The EU Can No Longer Let Fashion Go Up in Flames

The Ban on Destroying Unsold Clothes Marks a New Stage in EU Market Regulation

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Can the law tell a company that it is no longer free to destroy its own products? Until recently, the question would have sounded almost paradoxical. Among the powers traditionally associated with ownership is the freedom to determine the fate of one's property. A business that lawfully manufactures or acquires goods may sell them, store them, redesign them, donate them – or, if none of those options makes commercial sense, dispose of them, even by destroying them. Whether doing so is economically sensible or environmentally responsible is another matter. As a matter of law, however, the fate of lawfully owned products has generally been regarded as a matter for their owner, subject to the limits imposed by law. However, as of 19 July 2026, the Ecodesign for Sustainable Products Regulation (ESPR), which entered into force in 2024, prohibits large companies from destroying unsold clothing, accessories and footwear, subject to a limited number of exceptions. The measure has understandably attracted considerable attention within the fashion and retail sectors, where the management of unsold inventory has long formed part of ordinary commercial practice.

From Private Disposal to Public Interest

The traditional understanding of ownership has come under increasing pressure in recent years. Reports of perfectly wearable clothes and shoes being destroyed rather than sold, donated or recycled have become emblematic of one of the fashion industry's most troubling contradictions. While businesses increasingly present sustainability as a core corporate value, the destruction of unsold products has continued to reveal the environmental costs of a linear model of production and consumption. Public controversy surrounding practices adopted by brands such as Burberry, H&M and, more recently, Coach helped bring the issue into the public spotlight, prompting growing calls for regulatory intervention to ensure that perfectly usable products remain in circulation rather than prematurely becoming waste.

Yet, the prohibition on destroying unsold products is only one part of a much broader regulatory ambition. Traditionally, EU environmental legislation has focused on making products more sustainable by reducing their environmental footprint, improving their durability, and facilitating their repair, reuse and recycling. The ESPR certainly pursues those objectives. The new rules on unsold consumer products, however, address a different stage of a product's lifecycle. They recognise that a product's environmental impact depends not only on how it is designed and manufactured, but also on what happens after it enters the market if it remains unsold. In doing so, the Regulation begins to treat the continued circulation of products as a matter of public interest rather than leaving their fate entirely to private commercial discretion. More broadly, the new regime illustrates how the European Green Deal is reshaping not only the Union's environmental ambitions, but also the legal architecture of the internal market.

Accordingly, the ESPR's new regime on unsold consumer products arguably marks an important new stage in the EU's transition towards a circular economy. Preventing the destruction of unsold clothes and shoes, however, is only the first step. Whether products can genuinely remain in circulation ultimately depends on a broader legal ecosystem – including consumer law, product safety rules, liability regimes and intellectual property law – that increasingly needs to facilitate, rather than frustrate, the objective of extending product lifecycles.

Understanding that broader shift first requires a closer look at what the ESPR actually does.

More Than a Ban: The ESPR's Three-Pillar Framework

Despite widespread references to the EU "banning" the destruction of unsold clothes, the new legal framework is considerably more sophisticated than that description suggests. Rather than relying solely on a prohibition, the ESPR establishes a graduated regulatory regime built around three complementary pillars: prevention, transparency and prohibition.

The first pillar is prevention. Article 23 ESPR requires economic operators placing consumer products on the Union market to take measures that can reasonably be expected to prevent the need to destroy unsold consumer products. Importantly, the Regulation does not prescribe how businesses should achieve that objective. Instead, it leaves considerable room for commercial innovation, encouraging undertakings to improve demand forecasting, inventory management, production planning and other practices that reduce the accumulation of surplus stock before it arises. The emphasis is therefore not simply on prohibiting destruction, but on addressing the business practices that make destruction necessary in the first place.

The second pillar is transparency. Under Article 24 ESPR, large economic operators discarding unsold consumer products must publish annual information on the quantity and weight of discarded products, the reasons for their disposal, the waste treatment operations applied, and the measures taken to reduce future destruction. These reporting obligations, further specified by the Commission through implementing legislation, reflect an increasingly familiar feature of EU sustainability regulation: behavioural change is pursued not only through substantive obligations but also through disclosure. By making destruction practices visible to regulators, consumers, investors and civil society, the Regulation relies on transparency itself as a mechanism for encouraging more sustainable corporate behaviour.

Only the third pillar introduces a direct prohibition. Article 25 ESPR prohibits the destruction of unsold consumer products listed in Annex VII, which currently includes apparel, clothing accessories and footwear. The prohibition applies to large undertakings from 19 July 2026 and will extend to medium-sized undertakings from 19 July 2030, while micro and small enterprises remain exempt. Importantly, the prohibition is not absolute. Pursuant to Article 25(5), the Commission has adopted a Delegated Regulation specifying narrowly defined derogations, including situations where products present health or safety risks, have become unsuitable for their intended purpose because of damage or defects, infringe intellectual property rights, or fall within other exceptional circumstances where destruction remains justified.

Together, these three pillars show that the ESPR seeks not merely to prevent destruction, but to keep products in circulation for as long as reasonably possible.

From Waste Management to Product Stewardship

The prohibition on destroying unsold consumer products forms part of a broader transformation in EU environmental regulation. Traditionally, environmental law has concentrated on mitigating environmental harm by limiting pollution, reducing emissions and improving waste management. The circular economy starts from a different premise. Rather than asking how waste should be treated once it has been created, it seeks to prevent products from becoming waste in the first place.

That logic runs throughout the ESPR. The Regulation aims to keep products in use for as long as possible by making them more durable, repairable, reusable, refurbishable and recyclable. The rules on unsold consumer products extend that philosophy beyond product design and into the commercial decisions that determine whether goods remain in circulation after they leave the factory. A product's environmental footprint is therefore shaped not only by how it is made, but also by whether it continues to be used once it can no longer be sold through ordinary retail channels.

This marks an important shift in regulatory thinking. Rather than focusing solely on the characteristics of products – their durability, energy efficiency or recyclability – Articles 23 to 25 ESPR regulate the commer-

cial decisions that determine whether products remain in circulation after they have been manufactured. In doing so, the Regulation moves beyond the traditional "take-make-dispose" model, treating unsold products not as failed commercial assets but as resources whose useful life should be prolonged wherever reasonably possible.

Nor is this shift based on environmental ambition alone. Before implementing Articles 24 and 25 ESPR, the Commission relied on extensive technical work by the Joint Research Centre, which examined the prevalence of destroying unsold products, assessed its environmental consequences and evaluated different regulatory options. The resulting framework therefore rests on evidence as well as political ambition.

Although the ESPR limits businesses' traditional discretion over surplus inventory, it does so incrementally. It combines flexible prevention duties and transparency obligations with a carefully circumscribed prohibition applying only to certain products, larger undertakings and narrowly defined situations. Rather than replacing commercial judgment, it seeks to steer it towards more sustainable outcomes.

Seen in this light, the new regime is best understood not as an isolated intervention aimed at the fashion industry, but as part of a broader transformation in EU market regulation. Sustainability is no longer treated merely as an external constraint on economic activity. Increasingly, it is becoming one of the principles that shapes how markets themselves are expected to function. Products are valued not only for their manufacture and sale, but also for their continued use.

The question, however, is whether environmental law can achieve that objective on its own. Preventing products from being destroyed is only the beginning. They must also be capable of being resold, repaired, refurbished, remanufactured and upcycled within a legal framework that facilitates – rather than frustrates – those activities. It is here that the broader challenge of regulatory coherence begins to emerge.

A Circular Economy Requires More Than Environmental Law

Preventing the destruction of unsold products is an important step towards a circular economy. It is not, however, the same as ensuring that those products actually remain in circulation. A garment that cannot lawfully be destroyed still needs to find an alternative pathway: it may be donated, resold, repaired, refurbished, remanufactured or transformed into something new. Whether those pathways are genuinely available depends not only on environmental legislation, but also on the wider legal framework governing products after they have entered the market.

The ESPR itself demonstrates that preventing destruction cannot be considered in isolation from the wider legal framework. While Article 25 establishes a general prohibition on destroying certain unsold consumer products, both this provision and the Commission's Delegated Regulation recognise circumstances in which destruction may nevertheless remain justified. One such example concerns products that infringe intellectual property (IP) rights. Although this may sometimes be appropriate – for example where counterfeit goods pose health or safety risks – it is less clear why IP infringement should automatically require destruction. As Charlotte Vrendenbarg has argued, both the TRIPS Agreement and the IP Enforcement Directive already leave room for more proportionate and environmentally sustainable alternatives, including de-branding, donation and recycling.

More broadly, IP law increasingly shapes whether products may be repaired, refurbished or upcycled after entering the market. Yet it is not inherently at odds with the circular economy. Recent scholarship suggests that many disputes involving repair, refurbishment and fashion upcycling can be accommodated through a more sustainability-conscious interpretation of existing doctrines, rather than by creating entirely new rules (see, for example, here, here, here, and here).

The same observation extends beyond IP. Product safety, consumer protection, liability, tax, procurement and waste rules all influence whether products can

realistically remain in circulation. The success of the circular economy therefore depends on ensuring that these legal frameworks operate coherently, rather than in isolation.

Conclusion

The prohibition on destroying unsold clothes and shoes deserves to be celebrated. But after celebrating this important milestone, attention should turn to what comes next. By treating the continued use of products as a matter of public interest rather than private commercial choice, the ESPR marks an important new stage in the EU's transition towards a circular economy. The EU may have decided that fashion should no longer go up in flames. The next challenge is to ensure that European law consistently enables products to stay in use instead.

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