

Evolving ESG Clauses in Commercial Contracts: Legal and Environmental Implications**Toqsanbaeva Ayjamal**

LLM, Tashkent state university of law

Annotation: This article explores the integration of Environmental, Social, and Governance (ESG) clauses into commercial contracts in light of evolving regulatory frameworks such as the EU Corporate Sustainability Due Diligence Directive (CSDDD). It discusses the legal complexities and enforceability issues, particularly in the context of Anglo-Saxon legal traditions, and highlights how ESG obligations influence supply chain dynamics. The paper also analyzes potential disputes arising from vague ESG commitments and proposes solutions to strengthen contractual mechanisms that support corporate sustainability goals.

Keywords: ESG clauses, commercial contracts, sustainability, due diligence, supply chains, CSDDD, corporate responsibility, contract law, environmental regulation, arbitration.

The global focus on environmental and social governance (ESG) is intensifying amid growing concerns about the planet's health and sustainable business practices. The European Union's adoption of the Corporate Sustainability Due Diligence Directive (CSDDD) in May 2024, alongside the Corporate Sustainability Reporting Directive (CSRD), underscores a shift towards legally binding obligations that demand companies integrate ESG concerns across their operations, especially within supply chains. These obligations have elevated ESG clauses from optional inclusions to potentially critical elements in commercial contracts.

What Are ESG Clauses? ESG clauses are contractual provisions that bind businesses and their suppliers to certain environmental, social, and governance standards. These can stem from internal net-zero pledges or arise from external regulatory frameworks such as the CSDDD. The European Commission is expected to provide further guidance and introduce voluntary model clauses. These may address matters including due diligence processes, emissions reporting, waste disposal practices, labor rights, and more.

Green clauses specifically target environmental responsibilities. They often compel parties to reduce carbon emissions, transition to renewable energy, adopt sustainable procurement practices, and comply with climate targets. Green clauses are particularly relevant where supply chains contribute substantially to a company's overall environmental footprint. The Chancery Lane Project in the UK offers a library of climate-aligned clauses under English law, enabling businesses to integrate environmental standards into their agreements without requiring extensive redrafting. These model clauses are designed to align with specific types of contracts and environmental objectives. ESG and green clauses are gaining traction in mergers and acquisitions through warranties and representations. For example, a seller might warrant that their operations comply with environmental regulations, or that no pending investigations are in place. If such assertions prove false, indemnification or damages may be triggered. These provisions reflect growing investor concern regarding reputational risks and regulatory breaches linked to ESG failures. Despite their potential, enforcing ESG clauses remains complex. Multi-jurisdictional supply chains create compliance gaps, particularly in regions with limited environmental regulation. Furthermore, companies may hesitate to impose stringent obligations on long-term partners, fearing commercial disruption.

Drafting overly broad ESG clauses—such as those with vague indemnities or open-ended termination rights—can lead to interpretation disputes. Without quantifiable metrics or timelines, enforcement becomes difficult. For instance, proving that a supplier caused environmental damage might require scientific evidence, which is costly and time-consuming. Complicating matters further, ESG compliance can be influenced by unstable political climates, shifting economic priorities, and variable regulatory enforcement. Additionally, arbitration often lacks jurisdiction over third-party subcontractors, which limits remedy options in cases involving indirect supply chain actors.

Traditional contract law, particularly within common law systems like that of the UK, favors strict textual interpretation over contextual analysis. This formalistic approach can hinder the enforcement of ESG clauses that rely on evolving standards or ethical considerations. Courts may resist interpreting contracts based on external environmental goals unless explicitly written. Moreover, remedies often require proof of quantifiable loss. For reputational harm linked to a supplier's ESG failure, a business must demonstrate financial damage—a difficult task for multinational firms with diversified revenue streams.

In civil law jurisdictions like Germany or France, codified principles may more readily accommodate environmental and social concerns. By contrast, Anglo-Saxon systems may require more precise drafting and statutory support. Meanwhile, Islamic legal systems such as that of Saudi Arabia prioritize ethical trade and stewardship (*amanah*), aligning naturally with ESG goals, though practical enforcement varies. Despite hurdles, the future of ESG and green clauses appears promising. Mandated due diligence, transparent monitoring, and enforceable remedies are key to their success. Companies are encouraged to draft clauses with measurable benchmarks and to integrate climate goals into standard contract templates.

The integration of ESG and green clauses into commercial contracts represents a transformative shift in corporate accountability. While enforcement mechanisms and legal frameworks continue to evolve, these clauses are essential tools for aligning business operations with global sustainability goals. As regulators and courts adapt to these norms, contractual obligations will play a central role in driving environmental responsibility across global commerce.

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