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Enforcing compliance across EU borders

Analysing the European Union's extraterritoriality and its impact on value chains

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ABSTRACT: The thesis investigates how the European Union leverages extraterritorial jurisdiction measures in legislation to enforce compliance beyond its borders, particularly through mechanism called contractual cascading that impose EU standards on international partners. As globalization increasingly interconnects markets and businesses, the EU has embedded extraterritorial elements in critical areas, including data protection, sanctions enforcement, and corporate sustainability. This study focuses on three major legislative acts, the General Data Protection Regulation (GDPR), the sanctions regime against Russia, and the Corporate Sustainability Due Diligence Directive (CSDDD), to illustrate how these frameworks extend compliance obligations to third-country entities via contractual agreements with EU companies.

The GDPR serves as a global benchmark in data protection, mandating that any company handling EU citizens' data comply with its standards, even if the company operates outside the EU. To enforce this, GDPR requires EU-based companies to contractually oblige third-country partners to adhere to its provisions, creating a chain of compliance throughout data handling processes. Similarly, the EU sanctions regime against Russia employs contractual cascading to prevent sanctioned entities from accessing restricted goods and services via intermediaries. This system mandates that EU companies include contractual clauses prohibiting re-export to Russia when engaging with third-country buyers, thereby extending EU sanctions to foreign partners who otherwise would not be bound by EU law. The CSDDD further exemplifies extraterritoriality by requiring large companies to ensure compliance with environmental and human rights standards across their entire supply chain, regardless of where suppliers operate, aiming to create a sustainable and ethically responsible global business environment.

The thesis explores the significant challenges businesses face when adapting to these extraterritorial requirements. Companies must navigate varied national legal frameworks, which can introduce conflicts between EU and local regulations, as well as increased compliance costs due to the need for extensive contractual controls and monitoring. Operational complexity is heightened by the diversity of compliance standards across countries and the need to enforce EU rules on non-EU partners who may lack familiarity with these standards. To address these challenges, the thesis investigates the role of legal design, particularly the development of standardized model clauses, in making compliance requirements more enforceable. By integrating model clauses into contracts, companies can streamline compliance, enhance enforceability, and reduce the legal and administrative burden associated with ensuring adherence across complex supply chains. The thesis concludes to the discussion on the EU’s approach to extraterritorial jurisdiction strategically extending its regulatory influence, using market power to enforce global compliance with EU standards.

KEYWORDS: European Union, Extraterritorial Jurisdiction, Data Protection, Sanctions, Corporate Responsibility

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TIIVISTELMÄ: Tutkielmassa tarkastellaan, kuinka Euroopan unioni käyttää ekstraterritoriaalista toimivaltaa lainsäädännössä edistääkseen säädösten noudattamista myös EU:n ulkopuolella, erityisesti niin kutsuttujen sopimusvelvoitteiden ketjutuksen avulla, joka asettaa EU-standardit kansainvälisille kumppaneille. Globalisaation sitoessa markkinoita ja yrityksiä yhä tiiviimmin yhteen EU on sisällyttänyt ekstraterritoriaalisia elementtejä keskeisille osa-alueille, kuten tietosuojaan, pakotteiden toimeenpanoon ja yritysvastuuseen. Tutkimuksessa keskitytään kolmeen merkittävään säädökseen: yleiseen tietosuoja-asetukseen (GDPR), Venäjän vastaisiin pakotteisiin sekä yritysvastuun huolellisuusvelvoitedirektiiviin (CSDDD), joiden avulla havainnollistetaan, miten nämä lainsäädäntökehykset ulottavat velvoitteet kolmansien maiden toimijoille EU-yritysten sopimuksin.

GDPR toimii maailmanlaajuisena tietosuojan mittapuuna, edellyttäen, että kaikki EU-kansalaisten tietoja käsittelevät yritykset noudattavat sen standardeja, vaikka toimisivat EU:n ulkopuolella. Tämän velvoittamiseksi GDPR edellyttää EU:ssa sijaitsevien yritysten sopimusperäisesti sitouttavan kolmansien maiden kumppanit noudattamaan sen säännöksiä, mikä luo velvoitteiden ketjun tietojenkäsittelyprosessien läpi. Vastaavasti EU:n Venäjää vastaan suunnattu pakotejärjestelmä käyttää sopimusperäistä ketjutusta estääkseen pakotelistattuja tahoja pääsemästä rajoitettuihin tavaroihin ja palveluihin välittäjien kautta. Järjestelmä edellyttää EU-yrityksiä sisällyttämään sopimuksiinsa lausekkeita, jotka kieltävät edelleenviennin Venäjälle kolmansien maiden ostajille, laajentaen EU-pakotteet koskemaan ulkomaisia kumppaneita, joita EU-laki ei muuten sitoisi. CSDDD vaatii suuria yrityksiä varmistamaan ympäristö- ja ihmisoikeusstandardien noudattamisen koko toimitusketjussa riippumatta toimittajien sijainnista, tavoitteena luoda kestävä ja eettisesti vastuullinen globaali liiketoimintaympäristö.

Tutkielmassa tarkastellaan merkittäviä haasteita, joita yritykset kohtaavat sopeutuessaan näihin ekstraterritoriaalisiin vaatimuksiin. Yritysten on navigoitava erilaisten kansallisten oikeudellisten kehysten keskellä, mikä voi aiheuttaa ristiriitoja EU:n ja paikallisten säädösten välillä, sekä lisätä vaatimusten noudattamisesta aiheutuvia kustannuksia laajojen sopimusperäisten kontrollien ja valvontatoimien tarpeen vuoksi. Operationaalinen monimutkaisuus lisääntyy eri maiden vaatimusten eroista ja tarpeesta panna EU-säädökset täytäntöön kumppaneille, jotka eivät välttämättä tunne näitä standardeja. Näiden haasteiden ratkaisemiseksi tutkielmassa tarkastellaan oikeusmuotoilun roolia, erityisesti vakioitujen mallilausekkeiden kehittämistä, jotka helpottavat vaatimusten noudattamisen täytäntöönpanoa. Mallilausekkeiden integrointi sopimuksiin voi yksinkertaistaa noudattamisprosessia, parantaa täytäntöönpanokelpoisuutta ja vähentää laillisia ja hallinnollisia rasitteita, jotka liittyvät vaatimusten toteuttamiseen monimutkaisissa toimitusketjuissa. Tutkielma päättyy keskusteluun EU:n lähestymistavasta ekstraterritoriaaliseen toimivaltaan, joka strategisesti laajentaa sen sääntelyvaikutusta hyödyntäen markkinavoimaa edistääkseen EU-standardien noudattamista maailmanlaajuisesti.

AVAINSANAT: Euroopan unioni, ekstraterritoriaalinen toimivalta, tietosuoja, pakotteet, yritysvastuu

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Abbreviations

CBAM	Carbon Border Adjustment Mechanism
CFSP	Common Foreign and Security Policy
CHPI	Common High Priority Items
CJEU	Court of Justice of the European Union
CoC	Code of Conduct
CSDDD	Corporate Sustainability Due Diligence Directive
CSRD	Corporate Sustainability Reporting Directive
DPO	Data Protection Officer
EMC	European Model Clauses
ESG	Environmental, Social, and Governance
EU	European Union
EUDR	Deforestation Regulation
GDPR	General Data Protection Regulation
HREDD	Human Rights and Environmental Due Diligence
IPR	Intellectual Property Rights
MCC	Model Contract Clauses
MNE	Multinational Enterprise
OECD	Organisation for Economic Co-operation and Development
SCC	Standard Contractual Clauses
SCoC	Supplier Code of Conduct
SME	Small and Medium-sized Enterprise
TFEU	Treaty on the Functioning of the European Union
TEU	Treaty on European Union

List of legislative acts

General Data Protection Regulation (GDPR)	Regulation (EU) 2016/679 of the European Parliament and of the Council
Russia Sanctions	Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine
Belarus Sanctions	Council Regulation (EC) No 765/2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus
Corporate Sustainability Due Diligence Directive (CSDDD)	Directive (EU) 2024/1760 of the European Parliament and of the Council on corporate sustainability due diligence
Corporate Sustainability Reporting Directive (CSRD)	Directive (EU) 2022/2464 of the European Parliament and of the Council on corporate sustainability reporting
Carbon Border Adjustment Mechanism (CBAM)	Regulation (EU) 2023/956 of the European Parliament and of the Council establishing a carbon border adjustment mechanism
Deforestation Regulation (EUDR)	Regulation (EU) 2022/2559 of the European Parliament and of the Council on deforestation-free products
Finnish Consumer Protection Act	Kuluttajansuojalaki (38/1978)
Finnish Employment Contracts Act	Työsopimuslaki (55/2001)
Finnish Environmental Protection Act	Ympäristönsuojelulaki (527/2014)

Finnish Law of Contracts Act	Laki varallisuusoikeudellisista oikeustoimista (Oikeustoimilaki) (228/1929)
EU Public Procurement Directive	Directive 2014/24/EU of the European Parliament and of the Council on public procurement
Consumer Rights Directive	Directive 2011/83/EU of the European Parliament and of the Council on consumer rights
Unfair Contract Terms Directive	Council Directive 93/13/EEC on unfair terms in consumer contracts
Rome I Regulation (Rome I)	Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations
E-Commerce Directive	Directive 2000/31/EC of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market
EU Blocking Regulation	Council Regulation (EC) No 2271/96 on protection against the effects of the extraterritorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom

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1 Introduction

1.1 Background and purpose

In recent years, the European Union (EU) has progressively expanded its legislative horizon beyond its territorial borders, embedding extraterritorial elements within its legislative frameworks[1]. This strategic shift is driven by the complex realities of globalization, where business operations and their impacts exceed national boundaries, necessitating a more expansive regulatory approach. The inclusion of extraterritorial jurisdiction in EU legislation reflects an acknowledgment that issues such as data protection, corporate governance, national safety, environmental responsibility, and human rights require coherent and enforceable standards that apply not only within the EU but also in relation to activities linked to the EU market from third countries.

This thesis investigates the emerging trend of extraterritorial jurisdiction elements in EU laws, focusing on its consequential effects on companies operating within and outside the EU. As the EU continues to extend the reach of its regulations, businesses are increasingly required to comply with these rules, not merely as a matter of legal obligation but as a messenger of broader corporate responsibility and ethical business practices. The research primarily explores how contractual cascading, being a mechanism through which compliance obligations are imposed down the supply chain through contractual agreements, serves as a critical tool for ensuring adherence to EU standards globally.

The motivation behind this study comes from a series of recent EU legislative measures requiring companies to contractually agree to receive data from third countries or to ensure specific compliance practices by entities operating abroad. However, the focus of this thesis is narrowed to three key acts that explicitly require companies to establish binding contracts with third-party actors, effectively extending EU standards into non-EU jurisdictions: the General Data Protection

[1] As discussed in the chapter 4

Regulation (GDPR) ((EU) 2016/679 Article 28), the sanctions against Russia ((EU) 833/2014 Article 12g), and the Corporate Sustainability Due Diligence Directive (CSDDD)((EU) 2024/1760 Article 18). Each of these frameworks incorporate elements of extraterritoriality through explicitly mandating contractual cascading, thus imposing a complex layer of compliance challenges for companies. For instance, the GDPR's reach affects any entity processing EU citizens' data, regardless of the entity's location. The Russia and Belarus sanctions have developed to reach third country subsidiaries and counterparts. Similarly, the CSDDD mandates that large companies ensure not only their own compliance with sustainability practices but also that of their global partners and suppliers.

The impact of these laws is profound for companies, affecting various aspects of business operations from contractual agreements to their whole value chain management. Companies within the EU must ensure that their contracts with counterparts in third countries[2] reflect the compliance requirements of the EU, thereby cascading obligations across global networks and enforcing compliance across EU's boarders. This thesis aims to analyse the legal and practical challenges faced by businesses in implementing these cascading contracts. It further examines how legal design principles can enhance the enforceability and compliance of such contracts through using model clauses, thereby contributing to the EU's broader goals of promoting sustainability, protecting sovereignty, and ensuring data privacy.

Ultimately, this research seeks to provide a comprehensive understanding of the EU's approach to extraterritorial jurisdiction elements and its implications for global business practices. By exploring the intersection of law and business, the thesis aims to offer insights and practical solutions for companies and the legislative bodies striving to navigate the increasingly complex landscape of compliance within the EU and beyond. This exploration is timely and critical, as businesses and regulators attempt to balance legal requirements with operational practicality in an interconnected world without disruptions to internation trade[3].

[2] Third country is considered to be other than EU member state
[3] von der Leyen, 2024, p.7; European Investment Bank, 2023, p. 17

1.2 Scope and methodology

The primary focus of this research is to critically analyse the European Union's legislative framework concerning extraterritorial jurisdiction elements and the enforcement mechanisms of compliance within global supply chains through contractual cascading. It delves into the complexities of EU legislative measures examining their profound impacts on global business practices and supply chain compliance. Geographic considerations center on the effects of these EU legislations on global businesses operating both within the Union and having counterparties located in third countries, highlighting specific challenges and adaptations necessitated by the extraterritorial reach of these laws. The thesis covers a significant period from the GDPR's implementation in 2016 up to the latest amendments in the Russia Sanctions in latter parts of 2024, providing a contemporary view of evolving compliance dynamics. This thesis builds upon existing legal and academic discourses by integrating legislative texts and scholarly research predominantly from the EU and Finland, focusing on the legal, and practical challenges of implementing extraterritorial legislations across diverse national jurisdictions.

The research aims to explore the efficiency of contractual cascading as a tool for enforcing compliance across international supply chains, the broader impacts of EU extraterritorial legislation on global business operations, and the operational and legal obstacles encountered in the application of cascading contracts across varying national legal frameworks. It employs a qualitative methodology, focusing on a literature and official sources review and regulatory analysis to gather and interpret relevant data. This approach is chosen for its strength in exploring complex legal frameworks and their practical implications in depth. The methodology involves identifying and interpreting EU administrative regulations and guidance, which are instrumental in shaping the application and enforcement of laws. It also includes a review of legal research, relevant treatises, law reviews, and legal journals. These sources provide an overview and analysis of the topics, offering essential insights into the broader legal implications and scholarly debates surrounding the measures.

This thesis aims to answer the following research questions: How can contractual cascading be effectively implemented within the EU's legislative framework to enforce compliance across global supply chains? What are the broader impacts of EU extraterritorial legislation on global business practices, and what challenges do businesses face under multiple legal systems? The study also explores the practices in designing, using, and enforcing cascading contracts and how differences in national legislations affect their effectiveness. Additionally, it examines how model clauses can and should be drafted and used to balance legal enforceability with practical implementation, contributing to regulatory compliance and sustainability goals. Furthermore, the research investigates how the evolving compliance landscape affects companies both within the EU and in third countries, particularly in ensuring compliance of international partners with EU standards.

The research acknowledges several limitations, such as the scope of data being primarily based on publicly available regulatory documents and secondary scholarly sources. While these provide a basis for analysis, they also limit the study to the perspectives and data disclosed through these means. The reliance on literature and regulatory review restricts the firsthand empirical data, which might have offered additional depth through methods such as surveys or interviews with legal professionals and businesses affected by these laws. Additionally, given the specificity of legal interpretations and the dynamic nature of EU legislation, the findings may not be easily replicable in other contexts, and their validity is dependent upon the continued relevance and stability of the underlying legal frameworks and the expansion of the extraterritorial measures.

This thesis aims to contribute to the understanding of how EU laws are designed to project their influence beyond their borders and to suggest potential improvements in the mechanisms used within the EU. By dissecting the impact of extraterritorial jurisdiction on global commerce and compliance, the research offers valuable insights into the challenges and opportunities presented by the EU’s legislative strategies.

2 Compliance through contractual cascading

2.1 The role of compliance in global business environment

2.1.1 Strategic importance

Compliance in today's globalized world holds critical importance for companies operating across various jurisdictions, each with its own set of laws, regulations, and ethical practices relevant to its activities. At its core, compliance represents a company's dedication to legal and ethical integrity, ensuring it conducts business within the bounds of both regulatory requirements and societal norms[4]. It is not simply about following legal requirements but also about fostering an ethical culture that aligns with societal expectations and corporate values[5]. Compliance obligations cover a wide array of areas, depending on the company and its operations, including compliance reporting, environmental regulations, data protection, anti-corruption measures, trade and sanctions, and labour laws[6].

Compliance is not just a protective mechanism against penalties but a vital component for building a responsible corporate culture, especially in a world where information flows quickly, and corporate errors can have far-reaching consequences[7]. In addition, compliance should be seen as a strategic asset for competitive advantage, enabling companies to differentiate themselves in the market by demonstrating their commitment to high standards. This strategic approach not only mitigates risks but also enhances market access, as businesses that adhere to compliance frameworks are often preferred partners in global supply chains, and they are able to protect themselves and operate in higher risk areas.

In the European Union (EU), compliance frameworks have become increasingly interconnected, reflecting the EU's commitment to safeguarding fair competition, consumer rights, national

[4] Ratsula, 2024, pp.35–38
[5] Kalliokoski, Karvetti, Ratsula, Helsinginseudun kauppakamari, 2023, pp. 224–250
[6] Ratsula, 2024, pp.45–46, p. 207
[7] Pursiainen, 2021, p. 383

sovereignty, data privacy, and sustainability. The EU compliance process for its member states relies on both cooperative and coercive strategies, such as the infringement procedures outlined in the Treaty on the Functioning of the European Union (TFEU)[8]. This includes monitoring and penalties as needed to enforce EU laws across member states.

The EU compliance enforcement towards companies is shaped by major regulatory pillars like the General Data Protection Regulation (GDPR) ((EU) 2016/679), which has set global standards for data protection and privacy, and the Corporate Sustainability Reporting Directive (CSRD) ((EU) 2022/2464), which mandates transparency on environmental and social impacts and sustainability reporting standards. Additionally, the EU Competition Law as implemented in Treaty on the Functioning of the European Union (TFEU)[9] preventing anti-competitive practices and abuse of dominant position, and emerging directives, such as the Corporate Sustainability Due Diligence Directive (CSDDD) ((EU) 2024/1760) emphasize transparency in corporate activities. In addition, the ever-changing Russia and Belarus sanction ((EU) 833/2014; 765/2006) regimes are causing quickly evolving obligations for the companies. These regulations underscore the EU's commitment to not only legal adherence but also ethical conduct and corporate social responsibility.

The EU's compliance approach not only focuses on adherence to hard laws but also encourages voluntary alignment with soft laws[10], such as ethical norms through frameworks like the United Nations Global Compact[11] and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises[12]. This blend of mandatory regulations and voluntary guidelines helps ensure that companies are not only compliant with the law but also uphold high standards of social responsibility and environmental standards. However, this mix of

[8] Treaty on the Functioning of the European Union, 1958, art. 258 and 260
[9] Treaty on the Functioning of the European Union, 1958, art. 101 and 102
[10] Ratsula, 2024, pp.48-49
[11] United Nations Global Compact, 2024, principles 1-10
[12] Organisation for Economic Co-operation and Development, 2023, pp. 14-15

hard and soft laws can also burden companies, especially small and medium-sized enterprises (SMEs[13]), by increasing compliance costs and complexity.

In Finland and other EU member states, compliance practices reflect the EU's broader regulatory framework while also incorporating specific national regulations. Finnish law, as well as other Nordic countries, emphasizes good faith and fairness in business practices[14], aligning compliance with principles that go beyond strict legal requirements. For instance, in addition, companies are expected to comply with national laws in areas such as consumer protection[15], labour rights[16], and environmental regulations[17], which mirror EU directives but are tailored to meet Finland's specific regulatory needs. Finnish companies often need to adopt compliance programs that include transparent reporting, whistleblower protections, and thorough risk assessments, emphasizing the integration of ethical considerations into daily business operations[18]. The Finnish and European approach can be seen as underscoring the role of compliance in building a trustworthy corporate environment where employees, customers, and investors feel confident that the company's operations align with both legal and ethical standards.

2.1.2 Extending compliance globally

Globally, compliance plays a critical role in shaping how companies conduct business, manage risks, and build sustainable relationships with stakeholders. For multinational enterprises (MNEs), compliance is both a strategic necessity and a complex challenge. Global companies must navigate a range of legal environments, often facing conflicting regulations and varying levels of

[13] Definition of SMEs per Recommendation by European Commission, 2003
[14] Lilleholt, 2013, pp. 12-13
[15] Such as Finnish Consumer Protection Act[15] (38/1978). In Finnish Kuluttajansuojalaki
[16] Such as Finnish Employment Contracts Act (55/2001). In Finnish Työsopimuslaki
[17] Such as Finnish Environmental Protection Act (527/2014). In Finnish Ympäristönsuojelulaki
[18] Such as Finnish Companies Act (624/2006) Article 17 obligates the board to ensure proper organization of the company's operations, including compliance and risk management or Finnish Auditing Act (1141/2015) Article 23 that auditors evaluate the adequacy of the company's risk management systems or Finnish Act on the Protection of Whistleblowers (1171/2022) Article 6 requires organizations to set up internal procedures for reporting breaches.

enforcement. Compliance programs for MNEs thus must be adaptable, comprehensive, and proactive, addressing both the legal obligations in each operating jurisdiction and the ethical expectations of a global audience. For example, while one country may have stringent anti-corruption laws[19], another may have less rigorous enforcement, posing a risk to MNEs that rely on a unified approach to compliance.

To mitigate these risks and ensure market access, MNEs often implement centralized compliance departments that coordinate efforts across different jurisdictions, providing guidance to local teams while ensuring consistency in adherence to the company's global standards[20]. These programs are usually designed to prevent unethical practices such as fraud, corruption, and discrimination, and to align operations with legal obligations, and company's own and industry standards. An effective compliance program includes policies and procedures that establish clear guidelines for acceptable behaviours and processes within the organization[21]. It also involves training and awareness initiatives to educate employees about compliance obligations and ethical standards. Monitoring and auditing systems are essential to detect and prevent violations, including internal audits and risk assessments.[22] Reporting mechanisms, such as whistleblower channel, provide means for employees and stakeholders to report concerns or violations. Enforcement and disciplinary measures ensure that non-compliance is addressed appropriately, maintaining the integrity of the compliance program[23].

An essential component of global compliance is managing third-party relationships. As companies increasingly rely on complex supply chains and partnerships that extent multiple countries, they face the challenge of ensuring compliance across all levels of their business operations. The concept of contractual cascading, for example, has become an adopted tool, particularly in industries with extensive supply chains[24]. Through cascading clauses, a company can obligate its

[19] such as UK Bribery Act 2010 and the U.S. Foreign Corrupt Practices Act (FCPA)
[20] Ratsula, 2024,
[21] Pursiainen, 2021, p.401
[22] Ratsula, 2024, pp. 110–112
[23] Ratsula, 2024, pp. 38–39
[24] Organisation for Economic Co-operation and Development, 2018, p. 18

business partners to enforce compliance with legal and ethical standards down the line, ensuring that suppliers and subcontractors are held accountable[25]. For instance, a European manufacturer may require its suppliers to comply with environmental regulations aligned with EU standards. These suppliers, in turn, need to impose similar compliance obligations on their own partners, creating a chain of responsibility that extends throughout the supply chain. This approach helps global companies mitigate risks associated with third-party non-compliance, promoting consistent adherence to standards regardless of the local regulatory environment[26].

Contractual cascading offers several benefits. It extends the company's compliance reach, ensuring that third parties are legally bound to adhere to required standards. It also mitigates risks associated with third-party violations that could impact the company, such as legal penalties or damage to reputation. By promoting responsible business practices among suppliers and subcontractors, contractual cascading contributes to building ethical supply chains and enhances overall corporate social responsibility[27].

The importance of compliance is intensified by the potential reputational risks associated with non-compliance. In a digital age where corporate conduct is subject to intense public scrutiny, companies that fail to meet compliance standards face significant reputational damage that can impact customer trust, investor confidence, and market value. High-profile cases of non-compliance, whether related to data breaches [28], environmental violations [29], or sanction breaches[30], can lead to severe consequences, often prompting regulatory investigations, financial penalties, and loss of consumer goodwill. Therefore, Compliance programs can serve as a

[25] Soundararajan, 2023, pp. 209–210
[26] McCall-Smith & Rühmkorf, 2019, p.7
[27] Jajja, Chatha, & Farooq, 2018, p. 129
[28] In 2024 the Dutch Supervisory Authority imposed a fine of 290 million euro on Uber due to its transfers of drivers' data to the US
[29] In 2015 the German car manufacturer Volkswagen had been using software in diesel engines to cheat on emission tests, also known as "Dieselgate"
[30] In 2020 The UK sanctions authority, the Office of Financial Sanctions Implementation, imposed over 20million pound penalty on the UK bank Standard Chartered for breaching sanctions imposed against Russia by the EU.

safeguard not only for legal risk management but also for reputation preservation, positioning companies as responsible and trustworthy entities in the eyes of stakeholders.

Enforcing compliance among third parties presents challenges, particularly for MNEs operating across multiple different jurisdictions. Diverse legal environments mean that business partners may be subject to different laws and regulations, leading to conflicting obligations[31]. Supply chain complexity adds another layer of difficulty, as companies may have limited visibility into the practices of lower-tier suppliers. Resource constraints can also hinder compliance efforts, especially among smaller suppliers who may lack the financial or human resources to meet compliance demands. Cultural differences may affect attitudes toward compliance and ethics, requiring companies to navigate varying expectations and norms[32]. In addition, lower-tier suppliers in global value chains often face challenges in meeting the required standards, leading to exploitation and inequality[33].

To overcome these challenges, companies should adopt several compliance strategies. Adopting a shared responsibility model and other compliance programs encourages all supply chain actors to take ownership of compliance, fostering collaboration and mutual accountability[34]. Investing in training and capacity-building programs helps business partners understand and meet compliance requirements[35]. Collaborating with regulators, industry groups, and benchmarking with other companies can provide insights into best practices and facilitate compliance across jurisdictions. Promoting an ethical culture within the company and among business partners reinforces the importance of compliance and encourages ethical behaviour at all levels[36].

Beyond the legal and reputational priorities, compliance offers substantial strategic advantages. An effective compliance program can improve operational efficiency by establishing clear policies

[31] Meyer, & Schotter, 2020, pp. 563-565
[32] Juettner, Windler, Podleisek, Gander, & Meldau, 2020, pp.928-932
[33] McCall-Smith & Ruhmkorf, 2019,
[34] Soundararajan, 2023, p. 214
[35] Kalliokoski, Karvetti, Ratsula & Helsingin seudun kauppakamari 2023, pp. 226–229
[36] Hernández-Cuadra, Fernández-Fernández, 2024, pp. 73–74

and procedures that streamline decision-making and reduce the likelihood of disruptions caused by legal issues[37]. For global companies, a well-designed compliance program supports market expansion and market access also to more risky regions by demonstrating the company's commitment to local laws and ethical standards. Moreover, companies that prioritize compliance often attract and retain talent more effectively, as employees are more likely to commit to organizations that uphold ethical values[38].

Companies operating in the EU and Finland face requirements and obligations concerning compliance in multiple levels. They must not only ensure adherence within their own operations but also enforce compliance among their business partners. Compliance programs that integrate contractual cascading and other strategies are essential for managing risks and maintaining legal and ethical standards. Extending compliance obligations throughout their value chains, companies can contribute to compliant business practices, protect their reputation, and support long-term success.

2.2 Leveraging contractual cascading to implement compliance

2.2.1 Contracting withing Finnish and EU contract law

Contract law is a foundational element of both Finnish and European Union (EU) legal systems, establishing the rules and principles that govern the creation, interpretation, and enforcement of agreements between contract parties. In Finland, contract law is primarily codified in the Contracts Act[39] (1929/228), which provides the statutory framework for contractual relations. Finnish contract law is deeply influenced by the Nordic legal tradition, emphasizing principles such as freedom of contract, good faith, and the binding nature of agreements.

[37] Ratsula, 2024, pp. 275–289
[38] Laker, 2023
[39] In Finnish Laki varallisuusoikeudellisista oikeustoimista (Oikeustoimilaki)

The principle of freedom of contract is central to Finnish and international contract law, granting parties the autonomy to negotiate and define the terms of their agreements according to their own interests and intentions[40]. This freedom is not absolute, however, as contracts must not contravene mandatory legal provisions[41]. The Contracts Act sets forth certain mandatory rules, especially in areas where there is a need to protect weaker parties or the public interest. For instance, the Contracts Act Article 36 permits courts to adjust or set aside unreasonable contractual terms, ensuring that contractual freedom does not lead to unjust outcomes. Nonetheless, within these boundaries, parties have considerable freedom to structure their contractual relationships according to their needs and intentions.

Another fundamental principle is the binding force of contracts, summarized in the Latin principle *pacta sunt servanda*, meaning agreements must be kept[42]. This principle underscores the expectation that once parties have voluntarily entered into a valid contract, they are legally obligated to fulfil their commitments. The enforceability of contracts relies on this principle, ensuring that parties can rely on the promises made by their counterparts. The Contracts Act Article 1 supports this principle through requirements that enforce the agreed terms unless they are deemed unreasonable or invalid under the law[43]. In Finnish law, this binding nature is reinforced by the possibility of legal remedies, such as damages or specific performance, in the event of breach[44].

The principle of good faith, in Latin *bona fide*, and fair dealing are also integral to Finnish contract law. Although not explicitly stated in the Contracts Act, they are recognized through judicial practice and legal doctrine.[45] Parties are expected to act honestly and fairly in both the formation and performance of contracts, refraining from conduct that would be considered dishonest or exploitative. The Supreme Court of Finland has affirmed the importance of good faith and fair

[40] Saarnilehto & Annola, 2018, p.17
[41] Hemmo & Hoppu, 2022, Chapter 3
[42] Saarnilehto & Annola, 2018, p.165
[43] Hemmo & Hoppu, 2022, Chapter 6
[44] Saarnilehto & Annola, 2018, pp.191–194
[45] Saarnilehto & Annola, 2018, pp.20–22, 134–135

dealing in several decisions[46], reinforcing its role in contractual relationships. This principle ensures that contracts are not merely legal formalities but are executed in a manner that respects the parties' legitimate expectations and societal norms.

In the broader context of the EU, contract law is not fully harmonized but is influenced by various directives, regulations, and the jurisprudence of the Court of Justice of the European Union (CJEU). Additionally, the Principles of European Contract Law (PECL), developed by the Commission on European Contract Law, offer a set of model rules as a soft law intended to harmonize contract law across EU member states[47]. While not legally binding, the PECL serves as a reference framework and can be applied when explicitly incorporated into contracts by the parties involved. However, parties retain the autonomy to exclude its application through specific contractual provisions.[48] PECL underline key concepts as parties to act in good faith and fair dealing[49], the freedom to enter into contracts and determine their contents[50], and defines reasonableness based on what individuals acting in good faith in similar situations would consider reasonable[51], considering the contract's nature, purpose, circumstances, and relevant practices.

It appears that the EU seeks to facilitate the functioning of the internal single market by promoting uniformity and coherence in certain areas of contract law, particularly those affecting cross-border transactions, consumer protection, and digital commerce. Key EU legal instruments include the Consumer Rights Directive (2011/83/EU), the Unfair Contract Terms Directive (93/13/EEC), the Rome I Regulation (593/2008/EC) on the law applicable to contractual obligations, and the E-Commerce Directive (2000/31/EC).

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[46] KKO 2009:45 where decision sets a precedent for good faith, holding a party liable for damages if their conduct in negotiations creates reasonable contract expectations in the other party, even without a formal agreement; KKO 2015:17 decision sets a precedent for fair dealing by holding a parent company responsible for compensation fees avoided by its subsidiary, despite the subsidiary's formal independence, as the arrangement was structured to circumvent statutory fees

[47] Principles of European Contract Law, 1997

[48] Hietala, Järvensivu, Kaivanto, & Kyläkallio, 2024, chapter 8.7.3

[49] PECJ Article 1:201

[50] PECJ Article 1:102

[51] PECJ Article 1:302

The Consumer Rights Directive and Finnish Consumer Protection Act[52] (38/1978) enhances consumer protections, particularly in distance selling and online contracts, ensuring that consumers receive clear information and have the right to withdraw from contracts under certain conditions (2011/83/EU Article 9). The Unfair Contract Terms Directive which has been implemented into the Finnish Consumer Protection Act aims to prevent the use of unfair terms in consumer contracts, which are not individually negotiated and cause a significant imbalance in the parties' rights and obligations (93/13/EEC Article 1). The Rome I Regulation provides rules for determining the applicable law in cross-border contractual disputes, promoting legal certainty and predictability. As an EU Regulation, the Rome I Regulation is directly applicable in Finland without the need for national implementing legislation. According to the Article 3, contracting parties may choose the law applicable to their contract and subsequently Article 4 provides rules to determine the applicable law when no choice has been made. The E-Commerce Directive addresses issues related to electronic contracts, including the validity and formation of online agreements (Article 9).

Finnish contract law must be interpreted and applied in conformity with EU law, and in cases of conflict, EU law takes precedence. This means that Finnish courts are obliged to consider EU directives and regulations when resolving contractual disputes[53], especially those involving cross-border elements or consumer protection issues. The interaction between national and EU law creates a layered legal framework, where domestic contract law is complemented and, in some areas, superseded by EU legal instruments.

[52] In Finnish Kuluttajansuojalaki
[53] See more in chapter 3.1

2.2.2 Balancing impacts in supply chains

Traditionally, contracts have been viewed as bilateral agreements, involving mutual obligations and rights strictly between two parties[54]. The principle of privity of contract underpins this notion, emphasizing that only parties to a contract are bound by its terms and can enforce them[55]. This principle should provide clarity and predictability, as parties know with whom they are contracting and what obligations they have undertaken. However, the complexities of modern globalized trade, with extensive supply chains, outsourcing, and subcontracting arrangements, have challenged the traditional bilateral framework. Businesses often engage with multiple layers of suppliers and partners, making it impractical to establish direct contractual relationships with every participant in the supply chain. Moreover, companies are increasingly held accountable for the actions of their suppliers, particularly concerning compliance with legal, ethical, and sustainability standards[56].

It is generally accepted that contractual cascading provides a mechanism to address these challenges. Contractual cascading involves the inclusion of contractual clauses that require a contracting party to impose certain obligations on its own customers, subcontractors or suppliers, extending the reach of the original contract's terms beyond the immediate parties. This approach creates a chain of contractual obligations that "cascade" up and down through the various levels of the supply chain, ensuring that all participants adhere to the standards set by the primary company.

The interaction of contractual cascading with key principles of contract law can be seen as creating a balance between traditional two-party contracts and the broader, layered responsibilities introduced through cascading clauses. Firstly, it challenges the traditional concept of privity[57] and bilateral nature of contracts[58] by extending obligations to parties who are not

[54] Norros, 2007, p. 1
[55] Saarnilehto & Annola, 2018, p. 8
[56] As discussed in section 2.1
[57] Villa et al., 2020, chapter VIII:7:1
[58] Saarnilehto & Annola, 2018, p.37

directly part of the original contract. However, it can be argued that this extension is facilitated through the contractual obligations of each middle party, who agrees to impose the relevant terms on their own counterparts. In this way, the chain of contracts maintains the principle of privity at each level while achieving the overall objective of cascading obligations.

Secondly, the principle of freedom of contract[59] allows parties to agree upon the inclusion of cascading clauses. As long as the obligations are lawful, and clear parties can structure their contracts to require compliance from their counterparties[60]. This contractual freedom enables companies to manage risks and ensure adherence to standards throughout their supply chains and enables free competition[61]. While this method respects the initial contracting parties' freedom to structure their agreements, it can be seen as imposing predefined terms on additional parties, potentially limiting their contractual freedom. This raises questions about the real extent of contract freedom when participants are required to accept upstream conditions to engage in certain markets or projects.

Thirdly, the principle of good faith[62] and duty of loyalty plays a crucial role in the operation of contractual cascading. Parties are expected to act in good faith when imposing obligations on their counterparties, ensuring that the requirements are reasonable and achievable, and consider each other's interests during the contractual relationship[63]. This should, in theory, prevent the use of unfair, illegal or overly burdensome obligations that could be deemed unreasonable between contracting parties. However, it is useful to recognize that at the same time this raises potential disputes based on lack of knowledge or consent. The objectives set by the original contract may compel parties to impose terms that are disadvantageous or overly demanding to their counterparties. Additionally, it is likely that “weaker” parties further down the value chain face unfair burdens due to their diminished negotiating power. They may be compelled to agree

[59] Hemmo, 1997, pp.57–58
[60] Meri, 2023, pp.147–148
[61] Villa et al, 2020, chapter VIII:1:2
[62] Saarnilehto & Annola, 2018, pp. 19–21;
[63] Saarnilehto & Annola, 2018, pp. 24–25

to terms decided without their input, exacerbating power imbalances and potentially violating laws designed to protect weaker parties, such as consumers and small businesses, from oppressive contractual terms.

Contractual cascading is also impeded in the context of public procurement. Under the EU Public Procurement Directive (2014/24/EU), contracting authorities are required to "take appropriate measures" that their contractors and subcontractors comply with environmental, social, and labour laws (Article 18(2)). This suggests that contracting authorities should require compliance from contractors and, by extension, their subcontractors. It is apparent that this often necessitates the inclusion of cascading clauses in public contracts, obliging contractors to impose the same standards on their counterparties.

In practice, contractual cascading involves the careful drafting of contractual clauses that specify the obligations to be imposed on third parties. For these clauses to be effective, they must be clear, precise, and enforceable[64]. Typically, they include provisions requiring the contracting party to ensure that specific third party comply with specified laws, regulations, standards, or codes of conduct. Additionally, these clauses may incorporate mechanisms for monitoring compliance, such as audit rights, reporting obligations, or rights to request information.

The use of contractual cascading offers several benefits. It allows companies to manage risks associated with their supply chains, ensuring that all participants adhere to the same legal and ethical standards. It promotes consistency and uniformity in the application of policies across different levels of the supply chain. It can enhance a company's reputation by demonstrating a commitment to responsible business practices. However, it is useful to recognize that there are also challenges associated with contractual cascading. The effectiveness of cascading clauses depends on the willingness and ability of third parties to comply with the imposed obligations. In some cases, third parties may resist additional requirements, particularly if they involve increased

[64] Ratsula, 2016, chapter 3.6:2

costs or administrative burdens. There may also be legal limitations in certain jurisdictions that affect the enforceability of cascading obligations, especially if they conflict with local laws or mandatory provisions. Furthermore, the principle of proportionality must be considered when imposing cascading obligations. Obligations should be reasonable and appropriate in relation to the contract's subject matter. Disproportionate requirements may be deemed unfair or invalid in accordance with the aforementioned principles of contract.

This raises the point that contractual cascading represents an evolution in contract law, adapting traditional principles to the complexities of modern commerce. It allows companies to extend their contractual obligations beyond the immediate parties, ensuring compliance and accountability throughout their supply chains. While it departs from the traditional bilateral nature of contracts, it remains consistent with the fundamental principles of Finnish and EU contract law, including freedom of contract, good faith, and the binding nature of agreements. As businesses continue to face increasing regulatory demands and societal expectations for responsible conduct, contractual cascading is likely to become an even more important tool for managing legal and ethical obligations in commercial relationships.

3 From Single Market to extraterritorial jurisdiction

3.1 Essentials of the European Union's legal system

3.1.1 Fundamental principles and institutions

The European Union (EU) has developed a complex and far-reaching legal system designed to govern both its internal affairs and its interactions with member states, citizens, and businesses. This system is rooted in the principles of integration, cooperation, and uniformity aimed at creating a harmonized legal and economic space within the EU[65]. EU law is characterized by its supranational nature, meaning that it often takes precedence over the national laws of its member states, ensuring that EU objectives are met consistently across borders[66].

EU law operates on multiple levels, with the framework being provided by the Treaty on European Union (TEU)[67] and the Treaty on the Functioning of the European Union (TFEU)[68]. These treaties are the primary legislation of EU law[69], defining the scope of EU competences and defining the powers of its institutions, such as the European Commission, the European Parliament, and Court of Justice of the European Union (CJEU)[70]. According to the TEU Article 1 the treaties are binding on all member states and the TFEU Article 288 sets the stage for the creation of secondary legislation, including regulations, directives, and decisions.

A central principle in the EU legal order is direct effect, as established by the European Court of Justice[71]. This principle allows individuals and businesses to rely directly on EU law in national courts, even in cases where member states have failed to implement or transpose those laws

[65] Tuominen, 2024, pp.15–16
[66] European Union, 2024
[67] Treaty on European Union, 1992
[68] Treaty on the Functioning of the European Union, 1958
[69] Raitio & Tuominen, 2020, p. 72
[70] TEU Articles 13–19
[71] Van Gend en Loos v Nederlandse Administratie der Belastingen Case 26/62 allows individuals and businesses to invoke EU law directly in national courts, which is essential for enforcing rights and obligations under EU law without waiting for national implementation.

effectively. Primacy of EU law has been established within the CJEU ruling[72] ensuring that, in cases of conflict between national and EU legislation, EU law takes precedence, reinforcing its authority over member states' domestic legal systems. These two principles are the cornerstones of the EU's legal framework, enabling uniform application of EU laws across its member states and giving teeth to the concept of European integration.

3.1.2 Legal instruments

EU law is implemented through various legal instruments, each designed for specific purposes and situations. These instruments include regulations, directives, decisions, recommendations, and opinions[73]and additionally, the EU utilizes delegated acts and implementing acts[74]. These provide the EU with the flexibility needed to regulate its diverse member states and ensure compliance with its policies.

EU regulations, such as sanctions regulations and the General Data Protection Regulation (GDPR), are binding legislative acts directly applicable across all member states and are commonly used in areas where uniformity is essential[75]. They are among the most robust forms of EU law, ensuring a uniform legal standard without requiring national legislation for implementation. According to TFEU Article 288 a regulation "shall have general application. It shall be binding in its entirety and directly applicable in all Member States." This means that regulations become enforceable EU-wide as soon as they are enacted, allowing for consistent application by national courts and administrative authorities.

Sanctions regulations and the General Data Protection Regulation (GDPR) demonstrate the EU's use of regulations where uniform enforcement is essential. Sanctions are central to EU foreign

[72] Costa v ENEL (Case 6/64) ensures that EU law overrides conflicting national legislation, which is crucial for maintaining the uniform application of EU law across all member states.
[73] TFEU Article 288
[74] TFEU Articles 290 and 291
[75] European Parliament, 2024a,

policy, requiring uniform application across all member states to prevent inconsistencies that could weaken their impact. It is evident that this regulatory form ensures identical enforcement across member states, minimizing the risk of loopholes or circumvention applications. Similarly, the GDPR creates a unified framework for data protection across the EU, necessary for managing cross-border data flows. This regulatory form can be seen to provide legal clarity for businesses, strong data rights for EU citizens, and extends GDPR's influence globally, as non-EU companies handling EU citizens' data must also comply.

Directives are binding upon member states in terms of the goals they must achieve, but they leave it to national authorities to decide the form and method of implementation[76]. Directives are particularly useful when there is a need for some level of national adaptation, reflecting the principle of subsidiarity[77], which ensures that decisions are taken as closely as possible to the citizen[78]. For instance, the EU's Corporate Sustainability Due Diligence Directive (CSDDD) requires member states to implement regulations mandating corporate accountability in global supply chains but allows flexibility in how these rules are enacted domestically.

In the case of the CSDDD, the use of a directive can be assumed to be particularly appropriate as several member states have already enacted similar obligations in their national legislation, such as the German Supply Chain Act[79] and the French Duty of Vigilance[80]. These national laws already mandate due diligence and accountability measures, ensuring that companies operating within these jurisdictions adhere to high standards of human rights and environmental protection[81]. By aligning with these existing frameworks, the directive not only harmonizes efforts across the EU but also leverages the established compliance mechanisms within member states, thereby enhancing overall effectiveness and coherence in achieving sustainability goals.

[76] TFEU Article 288
[77] European Parliament, 2024b,
[78] TEU Article 5(3)
[79] In German Lieferkettensorgfaltspflichtengesetz, vom 16. Juli 2021
[80] In French Loi de vigilance, Loi 2017-399 du 27 mars 2017
[81] Jault-Seseke, 2024, pp 1-8

Decisions are legally binding on those to whom they are addressed, whether it is a specific Member State, company, or individual. According to TFEU Article 288, a decision "shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them". They are directly applicable and do not require transposition into national law. Decisions are often used in areas such as competition policy or state aid, where tailored measures are needed for specific cases.

Recommendations and opinions are non-binding instruments that allow EU institutions to express views or make suggestions on certain issues. Article 288(5) TFEU states that "recommendations and opinions shall have no binding force". While they do not have the force of law, they are often used by EU institutions to express viewpoints or suggest actions concerning specific issues and can shape legislative developments or influence the behaviour of member states by guiding interpretations or applications of EU law.[82].

The Court of Justice of the European Union (CJEU) plays a central role in ensuring the consistent application and interpretation of EU law across member states. While national courts are responsible for applying EU laws within their jurisdictions, they can refer questions regarding the interpretation or validity of EU law to the CJEU through the preliminary ruling procedure[83]. This process allows national courts to seek guidance on EU law, promoting harmonized legal interpretations across the EU. Importantly, the CJEU's rulings in these cases are binding on all member states, establishing precedents that national courts must follow, thus reinforcing the uniform application of EU law across jurisdictions[84].

EU law operates within a structured hierarchy guided by the principles of *lex superior*, *lex generalis*, and *lex specialis*, which determine the precedence and application of legal norms[85].

[82] Such as the Rule of Law Report 2022, where Commission issues specific recommendations to member states concerning the Russian invasion of Ukraine.
[83] TFEU Article 267
[84] European Union, 2022,
[85] Raitio, 2013, pp.224-225

The principle of *lex superior*, which is higher law prevails over lower law, places EU treaties and fundamental rights at the top of the EU legal order, meaning that these primary legislation holds supremacy over secondary legislation, such as regulations and directives[86]. In the context of *lex generalis*, meaning general law, and *lex specialis*, meaning specific law, EU legal instruments are applied based on their scope and specificity. *Lex generalis* refers to broad EU legislation that sets general standards across various areas, such as the CSDDD sets general framework for due diligence obligations. In contrast, *lex specialis* applies to specific regulations or directives that address particular aspects within those general principles, such as the EU Deforestation Regulation (EUDR) (2023/1115) establishing a sector-specific framework for deforestation, outlining due diligence requirements for certain products[87]. This hierarchy ensures a consistent application of EU law, balancing general principles with the need for detailed, sector-specific regulation.

At the center of the EU's economic integration is the so-called single market, as defined in Article 3(3) TEU, which states that the Union "shall establish an internal market". The single market seeks to eliminate barriers to the free movement of goods, services, capital, and people across the EU, which are known as the four freedoms[88]. The creation of the single market has been one of the EU's greatest achievements, allowing for an unprecedented level of economic cooperation and cohesion between Member States[89]. With a consumer base of approximately 450 million people, the single market is one of the largest integrated economies in the world[90].

The single market ensures that businesses can operate across the EU without encountering national restrictions or divergent regulatory frameworks. By harmonizing regulations and removing trade barriers, the EU has created a seamless environment in which goods, services,

[86] European Parliament, 2024a
[87] European Commission, 2024a
[88] TFEU Articles 28-66
[89] European Commission, 2020a,
[90] European Commission, 2024b

and capital can flow freely between member states. This has significantly enhanced competition, fostered innovation, and reduced costs for both businesses and consumers[91].[92]

However, the benefits of the single market extend beyond economic integration. The EU's legal frameworks ensure that products and services meet similar standards of safety, environmental sustainability, and consumer protection. For example, EU regulations on product standards and environmental protections create a level playing field, ensuring that businesses compete fairly within the EU while protecting the welfare of EU citizens[93]. Additionally, the single market serves as a foundation for the EU's external trade policies, allowing it to negotiate from a position of strength globally and to enforce EU obligations to reach across its boarders[94].

3.2 Extraterritorial expansion of EU Law through contractual cascading

3.2.1 Use of contractual obligations to enforce measures

Extraterritorial jurisdiction refers to the authority to legislate, adjudicate, and enforce laws of a country or governing body, such as the European Union, to apply its laws outside its own borders, affecting individuals or entities located in other jurisdictions, for example in third countries. In the past, the EU has been seen generally cautious in applying extraterritorial jurisdiction, prioritizing respect for the sovereignty of non-EU countries and focusing primarily on issues within its borders[95]. This approach is evident in the EU's consistent opposition to the United States' extraterritorial sanctions, particularly those targeting Cuba and Iran[96]. For instance, U.S. sanctions against Iran have impacted European firms conducting business with Iranian

[91] European Commission, 2024d
[92] Raitio, 2013, pp. 365-370
[93] Raitio & Tuominen, 2020, pp.343–344
[94] European Commission, 2024d
[95] Stoll et al., 2020, pp.51-53
[96] specifically, from the EU Blocking Statute ((EC) 2271/96) which aims to protect against the effects of extraterritorial legislation enacted by third countries and any actions based on such legislation, primarily targeting certain U.S. sanctions on Cuba and Iran.

counterparts, forcing them to choose between trading with Iran or maintaining access to U.S. markets[97]. The EU has criticized such measures for overstepping international legal boundaries and infringing upon the sovereignty of other nations[98].

The EU has increasingly embedded extraterritorial elements in its legislation across data protection, sustainability, and sanctions, leveraging contractual cascading to enforce compliance by foreign entities. Globalization and the increasing interconnection of international markets can be seen as having significantly blurred traditional jurisdictional boundaries. In response, the EU has progressively adopted extraterritorial measures in key legislative areas to protect its interests and promote its values globally.[99] Rather than legislating similar extraterritorial jurisdiction laws as the U.S, EU uses MNEs as instruments to enforce extraterritorial measures, embedding compliance obligations into their contractual relationships to promote standards beyond EU borders. By doing so, it can be argued that the EU extends its regulatory reach beyond its borders, ensuring that even foreign entities adhere to its standards when engaging with the EU market.

The General Data Protection Regulation (GDPR) ((EU) 2016/679) has become a global benchmark for data protection and privacy. Coming into force in 2018, the GDPR imposed comprehensive compliance obligations on entities that process personal data of individuals within the EU. A key aspect of the GDPR is its extraterritorial scope, which requires not only EU-based entities but also companies in third countries to adhere to the regulation when processing data related to EU data subjects. To achieve this, the GDPR mandates that data controllers and processors must ensure compliance throughout their data processing chain, including with third-country counterparts46(1) and 46(2)(c)). These require EU-based entities to enforce GDPR standards contractually on third-country processors (Article 28), effectively cascading compliance down the supply chain. As a result, companies worldwide have need to adjust their privacy policies and data

[97] Pursiainen, 2021, pp.140-145
[98] Stoll et al., 2020, pp.51-53
[99] As discussed in chapter 4

handling practices to align with GDPR, acknowledging the importance of access to the EU market and the significant fines imposed for non-compliance.

In the area of sanctions, the EU uses extraterritorial jurisdiction to extend compliance obligations to third-country partners. For instance, in response to actions destabilizing Ukraine, the EU has imposed comprehensive sanctions against Russia ((EU) 833/2014) and to Belarus ((EU) 765/2006). These sanctions prohibitions extends to EU entities enforce compliance from participating in activities that circumvent sanctions, directly or indirectly. EU companies also must ensure their third country subsidiaries and third-country partners do not facilitate sanctioned activities, by including compliance clauses in contracts to prevent violations ((EU) 833/2014 Articles 8a and 12g). Furthermore, when discussing sanctions against Russia, these restrictions are not imposed within Russia itself, as the EU lacks jurisdiction across Russian territory[100]. Instead, the EU enforces compliance by imposing obligations on EU-based entities, which, in turn, cascade these obligations to their third-country counterparts. By requiring these foreign partners to adhere to specific contractual compliance clauses, the EU indirectly extends its sanctions regime beyond its own borders, compelling non-EU entities to align with EU policies if they wish to maintain business relationships. This indirect application of EU sanctions exemplifies how the EU leverages its jurisdiction to create a broader compliance network, aiming to prevent sanctions violations across global trade channels.

3.2.2 Proliferation of EU's extraterritorial measures

In addition to data protection and sanctions, the European Union has been at the forefront of incorporating sustainability into its regulatory framework[101], with a focus on extending its standards beyond its borders through various legal measures. EU has initiated several different measures which have extraterritorial measures through legal acts such as the Corporate

[100] Euronews, 2023
[101] Especially through the EU's Green Deal

Sustainability Reporting Directive (CSRD)((EU) 2022/2464), Carbon Border Adjustment Mechanism (CBAM)((EU) 2023/956), The proposed Forced Labour Regulation [102] , The Deforestation Regulation (EUDR) ((EU) 2022/2559) and the Corporate Sustainability Due Diligence Directive (CSDDD) ((EU) 2024/1760). These acts can be seen as indirectly obligating companies to seek contractual assurances from their business partners and to cascade these obligations further down their supply chains, ensuring that EU standards are met, and that accurate, timely data is received from third countries.

The CSRD expands sustainability reporting obligations to include non-EU entities with substantial EU operations, compelling companies to report on environmental, social, and governance (ESG) impacts across their entire value chain[103]. For example, non-EU companies with EU net turnover over €150 million and either a large or EU-listed subsidiary, or an EU branch with net turnover exceeding €40 million in the preceding financial year, are required to prepare a group-level sustainability report ((EU) 2022/2464 Article 40a). The CBAM is a financial instrument designed to price the carbon emissions of high-carbon goods entering the EU, ensuring that imported goods bear a similar carbon cost to items produced inside the EU[104]. The full implementation of the CBAM will coincide with the phase-out of free allocation of emissions allowances under the EU Emissions Trading System by 2026, supporting the broader decarbonization of EU industries, restricting carbon leakage[105] and to aligning carbon costs of manufacturing products inside and outside of the EU[106].

The EU's upcoming regulation on prohibiting products made with forced labour further exemplifies these extraterritorial measures. By planning to ban such products from entering EU's market, it requires companies to ensure that no forced labour is used at any point in their supply

[102] European Commission, 2022a
[103] European Commission, 2024e
[104] Finnish Customs, 2024
[105] refers to the situation where companies relocate production to countries with more lenient sustainability regulations and carbon costs
[106] European Commission, 2024f

chain[107]. The EUDR is designed to ensure that products imported, consumed or exported within the European Union do not contribute to global deforestation or forest degradation and are aimed at reducing greenhouse gas emissions. It also introduces due diligence obligations on EU-companies of their supply chains[108].

All of the above-mentioned sustainability measures necessitate the inclusion of clauses in contracts that require suppliers and partners to provide relevant ESG data, thereby extending EU standards globally through contractual relationships, but without explicitly obligated to by the acts. However, also the CSDDD imposes due diligence obligations on companies concerning human rights and environmental impacts throughout their operations and supply chains (Article 6 and 7). Companies are required to identify, prevent, mitigate, and account for adverse impacts, and similarly to the GDPR, to include compliance clauses in contracts with suppliers and business partners (Article 12). This approach ensures that EU companies promote adherence to EU sustainability standards among foreign suppliers, effectively extending EU policies beyond its borders through contractual cascading.

Comparatively, while the United States has long been known for its forceful use of extraterritorial jurisdiction, particularly in sanctions[109], the EU's approach differs in methodology and underlying principles. The U.S. often employs a direct enforcement approach, utilizing legal actions and punitive measures to enforce compliance with U.S. laws, sometimes imposing secondary sanctions that target non-U.S. entities engaging with sanctioned countries[110]. For example, the U.S. Iran sanction regime prohibit any non-US persons or non-US companies from trading with Iran, which underlines the extraterritorial reach intended to control actions that occur beyond American borders[111]. This extension of U.S. law has led to tensions with the EU, as European

[107] Council of the European Union, 2024a
[108] Finnish Food Authority, 2024
[109] Against Iran, Cuba, North Korea, Russia
[110] Pursiainen, 2021, pp. 120–126
[111] Schmidt, 2022, p. 53

policymakers struggle to protect their commercial interests from the adverse impacts of U.S. sanctions[112].

While the EU has increasingly adopted extraterritorial elements across various areas, like data protection, sanctions, and sustainability, it also enforces measures like the Blocking Regulation ((EC) 2271/96) to counteract extraterritorial laws from other jurisdictions. This regulation opposes effects of such extraterritorial application of third-country legislation, such as US sanctions, within the EU, explicitly stating that no judgment or decision enforcing these laws would be recognized or enforceable in the EU (Article 4). The regulation also prohibits EU persons from complying with the targeted extraterritorial sanctions.[113] This dual approach underlines the complexity and changing stance of the EU in navigating global legal influences while protecting its interests and sovereignty.

The EU's method of enforcing extraterritoriality can be seen as more indirect, relying on its companies to conduct contractual cascading and the leverage of its significant market access to enforce compliance. This indirect method leverages the EU's substantial market access, compelling adherence to its standards indirectly by integrating compliance requirements within contracts. This strategy also advances the EU's commitment to fundamental rights, promoting sovereignty, freedom, democracy, equality, and respect for human rights as protected in its treaties. By ensuring foreign entities meet EU standards, ideologically the EU prevents undercutting of its businesses by competitors operating under less stringent regulations, thus maintaining competitiveness and fostering a level playing field. In addition, it can be argued that this approach could reduce the need for direct legal or political confrontations, which might otherwise arise from attempts to enforce EU laws outside its territorial jurisdiction, potentially leading to diplomatic disputes.

[112] Lohmann, 2019, pp. 2-3
[113] European Commission, 2021, pp.2-3

However, the extraterritorial measures approach also has downsides. Enforcement depends heavily on the ability and willingness of companies to impose these standards on their partners, which can be less effective than direct legal enforcement. For companies ensuring that non-EU partners comply with EU regulations can impose significant compliance costs and administrative burdens[114]. Additionally, the global reach of EU regulations through extraterritorial jurisdiction can complicate international business operations, potentially putting EU businesses at a competitive disadvantage if their non-EU competitors are subject to less stringent regulations[115].

[114] Meyers, 2024, pp. 18-21
[115] National Board of Trade Sweden, 2024, p. 3

4 Key legislative acts influencing extraterritorial compliance

4.1 Enforcing Data Protection globally

4.1.1 The GDPR's principles and scope

The European Union's General Data Protection Regulation (GDPR) ((EU) 2016/679) significantly impacts how EU companies manage data protection within their supply chains, also when it involves third-country operators. The GDPR mandates strict data protection compliance, which EU companies must ensure is upheld through all levels of their supply chains. Adopted on 27 April 2016 and enforced from 25 May 2018, the GDPR aims to harmonize data protection laws across the EU, giving individuals greater control over their personal information while ensuring organizations adhere to clear, accountable data processing practices[116]. The regulation applies to any organization, regardless of its location, which processes the personal data of individuals residing in the EU (Article 3), making it a global standard for privacy protection.

At its core, the GDPR addresses concerns about privacy and data security in an era where personal data is extensively collected, analysed, and shared. The regulation mandates that personal data must be processed "lawfully, fairly, and transparently" (Article 5(1)(a)), ensuring that individuals can be fully aware of how their data is being used and that they could have control over it. Other four key provisions are explicit consent, right of access and rectification, right to erasure and data breach notification. Explicit Consent is requirement for clear and affirmative consent before data is processed (Article 7). Right of access and rectification means that individuals have the right to access their data and correct inaccuracies (Articles 15-16). Right to erasure, which is also known as right to be forgotten, gives right to individuals to request deletion of their personal data under certain conditions (Article 17). Data breach notification obligates organizations to notify authorities within 72 hours and affected individuals without undue delay in the event of a data breach (Articles 33-34), mandating establishing processes within the company to comply.

[116] European Commission, 2024g

For companies, GDPR introduces both opportunities and challenges. Compliance involves significant adjustments in how they collect, store, and manage personal data. Organizations must implement strict data protection measures, such as conducting assessments for high-risk processing activities (Article 35) and appointment of Data Protection Officers (DPOs) for certain organizations (Articles 37-39). Failure to comply can result in substantial fines, which can be up to €20 million or 4% of the organization's total worldwide annual turnover, whichever is higher (Article 83). Despite the compliance burden, the GDPR can offer opportunities for businesses. By adopting robust data protection practices, companies can adopt greater trust and transparency with their customers, which can be seen as a competitive advantage in a privacy-conscious world. Organizations that comply with the GDPR are better equipped to manage data securely, minimizing the risk of costly data breaches and enhancing their reputation for privacy protection.

In each EU member state, national data protection authorities are independent public authorities responsible for overseeing the application of data protection laws (Article 51(1)). Their primary functions cover monitoring compliance, providing expert guidance on data protection matters, and addressing complaints related to potential violations. These authorities possess investigative and corrective powers to enforce data protection regulations effectively.[117] In Finland, the GDPR is supplemented by the Data Protection Act[118] (1050/2018), which provides national specifications allowed under the GDPR. The Office of the Data Protection Ombudsman oversees compliance with data protection legislation as the national authority.

4.1.2 Standard contractual clauses and cross-border data compliance

The GDPR ((EU) 2016/679) applies to any organization that processes personal data of individuals residing in the EU, regardless of the organization's location (Article 3). This extraterritorial reach

[117] Office of the Data Protection Ombudsman, 2024
[118] In Finnish Tietosuojalaki

means that even companies based outside the EU must comply with the regulation if they offer goods or services to EU citizens or monitor their behaviour within the EU. Under the GDPR, data controllers[119] and processors[120] must ensure that all third parties involved in processing personal data adhere to the same data protection standards. GDPR Article 28 establishes clear requirements for the relationship between data controllers who determine the purposes and means of processing, and data processors who process data on behalf of controllers.

Article 28 of the GDPR outlines the requirements for contracts between controllers and processors. Controllers must engage only processors that provide "sufficient guarantees to implement appropriate technical and organizational measures" in compliance with the GDPR (Article 28(1)). Processing activities by a processor must be governed by a contract that specifies the processing's subject matter, duration, nature, purpose, types of personal data, categories of data subjects, and the obligations and rights of the controller (Article 28(3)). Processors cannot engage sub-processor without prior specific or general written authorization from the controller (Article 28(4)) obligating that the same data protection obligations must be imposed on the sub-processor through a contract. This contractual cascading ensures that data protection obligations cascade through every layer of the supply chain, maintaining consistent privacy standards even when data is processed outside the EU.

One of the primary mechanisms by which GDPR compliance is extended to third-country counterparts is through Standard Contractual Clauses (SCCs), which are pre-approved by the European Commission.[121]. They serve as a safeguard for data transfers to third countries which are lacking an adequacy requirements (Article 46(2)(c)). Since SCCs are pre-approved by the European Commission[122] they offer legal certainty and reduce the need for organizations to seek individual approval from national data protection authorities for data transfers.

[119] determines the purposes and means of processing bearing primary responsibilities
[120] processes data on behalf of the controller
[121] European Commission, 2024h
[122] Commission Implementing Decision ((EU) 2021/914)

SCCs[123] offer a structured framework for international data transfers, accommodating various scenarios[124], where the processor is within the EU and the controller is in a third country. They allow multiple parties to adhere to the clauses[125] and, with certain exceptions, facilitate transfers to sub-processors in third countries[126]. The SCCs also grant individuals the right to invoke the clauses as third-party beneficiaries[127] and establish liability rules between parties in cases of rights breaches, including compensation for damages suffered[128]. Additionally, they mandate conducting a transfer impact assessment to document the specific circumstances of the transfer, the laws in the destination country, and the additional safeguards implemented to protect personal data[129]. Furthermore, the SCCs impose obligations on data importers to inform data exporters of public authority access requests and to challenge unlawful requests, thereby enhancing transparency and accountability in data processing activities[130].

For organizations with extensive international operations, SCCs can help to ensure a uniform level of data protection across all entities and partners involved in data processing activities. Using SCCs could lead to saving time and resources by avoiding the need to negotiate data protection agreements for each international data transfer. For example, an EU-based company may need to transfer personal data to a non-EU service provider for processing. By incorporating SCCs into their contract, the EU company ensures the service provider is legally bound to comply with GDPR-equivalent data protection standards.

[123] Commission Implementing Decision ((EU) 2021/914)
[124] such as controller-to-controller, controller-to-processor, processor-to-processor, and processor-to-controller transfers
[125] ((EU) 2021/914) clause 7
[126] ((EU) 2021/914) clause 9
[127] ((EU) 2021/914) clause 3
[128] ((EU) 2021/914) clause 12
[129] ((EU) 2021/914) clause 14
[130] ((EU) 2021/914) clause 15

4.1.3 Challenges and strategies in cascading data protection

While Standard Contractual Clauses offer numerous benefits, there are challenges associated with their use. Following the Court of Justice of the European Union's decision in the Schrems II case [131], organizations must assess whether the law of the third country ensures adequate protection of personal data. The CJEU found that SCCs by themselves may not always provide adequate protection for personal data when transferred to third countries. Following the Schrems II decision, organizations relying on SCCs or other mechanisms for data transfers are required to conduct data transfer impact assessment. These assessments evaluate the legal landscape of the third country and ensure that data subjects' rights remain adequately protected despite the transfer.

Binding Corporate Rules (BCRs) represent a company's internal alternative to SCCs for multination enterprises. BCRs are internal policies adopted by MNEs to ensure that personal data transferred within the group, including to entities in third countries, comply with European data protection standards (Article 47(1)). These internal policies are legally binding on all entities of the organization, once approved by the national data protection authority, thereby ensuring that all subsidiaries adhere to the same GDPR standards, regardless of their location (Article 47(1)(a)). While BCRs offer a mechanism for cross-border data transfers, they are complex and time-consuming to implement, often making them inaccessible to smaller organizations.

These additional compliance layers forces EU companies to closely assess their third-country counterparts[132], strengthening the GDPR's cascade effect by holding the third-country entities to similar levels of data protection. Ensuring that third-country counterparts understand and are capable of complying with the obligations imposed by SCCs or BCRs may be challenging for EU-companies, particularly in jurisdictions with less strict data protection laws. Local laws in the recipient country may conflict with the obligations under the SCCs, potentially weakening the

[131] Data Protection Commissioner v Facebook Ireland and Maximillian Schrems (Schrems II), Case C-311/18. Judgment of 16 July 2020
[132] DIGITALEUROPE, 2021, pp.3–8

effectiveness of the clauses. While SCCs provide legal certainty and streamline the compliance process, organizations must remain alert in assessing the adequacy of data protection in third countries and supporting their third-country counterparts in understanding and meeting GDPR standards. By proactively managing these obligations, companies can mitigate legal risks, protect individual privacy rights, and maintain trust in their data processing activities while avoiding penalties.

In cases where third-country data protection regulations conflict with GDPR obligations, companies are placed in a difficult position. For instance, in the United States, government surveillance laws[133] may override the data protection commitments made under SCCs[134]. Such conflicts introduce legal uncertainties and may lead to enforcement actions by EU regulators against EU-based companies or their third-country counterparts if adequate safeguards cannot be ensured[135].

To effectively cascade data protection obligations, organizations must take several key steps. First, they should conduct thorough due diligence by assessing their third country's data protection landscape, identifying legal risks, and evaluating the partner's capacity to comply with GDPR obligations. Understanding local laws is crucial to ensure that non-EU partners can uphold the required standards. When addressing local laws that may conflict with SCC obligations, organizations should work closely with partners to implement additional safeguards, such as encryption[136] or pseudonymization[137] (Article 6(4)(e)), or consider alternative arrangements. In addition, establishing strong contractual commitments is essential. By incorporating Standard Contractual Clauses (SCCs) into contracts, organizations ensure that non-EU partners are legally

[133] such as Section 702 of the Foreign Intelligence Surveillance Act (FISA)
[134] CJEU highlighted these concerns in the Schrems II decision, invalidating the EU-U.S. Privacy Shield due to inadequate safeguards against U.S. surveillance practices
[135] European Data Protection Board, 2021, pp.3–5
[136] European Data Protection Board defines encryption as a process that transforms readable data into an unreadable format using a cryptographic algorithm and it can be accessed only by using the correct key.
[137] As per Article 4(5) pseudonymization involves processing personal data in a way that it cannot be linked to a specific individual without additional information, which must be stored separately and protected by technical and organizational measures to prevent re-identification.

bound to uphold GDPR standards, effectively extending GDPR compliance beyond EU borders. By successfully implementing these, may require providing training and raising awareness among third-country partners to help them understand and implement GDPR requirements. Offering guidance and support fosters a shared commitment to data protection and facilitates smoother compliance across different jurisdictions.

4.2 Extending EU sanction against Russia

4.2.1 Evolution of the EU's Sanction regime against Russia

The European Union has developed one of the most comprehensive and dynamic sanctions regimes against Russia[138], particularly following the annexation of Crimea in 2014 and the invasion of Ukraine in 2022. In response to Russia's actions, the EU has implemented a series of sanctions aimed at deterring Russian aggression, upholding international norms, and protecting its fundamental interests and values, including peace, security, democracy, and the rule of law[139]. The EU's sanctions regime against Russia originated in 2014, following Russia's illegal annexation of Crimea and the destabilization of eastern Ukraine. These actions violated international law, specifically the principles protected in the United Nations Charter[140] and the Helsinki Final Act[141], which guarantee the territorial integrity and sovereignty of countries. The EU responded to these violations through diplomatic measures and restrictive actions through sanction regulation ((EU) 833/2014) aimed at compelling Russia to reverse its course.

The primary objectives and strategies of the EU's sanctions against Russia are versatile. Firstly, by imposing significant economic and political costs[142], the EU aims to deter further violations of

[138] Since 2022, EU has banned almost 50 billion euros worth of goods in exports and over 90 billion euros in imports, and more than 20 billion euros worth of private assets frozen in the EU, according to European Council's policy.
[139] European council, 2024a, p. 1
[140] United Nations, 1945, article 1-2
[141] The Helsinki Act, 1975,
[142] European Council, 2024b

international law and territorial sovereignty. Secondly, the sanctions seek to pressure Russia into respecting Ukraine's territorial integrity and to withdraw support for separatist movements in eastern Ukraine. Thirdly, the EU emphasizes the importance of upholding international law, human rights, and democratic principles, signalling that violations will not be tolerated without consequence.[143] Lastly, coordinated sanctions among Western nations demonstrate unity in response to Russian aggression, enhancing the effectiveness of the measures[144]. According to the European Parliamentary Research Service[145], the measures have degraded Russia's military and technological capacities, restricted its access to developed global markets, and reduced the Kremlin's revenues used to finance the war.

Initially, the EU's sanctions were targeted and limited, focusing on individuals and entities directly involved in the annexation of Crimea and the destabilization of Ukraine. Measures included travel bans, asset freezes, designation as arms embargo country, and restrictions on economic activities in Crimea and Sevastopol ((EU) 692/2014). However, as the conflict escalated, particularly with Russia's full-scale invasion of Ukraine in February 2022, the EU significantly expanded its sanctions regime, adopting a series of comprehensive sanction packages designed to target Russia's economic and military capabilities[146]. The EU's sanctions against Russia have been implemented through successive sanction packages, each building upon the previous to increase pressure and close loopholes. In response to Russia's recognition of the separatist-controlled regions of Donetsk and Luhansk and the deployment of troops, the EU imposed measures targeting Russian access to European financial markets ((EU) 2022/263). The sanctions included restrictions on financing Russian sovereign debt and limiting economic relations with the non-government-controlled areas. Key individuals and organizations undermining Ukraine's territorial integrity were sanctioned, with asset freezes and travel bans imposed[147].

[143] Council of the European Union, 2024b
[144] European Council, 2024c
[145] Caprile & Delivorias, 2023, pp.6-10
[146] European Council, 2024c
[147] Council Decision (CFSP) 2022/266)

As the conflict intensified, the EU escalated its response by implementing comprehensive bans on Russian state-owned enterprises and further restricting Russian financial institutions (Article 5). The measures extended to prohibitions on exporting dual-use goods and technology (Article 2), and a ban on luxury goods exports to Russia (Article 3h). Investments in Russia's energy sector were also prohibited (Article 3a), aiming to disrupt a critical component of Russia's economy[148]. In April 2022, the EU introduced a ban on importing Russian coal (Article 3m), being a significant source of revenue for Russia, through its fifth package of sanctions[149]. Additional financial restrictions targeted Russian banks, and asset freezes were extended to hundreds of individuals and entities connected to the Kremlin[150]. Restrictions on Russian freight operators were implemented, limiting Russia's ability to transport goods across Europe (Article 3l).

Subsequent packages[151] expanded sanctions to include a partial embargo on Russian oil imports, targeting crude oil and petroleum products (Article 3m and 3n). Targeting Russia's industrial sectors, the EU imposed export restrictions on electronics, machinery, and other key technologies (Article 2a). It also prohibited EU nationals from serving on boards of Russian state enterprises (Article 5o), aiming to reduce European influence and support within Russian economic structures. Focusing on dual-use goods and advanced technologies, additional export bans were introduced on items such as drone engines, chemical substances, and materials with potential military applications (Article 2). Sanctions were tightened on Russia's financial institutions and state-controlled media outlets, aiming to combat propaganda and misinformation (Articles 5f and 5h).

The most recent packages[152], from eleven to fourteen, continued to escalate sanctions by addressing circumvention efforts and closing loopholes. Bans were extended to critical military technologies, luxury imports, and Russian diamonds (Article 3p). The implementation of the G7

[148] Council Regulation ((EU) 2022/328)
[149] Council Regulations ((EU) 2022/576; 2022/580)
[150] European Commission, 2022b
[151] Council Regulation ((EU) 2022/879); 2023/427)
[152] Council Regulations ((EU) 2023/1214; 2023/878; 2024/745; 2024/1745)

oil price cap aimed to limit Russia's revenue from oil exports while maintaining global oil supply stability (Article 3q). The recent sanctions packages include provisions for member states to monitor and report breaches, specifically targeting any efforts to circumvent sanctions. This article emphasizes information sharing on breaches or circumventions (Article 12).

To enhance the enforcement of sanctions and address inconsistencies across member states, the European Union took another significant legislative step. On November 2022, the Council adopted decision[153], which added the violation of Union restrictive measures to the list of EU crimes as specified in Article 83(1) of the Treaty on the Functioning of the European Union (TFEU). Subsequently, on 24 April 2024, Directive ((EU) 2024/1226) was enacted to define criminal offences and penalties for breaches of Union restrictive measures. This directive outlines specific criminal behaviours, such as assisting individuals in circumventing EU travel bans, trading in sanctioned goods, or conducting transactions with entities subject to EU restrictive measures. Member states are required to incorporate into their national laws specific criminal offenses related to breaches of EU sanctions. In addition, The directive mandates that member states impose effective, proportionate, and discouraging criminal penalties for these offenses for natural persons (Article 5) and for legal persons (Article 7). This involves updating the Criminal Code of Finland[154] (39/1889) to incorporate offenses related to breaches of EU sanctions.

4.2.2 Contractual cascading in sanctions enforcement

A significant development in the EU's sanctions regime was the introduction of contractual cascading obligations, particularly through the 12th sanction package's [155] Article 12g. This mechanism can be seen to represent a transformative shift in the EU's approach to enforcing sanctions, extending its legal reach beyond its borders and influencing international trade

[153] Council Decision ((EU) 2022/2332
[154] In Finnish Rikoslaki
[155] Council Regulation ((EU) 2023/2878)

practices. Article 12g mandates that EU-based exporters[156] include specific contractual clauses prohibiting the re-exportation of certain goods to Russia when dealing with entities in third countries. EU exporters are required to incorporate the so called "no re-export to Russia" clause into contracts with the first non-EU buyer counterparty, other than those located in partner countries[157], covering certain goods listed in the relevant annexes[158] of the regulation. However, it does not include further cascading of the contractual obligations.

Although third-country buyers are not directly subject to EU law, they become contractually bound to comply with the EU's sanctions regime through contractual obligations. The contractual cascading mechanism effectively extends the EU's sanctions beyond its borders, possibly impacting non-EU entities and influencing global trade practices. By requiring compliance from third-country buyers, the EU indirectly regulates the flow of goods and technologies to Russia globally. This extension of policy reaches into jurisdictions where EU law does not traditionally apply. Non-EU entities risk losing business with EU exporters unless they adhere to the no re-export clause, creating an incentive for compliance even without direct legal obligations under EU law, particularly for businesses reliant on access to EU markets and goods.

According to the Regulation, violations of the contractual obligations must lead to legal remedies such as contract termination, penalties, or damages (Article 12g (3)). More precisely, EU-exports must include adequate remedies in the contract obligations. In addition, EU exporters must report breaches to national authorities (Article 12g (4)), which can in a bigger global setting trigger diplomatic pressure. To facilitate implementation of the “no re-export to Russia” clause, the European Commission provided a model clause in its guidance documents, offering standardized wording for contracts[159].

[156] entities located inside the EU exporting goods outside of the EU customs boarders
[157] As listed in Annex VIII to Regulation 833/2014
[158] goods as listed in Annexes XI, XX and XXXV to Regulation (EU) 833/20014, common high priority items as listed in Annex XL to Regulation (EU) 833/2014, or firearms and ammunition as listed in Annex I to Regulation (EU) 258/2012
[159] European Commission, 2022c

The EU's approach mirrors the extraterritorial enforcement seen in U.S. sanctions as secondary sanctions, such as those against Iran and North Korea[160]. This represents a strategic shift in EU policy toward a more assertive stance in international trade and sanctions enforcement. By imposing contractual obligations, the EU aims to prevent Russia from circumventing sanctions through intermediaries in neutral or non-aligned countries, targeting global supply chains and reducing the risk of sensitive goods reaching Russia indirectly.

4.2.3 Broadening sanction enforcement further

Building on the precedent set by Article 12g, the EU continued to enhance its sanctions framework with further amendments in 14th sanction package[161], introducing provisions that focus on intellectual property rights (IPR) (Article 12ga) and risk management (Article 12gb). Article 12ga(1) extends obligations to the licensing and transfer of IPR, trade secrets, and any material or information protected by such rights of certain Common High Priority Items (CHPIs)[162], which were already covered by the original no re-export to Russia clause as well. Contracts with third-country counterparts must explicitly prohibit the use of IPRs or trade secrets in connection with goods destined for Russia with incorporating similar adequate remedies (Article 12ga (3)) as with the original no re-export to Russia clause. However, this prohibition also applies to third-country sublicensees, requiring their counterparts in those countries to ensure that the restriction is enforced throughout the licensing chain (Article 12ga (1)), adding another layer to the contractual cascading effect.

By extending restrictions to IPRs and trade secrets, the EU aims to prevent Russia from acquiring critical technologies and know-how, thereby reducing the risk of circumventing existing export prohibitions[163] by using, for example, manufacturing drawings to produce goods. Sectors heavily

[160] D.C. Houghton Ltd.,2024, p.356
[161] Council Regulation ((EU) 2024/1745
[162] As listed in Annex XL to Regulation 833/2014
[163] Council of the EU, 2024fourteen

reliant on IPRs and trade secrets, such as technology, defence, and advanced manufacturing, are even now significantly impacted by the existing sanction restrictive measures, necessitating stricter management of licensing agreements and other trade secret related agreements to ensure compliance. The obligations extend to non-EU entities in both ends of the supply chain covering both the supplier and customer side through contractual terms, reinforcing the EU's extraterritorial approach to sanctions enforcement.

Article 12gb mandates a proactive approach to sanction risk management. Exporters of CHPIs must conduct thorough risk assessments to identify and mitigate risks of indirect exports to Russia (Article 12gb(1)(a)). The risk assessment must be proportionate to the nature and size of the entity, recognizing differences between large corporations and SMEs (Article 12gb(1)(b)). Risks identified must be documented and revised accordingly (Article 12gb(1)(a)), ensuring ongoing compliance and adaptability to changing circumstances. In practise, companies must establish policies and procedures to manage risks, forcing indirectly companies to include supply chain monitoring and compliance programs.

These obligations extend also to non-EU subsidiaries owned or controlled by EU entities (Article 12gb(3)), ensuring consistent compliance across the entire corporate structure. This reinforces the EU's ability to influence global business practices, even in jurisdictions outside its legal reach. Companies must invest in compliance infrastructure, including training, monitoring systems, and legal support. Businesses must analyse their own entities, suppliers and customers more closely, potentially affecting relationships and market access. Failure to comply can result in significant penalties, both legal and reputational.

In addition, Article 8a mandates that EU individuals and entities utilize their best efforts to ensure that their non-EU subsidiaries or controlled entities do not engage in activities undermining EU’s sanctions under Regulation ((EU) 833/2014). This provision extends the reach of EU sanctions beyond its borders to apply to all articles of the Regulation, enhancing their extraterritorial application. The advantages include closing loopholes to prevent circumvention and reinforcing

the EU's commitment to international law. However, it also introduces legal complexities due to potential conflicts with local laws and imposes operational challenges, as EU parent companies must allocate significant resources to monitor and control the activities of their foreign subsidiaries to ensure compliance.

The EU has also expanded its sanctions to include Belarus, recognizing its role in supporting Russia's military efforts. Recent amendment[164] to the Council Regulation ((EU) 765/2006) extends similar contractual cascading obligations as the no re-export to Russia clause, to transactions involving Belarus, further complicating the compliance landscape for businesses. Companies must now ensure that similar goods are not redirected to Belarus as a means of circumventing sanctions (Article 8g). This addition of Belarus requires companies to reassessing and amending their existing No re-export to Russia clauses.

4.3 Mandating sustainability through due diligence

4.3.1 Obligations under the CSDDD and alignment with sustainability goals

The Corporate Sustainability Due Diligence Directive (CSDDD) ((EU) 2024/1760), adopted by the European Union in 13 of June 2024, represents a shift in corporate governance and sustainability, aligning business operations with broader human rights and environmental imperatives. Member states must incorporate the Directive into national law by July 2026, with the rules applying to the first group of companies a year later and full implementation by July 26, 2029 (Article 37). This directive is part of the EU's broader agenda to foster responsible corporate behaviour[165], especially within areas of climate change, biodiversity loss, and social inequalities. The CSDDD mandates that companies conduct due diligence and establish processes to ensure their activities, and those of their subsidiaries and value chain partners, do not contribute to adverse human rights or environmental impacts, both within and beyond the EU's borders (Article 1).

[164] Council Regulation ((EU) 2022/398
[165] European Commission, 2024i

At its core, the CSDDD introduces a comprehensive legal obligation for companies to identify, prevent, mitigate, and account for human rights abuses and environmental harms across their operations. It outlines the requirement for due diligence, specifying that companies must identify and prevent negative impacts on human rights and the environment (Article 7). Companies are required to mitigate such impacts when they are identified (Article 8), and to track and report on these actions (Article 9). This responsibility extends beyond direct operations to include indirect partners, such as suppliers and contractors, ensuring that businesses are accountable for the full spectrum of their influence. The directive applies to large companies, including non-EU firms operating within the EU market, with specific thresholds based on revenue and employee numbers (Article 2).

The CSDDD is also closely aligned with global sustainability frameworks, such as the Paris Agreement[166] on climate change and the United Nations Guiding Principles on Business and Human Rights[167]. Companies are required to adopt transition plans aimed at contributing to the EU's climate neutrality goals, ensuring that their business models evolve in line with international climate commitments (Article 8(3)). These obligations place sustainability at the heart of corporate strategy, requiring businesses to integrate environmental and social considerations into their risk management and operational decision-making processes.

National authorities in member states are responsible for overseeing compliance (Article 24), granting them authority to ensure adherence to CSDDD standards. Articles 27 outline a framework for penalties, which includes fines proportionate of up to 5% of companies' net worldwide turnover, public warnings, or restrictions on activities for companies failing to meet their due diligence obligations. Article 29 further introduces provisions for civil liability, enabling victims of human rights violations or environmental harm to seek remedies from corporations

[166] United Nations, 2015
[167] The United Nations, 2011

that breach their due diligence duties, granting individuals and communities a way to be compensated for damages.

4.3.2 Extending due diligence via contractual cascading

One of the primary obligations imposed by the CSDDD is the integration of due diligence into corporate policies and risk management systems. Companies are expected to implement these systems across all relevant areas of their operations, ensuring that human rights and environmental considerations are embedded at every level of decision-making. The directive requires businesses to establish a specific due diligence policy that addresses potential risks and outlines the steps to mitigate adverse impacts. This policy must be developed in consultation with employees and their representatives, reinforcing a participatory approach to corporate governance.

The CSDDD employs a comprehensive strategy to ensure that companies not only manage their own operations responsibly but also extend these obligations to their entire value chain, including partners located outside the EU. One of the primary mechanisms to achieve this is through contractual cascading. This approach requires companies to impose their due diligence obligations on direct and indirect business partners by incorporating contractual assurances in their agreements (Article 10(2)(b)). These assurances ensure that sustainability standards are upheld at every level of the supply chain.

To comply with the CSDDD, companies must take several practical measures to address adverse impacts. This includes seeking contractual assurances from direct business partners and, when necessary, cascading these requirements down the supply chain. These assurances are not limited to direct partners but must also be cascaded throughout the supply chain (Articles 10(2)(b);10(4);11(2)(c)). This ensures that all partners, regardless of their position in the value chain, are held to the same standards for human rights and environmental protection. Companies must modify their business strategies and operations, including their purchasing practices, to

ensure these impacts are addressed. Specifically, they are required to ensure that contracts with suppliers are based on fair and non-discriminatory terms, particularly when dealing with SMEs to prevent undue risk or burden transfer (Article 10(2)(e)).

4.3.3 Shared responsibility and model clauses

A critical component of the CSDDD's support for companies is outlined in Article 18, which mandates that the European Commission, in consultation with member states and stakeholders, will issue voluntary model contractual clauses to assist companies in complying with the directive. This guidance will be made available by 26 January 2027 and is intended to help businesses meet their contractual assurances obligations (Articles 10(2)(b) and 11(3)(c)). These model clauses will provide a standardized framework for integrating due diligence obligations into contracts, ensuring consistency and fairness across industries and sectors. By offering a clear legal framework, the Commission aims to reduce the burden on companies and their business partners while promoting effective compliance with the directive's requirements (Recital 66).

The model contractual clauses will be especially useful for companies dealing with complex global supply chains, where direct oversight of all business partners can be challenging. By adopting these standardized clauses, companies can ensure that their contractual partners, whether within or outside the EU, are legally bound to adhere to the same high standards of human rights and environmental protection[168]. Moreover, these clauses will be designed to allocate responsibilities fairly across the supply chain, preventing the unfair transfer of risks or burdens, particularly onto smaller suppliers[169].

In anticipation of the CSDDD's full implementation, various European initiatives and corporate efforts are already underway to bridge regulatory gaps, have included clauses already due to

[168] Dadush, Schönfelder, & Streibelt, 2024, pp. 5-7
[169] European Commission, 2024j, p.15

other legislations obligations, or advance sustainability agendas within supply chains. The European Model Clauses[170] (EMCs) were developed through the collaboration of legal and policy experts to strengthen contractual governance in global supply chains. These clauses address environmental and human rights issues by embedding responsible business practices into contractual obligations, ensuring companies meet the CSDDD's sustainability goals effectively and uniformly[171]. The EMCs serve as practical templates that enable companies to apply due diligence obligations consistently and fairly across multi-tiered supply chains, fostering collaborative relationships that distribute compliance costs and responsibilities fairly between buyers and suppliers[172]. Introduced by the European Working Group for Responsible and Sustainable Supply Chains, these model clauses are designed to establish enforceable standards for human rights and environmental due diligence (HREDD) across complex supply chains[173]. The clauses include provisions for risk identification, preventive and corrective measures, and the roles of both buyers and suppliers in ensuring adherence to HREDD principles[174].

EMCs play a critical role in operationalizing the CSDDD by embedding due diligence requirements directly into contractual agreements. The purpose of EMCs is to set standardized obligations that companies must observe to address adverse human rights or environmental impacts within their operations and supply chains. These clauses act as legal tools that promote consistent compliance, reduce ambiguity, and encourage the uniform application of due diligence practices across European and global supply chains[175] .The adoption of EMCs helps address some of the CSDDD's fundamental objectives, such as ensuring that companies systematically identify, mitigate, and prevent adverse impacts[176]. Importantly, by establishing these clauses, companies should be more equipped to navigate the directive's demands more effectively, aligning operational

[170] Responsible Contracting Project, 2024a
[171] Responsible Contracting Project, 2024b, pp. 1-2
[172] Saloranta & Hurmerinta-Haanpää, 2023, pp. 7-8
[173] Responsible Contracting Project, 2024b, p. 3
[174] Responsible Contracting Project, 2024b, p. 5
[175] Dadush, Schönfelder, & Streibelt, 2024, p. 2
[176] Saloranta & Hurmerinta-Haanpää, 2023, p. 4

practices with regulatory requirements and reducing exposure to civil liabilities or reputational damage.

One of the primary benefits EMCs offer companies, and their value chains is legal clarity and consistency in implementing the CSDDD. These clauses formalize preventive measures through comprehensive monitoring mechanisms, helping companies to establish compliance frameworks that can be consistently enforced. For instance, EMCs outline detailed guidelines on buyer and supplier obligations to conduct regular audits, foster cooperation, and ensure transparent communication regarding sustainability practices[177]. These clauses allow companies to leverage EMCs to extend their HREDD commitments downstream and across supply chains, thereby minimizing potential disruptions related to compliance violations[178].

EMCs also emphasize proactive measures such as stakeholder engagement and corrective actions to address and resolve impacts once identified[179]. By embedding these obligations, companies can foster a more resilient supply chain, where risks are addressed, and stakeholders can be seen as part of the solution. These clauses enable companies to strengthen their business relationships by sharing responsibilities with suppliers rather than enforcing one-sided compliance requirements. This shift towards a cooperative model not only supports the ethical goals of CSDDD but also provides practical benefits in terms of risk management and operational continuity[180].

While EMCs and the future Commission's model clauses offer benefits, they also present specific challenges. Firstly, it could be argued that the complexity of enforcing these clauses in international supply chains can hinder compliance, especially for suppliers operating in jurisdictions with weaker regulatory landscape. Many companies may find it difficult and slow to ensure that their suppliers fully comply with EMCs, particularly when subcontractors or smaller

[177] EMC Article 4
[178] EMC Article 1.1(c)
[179] EMC Articles 1.1(b) and 2(a)
[180] EMC Articles 1.1(a) and 5.1

entities in the value chain lack the resources to meet these stringent requirements. Moreover, the Directive requires that companies maintain comprehensive monitoring and auditing systems (Article 15), which can be costly, time-consuming and resource-intensive. Small and medium-sized enterprises (SMEs) are particularly vulnerable to these financial and administrative burdens, as they may lack the resources and knowledge to support such extensive compliance mechanisms. While the CSDDD and EMCs includes provisions to mitigate the burdens on SMEs, the indirect pressure on them, as business partners within larger value chains, could still be significant.

5 Enhancing model clauses through legal design

5.1 The role of legal design in compliance and contractual cascading

5.1.1 Improving compliance through legal design

In today's complex global legal and regulatory landscape, companies are increasingly challenged to ensure that their contractual documents are not only legally sound but also accessible and clearly defined. The traditional approach to legal documentation, characterized by legalese[181] and technical jargon[182], often hinders understanding and compliance, particularly when obligations must be communicated across global value chains. Legal design can be seen emerging as a transformative approach that reimagines legal documents by applying principles of design thinking, clear communication, and user-centricity[183].

Legal design is changing the way companies approach legal documents and processes, transforming complex legal jargon into accessible formats[184]. This transformation can be argued to be particularly significant when companies need to cascade compliance requirements through their value chains, in which a process that demands clarity and mutual understanding among all parties, is highlighted. By reforming contracts and compliance mechanisms through legal design, companies can enhance compliance, reduce risks, and foster stronger business relationships[185].

One of the primary ways legal design benefits companies is by simplifying contracts to ensure that compliance requirements are clearly understood and effectively implemented by all stakeholders through the value chain[186]. Traditional legal contracts are often dense and filled with technical language that can be difficult for non-lawyers to comprehend. This complexity can lead

[181] As defined by the Merriam-Webster dictionary “the specialized language of the legal profession”
[182] As defined by the Merriam-Webster dictionary “the technical terminology or characteristic idiom of a special activity or group”
[183] Corrales Compagnucci, Haapio, & Hagan, 2021, p.1
[184] Finnegan, 2021, p.33-35
[185] Autto, Haapio & Nuottila, 2024, p.3
[186] Hagan, 2024, chapter 4.1

to misunderstandings, non-compliance, and ultimately, legal disputes or regulatory penalties. Legal design addresses these challenges by applying principles of clear communication, visual aids, and user-centric design to legal documents[187].

By applying design principles to model clauses, legal professionals and authorities can create standardized language that is both clear and structurally optimized, making the clauses easier to read and understand while maintaining their legal forcefulness. This can be applied to model clauses by formatting them in ways that distinguish key sections, prioritize important information, and clarify hierarchical structures[188]. The importance of legal design and model clauses in cascading compliance requirements is underscored by recent legislative developments in which the contracts play a pivotal role in implementing compliance obligations across supply chains[189]. Companies cannot simply rely on contractual clauses to meet their due diligence obligations, but instead, contracts must be part of a broader, dynamic process that includes continuous engagement and monitoring that reaches extraterritorially[190]. Legal design enhances this process by making contracts more accessible and by fostering a collaborative approach to compliance.[191]

In the context of cascading compliance requirements, legal design ensures that all parties in the value chain understand their roles and responsibilities[192]. For example, when a company needs its suppliers to adhere to environmental regulations, a traditionally worded contract might outline these requirements in complex legal terms. Suppliers might sign the contract without fully understanding their obligations, leading to unintentional non-compliance. Legal design transforms these contracts by using plain language and incorporating visual elements such as flowcharts or infographics[193], which illustrate the specific steps suppliers must take to comply.

[187] Autto, Haapio & Nuottila, 2024, p. 8
[188] World Commerce & Contracting, 2024, Pattern families
[189] As discussed in chapter 4
[190] Autto, Haapio & Nuottila, 2024, p.6
[191] Dadush, Schönfelder, & Streibelt, 2024, p. 5
[192] Dadush, Schönfelder, & Streibelt, 2024, pp.7–8
[193] World Commerce & Contracting, 2024, Pattern library

This clarity should reduce the risk of misunderstandings and enhances the likelihood of compliance.

5.1.2 Leveraging legal design for effective model clauses

Legal design and creating own model clauses and templates also encourages companies to consider their own practices and how they might contribute to adverse impacts within the value chain. This could be for example a focusing the importance of companies adjusting their purchasing practices as a preventive measure[194]. Contracts that incorporate commitments to responsible purchasing practices can be seen as demonstrating a company's dedication to ethical standards and help prevent adverse impacts caused by unfair commercial terms. For instance, companies can include clauses that ensure fair pricing, reasonable lead times, and support for suppliers in meeting compliance obligations[195].

In addition to improving clarity and fostering collaboration, legal design and model clauses may contribute to operational efficiency[196]. Clear and well-designed contracts reduce the time and resources required for negotiation and execution. Parties spend less time interpreting complex terms and wordings and more time focusing on implementing the agreed-upon actions[197]. This efficiency can lead to faster onboarding of suppliers and partners, quicker implementation of compliance measures, and a more agile value chain. For example, modular model clauses designed with legal design principles can be used to quickly adapt contracts[198] for different jurisdictions or scenarios. This approach can be considered especially valuable in international contracts, where several variations may be necessary to maintain to comply with local regulations.

[194] Autto, Haapio & Nuottila, 2024, p.3
[195] Corrales Compagnucci, Fenwick, Haapio, & Vermeulen, 2022, p. 248
[196] Huovinen, 2021, p.178–179
[197] Finnegan, 2021, p.135
[198] World Commerce & Contracting, 2024, Pattern library

Integrating design principles into contracts have shown that this approach can lead to better business outcomes[199].

The benefits of legal design are further emphasized in recent legislative developments[200]. New legislations set boundaries around how companies can meet their due diligence obligations, limiting the ability to simply shift risks and responsibilities onto their suppliers. Contracts must be appropriate and effective, meaning they should be designed to genuinely address adverse impacts and be capable of achieving the objectives of defined compliance issues[201]. For example, the importance of avoiding strict liability clauses that treat any imperfection in the supplier's performance as a breach of contract has been highlighted[202]. Such clauses create incentives for suppliers to hide problems rather than disclose them, undermining the effectiveness of due diligence efforts [203] . Instead, contracts should promote ongoing cooperation and provide mechanisms for addressing issues collaboratively[204]. By making legal documents more accessible it can be ensured that clauses comply with accessibility standards, such as those under the EU Web Accessibility Directive ((EU) 2016/2102). This is critical for ensuring that all individuals, including those with disabilities, can understand and engage with contractual content[205].

In business-to-business contracting, moving away from traditional legal language often presents a considerable challenge. Many organizations view established legal terminology as essential to maintaining clarity, precision, and enforceability, particularly in complex business relationships where risk and liability concerns are high. Despite this, the integration of legal design elements has shown potential to enhance the comprehension of contract terms without entirely replacing conventional legal language[206]. Rather than fundamentally altering the substance of contracts,

[199] Finnegan, 2021, p.199
[200] As discussed in chapter 4
[201] Hagan, 2024, section 1.1
[202] Huovinen, 2021, p. 177
[203] Dadush, Schönfelder, & Streibelt, 2024, p. 6
[204] Huovinen, 2021, p. 180
[205] Finnegan, 2021, p.197
[206] Haapio, 2024, p. 6

these design elements can be used to increase understanding on top of the legal language, offering clarity where standard legal text may fall short.

5.2 Implementing model clauses efficiently

5.2.1 Evaluating Standard Contractual Clauses for enhanced data protection

The Commission Decision[207] ((EU) 2021/914) provides a standardized contractual framework, which is known as Standard Contractual Clauses (SCCs), for transferring personal data from entities within the European Economic Area (EEA) to third countries that lack an adequate level of data protection under GDPR ((EU) 2016/679). The SCCs are designed to be incorporated into contracts governing international data transfers, ensuring that personal data transferred outside the EEA is protected to a level comparable to that within the EU. This structure is modular tailored for various transfer relationships[208] allowing entities to select and apply the most relevant clauses based on their roles and data processing responsibilities.

The clauses include provisions that specify data protection safeguards[209], measures to facilitate data subject rights[210], and procedures for handling requests from public authorities for access to data[211]. The SCCs can be integrated into a broader contract, with additional clauses provided they do not conflict with the fundamental data protection obligations[212]. They serve as a compliance mechanism that helps companies avoid needing prior authorization from data protection authorities for each data transfer.

[207] Commission Implementing Decision ((EU) 2021/914), also referred to as SCCs
[208] SCC Clause 1
[209] SCC Clause 8
[210] SCC Clause 10
[211] SCC Clause 15
[212] SCC Clause 2

The SCCs exhibit several features aligned with good legal design principles, enhancing usability and compliance effectiveness. Each module within the SCCs is explicitly designed for a particular transfer scenario. This modular approach allows parties to focus only on the obligations relevant to their relationship, streamlining compliance efforts and facilitating role-specific obligations[213]. This modular approach allows parties to focus only on obligations relevant to their relationship, streamlining compliance efforts. For example, "Security of Processing" [214] mandates data importers to implement appropriate security measures, with additional detail in each module about what constitutes "appropriate" measures based on the data's sensitivity and the transfer's nature. The SCCs emphasize transparency in data processing, requiring data importers to inform data subjects of their rights, including the right to obtain copies of their data and request rectification or deletion[215].

Specific obligations[216], require data importers to adopt technical and organizational measures to prevent data breaches. This clause also outlines breach notification requirements, both to the data exporter and, if needed, to affected data subjects, ensuring companies implement robust security practices in line with regulatory standards. The clauses enable data subjects to enforce their rights as third-parties[217], promoting accountability by allowing individuals to seek remedies against non-compliant parties. This provision ensures that data subjects retain control over their data even when it is transferred internationally.

While the SCCs are structured effectively, some enhancements could make them more accessible. Certain legal term, such as "pseudonymization" and "onward transfers", might be challenging for non-subject-matter professionals. A glossary or practical examples could clarify complex requirements. For instance, Modul ones Clause 8.5 mandates "appropriate technical and organizational measures to ensure security." However, for organizations without dedicated data

[213] SCC Clause 8
[214] SCC Clause 8.5
[215] SCC Clause 8.2
[216] such as those outlined in Modul one Clause 8.5 on Security of Processing
[217] SCC Clause 3

security teams, understanding and implementing "appropriate" measures can be challenging. Including examples such as "appropriate measures could involve encryption of sensitive data during transfer or storage" would clarify expectations. Additionally, defining key terms like "pseudonymization" and "anonymization" would help companies better interpret their obligations, as many smaller entities may be unfamiliar with these security practices.

Clauses related to liability and indemnification[218] allow for penalties related to breaches but leave some specifics open to interpretation. Including standardized examples for calculating damages, or guidelines for arbitration, could help manage disputes without lengthy negotiations. A sample calculation, such as "if a breach affects X number of individuals and incurs a financial loss of Y, penalties could be determined based on this scale," would provide a clearer framework.

As an example, Clause 8.5 Duration of processing and erasure or return of data in Module two of the Commission Decision on SCCs.

> *Processing by the data importer shall only take place for the duration specified in Annex I.B. After the end of the provision of the processing services, the data importer shall, at the choice of the data exporter, delete all personal data processed on behalf of the controller and certify to the data exporter that it has done so, or return to the data exporter all personal data processed on its behalf and delete existing copies. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit return or deletion of the personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process it to the extent and for as long as required under that local law. This is without prejudice to Clause 14, in particular the requirement for the data importer under Clause 14(e) to notify the data exporter throughout the duration of the contract if it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under Clause 14(a).*

This Modul two Clause 8.5 could be revised using legal design principles by organizing content into structured, numbered sections with clear headings, simplifying options for deletion or return

[218] SCC Clause 12

of data, using direct, active language for clarity, and incorporating user-centric, scannable formats such as bullet points, which enhance readability, transparency, and comprehension[219].

8.5 Duration of Processing and Erasure or Return of Data

1. **Processing duration**. The data importer shall process personal data solely for the time period specified in Annex I.B.
2. **Data deletion or return at end of services**. Upon conclusion of the data processing services, the data importer shall either:

   (a) **Delete** all personal data processed on behalf of the data exporter and provide a written confirmation of deletion; or

   (b) **Return** all personal data to the data exporter and delete any remaining copies, unless further retention is legally required.

   The data exporter shall choose between deletion or return, and the data importer must comply with this choice promptly.
3. **Continued compliance during transition**. Until all data is fully deleted or returned, the data importer shall uphold all data protection obligations under these Clauses.
4. **Exceptions due to local law requirements.** If local laws applicable to the data importer prevent data deletion or return, the data importer shall both:

   (a) **Limit** processing of the data to only what is necessary to meet the requirements of that local law; and

   (b) **Notify** the data exporter of this limitation.
5. **Notification of compliance issues**. The data importer shall promptly inform the data exporter if, during the contract, it becomes subject to new laws or practices that conflict with the data protection obligations in these Clauses, as specified in Clause 14(e).

The SCCs offer key advantages for organizations handling complex, multi-jurisdictional data flows, enabling GDPR compliance without bespoke agreements and reducing legal costs, especially in high-volume data transfers. This standardized framework minimizes enforcement risks by adhering to pre-approved clauses and supports consistent compliance across varying legal

[219] World Commerce & Contracting, 2024, Pattern library

environments. As global data protection standards evolve, the SCCs provide a flexible foundation, with provisions like Clause 15 enhancing resilience to regulatory changes. However, the Commission should prioritize legal design improvements and provide clearer implementation guidance in future updates to further strengthen enforcement and usability.

5.2.2 Ensuring sovereignty with the "No Re-export to Russia" Clause

The so called "No re-export to Russia Clause" model provided by the European Commission in their Frequently Asked Questions (FAQ) document[220] offers a clear, structured approach to ensure compliance with Article 12g of the Russia Sanctions Regulation ((EU) No 833/2014). By specifying non-permitted actions and requiring the buyer to ensure compliance by downstream third parties, such as resellers, the clause thoroughly addresses both direct and indirect compliance risks. This proactive stance reduces the likelihood of goods inadvertently reaching sanctioned regions and aligns with regulatory standards.

The model clause offers significant advantages by incorporating monitoring mechanisms and establishing penalties for non-compliance, thereby enhancing compliance effectiveness and reducing the necessity for drafting customized compliance clauses. This standardization is particularly time-saving for manufacturing companies that must implement such contracts with their customers while also receiving to similar agreements from their own suppliers, a common scenario for global organizations operating within extensive value chains. The use of a standardized clause minimizes the resources required for reviewing individual agreements and decreases the need for iterative negotiations, streamlining the contracting process across complex supply chains.

From a legal design perspective, this model clause has several strong features that enhance clarity, enforceability, and compliance. The clause is structured in numbered sections, making each

[220] European Commission, 2022c, chapter 13.6

obligation distinct and easy to reference, which is beneficial for readability and enforcement. The language is clear and specific, particularly in requiring the [Importer/Buyer] to avoid re-exporting to the Russian Federation and to set up a "monitoring mechanism" to detect any non-compliant conduct by third parties. By setting a defined standard of "best efforts," it acknowledges practical limitations while still holding the [Importer/Buyer] accountable. The clause also introduces clear consequences for breaches, including termination rights and specified penalties, which reinforces compliance by outlining tangible repercussions. The notification requirement ensures prompt communication of any issues, and the two-week response period for compliance information requests establishes a reasonable timeframe, supporting transparency. Overall, this clause is well-structured to guide compliant behaviour and foster accountability while providing a structured, accessible framework.

> *(1) The [Importer/Buyer] shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation any goods supplied under or in connection with this Agreement that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014.*
> *(2) The [Importer/Buyer] shall undertake its best efforts to ensure that the purpose of paragraph (1) is not frustrated by any third parties further down the commercial chain, including by possible resellers.*
> *(3) The [Importer/Buyer] shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of paragraph (1).*
> *(4) Any violation of paragraphs (1), (2) or (3) shall constitute a material breach of an essential element of this Agreement, and the [Exporter/Seller] shall be entitled to seek appropriate remedies, including, but not limited to: (i) termination of this Agreement; and (ii) a penalty of [XX]% of the total value of this Agreement or price of the goods exported, whichever is higher.*
> *(5) The [Importer/Buyer] shall immediately inform the [Exporter/Seller] about any problems in applying paragraphs (1), (2) or (3), including any relevant activities by third parties that could frustrate the purpose of paragraph (1). The [Importer/Buyer] shall make available to the [Exporter/Seller] information concerning compliance with the obligations under paragraph (1), (2) and (3) within two weeks of the simple request of such information.*

This "No Re-export to Russia" clause could be revised using legal design principles by structuring it with clear, numbered sections and descriptive headings, introducing mutual obligations for

both parties, employing straightforward, active language, and enhancing user-centric readability with scannable elements, all of which improve clarity, transparency, and enforceability[221].

> **1. Restriction on sales and exports**. Both the [Importer/Buyer] and the [Exporter/Seller] shall not sell, export, or re-export, directly or indirectly, any goods covered by this Agreement to the Russian Federation or for use within the Russian Federation if those goods fall under Article 12g of Council Regulation (EU) No 833/2014.
> **2. Preventing indirect exports**. The [Importer/Buyer] and the [Exporter/Seller] shall each take all reasonable measures to prevent any third parties in their respective supply chains, including resellers, from violating the restriction in Section 1.
> **3. Monitoring and compliance measures**. Both Parties agree to establish and maintain adequate monitoring mechanisms to detect any actions by third parties in their respective supply chains that could undermine the restriction in Section 1.
> **4. Consequences of breach**. Any breach of Sections 1, 2, or 3 by either Party will constitute a material violation of this Agreement. The non-breaching Party shall be entitled to seek remedies, including but not limited to:
>
> - Termination of this Agreement; and
> - A penalty of [XX]% of the total Agreement value or the goods' export price, whichever is higher.
>
> **5. Notification and information sharing**
> The [Importer/Buyer] and the [Exporter/Seller] shall each promptly inform the other Party of any issues related to compliance with Sections 1, 2, or 3, including any third-party activities that might compromise the restriction in Section 1. Upon request, each Party shall provide the other with documentation confirming compliance within two weeks.

The changes made to the clause reflect a more balanced approach to compliance obligations by introducing mutual commitments for both the Importer/Buyer and Exporter/Seller. This shared structure enhances accountability and aligns with the compliance goals under Regulation by ensuring that both parties actively prevent prohibited transactions and maintain oversight within

[221] World Commerce & Contracting, 2024, Pattern library

their respective supply chains. Clear section headings like “Restriction on sales and exports” and “Consequences of breach” are used to organize the clause logically, improving readability and accessibility. By specifying each duty in numbered sections, such as monitoring and compliance, the revised clause creates distinct and actionable obligations, minimizing ambiguity. Additionally, language such as “shall take all reasonable measures” ensures specificity and clarity, setting clear standards for compliance without overreliance on vague terms like “best efforts.” This rephrasing promotes transparency, offering actionable guidance on compliance, including predefined consequences for breaches to enhance enforceability.

For future similar clauses, the Commission could further improve clarity and usability by employing direct, accessible language and modular formats with concise section headings for each obligation. It should also consider providing templates with flexible penalty options, such as percentage-based or value-based penalties, to aid organizations in consistent implementation. Detailed guidelines on compliance practices, such as monitoring mechanisms and standardized notification requirements, would assist companies in integrating these provisions uniformly across global value chains. Acknowledging that especially many MNEs operate in complex, multi-tiered supply chains, the Commission might encourage mutual agreements that foster shared accountability across parties, establishing a unified compliance approach that resonates with international best practices.

5.2.3 The European model clauses for sustainable future

The European Model Clauses[222] (EMCs) are a critical legal tool developed to assist businesses in meeting the standards of the Corporate Sustainability Due Diligence Directive (CSDDD) ((EU) 2024/1760), which. Created through a consultation process by the Responsible Contracting Project (RCP), the EMCs are designed to facilitate Human Rights and Environmental Due Diligence

[222] Responsible Contracting project, 2024a

(HREDD) as mandated by the CSDDD[223]. These clauses, currently released as a "Zero Draft" for feedback, aim to establish a standard for sustainable contracting that supports compliance with the CSDDD, and other international frameworks such as the UN Guiding Principles on Business and Human Rights[224], and the OECD Guidelines for Responsible Business Conduct[225], as well as existing due diligence regulations[226]. With an emphasis on practical and enforceable standards, the EMCs provide a structured and modular approach to due diligence obligations, making them adaptable across industry sectors and supply chains, especially for multinational enterprises (MNEs) with diverse global operations.

The EMCs are structured as modular clauses, enabling companies to select provisions tailored to their needs across various contractual relationships and industries. This flexible, modular design facilitates effective compliance without burdening companies with irrelevant provisions, making the EMCs particularly valuable for companies with intricate supply chains. Unlike traditional risk-shifting clauses, the EMCs emphasize shared responsibility, encouraging collaborative approaches to due diligence obligations[227]. For example, Mutual Obligations with Respect to Due Diligence in Supply Chains clause[228] outlines joint responsibilities between buyers and suppliers, emphasizing an approach based on cooperation rather than strict enforcement. Furthermore, the clauses implement exit as a last resort principle in situations involving human rights or environmental concerns, emphasizing corrective action over punitive measures, which promotes sustainable relationships over time[229].

The EMCs demonstrate several best practices in legal design that improve clarity, accessibility, and usability. The introductory document[230] provides background context and guides users through the clauses, aligning with legal design principles of providing an information layer to

[223] Responsible Contracting project, 2024b
[224] United Nations, 2011
[225] Organisation for Economic Co-operation and Development, 2018
[226] Such as the German Supply Chain Act and the French Duty of Vigilance
[227] Dadush, Schönfelder & Streibelt, 2024, pp.5-8
[228] EMC Article 1
[229] Dadush, Schönfelder & Streibelt, 2024, pp. 12-14
[230] Responsible Contracting project, 2024b

facilitate understanding. The EMCs also use clear section headings, such as in Article 4 on “Monitoring” and Article 5 on “Dispute Resolution with Stakeholders,” which categorize complex obligations into easily digestible sections. Additionally, the inclusion of clear definitions for terms like “Adverse Impact,” “Living Wage,” and “Human Rights and Environmental Due Diligence (HREDD)” in a separate definitions section helps to ensure consistency and prevent ambiguity throughout the clauses. These practices, such as clause summaries and visual hierarchy, demonstrate a user-centred approach, making legal obligations clearer and easier to follow for both legal and non-legal professionals[231].

A key feature of the EMCs is the shift from traditional compliance enforcement to a model of cooperative engagement, where both parties actively collaborate to manage risks and prevent adverse impacts. For instance, model clauses encourages joint risk identification, providing specific steps and timelines for engagement, stakeholder consultation, and compliance reporting[232]. This proactive, preventative approach to due diligence not only makes the clauses more adaptable to evolving legal standards but also fosters a partnership between contracting parties, where obligations are managed collaboratively rather than transferred. Additionally, it establishes a dialogue-based grievance mechanism, which requires parties to work directly with stakeholders to resolve concerns[233], creating a continuous feedback loop that strengthens sustainability practices within the supply chain.

This EMC Article 3.5 effectively uses clear section headings like "Termination" and "Responsible Exit" to organize distinct obligations, making it easier for parties to locate relevant information. Additionally, it adopts plain, actionable language, such as "the terminating party may terminate…after giving reasonable notice” and provides guidance on evaluating termination’s impact on Adverse Impacts, aligning with best practices that prioritize clarity and accessibility for users.

[231] World Commerce & Contracting, 2024, Pattern library
[232] EMC Article 1.1
[233] EMC Article 5

3.5 Termination and Responsible Exit
(a) Termination: The terminating party may terminate this Agreement after giving reasonable notice to the other party of its intent to terminate because of a [material] breach or uncured Default under Article 3.1 (Notice of Default, Cure Period, and Breach).
(b) Responsible Exit: In the event of termination, Article 2(d) (Responsible Exit) applies. If termination is pursued because of a violation of HREDD Obligations, the terminating party shall evaluate whether termination would either help to prevent additional Adverse Impacts or aggravate such Impacts. If termination would aggravate Adverse Impacts, then Buyer will consider not terminating.
(c) No prejudice to other rights or obligations: Termination of this Agreement shall be without prejudice to any rights or obligations accrued prior to the date of termination, including, without limitation, payment that is due for acceptable or conforming Goods that were partially or completely manufactured by Supplier prior to termination.

While the EMCs are thoughtfully structured, further legal design enhancements could increase their usability and clarity. Simplifying complex legal terms, such as "risk mitigation" and "corrective action," and providing specific examples or templates could help smaller companies implement these obligations more effectively. Visual aids, such as compliance timelines or flowcharts, could also illustrate key steps and requirements within the due diligence process, supporting efficient implementation. The EMCs already use a modular approach that aligns with legal design principles, yet integrating more interactive design features, such as layered summaries or icons to highlight critical obligations, could enhance accessibility and guide the user of model clauses, especially for SMEs unfamiliar with legal processes. Additionally, providing templates for compliance reporting and standardized forms would reduce the administrative load, making compliance more consistent and manageable across different sectors.

For companies under the CSDDD's mandate, the EMCs provide a robust, pre-validated framework for CSDDD compliance, reducing the resources required for drafting custom clauses and allowing companies to focus more effectively on implementation. Standardized clauses, aligned with EU legislation, streamline the contracting process, minimizing negotiation time and costs while enhancing compliance.

As the European Commission develops its official model clauses under Article 18 of the CSDDD, incorporating these legal design practices from the EMCs will be essential to maximize usability and effectiveness. For instance, standardized definitions for key terms like “due diligence” and “remediation” could reduce ambiguity and improve accessibility, particularly for SMEs. These enhancements, consistent with legal design best practices would ensure the clauses remain practical and actionable, providing companies with a user-centred approach to meeting legal requirements. Furthermore, ongoing stakeholder engagement during the clause development process will ensure that the clauses remain relevant, responsive to industry-specific needs, and adaptable to regulatory updates.

6 Conclusion

This thesis of extraterritorial compliance frameworks within the EU context highlights a complex and evolving landscape where global businesses must navigate complex regulatory obligations. Through tools like contractual cascading, the EU has successfully extended its jurisdictional reach to influence compliance across international value chains. By enforcing compliance obligations indirectly, the EU promotes adherence to its standards not only within member states but also among third-country counterparts, positioning itself as a remarkable actor in global regulatory governance. This development underscores the EU's shift from harmonizing its internal market to actively shaping international norms on data protection, sustainability, and geopolitical sanctions.

The challenges in enforcing compliance across borders are substantial, especially given the balance required between entities committed to regulatory adherence and those that may prioritize their operational efficiency over compliance. High penalties within the EU drive compliance for in-scope entities, but additional measures are necessary to ensure that third-country actors provide timely and accurate information. Internationally agreed standards, while aspirational, lack mechanisms for enforcing accountability directly at the transnational level. Therefore, reliance on national tort and contract laws remains critical in constructing a robust framework for accountability indicating that without a centralized international forum for justice, enforcement depends largely on national jurisdictions[234].

The increasing complexity and volume of EU regulations present a significant burden for businesses, as compliance requirements continue to accumulate across numerous sectors, particularly in areas tied to digital, green, and strategic autonomy transitions. The rapid expansion of regulatory demands in response to crises, such as the climate change and geopolitical tensions, has led to intensified obligations for companies operating within and outside the EU. This creates a cumulative compliance burden that can strain resources. The complex regulatory landscape in the EU has introduced significant uncertainty and administrative costs, which may lead to

[234] McCall-Smith & Ruhmkorf, 2019, p.8

reduction of EU's attractiveness as a trading partner[235]. At the same time, there is growing recognition within the EU of the need for regulatory simplification to sustain long-term competitiveness[236]. Overly intricate frameworks risk hindering productivity and innovation, underscoring the importance of streamlined regulation to support both economic growth and competitive stability[237]. Moreover, the drive towards regulatory alignment in the EU single market, while beneficial in principle, requires careful balance to avoid overwhelming businesses.[238]

Differences between legal standards can lead companies to attempt to circumvent EU obligations by relocating parts of their manufacturing or supply chains outside EU jurisdictions. This possibility raises questions about the efficacy and fairness of applying EU standards extraterritorially. However, the EU's use of extraterritorial standards and model clauses also brings advantages. By setting clear regulatory expectations, extraterritoriality can reduce the likelihood that companies will move key operations outside EU borders to evade compliance. This supports the EU's efforts to uphold high environmental, social, and governance standards across global value chains, helping to ensure that EU companies are not disadvantaged by competing against less-regulated businesses.

Moreover, imposing standardized model clauses can complicate international contracts, as third-country counterparts may resist additional constraints. Furthermore, standardized model clauses enhance contractual consistency, creating a common framework for regulatory compliance that is recognized and understood globally. These clauses can reduce ambiguity, offering businesses greater predictability and legal certainty, and facilitating compliance across borders. For companies operating internationally, such uniformity can ease the administrative burden by consolidating compliance efforts under a cohesive set of requirements, ultimately fostering a more streamlined and efficient approach to managing cross-border obligations. A shift from dictating terms to fostering shared responsibility could provide a more sustainable model for

[235] National Board of Trade Sweden, 2024, pp. 32-34
[236] European Commission, 2023, p. 18
[237] Meyers, 2024, pp. 17-19
[238] Meyers, 2024, pp. 9-14

compliance[239], one that encourages mutual accountability and minimizes resistance among foreign partners. This approach could be augmented with Free Trade Agreements (FTAs) and other incentives, creating a compliance landscape that offers both "carrots and sticks" to encourage adherence.

The EU's adoption of extraterritorial elements across regulatory areas, such as data protection, Sustainability, and sanctions, marks a progressive shift. While the EU historically focused on internal market harmonization, it now uses extraterritorial jurisdiction to address global challenges, leveraging its economic influence to spread high standards worldwide. Notably, GDPR has set a global precedent for data protection, and the CSDDD pushes sustainability and human rights due diligence across global supply chains. Similarly, sanctions frameworks, including "no re-export" clauses and intellectual property restrictions, extend EU sanctions enforcement beyond its borders. Yet, while this extraterritorial approach promotes higher global standards, it also risks creating friction with countries viewing it as an infringement on their sovereignty. For both EU and third-country companies, this regulatory shift imposes substantial compliance burdens, often necessitating dedicated resources for compliance infrastructure, expert legal guidance, and monitoring systems.

To address these challenges, companies must adopt a holistic compliance strategy throughout their global organizations, including clear contractual language and legal design principles to simplify complex requirements. A user-centred approach with model clauses and clear language can improve clarity, reduce negotiation times, and foster better relationships with suppliers and customers. To operationalize compliance effectively, organizations should establish comprehensive internal and external training programs, create new and update existing contracts, review general terms and conditions (GTCs), and implement codes of conduct (CoC) and supplier codes of conduct (SCoC). Leveraging globally recognized certifications and incorporating these into frame agreements or stand-alone-agreements can further strengthen compliance.

[239] Soundararajan, 2023, pp. 214-216

However, companies should be cautious about overly restrictive clauses or being over-compliant, which may slow negotiations or introduce legal ambiguities, increasing risks and costs. Effective compliance also requires robust tracking mechanisms to identify breaches within global supply chains, as enforcing standards on downstream buyers or resellers often proves challenging. Different enforcement practices, particularly in jurisdictions with weaker regulations, may hinder global adherence and increase the administrative burden on companies to monitor compliance.

Further research in extraterritorial compliance frameworks could focus on the practical balance between regulatory effectiveness and operational feasibility in a globalized business environment. Key areas include examining the comparative models of extraterritorial jurisdiction, such as between the EU and the U.S., to identify alternative enforcement approaches and their impact on global supply chains. Studies on contractual cascading's real-world effectiveness could provide insights into how well these contractual obligations propagate compliance and what challenges persist, particularly in less regulated markets. Additionally, exploring how compliance requirements influence corporate culture and sustainability initiatives would shed light on whether regulations drive meaningful change or simply encourage minimal adjustments to meet legal standards. Finally, the role of user-centred legal design, technology, and compliance incentives, such as "carrot-and-stick" approaches, could provide innovative methods for achieving widespread compliance while minimizing disruptions to international business practices and fostering cooperative international relations.

While extraterritoriality enhances EU’s influence on global standards, it introduces complexities for international business operations. To navigate this evolving landscape, companies should adopt comprehensive, adaptable compliance programs. Enhanced guidance from EU authorities would further support companies in understanding and implementing these standards, helping to mitigate risks associated with regulatory ambiguities. This will not only ensure adherence to EU regulations but also advance ethical and compliant conduct across global value chains.

References

Official sources

Caprile, A., & Delivorias, A. (2023). *EU sanctions on Russia: Update, economic impact and outlook* (PE 753.943). EPRS | European Parliamentary Research Service. Retrieved from https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/753943/EPRS_BRI%282023%29753943_EN.pdf

Commission Implementing Decision (EU) 2021/914. (2021). of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council. *Official Journal of the European Union*. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021D0914

Council Decision (CFSP) 2022/266. (2022). Amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty, and independence of Ukraine. *Official Journal of the European Union*.

Council Decision (EU) 2022/2332. (2022). of 28 November 2022 on identifying the violation of Union restrictive measures as an area of crime that meets the criteria specified in Article 83(1) of the Treaty on the Functioning of the European Union. *Official Journal of the European Union*.

Council of the European Union. (2024a). *Forced labour products*. https://www.consilium.europa.eu/en/policies/forced-labour-products/

Council of the European Union. (2024b). *Russia's war of aggression against Ukraine: EU individual sanctions over territorial integrity prolonged for a further six months* [Press release]. Retrieved from https://www.consilium.europa.eu/en/press/press-releases/2024/09/12/russia-s-war-of-aggression-against-ukraine-eu-individual-sanctions-over-territorial-integrity-prolonged-for-a-further-six-months/

Council Regulation (EU) 2022/328. (2022). Amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine. *Official Journal of the European Union*.

Council Regulation (EU) 2022/398. (2022). of 9 March 2022 amending Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine. *Official Journal of the European Union*.

Council Regulation (EU) 2022/576. (2022). Amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine. *Official Journal of the European Union*.

Council Regulation (EU) 2022/580. (2022). Implementing Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine. *Official Journal of the European Union*.

Council Regulation (EU) 2022/879. (2022). Amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine. *Official Journal of the European Union*.

Council Regulation (EU) 2023/1214. (2023). Amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine. *Official Journal of the European Union.*

Council Regulation (EU) 2023/2878. (2023). Amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine. *Official Journal of the European Union.*

Council Regulation (EU) 2023/2878. (2023). Implementing Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine. *Official Journal of the European Union*.

Council Regulation (EU) 2023/427. (2023). Amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine. *Official Journal of the European Union*.

Council Regulation (EU) 2024/1745. (2024). Amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine. *Official Journal of the European Union*.

Council Regulation (EU) 2024/745. (2024). Amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine. *Official Journal of the European Union*.

European Commission. (2003). Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises. *Official Journal of the European Union*, L124, 36–41. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32003H0361

European Commission. (2020a). *Single market*. Publications Office of the European Union. https://op.europa.eu/publication-detail/-/publication/25deabe8-199a-11eb-b57e-01aa75ed71a1

European Commission. (2021). *Report from the commission to the European parliament and the council relating to Article 7(a) of Council Regulation (EC) No 2271/96 ('Blocking Statute')*. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0535

European Commission. (2022a). *Proposal for a regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market* (COM/2022/453 final). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0453

European Commission. (2022b). *Question and answers on the fifth package of restrictive measures against Russia*. https://ec.europa.eu/commission/presscorner/detail/en/qanda_22_2333

European Commission. (2022c). Commission consolidated FAQs. Consolidated version - Frequently asked questions concerning sanctions adopted following Russia's military aggression against Ukraine and Belarus' involvement in it.

European Commission. (2023). *Long-term competitiveness of the EU: Looking beyond 2030*. European Commission.

European Commission. (2024a). *Guidance on EU deforestation regulation (Document C(2024)7027)*. Green Business. https://green-business.ec.europa.eu/document/download/162138c8-7c22-4bb5-98ce-fd31c81d6936_en

European Commission. (2024b). *The EU single market*. https://trade.ec.europa.eu/access-to-markets/en/content/eu-single-market

European Commission. (2024c). *The single market strategy*. https://single-market-economy.ec.europa.eu/single-market/single-market-strategy_en

European Commission. (2024d). Making trade policy. https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/making-trade-policy_en

European Commission. (2024e). *Corporate sustainability reporting*. Finance. https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en

European Commission. (2024f). *Carbon border adjustment mechanism*. Taxation and Customs Union. https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en

European Commission. (2024g). *Data protection in the EU*. https://commission.europa.eu/law/law-topic/data-protection/data-protection-eu_en

European Commission. (2024h). *Standard contractual clauses (SCC)*. European Union. Retrieved from https://commission.europa.eu/law/law-topic/data-protection/international-dimension-data-protection/standard-contractual-clauses-scc_en

European Commission. (2024i). *Corporate sustainability and responsibility*. Retrieved November 8, 2024, from https://single-market-economy.ec.europa.eu/industry/sustainability/corporate-sustainability-and-responsibility_en

European Commission. (2024j). *Directive on Corporate Sustainability Due Diligence Frequently Asked Questions.*

European Council. (2024a). *Council conclusions*. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02014R0833-20240913

European Council. (2024b). *EU action in support of Ukraine* [Factsheet]. Retrieved from https://www.consilium.europa.eu/media/ubqiviag/2024_224_factsheet_eu-action-in-support-of-ukraine_6_august_2024.pdf

European Council. (2024c). *EU sanctions against Russia explained*. https://www.consilium.europa.eu/en/policies/forced-labour-products/

European Data Protection Board. (2021, June 18). *Recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data (Version 2.0)*. Retrieved from https://www.edpb.europa.eu/system/files/2021-06/edpb_recommendations_202001vo.2.0_supplementarymeasurestransferstools_en.pdf

European Investment Bank. (2023). *EIB Investment Survey: European Union overview*. https://www.eib.org/eibis. https://doi.org/10.2867/26678

European Parliament. (2024a). *Sources and scope of European Union law.* https://www.europarl.europa.eu/factsheets/en/sheet/6/sources-and-scope-of-european-union-law.

European Parliament. (2024b). *The principle of subsidiarity*. https://www.europarl.europa.eu/factsheets/en/sheet/7/the-principle-of-subsidiarity

European Union. (2022). *Preliminary ruling proceedings: Recommendations to national courts*. EUR-Lex. https://eur-lex.europa.eu/EN/legal-content/summary/preliminary-ruling-proceedings-recommendations-to-national-courts.html

European Union. (2024). *Primacy of EU law*. EUR-Lex. https://eur-lex.europa.eu/EN/legal-content/glossary/primacy-of-eu-law-precedence-supremacy.html

Finnish Customs. (2024). *Hiilirajamekanismi [Carbon border adjustment mechanism]*. https://tulli.fi/hiilirajamekanismi

Finnish Food Authority. (2024). *Deforestation regulation*. https://www.ruokavirasto.fi/en/themes/deforestation-regulation/

Helsinki Act. (1975). https://www.osce.org/files/f/documents/5/c/39501.pdf

National Board of Trade Sweden. (2024). *The cumulative effect of EU regulations on external trade*. National Board of Trade Sweden. https://www.kommerskollegium.se/globalassets/publikationer/rapporter/2024/cumulative-effect-regulations-external-trade.pdf

Office of the Data Protection Ombudsman. (2024). *Duties*. Retrieved October 25, 2024, from https://tietosuoja.fi/en/duties

Organisation for Economic Co-operation and Development. (2018). *OECD guidelines for responsible business conduct*. OECD Publishing. https://mneguidelines.oecd.org/OECD-Guidelines-for-Responsible-Business-Conduct.pdf

Organisation for Economic Co-operation and Development. (2023). *OECD Guidelines for Multinational Enterprises: Recommendations for general policies (Chapter II), human rights (Chapter IV) and environment (Chapter VI)*. OECD iLibrary. https://doi.org/10.1787/81f92357-en.

Principles of European Contract Law. (1997). *Principles of European Contract Law (PECL)*. Retrieved November 2, 2024, from

https://www.internationalcontracts.net/international-law-documents/Principles-of-European-Contract-Law.pdf

Stoll, T., Blockmans, S., Hagemejer, J., Hartwell, C. A., Gött, H., Karunska, K., & Maurer, A. (2020). *Extraterritorial sanctions on trade and investments and European responses*. Policy Department for External Relations, Directorate General for External Policies of the Union, European Parliament. https://doi.org/10.2861/028506

Treaty on European Union. (1992). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012M%2FTXT

Treaty on the Functioning of the European Union. (1958). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT

United Nations Global Compact. (2024). *Mission and principles*. United Nations Global Compact. Retrieved from https://unglobalcompact.org/what-is-gc/mission/principles

United Nations. (1945). *Charter of the United Nations*. Chapter I: Purpose and Principles. Retrieved from https://www.un.org/en/about-us/un-charter

United Nations. (2011). *Guiding principles on business and human rights: Implementing the United Nations "Protect, Respect and Remedy" framework*. United Nations Human Rights Office of the High Commissioner. https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

United Nations. (2015). *Paris Agreement*. Retrieved from https://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf

von der Leyen, U. (2024, July 18). *Europe's choice: Political guidelines for the next European Commission 2024–2029*. Strasbourg. https://commission.europa.eu/document/download/e6cd4328-673c-4e7a-8683-f63ffb2cf648_en?filename=Political%20Guidelines%202024-2029_EN.pdff648_en

Literature sources

Autto, H., Haapio, H., & Nuottila, J. (2024). *Contracts rethought and redesigned: A new era with AI*. Journal of Strategic Contracting and Negotiation.

Corrales Compagnucci, M., Haapio, H., & Hagan, M. (2022). *Legal design: Integrating business, design and legal thinking with technology*. Edward Elgar Publishing Limited.

D.C. Houghton Ltd. (2024). *Sanctions in Europe* (2nd ed., T. Blass, Ed.). WorldECR, the journal of export controls and sanctions.

Dadush, S., Schönfelder, D., & Streibelt, M. (2024). *What the EU Corporate Sustainability Due Diligence Directive Says About Contracts.* RCP Policy. Responsible Contracting Project. Brief.https://www.responsiblecontracting.org/_files/ugd/fcee10_b583a26ebc14492994b4eb99a1931c64.pdf.

DIGITALEUROPE. (2021, May 17). *Data transfers and effectiveness of supplementary measures*. https://cdn.digitaleurope.org/uploads/2021/05/Data-transfers-and-effectiveness-of-supplementary-measures.pdf

Euronews. (2023, May 11). *EU sanctions on Russia face the next frontier: Extraterritoriality*. https://www.euronews.com/my-europe/2023/05/11/eu-sanctions-on-russia-face-the-next-frontier-extraterritoriality

Finnegan, M. (2021). *User-centered design: A key to contract simplification*. Acta Wasaensia. Vaasan yliopisto.

Hagan, M. (2024). *Law by design*. Law By Design. https://lawbydesign.co/

Hemmo, M., & Hoppu, K. (2022). *Sopimusoikeus*. Alma Talent Oy.

Hemmo, M., & Lakimiesliiton kustannus. (1997). *Sopimusoikeus: 1*. Lakimiesliiton kustannus.

Hernández-Cuadra, E., & Fernández-Fernández, J.-L. (2024). Ethics and compliance programs for a new business narrative: A Kohlberg-based moral valuing model for diagnosing

commitment at the top. *Business and Society Review, 129*(1), 72–95. https://doi.org/10.1111/basr.12345

Hietala, H., Järvensivu, P., Kaivanto, K., & Kyläkallio, K. (2024). *Yrityksen asiakirja- ja sopimusopas* (8th ed.). Alma Talent Oy.

Huovinen, K. (2021). Better commercial contracts with the application of functional contracting and legal design. In *Legal design: Integrating business, design, and legal thinking with technology* (pp. 175–201). Edward Elgar Publishing.

Jajja, M. S. S., Chatha, K. A., & Farooq, S. (2018). Impact of supply chain risk on agility performance: Mediating role of supply chain integration. *International Journal of Production Economics, 205*, 118–138. https://doi.org/10.1016/j.ijpe.2018.08.032

Jault-Seseke, F. (2024). A comparison of the French and German transparency laws. *Oslo Law Review, 10*(2), 1–8. https://doi.org/10.18261/olr.10.2.3

Kalliokoski, S., Karvetti, K., Ratsula, N., & Helsingin seudun kauppakamari. (2023). *Tavoitteena eettisesti kestävä työelämä*. Kauppakamari.

Laker, B. (2023, April 19). Company values essential for attracting and retaining talent, says LinkedIn. *Forbes*. https://www.forbes.com/sites/benjaminlaker/2023/04/19/company-values-essential-for-attracting-and-retaining-talent-says-linkedin/

Lilleholt, K. (2013). *Application of General Principles in Private Law in the Nordic Countries*. Juridica international. University of Tartu. https://www.juridicainternational.eu/public/pdf/ji_2013_XX_12.pdf

Lohmann, S. (2019). *Extraterritorial U.S. Sanctions: Only Domestic Courts Could Effectively Curb the Enforcement of U.S. Law Abroad*. SWP Comment No. 5. Stiftung Wissenschaft und Politik.

McCall-Smith, K., & Rühmkorf, A. (2019). From international law to national law: The opportunities and limits of contractual CSR supply chain governance. In V. Ulfbeck, A. Horowitz, & K. Mitkidis (Eds.), *Law and responsible supply chain management: Contract*

and tort – interplay and overlap (pp. 15–45). Routledge. https://doi.org/10.4324/9780429461231-2

Meri, O. (2023). *Lain ja hyvän tavan vastaiset sopimukset: Sopimusoikeudellinen tutkimus kiellonvastaisista oikeustoimista ja niiden oikeusvaikutuksista* [Doctoral dissertation, University of Helsinki]. Alma Talent.

Meyer, K. E., Li, C., & Schotter, A. P. J. (2020). Managing the MNE subsidiary: Advancing a multi-level and dynamic research agenda. *Journal of International Business Studies, 51*(4), 538–576. https://doi.org/10.1057/s41267-020-00318-w

Meyers, Z. (2024, March). *Better regulation in Europe: An action plan for the next Commission*. Centre for European Reform. https://www.cer.eu/publications/archive/policy-brief/2024/better-regulation-europe-action-plan-next-commission

Norros, O. (2007). Vastuu sopimusketjussa [Responsibility in contract chains]. Alma Talent.

Pursiainen, A. (2021). *Kansainväliset pakotteet ja vientivalvonta [International sanctions and export control].* Alma Talent.

Raitio, J. (2013). *Eurooppaoikeus ja sisämarkkinat* [European law and the internal market]. Alma Talent Oy.

Raitio, J., & Tuominen, T. (2020). *Euroopan unionin oikeus* (2., uudistettu painos) [European Union law (2nd revised edition)]. Alma Talent Oy.

Ratsula, N. (2016). *Compliance: Eettinen ja vastuullinen liiketoiminta*. Alma Talent.

Ratsula, N. (2024). Tuloksellinen compliance-ohjelma [Effective compliance program]. Alma Media Finland Oy.

Responsible Contracting project. (2024a). *The European Model Clauses (EMCs) for Responsible and Sustainable Supply Chains.* Retrieved from https://www.responsiblecontracting.org/_files/ugd/fcee10_538d4de3351d4b699cd1c47e81ba8f22.pdf

Responsible Contracting project. (2024b). Introduction to the Zero Draft for Consultation: The European Model Clauses (EMCs) for Responsible and Sustainable Supply Chains. Retrieved November 8, 2024, from https://www.responsiblecontracting.org/_files/ugd/fcee10_9369ac77da2d4a4493dcd476eb6ecd40.pdf

Saarnilehto, A., & Annola, V. (2018). Sopimusoikeuden perusteet [Basics of contract law]. Alma Talent Oy.

Saloranta, J., & Hurmerinta-Haanpää, A. (2023). Proactive contract theory in the context of corporate sustainability due diligence. *Journal of Strategic Contracting and Negotiation, 6*(3–4), 221–236. https://doi.org/10.1177/20555636231165901

Schmidt, J. (2022). The legality of unilateral extra-territorial sanctions under international law. *Journal of Conflict & Security Law, 27*(1), 53-81. https://doi.org/10.1093/jcsl/krac005

Soundararajan, V. (2023). The dark side of the cascading compliance model in global value chains. *Journal of Industrial and Business Economics, 50*(1), 209–218. https://doi.org/10.1007/s40812-022-00250-0

Villa, S., Airaksinen, M., Alén-Savikko, A., Bärlund, J., Jauhiainen, J., Kaisanlahti, T.,. (2020). *Yritysoikeus* (Neljäs, uudistettu painos) [Corporate law (4th revised edition)]. Alma Talent.

World Commerce & Contracting. (2024). *Contract design pattern library*. Retrieved November 2, 2024, from https://contract-design.worldcc.com/library

List of legal cases