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## **Ordinance on Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas and Child Labour (DDTrO)**

of 3 December 2021 (Status as of 1 January 2022)

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*The Swiss Federal Council,*

based on Articles 964j<sup>1</sup> paragraphs 2–4 and 964k paragraph 4 of the Code of Obligations (CO)<sup>2</sup>,

*ordains:*

### **Section 1    General Provisions**

#### **Art. 1            Subject matter**

This Ordinance regulates the due diligence and reporting obligations to be complied with by companies under Articles 964j–964l CO in relation to minerals and metals from conflict-affected and high-risk areas and in relation to child labour.

#### **Art. 2            Definitions** (Art. 964j para. 1 CO)

<sup>1</sup> In this Ordinance:

- a. *undertakings* means natural persons, legal entities and partnerships whose seat, domicile, head office or principal place of business is in Switzerland and that operate a business;
- b. *supply chain* means a process that includes an undertaking's own business activity and that of all upstream economic operators that:
  1. have possession of minerals or metals originating from conflict-affected and high-risk areas and that are involved in their shipment, treatment and processing in the final product,

AS 2021 847

<sup>1</sup> The references to the CO were amended on 1 Jan. 2022 in application of Art. 12 para. 2 of the Publications Act of 18 June 2004 (SR 170.512).  
<sup>2</sup> SR 220

2. offer products or services in relation to which there are reasonable grounds to suspect that they have been manufactured or provided using child labour;
- c. *minerals* means ores and concentrates containing tin, tantalum or tungsten, as well as gold as specified in Annex 1 Part A, also in the form of by-products;
- d. *metals* means metals containing or consisting of tin, tantalum or tungsten, as well as gold as specified in Annex 1 Part A, also in the form of by-products;
- e. *conflict-affected and high risk areas* means areas in a state of armed conflict or fragile post-conflict as well as areas witnessing weak or non-existent governance and security, such as failed states, and in which there are widespread and systematic violations of international law, including human rights abuses;
- f. *child labour* means
  1. any form of work performed within or outside an employment relationship by persons who have not reached the age of 18 and which is among the worst forms of child labour as defined in Article 3 of ILO Convention No. 182 of 17 June 1999<sup>3</sup> concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention No. 182),
  2. in the case of work performed on the territory of a State which has ratified ILO Convention No. 138 of 26 June 1973<sup>4</sup> concerning Minimum Age for Admission to Employment (ILO Convention No. 138), in addition: any form of child labour prohibited under the legislation of that State, provided that the legislation is in conformity with ILO Convention No. 138,
  3. in the case of work performed on the territory of a State which has not ratified ILO Convention No. 138, in addition:
    - any form of work performed within or outside an employment relationship by persons who are subject to compulsory education or who have not yet reached the age of 15, and
    - any form of work performed within or outside an employment relationship by persons who have not reached the age of 18, provided that such work, by its nature or the circumstances in which it is performed, is likely to be dangerous to the life, health or morals of the young person concerned.

<sup>2</sup> Child labour as defined in paragraph 1 letter f does not include activities in the context of vocational training or light work within the meaning of Articles 6 and 7 of ILO Convention No. 138.

<sup>3</sup> SR 0.822.728.2

<sup>4</sup> SR 0.822.723.8

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## **Section 2**

### **Scope of Application of Due Diligence and Reporting Obligations in relation to Minerals and Metals**

#### **Art. 3** Checks for minerals and metals from conflict and high-risk areas (Art. 964j para. 1 no 1 CO)

<sup>1</sup> Undertakings shall check whether minerals and metals originate from conflict-affected or high-risk areas if the import and processing quantities specified in Article 4 are exceeded.

<sup>2</sup> If the check establishes that the minerals and metals do not originate from a conflict-affected or high-risk area, the undertaking shall document this finding and shall be exempt from the due diligence and reporting obligations.

#### **Art. 4** Exemptions for import and processing quantities (Art. 964j para. 2 CO)

<sup>1</sup> The annual import and processing quantities for minerals and metals below which an undertaking is exempt from the due diligence and reporting obligations are set out in Annex 1.

<sup>2</sup> If an undertaking controls one or more other undertakings, the import and processing quantities apply to the entire group of undertakings.

## **Section 3**

### **Scope of Application of Due Diligence and Reporting Obligations in relation to Child Labour**

#### **Art. 5** Checks for suspected child labour (Art. 964j para. 1 no 2 CO)

<sup>1</sup> Undertakings shall check whether there are reasonable grounds to suspect child labour, unless one of the exceptions to the due diligence and reporting obligations in Articles 6 and 7 applies.

<sup>2</sup> If, based on the check, there are no reasonable grounds to suspect child labour, the undertaking shall document this finding and shall be exempt from the due diligence and reporting obligations.

#### **Art. 6** Exception for small and medium-sized undertakings (Art. 964j para. 3 CO)

<sup>1</sup> Small and medium-sized undertakings are not required to check whether there are reasonable grounds to suspect child labour and are exempt from the due diligence and reporting obligations.

<sup>2</sup> Small and medium-sized undertakings are undertakings which, together with the domestic and foreign undertakings that they control, fall below two of the following amounts in two successive business years:

- a. a balance sheet total of CHF 20 million;
- b. sales revenue of CHF 40 million;
- c. 250 full-time equivalent positions on average for the year.

**Art. 7** Exemption for low-risk undertakings

(Art. 964j para. 3 CO)

<sup>1</sup> Undertakings with low risks in relation to child labour are not required to check whether there are reasonable grounds to suspect child labour and are exempt from the due diligence and reporting obligations.

<sup>2</sup> A low risk in relation to child labour is assumed if a company operating in countries whose due diligence response is rated as «basic» by UNICEF in its Children's Rights in the Workplace Index<sup>5</sup>:

- a. purchases or manufactures products in accordance with the indication of origin;
- b. primarily procures or provides services.

<sup>3</sup> Undertakings must document the extent to which they have a low risk in relation to child labour.

**Art. 8** Evident use of child labour

(Art. 964j para. 1 no 2 CO)

If an undertaking offers products or services that have evidently been produced or provided using child labour, Articles 5–7 do not apply and it is subject to due diligence and reporting obligations.

**Section 4**

**Exemptions from the Due Diligence and Reporting Obligations due to Compliance with Internationally Recognised Equivalent Regulations**

(Art. 964j para. 4 CO)

**Art. 9**

<sup>1</sup> Undertakings that adhere to internationally recognised equivalent regulations are exempt from the due diligence and reporting obligations.

<sup>2</sup> The internationally recognised equivalent regulations are those listed in Annex 2.

<sup>3</sup> The undertaking shall prepare a report in which it names the internationally recognised regulations, and shall apply them in their entirety.

<sup>5</sup> Available at: [www.childrensrightsatlas.org](http://www.childrensrightsatlas.org) > data and indices.

## Section 5 Due Diligence

### Art. 10 Supply chain policy on minerals and metals

(Art. 964k para. 1 no 1 CO)

<sup>1</sup> The undertaking shall establish a supply chain policy on minerals and metals that meets the following requirements:

- a. The undertaking shall ensure that it complies with the due diligence obligations in its supply chains when sourcing minerals and metals from conflict-affected and high-risk areas.
- b. It shall provide its suppliers and the public with up-to-date information on its supply chain policy and include its supply chain policy in contracts and agreements with suppliers.
- c. It shall ensure that concerns about minerals and metals originating from conflict-affected and high-risk areas can be reported in its supply chain.
- d. It shall identify and assess the risks of adverse impacts of minerals and metals originating from conflict-affected and high-risk areas in the supply chain, take appropriate measures to avert or mitigate such impacts, evaluate the results of the measures and communicate these results.

<sup>2</sup> The supply chain policy shall specify the instruments that the undertaking uses to identify, assess, eliminate or mitigate the risks of potential adverse impacts in its supply chain. These instruments include:

- a. on-site checks;
- b. information, in particular from public authorities, international organisations and civil society;
- c. consulting experts and specialist literature;
- d. obtaining assurances from economic operators in the supply chain and other business partners;
- e. using recognised standards and certification systems.

<sup>3</sup> The supply chain policy shall be based on the regulations set out in Annex 2 Part A.

### Art. 11 Supply chain policy on child labour

(Art. 964 k para. 1 no 2 CO)

<sup>1</sup> The undertaking shall establish a supply chain policy on child labour that meets the following requirements:

- a. The undertaking shall ensure that it complies with the due diligence obligations in its supply chains when offering products or services that it has reasonable grounds to suspect have been produced or provided using child labour.