

## EUROPEAN MODEL CONTRACT CLAUSES For Responsible and Sustainable Supply Chains

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1. An independent European Working Group (European WG) of legal experts is drafting European Model Clauses (EMCs) to align international supply contracts with the goals of the Corporate Sustainability Due Diligence Directive and to build on the UN Guiding Principles and the OECD Guidance on Due Diligence. The European WG is comprised of professionals and academics representing France, Germany, Italy, the Netherlands, Poland, Portugal, and Spain, along with experts in the law of the EU, the US, and the UK. Experts from other Member States may join at any time.
2. The EMCs emphasize:
  - 2.1. Human rights/environmental due diligence (rather than risk shifting);
  - 2.2. Collaboration, shared responsibility, and principled purchasing practices;
  - 2.3. The business realities of production and supply chain management; and
  - 2.4. Moving away from the unhelpful history of supply contracts.
3. Contracts are a crucial, necessary tool for managing supply chains and achieving the goals of the directive, although contracts are not the only tool. Contracts are critical because:
  - 3.1. They are *legally effective*, making rules binding on not-in-scope suppliers and in places beyond the effective jurisdiction of public authorities.
  - 3.2. They hold a central role in managing production and supply, making the goals of the CSDDD *operationally likely*.
  - 3.3. They can require information sharing and documentation for the use of businesses (including management and owners), regulators, enforcement agencies, and courts.
  - 3.4. They can evolve and develop in light of learning, experience, and changing circumstances.
4. Human rights due diligence in the EMCs involves realistic identification and mitigation of risks rather than unrealistic or uninformed allocation of risk to suppliers through representations, warranties, or assurances that promise perfect compliance. The EMCs:
  - 4.1. Focus on practical problem identification and dispute resolution rather than arbitration or litigation;
  - 4.2. Emphasize remediation rather than termination;
  - 4.3. Recognize stakeholders and rights-holders as well as buyers and suppliers.
5. Shared responsibility between buyers and suppliers is based on balance and fairness, including:
  - 5.1. Responsible purchasing practices by buyers, who commit, for example, to practical pricing and payment terms, delivery demands, and timing for change orders.
  - 5.2. Reasonable assistance and support by buyers for suppliers who need help complying with the goals of the CSDDD.
6. The EMCs aim to be modular and scalable to take into account different capabilities of large corporates versus SMEs.
7. The European WG is working from Model Contract Clauses originally drafted by a working group of the American Bar Association Business Law Section, but the EMCs are being adapted to European public law (e.g., EU directives), private law (the civil law system), and drafting style (concise rather than comprehensive). A first draft was completed mid-2022 and is being revised in light of a Lisbon meeting (Sept 2022) with input from MEPs. A second draft is anticipated in spring 2023. A public draft is anticipated summer 2023, followed by consultations with stakeholders and others.