

LCF



The London Centre for Commercial and Financial Law

ALBA LCF

The Future of the Commercial Contract in Scholarship and Law Reform

Fifth Annual Conference

16th Oct 2020

Online event

Welcome

- This is our first fully online event
- Our programme this year focusses on the theme of sustainability in commercial contracts
- It also reflects on some individual contract types - franchise agreements - as well as the role of Covid-19 in contractual performance and insurance

Global supply chains

- (A) The initiatives so far
- (B) Legislative manifestations
- (C) The role of contract

International Organisations

- United Nations Global Compact (2000)
 - “As a special initiative of the UN Secretary-General, the United Nations Global Compact is a call to companies everywhere to align their operations and strategies with ten universal principles in the areas of human rights, labour, environment and anti-corruption.” <https://www.unglobalcompact.org/news/4590-09-20-2020>
- OECD Principles
 - OECD Guidelines for Multinational Enterprises - Responsible Business Conduct Matters
- WTO Principles (in the Marrakesh Agreement)

Selected Countries' Initiatives

- UK
- Germany
- Switzerland

UK regulatory framework

- Modern Slavery Act (2015)

Art 54 Supply Chains

(1) A commercial organisation within subsection (2) must prepare a slavery and human trafficking statement for each financial year of the organisation.

- The Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015 UK Statutory Instruments 2015 No. 1833 Regulation 2:

“Prescribed amount of total turnover

2. The amount of total turnover prescribed for the purposes of section 54(2)(b) of the 2015 Act is £36 million. “

UK regulatory framework

- Global Resource Initiative – focus on deforestation

Final Recommendations Report March 2020 :...”seven key commodities – beef and leather, cocoa, palm oil, pulp and paper, rubber, soya and timber is part of the global demand for these commodities. Production of these commodities continues to drive forest loss and conversion of natural habitats

- Department for Environment Food and Rural Affairs, (Defra) : Due diligence on forest risk commodities – Consultation document August 2020

25- Aug 2020 to 5th October 2020

Germany - initiatives

- Lieferkettengesetz” – supply chain act

This is a government proposal for a draft bill currently being consulted on.

National action plan 2016 (NAP) based on the Un Global Compact commitments:

voluntary implementation of UN objectives

Review in 2019 and 2020 based on NAP:

WTO should also be used to push for the enforcement of standards of sustainability.

- “Initiative Lieferkettengesetz”

(<https://lieferkettengesetz.de>)

Switzerland - initiatives

- “Konzernverantwortungsinitiative” – responsible business initiative

This aimed at amending the Swiss Federal Constitution by adding a provision making Swiss businesses liable for breaches of sustainability goals within their groups of companies

- Vote in November 2020

On counterproposal

Questions for our 5th Annual Conference

- What means sustainability ?
 - Create and enforce high environmental standards
 - Improved human interaction
 - protection of human rights
 - enforcement of labour laws
- Leaving contracts entirely out of the equation and concentrating wholly on regulation might prove unrealistic, turning a blind eye on commercial practices.
- Using contract as a tool for sustainable supply chains bears the risk of 'passing the buck' down the chain
- This would reinforce traditional imbalances in the supply chain which are to be alleviated by the respective legislative initiatives.

The role of contract in this – ethics in supply chains

- Role of general ethics in contracts
- Standard terms
- Enforcement

Previous LCF research

- on contractual ethics, sustainability and supply chains:
- Keynote speech by Professor Cafaggi 2018 on contracts governing supply chains
- Edited volume Springer 2019
- Special issue EBLR 2019
- Amicus Curiae 2020

Previous LCF research on contractual ethics

- CSR values in contracts
- Protection of SMEs through legislation and traditional contract theory: Groceries Code in the UK, New Standard Terms regulation in Japan
- Sustainable business contracts: the role of industry standards in construction – keeping the contract alive
- Sustainable trade relations: the role of renegotiation and contract adaptation in general civil law and in international commercial sales contracts

2020 presentations

- Professor Malkawi on good faith in UAE
- Vannerom revisiting ethical contractual standards for SMEs
- Discussing good faith standard in CISG: Prof. Franco Ferrari
- Discussing sustainability and fairness in new French law (*imprévision*): Catherine Pédamon

2020 presentations

- Dr. Kryla-Cudna, Tilburg University on the circular economy
- Dr. Poludniak-Gierz, Jagiellonian University, on ecological contract terms
- Ms Agostini. University of Glasgow on sustainable financial products
- Dr Lee's panel on sustainability aspects of modern technology in modern forms of trading

Enjoy the conference!