

CHILD LABOUR DUE DILIGENCE IN SWITZERLAND

Implementation of new legal requirements: Swiss ordinance or international standards?

The [RBI Counter-Proposal](#) that entered into force in January 2022 introduces new obligations for Swiss companies in three areas:

1. A reporting obligation for non-financial matters,
2. a due diligence and reporting obligation with regards to conflict minerals and metals
3. a due diligence and reporting obligation with regards to child labour

In the following, we answer the most important questions for companies in the scope of the child labour regulation. Before starting due diligence, companies need to decide if they will implement the new legal requirements as defined in the [Swiss Ordinance](#) on Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas and Child Labour (DDTrO), or make use of the exception ([CO Art. 964j Para.4](#)) and follow the steps outlined in the international standards listed in [Annex 2-B](#) of the ordinance¹. To help you in making an informed decision, we have compiled some of the most important questions and answers below².

General Questions

1. What do we need to do to comply with the new child labour due diligence requirements?

The new Swiss regulation gives companies the freedom to choose one of two options to comply with the new child labour due diligence requirements:

- **A - DDTrO:** companies can base their due diligence on the Swiss Ordinance DDTrO, which defines the scope of application of the new obligations and details the steps companies must take to implement child labour due diligence. This option corresponds to the Swiss approach to due diligence.
- **B – International standards:** companies can choose to base their due diligence on the implementation of international standards in their entirety (specified in Annex 2-B of DDTrO), in which case they do not need to follow the steps outlined in DDTrO. This option corresponds to the international approach to due diligence. In the following, under option B we focus on the implementation of the [UN Guiding Principles on Business and Human Rights](#) (UNGPs).

2. What are the main differences between the two options with regards to the implementation of the due diligence obligations?

- **A - DDTrO:** due diligence is limited to the topic of child labour in own operations and the upstream value chain and is conducted at the level of individual products / services. An extensive traceability system of the upstream supply chain of the specific products / services in the scope of the regulation is required, for which companies can take a risk-based approach. Accordingly, as a first step it is necessary to identify the specific products and services that are covered by due diligence obligations.

¹ Annex 2 - Part B. Regulations on child labour

"In order to be exempt from the due diligence and reporting obligations under Article 9, an undertaking must comply with the following regulations:

1. ILO Conventions Nos 138 and 182 and the ILO-IOE Child Labour Guidance Tool for Business of 15 December 2015, and
2. the OECD Due Diligence Guidance for Responsible Business of 30 May 2018 or the UN Guiding Principles on Business and Human Rights."

² focusright's own interpretation of the new legal requirements, all information provided without guarantee. It does not constitute legal advice.

- **B – International Standards:** due diligence covers all human rights in own operations in the up- and downstream value chain and is conducted at company level. There are no requirements regarding traceability of the supply chain. Overall, international standards allow for a more flexible and risk-based approach to HRDD that is tailored to the company.

3. Once the scope of application of DDTro is clear: what option requires more effort/resources for the company to set up and implement the due diligence system?

With regards to the set up and implementation of due diligence, the two options are similar. They both require:

- the adoption of a policy commitment
- a regular risk analysis which entails the identification, evaluation and prioritization of risks
- the implementation of measures to cease, prevent or mitigate the identified impacts
- regular monitoring of the effectiveness of measures
- external communication about the due diligence system and process
- a grievance mechanism through which interested stakeholders can express their concerns to the company

The difference is that under option A - DDTro, all of these steps are focused on child labour, with no obligation to consider other human rights. For most of these steps, DDTro and the explanatory report contain more detailed requirements of how exactly they have to be implemented. Additionally, the set-up of a comprehensive and risk-based supply chain traceability system is required.

Under option B-international standards, the above steps are focused on human rights in general, with the company identifying and prioritising those human rights that are most relevant to the business, such as forced labour or modern slavery (so-called salient human rights issues). International standards provide principle-based guidance on how to implement the various steps.

4. My company is directly or indirectly affected by the German supply chain due diligence act: what are the differences between DDTro and the German requirements for implementing HRDD? Which option is more suited to set up due diligence processes that comply with both laws at the same time?

The key differences between the two legislations are that the [German law](#) (i) introduces due diligence obligations at company, not product level, and (ii) that it covers human rights in general instead of just child labour. With these two characteristics, the German law is much closer to international standards than the Swiss law.

Accordingly, for companies directly covered or [indirectly affected](#) by both legislations (e.g. with business customers in Germany, that are covered by the German law), it is more efficient to implement option B-international standards in Switzerland. This option already covers most requirements of the German law, and the company can avoid a duplication of efforts by creating two parallel HRDD systems with different contents and scopes.

5. What option prepares my company better for future legal developments (e.g. upcoming EU Corporate Sustainability Due Diligence Directive)?

In general, the regulatory trend in HRDD is closely guided by international standards. Most importantly, the proposal of the [EU Corporate Sustainability Due Diligence Directive](#) contains the following key aspects: it covers human rights in general (not only certain topics), it introduces HRDD at company level (not products or services), and it encompasses both the up- and downstream value chain. As a consequence, option B-international standards is more aligned with HRDD regulations abroad and prepares the company better for upcoming legal developments or customer requirements.

6. What option has a bigger positive impact from a human rights perspective?

From a human rights perspective, all human rights should be considered equally important, and a company should not *ex ante* single out certain human rights over others. It is key companies start HRDD by considering all human rights, and in a second step identify and prioritize the rights that are most relevant for their specific activities and context of operations. In order to generate a positive impact on the respect of human rights, option B-international standards is thus clearly preferable.

Option A) DDTro

7. What steps does the company need to follow to evaluate whether it is in the scope of the DDTro child labour due diligence obligation?

- **Step 1: Check thresholds** - Small and medium-sized companies are exempt from the regulation. This refers to companies that fall below two of the following amounts in two successive business years: a balance sheet total of CHF 20 million; sales revenue of CHF 40 million; 250 full-time equivalent positions on average for the year.
- **Step 2: Identify the "made in" country** of all products and services the company procures or produces and compare it with the country classification in the UNICEF Workplace Index. Due diligence obligations do not apply to products and services that are "made in" countries classified as "basic" in the UNICEF index. However, note that only a small number of countries (mostly in Europe) are classified as "basic".
- **Step 3: Conduct a suspicion assessment** for all products and services "made in" countries classified as "enhanced" or "heightened" in the UNICEF Index. This corresponds to a high-level risk analysis for the occurrence of child labour in the full upstream value chain, for which a risk-based approach can be taken. Sources of information include e.g. on-site visits; information from public authorities, international organisations and civil society; consulting experts and specialist literature; assurances from supply chain partners and other business partners.
- **Step 4: Counter exception** in case of "obvious use" of child labour, in which case the due diligence obligations apply irrespective of steps 1-3.
 - ➔ For all products and services where there are reasonable grounds to suspect child labour based on step 3, the company is in the scope of the DDTro child labour due diligence obligation.
 - ➔ The three steps have to be conducted annually and documented internally.

8. How much effort / administrative burden is required of the company to conduct the yearly evaluation of the scope of application (steps 2 and 3)?

In principle, this depends on the number of products and services the company purchases and / or produces, as step 2 and 3 are conducted at the level of individual products and services: the more products and services a company purchases or produces, the more effort is required to determine DDTro's scope of application.

Additionally:

- **Step 2:** the effort required depends on the currently available information in the company about the products' and services' "made in" indication of origin. Where this information is already available or easy to gather, less effort is required compared to a company where the information is not yet available or difficult to gather.
- **Step 3:** the effort required depends on the number of products and services with a "made in" indication of origin in countries classified as "heightened" or "enhanced" in the UNICEF Index (i.e. which are most countries outside Europe, and apart from Canada, Australia and Russia). Companies can take a risk-based approach, and the effort required also depends on the complexity of the upstream supply chain of these products and the available information on the occurrence of child labour in the supply chain.

9. Option A – DDTro requires extensive traceability of the full upstream supply chain: what does that mean for the company?

As part of due diligence, DDTro requires companies to establish a supply chain traceability system that includes and documents the following information for each product or service for which there are reasonable grounds to suspect child labour:

- a description of the product or service and, if one exists, the trade name;
- the names and addresses of the supplier and the production sites or the service provider for the undertaking

This traceability system must be documented internally and include the full upstream supply chain of the relevant products and services. The traceability system must aim to ensure traceability to the best of the company's ability ("obligation of effort", not result). Particularly in case of complex supply chains, a risk-based approach may be taken: the greater the risk of child labor, the more intensively and extensively the supply chain must be traced back.

Option B) International Standards - UNGPs

10. What does it mean to implement international standards "in their entirety"?

Implementing international standards, such as the UN Guiding Principles on Business and Human Rights (UNGPs), in their entirety means establishing a comprehensive HRDD system, that covers all human rights and the company's own activities as well as the up- and downstream value chain. International standards allow for continuous improvement and for a tailored approach that is adapted to the specific profile and context of each company. Therefore, HRDD can and should be integrated into the company's existing policies, processes and management systems to avoid duplication of efforts.

11. The scope of option B is broader compared to option A: HRDD according to international standards covers all human rights and the up- and downstream value chain. How is this feasible considering limited resources?

First, some steps of HRDD are not more work-intensive if done for all human rights instead of just for child labour. E.g. adopting a policy commitment or establishing a grievance mechanism about human rights in general probably represents a similar workload as adopting a child labour-specific policy commitment or grievance mechanism.

Second, most companies have already established various measures and processes related to HRDD, e.g. around occupational health and safety, non-discrimination, or child labour. Often, however, these have not been established in the context of HRDD and are therefore not immediately recognised as part of it.

Third, downstream due diligence is often already done to a certain extent, e.g. related to product safety and the recycling of products. The additional effort of conducting downstream due diligence is thus limited for most companies.

Conclusion

For many companies, making use of the legal exception and complying with the new child labour due diligence requirements in Switzerland by applying international standards may be the more efficient and leaner option that requires less effort from the company while creating a greater positive impact on human rights. We thus recommend companies to conduct a careful analysis and weighting of the two options, considering the company's available resources, ambition level and (international) customer expectations.

Overview of the two options

	Option A - DDTrO	Option B – International Standards (UNGPs)
Process to determine scope of application	Yearly evaluation which products / services are in the scope of due diligence: <ul style="list-style-type: none"> - Step 1: Check thresholds (exception for SMEs) - Step 2: Identify the “made in” country of all products and services the company procures or produces (exception for low child labour risk products & services) - Step 3: Conduct a (risk-based) suspicion assessment for all products and services “made in” countries classified as “enhanced” or “heightened” in the UNICEF Index. 	None
Approach	Requirements outlined in DDTrO, risk-based approach and continuous improvement	Principles outlined e.g. in UNGPs, risk-based approach and continuous improvement
Human rights covered	Child labour	All human rights: company determines and prioritises its salient issues
Due diligence applies to	Individual products and services with a reasonable suspicion of child labour	Company as a whole (i.e. management system)
Scope of due diligence	Own business activities and full upstream supply chain	Own business activities and full up- and downstream value chain
Traceability system of full upstream supply chain	Required	Not required
Application of international standards	Use “as guidance” for implementation of due diligence	Implement “in their entirety”
Cost and effort required	Depends e.g. on number of products / services in the scope	Depends e.g. on company’s ambition level
Positive impact on human rights	Lower	Higher
Alignment with German Due Diligence Law (LkSG)	Lower	Higher
Alignment with upcoming legal developments (e.g. EU Directive)	Lower	Higher

Disclaimer

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