

Corporate ESG Disclosure : duties and challenges

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ESG Disclosure Swiss Framework

General :

- CO 734f (big listed companies)
women on board
- CO 964a-c (listed companies)
extra-financial reporting

Industry-specific rules:

- 2016/01 FINMA Circular « Disclosure-Banks »; 2016/02 FINMA Circular « Disclosure- insurers », with FINMA Guidance 03/2022 (banks and insurers)
climate-related financial risks reporting
- CO 964d-I (raw material companies undergoing ordinary audit)
payments to government
- CO 964j-I (3TG and metal industry companies; companies industries with risks of child labour in the supply chain)
adverse impacts on human rights and child labour reporting
- CO 964a-c (companies under FINMA's supervision)
extra-financial reporting

CO 964a-l

CO 964a-c

Extra-financial reporting

ESG in a broad sense

01.01.2022

FY 2023

Source of inspiration: NFRD

CO 964d-i

Transparency in raw
material companies

BRIBERY

01.01.2021

FY 2022

Source of inspiration: Dodd-Frank
Act, Art. 1504

CO 964j-l

Due Diligence and transparency in
relation to Minerals and Metals from
Conflict-Affected Areas and Child
Labour

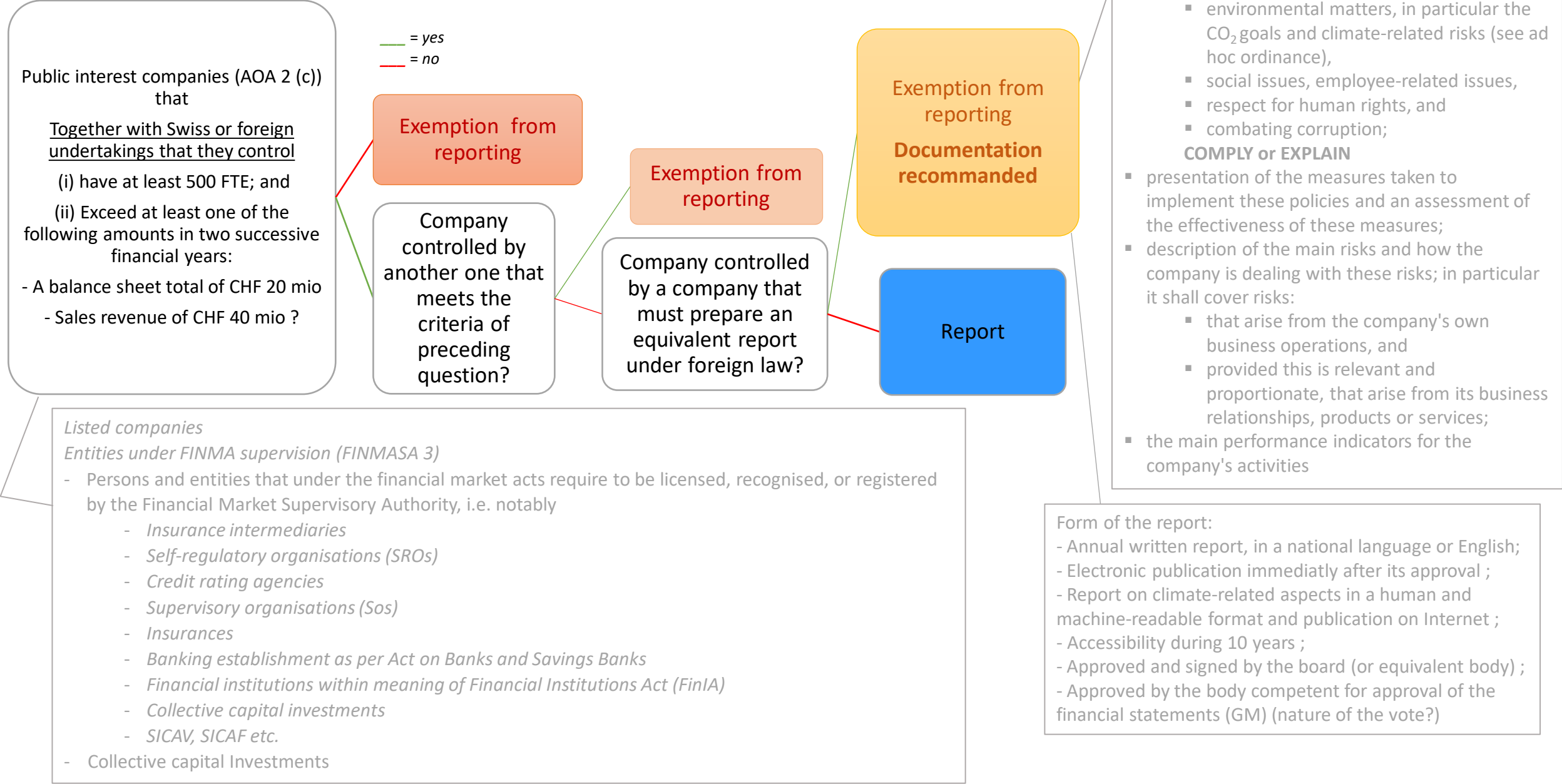
HUMAN RIGHTS

01.01.2022

FY 2023

Source of inspiration: EU Directive 2017/821 and
Dutch Child Labour Due Diligence Act

CO 964a-c : Extra-financial reporting



CO 964d-i : Transparency in raw material companies

Enterprises undergoing an ordinary audit, which are, directly or through a company that they control involved in the extraction of minerals, oil or natural gas or harvesting of timber in primary forests?

Extraction includes all activities carried out by the company in the areas of exploration, prospecting, discovery, development and extraction of minerals, oil and natural gas deposits and the harvesting of timber in primary forests (CO 964d IV)

Exemption of reporting

Payment to state bodies?

Exemption of reporting

Payment amounting to min. CHF 100'000.- in a financial year?

In one or several sums

Exemption of reporting
Documentation recommended

Company as part of a group that draws up consolidated annual accounts?

No report
Report replaced by the group report
Reference to group report in the annex to financial statements (CO 964d II and III)

Company covered by foreign company's report as per equivalent regulation? (CO 964d III)

Annex to financial statements
(reference to the other company)

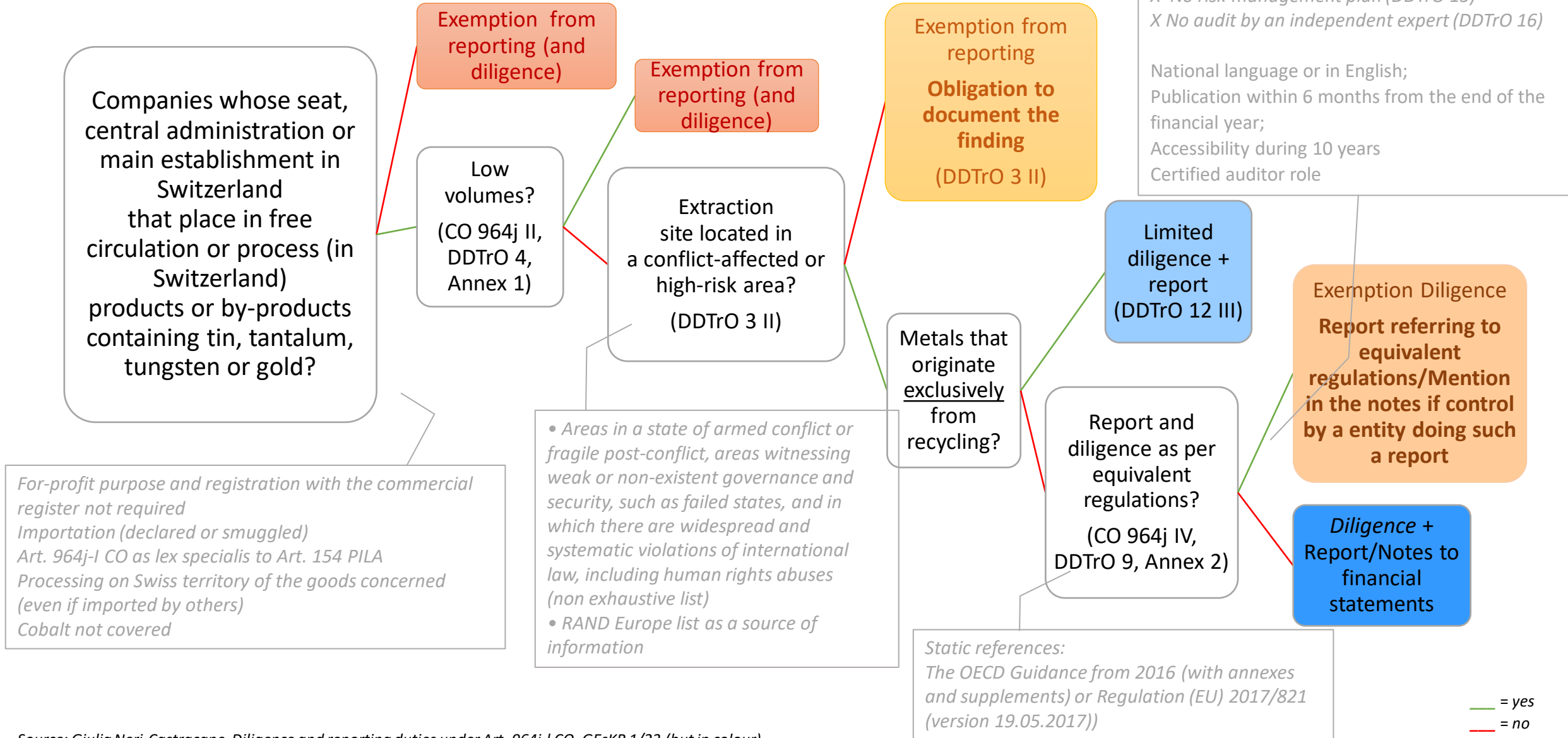
Report

Mention of all payments (indication of the amount of the payments made in total and by type of service to each state body and each project);
National language or in English;
Approval by the board (or equivalent body);
Publication within 6 months from the end of the financial year;
Accessibility during 10 years

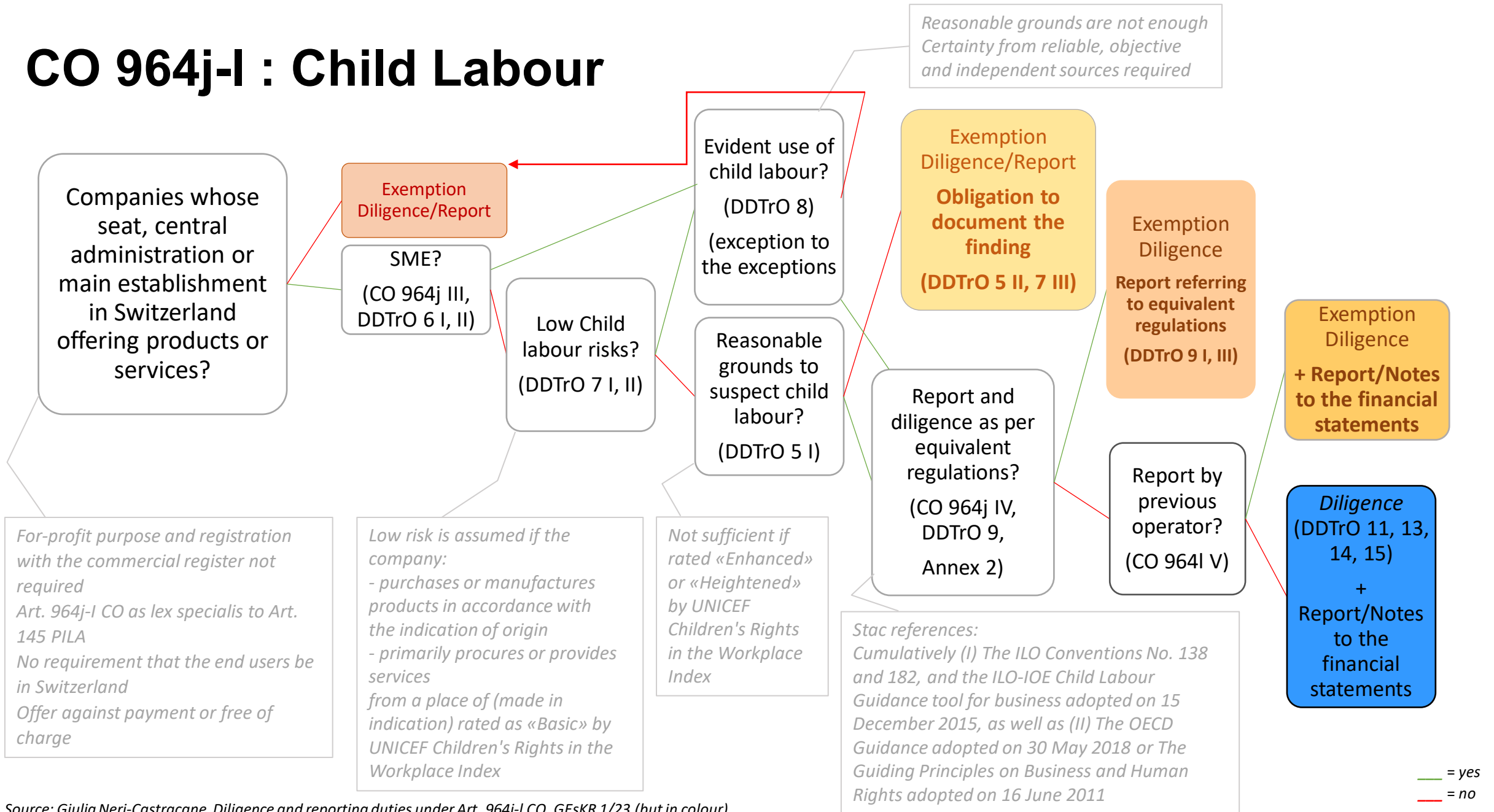
- State bodies = national, regional or local authorities in a third country together with the departments and businesses controlled by such authorities (CO 964d V)
- *Payment* = payments in cash or in kind, notably those listed at CO 964e I
- In the case of a payment in kind, the subject matter, value, method of valuation and if applicable the extent must be indicated (CO 964e II)

— = yes
— = no

CO 964j-I : Minerals and Metals from Conflict-Affected Areas



CO 964j-I : Child Labour



Challenges

Practical challenges – how to deal with suppliers?

Regulation-based challenges

- Standard of evaluation? *Reasonable efforts vs. Best efforts?*
- Say on Sustainability
 - Mandatory or consultative?
 - What if refusal? (impact on publication?)
- Concept of « responsible operators » - only possession or also ownership is required?
- Concept of equivalent regulations
- Available sanctions/Consequences
 - Criminal Code 325bis and ter
 - CO 754? Is it a duty of the board or of the company?
 - CO 41? – are CO 964a-I norms protecting third parties?
 - UCA 3 I (b), 9 and 10 – possible standing right for some stakeholders (customers, employees, shareholders, creditors)

Conclusion

Questions/Comments?

Thank you !