

April 2023

European Cultural and Creative Industries Alliance (ECCIA)

Ecodesign for Sustainable Products Regulation proposal: further improving the responsible management of unsold goods

The [European Cultural and Creative Industries Alliance \(ECCIA\)](#) is composed of seven European cultural and creative industries organisations - Altagamma (Italy), Circulo Fortuny (Spain), Comité Colbert (France), Gustaf III Kommitté (Sweden), Laurel (Portugal), Meisterkreis (Germany), and Walpole (UK) - who between them represent over 600 brands and cultural institutions.

Based on art, culture and creativity, our work is underpinned by continuous innovation, a relentless focus on quality, highly skilled employment, and strong exports abroad. Our members strive for the highest quality in all they do, from products and services all the way to the experience offered to consumers.

European
Cultural
and Creative
Industries
Alliance

Introduction

The European Cultural and Creative Industries Alliance ([ECCIA](#)) fully supports the goals of the Ecodesign for Sustainable Products Regulation (ESPR) proposal and the objective to ban the unjustified destruction of unsold goods. At the same time, we believe it is critical to have measures that can be implemented from an operational perspective and do not compromise European companies' intellectual property and competitiveness. As a minimum, we believe that any outright ban on the destruction of unsold goods should be preceded by a comprehensive impact assessment.

ECCIA recommends that the European institutions consider the following three asks:

- Definition of unsold products must be clarified;
- Flexibility in the allowed type of treatments of unsold goods should be given to manufacturers;
- Disclosure requirements related to unsold products should only apply at the request of the European Commission or national authorities.

The following sections look at these points in detail and outline the rationale behind ECCIA's recommendations.

1. Clarifying the definition of “unsold products” to provide legal certainty

Not all products are meant for sale (e.g., samples and prototypes), while counterfeited products cannot be considered “unsold goods”. As a result, **the concept of “unsold products” must only cover consumer products that are effectively offered for sale and that are fit for consumption and sale.**

2. Providing manufacturers with the necessary flexibility in responsibly managing unsold consumer products, including by allowing recycling as an alternative to destruction

ECCIA fully supports the ban on the unjustified destruction of unsold goods, particularly apparel and clothing accessories, as currently suggested by the Council and Parliament. However, we strongly believe that manufacturers should have the flexibility to choose alternatives to destruction (such as reuse, upcycling, recycling, etc.) that best suit the characteristics of their products.

In this respect, we are extremely concerned by the provision of the latest version of the Council Compromise text (recital 46), which reads as follows: *“The concept of destruction as outlined in this Regulation should cover the last three activities on the waste hierarchy as defined in the Waste Framework Directive: recycling, other recovery and disposal. Remanufacturing and preparation for re-use should furthermore not be considered destruction. While recycling is an important waste treatment activity for a circular economy, it is unreasonable that products are manufactured only to immediately be recycled, hence the inclusion of recycling in the concept of destruction.”*¹ We understand that similar discussions equating recycling and destruction are currently taking place in the European Parliament.

¹ Please see the annex for definitions and references.

In other words – under the Council’s proposal – for categories of unsold products which are or will be banned from destruction, recycling will no longer be possible. ECCIA strongly opposes this provision for the following reasons:

- **Conceptually, we disagree with the assimilation of recycling to destruction.** In the waste treatment options currently provided in the Waste Framework Directive, recycling, and destruction (referred to as disposal) are two separate modes of waste treatment. The established Waste Hierarchy is a proven strong mechanism for minimizing the environment impacts of waste management, and should continue to be applied horizontally throughout the EU legislation
- Such a ban would run **contrary to the objectives pursued by the European Commission in several initiatives of the European Green Deal, including in the ESPR**, which clearly promotes recycling: recycled content in products as an eco-design requirement in the ESPR, increased recyclability of packaging and minimum recycled content in the Packaging and Packaging Waste Regulation, increased recyclability, and recycling of textiles in the Strategy for sustainable and circular textiles, etc. In this respect, the ability to recycle our unsold products would contribute to increasing the number of recycled materials available to comply with requirements relating to the incorporation of recycled content.
- **The EU Strategy for sustainable and circular textiles supports R&D in terms of recyclability as opposed to destruction:** *“The circular textiles ecosystem is thriving, driven by sufficient capacities for innovative fiber-to-fiber recycling, while the incineration and landfilling of textiles are reduced to the minimum.”* In line with these objectives, the ability to recycle our unsold products allows for better traceability of recycled materials and could be an incentive for R&D in this matter.
- The assumption used to justify this provision is that products would be manufactured just to be recycled and that banning recycling would be the only way to force companies to limit their production ex-ante. This is clearly not true for a lot of product categories, in particular for high-end textile products. **High-end and creative clothing and accessories are made from high-quality and innovative materials with outstanding craftsmanship techniques and savoir-faire.** They are produced in limited quantities and made to last: they can be repaired and restored, facilitating their capacity to be reused, granted a second life, or often passed from one generation to the next.
- Re-use (such as donation) is not always a viable alternative to destruction due to health and safety requirements or other risks such as infringement of intellectual property and unauthorized resale. In such cases, recycling may be the main or only available waste treatment for unsold products.
- Our industries have invested heavily in developing their recycling capabilities, particularly when recycling solutions did not exist due to the very specific nature of the products. This is the case in the high and creative clothing and accessories sector, where the following initiatives were launched:
 - **CEDRE (Centre Environnemental de Déconditionnement, Recyclage Écologique)**, created in partnership with LVMH in 2009, located in Pithiviers, France, which is a platform dedicated to the recycling and recovery of unsold products (textile and glass among others), particularly to the dismantling of unsold goods and then the reuse of sub-products (recovery and recycling of metal parts and metal haberdashery, shredding of logoed fabrics, optimized recycling for cotton, wool or silk fabrics, etc.).
 - **The Atelier des Matières**, launched by Chanel in 2019, is a company open to all luxury and premium brands, offering them the opportunity to give a new

value not only to their unsold or unused manufactured products but also to unused materials (stocks, production scraps), through recycling and production of new recycled raw materials, relying on the support of a research and development's dedicated team. Located in Le Meux in the Oise region in France, the Atelier des Matières now employs 35 people, including a team of "valuers" in charge of finding second-life solutions for the collected objects: ready-to-wear products, leather goods, and small leather goods, shoes at the end of their life, but also unused materials, such as threads and textiles, chains or metal elements, buttons and cuffs, leather and skins, which it will sort, disassemble, extract and then transform into quality recycled materials, relying on complete traceability of the resources entrusted to it, as well as on the confidentiality and security of its responsible transformation chain. Finally, the Atelier des Matières offers high-quality recycled materials or recycled products, at very competitive prices and with no minimum quantity to encourage creative circularity.

Some of the activities performed in these facilities may be considered as "remanufacturing" and therefore allowed but the definition of remanufacturing is not clear and rather limited in the Council Compromise text (Art 2 (16)). As a result, many activities risk being considered as recycling and consequently being banned.

- **Providing a ban that would potentially apply to many different types of unsold products without any proper sector-specific impact assessment is extremely dangerous as it may cover products for which recycling is the only or the main viable alternative treatment to destruction.**

As a result, we would suggest either:

- Completely **removing the recycling ban** as drafted in the Council Compromise text (recital 46), which is by far the simplest option, or
- Making the ban specific to apparel and clothing accessories (covered by the ban provided in Article 20b of the current Council text) and **detailing/expanding the scope and definition of authorized "remanufacturing"** to ensure it covers the valuable operations described above (to include valuable recycling and upcycling solutions). For products other than apparel and clothing accessories and when considering a ban on the destruction of unsold products, the Commission would have to conduct an impact assessment to decide whether certain types of waste treatment should be limited or banned for certain types of products.

3. Information on unsold goods should be disclosed only at the request of the European Commission or competent national authorities

We understand the objective of the disclosure requirement currently considered by all three institutions is to allow the Commission, based on the information provided, to assess whether a ban on the destruction of unsold consumer products in one or more sectors is justified. Given the sensitivity of this data from a business and competition point of view, it should be exclusively provided to the Commission or a competent national authority upon request (as opposed to the public at large, as currently provided) and be used for the sole purpose of assessing where bans might be necessary from the Commission's point of view.

Annex: Definitions and references

The waste hierarchy defined in the Waste Framework Directive reads as follows (Article 4):

“The following waste hierarchy shall apply as a priority order in waste prevention and management legislation and policy:

- (a) prevention;*
- (b) preparing for re-use;*
- (c) recycling;*
- (d) other recovery, e.g. energy recovery; and*
- (e) disposal.”*

The relevant types of waste treatment are defined as follows:

- Recycling is defined in the Waste Framework Directive as *“any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. (...)”*;
- Remanufacturing is defined in the Council’s proposal as *“an industrial operation in which a new product is manufactured from objects that are either waste, products or components and in which at least one change is made to the product that affects its safety, performance, purpose or type”*;
- Preparing for re-use is defined in the Waste Framework Directive as *“checking, cleaning or repairing recovery operations, by which products or components of products that have become waste are prepared so that they can be re-used without any other pre-processing”*; and
- Re-use is defined in the Waste Framework Directive as *“any operation by which products or components that are not waste are used again for the same purpose for which they were conceived”*.