

Due diligence on conflict minerals and child labour

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The popular initiative "For responsible businesses – protecting human rights and the environment" (Responsible Business Initiative) was put to the vote on 29 November 2020. It obtained a majority of the popular vote but failed to obtain a majority of the cantons, so that Parliament's indirect counter-proposal entered into force in its place.¹ The counter-proposal added three sets of provisions to the Code of Obligations. The first concerns non-financial reporting for large public interest entities (Art. 964a– 964c CO). The second requires transparency of payments to governments by companies active in the extraction of minerals, oil, gas or primary forest timber (Art. 964d ff. CO). The third imposes due diligence and reporting obligations for minerals and metals from conflict-affected areas and for child labour (Art. 964j–964l CO). The provisions entered into force on 1 January 2022 with a transitional period of one year, so that they applied for the first time to the financial year 2023.²

The details are set out in the Ordinance of 3 December 2021 on Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas and Child Labour (DDTrO).³ The obligations apply to a company with its seat, central administration or principal place of business in Switzerland that places into free circulation or processes in Switzerland minerals or metals containing tin, tantalum, tungsten or gold from conflict-affected or high-risk areas. They do not apply if its annual imports remain below the thresholds in Annex 1 of the ordinance, for example 100,000 kilograms for tin ore and 100 kilograms for gold.⁴ The obligations comprise a management system, a supply chain policy, a traceability system, a risk management plan and an annual report. For the supply chain policy and the assessment of risks the ordinance refers to the internationally recognized regulations listed in its Annex 2, which build on the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. Compliance with

the minerals obligations must be audited each year by an audit firm licensed by the Federal Audit Oversight Authority as an audit expert.⁵

The child labour obligations apply to companies that offer products or services for which there is a reasonable suspicion that they were produced using child labour. Small and medium-sized companies that remain below two of three thresholds (balance sheet total of CHF 20 million, turnover of CHF 40 million, 250 full-time employees) are exempt. So are companies whose products or services come from countries with a low risk of child labour according to the UNICEF Children's Rights in the Workplace Index.⁶ Wilful breach of the reporting obligations is punishable by a fine of up to CHF 100,000 under Article 325ter of the Swiss Criminal Code, and negligent breach by a fine of up to CHF 50,000.⁷

1 Notes

1. Lenz & Staehelin (Beat Kühni, Matthias Wolf et al.), "New ESG Regulations Enter Into Force As Of January 1, 2022", Mondaq, 3 January 2022, <https://www.mondaq.com/corporate-and-company-law/1146664/new-esg-regulations-enter-into-force-as-of-january-1-2022> (rejection of the initiative on 29 November 2020; adoption of the indirect counter-proposal). Swissvotes, vote no. 636.00 of 29 November 2020 (50.73 per cent in favour; 8.5 of 23 cantonal votes), <https://swissvotes.ch/vote/636.00>. ↩
2. Lenz & Staehelin (above) (entry into force on 1 January 2022; one-year transitional period; first application to financial year 2023; reporting threshold of 500 full-time employees together with balance sheet or turnover thresholds). ↩
3. Ordinance of 3 December 2021 on Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas and Child Labour (DDTrO), SR 221.433, title and preamble at [droit-bilingue.ch](https://www.droit-bilingue.ch), <https://www.droit-bilingue.ch/en-de/2/22/221.433-preamble-2.html>. ↩
4. Lenz & Staehelin (above) (tin 100,000 kg, gold 100 kg). ↩
5. DDTrO, Art. 10 (supply chain policy), Art. 12 (traceability system), Art. 15 (risk management plan, with reference to Annex 2) and Art. 16 (annual audit by a licensed audit expert), text at [droit-bilingue.ch](https://www.droit-bilingue.ch/en-de/2/22/221.433-15-18.html), <https://www.droit-bilingue.ch/en-de/2/22/221.433-15-18.html> and <https://www.droit-bilingue.ch/en-de/2/22/221.433-16-19.html>. The content of Annex 2 and its reference to OECD, Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, 3rd ed. ↩

6. Lenz & Staehelin (above) (SME criteria; UNICEF Children's Rights in the Workplace Index). DDrO, Art. 6 (exemption of small and medium-sized undertakings that remain below two of three thresholds: balance sheet total of CHF 20 million, sales revenue of CHF 40 million, 250 full-time equivalents), <https://www.droit-bilingue.ch/en-de/2/22/221.433-6-9.html>, and Art. 7 (low risk assumed for countries rated "basic" in the UNICEF Children's Rights in the Workplace Index), <https://www.droit-bilingue.ch/en-de/2/22/221.433-7-10.html>. ↩
7. Lenz & Staehelin (above) (fine up to CHF 100,000). SCC, Art. 325ter (intentional breach: fine up to CHF 100,000; negligent breach: fine up to CHF 50,000), text at [droit-bilingue.ch](https://www.droit-bilingue.ch/de-fr/3/31/311.0-325ter-406.html), <https://www.droit-bilingue.ch/de-fr/3/31/311.0-325ter-406.html>. ↩

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