EUR Research Information Portal

The prolieration of contractual assurance in environmental and human rights due diligence supply chains

Publication status and date:
Published: 15/07/2022

Document Version
Publisher's PDF, also known as Version of record

Document License/Available under:
Article 25fa Dutch Copyright Act

Citation for the published version (APA):
Scheltema, M. (2022). The prolieration of contractual assurance in environmental and human rights due diligence supply chains. *Tijdschrift voor Compliance*, *2022*(4), 177-183. Article 17294. https://denhollander.info/artikel/17294

Link to publication on the EUR Research Information Portal

Terms and Conditions of Use
Except as permitted by the applicable copyright law, you may not reproduce or make this material available to any third party without the prior written permission from the copyright holder(s). Copyright law allows the following uses of this material without prior permission:

- you may download, save and print a copy of this material for your personal use only;
- you may share the EUR portal link to this material.

In case the material is published with an open access license (e.g. a Creative Commons (CC) license), other uses may be allowed. Please check the terms and conditions of the specific license.

Take-down policy
If you believe that this material infringes your copyright and/or any other intellectual property rights, you may request its removal by contacting us at the following email address: openaccess.library@eur.nl. Please provide us with all the relevant information, including the reasons why you believe any of your rights have been infringed. In case of a legitimate complaint, we will make the material inaccessible and/or remove it from the website.

Erasmus University Rotterdam
Making Minds Matter

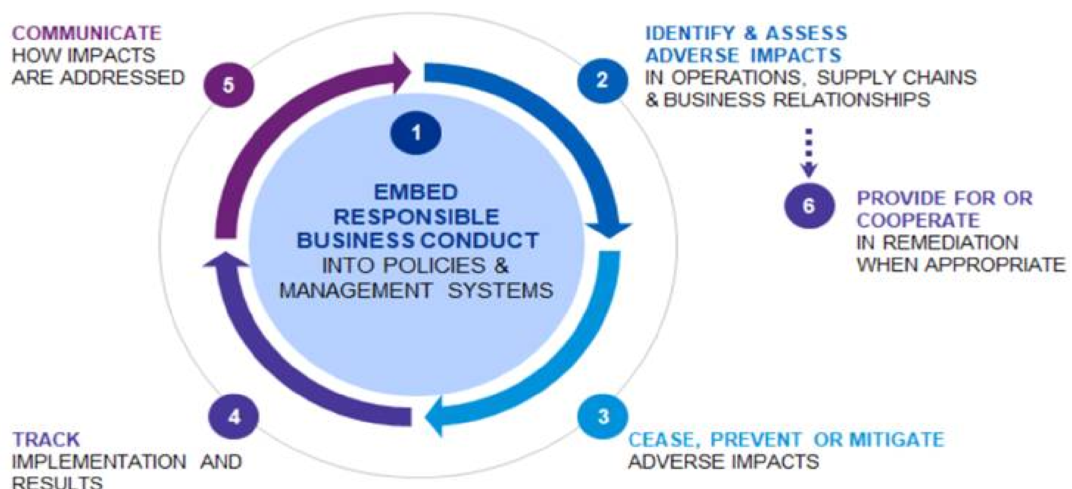
The Proliferation of Contractual Assurances in Environmental and Human Rights Due Diligence in Supply Chains

prof. mr. M.W. Scheltema[1]

Contracts are regularly deployed to regulate corporate practices of suppliers in connection with-environmental and human rights compliance as required by buyers in supply chains. Many buyers, mainly western brands, consider this to be an important means to undertake environmental and human rights due diligence as envisaged by the United Nations Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises (OECD Guidelines). However, the current practices need improvement.

1. Introduction

Contracts are regularly deployed to regulate corporate practices of suppliers in connection with- environmental and human rights compliance as required by buyers in supply chains. Many buyers, mainly western brands, consider this to be an important means to undertake environmental and human rights due diligence as envisaged by the United Nations Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises (OECD Guidelines). This type of due diligence, which focusses on the risks business operations pose for external stakeholders, is summarized in the following graph:[2]



As risk identification, prevention and mitigation as required by this type of due diligence extends beyond the business operations of the buyer itself and includes supply chains, buyers have to secure that

1. Martijn Scheltema is partner at Pels Rijcken (a the Hague based law firm) and professor at Erasmus University Rotterdam.
2. OECD Due Diligence Guidance for Responsible Business Conduct, p. 21, accessible at http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf.

their suppliers undertake environmental and human rights due diligence as well. Contractual mechanisms play an important role in this. This is reflected by a Directive currently proposed by the European Commission, which will be discussed hereinafter, and which relies heavily on contractual assurance in supply chains.

The proposed Directive aims at implementing environmental and human rights due diligence and mentions contractual mechanisms as a means to undertake this. For example, Articles 7(2)(b), 7(3), 7(4), 7(5), 7(6), 8(3)(c), 8(4), 8(5), 8(6) and 8(7) refer to contractual mechanisms with suppliers or indirect partners to prevent and address negative environmental and human rights impacts as well as to obtain measures to verify compliance and regarding termination of contracts because of such impacts. Beyond this, Article 12 implements the option for the European Commission to adopt guidance about voluntary model clauses to facilitate compliance with Articles 7(2)(b) and 8(3)(c) regarding contractual assurances from suppliers to prevent or address negative environmental or human rights impacts. Finally, such contractual assurances may shield against liability as implemented by Article 22(1). Article 22(2) holds that if the contractual assurances from suppliers as envisaged by Articles 7(2)(b) or 8(3)(c) including the measures to verify compliance as required by Articles 7(4) and 8(5) have been implemented, the Buyer will not be liable for damages caused by an adverse impact arising as a result of activities of an indirect partner with whom it has an established business relationship, unless it was unreasonable to expect that the action actually taken by the buyer would be adequate.

Most relevant human rights due diligence laws in EU-member states, notably France, do not include specific provisions regarding supply chain contracts. In connection with this law, the *Loi de Vigilance*, it is even unclear whether it extends beyond first tier suppliers. It includes those actors with whom the enterprise has an 'established commercial relationship'. This term is interpreted by some as including first tier suppliers only because an established commercial relationship solely exists when a contractual relationship has been concluded. However, this is not confirmed in jurisprudence yet.
The German law, the *Lieferkettensorgfaltzpflichtgesetz*, does not extend beyond the first tier either. Article 3(6)(4) holds that the obligations under this law are limited to those suppliers with whom a contractual relationship has been concluded. However, Article 3(6)(9) stipulates that the company's policies have to be adapted if the buyer has substantial knowledge of abuse further up a supply chain. A central element in this law is Article 6(4)(2) which sets forth the obligation to implement contractual mechanisms. Buyers have to obtain contractual assurances. Article 6(4)(2) holds that the contractual assurances should adequately address human rights issues up the entire supply chain. Like the proposal of the European Commission, Article 6(4)(4) requires the implementation of risk-based measures to verify compliance in which according to Article 6(3)(2) most severe and most likely risks should be addressed first. The law does not include specific language on contractual enforcement, but it is hardly conceivable sufficient control as required by Article 6(4) and (5) will exist without it. In connection with this, the explanatory memorandum with the law to Article 7(1)-7(3) explicitly presumes that contractual penalties are an option. Articles 7(2)(3) and 7(3)(3) imply that termination rights should also be an option as well as more lenient means such as suspension of a business relationship.

The limited scope of due diligence in supply chains by focusing on contractual approaches implemented by this law may partially be explained by the fact that a minority of European companies currently undertakes (sufficient) human rights due diligence. Research commissioned by the European Commission in 2018 has shown that 37% of them undertakes human rights and environmental due diligence in connection with all relevant aspects of it and only 16% throughout the entire supply chain. Another 34% undertakes due diligence on specific topics like worker safety or land rights.

2. Is the reliance on contractual approaches justified?

The proposal of the European Commission has elicited many reactions. In these reactions it is observed that the current contractual approaches often perform poorly in terms of securing human rights and addressing human rights issues and, thus, the reliance on contractual mechanisms is not justified.
For example, usually supplier codes of conduct regarding environmental and human rights compliance are implemented in connection with regular sales contracts. However, a problem especially in relation to smaller sized suppliers is the imbalance in negotiating powers between the buying companies and these suppliers. Many suppliers depend on a very limited number of buying companies, while, particularly in less specialized industries, it is easy for the buying company to swap suppliers and, thus, create a race to the bottom. In this position, buyers frequently exert price pressure, to the extent that many suppliers have reported taking orders at prices which would not even cover production costs. Additionally, lead times are often too short, or buyers have the option to change or cancel orders last-minute and at will. Beyond this, they do not offer support to these suppliers, who often do not avail over the capacity to implement the required measures. Because of these sourcing practices, suppliers might not be able to pay wages, turn down undeclared work, and demand (unpaid) overtime. Therefore,

these sourcing practices should be addressed whereas as long as they exist it will be challenging to enhance the human rights situation. Furthermore, imposing all costs of complying and verifying Suppliers Codes of Conduct on suppliers, does not improve this situation either.

However, this issue of imbalance of power is partially addressed by the Unfair Trade Practices Directive in Agricultural Supply Chains. The directive applies to companies within the EU but also governs agreements concluded between EU based entities and suppliers outside the EU. The rationale behind this directive is a power imbalance between supply chain actors which could result in acceptance of trade practices which are considered to be manifestly unfair and may negatively impact livelihood of smallholders and workers in agricultural supply chains, not only in the first tier but also beyond this. Interesting is that the Directive defines in Article 1(2) when an imbalance of power occurs through the use of differences in turnover as an indicator. Article 3 of this directive identifies several trade practices that are considered to be unfair and, thus, prohibited, unless specific exemptions occur. The terms in section 1 of this article are prohibited altogether and the terms listed in section 2 are presumed to be unfair but allow exceptions. Examples of the terms mentioned in section 1 are late payments and short-term termination of agreements regarding fungible goods, although member states may allow an exemption if these goods can reasonably be sold elsewhere. Beyond this and according to Article 3(1)(c) more powerful buyers are not allowed to unilaterally change contractual terms, unless this regards a specific element, such as the agreed quantity, and this has been agreed upon. Furthermore, Article 3(1)(c) prohibits charging a supplier for advertising unless the advertisement is connected to the specific transaction and if a specific transaction is involved, this should according to Article 3(2)(d) be explicitly agreed upon including the amount charged and this amount should be based on objective and reasonable estimates. If an agreement has been concluded orally, the supplier may pursuant to Article 3(1)(f) require a written confirmation of the terms of the agreement.[3] Supplier are also protected in another fashion. It is according to Article 3(1)(h) prohibited to prevent the exercise of rights by suppliers or collaboration with public supervisors, for example, through cancellation of orders or removing products from the array of goods sold by the buyer.[4] However, it remains to be seen whether individual suppliers will nonetheless not experience a fear factor concerning their business opportunities and will still refrain from exercising their rights or only through collectivization of their complaint through, for example, industry organizations. To improve the situation regarding the imbalance of power in supply chains, one may consider to broaden this Directive to other supply chains where such imbalance exists as well.

Another issue connected with the use of codes of conduct in supply chains is that the implementation of these codes of conduct varies widely.[5] Some companies only publish them on their website without implementing them through contractual mechanisms.[6] Others implement a code of conduct through general terms and conditions. These contracts, however, do not always contain a reference to these terms and conditions. An example being that such reference might not be deemed necessary in specific instances.[7] Another category of companies consider such codes of conduct to be a core element of their contracts with suppliers.[8] However, they are often only implemented through ancillary documents such as general terms and conditions but also in umbrella agreements governing long-term business relationships between commercial parties.[9] Some contractual mechanisms even create third party rights to counter non-compliance of the code of conduct, for example on behalf of workers of a supplier.[10] Other companies prescribe self-evaluation by suppliers in their code of conduct or require the completion of surveys, depending on the perceived risk.[11] Although the implementation of codes of conduct varies, the majority of the globally operating enterprises who have implemented a CSR/BHR policy utilizes a contractual mechanism to enhance compliance with their code of conduct.

The content of a (supplier) code of conduct also significantly varies from company to company. Some provisions therein are relatively vague implementing an obligation to 'comply with all relevant local regulation' or using language like 'workers condi-

3. See also consideration 23.
4. See also consideration 25.
5. Anna Beckers, Enforcing corporate social responsibility codes: on global self-regulation and national private law, PhD Thesis Maastricht 2014, p. 41 ff; Louise Vytopil, Contractual control in the supply chain, Ph.D. Thesis Utrecht 2015, Eleven:Den Haag 2015, p. 121 ff, who focusses on labor related rights.]
6. Vytopil 2015, p. 123, 124, 129 and 135-138. Cf. Beckers 2014, p. 50-71, who also discusses whether a public statement may be relevant in connection with the interpretation of a contract or become binding through other avenues.
7. Vytopil 2015, p. 123, 124, 129, 130, 136 and 137.
8. Beckers 2014, p. 41-43; Vytopil 2015, p. 123, 129, 135, 136 and 137. Sometimes a supplier has to confirm in writing the receipt of the code of conduct. See Vytopil 2015, p. 137. Companies also refer to codes of conduct developed by third parties (such as NGOs) or to supporting documents such as ILO or OECD guidance (which raises the question whether these documents become binding on the supplier). See Vygtopil 2015, p. 124, 136 and 137.
9. Beckers 2014, p. 45-50.
10. Vytopil 2015, p. 125, 126, 132 and 138. However, third party rights are explicitly rejected in other contracts. See Vytopil 2015, p. 139.
11. See e.g. Vytopil 2015, p. 130, 132 and 139. Cf. SHIFT, Global Compact Network Netherlands and Oxfam, Doing Business with Respect for Human Rights, 2016, p. 56, accessible at http://www.shiftproject.org/resources/publications/business-human-rights-sustainable-development-coherent-strategy/.

tions compliant with local regulation', 'no use of child/forced labor' or 'human rights compliant production'.[12] Some codes even allow suppliers to aim for these goals, yet, (at this point) do not impose an obligation to achieve these objectives.[13] Other codes are much more specific as to the supplier obligations. Furthermore, few codes include all relevant social standards in connection with human rights. For example, very few codes of conduct require Free Prior Informed Consent (FPIC) of third parties if a supplier uses land belonging to these third parties for its operations.[14]

Finally, monitoring compliance with and enforcement of (supplier) codes of conduct range from virtually no action by the buyer to strict monitoring and enforcement, implementing third party audits.[15] Some companies even go beyond auditing and establish a dialogue with suppliers to discuss the situation and to improve compliance with the code of conduct or collaborate with (local) NGOs to audit compliance in dialogue with the supplier.[16] Audits by third parties (NGOs) might be more effective in instances where the company itself might not be very well informed on the (complex) local conditions and the measures a supplier is able to implement in practice.[17] However, termination of a contract because of breach often does not solve the CSR/BHR issue. On the contrary, it might even cause the issue to worsen since termination might force a supplier to contract other buyers who might be more lenient on these issues. For example, termination based on the use of child labor hardly improves the situation as long as families need child labor to secure their livelihood.[18] Furthermore, companies are also reluctant to terminate a contractual relationship with a supplier due to fears regarding replacement of the supplier. If the companies are unable to replace the supplier in question on short notice, they may try to improve the situation through dialogue instead.[19]

In its reliance on contractual assurances the European Commission seems to be recognizant of at least some of these issues.[20] For example, companies should according to Article 7(2)(d) of the proposal provide targeted and proportionate support to smaller sized suppliers with which they have an established business relationship to prevent negative environmental or human rights impact, for example, by financing, directly or through low-interest loans, guarantees of continued sourcing and assistance in securing financing to assist the implementation of the code of conduct as well as by technical guidance or training, management systems upgrading and according to Article 7(2)(e) collaboration with other companies in compliance with competition law. Article 7(3) and consideration 35 also mention the option to conclude a contract with an indirect business partner to secure the implementation of the code of conduct or a prevention action plan. Furthermore, Article 7(4) holds that the companies should bear the cost of third-party verification in relation to smaller sized suppliers. Beyond this, Article 8 includes comparable provisions in connection with the address of actual negative impacts, for example, in section 5. Thus, it is likely some of the worst contractual practices in which all the risks and costs connected with human rights and environmental compliance are shifted to suppliers are no longer allowed when the Directive is implemented. Beyond this, the European Commission may also consider implementing additional articles in the Directive or in its guidance on model contracts as set forth by Article 12 which resemble the provisions in the Unfair Trade Practices in Agricultural Supply Chains Directive for other types of supply chains where an imbalance of power between buyers and suppliers is prevalent. This may also weed out some of the worst sourcing practices. That said, it needs to be clarified in the (recitals of) the proposed Directive that the current contractual approaches are often not a sufficient manner to undertake environmental and human rights due diligence. Furthermore, the proposal is limited to established business relationships, whereas the UNGPs and OECD Guidelines require human rights due diligence in all supply chains and especially those in which the risks of human rights impacts are highest. Thus, these frameworks require human rights due diligence beyond established business relationships.[21] This implies contractual environmental and human clauses as well as contractual approaches in supply chains should not be limited to established business relationships but should focus on those supply chains with the most significant and irreparable harm or where risks have become irremediable.

That said, it is questionable whether (even the enhanced) approach of the European Commission is sufficient. In my view a more comprehensive review of supply chains contracts is required. Currently,

12. Vytopil 2015, p. 123, 130, 135 and 136. See for the international normative framework ILO-conventions 29, 105, 138 and 182.
13. Vytopil 2015, p. 130.
14. Cf. for agri-business OECD-FAO Guidance for Responsible Agricultural Supply Chains, p. 80.
15. Vytopil 2015, p. 128, 135 and 139.
16. SHIFT, Global Compact Network Netherlands and Oxfam, Doing Business with Respect for Human Rights, 2016, p. 74 and 81.
17. Cf. SHIFT, Global Compact Network Netherlands and Oxfam, Doing Business with Respect for Human Rights, 2016, p. 85.
18. SHIFT, Global Compact Network Netherlands and Oxfam, Doing Business with Respect for Human Rights, 2016, p. 72 en 73.
19. Vytopil 2015, p. 126, 137 and 139.
20. Some of them have also been addressed in Articles 4 and 5 as well as Annex II of the more specific Conflict Minerals Regulation, Regulation EU 2017/821, https://publications.europa.eu/en/publication-detail/-/publication/8b0e378b-3c59-11e7-a08e-01aa75ed71a1/language-en/format-PDFA1A.
21. OHCHR, Feedback on the Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence, 23 May 2022, p. 2 and 3.

such a more comprehensive contractual approach is proposed in the US. A team within the American Bar Association has developed model contractual clauses for supply chains especially aiming at workers' rights, but contracts based on this model could easily implement other human rights as well as the model includes a schedule P which has to be filled in by the parties and reflects the human rights parties desire to adhere to.[22] This model of the American Bar Association will be discussed in the next paragraph.

3. The ABA model clauses for supply chains

The ABA Model Contract Clauses to Protect Workers in Supply Chains (MCCs) set forth 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 the likely mandatory human rights due diligence law in the European Union.[23] While the most prominent shift in MCCs is that buyers share contractual responsibility for human rights with their suppliers and sub suppliers, other contract design changes are equally fundamental. 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. This regime aligns better with current and contemplated legislation as well as initiatives such as the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Responsible Business Conduct. In addition to the shift to human rights due diligence, MCCs stress the importance of providing remedy to those harmed, rather than merely using typical contractual remedies such as money damages which only benefit the contracting parties, and they introduce relational dispute resolution mechanisms. The MCCs are fully modular so interested parties may choose which provisions and what level of commitment are appropriate for a particular client.

Thus, the MCCs include model contractual provisions which regulate workers' rights issues in supply chains, but may be broadened. Furthermore, parties to the agreement may also agree on the responsible sourcing practices included in Schedule Q.[24] This is quite relevant as it has been observed in the foregoing that many of the current sourcing practices, such as short lead times, late payments, last moment alterations, the option to cancel other outstanding assignments in case of human rights violations and termination at will, to put it mildly, do not contribute to human rights compliance by suppliers. Schedule Q aims to change these practices and also to incentivize 'responsible exits' in case a buyer has tried to change the human rights situation with a supplier, but unsuccessfully.

4. Are the MCCs the silver bullet for Europe too?

Although the MCCs provide a good and relevant guideline for improving contractual mechanisms in supply chains, they are based on US contract law and include several features which are not compliant with European (continental) contract law systems and not necessarily either with the proposed EU Directive or supply chain due diligence laws from France, Germany and Norway. Thus, this model cannot be adopted in Europe lock, stock and barrel.

Furthermore, the MCCs include rather broadly defined notions in terms of dialogue with suppliers, remediation plans and third-party rights. Apart from legal uncertainty as to the interpretation of these terms this may make company lawyers reluctant to use them. However, I feel parties to a supply chain contract need to get used to these more open norms to implement sufficient environmental and human rights due diligence, which require true dialogue and collaboration to prevent and address environmental and human rights impacts. Instead of trying to push environmental and compliance risks up the supply chain, companies should better identify the need to meaningfully collaborate to address these issues in a meaningful manner which also benefits workers and other rightsholders for whom the due diligence is developed. Thus, these supply chain contract should be less an exercise to shift risks to suppliers but means to really address environmental and human rights risks in a collaborative stance. Thus, contractual mechanisms should depart from a typical legal risk shifting mechanism and become a legal mechanism to enable true and effective collaboration to enhance the environmental and human rights situation. This is reflected by the approach in the MCCs through the use of more open norms which require collaboration instead of a negotiation or legal discussion on interpretation of the contract and whether the buyer or supplier (usually the latter) has to bear the risk and cost if things go wrong. The proposal of the European Commission also par-

22. This schedule may be accessed at https://www.americanbar.org/content/dam/aba/administrative/human_rights/contractual-clauses-project/mccs-full-report.pdf It seems not advisable to use Annex I to fill in Schedule P as this may be too limited in terms of relevant human rights. See OHCHR, Feedback on the Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence, 23 May 2022, p. 6 and 7.
23. See the abstract of this project (note 4), p. 1 and 2. This paragraph is based on this abstract.
24. See for this model: Principled Purchasing Project, American Bar Association: Responsible Purchasing Code of Conduct: Schedule Q Version 1.0, accessible at https://www.americanbar.org/content/dam/aba/administrative/human_rights/contractual-clauses-project/scheduleq.pdf

tially reflects this, by, as has been elaborated hereinabove, requiring support by buyers for smaller suppliers, by requiring buyers to pay for (third party) audits at smaller suppliers' production locations and by pointing at options to collaborate (through contracts) with indirect supply chain partners or business peers. Therefore, a shift to more responsible contracting in supply chains is desirable aiming at the implementation of a better collaboration between buyers and suppliers and at better results for those for whom environmental and human rights due diligence is designed. This envisaged collaboration should not be shaped through contractual assurances, third party verification and legalistic and compliance driven approaches.[25] The focus should be on achieving effective outcomes for rightsholders.[26] For example, it is important a remediation plan is actually implemented and the effects of it monitored.[27] This should be done in a collaborative fashion. The MCCs reflect this enhanced approach through collaboration.

That said, the MCCs still need to be adapted to the European legal systems. From this conclusion a European working group has been[28] established which aims to develop European model clauses for supply chains building on the MCCs but adapting them to the European (continental) legal systems. Therefore, the European revision will not include an overall redraft of the MCCs but adaptations of the current clauses where necessary from a European perspective. In conducting this analysis, the focus is not only on the current contractual legal systems, but also the upcoming legislation discussed hereinabove. Obviously, the European contract law systems and details of the supply chain due diligence laws vary and, thus, it may be specific adaptations are required for specific countries. The working groups envisages to develop general European MCCs, also to accommodate the desire of many companies to use comparable clauses in every European country to the extent possible and not specifically adapt them for every country and indicate where specific legal systems require specific adaptations. The result will hopefully be European Model Clauses for Supply Chain Contracts commensurate with the current European contract law systems and the existing national and upcoming EU legislation on Human Rights Due Diligence. Article 12 of the proposed Directive holds the power of the European Commission to develop guidelines for model contracts. These European Model Clauses for Supply Chains Contracts may provide such a model.

5. Conclusion

In the foregoing it has been elaborated that contractual approaches, and especially (supplier) codes of conduct, constitute an often deployed means to undertake environmental and human rights due diligence in supply chains. This is reflected by the emphasis contractual approaches have gotten in the proposal of the European Commission for a Directive on environmental and human rights due diligence. However, the current contractual practices often perform poorly for the reasons explained, such as an imbalance in bargaining power and ensuing purchasing practices, poor implementation, unclarity over human rights expectations of buyers, lacking support for the supplier regarding implementation of measures and insufficient monitoring and enforcement. More importantly, the current contractual approaches often contribute to a risk shifting exercise instead of an effective and meaningful dialogue as well as collaboration between buyer and supplier to prevent and address environmental and human rights impacts.

The proposed Directive aims to prevent and mitigate some of these problems, but not sufficiently as a more comprehensive and coherent contractual approaches are needed. This may be partially achieved by implementing additional articles in the Directive or in the guidance of the European Commission on model contracts as set forth by Article 12. Such additional articles or guidance may resemble the provisions in the Unfair Trade Practices in Agricultural Supply Chains Directive and implement these in other types of supply chains where an imbalance of power between buyers and suppliers is prevalent. It also needs to be clarified in the (recitals of) the proposed Directive that the current contractual approaches are often not a sufficient manner to undertake environmental and human rights due diligence.

Furthermore, the MCCs provide a coherent and comprehensive approach through model contractual terms which are helpful to show companies how environmental and human rights due diligence may be undertaken in a meaningful manner through supply chain contracts. That said, the MCCs are not adapted to the European legal systems. Thus, adapting them for Europe is a feasible way forward to enhance the contractual approaches in supply chains in Europe too. This may pave the way to meaningful and effective collaboration between buyers and suppliers in Europe to implement effective environ-

25. Cf. OHCHR, Feedback on the Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence, 23 May 2022, p. 7 and 8.
26. OHCHR, Feedback on the Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence, 23 May 2022, ibid.
27. OHCHR, Feedback on the Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence, 23 May 2022, p. 7.
28. This working group consists of experts from France, Germany, Italy, the Netherlands, Poland, Spain/Portugal and the UK. The co-chair of the working group of the American Bar Association which has developed the MCCs is also co-chair of this group. The European Working Group has prepared a first draft of the model clauses which will be consulted with a broad audience in a later stage.

mental and human rights due diligence through supply chains contracts which truly assist in preventing and addressing environmental and human rights impacts.