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Client Alert

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Switzerland: Update for Switzerland-based businesses on the practical implications of Swiss and EU regulations on supply chain due diligence

In brief

On 1 January 2022, Switzerland introduced due diligence and reporting requirements to address risks in the supply chains of Switzerland-based businesses related to child labor and so-called conflict minerals. On 24 May 2024, the European Council adopted the EU Corporate Sustainability Due Diligence Directive (CS3D), which imposes EU-level due diligence requirements in the value chain (i.e., upstream and downstream), on top of existing regulations in this area at the EU member state level.

In this update, we provide an overview of the evolving regulatory landscape of supply chain due diligence requirements in Switzerland and the EU, as well as their practical implications, and we suggest action items for Swiss businesses with respect to supply chain governance and compliance programs. In doing so, we refer to further materials prepared by our environmental, social and governance (ESG) team across our EU offices.

In this issue

Key takeaways

To this day, Swiss law imposes fairly limited due diligence requirements related to risks in the supply chain, and liability risks related to noncompliance are discrete. However, thousands of Swiss groups of companies or standalone businesses will be either directly or indirectly impacted by the CS3D, which may apply to both EU companies and non-EU companies. Companies directly bound by the CS3D have been called to reduce risks in the supply chain on a much broader scale and to involve their business partners (including suppliers), where noncompliance can be subject to painful fines and civil liability. Switzerland-based businesses that do not respond adequately to these realities, even if not directly bound by the CS3D, may lose business and/or, through their EU affiliates, expose themselves to financial risk. Accordingly, we suggest that Switzerland-based businesses frame their programs to implement the Swiss requirements as an opportunity to bring their supply chain governance and compliance processes to the required levels for the future. To this end, Swiss companies should do the following:

- Consider regulatory developments beyond Switzerland and the risk of losing business if they don't, as companies subject to tighter supply chain due diligence requirements in the EU and elsewhere will likely impose "equivalent" requirements on their business partners
- Implement proper governance around supply chain compliance, including the role of the company leadership, the procurement, finance, legal and compliance functions, and others, as well as supply chain policies that provide guidance for decision-making in procurement. Given the tightening of regulations around supply chain due diligence, Swiss businesses should integrate related compliance requirements into their governance and policy framework, which should allocate responsibilities and describe the required due diligence processes
- Review the data sets available in procurement and sales/distribution processes and to what extent they need to be enriched to enable required risk assessments across the entire chain of activities
- Review existing business partner screening and due diligence processes to ascertain the extent to which these can be leveraged for supply chain due diligence

- Review the supplier code of conduct and standard procurement contracts to understand the need to amend them, such that they dovetail with the requirements companies are exposed to either directly through Swiss (and EU) regulations or indirectly through their role in the supply chain of companies in Switzerland, the EU or elsewhere
- Take measures to ensure compliance with their supplier code of conduct and contractual assurances, and eliminate risk from their supply chain in the case of noncompliance by business partners
- Implement a whistleblowing system that meets best standards (The requirement to implement reporting mechanisms related to certain risk areas in the supply chain and the implementation of the EU Whistleblowing Directive at the EU member state level, which apply to an increasing number of EU affiliates of Swiss companies, should be seen as a last call to accept the fact that maintaining a proper whistleblowing system is a must)

Introduction

A regulatory tsunami has been rolling over Switzerland-based businesses related to the ESG impacts of their activities on their own financials and their stakeholders. Pursuant to the new regulations, Switzerland-based businesses, including affiliates of foreign groups of companies, have had to understand and fulfill sustainability reporting requirements, as well as due diligence and reporting requirements related to the operation of their supply chains. Many Switzerland-based businesses are directly or indirectly impacted not only by Swiss regulations, but also evolving requirements in the EU, its member states and elsewhere.

Following the recent adoption of the CS3D, we provide an update on existing and forthcoming Swiss and EU requirements related to supply chain due diligence, and offer some practical considerations related to the implementation of these requirements in businesses, as well as governance and compliance risk control processes.

Overview of existing and forthcoming regulations on supply chain due diligence relevant for Swiss businesses

Before moving to practical considerations related to the implementation of supply chain governance and due diligence, we provide a recap of the existing and forthcoming regulations below.

Switzerland

Conflict minerals and child labor

As reported previously, Swiss businesses with risks in their supply chain related to conflict minerals and child labor have been subject, since 1 January 2022, to quite far-reaching regulations on reporting and due diligence obligations under Article 964j-l Code of Obligations (CO) and the related Ordinance on Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas and Child Labour (DDTrO). See our previous alerts here and here, and further information below. Pro memoria, these requirements apply to companies with their seat, head office or principal place of business in Switzerland, which includes Swiss affiliates of foreign groups of companies. In contrast, foreign affiliates of Swiss groups of companies do not fall within the scope of application, unless their operations are effectively run from within Switzerland, such that their principal place of business is deemed to be there. Further, foreign affiliates' business must be considered in respect of their exports of conflict minerals into Switzerland (i.e., to third parties). This is because, for the purposes of determining whether a Switzerland-based group of companies is subject to the due diligence requirements related to conflict minerals, the quantities of imports into Switzerland are considered on an aggregated basis. If the threshold values are exceeded, the Swiss parent company is subject to due diligence and reporting obligations. Finally, if consolidated annual financial statements have to be prepared, foreign subsidiaries of Swiss companies subject to the due diligence and reporting obligations related to conflict minerals and child labor have to be included in the consolidated report.

Further supply chain regulation likely in the coming years

The Swiss government has repeatedly stated that it will closely observe the evolution of ESG regulations in the EU and follow its lead, provided the downsides of doing so will not outweigh the upsides of a uniform regulatory landscape across Switzerland and the most relevant import and export market for Swiss businesses. For instance, the Federal Council has announced that it will issue draft legislation in summer 2024 to amend the current nonfinancial reporting obligations under Article 964a et seq. CO, which are modeled after the old EU nonfinancial reporting directive, to align them with the recently enacted EU Corporate Sustainability Reporting Directive (CSRD). This move may be meaningful in view of the fact that, over time, an increasing number of groups of

companies headquartered in Switzerland will become subject to reporting requirements under the CSRD; because the CSRD may apply to their EU operations; or because they may be caught out by the third-party reporting regime that will apply from 2029 onward if their non-EU businesses meet certain revenue thresholds in the EU.

In the area of supply chain due diligence, the Federal Council previously said that it would await the availability of the final text of the CS3D as adopted by the EU Parliament, and only then consider whether there may be a need for legislative action in Switzerland. Now that the CS3D has been adopted, we can expect the Federal Council to take a position on the way forward soon.

The EU

The CS3D

On 24 April 2024, after a protracted back and forth, the EU Parliament finally approved the CS3D, which the EU Commission first proposed in February 2022 and the EU Council adopted on 24 May 2024. The final text is available here. It will now be published in the Official Journal and enter in force on the 20th day following that publication. Key changes to the previous versions include the following: Thresholds have been increased in terms of number of employees and turnover for companies to fall within scope, references to financial activities and specificities of the financial sector have been eliminated, and member states enjoy more flexibility with respect to the controversial provisions on civil liability.

The CS3D will be introduced in a staggered approach, as shown below, where EU member states will have to transpose the directive into national law within 2 years from the date of publication in the Official Journal, that is in the course of 2026. Given the increased thresholds, it will likely only apply directly to a limited number of affiliates of groups of companies headquartered in Switzerland.

	EU companies	Non-EU companies
2027	5,000 employees/EUR 1.5 billion turnover	EUR 1.5 billion turnover in the EU
2028	3,000 employees/EUR 900 million turnover	EUR 900 million turnover in the EU
2029	1,000 employees/EUR 450 million turnover	EUR 450 million turnover in the EU

For non-EU companies, including Switzerland-based companies, the turnover in the EU is the only relevant factor for determining the applicability of the CS3D.

In terms of substance, the CS3D goes further than the current Swiss regulation. We highlight the following key differences, among many more:

i. Scope: The CS3D covers several environmental and human rights (detailed concerns in the annex to the CS3D), whereas the Swiss regulation only covers conflict minerals and child labor.

ii. Supply chain versus chain of activities or value chain: The CS3D covers both upstream and certain downstream activities, whereas only upstream activities are covered under Swiss law.

iii. Regulatory supervision: The CS3D requires member states to designate a supervisory authority responsible for monitoring compliance, whereas Swiss law does not provide for regulatory supervision, specifically for value chain due diligence matters.

iv. Liability: The CS3D requires that the supervisory authority be given the power to impose fines for noncompliance of at least up to five times the annual turnover and to provide for a civil cause of action available to certain stakeholders, whereas Swiss law does not set forth any dedicated liability regime.

For detailed overviews of key aspects of the CS3D, please refer to our CS3D Explainer Series, which includes an overview and deep dives into the scope of the CS3D (here), due diligence obligations for companies under the CS3D (here), penalties and civil liability under the CS3D (here), and the CS3D reporting rules (here).

If you would like to keep abreast of developments on supply chain regulations globally and receive updates on developments, feel free to subscribe to our global Supply Chain Compliance Blog at Global Supply Chain Compliance - Baker McKenzie's analysis of emerging legal trends and hot topics in supply chain risk management.

While the focus of legislative activity and public attention relating to supply chain regulation in the EU was on the CS3D, there have been other developments at the EU level that are noteworthy.

Deforestation-free regulation

On 29 June 2023, the regulation on deforestation-free products entered into force. This regulation primarily aims to address the increasing expansion of agricultural land associated with the production of various commodities, including cattle, wood, cocoa, soy, palm oil, coffee, rubber and some of their derived products, such as leather, chocolate, tires or furniture. Under the regulation, any operator or trader that sells these commodities within the EU market or exports them from it must demonstrate that the products are not sourced from recently deforested areas or have contributed to forest degradation. For further information on the deforestation-free regulation, see our Baker McKenzie Blog.

The Federal Council does not intend to amend Swiss law for the time being. However, the Federal Council has instructed the federal administration to examine support measures for the companies concerned and to carry out further assessments as to whether amendments of Swiss law may be required. For the details, see here.

Forced labor product ban

On 23 April 2024, the European Parliament approved the proposal of the EU Forced Labour Regulation (EUFLR). Under the EUFLR, all products (including their components) manufactured using forced labor and placed and made available on the market in the EU, or exported from the EU, will be banned. The prohibition applies to products regardless of the sector, origin, or whether they are made domestically or imported, and also applies to each stage of a product's supply chain, including its manufacture, harvest and extraction, and any working or processing related to the products. For further information on the forced labor product ban, see our Baker McKenzie Blog.

Other jurisdictions

As we reported earlier (see here), the CS3D has had its precursors in legislation at the EU member state level. This includes the German Supply Chain Act (see here) and the French duty of vigilance. Under the French duty of vigilance, there has already been a conviction (see here).

Practical implications and action items for Swiss businesses with respect to supply chain governance and compliance programs

Below, we set out practical implications of the increasing regulation of due diligence in the supply chain in the EU and Switzerland and the steps Swiss businesses should consider when they design their approach to compliance with current Swiss supply chain due diligence obligations.

Consider amending your own supply chain governance and due diligence, even if corresponding regulations, such as the CS3D, do not apply to your business directly

According to a study prepared on behalf of the Swiss government on the impact of the CS3D published in November 2023, between 10,000 and 50,000 companies operating in Switzerland are indirectly affected by Swiss and EU member states supply chain related regulations (BSS, Auswirkungen der CSDDD auf Schweizer Unternehmen, Standortattraktivität und Wettbewerb). While the version of the CS3D adopted by the EU Parliament was watered down considerably compared to earlier drafts, that number is not expected to go down. Hence, even those Swiss businesses that are not directly caught by existing and forthcoming regulation (which is a relatively small number) have been, or soon will be, confronted with demands by their business partners that are.

For instance, under the headings "preventing potential adverse impacts" and "bringing actual adverse impact to an end," the CS3D refers to measures that companies shall take vis-à-vis their business partners in the supply chain. Specifically, where relevant, according to Article 7 CS3D, companies shall seek contractual assurances from business partners that ensure compliance with the company's code of conduct or risk prevention plan, where the contractual assurances shall be accompanied by measures to verify compliance, including by way of independent third-party verification. Further, if adverse impacts have been identified, assurances should be required from business partners with respect to corrective action plans, and/or business relationships should be terminated (Article 8 CS3D).

In view of the enforcement mechanisms that are going to be set up under the CS3D, including supervisory authorities with the authority to impose fines of at least 5% of a group of companies' worldwide turnover and the civil liability regime that EU member states will have to put in place, companies subject to the CS3D will not take these obligations lightly. What is more, businesses are concerned about the reputational impact of issues that may arise in their value chain and, accordingly, may well go beyond the strict requirements imposed by the CS3D when it comes to "involving" their business partners in their compliance activities.

Accordingly, Swiss businesses in the value chain of many EU companies are already, or will be, confronted with requests for information about their operations and their own supply chain, for assurances of compliance with supplier codes of conduct and further requirements, contractual clauses such as audit and termination rights related to their compliance with supply chain due diligence requirements imposed by business partners, etc.

In sum, even though the Swiss due diligence requirements related to the supply chain are not built out to the standards applicable under the CS3D — or, today, the German Supply Chain Act — Swiss businesses are well advised not to limit their focus to complying with the minimum required under current Swiss law. Instead, they are well advised to anticipate further-reaching requirements that their business partners may impose on them.

Consider whether you want to apply the Swiss standard (with its exemptions) or equivalent international standards (which do not provide for exemptions)

Switzerland-based businesses have a certain flexibility with respect to the standards they apply to meet supply chain due diligence requirements. They may choose to align their processes with the requirements set out in Swiss law (Article 964j-l CO and DDTrO) or with the international standards listed in Annex 2 of the DDTrO (see Article 9 DDTrO).

A comparison of the requirements under Swiss law and the international standards listed in Annex 2 reveals that in substance they are similar. That said, Swiss law provides for a number of exemptions from due diligence and reporting requirements which none of the international standards does. Specifically, with regard to conflict minerals and metals, the due diligence and reporting obligations only apply if a certain import or processing volume has been reached. With regard to child labor, the due diligence and reporting obligations do not apply to (i) small and medium-sized enterprises (enterprises that do not meet two out of the following three parameters in two consecutive years: assets of CHF 10 million, revenue of CHF 40 million, 250 employees) as well as (ii) low-risk enterprises (enterprises which source products and services in countries with a risk score of "basic" in the UNICEF Children's Rights in the Workplace Index) or, finally, (iii) as long as a company does not have reasonable suspicion of child labor.

Accordingly, Swiss companies may want to consider carefully what standard they apply as both Swiss head-quartered companies and Swiss subsidiaries of foreign multinational companies which are not subject to due diligence and reporting obligations related to their supply chain may benefit from exemptions under Swiss law, which may outweigh the benefits of applying a standard that is known more widely. To add that if a Swiss subsidiary of a foreign multinational company opts to apply an international standard, presumably in line with the approach of its foreign (ultimate) parent, that Swiss subsidiary must make reference in its report to that standard.

Consider what processes you have in place and what data is already available (embedded compliance)

Before you add an additional layer of compliance activities to existing data collection and due diligence processes, business functions and compliance departments should look carefully at the data that has already been collected when onboarding suppliers and screening and due diligence processes that are already in place, etc. More likely than not, a good portion of the data required for the supply chain due diligence is already available. For instance, where we suggest that companies screen suppliers, this screening may already form part and parcel of a company's sanctions compliance framework. Further, many data points may be collected in relation to existing procurement processes, and control points from a conflict minerals and child labor perspective may be embedded in these processes.

Consider introducing and maintaining an effective reporting procedure (whistleblowing system)

Under Swiss law, there is no general, hard obligation to maintain a whistleblowing system, although it is widely acknowledged that maintaining one is best practice. In addition, according to the DDTrO, only companies that are subject to the due diligence and reporting obligations must establish what is referred to as "a reporting procedure that allows all interested parties to raise reasonable concerns about the existence of a potential or actual adverse impact related to minerals and metals from conflict-affected or high-risk areas or child labor" (Article 14 DDTrO). However, in view of the uncertainties around some of the requirements, which we will touch on below, and stakeholders' interest in the issues of conflict minerals and child labor, we highly recommend that companies offer an effective reporting channel, irrespective of whether they are required to have one.

What is more, the CS3D requires that companies establish and maintain a complaints mechanism, open to those affected by adverse impacts and their representatives, such as NGOs and unions, where these adverse impacts may be caused by the companies' own operations or the operations of their business partners. A similar mechanism is already required under the German Supply Chain Act and, of course, under the EU Whistleblowing Directive, which applies to all companies with 50 employees or more. Whatever the state of law in Switzerland is with respect to the requirement to implement and maintain an effective whistleblowing system (where the OECD continues to criticize Switzerland in this regard), the case for not rolling out this system across Swiss business becomes weaker by the day.

Consider whether you have in place proper governance around due diligence obligations in relation to the supply chain, including required policies

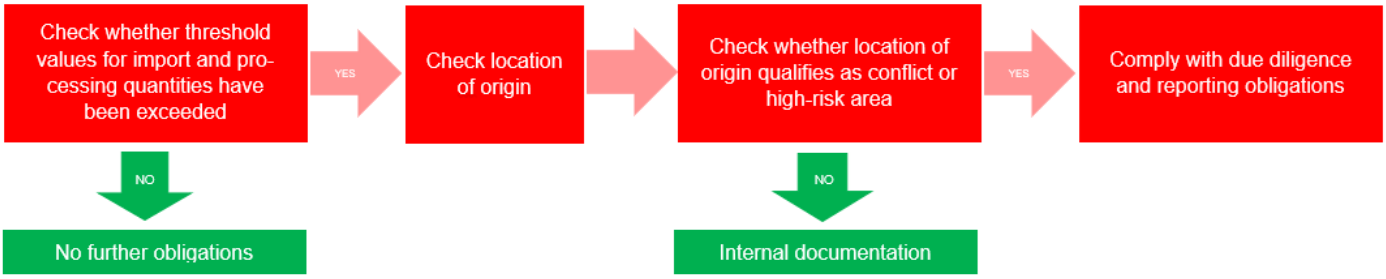
As we will set out below in our steps for assessing whether a Switzerland-based business is subject to the due diligence and reporting requirements, relevant factors include the presence of certain knowledge about certain facts and the assessment of these facts. For instance, one important question in relation to child labor is what facts a company must consider in its assessment of whether there are reasonable grounds to suspect child labor is involved in their supply chain. Accordingly, companies should determine the perimeter from within which available information is considered and the governance bodies that are in charge of the required assessments. There is no one-size-fits-all recommendation, and the solution a given company chooses depends on many factors. However, companies should consider articulating these and other points in a policy and follow the governance laid out in this policy with discipline.

Determine whether you are subject to due diligence and reporting requirements

If a Switzerland-based business decides to comply with the due diligence and reporting obligations under Swiss law (i.e., Article 964j-l CO and DDTrO), they should consider the following steps to operationalize the requirements and embed required measures into existing business and compliance processes.

Conflict minerals

The proposed steps can be illustrated as follows:



Step 1: Check the annual import and processing quantities

The threshold values for the due diligence and reporting obligations to apply can be found in Annex 1, Parts A and Part B of the DDTrO. The import and processing quantities are to be considered on a consolidated basis within a group of companies, i.e., all imports into Switzerland by domestic and foreign subsidiaries (but not imports into a foreign country by foreign subsidiaries!) and the processing quantities in Switzerland. If the threshold values are exceeded, the company falls within the scope of the regulation.

Step 2: Apply due diligence "light" to ascertain the origin of minerals and qualification of the same

More often than not, relevant materials are not procured from the extracting company itself, but from another group company or an intermediary. Accordingly, companies should consider requesting that their supplier provide information on their source(s) of supply and screen them (media or internet check). On the face of it, the requirement to implement a system enabling the traceability of conflict minerals along the supply chain only applies if it is established that they originate from conflict or high-risk areas and, therefore, a company is subject to the due diligence and reporting requirements in the first place (Article 12 DDTrO). However, this due diligence "light" is, in our view, opportune to establish and support the documentation of the basis of the exemption from these requirements (Article 4 DDTrO). Depending on the depth of the supply chain, further information requests or screening may be required to ascertain the location where relevant minerals have been extracted.

Step 3: Classify the location of origin

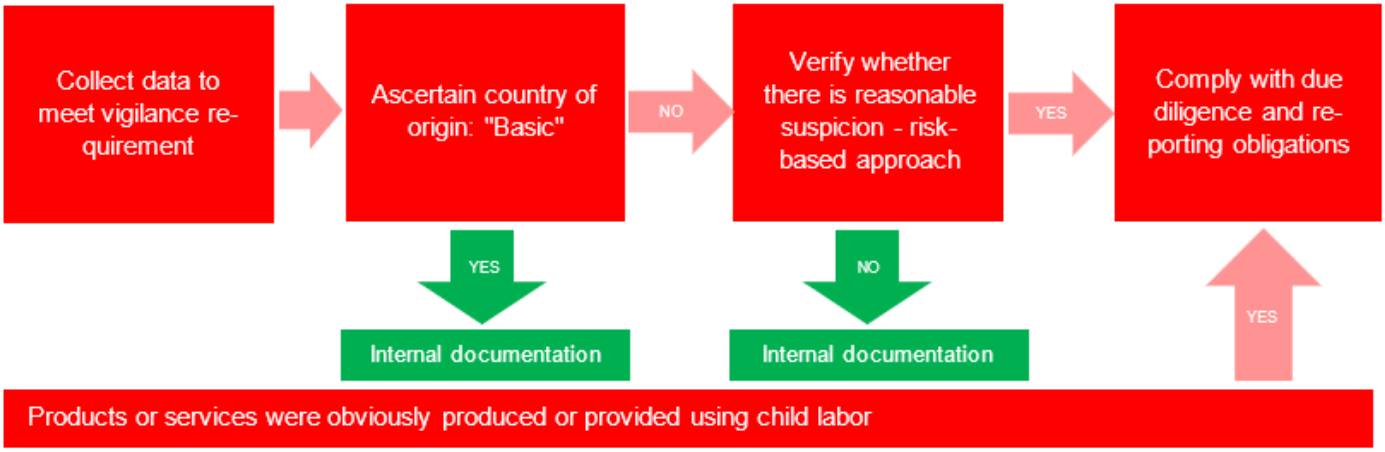
Once the geographic origin of the relevant minerals has been established, companies have to determine whether the place of origin is located in a conflict or high-risk area. This should be done by way of consulting various sources (a list of consultation options can be found in EU Recommendation 2018/1149, page 100 et seq.). This is a regular review, as the qualification as a conflict or high-risk area may change.

Step 4: Document result and, if applicable, due diligence and reporting

If the location of origin concerned is not in a conflict or high-risk area, this determination should be documented internally. Otherwise, the due diligence and reporting obligations of Article 10 to Article 16 DDTrO must be complied with.

Child labor

The proposed steps can be illustrated as follows:



The language used in the DDTrO to describe the requirements in the area of child labor is not self-explanatory with respect to a number of issues. For instance, Article 7 DDTrO[1] — on the face of it, the procurement of one single product or service from a country that is not classified as "basic" in the relevant index (see more on this below) appears to bar a company from using the exemption from the requirement to consider possible grounds to suspect the use of child labor in relation to any and all products or services. Alternatively, where only the presence of reasonable suspicion that child labor is involved in the supply chain triggers the application of due diligence and reporting obligations, it appears reasonable to conclude that, for the purposes of determining whether such suspicion exists, companies can rely on the information that is already available. However, Article 5 DDTrO requires that companies "check" (German: prüfen; French: vérifier; Italian: verificare) whether such suspicion exists, which at least requires determining a perimeter from within which information available in the company is sourced and a process that is applied for purposes of that "check." Given these uncertainties and considering various stakeholders' interest in the issue, we propose that Switzerland-based businesses consider the following steps:

Step 1: Collect and maintain relevant data

The Swiss government acknowledges that, due to the disproportionate efforts that would be involved, no systematic suspicious activity checks across the supply chain for all products or services are required. However, the Swiss government also said that companies should be "vigilant," and, as set out above, the law requires that they "check" whether they have reasonable grounds to suspect that child labor is involved in their supply chain. In our view, being vigilant and retaining the ability to perform a "check" means that companies establish, for all products and services purchased, the geographical origin and the industries involved, by way of collecting the data and keeping it available in a structured form. The first step should be procuring data that is already available. Over time, and with respect to higher-risk products (i.e., products from higher-risk industries and/or higher-risk geographies), the available data may have to be enriched.

Step 2a: Review the origin of products and services from direct suppliers

As part of the made-in test, companies should determine whether the exemption from Article 7 DDTrO applies. The decisive factor is where a product is produced and/or where a service is provided. If the country of origin is classified as "basic" according to the UNICEF Children's Rights in the Workplace Index, no further measures are required. This determination must be documented internally. However, if the country of origin is classified as "enhanced" or "heightened," companies should ascertain whether they can reasonably suspect that child labor was involved in relation to producing a good or providing a service. This check must be carried out regularly, as the classification may change.

Step 2b: Review the origin of products and services from indirect suppliers/intermediaries

In the case of indirect suppliers, the made-in test mentioned above can be applied to the extent reliable data on the place of production is available. If this data is not available, it appears defensible to determine as a next step whether the purchased products/services were produced in or originated from a high-risk industry. Various sources can be consulted to identify high-risk industries (e.g., https://bhr-navigator.unglobalcompact.org/issues/child-labour/industry-specific-risk-factors/). If this is not the case, it

[1]Undertakings with low risks in relation to child labor are not required to check whether there are reasonable grounds to suspect child labor and are exempt from the due diligence and reporting obligations. A low risk in relation to child labor 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 (a) purchases or manufactures products in accordance with the indication of origin or (b) primarily procures or provides services.

is, in our view, defensible to dispense further efforts to establish whether the company has reasonable grounds to suspect child labor is involved in its supply chain, unless there are special circumstances. If the product or service originates from a high-risk industry but there is no reliable data on the location of origin available, more in-depth investigations should be carried out, which may include questionnaires to the supplier, open-source research, etc. Once the company has the required level of comfort with respect to the origin of a product or service in a high-risk industry, the location of origin should be assessed in accordance with step 2a.

Step 3: Assess whether there are reasonable grounds to suspect child labor

In our view, companies should consider looking beyond the data that is already available to assess whether they have reasonable grounds to suspect that child labor was involved in relation to a product and/or service sourced from a high-risk industry. These additional measures would ordinarily include obtaining further information and/or confirmations from the supplier, and/or screening a supplier (media or internet check). If suspicion sustains throughout this search, further, more in-depth investigations should be carried out. The instruments pursuant to Article 10, paragraph 2 DDTrO may be used at that stage (e.g., on-site inspections, information from authorities or international organizations, involvement of experts, etc.).

Step 4: Document findings

If the suspicion of the use of child labor is not confirmed during the due diligence, this finding must be documented. Otherwise, the due diligence and reporting obligations in accordance with Article 10 to Article 16 DDTrO apply.

How to go about due diligence and reporting requirements

If a company concludes that it is not exempt from the due diligence and related reporting requirements, certain additional requirements apply.

Due diligence obligations

In a nutshell, the due diligence obligations set out in Article 10 et seq. DDTrO include the following requirements:

i. Define a **supply chain policy**, including the instruments with which the company identifies, assesses, eliminates or mitigates the risks of potential adverse impacts in its supply chain

ii. Maintain a **supply chain traceability system**

iii. Introduce a **reporting procedure** (whistleblowing system)

iv. Introduce and maintain a **risk management system** that makes it possible to identify and assess the risks in the supply chain

Companies that operationalize the new due diligence requirements related to conflict minerals and child labor in the ways set out above will have made significant headway toward meeting the requirements that apply if they conclude that they are not exempt. Namely, they would have set out their approach to their supply chain management in a policy, they would have laid the groundwork for their traceability system, and they would have introduced reporting procedures. Finally, if they add the proposed governance measures, they would also have the essential elements of a risk management system in place already.

To sum up: Whatever the future build-out of the legal and regulatory frameworks in Switzerland, the EU and beyond will look like, it is now time to adjust governance, policies and compliance processes.

The legal and regulatory landscape is still a moving target, and it will likely remain one. However, when it comes to governance structures and compliance processes around procurement, the requirements that already apply today, directly or indirectly, provide a good opportunity to consider some of the key items whatever the specific requirements are going to be eventually. In line with our suggestions on how to operationalize existing due diligence requirements under Swiss law, these items include the following:

- **Consider regulatory developments beyond Switzerland and the risk of losing business if you don't.** The regulatory requirements related to supply chain due diligence in Switzerland are not as well-developed as in the EU, and noncompliance does not per se attract liability risks. However, EU-based business partners of Swiss businesses are exposed to tighter regulations and related liability risks. They may take business away from you if you do not adjust to the standards that they are required to meet and that will likely be imposed on you as well, if only contractually. For now, it likely is the indirect exposure to developments in the EU and elsewhere that dictate the compliance agenda of Swiss businesses related to your

supply chain. In addition, foreign affiliates of Swiss businesses may be directly subject to supply chain-related compliance requirements.

- **Implement proper governance around supply chain compliance, including the role of procurement, finance, legal, compliance, etc. and supply chain policies to provide guidance for decision-making in procurement.** Given the tightening of regulations around supply chain due diligence, Swiss businesses should integrate related compliance requirements into their governance and policy framework, which should allocate responsibilities and describe the required due diligence processes. Supply chain policies should also provide guidance to procurement where often times appeasement to cost pressure to buy fast and cheap may translate into compliance risk.
- **Review the data sets available in the procurement and sales/distribution processes and to what extent they need to be enriched to enable required risk assessments** across the supply chain. For instance, it will be important to understand whether a supplier is a direct supplier or an intermediary, what industry sector a good or service relates to, or where a product was produced (in addition to where the supplier is located), etc. Companies are well advised to embed their supply chain due diligence framework into existing compliance frameworks to the extent possible.
- **Review existing business partner screening and due diligence** to ascertain the extent to which these can be leveraged for supply chain due diligence. For instance, has your company established a risk management system that allows for regular risk analyses within the company's own business area and among its suppliers? With the new CS3D, risk analysis becomes even more important, serving as the linchpin of supply chain due diligence.
- **Review your supplier code of conduct and standard procurement contracts** to understand the need to amend them, such that they dovetail with the requirements your company is exposed to, either directly through Swiss regulation or indirectly through your own role in the supply chain of companies in the EU or elsewhere that are subject to further requirements, which they may "pass on" to you.
- **Take measures to ensure compliance with your supplier code of conduct and contractual assurances and eliminate risk from your supply chain.** In addition to developing documentation that addresses supply chain risks, companies should take adequate steps to ensure their business partners comply with the requirements they impose on them contractually and, in the case of doubt, eliminate business partner-related risks from their supply chain.
- **Implement a whistleblowing system that meets required standards.** Given the lack of legislation that requires the implementation of a whistleblowing system, there are still Swiss companies that are reluctant to introduce and promote one that meets best standards. The requirement to implement reporting mechanisms in relation to certain risk areas in the supply chain and the implementation of the EU Whistleblowing Directive at the EU member state level, which apply to an increasing number of EU affiliates of Swiss companies, should be seen as a last call to accept the fact that a proper whistleblowing system is a must.

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