

## **Public consultation on the Draft Delegated Act supplementing the Ecodesign for Sustainable Products Regulation (ESPR) with derogations to the prohibition of destruction of apparel and footwear products**

### **European Environmental Bureau response**

**11 August 2025**

The European Environmental Bureau welcomes the prohibition of destruction of unsold consumer products introduced by the Ecodesign for Sustainable Products Regulation (ESPR), and, in particular, that the prohibition applies to unsold apparel and clothing accessories as well as footwear products.

Destroying unsold goods contributes not only to the overgeneration of waste and pollution but also to the depletion of finite resources.

It should be noted that the prevalence of unsold goods is a direct result of overproduction in the sector. The prohibition of destruction of unsold goods must be used to prevent the accumulation of excess inventory and overstock, as well as the high rates of consumer returns.

Derogations to this prohibition of destruction of unsold apparel and footwear were foreseen in Article 25 of the ESPR, and while we understand the need for some derogations to the prohibition we are concerned about the potential for these derogations to cement loopholes to the prohibition into law, allowing economic operators to easily circumvent it, rendering it superficial and upholding wasteful practices.

We regret that the Commission has included several derogations in the Draft Delegated Act which could result in many products in usable condition being destroyed. Given textiles and footwear have been specifically prioritised under the ESPR for the sector's high rates of production and discard, derogations to the ban should always be technically justified and strictly defined, as well as limited to cases where reuse is truly impossible.

Further, we call on the Commission to include an explicit reference to the obligation to comply with the waste hierarchy when implementing the listed derogations, and for provisions to evaluate the effectiveness of the ban and assess whether it is fit for purpose as well as an assessment of how many products are destroyed using the derogations.

Ultimately, we urge the Commission to implement the prohibition of destruction of unsold textile products with limited exceptions. We urge the Commission to delete and strengthen the proposed derogations as follows:

**Delete Article 2 (d) and Article 3 (d)**

We recommend deleting this derogation which would allow economic operators to destroy usable products simply because the licensing agreement for that product has expired. This derogation would particularly benefit the luxury branded clothing market where defined sales periods for limited-edition collections are often set out in licensing agreements. Instead of setting a derogation to adapt to licensing agreements, rather, economic operators should be required to include provisions relating to reuse and remanufacture into licensing agreements. Costs associated with removing labels, logos and other components from products should be covered by the economic operator.

**Delete Article 2 (e) and Article 3 (e)**

We recommend deleting this derogation as it could pose an incentive for companies to design hard-to-remove logos, labels and product characteristics. The ESPR promotes disassembly as a principle so including a derogation that allows companies to destroy products they placed on the market which are unsuitable for remanufacture would directly undermine the ESPR's own ambition.

An additional and more explicit derogation could be considered to reflect products which contain characteristics that are inappropriate and go against 'social norms and values'. This could be necessary for clothing which contains a particularly offensive word or logo – although, these cases would be very specific and often subjective. Costs associated with removing labels, logos and other components from products should be covered by the economic operator.

**Delete Article 2 (i) and Article 3 (h)**

The non-acceptance of products offered for donation should not be considered a legitimate reason for destroying products and these articles should be deleted. It is our view that upholding these articles would represent a major loophole for economic operators to continue overproducing short-lived products – in direct contravention of the very aims of the ESPR and the EU Textile Strategy. The second-hand sector is under immense pressure due to the abundance of harmful and disposable textile products it is receiving as a result of the ever-increasing volumes of clothing and footwear placed on the market which lead to high rates of product discard.

The prohibition of destruction of unsold goods, should push the market towards adapting purchasing practices so that they do not result in the systematic accumulation of unsold and returned stock. Allowing companies to bypass the prohibition of destruction through the non-acceptance of donations would essentially allow companies to continue this accumulation of ever-more products which they can easily get rid of using the formalities provided by this derogation. As a result, this derogation will do nothing to reduce volumes or ease the pressure on the second-hand sector, rather, it may even further institutionalise overproduction and worsen the burden on the second-hand value chain.

While we strongly urge the deletion of this derogation, if it is to be upheld, we strongly call for the 'tick box' formality of allowing economic operators to offer unsold products on their website before destruction to be removed. This would be an incredibly passive option for companies – with the burden placed on social economy entities to monitor websites for donations. In

addition, the number of necessary rejections before destruction is allowed is far too low. Again, it represents a formality for companies to tick off while maintaining business as usual.

We also call on the Commission to ensure that it is not possible for economic operators to offload unsold products to Extended Producer Responsibility (EPR) schemes as a way to circumvent the prohibition. Where the operations of Producer Responsibility Organisations (PROs) are not bound by the same rules on unsold goods as economic operators, there is no guarantee that a PRO will prioritise reuse over other waste treatment operations.

### **Delete Article 2 (j) and Article 3 (i); and Article 2 (k) and Article 3 (j)**

This derogation would further diminish any incentives for producers not to accumulate excess stock as the burden for dealing with unsold goods would ultimately be shifted to the second-hand value chain and further incentivise destruction. Waste treatment operators must not be held responsible for managing volumes of unsold goods they did not produce, including potential costs for their destruction.

### **Strengthen Article 2 (a) and Article 3 (a)**

The criteria to define when a product is considered dangerous should be more precise to prevent economic operators from misusing this derogation to circumvent the prohibition. Article 2 (a) and Article 3 (a) should be amended to ensure economic operators are required to assess whether corrective actions to remedy the products' faults through repair or modification are technically possible. If it is technically possible to remedy the safety of the product, this should be the required course of action. Strengthening the derogation in this respect would ensure that it is not used to avoid taking corrective action for minor or remediable issues.

### **Strengthen Article 2 (b) and Article 3 (b)**

Where products are deemed unfit for their original purpose, destruction should only be allowed after all technically feasible options for repair, repurposing, or remanufacturing have been exhausted. Design and manufacturing defects should not justify destruction when reuse is possible. If it is possible to take corrective measures, economic operators should be required to carry these out opposed to destruction.

In addition to the documentation required in Article 3 (b), operators should be required to keep documentation to prove that they have assessed the feasibility of corrective measures, but they were technically not feasible.

### **Strengthen Article 2 (f), Article 2 (g), and Article 3 (f)**

The proposed cost-effectiveness criterion for allowing the destruction of returned or damaged goods is too narrow and biased toward low-margin business models. The definition should consider long-term environmental and social costs, for instance, related to the waste management of the product, not just short-term financial considerations. The environmental, social, and economic cost of raw material extractions, manufacture and destruction and disposal should be considered in an absolute cost basis calculation of cost-effectiveness.

The Commission should provide a more precise definition of what would render clothing and footwear completely unfit for purpose (Article 2 (g)). Destruction should only be allowed after all

technically feasible options for repair, repurposing, or remanufacturing have been exhausted. Design and manufacturing defects should not justify destruction when reuse is possible. We call on the Commission to separate the verification procedure for this derogation from the one related to damage, deterioration or contamination under Article 2 (f). It should be clear that cost-effectiveness considerations are not applicable to this derogation.

**Strengthen Article 2 (h) and Article 3 (g)**

To avoid operators misusing this derogation, a proven track record of implementing those voluntary standards should be foreseen. The verification requirement should be linked to the forthcoming information requirements which will be set under the ESPR as these represent an opportunity for producers to be required to report on all substances, including the overall quantity, that have been used in production. This will allow them to be phased out by design – reducing the potential need to destroy finished consumer products which have been identified as containing substances of concern (SoC).