



**EEB**  
European  
Environmental  
Bureau



# POLICY BRIEF ON Prohibiting the Destruction of Unsold Goods

Prepared by  
Ökopol for the EEB

*This document was prepared by Ökopol for the European Environmental Bureau. The views expressed in this document are solely those of the authors and do not necessary reflect the position of the EEB.*



## 1. Our key recommendations

- **The Sustainable Products Initiative should introduce a legally binding “duty of care”<sup>1</sup> for producers and retailers:** From 2022 onwards, producers and retailers should ensure that all products they produce or sell are kept in the best possible condition, from the initial production and for as long as the products are in their ownership. This duty of care must also include a duty to avoid hazards that could lead to damage to the goods.
- **Introduce a legal ban on the deliberate destruction or disposal of unsold goods.** Such a ban should apply from 2023 onwards to both brand-new and returned goods, as well as to producers, retailers and any third parties commissioned by them.
- **Disposal should only be allowed for products that are not compliant with legal requirements.** These products must be recycled.
- **Introduce a reduction in Value Added Tax for producers and retailers** who make use of sound alternatives for returned or unsold products instead of disposing of them, such as donations, from 2022 onwards.
- **To avoid using alleged charitable purposes to circumvent the destruction ban, any exporting producer or retailer should provide proof of the intended use of the goods,** for all products exported outside of the EU for donation to countries, legal entities or private persons from 2023 onwards.
- **Introduce a reporting requirement and monitoring system at Member State and EU level on the fate of the products which:**
  - i) are placed on the market but are not sold;
  - ii) have been sold and returned within the return period, or
  - iii) have been produced but never placed on the market from 2022 onwards.
- **Member States should be equipped and required to effectively enforce the ban on non-destruction of unsold goods through an appropriate legal framework at EU level.** This requirement should apply from 2023 onwards, and in priority to the textile and electronics sectors. For this, Member States should be obliged to prepare inspection plans, similar to the Waste Shipment Regulation (EU) No 660/2014 for all streams of unsold goods exceeding a certain threshold in value per year and company.

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<sup>1</sup> See below “Inspiring Policy Initiatives at Member State Level”: Germany

## 2. Introduction

The deliberate destruction and disposal of unsold or returned goods by producers and especially online retailers has been brought to attention multiple times recently. While some sources claim that this happens on a large scale, it is unclear who is engaged in these practices and to what extent. There is hardly any transparency with regard to the handling of returned and unsold goods. The destruction of goods has been reported<sup>2</sup> only for a small number of cases.

**The deliberate destruction or disposal of returned or unsold goods severely contradicts two of the key objectives of the European Union's Green Deal<sup>3</sup> and Circular Economy Action Plan<sup>4</sup>: the promotion of a resource-efficient circular economy and the significant reduction of total waste generated.**

**In the context of these overarching EU priorities, the objective of this brief is to support the European Commission to end current practices of wasting resources. This brief proposes effective policy measures that can be adopted into EU regulation, and:**

- 1.** documents the scale of destruction of unsold or returned goods in the European Union, its drivers, while indicating where data is not available;
- 2.** provides specific policy recommendations to reduce this reckless waste of resources;
- 3.** highlights inspiring legislative initiatives at the national level to reduce the destruction of unsold or returned goods, illustrating the need for a harmonized and level-playing field through an EU Sustainable Product Policy. It is essential that frontrunner Member States are not disadvantaged by creating incentives to export goods to Member States with lower or inexistent legal standards as regards to the destruction of unsold goods; and
- 4.** reviews existing national policy initiatives in terms of pros and cons, showing points that should be reproduced at EU level and weak points to be corrected.

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<sup>2</sup> For example, Burberry is known to report the destruction of goods in its financial report (Zazzara et al. 2020)

<sup>3</sup> The European Green Deal, COM (2019) 640 final.

<sup>4</sup> A new Circular Economy Action Plan - For a cleaner and more competitive Europe, COM (2020) 98 final.

### 3. Why does it matter?

The **European Green Deal** aims to transform the EU economy towards a resource-efficient economic system, decoupling economic growth from resource use and reducing total generated waste. To achieve this, the Commission plans to use regulations and reforms as well as incentives to mobilise the industry.

The **Circular Economy Action Plan** is a key part of the European Green Deal and includes plans for a sustainable product policy framework. This framework targets sustainable products per design, circularity in production processes and the empowerment of consumers to make informed and sustainable consumption choices. The plan identifies a set of key product value chains, which pose significant sustainability challenges and a need to be addressed with “urgent, comprehensive and coordinated actions” (European Commission 2020a).

The Circular Economy Action Plan also announces a **Sustainable Products Initiative** (European Commission 2020c), which the Commission aims to adopt by the end of 2021. **This legislative initiative is expected to include announced measures “to ban the destruction of unsold durable goods” (ibid.).**

One of the main focuses of the **New Industrial Strategy**<sup>5</sup> is to build a more circular economy by “reducing Europe’s carbon and material footprint” (European Commission 2020b). The strategy proposes to reconsider current production and use schemes to incentivise new circular approaches.

The prevailing practice of producers and retailers destroying and/or disposing of unsold and returned goods is therefore severely contradicting the goals of the European Green Deal, as it results in a negative resource productivity. This is due to the fact that the destruction of unsold or returned goods causes and tolerates:

- resource consumption for the production
- affiliated CO<sub>2</sub> emissions and emissions of hazardous substances
- negative environmental impacts due to waste treatment of products whose actual use potential has never been tapped.

As we highly value the European Commission’s strategic endeavours, the key objective of this brief is to support the Commission to end current practices of recklessly wasting resources, by proposing effective policy measures that can be swiftly adopted into EU regulation.

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<sup>5</sup> A New Industrial Strategy for Europe, COM(2020) 102 final.

## 4. Problem analysis

The deliberate destruction and disposal of unsold or returned goods is not a new phenomenon and has been reported in various sectors. Amongst others, the most prominent sectors in which unsold goods end up being destroyed are (Elia 2020):

- clothing and other textiles;
- electronics.

The rise of e-commerce (Pourhejazy 2020), along with changing consumption patterns and business strategies, such as fast fashion (Napier and Sanguineti 2018), have largely increased the proportion of unsold goods.

In recent years, the media have shown examples of such practices by international retailers, online platforms and producers. Examples of brands linked to large scale destruction of unsold goods are Amazon (ZDF 2018), Burberry (Zazzara et al. 2020), H&M and Zara (Deutsche Welle 2020). Besides these, many other brands and businesses made it into the media due to accusations of having willfully destroyed unsold goods (Napier und Sanguineti 2018).

The main motivations claimed and reported for the destruction of unsold goods are (Napier und Sanguineti 2018; Pourhejazy 2020; Elia 2020):

- Retaining brand image and prices<sup>6</sup>, or to “protect intellectual property” (especially for luxury brands)<sup>7</sup>;
- Damaged products due to shipment or else as well as returns;
- Cost reasons related to reprocessing, rebranding, or tariffs/taxes<sup>8</sup>;
- Overproduction<sup>9</sup> and
- “Unpredictable factors”<sup>10</sup>.

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<sup>6</sup> According to Elia (2020), high end fashion brands (such as Louis Vuitton, Burberry or Chanel) aim to prevent their goods from being sold at knockdown prices on grey or other markets in order to avoid the brand being linked to discount prices and to ensure exclusivity. Incineration is claimed to be the last resort, occasionally before employee sales and sale prices in other countries (ibid.). As an example, Cartier bought back and destroyed over £ 400 million of watches in two years to prevent them being sold at low prices which equals about about € 470 million (Wood 2018).

<sup>7</sup> In order to understand the underlying rationale of stakeholders from industry and to verify this claim, five luxury-product associations were asked to comment on this matter in June 2021. Unfortunately, no responses were obtained and no such industry statement was included in this policy brief. The contacted brands were Kering Group (luxury fashion), LVMH Moët Hennessy – Louis Vuitton (luxuryfashion), Hermes Paris (luxury fashion), Federation de la Haute Couture et de la Mode (fashion/Haute Couture) and Comite Colbert (diverse). However, it is more likely that the concerns were based on the fear that selling the products at low prices and by unaffiliated retailers, would affect exclusivity and brand image.

<sup>8</sup> Brands reason that the donation of goods is expensive, at least more expensive than incineration. This is due to the VAT which is payable when donating the goods. In a public statement, the The director of Amazon Germany publicly declared this to be a limiting factor for donations (Stewart 2020). Any effort spent on unsold or returned products, such as reprocessing or rebranding, affect the profit margin and go beyond that of sold goods. It is therefore, that for products with a small profit margin or low value, it is more lucrative to destroy them than to resell or donate them.

<sup>9</sup> As a production strategy of Fast-Fashion, overproduction is economically advantageous. Clothing stocks not matching demand, remain unsold and destruction is a cost-effective way for removing unwanted stocks. In 2017, H&M was accused of burning 12 tonnes of clothing a year between 2013 and 2017, of which the firm has denied liability (Hendriksz 2017).

<sup>10</sup> Unforseeable reasons for unsold goods are claimed to vary (Elia 2020), but convincing or verifiable examples are largely missing.

Big companies that make use of this practice often destroy unsold goods directly in their warehouses in a designated destruction zone (Hamilton 2019). Amazon has been accused of such practices in France (Connexion France 2019), Germany (Greenpeace 2021) and most recently in the UK (The Guardian 2021). Although there is individual evidence for destruction and disposal, the overall size of destruction remains uncertain, apart from singular estimations. There are no current estimates of the quantity or value of destroyed unsold goods in the EU. France estimates a total value of € 630 million of unsold goods is destroyed each year, whereas an amount as high as € 7 billion per year was estimated for Germany (DW, 2020). As regards the environmental impact, the destruction of unsold goods implies useless resource consumption for the production of the goods, related CO<sub>2</sub> emissions and emissions of hazardous substances as well as negative environmental impacts due to waste treatment.

Despite the growing evidence, the majority of producers is still contesting the problem and only a few have openly committed to avoid or reduce the destruction of unsold goods<sup>11</sup>. The lack of primary data has led to a non-transparent and poorly documented situation with regards to quantities or types of goods being destroyed (Elia 2020). Thereby, it has been reported that most Member States are missing an active stance towards the issue (Napier and Sanguinetti 2018). In some cases, the current tax law is even directly or indirectly motivating the destruction of unsold goods. Examples of such national legal policies include monetary compensation for unsold goods (Elia 2020) or the lack of VAT (Value Added Tax) reimbursements for the donation of unsold goods (BEVH 2019).

Various companies have been increasingly uptaking and accounting for their so-called “Corporate Responsibility” (or Corporate Sustainability) and related reporting activities in the past decade, covering a wide range of their corporate activities, associated material flows and related environmental impacts<sup>12</sup>. However, in many cases, this responsibility apparently ends once the product is ready to sell. We believe it is time to challenge and change this unsustainable and irresponsible corporate mindset. Today’s companies should ensure that all natural resources used to make a product are actually used, instead of being instantly wasted. It is time to truly value each and every product. And to truly care.

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<sup>11</sup> „We work hard to ensure that unsold products never end up as waste. [...] Ensuring unsold products never become waste is a priority for us — we want the resources that go into producing a product to be valued, used and reused. We increasingly apply predictive artificial intelligence tools to match production to demand. When a product isn’t selling, we take all actions possible to sell products within our primary sales channels, before using products within internal circular initiatives or brands such as Afound. When internal possibilities are exhausted, we find solutions via trusted business partners“ (H&M, Sustainability Report 2020).

<sup>12</sup> Including corporate waste streams, see e.g. the Guidelines of the Global Reporting Initiative (GRI) on waste: <https://www.globalreporting.org/search/?query=waste>

## 5. Policy Recommendations

To end the willful destruction and/or disposal of unsold or returned goods, transparency of all relevant industry stakeholders and a consistent policy mix are needed. Policy measures should:

- Effectively restrict the destruction and disposal of unsold or returned goods at EU level to ensure a level playing field in all Member States, and to prevent intra-European cross-border movement of goods for disposal and circumvention of anti-destruction legislation by individual Member States
- Make sure that existing or future policy measures do not i) incentivize overproduction and b) harm any national markets outside the EU by flooding them with so-called donated or charity-goods
- Establish reporting requirements for producers and retailers as well as a monitoring system at Member State and EU level to allow a targeted assessment of the policy intervention and the need for further action

Allowing donation is only the second-best option to destruction and disposal of unsold goods. First of all, excess production needs to be prevented. For this, well cut and courageous policy proposals are needed on our way to a truly Sustainable Product Policy.

The upcoming legislative framework of the Sustainable Products Initiative should provide a consistent and effective policy and include at least the following actions and measures:

- **The Sustainable Products Initiative should introduce a legally binding “duty of care”<sup>13</sup> for producers and retailers: From 2022 onwards, producers and retailers should ensure that all products they produce or sell are kept in the best possible condition, from initial production and as long as the products are in their ownership. This duty of care must also include a duty to avoid hazards that could lead to damage to the goods.** Manufacturers and retailers, including wholesalers and intermediaries, should be legally obliged to ensure that they keep their products in the best possible condition upon their production (including function and appearance). In the future, it should be the responsibility of the producers and traders of products to ensure that their products do not become waste. This duty of care also includes the transport and storage of products upon their production. It must also include a duty to avoid hazards that could lead to damage to the goods.
- **Introduce a legal ban on the deliberate destruction or disposal of unsold goods. Such a ban should apply from 2023 onwards to both brand-new and returned goods, as well as to producers, retailers and any third parties commissioned by them.** The willful destruction of products which have never been placed on the market, of products which have been placed on the market, but which are not sold and of products which have been returned by consumers within the return period should be legally prohibited. This includes a ban on exporting products for subsequent destruction and disposal outside the EU. To enable proper enforcement through national authorities, reliable and valid verification obligations for the

<sup>13</sup> See below “Inspiring Policy Initiatives at Member State Level”: Germany

exporting parties should be introduced to ensure that the products to be exported are put to their original purpose of use.

- **Disposal should only be allowed for products that are not compliant with legal requirements. These products must be recycled.** Incineration or thermal recovery should be prohibited.

- **Introduce a reduction in Value Added Tax for producers and retailers who make use of sound alternatives for returned or unsold products instead of disposing of them, such as donations, from 2022 onwards.** In addition, donations of any kind must be mutually agreed upon by all relevant parties. The producer or distributor must be able to provide proof of this to the competent authority on request.

- **To avoid using alleged charitable purposes to circumvent the destruction ban, any exporting producer or retailer should provide proof of the intended use of the goods, for any products exported outside of the EU for donation to countries, legal entities or private persons from 2023 onwards.**

- **Introduce a reporting requirement and monitoring system at Member State and EU level on the fate of products which:**

- i) are placed on the market but are not sold;

- ii) have been sold and returned within the return period, or

- iii) have been produced but never placed on the market from 2022 onwards.

Producers and retailers (including wholesalers and intermediaries) should be obliged to gather and report the type and amounts of new and unused products being wasted in each Member State and to explain the reasons for doing so. Member States should be required to report to the Commission which types of products and what amounts are being wasted. Reporting requirements should start no later than 2023. The Commission should provide a reporting standard applicable to all Member States by October 2022. In addition, the forthcoming Corporate Sustainability Reporting Directive should require companies to disclose data on the waste management of unsold products. Co-legislators should amend the Commission's proposal to further detail the reporting requirement on resource use, waste management and circular economy. These reporting requirements should be translated into specific waste-related reporting standards to be developed in the standard-setting process with the aim of obliging companies to report on their waste and resource management as of 2024 (applying to the financial year of 2023) as foreseen in the proposal.

- **Member States should be equipped and required to effectively enforce the ban on non-destruction of unsold goods through an appropriate legal framework at EU level. This requirement should apply from 2023 onwards, and in priority to the textile and electronics sectors. For this, Member States should be obliged to prepare inspection plans, similar to the Waste Shipment Regulation (EU) No 660/2014 for all streams of unsold goods exceeding a certain threshold in value per year and company.**



6. Expected impact

As little to no EU-wide data is available on the destruction of damaged and unsold goods or unsold goods in general, we use the German e-commerce sector as a basis for this impact assessment. The focus of the assessment is on the two product groups: electronics and clothing. The German impact per capita is extrapolated to the total amount of citizens in the European Union<sup>14</sup> to put these numbers into perspective.

The **overall market size** of goods sold in e-commerce in Germany adds up to € 72,6 billion in 2019. The product groups ‘clothing’ (26 %) and ‘electronics’ (36 %)<sup>15</sup> account for a combined € 44,6 billion (BEVH 2020). The number of **products returned** highly deviates per product group or even per item (University Bamberg 2019). The return and destruction rates administered in this impact assessment are indicated in Table 1. Based on these rates, clothing is more likely to be returned compared to electronics. Up to half of the clothing products ordered online are returned, where for electronics this ratio averages one product out of seven. Also, the amount of returned products being destroyed varies between the product groups. Clothing products are double as likely to be destroyed compared to electronics.

Table 1: Clothing and electronics: Reported return and disposal rates and derived minimum and maximum disposal scenarios in online retail

	Clothing	Electronics
Minimum Return Date	20 %	5 %
Maximum Return Date	50 %	15 %
Minimum Disposal Date	10 %	4 %
Maximum Disposal Date	20 %	10 %
Minimum Scenario: Disposal Rate	2 %	0,2 %
Maximum Scenario: Disposal Rate	10 %	1,5 %

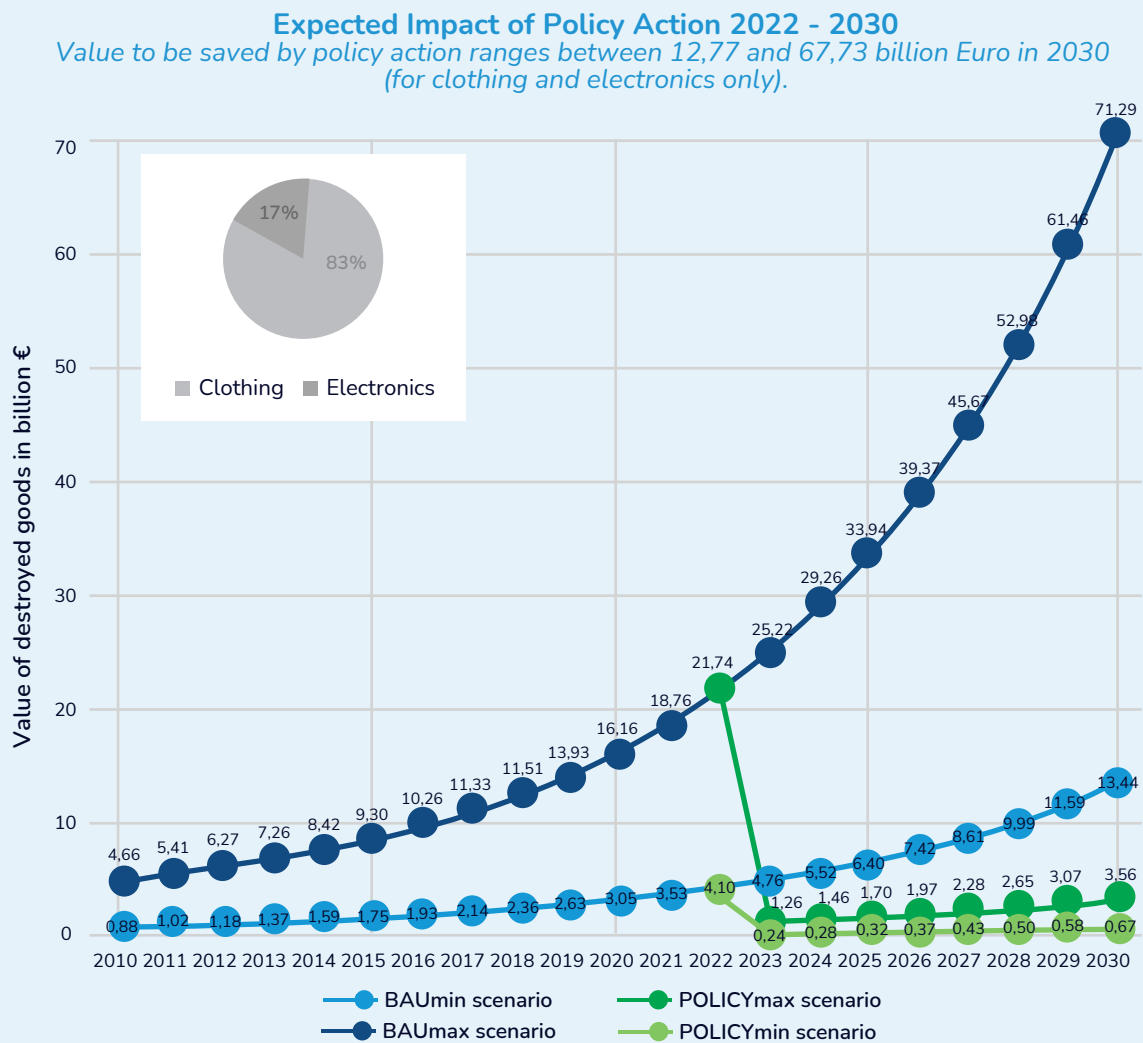
Sources return and disposal rates: (Karl and Asdecker 2021; Dowideit 2019)

The following graph illustrates the impact on the total value of the destroyed clothing and electronics in the EU. Based on varying return and destruction rates, a “**minimum scenario**” (i.e. lowest reported return combined with lowest destruction rates) and a “**maximum scenario**” (i.e. highest reported return combined with highest destruction rates) are shown, presenting the upper and the lower limits of the real numbers which are likely to be found in practice. If the proposed policy measures were to be taken, the number and value of products would be drastically reduced. The potential introduction of such policy measures as of 2023 demonstrate a 95 % drop compared to business-as-usual in destroyed and/or disposed goods.

<sup>14</sup> The number of EU citizens varies over the period of time considered due to joining and leaving of member states. The extrapolation from Germany (83,17 million) to the EU (513,09 million) is based on data from the 1st of January 2019 (Eurostat 2021b).

<sup>15</sup> As ‚electronics‘ are not evaluated as a separate category by BEVH (2020); Karl and Asdecker 2021), the product group ‚Entertainment‘ is used as a representation for ‚electronics‘ in this evaluation. The ‚Entertainment‘ product group incorporates: Books/Ebooks/Audio books, picture/sound carriers, computers/accessories/games/software incl. Downloads, electronics/telecommunications.

Note: The figures and the impact scenarios presented below are conservative, as they only reflect returned goods as regards to clothing and electronics in online retail and do not take into account items sold in local retail stores or items never sold, thus never returned, but still destroyed as unsold goods.



In the maximum business-as-usual scenario (BAUmax), the sum of electronics and clothing destroyed in the European Union would amount to € 21.74 billion by 2022. This would be larger than the entire GDP (Gross Domestic Product) of Cyprus for the year 2020, amounting to € 20.84 billion (Eurostat 2021a). Without policy measures taken, it is estimated that in the BAUmax scenario, this could increase to up to € 71.29 billion by 2030. To put this into perspective, this amount would be equal to the revenue generated by the entire German e-commerce market in 2019 (€ 72.64 billion) (BEVH 2020). This scenario covers only returned and destroyed goods in e-commerce – the mass of products destroyed and disposed of due to overproduction or for any other reasons will add to this and remains unknown.

The following illustration visualises the scale of destruction in the EU by stringing the packaging of all destroyed goods together to form one line around the earth in case each product was to be packed in one box with an edge length of 45 cm, corresponding to the average parcel size.

### Scale of destroyed clothing and electronics together



2010

2020

2030

Times the Earth's  
circumference

≈ 0,5

≈ 1,5

≈ 6,0

Underlying assumptions and calculation methods used: According to Asdecker (2021) 0,00727 shipments are returned for every Euro of revenue generated in online retail in Germany. In the visualisation, this ratio is applied to derive the number of shipments corresponding to clothing and electronics destroyed in Europe. The number of shipments was then multiplied by 45 cm which represents a standard length used for packaging in online retail. As an example: € 1.000,- of revenue \* 0,00727 = 7,27 shipments. 7,27 \* 0,45 = 3,27 meters. The total length is then divided by the earth's circumference (40.000 km), resulting in the number of the Earth's circumference.

## 7. Inspiring policy initiatives at Member State level

Recently, several Member States have made an effort to address the destruction of unsold goods in national legislation. Table 2 gives an overview of aspects addressed by national legislation in Belgium, France and Germany.

**Table 2: Inspiring policy initiatives: Overview of aspects addressed in the national policy initiatives**

Member State	Ban on destruction of unsold goods	Reuse as a priority option	Reduction of VAT on donations	Product specification	Duty of care principle	Reporting obligations
Belgium			X	X		X
France		(X) only hygiene and childcare products	X	X		
Germany	X	X			X	X





## Belgium

In many EU Member States, donating and providing products free of charge means the supplier still has to account for the VAT. This economic barrier as regards donations was addressed in Belgian legislation by the amendment of the VAT-law<sup>16</sup> on 7 April 2019. The amendment extends the VAT relief to charitable donations from food to certain essential non-food products:

*Free transfer of certain essential non-food goods (Article 12, § 1, paragraph 1, 2°, c) of the Belgium VAT Code)*

The new Article 12, § 1, paragraph 1, 2°, c) of the VAT Code shall read as follows

*§ 1. The following shall be treated as supplies for consideration: (...)*

*2° the removal of goods by a taxable person from his business in order to pass them on free of charge, where the goods or the components of which they are made up have given rise to a full or partial deduction of tax, with the exception of removals carried out with a view to:*

*(c) the supply for charitable purposes of essential non-food goods, other than goods which can be used on a long-term basis, of which the intrinsic characteristics no longer allow them to be sold under the original marketing conditions at any stage of the economic circuit;"*

Amendment Act of the VAT-Act, Article 12, § 1c (translated from French)

**This legislation simplifies the donation of unsold goods for charitable purposes under the condition that they are provided free of charge.**

**This legislative initiative is likely to reduce the number of destroyed goods. However, it also signals potential gaps. The legislation does not prohibit the destruction of goods, instead, it focuses on making donations cheaper for companies, in most cases cheaper than destruction or disposal. However, due to the eliminated financial burden, companies are not encouraged to limit overproduction in any way and the disposal costs are shifted to charity organisations.<sup>17</sup>**

## France

**The French Anti-Waste Law<sup>18</sup> amended the Environmental Code<sup>19</sup> by incorporating clauses on the handling of unsold goods. Article 35 is especially relevant in this context:**

*"Producers, importers and distributors of new non-food products intended for sale are required to reuse in particular by donating [...] or recycle their unsold products, in compliance with the hierarchy of treatment [...]"*  
Art. L. 541-15-8.-I.- (translated from French)

**This applies to all products subject to producer responsibility. For two product groups (hygiene and childcare products) a specific requirement is imposed to encourage donations:**



<sup>16</sup> C - 2019/12122 (04.07.2019): Loi modifiant le Code de la taxe sur la valeur ajoutée en vue d'exempter de la T.V.A. les dons de biens non alimentaires aux plus démunis. In: Moniteur Belge 189 (98).

<sup>17</sup> This claim was provided by a Belgian NGO dedicated to the topic 'reuse of goods'. The details of the contact person are available to the authors of this brief.

<sup>18</sup> n°2020-105 LOI du 10 février 2020 relative à la lutte contre le gaspillage et à l'économie circulaire. In: Journal officiel - JORF. Available online: <https://perma.cc/9YRB-SQGQ>, last, accessed on 22.06.2021.

<sup>19</sup> Code de l'environnement (17.06.2021). Available online at [https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000006074220/2021-06-23/](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006074220/2021-06-23/).

*"Hygiene and childcare products, the list of which is set by decree (2020-1724), that remain unsold must necessarily be reused, except for products with a minimum durability date of less than three months and with the exception of cases where no possibility of reuse is possible [...]"*

Art. L. 541-15-8.-I.- (translated from French):

**Actors failing to comply with the obligations risk a financial penalty of up to € 15.000 as well as a publication of the court decision at the expense of the offender.**

Regardless of the detailed fines, a documentation or monitoring requirement seems absent in the legislation. This complicates transparency and therefore enforcement of such penalties. Moreover, the law focuses mainly on the prohibition of the destruction of new goods, excluding returned and/or damaged goods. This means that these goods could still be subject to destruction. Another relevant limitation of the law is that it still allows for the recycling of the products, except for hygiene and childcare products. Furthermore, products can still be destroyed or disposed of if there is no recycling facility available.

Sources claim that the main reason for the exceptions in the law is due to concerns expressed by French industry representatives, especially from the luxury products industry, regarding the risks to brands' intellectual property (Zazzara et al. 2020).

## Germany

The revised German Circular Economy Law<sup>20</sup> provides a regulative framework to address the destruction of overproduced, unsold and returned products. It does so by means of a duty of care ('Obhutspflicht') and a reporting obligation ('Berichtspflicht') for all products. With the introduction of the duty of care, the law enhances the existing producer responsibility. Here, a central requirement is the obligation to ensure product durability and usability and to prevent products from becoming waste. In this context, the legislation distinctly mentions returned goods:

*"A duty of care with regard to the products distributed, in particular the duty to ensure, when distributing the products, also in connection with their return or withdrawal, that the fitness for use of the products is maintained and that they do not become waste."*

German Circular Economy Law, § 23(1)(11) (translated from German):

**In support of the enforcement of the duty of care, a documentation obligation is included in the legislation:**

*"[...] in order to ensure adequate transparency for certain products covered by the duty of care, a report has to be drafted on the use of the products, in particular their nature, quantity, whereabouts and disposal, as well as the measures taken and planned to implement the duty of care [...]"*

German Circular Economy Law § 25(1)(9) (translated from German):

**If administered and enforced correctly, this regulative clause could bring a great deal of transparency into the handling of unsold goods. It also provides the possibility for third-party verification and potential consequences for neglect of the duty of care.**



<sup>20</sup> Kreislaufwirtschaftsgesetz - KrWG (23.10.2020): Gesetz zur Förderung der Kreislaufwirtschaft und Sicherung der umweltverträglichen Bewirtschaftung von Abfällen. Available online at <https://www.gesetze-im-internet.de/krwg/KrWG.pdf>, last accessed on 22.06.2021.

The legislation has great potential for halting the practice of destroying unsold goods, however, there are also limitations. A potential gap is that the legislation does not address the export of goods to be destroyed outside of Germany, which could be a loophole to bypass the duty of care. As a result, it is nearly impossible to ensure the already difficult supervision, transparency as well as the conditions under which destruction is performed.

The following table highlights policy measures that already exist at Member State level that could be replicated at EU level and the weak points to be corrected.

**Table 2: Review of existing policy initiatives on Member State level – measures to be replicated at EU level and measures to be corrected**

	Belgium	France	Germany
<b>Measures to be replicated at EU level</b>	<ul style="list-style-type: none"> <li>• VAT relief for donations</li> </ul>	<ul style="list-style-type: none"> <li>• reuse obligation</li> </ul>	<ul style="list-style-type: none"> <li>• overproduced, unsold as well as returned products are explicitly covered by national legislation</li> <li>• duty of care as a novel legal principle for producers and retailers</li> <li>• reporting obligations for types and quantities of products being destroyed</li> </ul>
<b>Measures to be corrected</b>	<ul style="list-style-type: none"> <li>• VAT reliefs apply to certain consumer goods only (durables such as household appliances are excluded)</li> <li>• does not prohibit the destruction of goods</li> <li>• no measures to counterfeit overproduction</li> <li>• no obligation to verify that donations do not conceal subsequent destruction and disposal</li> <li>• Exporting of products for subsequent destruction not covered by legislation</li> <li>• no public reporting obligations</li> <li>• no national registry/ no national database of products being destroyed or donated</li> </ul>	<ul style="list-style-type: none"> <li>• reuse is the prioritised option only for a very limited product scope</li> <li>• for all other products reuse (“especially by donation”) is an equivalent option to recycling</li> <li>• no measures to counterfeit overproduction</li> <li>• exporting of products for subsequent destruction not covered by legislation</li> <li>• no public reporting obligations</li> <li>• no national registry/ no monitoring system of products being destroyed or donated</li> </ul>	<ul style="list-style-type: none"> <li>• the duty of care is so far only a general basic duty without a specific norm addressee. For effective enforcement, both the addressees and the products must be specified in legal ordinances.</li> <li>• the legal definition of the duty of care is comprehensive, yet generic. This might hinder its steering effect on the behaviour of producers and retailers as well as effective enforcement</li> <li>• exporting of products for subsequent destruction not covered by legislation</li> <li>• no public reporting obligations</li> </ul>



## 8. Reference List

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Authors:

Lisa Rödiger (Expert Product Policy)

Dirk Jepsen (Expert Waste Policy)

Till Zimmermann (Expert Material Flows and Circular Economy)

Robin Memelink (Junior Expert Circular Economy)

Anna Falkenstein (Junior Expert Product Policy)

Affiliation: Ökopol – Institut für Ökologie und Politik GmbH

info@oekopol.de

+49 (0)40 39 10 02-0

www.oekopol.de/en

European Environmental Bureau (EEB)

Rue des Deux Eglises 14-16

1000 Brussels, Belgium

+32 (0)2 289 1090

eeb@eeb.org

eeb.org

meta.eeb.org

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