
Unsold stock and the EU rules

What we already know, what is coming and what nobody knows yet

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The position as at 12 August 2026

EXECUTIVE SUMMARY

WHAT FASHION BRANDS NEED TO KNOW

Large fashion companies can no longer destroy unsold apparel, clothing accessories and footwear except in limited, documented circumstances. Recycling and energy recovery count as destruction; resale, donation and preparation for reuse do not.

The obligations come from the EU Ecodesign for Sustainable Products Regulation (ESPR) and the instruments made under it. This paper sets out what the law actually says, quoting the passages that carry the weight, and is equally clear about where the law does not say anything yet. Every instrument is listed at the end so any of it can be checked. It describes the law; it is not legal advice.

AT A GLANCE

Who is covered now?	Large enterprises, including some brands that appear mid-sized but are part of a larger group.
When?	From 19 July 2026. Medium-sized enterprises from 19 July 2030.
What products?	Specified apparel, clothing accessories, headgear and footwear. Not every fashion product.
Does recycling count?	Yes, as destruction. So does energy recovery.
What is still allowed?	Sale, holding stock, donation, preparation for reuse, and destruction only in specified documented circumstances.
What must be reported?	Annual quantities, reasons, treatment route and prevention measures for discarded unsold consumer products.

DOES THE BAN APPLY TO US?

This is where most of the confusion starts, and getting it wrong in the optimistic direction costs four years of preparation time.

THE SIZE TEST COUNTS YOUR WHOLE GROUP

The size classes come from the Annex to Commission Recommendation 2003/361/EC. An enterprise is an SME if it employs fewer than 250 people and has either turnover of no more than EUR 50 million or a balance sheet total of no more than EUR 43 million. Headcount is mandatory. The two financial ceilings are alternatives, so meeting either one is enough. It is not a two-of-three test, which is a different construction used in the Accounting Directive and frequently confused with this one.

< 250

employees. Mandatory: every SME must pass this one.

≤ €50m

turnover, **or** the balance-sheet ceiling. Either is enough.

≤ €43m

balance sheet total, the alternative financial ceiling.

Article 6 of the same annex is where this changes. Where a company is **linked** to another, it must add **100 per cent** of that other company's headcount and financial data. Linked means, among other things, holding a majority of the voting rights, or having the right to appoint or remove a majority of the board, or exercising dominant influence under a contract. Where a company is a **partner** of another, holding 25 per cent or more of its capital or voting rights, the data is added proportionally.

So a brand with 180 staff and EUR 40 million of turnover that is majority-owned by a group, a trade buyer or a private equity house is very probably a large enterprise. If so, the destruction ban has applied to it since July 2026 and it does not have until 2030. In our experience this is the single most common misreading in the mid-market, and it is an easy one to make, because nothing on the face of the ESPR mentions group structure.

There are carve-outs. An enterprise can stay autonomous despite the 25 per cent threshold where the investor is a public investment corporation, a venture capital company, a business angel investing less than EUR 1 250 000 in that enterprise, a university or non-profit research centre, an institutional investor including a regional development fund, or a small autonomous local authority.

There is also a brake in the other direction. Under Article 4(2), crossing a ceiling does not change status unless it is crossed **over two consecutive accounting periods**. One unusual year does not move a company between categories.

Headcount is measured in annual work units. Part-time and seasonal staff count as fractions. Apprentices and students on vocational training contracts are excluded, and maternity or parental leave is not counted.

GEOGRAPHY DOES NOT GET YOU OUT

Territorial scope needs care as well. These obligations attach to economic operators, which Article 2(46) defines as the manufacturer, the authorised representative, the importer, the distributor, the dealer and the fulfilment service provider. Of those, only the importer is defined as being established in the Union.

A manufacturer is anyone who has a product made and markets it under their own name or trademark, with no establishment test, and a dealer includes anyone offering products to end users through distance selling. A brand established outside the EU should not assume the rules pass it by because of where it is incorporated. Exactly where the duty lands in a particular supply chain is worth taking advice on.

THE PRODUCT TEST IS TWO DIFFERENT TESTS

The destruction ban applies only to the products listed in Annex VII of the ESPR. That list is short and specific:

IN THE BAN • ANNEX VII

Leather apparel and accessories	CN 4203
Knitted or crocheted apparel	CN 61
Woven apparel	CN 62
Hats and headgear	CN 6504, 6505
Footwear	CN 6401–6405

NOT IN THE BAN

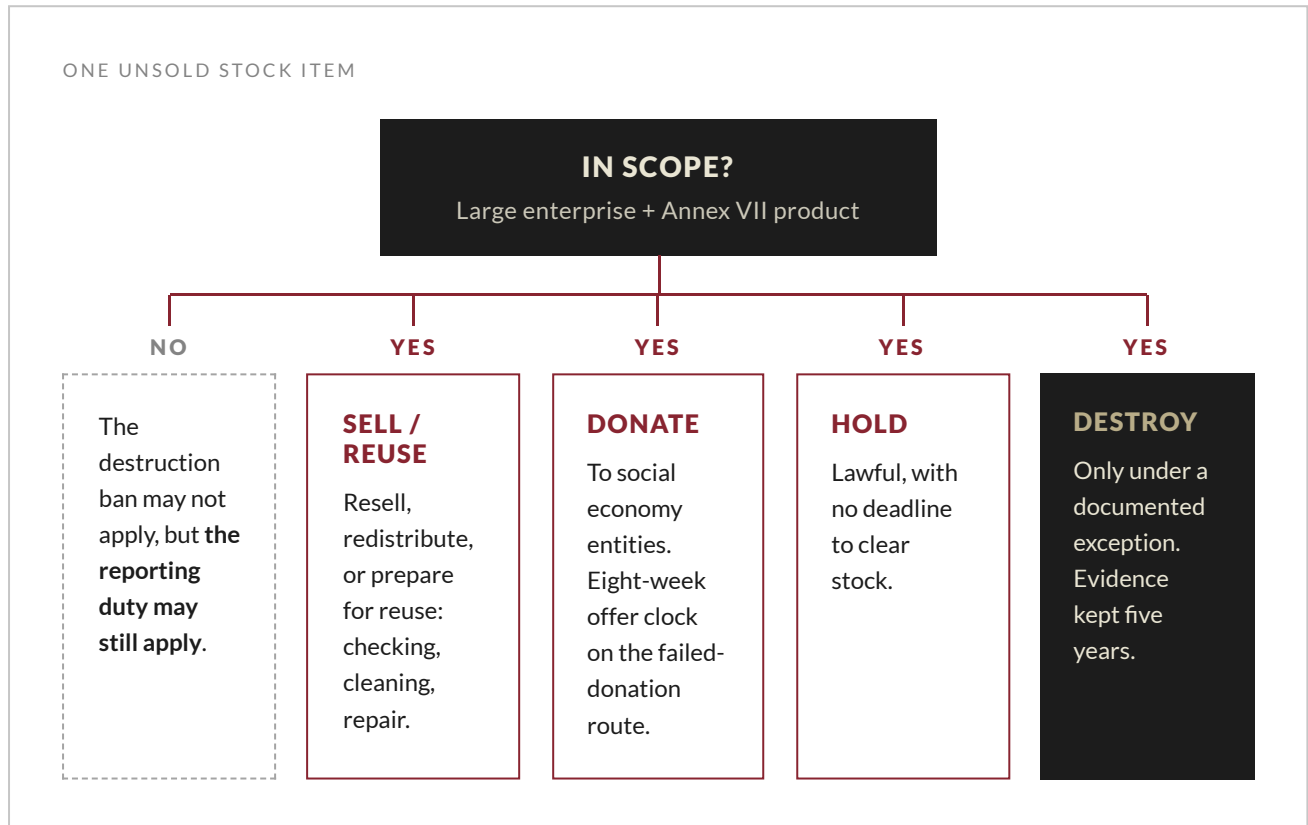
Handbags, luggage, wallets	CN 4202
Home textiles	CN 63
Fabric and yarn	CN 50–60
Jewellery and watches	—
Still inside the reporting duty. Codes pinned to the combined nomenclature in force on 28 June 2024.	

The reporting duty is not limited to that list. Article 24 attaches to unsold consumer products generally. Handbags are a clean illustration: CN 4202 appears in the implementing regulation as a reporting category, but not in the destruction ban. A brand may therefore still lawfully destroy an unsold handbag, and must still report that it did.

Keeping those two scopes apart resolves a large share of the confusion we hear.

WHAT CAN WE DO WITH UNSOLD STOCK?

For a company inside the ban, the exits for a piece of unsold stock are to sell it, to send it for preparing for reuse, to donate it, or to destroy it on one of ten documented grounds. Continuing to hold it is also lawful. What is not available is destroying it on any other basis.



THE KEY LEGAL TERM IS "DESTRUCTION", AND IT IS WIDER THAN IT SOUNDS

Since 19 July 2026, large companies have been prohibited from destroying covered unsold products. Article 25 of the ESPR is short:

From 19 July 2026, the destruction of unsold consumer products as listed in Annex VII shall be prohibited.

This paragraph shall not apply to micro and small enterprises.

This paragraph shall apply to medium-sized enterprises from 19 July 2030.

Destruction is defined in Article 2(34) as the intentional damaging or discarding of a product as waste, with one exception: discarding for the sole purpose of delivering the product for preparing for reuse, including refurbishment or remanufacturing. Recital 55 puts the practical consequence beyond doubt:

The concept of destruction as outlined in this Regulation should cover the last three activities on the waste hierarchy, namely recycling, other recovery and disposal. Preparation for reuse, including refurbishment and remanufacturing, should not be considered destruction.

So recycling is destruction. Energy recovery is destruction. The disposal contract that looked like the responsible option is, for a large company, now inside the prohibition, and a certificate of destruction from a recycler no longer does the job it used to do. Note also that the exception covers discarding only for the "sole purpose" of preparing for reuse, which leaves an open question about consignments sent for mixed purposes.

That leaves one route that is not destruction at all. Directive 2008/98/EC defines preparing for re-use as checking, cleaning or repairing recovery operations, by which products that have become waste are prepared so that they can be re-used without any other pre-processing. We should be transparent that this is the work our own business does, so treat us as an interested party. But the definition is the legislator's, not ours.

COMPANIES CANNOT AVOID THE BAN BY SENDING STOCK TO ANOTHER PARTY

Article 25(2) provides that operators who are **not** subject to the ban must not destroy unsold consumer products supplied to them for the purpose of circumventing it. Routing stock to a smaller third party, or to a disposal contractor, in order to have it destroyed there does not work.

THE STOCK YOU WERE ALREADY HOLDING

The ban applies whenever covered stock is destroyed after 19 July 2026, including older inventory: we have found no transitional provision for existing stock. Brands usually ask about the other direction first. **Holding unsold stock is not an offence under the ESPR.** Nothing in the regulation requires a brand to move, sell or process what is sitting in its warehouses, and there is no deadline by which the warehouse must be cleared. What changed on 19 July 2026 is the set of exits available when a brand does decide to move it.

WHEN IS DESTRUCTION ALLOWED?

The exceptions are limited and require evidence. Delegated Regulation (EU) 2026/296 sets out ten grounds, which group into four practical categories. The regulation's own lettering is kept so each ground can be traced back.

8 weeks

minimum donation offer before the failed-donation ground applies.

3 entities

suitable social economy entities the offer must reach, or your own website.

5 years

the evidence file must be kept after destruction.

30 days

to produce it when an authority asks.

SAFETY AND LEGAL COMPLIANCE

(a) the product is dangerous within the meaning of Regulation (EU) 2023/988. (b) it is non-compliant with Union or national law and destruction is required by law or is the appropriate and proportionate corrective action.

INTELLECTUAL PROPERTY AND CONTRACT

(c) the product is found to infringe IP rights, provided the operator can substantiate the infringement. (d) a valid licence or similar contract makes transfer after a specified period an infringement, and that period has expired. (e) protected or inappropriate labels, logos or design features cannot technically be removed or rendered permanently inaccessible.

CONDITION AND DEFECTS

(f) the product is unacceptable for consumer use through damage, deterioration or contamination, and repair and refurbishment are not technically feasible or cost-effective. (g) it is unfit for its intended purpose through a design or manufacturing defect that cannot technically be repaired.

FAILED REUSE ROUTES

(h) the product was offered unsuccessfully for donation on the conditions below. (i) it was donated to a social economy entity in the Union which could not find a recipient. (j) it was prepared for reuse by a waste treatment operator and no recipient was found.

Three points in the list need spelling out.

"Cost-effective" is defined, and the definition is demanding. Under Article 1(2) it means the cost of repairing or refurbishing not outweighing the total cost of destroying the product **and** of the materials, manufacturing, packaging, transport, stocking and other administrative or logistical expenses of replacing that same product. The comparator is the full cost of replacing what you destroyed.

The donation route runs on an eight-week clock. Destruction on that ground is permitted only where none of grounds (a) to (g) applies, and where the product was offered either directly to **at least three suitable social economy entities** in the Union, or on an easily accessible page of the operator's own website, **for a period of at least eight weeks**, and was not accepted. That is harder than it sounds, because social economy entity is a defined term: a private law entity operating on the primacy of people and social or environmental purpose over profit, reinvesting all or most of its surpluses to those purposes, and run on democratic or participatory governance. A commercial reseller does not qualify, and there is no Union register of entities that do.

A company cannot simply claim an exception; it must keep the required evidence. Each ground depends on producing the documentation set out in Article 3, which must be kept for **five years** after destruction and produced to a competent authority in electronic form **within 30 days** of receipt of a request.

For the damage and defect grounds, the evidence expected includes proof that the product went through "quality assessment procedures including visual inspection and sorting that prioritises restocking and repairs".

THE COMPLIANT HIERARCHY

- 1** Sell or redistribute stock where possible.
- 2** Restock, repair, clean and prepare items for reuse.
- 3** Donate through a properly documented process.
- 4** Retain inventory if no viable route exists.
- 5** Destroy only where a specific derogation applies and the evidence file is complete.

Routing inventory through a smaller third party to have it destroyed is expressly prohibited where that arrangement circumvents the ban.

WHAT MUST WE REPORT AND RETAIN?

There are two layers here, and conflating them is the most common error in circulation. We have seen it in our own earlier material, which is part of why this paper exists.

LAYER ONE • LIVE NOW

Article 24. Publish annually, on an accessible page of your website: quantities, reasons, treatment route, prevention measures. No prescribed format, no stated deadline.

LAYER TWO • FROM 2 MARCH 2027

Implementing Regulation 2026/2. Prescribed template by CN category, twelve-month disclosure deadline, records kept five years.

LAYER ONE IS LIVE NOW

Article 24 requires operators that discard unsold consumer products, directly or on their behalf, to disclose four things:

- the number and weight discarded per year, differentiated per type or category of products
- the reasons for discarding, and where applicable the derogation relied on
- the proportion delivered to each of preparing for reuse, recycling, other recovery including energy recovery, and disposal
- measures taken and planned to prevent the destruction of unsold consumer products

It must be published "in a clear and visible manner at least on an easily accessible page" of the operator's website. Companies already publishing sustainability reporting under Article 19a or 29a of the Accounting Directive may include it there instead. It is annual, it covers the preceding financial year, and each year's information must remain publicly available. The first disclosure covers "the first full financial year during which this Regulation is in force". The size classes in Part one apply here too: micro and small enterprises are outside the disclosure duty, and medium-sized enterprises are not caught until 19 July 2030. A company that is large only because of the linked-enterprise rule is inside it now.

The disclosure is aggregate, differentiated by type or category; there is no item-level obligation anywhere in Article 24. And **there is no twelve-month deadline in the ESPR itself**, which matters because a twelve-month deadline is circulating widely and attached to the wrong thing. The duty is live and the ESPR sets no date by which each year's disclosure must appear. A large company that has not published is therefore relying on the absence of a stated deadline rather than on the absence of an obligation, which is a different and less comfortable position.

There is also no prescribed format yet, so a compliant disclosure today is the four points above, published on an accessible page, covering the preceding financial year. Nothing prevents a brand from adopting the 2027 template early, and a disclosure built on that template is hard to fault for completeness.

Article 24(2) also gives the Commission or a national authority the right to ask for the information and documentation demonstrating the delivery and reception of discarded products, and the applicability of any derogation relied on. That must be produced in paper or electronic form **within 30 days** of receipt of the request. The duty does not apply where the authority already holds the information under another legal act.

LAYER TWO DOES NOT START UNTIL 2027

Implementing Regulation (EU) 2026/2 sets the format. Its own Article 1 says it applies to products discarded in each financial year **as from the first full financial year after the date of application of this Regulation**, and that operators disclose within twelve months of that financial year end. Article 7 sets the date of application at **2 March 2027**. So the twelve-month deadline is real, but it belongs to the implementing regulation and not to the current duty. For a brand on a calendar financial year the formatted regime first bites on the 2028 financial year, disclosed during 2029.

When it does arrive, the format is prescriptive. Categories are delimited by the first two digits of the CN code, or four digits for the products listed in its Annex II. The template asks for the legal entity and its identifier, whether the disclosure is standalone or consolidated and which subsidiaries it covers, the financial year dates, units and total weight in kilograms, whether packaging is included in that weight, the reason for discarding, and the split of waste treatment across preparing for reuse, destruction and unknown. The same regulation requires the information, and the documentation demonstrating delivery and reception including statements from waste treatment operators, to be kept for **five years** after the disclosure.

HOW AUTHORITIES WILL DECIDE WHO TO LOOK AT

Annex III of the same regulation sets out the verification approach, and it is worth reading before deciding how much care to take. Competent authorities work on a risk basis, and the listed criteria include no disclosure at all, or "unusually low numbers disclosed in comparison to economic operators that operate in the same market or product segment", a past record of non-compliance, "a high percentage of unknown waste treatment operations", the size and nature of the operator, and information from other sources including tax declarations.

Verification is therefore peer-relative. Publishing nothing, or publishing a number that looks low next to comparable brands, is itself a selection criterion, as is a large "unknown" column.

ENFORCEMENT

Article 74 of the ESPR leaves penalties to member states. They must be "effective, proportionate and dissuasive", and member states must notify the Commission of them. The regulation sets no amounts.

It does set a floor on the tools. Under Article 74(3), member states must at least be able to impose **fin**es and **time-limited exclusion from public procurement procedures**. For any brand with a uniform, workwear or public-sector line, that second one may matter more than the first. Article 74(2) also requires penalties to have regard to, among other things, "the economic benefits derived from the infringement": the money saved by destroying instead of recovering.

Beyond that, we will not give you a number. Figures are circulating in trade commentary, including a figure of EUR 50 000 in Germany and a percentage of turnover in the Netherlands. When we followed those back, they appear to attach to greenwashing and misleading-communication regimes rather than to the ESPR, and we could not locate a published national instrument setting ESPR penalties in any of the markets we checked.

As at 12 August 2026, we could not verify a single published national penalty figure for the ESPR. Anyone quoting one should be asked which national law it comes from.

TIMELINE: 2026 TO 2030

● LIVE NOW ● TODAY ○ UPCOMING

- **19 July 2026**
Destruction ban live for large enterprises; the Article 24 reporting duty is running.
- **12 August 2026**
This paper's position date.
- **2 March 2027**
Implementing Regulation (EU) 2026/2 applies: prescribed disclosure format and the twelve-month deadline.
- **2027, indicatively**
Textile ecodesign delegated act expected, defining the textile Digital Product Passport. Timing indicative, from the ESPR working plan adopted April 2025.
- **17 April 2028**
Every member state must have an extended producer responsibility scheme for textile, textile-related and footwear products, under Directive (EU) 2025/1892. A separate regime from the ESPR with separate registration and fee obligations.
- **19 July 2030**
The destruction ban and disclosure duty reach medium-sized enterprises.

Not dated: Article 25(3) allows the Commission to amend Annex VII by delegated act, both to add products and to realign commodity codes. The banned list is not fixed, and a brand whose categories currently sit outside it should not treat that as permanent.

OPEN QUESTIONS AND WATCHLIST

We think this is the most useful section, because some of the answers do not exist yet and very little published material says so.

Whether sending saleable stock for recovery is a disclosable event at all.

Destruction turns on discarding a product *as waste*. Waste means something the holder discards, intends to discard, or is required to discard. Stock consigned to a recovery service as inventory, which the owner intends to sell, is arguably never waste. The regulation does not address the point, and it determines whether a recovery route produces a reporting line. Whether or not the recovery of a garment is declarable, it is still reducing waste, and waste has to be declared.

How "sole purpose" gets tested.

The exception applies to discarding for the sole purpose of delivering for preparing for reuse. Mixed consignments are not dealt with.

What penalties actually are.

Covered above. National rules are not published.

What evidence satisfies an authority.

The delegated regulation lists document types and the implementing regulation sets verification principles, but there is no enforcement practice to learn from yet.

Whether a group publishes once or once per entity.

The duty binds economic operators. The 2027 template asks whether a disclosure is standalone or consolidated and which subsidiaries it covers, which tells you the question exists. Nothing tells a group what to do in the meantime.

How the ESPR duty and textile EPR reporting interact.

The two regimes share the term "unsold consumer product" but ask for different things. Brands may end up reporting overlapping data twice under different definitions.

Whether customer returns are caught.

The rules address unsold consumer products. Goods that were sold and came back sit awkwardly against that framing, and we have not found anything that resolves it. However, if unsold stock from returns is reduced, it lightens the burden on the brand to find alternative reuse routes.

We have also not been able to find any Commission guidance note or FAQ interpreting Articles 24 or 25. If one is published, much of this section may change.

THE NATIONAL LAYER

The ESPR sits on top of national schemes and does not replace them. In the markets we work in:

Netherlands. The Besluit UPV Textiel has been in force since 1 July 2023, with producer obligations running from 2025, including reporting volumes placed on the Dutch market and meeting preparation-for-reuse targets.

France. The longest-established scheme, running through Refashion since 2007 under the AGECE framework, with eco-modulated fees per item.

Spain. The draft Royal Decree on textile and footwear extended producer responsibility was notified to the Commission on 27 May 2026, opening a three-month standstill period that ends on **28 August 2026**. Adoption becomes possible after that date, though scheme set-up will take longer.

United Kingdom. There is no ESPR equivalent. A brand selling only in the UK is outside all of the above. A UK brand selling into the EU is not.

Germany and Italy are not covered here. Both must have a scheme in place by 17 April 2028 under Directive (EU) 2025/1892, and anyone with material volumes in either should take local advice and not read across from the schemes above.

These positions are stated as at the date of this paper. Unlike the rest of it they are drawn from national scheme material rather than from the Official Journal texts quoted above, and we have not verified them against the national instruments themselves. The Spanish position in particular is likely to move within weeks of publication.

SOURCES

Everything in this paper comes from the following, and every quotation is taken from the Official Journal text. We would rather you checked them than took our word for it.

- **Regulation (EU) 2024/1781** (ESPR), in particular Articles 2, 24, 25 and 74, Recital 55 and Annex VII
- **Commission Delegated Regulation (EU) 2026/296**, derogations from the prohibition of destruction, and the documentation requirements in its Article 3
- **Commission Implementing Regulation (EU) 2026/2**, disclosure format, and its Annexes I, II and III
- **Directive 2008/98/EC** (Waste Framework Directive), Article 3 definitions
- **Directive (EU) 2025/1892**, amending Directive 2008/98/EC, textile extended producer responsibility and the definition of a social economy entity
- **Commission Recommendation 2003/361/EC**, Annex, Articles 2 to 6, the SME definition

- **Directive 2013/34/EU** (the Accounting Directive), Articles 19a and 29a, the alternative publication route
- **ESPR working plan 2025 to 2030**, adopted 16 April 2025. This is the one item on this list we have not read in the Official Journal. The 2027 timing for textiles is taken from reporting of the working plan and should be checked against the Commission's own text.

A NOTE ON WHO WROTE THIS

Opera Garment Solutions recovers returned, damaged and unsold garments for fashion brands, bringing them back to a condition the brand can sell again. That gives us an obvious interest in a regulation whose route out of destruction is defined as checking, cleaning or repairing, and you should read this paper with that in mind.

We have tried to keep the two things separate. The sources list is there so that any of this can be checked against the instrument rather than against us.

If it would be useful to talk any of this through against your own stock, we are happy to.

Joanna Lambert
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This paper describes the law as we understand it at 12 August 2026. It is not legal advice.