

24 July 2024

**EBCA's contribution to the consultation on the derogations for the prohibition on the destruction of unsold apparel and footwear under the Ecodesign for Sustainable Products Regulation**

**Summary of key principles**

- EBCA representing leading global retail clothing brands would like to recall that the goal and ambition of commercial practices are to keep the stock of unsold products at a minimum or to avoid it altogether. This is a fundamental interest of the companies to ensure commercial profitability. Destruction comes with a cost. No product is made just to be destroyed at a later stage. Before sending products for destruction (incl. recycling), the possibility of reprocessing is always evaluated.
- **EBCA would like to recall its concerns<sup>1</sup> that in the ESPR, “recycling” is under the definition of “destruction”.** Equating recycling with destruction is conceptually incorrect. Where remanufacturing or preparation for reuse is not possible, recycling should not be excluded as an option to treat unsold goods as it is also a recovery operation, unlike incineration and landfilling, which are both disposal operations. Unsold goods have the potential to greatly contribute to the circularity of the sector if the right approach is implemented, always prioritizing reusability and ensuring the potential of pre-consumer goods in fiber-to-fiber recyclability.
- **The definition of unsold goods** requires careful consideration to encompass the complexities of supply chains and ensure coherence with other EU initiatives. The definition should cover products that have passed quality controls and reached the economic operator's warehouse. Moreover, the definition must not include business-to-business transactions intended for direct sales to consumers, provided there is a clear intention and effort to facilitate their sale.
- **Following the waste hierarchy, the following options are prioritised by brands, in order:**
  - 1- **Repackaged and sold as usual:** If products (garments, footwear) present minimal defects and are fit for use and distribution, they are repackaged and sold at their regular price. At the end of the season, these products are offered at discounted prices through internal sales or sold in outlet stores.
  - 2- **Corrective measures (e.g. reprocessing, repair, cleaning):** Products with remediable issues or minor defects, such as small stains, loose threads, buttons, zippers, are typically sent for reprocessing or repair. This includes processes like chemical or physical procedures for reprocessing, substitution of affected components, cleaning, sewing, and minor repairs. Products that have been subject to effective corrective measures then reenter the consumer market.

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<sup>1</sup> Joint statement on the destruction of unsold goods, 29 September 2023, <https://ebca-europe.org/position-papers.html>

- 3- **Donation:** When the previous steps were not possible due to economic, technical, operational or environmental reasons, products that did not find a market and remain fit for use and distribution are donated to charity partners.
  - 4- **Recycling:** Where donations are rejected, the waste hierarchy is followed, and the garment is recycled if possible.
  - 5- **Valorisation or disposal:** Products exhibiting health or hygiene risks that cannot be corrected are destroyed as a last resort and is the most expensive handling method.
- Under operationalisation, in order **to prove compliance**, economic operators should be required to document the specific reasons why a product cannot be placed on the market for use. Additionally, economic operators should report the motives preventing reprocessing or repair, where applicable.
  - The **proof of compliance** should be case-specific, as the method varies depending on what needs to be verified (test results, graphic proof, etc.). Any product with health, safety, legal, or use concerns should not be placed on the market. However, we are concerned with the large administrative burden that these “reports” or “statements” could place on business. We consider that in some cases, the verification should not be required for every product/ color/size, etc, but a bulk disposition should be considered.
  - **Economic viability (or “cost-effectiveness” as referred to in the questionnaire) is not always the reason why reprocessing or repair are not possible, there can be technical limitations.** The viability of reprocessing or repair should be assessed based on technical, operational or environmental considerations, and not only based on economic reasons. . If products cannot be reprocessed or repaired, appropriate waste management practices such as recycling should be allowed.
  - Waste handlers should not be in charge of the verification, as they are often SMEs and do not have the required resources to deal with verification procedures. Compliance records must be subject to **verification during surveillance activities**. They will already have to be conducted to oversee parallel reporting obligations.
  - A self-declaration to the waste treatment operator pointing the reason for destruction is not always relevant to **ensure the best treatment options** and should not be required, , except for health or hygiene reasons. In addition, brands often do not decide what the waste handlers or service providers do with the garments. It would increase the administrative burden of sorting facilities, as brands would need additional documentation from the sorting facilities to ensure their compliance with the law. This will be difficult for e.g. sorting facilities depending on their level of automatisaton.

**About EBCA:**

*The European Branded Clothing Alliance is a coalition of leading global retail clothing brands that represent over 60 brands. The alliance works to ensure a positive trade agenda and a more predictable business environment for a leading industry sector in the EU that contributes to jobs, innovation and research and development. Via their global value chains, members also contribute to jobs and sustainable development in countries in which they source and produce.*

Please visit our website at <http://www.ebca-europe.org/> for further information.

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