

Leveraging the Unfair Trading Practices Directive to benefit the Garment Sector

September 2021



By

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This position paper is based on original research by Justice in Fashion. <https://www.justiceinfashion.org/>

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1 Summary

This joint paper proposes that trade unions and civil society organisations concerned about labour rights in the garment sector convince EU Member States to expand the scope of the transposition of the 2019 Directive on unfair trading practices in the agri-food sector to also include garment brands, retailers and manufacturers.

As this paper demonstrates, Unfair Trading Practices are widespread in the garment sector. Therefore, the new rules that apply to food business could significantly improve responsible business conduct in the garment sector.

The purpose of this paper is to set out why garment companies should be included in the scope of how the UTP Directive is transposed in your country. It is aimed as an advocacy tool for trade unions, labour rights organisations and allies to use in their respective EU Member States to broaden the application of the Directive.

2 Introduction

The garment sector is infamous for the unequal power relations between brands and retailers and their suppliers. Brands and retailers (or lead firms) wield power over their suppliers in contractual negotiations and the coordination of production activities. From this position of strength, these lead firms' actors are able to dictate several terms and conditions to their advantage, including the time frames within which suppliers should manufacture and deliver products, the price brands are willing to pay for these finished products and other purchasing terms.⁽¹⁾

Such power disparities and imbalances often lead to unfair trading practices along textile and clothing supply chains. These are business-to-business practices that deviate from good commercial conduct and are contrary to good faith and fair dealing which are unilaterally imposed by one trading partner on another.⁽²⁾ In short,

they fail to strike the balance between the rights and obligations of all the different contractual parties involved.

Driven by the search for lower cost, steered by low wages in a labour-intensive industry, brands have sought to relocate most if not all production to low-wage countries.⁽³⁾ Furthermore many of these outsourcing countries have lower and less stringent regulations and enforcement in terms of wages and labour conditions. Despite the already significantly lower production costs, more than half of garment suppliers have already accepted orders below the cost of production. Driven by the search by brands and retailers for lower production costs, manufacturers are forced to cut corners when it comes to labour rights, resulting in forced overtime, temporary contracts and low wages. Popular outsourcing countries often also feature a large number of small suppliers that work on an independent and fragmented basis, decreasing their bargaining power in negotiations with their more powerful partners.⁽⁴⁾

The SARS-COV-19 (COVID-19) crisis both demonstrated and amplified painfully the effects of these skewed power structures and buyer-driven supply chains. Fashion brands have activated broad hardship or force majeure clauses in their supplier contracts, which they invoked in the pandemic as a way to cancel or suspend orders worth millions of euros and to dishonour their contractual obligations.⁽⁵⁾ No payment of orders results



(1) Human Rights Watch (2019) Paying for a Bus Ticket and Expecting to Fly. How Apparel Brand Purchasing Practices Drive Labor Abuses. Available at: https://www.hrw.org/sites/default/files/report_pdf/wrd0419_web2.pdf

(2) European Commission (2014) Communication COM(2014) 472 on Tackling unfair trading practices in the business-to-business food supply chain. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0472&from=EN>

(3) Arrigo E (2020) Global sourcing in fast fashion retailers. Available at <https://www.mdpi.com/2071-1050/12/2/508/htm>

(4) Perry P and Wood S (2019) Exploring the International Fashion Supply Chain and Corporate Social Responsibility: Cost, Responsiveness and Ethical Implications. Available at: http://epubs.surrey.ac.uk/849196/1/_homes.surrey.ac.uk_home_System_Desktop_Exploring%20the%20International%20Fashion%20Supply%20Chain%20and%20CSR_Perry_Wood%20chapter%202019.pdf

(5) Kelly A (2020) Primark and Matalan among retailers allegedly cancelling £2.4bn orders in 'catastrophic' move for Bangladesh. Available at: <https://www.theguardian.com/global-development/2020/apr/02/fashion-brands-cancellations-of-24bn-orders-catastrophic-for-bangladesh>

in no income for factory workers in China/Bangladesh/India, which may have disastrous effects, as these countries do not provide a strong social security net for their citizens. In European countries such as Italy, Spain and Hungary, cancelled orders have led to additional costs on (extended) social protection systems. At the same time, depleted order books may also jeopardise future recovery by weakened balance sheets.

Suppliers often do not have sufficient bargaining power, or other avenues for redress, to defend themselves against unfair contractual clauses. Suppliers equally shy away from enforcing the already unfavourable contracts due to the significant fear factor, namely that brands no longer want to do business with the supplier if they dare to oppose the brands' practices. Furthermore, it is also difficult for suppliers to challenge these unfair practices

afterwards as they face significant financial barriers in their access to legal remedies.

This paper aims to provide an overview of unfair trading practices occurring in the garment sector, as well as the effects these practices may have. It explores the additional hardship arising from the COVID-19 pandemic. Moreover, it will take a look at the EU response in the agri-food sector⁽⁶⁾, which already provides some safeguards to protect smaller operators against more powerful trading partners. Lastly, recommendations are made on how to use the EU Directive on unfair trading practices in the agri-food sector to effectively mitigate the specific risks caused by these power imbalances in the global garment supply chain.



(6) Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain. Available at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32019L0633>

3 Overview of unfair trading practices in the Garment Sector

Unfair trading practices can be regarded as an infringement on good faith and/or the freedom of contract. These are crucial principles in contract law which states that parties should be able to determine independently whether or not to engage in an agreement, as well as to design and negotiate agreements that best suit their needs. Parties must thus be in a position to freely negotiate contract provisions, something that is often not the case in relationships with significant power disparities. Unfair trading practices can occur at any stage of the B2B relationship. They can be employed when negotiating a contract, can be part of the contract itself, or can be imposed in the post-contractual phase (changes of terms).

3.1 Factors linked to unfair trading practices

- The lack of market transparency
- Inequalities in bargaining power: due to various factors like a significant difference in turnovers/ company size, economic dependency, etc. ⁽⁷⁾
- Lack of knowledge of adverse implications of negotiated contractual terms
- Fear of retaliation and lack of sufficient financial resources to challenge unfair practices or to switch trading partners

3.2 Types/examples of unfair trade practices in the garment sector

In the clothing sector, a 2007 report on business relations in the EU clothing chain identified several practices between manufacturers and retailers that were perceived as unfair. ⁽⁸⁾

3.2.1 Negotiating disproportionate low buying prices

Due to the high competition between small suppliers in the garment sector, brands are able to purchase orders for very low prices, often even below the cost of production. These include costs required to meet code of conduct compliance, as well as necessary production costs like energy or transport prices. Research shows that 65% of suppliers surveyed accepted the setting of prices below total production costs per unit fearing loss of future business. ⁽⁹⁾ More specific reasons for accepting such low prices include securing future orders, keeping advantage over competitors and surrendering to customers' threats. Purchasing prices moreover do not always incorporate increases in factory workers' statutory minimum wages, nor do they accurately correspond with the amounts of samples designed or orders finalised. ⁽¹⁰⁾

3.2.2 Short manufacturing lead times

Lead time is usually understood as the time from the date an order is confirmed to the date the products are readied for shipment at the factory. ⁽¹¹⁾ By demanding unreasonable and strict deadlines for the manufacturing of products, for example due to shorter design cycles and more seasonal changes, the speed-to-market pressure is passed on to factories. If suppliers do not agree to the reduced lead times, the suppliers might lose the order as brands will just switch to another player in the competitive market. In an ILO survey of 2017, the textile and garment manufacturers were identified as one of the industries with the most inadequate (too short) lead times. This is often exacerbated due to lack of effective communication on behalf of the brands, by last-minute order placements and delays in material specification and sample approvals. ⁽¹²⁾ Poor forecasting of sales and resulting sudden changes in order volumes may also account for extra time pressure for the suppliers. Short lead times might in turn lead to unauthorised subcontracting, often to informal workers who are exposed to particularly acute risks and bad working conditions. ⁽¹³⁾

(7) European Commission (2013) Green Paper on unfair trading practices in the business-to-business food and non-food supply chain in Europe. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52013DC0037>

(8) Ravasi D and Saviolo S (2007) Business relations in the EU clothing chain: from industry to retail and distribution. Available at: https://didattica.unibocconi.it/mypage/upload/49942_20080912_062823_BUSINESSRELATIONSINTHEEUCLTHINGCHAIN.PDF

(9) Starmanns M (2017) Purchasing practices and low wages in global supply chains: Empirical cases from the garment industry. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_561141.pdf

(10) International Labour Organization (ILO) (2016) Purchasing practices and working conditions in global supply chains: Global Survey results. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_556336.pdf

(11) Human Rights Watch (2019)

(12) ILO (2016)

(13) SOMO (2015) Fact Sheet: Hidden subcontracting in the garment industry. Zooming in on the role of buying companies. Available at: <https://www.somo.nl/wp-content/uploads/2015/09/Hidden-subcontracting.pdf>

3.2.3 Poor payment terms

Some large brands and retailers stipulate terms of 90 days from the date of shipment, to pay the supplier.⁽¹⁴⁾ The Covid crisis has only made this worse, with brands seeing declines in sale volumes and demanding unreasonable payment terms of up to 180 days in order to control the costs, shifting the economic risks of the crisis to the suppliers.⁽¹⁵⁾ By delaying payments so severely, brands are effectively using their suppliers as interest-free loan facilities.

3.2.4 Unilateral amendment contract terms

As a result of disproportionate power relations, brands may apply leverage to make unilateral changes to previously negotiated clauses concerning payment, delivery, or contract termination. They also may demand flexibility regarding ordered goods, with ambiguous and unspecific terms allowing them to ask for quick last-minute adjustments in design, sizes, or volumes of orders, to change technical order specifications without any form of compensation, etc. The COVID-19 crisis witnessed brands and retailers changing the terms without prior agreement to impose longer payment terms, return unsold goods or force sudden discounts of orders of already placed goods, etc.⁽¹⁶⁾

3.2.5 Shifting of risks and imposing additional obligations

When suppliers cannot meet strict deadlines, contractual conditions may allow brands to charge heavy penalties like massive discounts, demand air freight shipment, or even the sudden termination of supply relationships without any liability or compensation. Brands do not take the responsibility for delays in order approvals, or any other mistakes made by them which play a huge part in the inability of suppliers to meet the deadline. During COVID-19, brands and retailers sometimes made use of opaque liability exoneration terms like force majeure clauses to suspend or cancel purchase orders of already completed goods without recourse, hence transferring their financial risks to the other contract party.⁽¹⁷⁾

3.3 Potential effects of unfair trading practices

This disproportionate buying power and related unfair trading practices exacerbate risks for human and labour rights abuses in factories. By squeezing suppliers too far financially, these businesses face powerful incentives to cut costs in ways that negatively impact compliance with working and safety conditions and heighten brands' exposure to human rights risks.⁽¹⁸⁾



A global survey conducted by the ILO, which collected data on over 1,500 suppliers in the garment chain, confirms that wages are directly influenced by purchasing practices and prices set by brands.⁽¹⁹⁾ It demonstrated how last-minute changes in orders and inaccurate technical specifications lead to an increased production cost, and for half of the surveyed suppliers, to financial losses. As buyers are demanding low Free On Board (FOB)⁽²⁰⁾ prices, factories will need to reduce unfixed costs, like wages and social security contributions. Furthermore, squeezed margins potentially reduce companies' capacity to invest and innovate in health and safety facilities, like cooling mechanisms, fire alarms, appropriate protective clothing, etc.

(14) Human Rights Watch (2019)

(15) Vogt J, Saage-Maaß M, Vanpeperstraete B and Hensler B (2020) Farce majeure: How global apparel brands are using the COVID-19 pandemic to stiff suppliers and abandon workers. Available at : https://www.ecchr.eu/fileadmin/ECCHR_PP_FARCE_MAJEURE.pdf

(16), (17) Ibid

(18) HRW (2019)

(19) ILO (2017)

(20) Free on Board (FOB) is the most used shipping agreement in garment exporting. As the name indicates, the seller holds the responsibility of goods until they are loaded on board of the ship/aircraft nominated by the buyer

Delays in payments by brands often forces factories to borrow to operate while awaiting payment. However, as small enterprises often have a harder time finding external financing, there is a risk of suppliers being vulnerable to cash flow problems. In effect, they may not be able to pay their workers' wages on time. Moreover, as factory workers in the garments sector are often paid by piece-rate, they may not even receive their payment at all with the sudden suspension or cancellation of orders amid the COVID-19 crisis.⁽²¹⁾

The imposition of unreasonable production quotas per worker, longer hours of labour and fewer toilet breaks may arise because of last-minute changes

of order volumes and designs. The latter especially has a disproportionately adverse impact on female employees, who, according to a 2017 ILO survey, constitute almost 60% of the garment industries' factory workers.⁽²²⁾ Unpredictable working hours and excessive overtime increases the risk of violence and harassment and can have further adverse impacts on female workers.⁽²³⁾ Lastly, unreasonable demands of brands may lead to supplying factories turning to unauthorised sub-contractors, whose factory working conditions are not closely monitored.



(21) Fair Wear Foundation (2020) COVID-19: impact on brands and workers in garment supply chains. Available at: <https://api.fairwear.org/wp-content/uploads/2020/03/Fair-Wear-Impact-COVID-19-on-garment-supply-chains-200420.pdf>

(22) ILO (2017)

(23) Fair Wear Foundation (2017) Brand Performance Check Guide. Available at: <https://api.fairwear.org/wp-content/uploads/2017/09/brand-performance-check-guide-2018.pdf>

4 Garment Unfair Trading Practices during the COVID-19 Pandemic

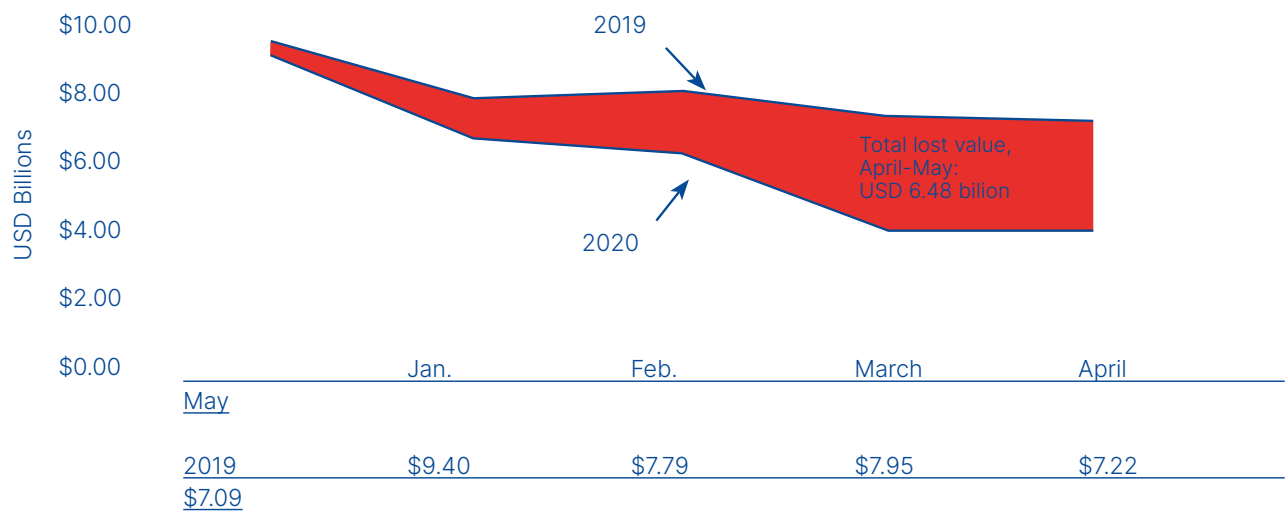
In 2020, the garment sector was particularly severely hit due to the COVID-19 pandemic. Disruptions to the industry began in January, when China's lockdown limited the ability of manufacturers to secure necessary materials to fulfil their orders. A second, and far larger, disruption started in March, when the virus spread and began impacting major markets such as the European Union (EU). Though demand and production picked up over the summer, worsening economic conditions coupled with new lockdown restrictions, starting in mid-September, have been hitting the industry hard once again.

4.1 Cancellations and reduced payments

The initial response of many European brands and retailers to the COVID-19 pandemic was to cancel orders and between January and June of 2020. Imports of garments to the EU declined by 25% compared to 2019 (US \$17.5 billion decrease). In April through June alone, garment imports to the EU declined by 45%, respectively, compared to the same period in 2019.

Survey data from suppliers in various developing economies across the globe reveal that 77% had at least some of their orders cancelled without payment from buyers. By mid-August, only 27% of these same suppliers say all or most of those cancelled orders had been paid in full.

Apparel Imports to the EU, Jan-May 2019-2020 (USD Billions)

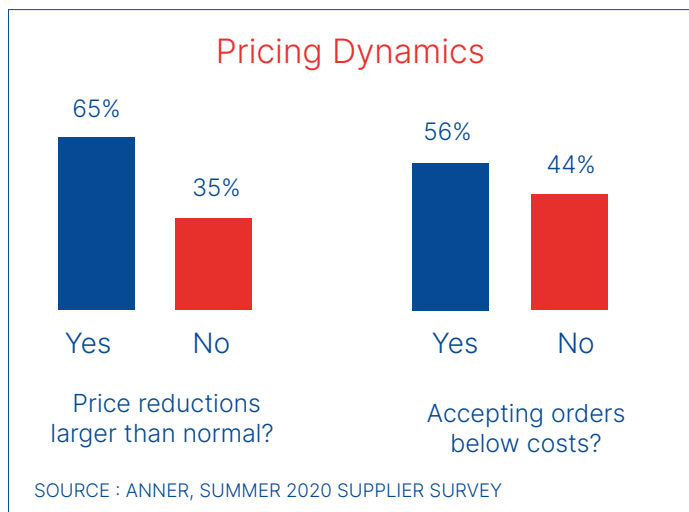


SOURCE : ANNER, BASED ON EUROSTAT DATA

Secondly, brands and retailers refused to pay for partially or already completed orders and demanded discounts in prices and/or payment term extensions. As a result, garment factories and suppliers are estimated to have lost at least US \$16.2 billion in revenue between April and June of 2020.⁽²⁴⁾ However, recent data indicates that coming out of this crisis, brands and retailers are imposing more durable price cuts, longer payment terms, lower order volume and limited flexibility to allow for needed safety improvement at work during the COVID-19 pandemic. A recent survey indicated that around 57% of suppliers reported that, if current patterns continue, it is extremely likely or somewhat likely that they will be forced out of business.⁽²⁵⁾

4.2 Price Squeezing for future orders

In a survey of 75 suppliers based in various garment-producing countries and regions across the globe between July 5 and August 21, 2020, a large majority say that brands have demanded price discounts that are substantially larger than the year-over-year reductions businesses typically seek.⁽²⁶⁾ More than half (56%) of suppliers have been forced to accept at least some of their orders below cost.



In another survey of 147 suppliers from 30 countries between June 25 and July 13, 2020, 51% of suppliers reported smaller volumes at same prices (signalling smaller margins),

An analysis of EU trade data by the Center for Global Workers' Rights corroborates this evidence of price squeezing. When they compared the value of monthly apparel imports to the EU between January - June 2019 and 2020, they found that the overall decline reflected more than just the expected decline in order volume. By dividing the monthly value of imports by the monthly units of import, the data and analysis showed a decline in the average price per unit per month, to the total of US \$16.2 billion loss in imports for the EU and 40.1% reported lower target prices from previous orders.⁽²⁷⁾

4.3 Delayed Payments and 'Re-negotiated' Payment Terms

In response to COVID-19, brands and retailers have imposed longer payment terms on suppliers once orders are shipped. The previously mentioned survey based on 75 suppliers revealed that on average, suppliers must wait 77 days to receive payment after they complete and ship customers' new orders. Prior to the pandemic, the average number of days for payment was 43. According to the survey results, 66% of buyers are imposing 60-day or longer payment terms, compared to 34% prior to the pandemic. One in four buyers is now imposing payment terms of 120 days or longer.

Longer payment terms create further costs for manufacturers. Small and medium-sized manufacturers are particularly vulnerable to the cash flow challenges of extended payment terms.

(24) McNamara M (2020) World's Garment Workers Face Ruin As Fashion Brands Refuse To Pay \$16Bn. Available at: <https://www.theguardian.com/global-development/2020/oct/08/worlds-garment-workers-face-ruin-as-fashion-brands-refuse-to-pay-16bn>

(25) Anner M (2020) Leveraging Desperation. Available at: <https://www.workersrights.org/wp-content/uploads/2020/10/Leveraging-Desperation.pdf>

(26) Ibid

(27) Better Buying Institute (2020) Cost And Cost Negotiation And The Need For New Practices. Available at: <https://betterbuying.org/wp-content/uploads/2020/07/Better-Buying-Special-Report-Cost-Cost-Negotiation-the-Need-of-New-Practices.pdf>

Box 1: Examples of Unfair Trading Practices and inaccurate reporting by EU Brands

C&A (Belgium/Germany)

In a report to Clean Clothes Campaign (CCC) at the end of May 2020, C&A announced they had reinstated around USD \$1.5 billion of its cancelled orders. CCC noted at the time that while this represented a very sizable advance in the company's position, C&A was still not paying for a significant part of the orders being produced for them, and that the exact amount of outstanding cancellations could not be determined precisely because there were conflicts between reports from suppliers and from C&A.

In early December 2020, C&A finally announced it would pay in full for all the remaining orders that were in-production or completed at the outset of the crisis. CCC noted its concern that C&A's public statement did not communicate honestly about the fact that they had originally cancelled orders, with major impacts on suppliers and workers, and instead now says the orders were merely "put on hold". CCC went on to note that the seven-month delay in achieving 100% payment had no doubt been costly to many suppliers (with consequential impacts on thousands of workers), and that given the ample resources of C&A's ownership, the original cancellations and slow pace to rectify the situation were never defensible.⁽²⁸⁾

Camaïeu (France)

Reports from suppliers recently received by the Worker Rights Consortium indicate that the French brand, Camaïeu, failed to pay for completed orders and proceeded with significant retroactive cancellations of in-production orders during the COVID-19 pandemic. According to these suppliers, Camaïeu is refusing to reinstate orders of both finished and in-production goods. Several months have passed since temporary store closures have ended, and Camaïeu has had ample opportunity to rectify this dereliction of responsibility.⁽²⁹⁾

Colloseum (Germany)

The Worker Rights Consortium received complaints in late October that the German apparel brand Colloseum had failed to pay for completed orders on originally scheduled payment terms. The suppliers stated that they faced long delays in payment for goods finished in March 2020 that were initially supposed to be paid within 60 days of completion. Colloseum has continued to fail to pay for these orders, presenting a serious threat to continued factory operations and worker incomes. Recently, Colloseum has told suppliers that it wants to accept only 50% of these garments, which would cause enormous losses for the suppliers. So far, suppliers have refused to accept the proposed settlement, instead insisting, appropriately, that they be paid in full for the work they have done. Although Colloseum's parent company, Fashion FC Club, filed for insolvency in May of 2020, the brand was acquired by Schulz Fashion on July 1, 2020.⁽³⁰⁾

(28) Clean Clothes Campaign (2020) C&A finally pays orders placed before the pandemic. Available at: <https://cleanclothes.org/news/2020/ca-finally-pays-orders-placed-before-the-pandemic>

(29) Worker Rights Consortium (2020) Camaïeu is refusing to pay for completed orders. Available at: <https://www.workersrights.org/updates-and-analysis/>

(30) Worker Rights Consortium (2020) Suppliers are still waiting for Colloseum (part of Schulz Fashion) to pay for orders completed prior to pandemic. Available at: <https://www.workersrights.org/updates-and-analysis/>

5 EU Directive 2019/633 on unfair practices in the agri-food sector

In April 2019, the first sector-specific EU regulatory framework on the issues of UTPs in the B2B supply chain was agreed upon. The Directive (2019/633) on unfair trading practices in the agricultural and food supply chain was adopted on the legal basis of the EU's sector-specific competence in agriculture, grounded in Article 43(2) of the Treaty on the Functioning of the European Union.

The new instrument contains provisions that ban certain UTPs imposed unilaterally by one trading partner on another. It also protects suppliers based outside of the EU that sell products into the internal market. From the current language of the Directive, it is clear the Directive is specifically adopted to protect small- and medium-sized enterprises, as suppliers with huge turnovers (over 350 million euros) fall outside the scope of the Directive.

5.1 Key provisions/safeguards

Article 3(1) of the Directive lists several practices that are explicitly defined as 'unfair' and shall be prohibited in national law. Some practices are explicitly defined as 'unfair' and automatically banned, for instance:

- the refusal after request to enter into written contracts,
- unilateral contractual changes,
- last-minute cancellation of orders,
- payments later than 30 days of invoices concerning perishable products (for others later than 60 days).

Other trading practices listed in Article 3(2) will merely be banned when they were not agreed on in the supply agreement in clear and unambiguous terms. These include:

- return unsold products,
- payment for stocking and
- the financial aid in promotion and marketing of products.

5.2 Enforcement

Each Member State needs to designate an authority which is competent to tackle unfair purchasing practices along the whole supply chain (from grower to retailer) and to enforce the new rules. Furthermore, acknowledging the significance of confidentiality and as a remedy to the fear that brands will respond with retaliations, Member States must ensure that suppliers have the opportunity to make an anonymous complaint to the competent national authority. This is crucial to address the so-called 'fear factor', where suppliers are reluctant to enforce their claims or rights through civil procedures.

Unions/organisations/NGOs may also lodge aggregated complaints on behalf of suppliers. In addition to acting on such a complaint, the authority should convey the power to launch an investigation and carry out on-site inspections on its own initiative and impose appropriate sanctions - like fines/recovering damages - on companies that infringe the provisions. They also need to conduct an annual report on their activities, like the number of complaints received, the outcome of investigations, etc.

	Minimum harmonisation provisions in Directive 2019/633	Possible relevance/adaptation to garment sector
Material scope (i.e. which practices)	Unfair practices within B2B relationships in agri-food supply chain	Unfair practices within B2B relationships in garment supply chains
Company scope (i.e. which entities)	<ul style="list-style-type: none"> - Suppliers with a max annual turnover 350 million euro - All buyers (but these need to have bigger annual turnover compared to the supplier) 	Same
Territorial scope	Agreements with EU suppliers or with suppliers outside of EU that sell products into the internal market	Same
Blacklist of practices: automatically banned	<p>Art. 3 (1) (a)</p> <ul style="list-style-type: none"> - for perishable products: payment later than 30 days after end of agreed delivery period OR after amount payable is set - for other products: payment later than 60 days 	Current practices in the garment sector typically range from 90 days after shipment to 180 days. Payment terms within 60 days would therefore be a significant improvement in the garment sector.
	<p>Art. 3 (1) (b)</p> <p>Last-minute cancellation order of perishable product (at notice of less than 30 days)</p>	Last minute cancellation of specific time-limited items, such as items related to valentines, Mothering Sunday, Easter, Fathering Sunday, Christmas, or other events.
	<p>Art. 3 (1) (c)</p> <p>Unilateral contractual changes</p>	Same This is a crucial Unfair Trading Practice in the garment sector. The garment sector saw unilateral imposition of discounts, changes to order size, technical specifications, payment terms and cancellations. (See section 3 above.)

	Minimum harmonisation provisions in Directive 2019/633	Possible relevance/adaptation to garment sector
	Art. 3 (1) (d) Buyer require payments which is not related to sale by supplier	Little to no relevance to the garment sector
	Art. 3 (1) (e) Buyer requires the supplier to pay for the deterioration or loss of products after ownership is transferred	Little to no relevance to the garment sector
	Art. 3 (1) (f) Refusal after request to confirm contractual terms in writing	Same
	Art. 3 (1) (g): buyer unlawfully acquires, uses or discloses the trade secrets of the supplier	Same
	Art. 3 (1) (h): buyer threatens to carry out acts of commercial retaliation (like de-listing) against the supplier if the supplier exercises its contractual or legal rights	Same
	Aft. 3 (1) (i) buyer requires compensation from the supplier for the cost of examining customer complaints (despite absence of negligence/fault on his part)	Little to no relevance to the garment sector
Grey list of practices: banned unless explicitly agreed upon	Art. 3 (2) (a): return unsold products without paying	Little to no relevance to the garment sector
	Art. 3 (2) (b) and (f) Demand payment of supplier for stocking, fitting out premises, making products available to market	Little to no relevance to the garment sector
	Art. 3 (2) (c-e) financial aid: supplier needs to bear costs of promotion, advertising and marketing of products	Little to no relevance to the garment sector

	Minimum harmonisation provisions in Directive 2019/633	Possible relevance/adaptation to garment sector
Enforcement	Designate competent enforcement authority and Grant it powers: <ul style="list-style-type: none"> - to conduct investigation on its own/on basis of confidential complaint - to carry out unannounced on-site inspections - to impose appropriate sanctions for non-compliance 	Same
Reporting	Enforcement authorities need to publish annual report on activities falling within scope of the Directive	Same

6 A path forward

In 2010, the European Parliament already acknowledged the need to take action beyond the agri-food industry to combat unfair practices in other sectors as well and adopt a more general harmonised framework on unfair practices in business relations.⁽³¹⁾ This would equally be in line with the initial 2013 Green Paper which looked at a diversity of sectors, including garment.⁽³²⁾

Indeed, the agri-food Unfair Trading Practice Directive provides a specific protection to the food sector, aiming to protect agri-food. Recital 6 states that farmers bear extra business risks and uncertainty in production due to its reliance on biological processes and its exposure to weather conditions. Several agricultural and food products are also, to a greater extent, perishable and seasonal. (e.g. dairy). Unfair trading practices related to last-minute unilateral changes of delivery terms or cancellations in orders therefore have an extra hard impact on these suppliers. Furthermore, the presence of many large enterprises and a high degree of concentration in processing and retail stages of the

supply chain stand in contrast to the fragmentation of smaller operators in the production stage.⁽³³⁾

As decades of literature on purchasing practices in the garment sector has shown, as well as the reaction of clothing retailers during the COVID-19 pandemic, garment retailers impose similar unfair trading practices on their suppliers. If the trading practices are similar in the garment industry to those in agri-food, a similar legislative approach should be considered. The UTPs are extensive in the garment and textile sector, as we can find similar significant power imbalances, with the main control or influence being exercised from the retail end. In addition to the banning of UTPs like late payments, unilateral changes, negotiating unreasonable low prices, last-minute cancellation of orders, Member States could add practices that are specific in garment sector, such as below-cost selling, last-minute confirmation or changes of samples/technical orders, excessive levels of sampling, unreasonable penalties for late deliveries, such as expensive premium airfreight shipments, etc.



(31) European Parliament (2011) Resolution on a more efficient and fairer retail market. Available at: https://www.europarl.europa.eu/doceo/document/A-7-2011-0217_EN.html

(32) European Commission (2013)

(33) European Commission (2014)

7 Recommendations

7.1 to trade unions and civil society

In order to expand the scope of the transposed 2019 EU agri-food Directive, trade unions and labour rights activists are encouraged to already ask their governments to organise a consultation to broaden the scope to include the textile and the garment sector.

Starting from March 2022, Member States will be required to send yearly reports on the implementation and enforcement of the Directive to the EC, and the EC will conduct an evaluation of the Directive and present a report in November 2025. Trade unions and civil society can use those evaluations as an occasion to raise the need a Directive inspired by the agri-food UTP Directive covering textiles.

7.2 to EU Member States

The agri-food UTP Directive, like any directive, provides minimum harmonisation rules, meaning Member States may also offer stricter protection than specified within the scope of the Directive. This is explicitly mentioned in article 9 of the Directive. Hence EU Member States, when transposing, may choose a broader application of the Directive, and include other sectors, such as the garment sector. Member States may equally consider transposing the norms in the Directive throughout the economy.⁽³⁴⁾ Finally, when applying the norms in the Directive more broadly, it is important to also ensure the national competent authority has a mandate to enforce these rules in all the sectors covered.

7.3 to the European institutions

There is a clear need for EU action and a harmonised framework beyond the agri-food industry to combat unfair practices in other sectors. The Commission as well as the other EU institutions, should initiate and develop such a regulatory approach tackling Unfair Trading Practices more broadly, starting with the garment sector.

Such an approach could be based on the 2013 Green Paper on Unfair Trading Practices, and the responses received in the consultation relative to the garment sector, as well as subsequent evidence of unfair trading practices from international surveys and repairs. This could lay the foundations of a garment-specific instrument, as part of a wider EU strategy on responsible business conduct in the garment sector, or as an economy-wide instrument on unfair trading practices between businesses.

(34)The recently adopted law in Belgium on economic dominance may for example provide a partial response to this.