Suggestions for improving the communication of the European Model Clauses for Responsible and Sustainable Supply Chains

International Institute for Information Design

Comments submitted in response to the consultation co-ordinated by the Responsible Contracting Project, 2 December 2024.

Comments from a team of information designers and writers

Introduction

Thank you very much for the opportunity to provide feedback on the Zero Draft Consultation Version of the European Model Clauses (EMCs).

We acknowledge and appreciate the immense efforts that the European Working Group (EWG) have invested to prepare this draft of the EMCs, in collaboration with the Responsible Contracting Project.

How information is presented has a substantial impact on how it is ultimately perceived, understood and acted upon. We would therefore like to provide the EWG with some feedback on the presentation of the clauses, in the hope that our constructive suggestions may assist the preparation of the next draft of the EMCs.

The *Introduction to the Zero Draft for Consultation* already acknowledges the wider role of contracts in communication. It notes that

> "Contracts are ... 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." (page 8).

But while it warns against "adherence to more traditional contractual language" (page 10), we think it could move still further in the direction of plain language.

Who we are

We are a team of information design practitioners with backgrounds in plain language, legal translation, law, user experience and contract negotiation, coordinated by the International Institute for Information Design (IIID). During the recent Information Design Summer School, we worked together to review and provide feedback on the EMCs, through the lens of information design.

Our team:
Hilary West, in-house lawyer, The Netherlands
Dr Peter Hornsby, user experience designer, UK
Sarah Tayeb, legal designer, Belgium
Gwendoline Clavé, translator, France
Tania Malréchauffé, visual designer, Finland
Dr Rob Waller, information designer, UK

The ISO standard for plain language

Our suggestions are largely based on the recently published ISO Standard for plain language (ISO 24495-1: 2023 Plain Language – Part 1: Governing principles and guidelines).

One of our number (Rob Waller) was a member of the drafting committee, representing IIID, and is also involved in the drafting of a supplementary part focused on legal communications (ISO 24495-2: 2023 Plain language – Part 2: Legal communication, still in committee).

Our approach

We believe that incorporating information design concepts into the EMCs can significantly enhance their readability and usability, and increase their adoption and success.

In preparing our feedback, we have focused on trying to make the content:

- **easier to read and understand**, both for people who need to use and implement them, and for the general public (who may not have any knowledge or background in this subject area); and
- **easier to include into commercial contracts**, so that legal teams can more easily (a) incorporate relevant clauses into existing or future contracts, and (b) justify why the clauses are important to relevant business stakeholders.

Rather than redrafting or reformatting the clauses in their entirety, we have chosen to provide some language and layout revision suggestions for some select clauses. In this way, we hope to illustrate some of the key information design principles that we believe could be beneficial for the EMCs.

Note that each before-and-after example has been provided by a different member of our team as part of their work for the summer school programme. There are therefore differences of approach to language and design, which would be resolved should these ideas be accepted and implemented in a future stage of the EMC project.

We have prioritised information clarity and readability, rather than minimising the number of pages. This is because we believe that the clauses would benefit from a layout with more white space and design elements, including summaries, to help the reader better understand the clause content.

Presenting the clauses in the context of guidance and commentary

We note that the EMCs will be presented alongside other materials. In the introduction (page 9) you state that:

> 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.

In the Zero Draft, these elements are presented in separate documents. The commentary and guidance is much greater in length than the clause, and includes descriptions of complex processes.

We have confined our feedback to the clauses themselves, but we note that the commentary and guidance is a challenging read. It too would greatly benefit from clearer explanations, including visualisations such as diagrams and flow charts.

Principles of plain language

What is plain language?

Plain language is communication that puts readers first. It considers:

- what readers want and need to know;
- readers' level of interest, expertise and literacy skills, and
- the context in which readers will use the document.

Wording, structure and design are so clear that intended readers can easily:

- find what they need,
- understand what they find, and
- use that information.

Benefits of plain language

The ISO standard (ISO 24495-1: 2023 Plain Language – Part 1: Governing principles and guidelines) states in its introduction (formatted here as bullet points):

"Extensive studies have shown that:

- Writing in plain language saves time or money (or both) for readers and organizations.
- Plain language is more effective and produces better outcomes.
- Readers prefer plain language.
- For organizations, plain language is an important way to build trust with the readers.
- The process of translating is more efficient for plain language documents than for documents that are difficult to understand."

Four governing principles

Principle 1: Readers get what they need (**relevant**)

Principle 2: Readers can easily find what they need (**findable**)

Principle 3: Readers can easily understand what they find (**understandable**)

Principle 4: Readers can easily use the information (**usable**)

The four principles of plain language

From ISO 24495-1:2023 Plain Language, Part 1: Governing principles and guidelines

Relevant:
principle 1 in practice

Get to know your readers and their needs:

- Who is going to read the European Model Clauses?
- Where and on which medium?
- When and how much time will they have to do so?
- What will be their goals and priorities?
- How well do they know the topic?

Findable:
principle 2 in practice

Organise your document in a way that will meet your readers' needs:

- Start with the information that is most important to your readers.
- Build a logical structure (e.g. based on job roles, or project stages).
- Use clear headings and subheadings.
- Make the structure apparent with fonts, colours, text size, spacing, etc.
- Add navigational aids (e.g. table of contents and summaries).

Understandable:
principle 3 in practice

Use language that your readers will understand:

- Use everyday language (no jargon or archaic words).
- Avoid long words and words that have several meanings.
- Write short sentences — but vary sentence length.
- Prefer the active voice, action verbs, and simple syntax.
- Avoid negative statements.
- Use bulleted or numbered lists where relevant.
- Use visual elements to support text (e.g. icons or diagrams).

Usable:
principle 4 in practice

Assess the document continuously in the design phase.

- Test the document with readers.
- Keep assessing how readers use the document.

Example 1 Plain language and graphic structure

Before

Most EMC clauses are presented in this form. There are some headings, but the text is presented in quite dense paragraphs.

1.1 Human Rights and Environmental Due Diligence (HREDD)

(a) Joint commitment to HREDD: Buyer and Supplier each covenants to establish and cooperate in maintaining a HREDD process in connection with the Goods governed by the Agreement, in accordance with the standards set out in the OECD Guidance. The HREDD process shall be appropriate to each party's size and circumstances. If Supplier is an SME, Supplier can opt to establish its own HREDD process or to participate and cooperate in Buyer's HREDD process as clearly requested and instructed by Buyer.

(b) Stakeholder engagement: Buyer and Supplier must engage Stakeholders at each step of the HREDD process set out in Clause 1.1. Such Stakeholder engagement must be on-going, responsive, effective and conducted in a culturally appropriate format and in a manner that is free of manipulation, discrimination, interference, coercion, and intimidation. The parties shall provide Stakeholders with the information necessary for them to meaningfully engage in the HREDD process. Buyer and Supplier may prioritize types of engagement according to severity and likelihood of Adverse Impacts. Buyer and Supplier shall adequately document the Stakeholder consultation process and outcomes to enable Buyer to comply with the relevant reporting requirements under applicable law.

After

Unnecessary words deleted.

BEFORE

'If Supplier is an SME, Supplier can opt to…'

AFTER

'SME Suppliers can…'

Bullet lists reveal the structure of the sentence, and make reading easier and quicker.

1.1 Human Rights and Environmental Due Diligence (HREDD)

(a) **Joint commitment to HREDD**: For the Goods governed by the Agreement, Buyer and Supplier will create and maintain a HREDD process:

- appropriate to their size and circumstances; and
- using the OECD Guidance standards.

SME Suppliers can either:

- establish their own HREDD process; or
- participate and cooperate in Buyer's HREDD process.

Each party is independently responsible for upholding its HREDD Obligations under this Agreement, and a failure to do so by one party will not relieve the other party of its HREDD Obligations.

(b) **Stakeholder engagement**: Buyer and Supplier must engage Stakeholders at each step of the HREDD process in a way that is:

- ongoing, responsive, effective, and culturally appropriate; and
- free of manipulation, discrimination, interference, coercion, and intimidation.

The parties will provide Stakeholders with all information necessary for them to meaningfully engage in the HREDD process.

Buyer and Supplier:

- may prioritize engagement types according to severity and likelihood of Adverse Impacts, and
- shall adequately document the Stakeholder consultation process and outcomes to enable Buyer to comply with the relevant reporting requirements under applicable law.

A graphically structured text will be easier to adapt and integrate into existing contracts. This is because each element of the content sits on its own, rather than being embedded in a complex sentence or paragraph.

Example 2 Plain language, graphic structure and visualisation

Before

Article 5: Dispute Resolution with Stakeholders

5.1 Dialogue

The Corrective Action Plan set out in Article 2 contemplates establishing and, if necessary, using a dialogue-based dispute resolution mechanism that is compliant with UNGP 31 and that involves an independent facilitator and allows adversely affected Stakeholders to file grievances. The mechanism must also allow for representation by civil society organisations and other relevant associations representing the interests of adversely impacted Stakeholders. This dialogue-based dispute resolution mechanism requires the participation of both Buyer and Supplier. It may be established at the time the Corrective Action Plan, as part of that Plan, or it can be a component of the OLGM[s], or of some other dialogue-based mechanism maintained by a third party, provided that such mechanism meets the criteria set out in UNGPs 29 and 31.

5.2 Escalation mechanism

[If national law allows arbitration on human rights issues:] If a grievance is not resolved between one or both parties and the Stakeholders referred to in Section 5.1 in the dialogue based process referred to in Section 5.1 [within a reasonable period proportionate to the nature and the salience of the Adverse Human Rights Impact][within X months], then the grievance shall be settled by arbitration in accordance with [the Hague Rules on Business Human Rights Arbitration][arbitration rules] (the "Arbitration Rules") in effect on the date of this Agreement. The arbitration shall be administered by [arbitral institute] and the number of arbitrators shall be [one][three]. The seat of arbitration shall be [X]. The language of the proceedings shall be [language]. The award shall include compliance with the Corrective Action Plan as contemplated by Section 2.1.

[If national law does not allows arbitration on (certain) human rights issues, then for these issues:] If a grievance is not resolved between one or both parties and the Stakeholders referred to in Section 5.1 in the dialogue based process referred to in Section 5.1 [within a reasonable period proportionate to the nature and the salience of the Adverse Human Rights Impact][within X months], then the grievance shall be settled by [competent national court of the State in which the Adverse Impact occurred].

5.3 Non-retaliation

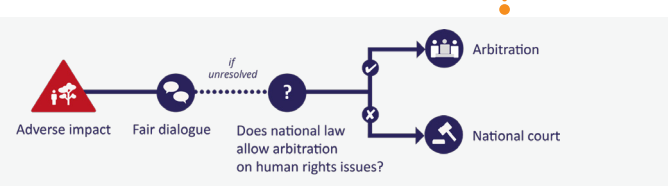
Parties shall not take any adverse action against any person on account of such person having spoken to parties' representatives, supplied information or otherwise having cooperated in any fashion with parties or their representatives or with dispute resolution referred to in Section 5.2.

The process is visualised simply, so readers can quickly grasp the main stages.

After

ARTICLE 5

Dispute Resolution with Stakeholders



Listing elements in a short and clear way makes it easier to read, understand and take action.

1. Dialogue-based mechanism

Dialogue-based dispute resolution mechanism must:

- be compliant with UNGP 31
- involve an independent facilitator
- allow affected Stakeholders to file grievances
- allow associations to represent the interests of affected Stakeholders, and
- involve participation of both Buyer and Supplier.

This dialogue-based mechanism can be established either as part of either :

- the Corrective Action Plan (set out in Article [2]) or,
- the OLGM(s), Operational Level Grievance Mechanism(s) (set out in Article [1]), or,
- other dialogue-based mechanism maintained by a third party, if such mechanism meets UNGPs 29 and 31's criteria.

For online versions, direct links can save reader's time.

2. Escalation mechanism

If a grievance is not resolved in the dialogue based process [within a reasonable period proportionate to the nature and the salience of the Adverse Human Rights Impact] / [within X months], and :

A If the national law allows arbitration for this specific human right issue, the grievance shall be settled by arbitration.

- Arbitration rules are : [the Hague Rules on Business Human Rights Arbitration] / [arbitration rules] in effect on the date of this Agreement.
- Arbitration shall be administered by [arbitral institute] and the number of arbitrators shall be [one] / [three].
- Seat of arbitration shall be [X].
- Language of the proceedings shall be [language].
- Award shall include compliance with the Corrective Action Plan (Article [2.1])

B If the national law does not allow arbitration for this specific human right issue, the grievance shall be settled by [competent national court of the State in which the Adverse Impact occurred].

Using [ ] + grey type show drafters where they need to complete the text. A list format could also help make sure nothing is left out.

3. Non-retaliation

Parties shall not retaliate against any person for having spoken to parties' representatives, supplied information or having cooperated in any fashion with parties or their representatives or with dispute resolution referred to in Section 2.

Example 3 Plain language and graphic structure

Before

Article 3: Remedies

3.1 Notice of Default, Cure Period, and Breach

(a) Right to Cure and Breach: Failure to satisfy an HREDD Obligation shall constitute a default, "HREDD Default", which must be cured by an enhanced Prevention Action Plan in the case of a potential Adverse Impact or by an enhanced Corrective Action Plan in the case of an actual Adverse Impact. If the HREDD Default is not cured by the defaulting party within [an appropriate period][X days][Y weeks][a period agreed by the parties in the Agreement] after receipt of a written notice from the other party, such failure to cure shall constitute a breach of this Agreement.

(b) Cooperating in Cure: The parties shall cooperate in good faith to cure the HREDD Default.

(c) HREDD Default with an Actual Adverse Impact: For the avoidance of doubt, if a HREDD Default leads to, or is otherwise associated with, an actual Adverse Impact, curing such HREDD Default will require, at a minimum, preparing and implementing a Corrective Action Plan as indicated in Article 2 on remediating Actual Adverse Impacts.

3.2 Exercise of Interim Remedies in the Event of a HREDD Default

(a) Cumulative Remedies: Remedies shall be cumulative, non-exclusive of, and without prejudice to any other remedies provided hereunder or by applicable law.

(b) Interim remedies: Interim remedies are those remedies that can be exercised by the non-defaulting party during the cure period for a HREDD Default, "Interim Remedies". A party's exercise of Interim Remedies shall not be construed as constituting a waiver of its rights. Interim Remedies include, without limitation:

(i) Demanding adequate assurances from the defaulting party of cure or due performance in conformity with this Agreement. Such assurances shall be fair, reasonable, non-discriminatory, and appropriate to the parties' size and circumstances.

(ii) Demanding that the defaulting party take active measures, such as the immediate cessation of activities that could aggravate existing or create new Adverse Impacts. Such measures may include Supplier's termination or removal of employees, if permissible under applicable law, and/or other Representatives in accordance with applicable laws, placing its supplier(s) or subcontractor(s) on notice of an Adverse Impact that the parties reasonably believe was caused or jointly caused by such supplier or subcontractor, requiring those entities to take corrective action to remedy the Adverse Impact, and, if it becomes clear that remedy is not forthcoming or that continuing the relationship will aggravate or create additional Adverse Impacts, terminating the contract or affiliation with the sub-supplier(s) or subcontractor(s).

(iii) Suspending payments, whether under the Agreement or other agreements, until the non-defaulting party determines, in its reasonable discretion, that the defaulting party has taken appropriate remedial action, as indicated in Section 3.1 on Breach and Notice of

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After

The article starts with a clear problem statement

Question headings in a table help readers quickly see key information

ARTICLE 3

Remedies

If Buyer or Supplier fails to meet an HREDD Obligation, such failure will constitute an "HREDD Default."

A. Prevention or Correction

The defaulting party must cure the HREDD Default:

How?	When?	Or what?
By preparing and implementing an enhanced Prevention or Corrective Action Plan, as appropriate.	Within [an appropriate period][X days][Y weeks][a period agreed in the Agreement] after receiving a written notice from the other party.	Failing that, the defaulting party will be in breach of this Agreement.

The parties must cooperate in good faith to cure the HREDD Default.

B. Indemnification

Unless the defaulting party is an SME, it must indemnify the other party and its Representatives, affiliates, successors and assigns (collectively, "Indemnified Party") against [any and all] losses, costs, and damages.

If the Indemnified Party individually or jointly caused the breach, the parties must determine its degree of contribution — following the dispute resolution process set out in Article 5 if necessary. Indemnification will be reduced in proportion to the agreed degree of contribution.

C. Interim Remedies

During the cure period for a HREDD Default, the non-defaulting party may exercise one or more contractual or legal remedies, "Interim Remedies," without waiving its rights.

For instance, the nondefaulting party may:

- require the defaulting party to provide adequate assurances of cure or due performance;
- require the defaulting party to take active measures, such as:
  - ceasing any problematic activities immediately,
  - terminating or removing employees or Representatives, or
  - requiring corrective action from its sub-suppliers or subcontractors and terminating their contracts if necessary;
- suspend payments until the nondefaulting party determines that the defaulting party has taken appropriate remedial action[. If a party jointly caused the Default by failing to meet its own HREDD Obligations, that party cannot suspend payments];
- obtain damages caused by the HREDD Default. If the other party caused or jointly caused the Default, damages will be reduced proportionally to that party's contribution.

Guidance in the margin

The choice of plan depends on the nature of the Adverse Impact caused by the HREDD Default:

- a potential Adverse Impact requires an enhanced Prevention Action Plan — see Article 1.1 (c)
- an actual Adverse Impact requires an enhanced Corrective Action Plan — see Article 2 (a).

Use the active voice to show who does what, and help readers recognise their rights and obligations

Make abstract concepts easier to grasp with examples that take little effort to find, read and understand

Example 4 The effect of just adding graphic structure

Before

This paragraph includes a 93 word sentence.

The EU's clear writing guide recommends 20 words per sentence as a suitable average.*

Exercise of Interim Remedies in the Event of a HREDD Default
Demanding that the defaulting party take active measures, such as the immediate cessation of activities that could aggravate existing or create new Adverse Impacts. Such measures may include Supplier's termination or removal of employees, if permissible under applicable law, and/or other Representatives in accordance with applicable laws, placing its supplier(s) or subcontractor(s) on notice of an Adverse Impact that the parties reasonably believe was caused or jointly caused by such supplier or subcontractor, requiring those entities to take corrective action to remedy the Adverse Impact, and, if it becomes clear that remedy is not forthcoming or that continuing the relationship will aggravate or create additional Adverse Impacts, terminating the contract or affiliation with the sub-supplier(s) or subcontractor(s).

With graphic structure

The new version makes no changes to the wording – the only difference is to the graphic structure.

Line breaks, bullet points and bold type make the structure of the text easy to see, reducing the reader's cognitive load.

Exercise of Interim Remedies in the Event of a HREDD Default

Demanding that the defaulting party take active measures, such as the immediate cessation of activities that could aggravate existing or create new Adverse Impacts.

Such measures may include

- **Supplier's termination or removal of employees**, if permissible under applicable law, and/or other Representatives in accordance with applicable laws,
- **placing its supplier(s) or subcontractor(s) on notice of an Adverse Impact** that the parties reasonably believe was caused or jointly caused by such supplier or subcontractor, requiring those entities to take corrective action to remedy the Adverse Impact,

and, if it becomes clear that remedy is not forthcoming or that continuing the relationship will aggravate or create additional Adverse Impacts,

- **terminating the contract or affiliation** with the sub-supplier(s) or subcontractor(s).

* European Commission: Directorate-General for Translation and Field, Z., *How to write clearly*, Publications Office of the European Union, 2012, https://data.europa.eu/doi/10.2782/54318

Making the model clauses easy to integrate into contract communications

Resources for integration into contracts and guidelines

The model contract clauses are motivated by human rights and environmental concerns. **But if they only exist in specialist language there is a danger that they will remain there, inaccessible to people without legal or commercial training.** No doubt others would provide translations and interpretations, but there is an opportunity for projects such as these to take more control of how this initiative is implemented and communicated.

We recommend **developing a structured set of key messages** – standard wordings for explaining products or concepts, which vary by audience or context.

Without a serious, sincere and radical effort to communicate to all participants in the supply chain, **the ultimate beneficiaries of HREDD could be left out of the conversation entirely**: the workers, who need communications in their own language, many of whom were deprived of a good education.

The resources might include:

- The original clause, expressed in **legally sound plain language**.
- A **summary version** that expresses its purpose in general terms.
- **Diagrams and flowcharts** that clarify processes.
- Links to **training**, or to **model documents** that can help implement the clauses.
- Materials suitable for **public information** about the EMCs.

Model documents

The resources might include all communications related to the model contracts. They should be based on an understanding of who the users are, and what they need at each stage of the processes that affect them.

The EMCs make reference to various document types to be used in reporting. For example 1.1 (d) (iii) mentions "questionnaires, audits, certifications and scorecards", and deals with the possibility that they may "[fail] to satisfy Buyer's minimum standards".

So the resources may include document templates to help suppliers communicate to the expected standard. This approach was taken in a pioneering contract design project reported by Waller et al (2016),* in which a range of contract requirements were supported by model documents that helped SME suppliers provide quotations and invoices in the correct format.

The principle here is that the model clauses themselves are not a complete solution, but rather the legal underpinning of a communication process that ensures the kind of cooperative efforts the clauses are intended to encourage.

* Robert Waller, Jenny Waller, Helena Haapio, Gary Crag, and Sandi Morrisseau (2016), Cooperation through clarity: designing simplified contracts, *Journal of Strategic Contracting and Negotiation*. vol 2 issue 1: 48-68.

The different audiences

Buyers at the top of the supply chain will usually have access to sophisticated corporate resources. Further down the supply chain access to these resources becomes less likely, and firms may welcome help in communicating the new contract clauses to their staff and suppliers.

The full range of documents potentially needed is considerable, and they can only be drafted in the context of each firm's operational processes. But the EMC documentation could flag up the need for them, and in the case of more radical ideas (such as comic book communications for employees) could point to available guidance.

Audience		***What they need***
Contract specialists	Contract and commercial management, procurement and legal teams, in the buyer and seller companies. They understand traditional contracts and may not feel the need to change.	Contract clauses that are legally sound, clear and unambiguous. Guidance about how to integrate the model clauses into contracts.
Managers responsible for operations and processes	The managers in the buyer and seller companies who negotiate deals and relationships. Managers responsible for sustainability and human resources.	Contract guide, explaining how the contract affects their operations, and how to measure compliance. Paperwork that reflects the contract commitments (for example, on change order forms, or quotations). Checklists and other tools. Training.
Office staff	The people who place or receive orders, and manage their progress through manufacturing.	Processes and paperwork that reflect the commitments made in the contract.
Workers	There may be language and literacy issues.	Plain language versions or comic book explanations could be designed for this group.
Observers and auditors	External bodies such as trade unions, industry bodies, investors, advocacy groups and journalists. They need to know what commitments have been made, so they can monitor their effect and advocate for improvements.	Clear explanation of the new requirements. Access to compliance data.
Consumers	Including those who communicate with them, such as journalists, influencers and retail staff.	Reassuring messages about the provenance of the products they are buying. Brand promises about sustainability and human rights.

Finally

We recognise the very important work that the EWG and RCP are doing to promote responsible contracting principles, and we thank you again for the opportunity to provide feedback on the EMCs.

Please let us know if you have any questions about any of our feedback. We are happy to provide further information or clarification if necessary, and we would welcome the opportunity to be involved in the future development of the EMCs.

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