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## **From cascading contractual obligations to collaborating on due diligence: Our feedback on European Model Contract Clauses (EMCs)**

The Corporate Sustainability Due Diligence Directive (CSDDD) is a groundbreaking law: It not only requires large companies to do due diligence and prevent, mitigate and remedy their human rights and environmental impacts, but also requires them not to push the hard work onto their suppliers. The CSDDD enshrines into law a spirit of collaboration: Companies must adjust their business practices, including how they make contracts, and must support their suppliers – smallholder farmers, factories, and other micro, small and medium enterprises – throughout the process.

As the lawyers behind the Responsible Contracting Project have pointed out, this legal obligation of collaboration starts with contracts. It is in this context that they have put together a set of [European Model Contract Clauses](#) to put due diligence and cost-sharing at the heart of business relations.

At the Fair Trade Advocacy Office, in collaboration with the World Fair Trade Organization-Europe and Fairtrade International, we have submitted feedback on the Zero Draft of the European Model Contract Clauses (EMCs). In the process, we have had extensive engagement with smallholder producer representatives and the legal experts behind this initiative during several consultations. We believe these model contract clauses are an important step towards ensuring responsible contracting practices.

To make sure that these clauses work in practice, the Responsible Contracting Project will be collecting feedback until January 15, 2025. The feedback received will be integrated (anonymously) into the EMCs 1.0, which is expected to be published by Summer 2025. For more information check the Responsible Contracting Project [website](#).

### **Living Income and Living Wages**

The EMCs have recognised the importance of paying living wages and prices that allow for living incomes. This is a crucial aspect of responsible business conduct and is explicitly mentioned in the CSDDD. However, the current draft treats living wages and living incomes as

interchangeable, which is inaccurate. Living wages apply to hired workers, while living incomes pertain to self-employed farmers and encompass income from various sources, not just the sale of goods. Therefore, we propose amending the clause to recognise this distinction, and outline a progressive pricing schedule and costing strategy to ensure the payment of living wages and living income reference prices. This should include:

- A commitment to collaborate and agree on a price that enables farmers and hired workers to cover their costs of sustainable production, health and safety measures, and achieve a decent standard of living.
- A clear timeframe (months or years) for achieving living wage payments.
- A commitment to annually review the agreed price and align it with living income benchmarks.

For more information, please see this [guidance document](#) on enabling Living Income.

### **Purchasing practices**

Unfair purchasing practices significantly hinder the ability of suppliers to implement responsible business practices and pay living wages – a fact that is also recognised in the CSDDD, which calls on companies to adjust their purchasing practices if needed. We therefore support that the EMCs incorporate purchasing practices, and recommend that they should explicitly prohibit practices that are already outlawed in the [Directive on Unfair Trading Practices in the Agri-Food sector](#). This includes:

- Unilateral contract changes relating to aspects like delivery, quality standards, payment terms, or prices.
- Late payments, especially for perishable products.
- Payments unrelated to the sale of goods.
- Unlawful acquisition or disclosure of the supplier's trade secrets.
- Commercial retaliation against suppliers exercising their contractual or legal rights.
- Requiring suppliers to compensate for customer complaints in the absence of negligence or fault.
- The return of unsold goods and making the supplier bear the cost of discounts or advertising.

Further, it is essential that the EMCs incorporate a prohibition of unilateral imposition of timelines, such as short manufacturing lead times. Instead, timelines should be jointly developed, allowing production to occur within regular working hours. The EMCs should also consider ways to prevent the unfair practice of [purchasing below the cost of sustainable production](#), which should be determined by the seller.

### **Shared responsibility**

A core principle of responsible contracting is shared responsibility. It is crucial to prevent the burden of compliance from falling disproportionately on suppliers, who often hold less power in the buyer-supplier relationship. This is especially the case for smallholder farmers, who often only have a single buyer who dictates the terms of the relationship. We recommend revising certain clauses in the EMCs to ensure a more balanced approach to HREDD implementation. For example, while the EMCs allow for the buyer to provide “reasonable support” to the supplier, the term “reasonable” should be further defined, aligning with the CSDDD’s language of “targeted and proportionate support”. The buyer should not dictate the support needed; it should be a collaborative decision.

### **Creating a safe space to speak up**

The EMCs also spell out under what circumstances buyers can ask suppliers for information, for instance on their compliance with codes of conduct or due diligence processes. To protect suppliers and producers from retaliation, it is crucial to strengthen confidentiality rules that accompany these requirements. Suppliers need assurance that they can speak up safely, and smallholder farmers are often vulnerable to commercial blacklisting when they report risks. Companies must also ensure they follow data protection laws and uphold a non-retaliation policy, and strong confidentiality measures to prevent reputational harm.

### **Responsible disengagement**

Just as the CSDDD, the EMCs foresee that if human rights issues do arise, companies should prioritise staying and supporting suppliers, rather than cut-and-run behaviour. However, to better align with the CSDDD, the EMCs should put into concrete contractual language this obligation that disengagement should only happen as a last resort, when other efforts to prevent or fix the issue have failed. This is essential to ensure that suppliers, especially

smallholder farmers, are not left to fend for themselves as they attempt to address the environmental and/or human rights impacts.

We are confident that by incorporating these suggestions, the EMCs can become a powerful tool in promoting responsible contracting practices and putting human rights and environmental due diligence into practice.

You can read our detailed feedback here: [[PDF link](#)]

For more information about our work on Human Rights and Environmental Due Diligence, please contact Alena Kahle, Senior Policy and Project Coordinator at [kahle@fairtrade-advocacy.org](mailto:kahle@fairtrade-advocacy.org).



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