

**Introduction to the
Zero Draft for Consultation:
The European Model Clauses (EMCs) for Responsible and Sustainable Supply Chains
July 2024**

1. General observations	1
2. Legislative developments in the EU	4
3. The ABA Model Clauses for Supply Chains	6
4. European Working Group	7
4.1. Introduction	7
4.2. Content of the EMCs	8
4.3 Development of the EMCs	10
5. Members of the working group	10
6. Implementing Due Diligence with the EMCs	11

Prepared by the European Working Group for Responsible and Sustainable Supply Chains.

1. General observations

Contracts are integral to corporate practice and to regulating global business operations, and increasingly address environmental and human rights issues in supply chains. Contracts can be a powerful tool to improve these practices, but their history is fraught. This project is an effort to improve contractual governance in order to better uphold human rights and environmental standards and implement appropriate due diligence in global supply chains. The approach seeks to build on the strength and reach of contracts whilst moving away from contractual practices that have so frequently proven ineffective (if not counter-productive) in practice. The goal is to make human rights and environmental standards¹ a central part of contractual governance for both suppliers and buyers, as envisaged by the 2011 United Nations Guiding Principles on Business and Human Rights (UNGPs)² and the 2023 OECD Guidelines for Responsible Business Conduct³ and required by EU Directive 2024/1760 on corporate sustainability due diligence (CSDDD)⁴. Unanimously endorsed by the UN Human Rights Council in 2011, the UNGPs articulate companies' responsibility to respect human rights in order to satisfy that responsibility, their duty to carry out human rights due diligence (HRDD). HRDD should identify, prevent, mitigate and account for

¹ Such standards are generally stated in a corporate code. See for example Volkswagen, *Code of Conduct for Business Partners*, accessible at https://www.volkswagenag.com/presence/nachhaltigkeit/documents/policy-intern/2019_Code_of_Conduct_for_Business_Partners-DE-EN.pdf.

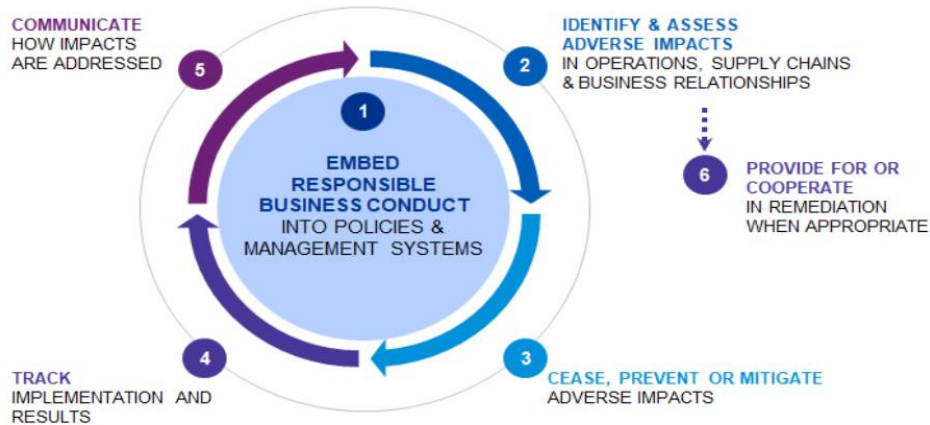
² https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf.

³ Accessible at <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

⁴ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859.

potential and actual adverse human rights impacts that may arise from their own activities or throughout their supply chains.

This type of due diligence, which focusses on impacts business operations cause to external stakeholders, is summarized in the following graphic from the OECD:⁵



Because identification, prevention, mitigation and reparation of impacts where feasible required by HREDD extends beyond the business operations of the buyer itself and includes supply chains, buyers need to assure that their suppliers and sub-suppliers respect environmental and human rights standards. Because these commercial relationships are generally regulated by contracts, contractual mechanisms will play an important role, as reflected by current and proposed legislation.⁶

Although contract clauses and Supplier Codes of Conduct that seek to address environmental and human rights issues are frequent in practice, there has been little evidence that this has led to better environmental and human rights outcomes in supply chains. Frequent imbalances in bargaining power result in one-sided contractual clauses imposed by the most powerful party (generally the buyer) onto the weaker one (generally the supplier) which are not compatible with human rights or environmental standards.

These imbalances are exacerbated by the fact that many suppliers depend on a very limited number of buying companies,⁷ and, particularly in less specialized sectors, buyers can easily switch suppliers. This dynamic can create a race to the bottom, with suppliers competing on ever lower pricing and delivery timings at the cost of human rights or environmental standards.⁸ Indeed, extreme pricing and timing pressure exerted by buyers can lead suppliers to be unable to pay a living or even minimum wage to their workers, and potentially spur them to have recourse to undeclared work, child labor and/or unpaid overtime.⁹ In practice, many suppliers have reported taking orders at

⁵ OECD Due Diligence Guidance for Responsible Business Conduct, p. 21,

⁶ See Sect. 6 (4) No. 2 and 4 of the German Supply Chain Due Diligence Act (GSCDDA) and Artt. 10(2)(b), 10(5), 11(3)(c), 11(6) CSDDD

⁷ Daniel Vaughan-Whitehead & Luis Pinedo Caro, International Labour Office, Purchasing Practices And Working Conditions In Global Supply Chains: Global Survey Results, Inwork Issue Brief No. 10, 11 (2017), p. 6.

⁸ Sarah Dadush, Contracting for Human Rights: Looking to Version 2.0 of the ABA Model Contract Clauses, 68 AM. U. L. REV. 1519 (2019).

⁹ German government's reasoning for the GSCDDA, BT-Drs. 19/28649, p. 43.

prices that would not even cover production costs.¹⁰ In addition to production times often being too short to assure compatibility with good human rights practices, buyers have been reported to change or cancel orders at the last minute. Especially during the Covid-19 pandemic, many orders were cancelled by the buyers (even in cases of goods that had already been manufactured and sometimes even already shipped), leaving suppliers unpaid and workers in the most precarious situations.

In addition, suppliers are generally expected to carry all the costs for compliance and verification which they often struggle to do, especially when they are SMEs with limited resources.¹¹

Current contractual practices have not only failed to provide an effective mechanism to address these issues but have even sometimes been an active part of the issues.

Similarly, the typical practice of using representations and warranties to assign all responsibility to suppliers in an effort to shift the risk of human rights and environmental violations is often doomed. Contractual guarantees of perfect performance are unrealistic in general, and the situation is exacerbated by differing laws, codes and demands from different buyers. Such unrealistic contractual mechanisms lead to turning a blind eye — or hiding — the problems and their causes. Further, some companies do not monitor compliance with applicable laws or even with their own codes, much less enforce them. Other companies use third-party audits, but these have often proved unhelpful as well. Such third-party audits sometimes are ill equipped to detect violations (e.g. interviewing workers in front of their employer), or are subject to audit fraud, or human rights issues such as forced labour may be difficult to detect. Other times the violations are so numerous that the auditors and the companies barely know how to catalogue and address the issues.

Traditional contracts often contain too far-reaching termination rights when contractual guarantees are not met. When companies terminate contracts after a breach, this generally does not solve the environmental and human rights issue. On the contrary, it might worsen the problem since termination might force a supplier to contract other, more lenient buyers or dismiss work forces leading to unemployment without any protection for the workers.

Contracts can be considerably more effective in delivering better human rights and environmental outcomes than they have been, and moving toward this outcome is the goal of this project.¹² To be effective, contractual clauses need to be carefully crafted and provide for:

- responsibilities of both buyers and suppliers
- more uniform content, avoiding multiple and differing standards and applicable laws
- enforcement of the obligations so the environmental and human rights impact is remediated, with termination used only as a last resort

¹⁰ Daniel Vaughan-Whitehead & Luis Pinedo Caro, International Labour Office, Purchasing Practices And Working Conditions In Global Supply Chains: Global Survey Results, Inwork Issue Brief No. 10, 11 (2017), p. 7.

¹¹ See Lidl's case study "Spanish Berry HRIA", p. 18, accessible at:

<https://corporate.lidl.co.uk/sustainability/human-rights/hria/hria/spanish-berry>, 11th of October 2022.

¹² Martijn Scheltema, The mismatch between human rights policies and contract law; improving contractual mechanisms to advance human rights compliance in supply chains, In: Accountability, international business operations, and the law (Liesbeth Enneking et.al. (eds.)), Routledge: London and New York 2020, para. 4, accessible at

<https://www.ohchr.org/Documents/Issues/Business/WGSubmissions/2018/MartijnScheltema.pdf>.

- access to information, including information gathered in grievance mechanisms
- dialogue and collaboration
- capacity building
- efficient and productive dispute resolution with rights holders.

2. Legislative developments in the EU

The CSDDD will turn the UNGPs due diligence expectations into hard law. The Directive, originally proposed by the Commission on February 2023, 2022,¹³ was finally approved by the Council on May 24, published in the Official Journal of the European Unions on July 5, 2024 and will enter into force on July 25, 2024. The Member States have to transpose the Directive by July 26, 2026.

The CSDDD aims to create a legally binding obligation for companies to carry out human rights and environmental due diligence (HREDD) throughout their operations including those of their business partners across their (mainly upstream) value chains.¹⁴ The CSDDD introduces human rights and environmental due diligence obligations for large European and foreign companies meeting certain thresholds (defined in terms of number of employees and/or turnover). The obligations are accompanied by enforcement through national supervisory authorities and civil liability. Contractual provisions play a role throughout the proposal, and under Art. 18, the Commission is to adopt guidance – in consultation with Member States and relevant stakeholders - about voluntary model contract clauses to assist companies to meet the requirements of the Directive. The advantage of such model clauses also is that if they are applied by most buyers, suppliers face less diverging contractual requirements from their buyers. This may facilitate the implementation of human rights and environmental due diligence and lower cost for suppliers.¹⁵

The CSDDD recognizes that contracts have an important role to play - as a key component of the human rights and environmental due diligence (HREDD) exercise - to contribute to fostering respect

¹³ Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022PC0071> . [For an overview of the obligations and the enforcement, contrasted with the German Supply Chain Due Diligence Act and the French Loi de Vigilance, see](#) Brabant, Stephane, Bright, Claire, Neitzel, Noah; Schönfelder, Daniel: *Due Diligence Around the World: The Draft Directive on Corporate Sustainability Due Diligence (Part 1)*, *VerfBlog*, 2022/3/15, <https://verfassungsblog.de/due-diligence-around-the-world/> and Brabant, Stephane, Bright, Claire, Neitzel, Noah; Schönfelder, Daniel: *Enforcing Due Diligence Obligations: The Draft Directive on Corporate Sustainability Due Diligence (Part 2)*, *VerfBlog*, 2022/3/16, <https://verfassungsblog.de/enforcing-due-diligence-obligations/>

¹⁴ More regulation is either in force or envisaged which will require or facilitate the implementation of corporate sustainability due diligence, such as the Corporate Sustainability Reporting Directive (EU 2022/2464), accessible at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022L2464>), the envisaged Forced Labour Regulation, of which the provisional agreement is accessible at https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/CJ33/AG/2024/03-20/1298958EN.pdf, the Deforestation regulation EU 2023/1115, accessible at [Regulation \(EU\) 2023/ of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation \(EU\) No 995/2010 \(europa.eu\)](#) and (Articles 47-53 of the) Battery Regulation EU 2023/1542, accessible at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023R1542>.

¹⁵ Cf. the commentary to the OECD Guidelines to II (General Policies), para. 26.

for human rights, decent working conditions, and sustainable environmental standards within global supply chains, although they are not the only means to undertake such HREDD.¹⁶

A central goal of the EMC project is to move away from contracts that are ineffective and perhaps even counterproductive and to provide clauses that will integrate HREDD standards and support the goals of the CSDDD and similar legislation.

The CSDDD itself contemplates the use of contracts as part of HREDD: companies can use well-designed contractual provisions as a means to prevent potential adverse impacts (Art. 10(2)(b)), as well as ending adverse impacts (Art. 11(3)(c)). The CSDDD states that companies should use contractual provisions with business partners to give weight to a company's code of conduct and help ensure compliance, and that such provisions shall be "fair, reasonable and non-discriminatory" (Art. 10(5) and Art. 11(6)). Beyond this, both provisions set forth that buyers should support SMEs (Art. 10(2)(e) and Art. 11(3)(f)).

These Articles also envisage the possibility of requiring businesses to establish contractual provisions with their direct or indirect supply chain partners (Art. 10(2)(b) and 10(4) and Art. 11(3)(c) and Art. 11(5)). Both provisions clarify that such contractual provisions may be accompanied by measures to support carrying out due diligence (Art. 10(3) and Art. 11(4)), which are obligatory for SMEs (Art. 10(2)(e) and Art. 11(3)(f)).

Although the CSDDD will apply only to large companies as defined, it envisions that human rights and environmental due diligence obligations will flow through to SMEs through contractual measures and include special provisions for them and notably the fact that, where measures to verify compliance are targeting SMEs, the cost of independent third-party verification shall be borne (fully or in part) by the buyer (Art. 10(5) and Art. 11(6)).

Though this might not address all the potentially problematic behavior covered by Schedule Q in the Model Contract Clauses for Supply Chains (MCCs 2.0),¹⁷ it does recognize that often, due to an imbalance between the parties, the responsibility and cost of complying with codes of conduct and applicable laws is borne by SMEs, while the violations may be shared with the larger companies.

The CSDDD explicitly mentions responsible purchasing practices and notably requires companies to "adapt business plans and overall strategies and operations, including purchasing practices, and develop and use purchasing policies that contribute to living wages and incomes for their suppliers", in order to prevent potential adverse impacts or to bring to an end or mitigate actual adverse impacts and to "develop and use purchase policies that do not encourage potential adverse impacts on human rights or the environment".

The CSDDD clearly provides for the possibility to temporarily suspending commercial relations or terminating the business relationships where the potential adverse impacts could not be prevented or adequately mitigated or where the actual adverse impacts could not be brought to an end or mitigated and where there is no reasonable prospect of change (Art. 10(6) and Art. 11(7)) but requires the company to assess whether the adverse impacts of doing so would be greater than the adverse impact which is intended to be prevented or mitigated and to take steps to ensure a responsible exit (Art. 10(6) and Art. 11(7)). When terminating business relationships, companies

¹⁶ See also the commentary to the OECD Guidelines to II (General Policies), para. 23.

¹⁷ See below section 3.

have to give reasonable notice to their business partners, have to continue to address the impact giving rise to the termination, and have to appropriately address negative impacts resulting from the termination.

Beyond the legislative developments in the EU, different member states have also implemented legislation on corporate sustainability due diligence. For example, France, Germany and the Netherlands have adopted legislation on this topic. Similar to the CSDDD, the German law explicitly refers to contractual mechanisms.¹⁸ Other European countries outside the European Union, like Norway, have also adopted legislation.

3. The ABA Model Clauses for Supply Chains

In an attempt to address some of the issues identified in section 1, a working group of the American Bar Association Business Law Section developed Model Contract Clauses to Protect Workers in Supply Chains.¹⁹ These model contract clauses (MCCs) are a major shift in contract design, reflecting both recent research and thinking about what organizational strategies are most effective, and recent and ongoing legislative developments, including not only US legislation but also anticipating the likely mandatory human rights due diligence law in the European Union.²⁰ Instead of a typical regime of representations and warranties, with concomitant strict contractual liability, these clauses provide for a regime of human rights due diligence, requiring the parties to take appropriate steps to identify and address adverse human rights impacts. As a result, suppliers are less incentivized to hide problems for fear of contractual sanctions: they do not have to pretend that no human rights problems exist, but they have to show that they are implementing measures to address them.

The most prominent shift in the MCCs is that buyers share contractual responsibility for human rights with their suppliers and sub-suppliers. The MCCs include principles of responsible sourcing to avoid contributing to human rights violations, for example, negotiating prices that allow the supplier to pay adequate wages, see Art. 1.3.²¹ If a human rights violation occurs, remediation costs are divided between buyer and supplier, depending on who caused it, Art. 2.3(e).²² Merely changing purchasing without contractually giving the supplier enforcement rights lacks effectiveness as the supplier would be reluctant to address human rights problems. Concrete obligations of buying

¹⁸ An English version is accessible at https://www.bmas.de/SharedDocs/Downloads/DE/Internationales/act-corporate-due-diligence-obligations-supply-chains.pdf?__blob=publicationFile&v=3.

¹⁹ These clauses may be accessed at https://www.americanbar.org/content/dam/aba/administrative/human_rights/contractual-clauses-project/mccs-full-report.pdf.

²⁰ See the abstract of this project (note 4), p. 1 and 2.

²¹ Principled Purchasing Project, American Bar Association: *Model Contract Clauses to Protect Workers in International Supply Chains, Version 2.0* Art. 1.3 https://www.americanbar.org/content/dam/aba/administrative/human_rights/contractual-clauses-project/mccs-full-report.pdf parties to the agreement may also agree on the responsible sourcing practices included in Schedule Q: *Responsible Purchasing Code of Conduct: Schedule Q Version 1.0* https://www.americanbar.org/content/dam/aba/administrative/human_rights/contractual-clauses-project/scheduleq.pdf

²² Principled Purchasing Project, American Bar Association: *Responsible Purchasing Code of Conduct: Schedule Q Version 1.0* https://www.americanbar.org/content/dam/aba/administrative/human_rights/contractual-clauses-project/scheduleq.pdf

companies in the contract give suppliers some leverage and assurance to proactively and collaboratively address problems.

To address human rights issues throughout the entire supply chain, the MCCs include an obligation on the Supplier to ensure that their Suppliers and sub-suppliers in turn implement human rights due diligence requirements, Article 1.2. The ABA MCCs also stress the importance of providing remedy to those harmed in case of a breach, rather than merely using typical contractual remedies such as money damages which only benefit the contracting parties. In constructing remediation plans, suppliers need to consult with the affected stakeholders. Before terminating a contract, buyers need to “consider the potential adverse human rights impacts and employ commercially reasonable efforts to avoid or mitigate them”.²³

4. European Working Group

4.1. Introduction

The European Working Group (European WG) is an independent working group which was formed in 2021 and is composed of legal practitioners and academics representing France, Germany, Italy, the Netherlands, Poland, Portugal and Spain, along with experts in the law of the EU, the US and UK. Building on the MCCs,²⁴ it seeks to develop European Model Clauses (EMCs) adapted to the European context and aligned with the CSDDD, UNGPs, the 2023 OECD Guidelines for Responsible Business Conduct, and related guidance.

Identifying strategies and templates for more effective, Human Rights and Environmental Due Diligence (and corporate sustainability due diligence as referred to in the CSDDD)-aligned contracting is the goal of the European WG. Contracts are vehicles for implementing businesses’ human rights and environmental policies across borders and throughout the supply chain, and the European Model Clauses for Supply Chain Contracts (EMCs) seek to harness this contractual power. In practice, studies have shown that contracts are one of the most commonly used tools by companies to carry out Human Rights and Environmental Due Diligence.²⁵

However, it is important to acknowledge from the outset that supply chain contracts are not - and should not be - the only means for companies to carry out human rights and environmental due diligence. Rather, contractual clauses should be seen as one tool in the toolbox available to companies in carrying out due diligence. As such, contractual clauses should be implemented as part of broader corporate sustainability due diligence. Appropriate contractual clauses can help achieve the goals of the CSDDD and similar legislation, and certainly contracts cannot be ignored. In the past, contractual clauses have often not been crafted in a way that is compatible with human rights and/or environmental standards, and the EMCs seek to address this issue. The use of model contract clauses which are aligned with the CSDDD, UN Guiding Principles and 2023 OECD Guidelines for

²³ ABA (note 15) p. 22.

²⁴ See for these clauses

https://www.americanbar.org/content/dam/aba/administrative/human_rights/contractual-clauses-project/mccs-full-report.pdf.

²⁵ L. Smit, C. Bright, R. McCorquodale, et al. 'Study on Due Diligence Requirements through the Supply Chain', Study for the European Commission, February 2020, p. 152, accessible at: <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>.

Responsible Business Conduct will make complying with the CSDDD and achieving the objectives of the CSDDD more operationally likely.

As the CSDDD aims to create a legal obligation to undertake human rights and environmental due diligence and to implement grievance mechanisms, as well as retrieving aggregated information from these mechanisms, the only fashion this legal obligation can be transposed into supply chains is through contracts. Contracts are also indispensable for information sharing and documentation for the use of businesses (including management and owners) on the environmental and human rights situation in supply chains, as no obligation would exist for suppliers that are not in scope of the CSDDD and in places beyond the effective jurisdiction of public (supervisory) authorities to provide this information otherwise. This may be relevant for regulators, public supervisory authorities, and courts. Contracts are especially useful for generating human rights and environmental information from within the supply chain given that suppliers that are not in scope of the CSDDD may not be bound to provide this information otherwise. Access to this information may also assist buyers to meet obligations under European reporting requirements. Beyond this, model contracts can be reviewed and revised more easily and more quickly than regulation or public policy. This enables more frequent and continuous improvement in light of learning, experience, and changing circumstances.

Furthermore, European model contract clauses can help generate a European level playing field and reduce costs for businesses. If the model clauses become an often-applied model, this will enhance fair competition and will incentivize companies to implement comparable human rights and environmental practices aligned with the CSDDD. Widely adopted model clauses can reduce cost for businesses as they do not need to reinvent the wheel by drafting their own contractual provisions, at considerable cost, especially if they have to engage external counsel (as may frequently be necessary for smaller and medium sized entities).

4.2. Content of the EMCs

The EMCs seek to improve the current contracting practices that have proven so clearly insufficient. In particular, they seek to implement more balanced approaches in supply chains, with clauses that encourage cooperation, information sharing, and fair dealings, including through responsible purchasing practices. They seek a balance between buyers and suppliers, as well as worker-focused provisions on complaints procedures, human rights remediation, and options for third-party rights and responsible exit. Thus, the EMCs, like the MCCs, move away from the unilateral model where only one party bears responsibility for ensuring that human rights and environmental standards are upheld, towards a model of shared responsibility where both parties are obligated to carry out HREDD and to cooperate and support one another in doing so. The EMCs are able to take the shared responsibility principle further thanks to the legislative backdrop against which the European WG is operating.

Specifically, the clauses shift away from a regime of static, supplier-only, representations and warranties that require the supplier to guarantee that there are no and never will be any human rights issues in its supply chain towards a regime of human rights and environmental due diligence, under which both parties are responsible for upholding human rights and environmental standards.

Three key shifts deserve highlighting:

1. **Human Rights and Environmental Due Diligence:** buyer and supplier must *both* conduct human rights and environmental due diligence before and during the term of the contract.
2. **Buyer Responsibilities:** to discharge their respective HREDD obligations and avoid causing or contributing to adverse impacts, *both* buyer and supplier must engage in responsible sourcing and purchasing practices.
3. **Remediation-first:** in the event of an adverse impact, stakeholder-centred human rights remediation should come before or in conjunction with conventional contract remedies, such as termination, rejection, and money damages. Moreover, if the buyer contributed to the adverse impact (e.g., through its purchasing practices), then the buyer must participate in providing remediation to victims.

The EMCs also provide for reasonable assistance and support by buyers for suppliers who need help complying with the goals of the CSDDD.

The EMCs seek to adapt these new contracting strategies to the European context, in alignment with the CSDDD. The European WG is adapting and expanding the ABA MCCs to be compliant with European public law (such as EU directives and regulations), private law (the civil law system and especially contract law in member states with an eye to the Draft Common Frame of Reference), and with the European drafting style (concise rather than comprehensive).

Corporate sustainability due diligence as envisaged by 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. They emphasize that remediation is a better strategy than termination.²⁶ The EMCs suggest best practices for responsible exit if termination is necessary as a last resort. The EMCs also acknowledge the need to engage with and meaningfully consult stakeholders and rights-holders as well as buyers and suppliers and recognize all of them as relevant participants in connection with supply chain contracts.²⁷

Finally, the EMCs aim to be modular and scalable to take into account different capabilities of large corporates versus SMEs.

The format of the EMCs will depart significantly from the MCCs in that each provision will include: (1) the model clause itself, (2) a general commentary explaining the objective of the clause, (3) a commentary explaining best practices and referring to documents that may assist in implementing the clause, and (4) where relevant, guidance on implementing the clause in different member states with an eye to the Draft Common Frame of Reference.

The EMCs are intended to serve as an example of contractual clauses that can be implemented in (existing) supply chain contracts. If so, it will be important to ensure that the implemented provisions dovetail with the main sales agreement, including in relation to i) remedies, ii) termination iii) disclaimers, and iv) dispute resolution and confidentiality. They will need to be

²⁶ This is in accordance with the CSDDD which clearly prioritises preventive and corrective measures over the suspension and termination of business relationships and only allows the suspension and termination of business relationships under strict requirements, see Article 10(6), 11(7).

²⁷ See also Article 13 CSDDD.

adapted to avoid duplication or uncertainty when combined with the provisions in the main sales agreement.

The users will need to decide whether the model is used and to what extent the EMCs are adopted in the supply chain contracts. However, departures from the EMCs, and adherence to more traditional contractual language, increases the risk that these supply chain contracts will be incompatible with due diligence as required by the CSDDD.

The model is general and has only very limited specific guidance for various sectors in which supply chain contracts are deployed. That said, the approach suggested in the EMCs is generally applicable across sectors and can be adapted without unreasonable effort for specific sectors.

4.3 Development of the EMCs

A first draft of the European Model Clauses was discussed within the working group in Lisbon on 12 and 13 September 2022. The next step was to implement the revisions suggested during this meeting, which has resulted in this second draft (April 2023). This draft was discussed by the working group at a meeting held in Rotterdam on 15 and 16 May 2023 and has led to a new revised draft that is shared for a limited consultation in October 2023 - January 2024. The input received during this limited consultation was discussed in a Working Group meeting in Warsaw on January 25 and 26 and was implemented in a Zero draft ready for broader consultation. The European WG currently organizes, in collaboration with the Responsible Contracting Project, a broader consultation which lasts until November 2024. After implementing the results of the consultations, the 1.0 version will be circulated and published in the Spring of 2025. After publication the Working Group plans to regularly update the EMCs, building on improved practices, continued consultations and conversations with relevant stakeholders, and changing global supply chains. It may contemplate to provide sector specific models and/or guidance as well.

5. Members of the working group

The European working group currently consists of the following members (alphabetically by country)

Maria Pia Sacco (EU Law)

Salli Swartz (EU law)

Stéphane Brabant (France)

Sarah Dadush (France)

Gilles Lhuilier (France)

Anna Beckers (Germany)

Bettina Braun (Germany)

Michael Riegner (Germany)

Daniel Schönfelder (Germany)

Michaela Streibelt (Germany)

Angelica Bonfanti (Italy)

Achille Calìo Marincola Sculco (Italy)

Roberto Randazzo (Italy)

Martijn Scheltema, Co-chair (Netherlands/EU law)

Stanislaw Drozd (Poland)

Beata Faracik (Poland)

Claire Bright (Portugal/Spain)

Maria Folque (Portugal/Spain)

Carmen Marquez Carrasco (Portugal/Spain)

Jose Maria de Paz (Spain)

Noemi Marques de Magallanes (Spain)

Jaime de Blas (Spain)

Jordi Gras (Spain)

Encarna Cordero (Spain)

Andrea Sanchez (Spain)

Mariona Bernaus (Spain)

Rita Prates (Portugal/Spain)

Rachel Barrett (UK)

David Snyder, Co-chair (US)

6. Implementing Due Diligence with the EMCs

Unlike the MCCs, the following EMCs to undertake Corporate Sustainability Due Diligence in Supply Chains are embedded in the European regulatory landscape in which contractual mechanisms in supply chains play a role. They are a means through which Corporate Sustainability Due Diligence can be undertaken in supply chains, obviously in addition to other means of undertaking such due diligence.

The EMCs, although built on the ABA MCCs, implement an adapted approach compared to its US predecessor (which is currently being reviewed), not only because of the (current and future) legislative requirements in the EU and its Member States, but also to provide insight in necessary adaptations which may be required in specific legal (contract law) systems of the EU Member States as well as more practical guidance in connection with the model clauses.

Therefore, the following model clauses are elaborated as follows. First the text of the model clause is elaborated per Article. After this a general commentary is provided with the background of the Article and its objectives as well as other observations which may be helpful or should be borne in

mind when implementing this Article in a supply chain contract. The general commentary is followed by best practices, where available, in order to provide more practical guidance regarding the implementation of the Article. Finally, country specific observations are added where the contract law of EU member states requires deviation from the general model or where such deviation would be recommendable from the point of view of national contract law of this member state. Obviously, other specific legislation should be considered as well, such as the General Data Protection Regulation or competition law. This is not all explicitly referred to in this model as that would make it unwieldy and would render it quite challenging to negotiate or implement.