

Swiss Law Governing Non -Financial Disclosure Obligations

Introduction to articles 964a -c CO

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1. General Overview
2. Which companies are subject to the new law?
3. What are the key obligations under the new law?



Rejection of the popular “Responsible Business Initiative– Protecting Human Rights and the Environment” on November 29, 2020



Entry into effect of the indirect counterproposal of the Swiss Parliament, i.e., the new **law on transparency regarding non-financial matters** (articles 964a to 964c CO) as of January 1, 2022



The new due diligence and reporting obligations will apply for the first time to the financial year beginning one year after the entry into effect of the new law on the transparency regarding non-financial matters . This means that **most issuers** will have to report for the **first time in 2024 in relation to fiscal year 2023** .



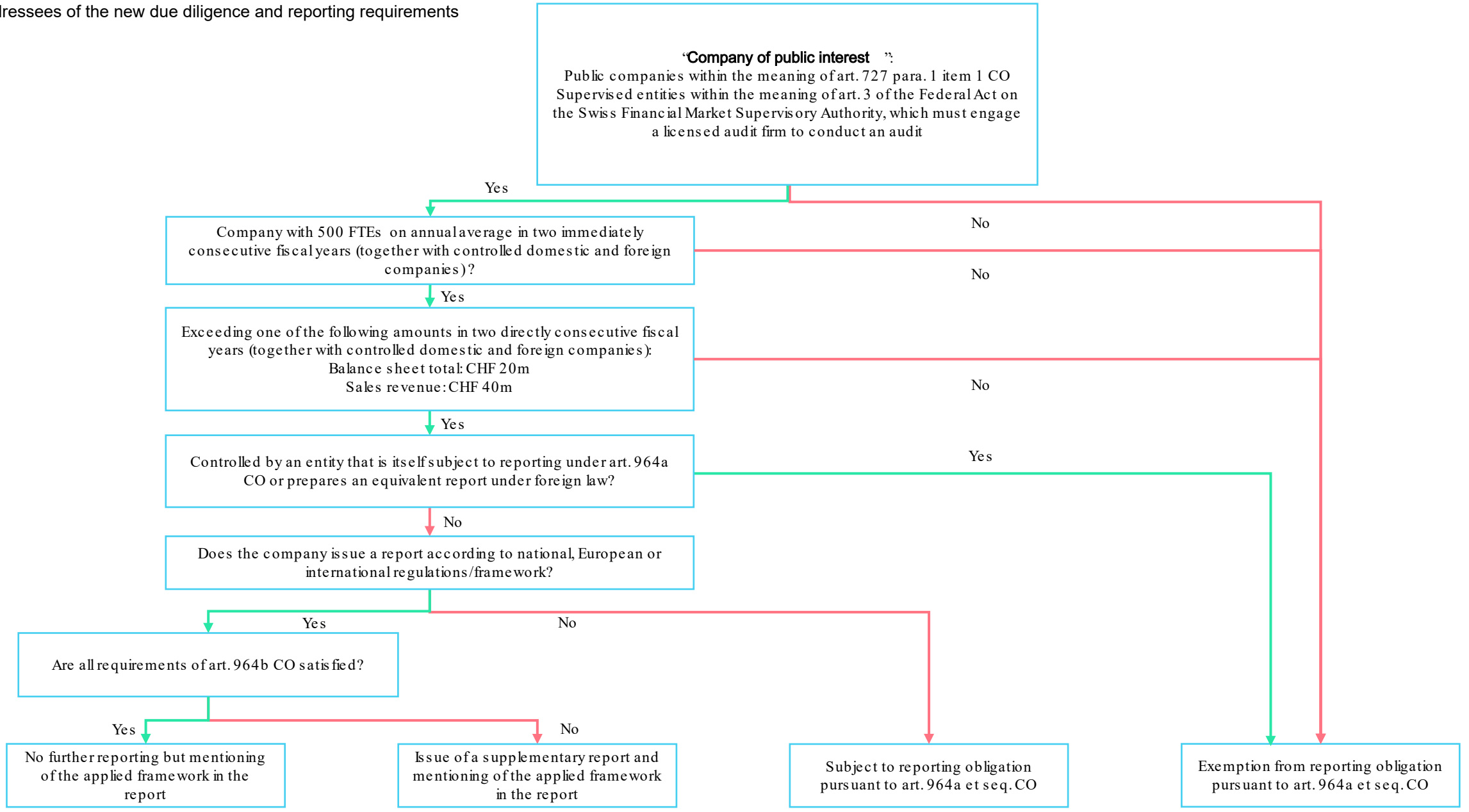
The due diligence obligations **must already be complied with in fiscal year 2023** .



Consultation draft ordinance implementing the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) pending. The consultation draft intends to ensure that disclosures are meaningful, comparable and, where possible, forward-looking and scenario-based. **Disclosures will be part of the report on non-financial matters** (expected to come into effect on 1 January 2023).

References : Directive 2014/95/EU (CSR Directive); Global Reporting Initiative (GRI), Sustainability Accounting Standards Board Standards (SASB); TCFD

Addressees of the new due diligence and reporting requirements



Reporting obligations, but no genuine due diligence obligation

Annual reporting regarding non-financial matters

- Environmental matters (incl. matters to be reported based on new TCFD ordinance)
- Social matters
- Employee matters
- Human rights
- Anti-corruption

Consolidated reporting

Swiss holding company (or other Swiss company if foreign holding company does not issue an equivalent report). Includes domestic and foreign group companies

“Comply or explain”

- No obligation to introduce concepts (risk-based approach)
- Even without concepts, the risks and performance indicators must be explained in relation to the respective non-financial matter

Content of report

- Business model
- Concepts pursued (i.e., strategy / directives), incl. due diligence processes
- Measures taken and assessment of the effectiveness of these measures
- Key risks (own activity and risks out of business relationships, its products or its services), how risks are managed
- Key performance indicators

Approval

- Board of Directors
- General meeting of shareholders (AGM)
- Ratification authority only (i.e., yes or no, but no modifications)

Publication

- Immediately after approval
- Electronically, at least for 10 years

Sanctions for violation of the new obligations

Criminal Liability (article 325^{ter} Swiss Criminal Code)

- Fine up to CHF 100,000 (in case of negligence CHF 50,000).
- Relevant violations:
 - Incorrect information in report
 - Failure to report
 - Violation of the duty to keep and document the report
- No sanction for violation of due diligence process obligations

Civil Liability

- No express new civil liability rules
- Civil liability according to article 754 CO/
article 41 CO?

Thank you for your attention

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