

January 15, 2025

Sent by e-mail to:  
Responsible Contracting Project  
[info@responsiblecontracting.org](mailto:info@responsiblecontracting.org)

## Re: Responsible Contracting Project – European Model Clauses – Consultation feedback

Thank you for the opportunity to provide feedback to the Zero Draft European Model Clauses (the “EMC”). The Confederation of Swedish Enterprise has 60,000 member companies organized in 48 business and/or employer associations.

The aims of the EU Corporate Sustainability Due Diligence Directive (in the following the “CSDDD” or the “Directive”) – to foster responsible and sustainable business conduct promoting human rights and environmental protection – are important. At the same time, the Directive is a new, unprecedented type of legislation, transforming voluntary frameworks into binding law, subject to sanctions and civil liability, and it will be a challenge for the EU Commission and the national legislators to secure that the rules can both feasibly be applied in practice and deliver meaningful impacts. Companies need clear guidance on how to put meaningful measures into effect that also allows due flexibility when so doing and prioritizing actions. Even though any model clauses and guidance from the EU Commission relating thereto would be voluntary, it is possible that they will become a *de facto* standard that will have material practical implications for companies. Therefore, we would like to take the opportunity to provide our comments to the EMC.

**In brief**, we believe that companies will need clear guidance and support, allowing due flexibility, to secure meaningful compliance with the CSDDD and making it possible to apply the rules in practice and ensuring fulfilment of the aims of the Directive. It is also stated that the purpose of the coming Commission guidance about voluntary model contractual clauses is to provide support to companies to facilitate compliance. Contrary to their purpose, we are concerned that the proposed EMC (as drafted) are too comprehensive and will lead to extensive non-value adding work for companies, which will ultimately not be possible to implement in practice in a meaningful way and that will thus not benefit the protection of human rights and the environment, as anticipated. For the guidance to be helpful for companies, the model clauses must be less complex and less extensive, and the guidance and model clauses must not add to the CSDDD requirements. Our general comments to the EMC have been briefly summarized below. As we believe that a different form of guidance and model clauses will be needed, we are not commenting the EMC in detail.

- While it is good that the Directive and the clauses intend to promote collaboration among stakeholders rather than shifting responsibility in the value chain, **we are concerned that lengthy model clauses like these will** – although voluntary – **lead to difficult, lengthy (and meaningless) contract negotiations and efforts to make the clauses fit the relevant contractual framework**. These suggested clauses may in fact be much longer and more complex than some of the actual commercial agreements that these suggested clauses would form part of. The EMC also include provisions that may duplicate or

contradict provisions in the supply agreement. This unduly adds to the complexity of handling the EMC in practice in a commercial context.

- Companies will need guidance and support to secure meaningful compliance with the CSDDD and this is also the aim of the coming Commission guidance about voluntary model contractual clauses. **For the guidance to be helpful for companies, any model clauses must be less complex and less extensive** and must **not add to the CSDDD requirements**. A lengthy agreement may prioritize formal requirements over practical guidance causing contracting parties to focus on ticking boxes (lip service) rather than achieving sustainability goals. Clear and concise instructions and guidance would be more helpful for contracting parties to take meaningful actions to achieve the objectives of the legislation. Any model clauses should facilitate collaboration, not impose strict requirements. As an example, the inclusion of indemnification provisions will add risk and complexity that will not contribute to the fulfilment of the aims of the Directive.
- Even though the legislation targets larger companies, it will affect the entire supply chain. While larger companies may have the resources to negotiate this type of comprehensive set of clauses, they **may be too complex and intimidating for smaller suppliers**, both to understand and to implement, potentially creating delays in the supply chains and/or increased costs. These types of lengthy and complex clauses could potentially even discourage smaller companies from collaborating with larger companies, causing loss of business and supply disruptions.
- We expect any model clauses to be **based on the civil law** system and to the furthest possible extent rely on available supporting commercial law statutes and codes. As drafted the EMC seem to be based on or inspired by common law, which would add to the concerns expressed above.
- **Any model clauses must not repeat what would be applicable under law** anyway and should not reformulate definitions used in the CSDDD.
- We believe that it should be explored whether brief model clauses could be combined with a **“best practice due diligence code of conduct” or similar documentation, which would facilitate collaboration** and hence be more helpful for businesses.

**Finally**, the design of the guidance and model clauses will be important to make it possible for companies to meaningfully apply the rules in practice. As mentioned above, the Confederation of Swedish Enterprise believe that a different form of guidance and model clauses will be needed for the model clauses to be practically useful. Such guidance must not add to the administrative burden of companies nor require complex legal negotiation and interpretation. Instead, businesses need practical guidance on how to meaningfully collaborate to contribute to responsible and sustainable business practices. T

We remain at your disposal.

Kind regards,

The Confederation of Swedish Enterprise  
Business Policy and Law Division

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