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The Swiss Federal Council has set 1 January 2021 as the date for the entry into force of the new provisions of the Swiss Code of Obligations (OR) on the transparency obligations of certain multinationals.

Irrespective of the popular initiative that will be put to a popular vote on 29 November, 2020, the revision of the law on the Swiss public limited company (AG), which was definitively adopted by Parliament on 19 June 2020, provides for the introduction of stricter transparency rules for companies active in the raw materials sector through Articles 964a to 964f of the Swiss Code of Obligations (OR).

What is it about?

As of 1 January 2021, Swiss companies active in the production of raw materials will have to declare in an electronically published report any payments made to governments if they reach CHF 100,000 per year. The legislator's stated aim in connection with these new obligations is "to increase the transparency of these companies and to encourage them to act more responsibly". The Federal Council will be able to extend these transparency rules to commodity trading at a later date in an internationally harmonised procedure.

By raw materials, the legislator understands the production of minerals, oil, natural gas or in the exploitation of primary forests. By "production", Article 964a OR expressly encompasses all activities of the company "in the exploration, prospecting, discovery, exploitation and extraction of minerals, oil or natural gas or in the exploitation of timber from primary forests".

It should be remembered that both the so-called "Responsible Multinationals Initiative" and the indirect counter-proposal by the Swiss Federal Parliament lay down much broader and stricter rules. These texts apply to all Swiss companies as far as the initiative is concerned, and to companies of "public interest" and "major financial institutions" as far as the counter-project is concerned. The initiative establishes a genuine global duty of care (also in terms of respect for human rights and environmental protection) with civil liability of Swiss companies before Swiss courts, including for actions committed by their subsidiaries with headquarters abroad. The counter-proposal, on the other hand, goes less far by obliging companies falling within the scope of these new provisions to report on their activities, including outside Switzerland, and by introducing a due diligence obligation only in two issues, namely mineral extraction in war zones and child labour, with Swiss companies being liable before Swiss courts, even for their foreign subsidiaries, only for the latter two issues.

When will these new OC rules come into force?

As this amendment (like the one on the setting of thresholds for gender representation) does not require an implementing provision, the Federal Council has set 1 January 2021 as the date of entry into force. It should be remembered that the other amendments require it and will probably come into force in 2022, according to the latest information received from the Federal Palace.

What is to be done?

It is important for the companies concerned to prepare themselves now to meet these new obligations. Wilhelm Gilliéron Avocats SA can usefully advise their boards of directors in this respect.

Source : <https://www.wg-avocats.ch/en/news/company-law/or-transparency-obligations-multinationals/>