



Law Department

As of: March 2022

Competition Law

Revision of the Cartel Act

Current Status & Outlook

On November 24, 2021, the Federal Council **opened a consultation on the partial revision of the Cartel Act (KG). Essentially, the Federal Council proposed the following elements:**

- The core element of the partial revision to the Cartel Act (KG) is the modernization of Swiss merger control. By changing from the current Qualified Market Dominance Test to the Significant Impediment to Effective Competition test (SIEC test); the review standards for the Competition Commission (WEKO) will be adapted to international practice according to the Federal Council.
- The Federal Council also stated that in addition to modernizing merger control, the proposed elements of the consultation draft also intend to improve civil antitrust law and opposition proceedings.
- Moreover, the Federal Council has included two demands in the partial revision of Motion 16.4094 Fournier, which called for "Improvement of the Situation of SMEs in Competition Proceedings". These two demands relate to the administrative proceedings under antitrust law. Firstly, the administrative proceedings should be accelerated by introducing time limits. Secondly, a party compensation for the first instance proceedings before the Competition Commission is to be introduced.
- Finally, the Federal Council makes a proposal for the implementation of the Français Motion adopted in June 2021 "The revision of the Cartel Act must take into account both qualitative and quantitative criteria to assess the inadmissibility of a competition agreement".

(cf. in detail the [link](#) to the Federal Council's media release and to the consultation documents).

The consultation period will be open until March 11, 2022.

SwissHoldings will participate in the consultation process and in particular advocate the inclusion of an institutional reform and the element of the compliance defense. The consultation response with the position of SwissHoldings in detail can be found on the SwissHoldings website after the consultation period has expired.



Corporate and Capital Market Law

Revision of Stock Corporation Law

Current Status & Outlook	<p>Adoption of the Revision for the Stock Corporation Act: After a very long lead-up, the revision of the Stock Corporation Act was completed in the summer of 2020. An essential part of this revision was the transfer of the Ordinance against Excessive Compensation into the Code of Obligations, which contained various technical adjustments.</p> <p>Entry into Effect: The Federal Council enacted the provisions of the stock corporation law revision in a staggered manner.</p> <ul style="list-style-type: none">- In 2020, the Gender Benchmarks (with long transition periods) and the Transparency Provisions in the commodities sector have already been put into effect as of January 1, 2021 (see link to media release).- Furthermore, Art. 293a SchKG, which extends the provisional moratorium from four to eight months, was also put into effect on October 20, 2020 (see link to media release).- On February 2, 2022, the Federal Council has now enacted the remaining provisions that make up the bulk of the revision of stock corporation law. These are the majority of the provisions of the revision of the Stock Corporation Act and in particular also the provisions relating to the transfer of the Ordinance against Excessive Compensation. Accordingly, the Federal Council has also decided to repeal the Ordinance against Excessive Excessive Compensation at the same time as the provisions regarding the stock corporation law enter into force (see link to media release). <p>As a result, all provisions that have not already been entered into effect will enter into effect as of January 1, 2023. SwissHoldings has closely followed the draft over the years and we are pleased it has been completed within the interest of legal certainty.</p>
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Revision of the Commercial Register Ordinance

Current Status & Outlook	<p>After completion of the revision to the Stock Corporation Act, the Ordinance provisions were still required. In this regard, the Federal Council had planned amendments to the Commercial Register Ordinance. It had carried out a corresponding consultation from February to May 2021 (see link to the corresponding media release including consultation documents), in which SwissHoldings had participated. The association welcomed the consultation draft and submitted mainly selective, technical amendments in the consultation (cf. link to the consultation response). On February 2, 2022, the Federal Council put the Revised Commercial Register Ordinance into effect as of February 1, 2023 (see link to the corresponding media release).</p> <p>SwissHoldings welcomes the revision and subsequent entry into force of the Commercial Register Ordinance.</p>
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Revisions in Stock Corporation Law in Connection with the Corporate Responsibility Initiative, CSR and ESG

<p>Current Status & Outlook</p>	<p>On December 3, the Federal Council put the provisions on the counter-proposal for the Corporate Responsibility Initiative into effect as of January 1, 2022 (see link to media release).</p> <p>This also needed and still needs implementing ordinances.</p> <ul style="list-style-type: none"> - VSoTr: The Federal Council has already decided on the largest part in the Ordinance on Due Diligence and Transparency in the Areas of Minerals and Metals from Conflict Areas, as well as Child Labor (VSoTr). This was put into effect on January 1, 2022, which included the provisions in the CO on the counter-proposal for the Corporate Responsibility Initiative (see link to media release). - The planned consultation on benchmarks for mandatory climate reporting towards large Swiss companies/TCFD. The Federal Council announced this in a media release on August 18, 2021 (cf. link to the corresponding media release). <p>cf. regarding this topic also in particular the comments in the section of the Department of Economy.</p>
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Regulations in Connection with the Bill Against Abusive Bankruptcies

<p>Current Status & Outlook</p>	<p>Regulation in Connection with the Bill Against Abusive Bankruptcies: The bill aims to use various measures in the Code of Obligations, Debt Enforcement, Bankruptcy Law, and Criminal Law to prevent debtors from abusing bankruptcy proceedings and exonerating them from their obligations (bankruptcy riding) (see link to documents on curia vista). The bill also includes measures under stock corporation law, namely on shell company trading and Audit Law. The bill has been discussed once by the National Council and one instance by the Council of States (in addition to their preparatory committees). However, it is now in the process of being amended.</p> <p>SwissHoldings positions itself as follows: The Federal Council's provisions - including those relating to stock corporation law - affects the members of SwissHoldings only marginally. For SwissHoldings, the most important thing in the parliamentary process is to avoid including provisions that are problematic for our member companies.</p>
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Future Proxy Advisor Regulation

<p>Current Status & Outlook</p>	<p>Within the framework regarding the revision to the Stock Corporation Act (as well as the revision for the SIX Directive on Information Relating to Corporate Governance), Parliament repeatedly discussed a provision that wanted to regulate proxy advisors. The regulation under consideration wanted to regulate proxy advisors via transparency obligations for Issuers. SwissHoldings opposed the regulation because it would have meant regulating (certainly existing problems in connection with proxy advisors) via a selective regulation "on the hump of the Issuers / Companies". In the end, the provision was not included in the revision of the Stock Corporation Act, which was a very favorable outcome from our perspective.</p> <p>In response, Motion 19.4122 (cf. link) was adopted with the following wording: "The Federal Council is instructed to submit an amendment to the law (e.g. the Financial Market Infrastructure Act), in order to disclose and avoid conflicts of interest for proxy advisors within listed public companies. In doing so, it takes into account international developments." It contains no reference, or at least no explicit</p>
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reference, to regulating via Issuers Obligation. Therefore, we are also pleased by the omission of this reference.

The corresponding revision of the law is now imminent.

Future Possible Regulations of Loyalty Shares

Current Status & Outlook

In the context of the revision of the Stock Corporation act, a regulation was discussed, which intended to introduce so-called Loyalty Shares. In the end, it was not adopted. Instead, the Council of States submitted a postulate instructing the Federal Council to develop a report on the possible advantages and disadvantages; as well as the effects of the proposed regulations stipulated in the revision of stock corporation law. According to the postulate, the report should also provide a comparative legal description of possible implemented variants in Swiss stock corporation law and the extent to which there is a need for action in this area (cf. in detail the [link to the postulate](#)). This could lead to future regulations.

In the context of the revision of stock corporation law, SwissHoldings had supported the original provision as an "optional" provision and is continuing to follow all further developments.

Regulation concerning Beneficial Owners (IG. Central Register) and Bearer Shares

Current Status & Outlook

In the future, as has been the case in the past, regulatory efforts on a national level under stock corporation law are likely to arise in connection with the recommendations of the Global Forum on Transparency and Exchange of Information for Tax Purposes and the Financial Action Task Force on Money Laundering (FATF). In these areas, SwissHoldings' general concern is to ensure that Switzerland does not end up on blacklists with such entities because it does not sufficiently implement their recommendations. At the same time, unnecessary restrictions on the freedom of action as well as unnecessary bureaucracy for the (listed) companies must be avoided.

In concrete terms, the following two developments are currently worth mentioning:

1. **Postulate 19.3634 and Status Report Global Forum** (cf. [link](#)): Within the report, the Federal Council has been instructed to submit a status report on the implementation of the proposal [18.082](#), "Implementation of the Recommendations of the Global Forum on Transparency and Exchange of Information for Tax Purposes." by the end of 2021. In this report, it states, among other things, that international developments at FATF, EU and OECD level would show an increased trend towards increasing restrictions on corporate transparency obligations. In light of this, Switzerland would, in due course, conduct an analysis of its national legislative framework and its effectiveness in order to implement appropriate options as an objective of the Federal Council's financial market policy in the area of integrity and international positioning (see link to status report).
2. **Revision of FATF Recommendation 24 on Transparency and Beneficial Owners of Legal Entities**: This mainly concerns the issue of beneficial owners and the possible introduction of a central register for beneficial owners, as well as possible restrictions on bearer shares. The revision to Recommendation 24 at the international level has been ongoing for some time and the FATF is expected to formally adopt the revised recommendation on March 4, 2022, then from March 2022 to March 2023 develop a



	<p>Guidance moving forward. The FATF held two public consultations in summer and winter of 2021, which SwissHoldings participated in both (for our position, see detailed link to our statement on the 2nd public consultation). The adoption of Recommendation 24 at the international level will be followed by work at the national level to implement the recommendations in national law.</p>
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Covid-19 and General Meetings 2022

<p>Current Status & Outlook</p>	<p>For the General Meetings in 2020 and 2021, the question had arisen regarding how companies could hold their General Meetings when event bans applied. The Federal Council had adopted a regulation for these two years, which allowed shareholders to exercise their rights exclusively through an independent proxy designated by the organizer.</p> <p>Last year, the Federal Council extended this regulation for the year of 2022 until the new Stock Corporation Act comes into effect (January 1, 2023). SwissHoldings welcomes the extension. Our members must be able to plan the course of their general meetings with sufficiently advanced notice.</p>
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Stock Exchange Equivalence - Extension of the Stock Exchange Protection Measure and Transfer of the Same to Ordinary Law

<p>Current Status & Outlook</p>	<p>On 30 November 2018, the Federal Council issued an Ordinance directly based on Art. 184 para. 3 of the Swiss Federal Constitution to protect the Swiss stock exchange infrastructure (safeguard measure) after the European Commission had not extended Switzerland's EU stock exchange equivalence. The safeguard measure ensures that EU securities firms can continue to trade Swiss equities on Swiss trading venues even without EU stock exchange equivalence. The Federal Council's Ordinance on the stock exchange protection measure was set to expire on December 31, 2021, and can only be extended once by the Federal Council. After that, it must be converted into ordinary law in order to continue to apply.</p> <p>Since the EU has not yet extended the EU stock exchange equivalence, the Federal Council has now extended the Ordinance. Concurrently, it is proposing the transfer of the Ordinance on the protective measure to the Financial Infrastructure Act (FinfraG) (cf. link media release regarding extension and consultation draft). SwissHoldings participated in the consultation process (see Link to the SwissHoldings positioning in the SwissHoldings consultation response).</p>
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Art. 24 FinfraV and the Self-Regulation Concerning The Stock Exchange

<p>Current Status & Outlook</p>	<p>As part of the revision to the Ordinance on the Federal Act for the Adaptation into Federal Law; specifically pertaining to the Developments in the Technology of Distributed Electronic Registers. The Federal Council decided on a very problematic amendment to Art. 24 FinfraV and put it into effect on August 1, 2021. It calls for complete independence for the management of the trading venue and a majority independence for the participants and the issuers. This would effectively mean the partial end of self-regulation by the Regulatory Board, as it would now have to be independent of the participants and issuers in terms of personnel and organization. The same would probably apply to the Issuers Committee.</p> <p>From SwissHoldings' point of view, the regulation is extremely problematic:</p>
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	<ul style="list-style-type: none"> - Firstly, this is the case in terms of content: The self-regulation of the Stock Exchange is strongly anchored in the consciousness of the local banks and issuers to allow sensible regulation. Consequently, issued by persons with the necessary practical experience and the corresponding expertise. This would also lead to acceptance of the regulations. - Secondly, it applies procedurally: it is extremely problematic if such far-reaching changes are adopted in an ordinance and not, for example, in a law, despite negative consultation results. Thematically, the Ordinance to the Federal Act on the Adaptation of Federal Law for Developments in the Technology of Distributed Electronic Registers is not necessarily the right place. Thus, this regulation was adopted without serious political debate. <p>Accordingly, it is central that a suitable solution is found here in the sense of the deletion of the decided regulation.</p>
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Revision SER Regulations on Ad Hoc Publicity

Current Status & Outlook	<p>In 2016 and 2020, the Six Exchange Regulation (SER) conducted consultations on the revision of the regulations for Ad Hoc Publicity. The proposal contains various amendments to the listing rules, the Directive on Information Relating to Corporate Governance and the Directive on Ad Hoc Publicity.</p> <p>SER (respectively the Regulatory Board of SER) has now published the various changes, in addition to a FAQ last year (cf. in detail the information on the page of SIX Exchange Regulation; link).</p> <ul style="list-style-type: none"> - The fundamental changes were put into effect on July 1, 2021. - Further amendments on the new obligation to use the Connexor Reporting Platform for the transmission of Ad Hoc Disclosures to SER have been implemented as of October 1, 2021 (with a transition period; cf. in detail Regulatory Board Communication No. 5/2021 of August 18, 2021; link). <p>Finally, SER is currently revising the commentary on the Directive on Ad hoc Publicity (RLAhP) and expects to publish it at the end of February/beginning of March. SwissHoldings accompanied and accompanies the bill and advocates the interests of its members.</p>
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Regulation of Special Purpose Acquisition Companies (SPACs)

Current Status & Outlook	<p>From June 3 to June 23, 2021, the SER Issuers Committee conducted a consultation on the regulation of so-called Special Purpose Acquisition Companies (SPACs). The background was that FINMA had expressed concerns that the current provisions of the SIX Listing Rules would not provide a sufficient basis for the admission of a SPAC. Accordingly, the Issuers Committee decided to revise the listing rules and to issue a new directive.</p> <p>SwissHoldings has participated in the consultation with a short statement of selective comments due to the limited impact (cf. link to the statement). The new and modified regulations were adopted on October 18, 2021 and implemented on December 6, 2021 (cf. link to further information of SIX Swiss Exchange on SPACs, the revised Coding Regulations and the new Directive).</p>
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Modification Regulation of Crypto-Assets as Underlying Instruments

<p>Current Status & Outlook</p>	<p>At the end of 2021, SIX Exchange Regulation Ltd has carried out a consultation on the adjustment for the regulation of "Crypto-Assets as Underlying Assets". The background to this is "Circular No. 3 - Practice regarding the listing of derivatives (RS3)", which the Issuers Committee supplemented four years ago. This included the requirements for cryptocurrencies as underlying assets of derivatives and now wants to transfer, as well as adapt at the level of regulations and directives. SwissHoldings is only affected by the bill to a limited extent and welcomes the regulation so far as the Issuers Committee wants to take into account the changed needs of the market, in addition to the technical innovations (see link to the statement).</p>
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Compliance

Compliance Specialist Group as a Platform for the Exchange of Experience among Member Companies - Namely on Compliance Management Systems

<p>Current Status</p>	<p>The ever-increasing compliance burden, also for non-financial companies, forces them to constantly expand their company-wide compliance systems and review their efficiency. In working group meetings held in English, the various Compliance Management Systems with the different member companies are presented and discussed. Other topics relevant to the member companies are also discussed.</p>
<p>Outlook</p>	<p>The office will continue to promote mutual exchange between member companies on a continual basis.</p>

Whistleblower Directive

<p>Current Status & Outlook</p>	<p>Problematic Obligation to Set Up Whistleblower Systems and Investigation Units in Every EU Country: There is a problematic development regarding the implementation of the Whistleblower Directive in the European member states. There is a risk that the Directive will have to be interpreted and implemented in such a way that local whistleblower systems, as well as investigation units will have to be set up in every EU country by companies that have more than 50 employees there. From SwissHoldings' point of view, this is extremely problematic in two respects: Firstly, whistleblowers are not better protected by local whistleblower systems. Secondly, this would lead to a large and unnecessary amount of bureaucracy. Accordingly, various stakeholders, namely various European and foreign associations as well as SwissHoldings from Switzerland, have been and are lobbying for the Commission to make/prescribe a different interpretation in this regard and for the various countries to allow group-wide whistleblower systems in their legislations. The deadline for implementing the Whistleblower Directive in the Member States has in principle already expired on December 17, 2021; however, not all Member States have yet adopted their respective laws. On a positive note, national legislation is emerging, at least in certain countries, that points in the direction of group-wide whistleblower systems. SwissHoldings continues to follow the developments and to advocate for group-wide whistleblower systems as far as possible from Switzerland.</p>
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Civil Procedure Law

Two Bills on the Revision of the Code of Civil Procedure - Professional Secrecy Protection for In-house Counsel and Collective Legal Protection

Current Status & Outlook

In 2018, a **consultation on** the amendment to the Code of Civil Procedure was carried out. It particularly concerned the dismantling of cost barriers, collective legal protection and the implementation of the parliamentary initiative Markwalder (16.409). Specifically, providing the right to testify and refuse to disclose in-house legal services employees. At the time, SwissHoldings participated in the consultation process and spoke out in favor of professional secrecy protection for in-house counsel. In addition, argued against the introduction of the elements of collective legal protection (see [link](#) to our consultation response).

In the meantime, the Federal Council has **created two bills** from the preliminary draft **and presented two separate dispatches accordingly:**

1. Bill 20.026, concerns the protection of professional secrecy for in-house counsel. The Federal Council presented the dispatch on February 26, 2020 (cf. [link](#) to the media release as well as to the dispatch and the Federal Council draft).
2. Bill 21.082, concerns collective legal protection. The Federal Council adopted the dispatch on this bill on December 10, 2021 (cf. [link](#) to the media release as well as to the dispatch and the Federal Council draft).

Bill 20.026 - Professional Secrecy Protection for In-house Counsel.

Bill 20.026 concerns the implementation of the parliamentary initiative Markwalder (16.409) for a right to testify and refuse to disclose in-house legal services employees. This is extremely important from SwissHoldings' point of view. It also concerns various amendments to the Code of Civil Procedure, which only marginally affects the members of SwissHoldings. The bill has now been discussed by the Council of States and is currently before the National Council's Preliminary Committee. The latter has already deliberated on the protection of professional secrecy (cf. [link](#) to the corresponding media release). However, the flag ("Fahne") with its decisions in detail has not yet been published. The bill is expected to come before the National Council in the special session, which will at the earliest take place by May 9-11, 2022.

SwissHoldings has long been a very active and resolute advocate for professional secrecy protection for in-house counsel - particularly in the form provided by the Federal Council.

Bill 21.082 - Collective Legal Protection

Bill 21.082 concerns collective legal protection. Although the Federal Council proposes a somewhat leaner solution overall compared to the preliminary draft, it is still extremely problematic. Specifically, the existing provision on collective actions in the CCP is to be adapted. It is namely intended to serve the enforcement of compensation claims in so-called mass and scattered damage cases. The possibility of collective settlements is also envisaged (see [link](#) to media release incl. draft and dispatch). Officially, it is not yet known when the bill will be discussed in parliament. **SwissHoldings is clearly opposed to the introduction of the use of collective redress.**



Data Protection

Data Protection Law, Regulation Law and the Equivalence Decision

<p>Current Status</p>	<p>Data Protection Law: In view of European developments, Switzerland also had to revise its data protection law. Firstly, this was to meet international expectations in accordance with the future revised Council of Europe Convention 108. Secondly, to maintain equivalence with the EU GDPR, which is very important for the economy. The revision was adopted in the final vote during the autumn session in 2020. We welcome this swift conclusion because it clears the way for preserving the recognition of equivalence.</p> <p>Ordinance Law: The enactment of the law is followed by the enactment of the Ordinance Law. SwissHoldings participated in the consultation period that ran from 23 June 2021 to 14 October 2021 and is working to ensure that significant changes are made to the bill (see link). It now remains to be seen what changes the Federal Office of Justice will make.</p> <p>Expected entry into force of the new Swiss data protection law and ordinance: According to the information on the page of the Federal Office of Justice (cf. link), it is planned to bring the new data protection law into force on September 1, 2023. The Federal Council however still has to make the necessary decision.</p> <p>Equivalence Decision by the EU: The Equivalence Decision by the EU was originally announced for summer 2020, however, it still has not been made. Nevertheless, it should now be made in the foreseeable future.</p>
<p>Outlook</p>	<p>SwissHoldings is following the developments around the above topics. We continue to advocate for the interests of the member companies in all these areas but in particular for maintaining equivalence.</p>

Additional Topics within the Legal Field

Lex Koller and Real Estate for Business Establishments “Betriebsstättegrundstücke”

<p>Current Status & Outlook</p>	<p>Demand in the Context of Covid Legislation: With regards to the regulation around Covid-19, there have been several calls for the introduction of a permit requirement for the purchase of Real Estate for Business Establishments (Betriebsstättegrundstücke). Ultimately, the Committee for Legal Affairs of the National Council drew up a parliamentary initiative to this effect. The content for the initiative found its way into the draft revision of the Covid 19 Act via a motion in the National Council's Preliminary Advisory Committee (Committee for Economic Affairs and Taxation of the National Council (WAK-N)). SwissHoldings (as well as many other associations) decidedly opposed the initiative, as well as the proposal because it was identical in all essential elements. (see our position in detail under the following link). Both the proposals were approved by an "unholy" broad alliance of the SP and parts of the SVP. Nevertheless, a broad</p>
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center was able to speak out against them in the end and these proposals are now off the table.

Motion 21.3598: However, Motion 21.3598 was then submitted as another initiative; whereby instructing the Federal Council to "submit the 'Amendment to the Federal Law on the Acquisition of Real Estate by Persons Abroad,' which it had submitted for consultation on March 10, 2017, to the Federal Assembly in the form of a dispatch." The National Council approved the motion and sent it to the Preliminary Advisory Committee, which ultimately opposed the motion. The Council of States will decide on it on March 16.

SwissHoldings is also opposed to this motion. It should be noted that the 2017 consultation draft was widely rejected by the business community. It should also be considered that it would be extremely problematic if the motion were to reintroduce the requirements for the mandatory licensing of business premises.

Consultation Regarding Strategic Infrastructures in the Energy Industry within Lex Koller

Current Status & Outlook

Regarding the Parliamentary Initiative "Submission of Strategic Infrastructures in the Energy Industry" (cf. [link](#) to 16.498 Pa.Iv. Badran Jacqueline), on October 11 2021. The consultation procedure was opened by the Committee for the Environment, Spatial Planning and Energy of the National Council. This resulted in the adoption of a preliminary draft amendment to the Federal Act on the Acquisition of Real Estate by Persons Abroad (BewG, so-called Lex Koller)

The amendment calls for more strategic infrastructures to be included within the energy industry, namely hydropower plants as well as electricity and gas grids. For regulatory reasons, the sale of such infrastructures to persons abroad is to be excluded in principle.

SwissHoldings clearly rejects the proposal and has positioned itself accordingly with a statement made during the consultation process (see [link to](#) statement).

Consultations on the Relief Act and Regulatory Brake

Current Status & Outlook

From April 28 to August 18, 2021, the Federal Council held consultations on both the Relief Act and the Regulatory Brake. With the Relief Act, the Federal Council wants to consistently check existing regulations and new bills for relief potential. With the Regulatory Brake, it wants to subject regulations to a qualified majority in Parliament that place a particularly heavy burden on companies (see in detail the Federal Council's media release of April 28, 2021, including the corresponding consultation documents under the following [link](#)).

SwissHoldings welcomes the proposals and has participated in the consultation process with a statement (see [link to](#) statement). We are now awaiting further steps by the Federal Council on this matter.



Amendment to the Foreign Nationals and Integration Act: Easier Admission for Foreign Nationals with a Swiss University Degree

Current Status & Outlook

On March 7, 2017 **Motion 17.3067 Dobler** claimed "If Switzerland trains expensive specialists, they should also be able to work here". The Motion was accepted by the National Council on September 20, 2018 and then by the Council of States on March 19, 2019. The justification is that young specialists from other countries, who have been trained expensively in Switzerland, leave the country because they cannot be employed directly after graduation. This is largely due to exhausted quotas despite there being a shortage of skilled workers in the country. The request for the Motion states that a new exception to the annual maximum numbers should be created. This would require an amendment to the Foreign Nationals and Integration Act (AIG), which the Federal Council has already submitted as a draft to the interested parties for consultation.

SwissHoldings welcomes the creation of this new exception and has accordingly participated in the consultation with a statement (see [link to statement](#)).