption. Furthermore, most international businesses domiciled in Switzerland have established internal policies relating to procurement. Such policies usually go beyond the traditional scope of procurement and include the entire supply chain management of a business also covering outsourcing arrangements.

14. CSR reporting and socially responsible investing

Federal and regulatory bodies in Switzerland have not taken any steps to require CSR reporting or socially responsible investments. On the contrary, with respect to socially responsible investment, the Federal Council and major business organisations have taken the view that legal or regulatory provisions that require companies or pension funds to undertake socially responsible investment would ultimately lead to less responsibility, and that CSR might be diluted by such mandatory requirements. As mentioned above, section 1, an attempt to introduce mandatory CSR provisions in the pension fund legislation was rejected. On the other hand, CSR reporting is generally encouraged, but without setting any particular reporting format – and many large Swiss companies publish CSR reports voluntarily.

Swiss asset managers and pension fund managers are expected to increase their focus on sustainable investments over time, and to try to encourage brokers, and in particular their sell-side analysts, to cover CSR research. Investors expect the kind of research that permits them to challenge companies about CSR issues. Some brokers have started to provide such analysis, eg a recent Goldman Sachs report on environmental and social issues facing energy companies. But as long as large investors are not specifically allocating their broker fees to such non-traditional research, the broker and analyst communities will not really improve their CSR-related research.

We believe that a standardised CSR reporting format could significantly promote such research: the London Stock Exchange's Corporate Social Responsibility Exchange (www.londonstockexchange.com/en-gb/products/ins/csr) is an important step towards providing a standard questionnaire relating to CSR issues. It would be a real achievement if all such initiatives resulted in a generally accepted CSR reporting format.

SOURCES

Interdepartmental Rio Committee (IDARio), Swiss Activities for Sustainable Development: Review and Outlook for 2004, January 2004.
www.are.admin.ch/are/en/nachhaltig/strategie/index.html.
Swiss Federal Council, Sustainable Development Strategy 2002, March 2002.
www.are.admin.ch/are/en/nachhaltig/strategie/index.html.
The World Bank Group, Corporate Social Responsibility Practice (Ed.), Race to the top: Attracting and enabling global sustainable business, Business Survey Report, October 2003, www.worldbank.org.