



Executive Vice-President Frans Timmermans
 European Commission
 Rue de la Loi / Wetstraat 200
 1049 Brussels
 Belgium

Cc. Secretary General, Ilze Juhansone

Re. Proposed revision of EU domestic regime for ivory trade

Brussels, 25th February 2021

Dear Executive Vice-President,

On behalf of the undersigned animal protection and wildlife conservation organisations, we are writing with regard to the recent proposal to revise Commission Regulation (EC) No 865/2006 and its associated guidance on the EU regime governing trade in ivory.

We greatly appreciate how improved this proposal is from previous versions, and the commitment of the European Commission to end the ivory trade. We broadly support the proposed amendments to the Regulation 865/2006 and the draft revised guidance document, particularly the proposal to suspend imports and re-exports both in raw and worked ivory and the proposal to suspend intra-EU trade in raw and post-1947 worked ivory. We are also supportive of the proposed exception for pre-1975 musical instruments. In addition, we are in favour of the Commission's proposal to require certificates for intra-EU trade in worked ivory antiques (pre-1947 worked ivory).

Despite these excellent amendments, a number of gaps still remain in the proposal that risk undermining its intent. We are particularly concerned with the failure to transpose the guidance's trade restrictions into legally binding regulations in Commission Regulation 865/2006. Furthermore, the proposal fails to limit the issuance of certificates to certain types of pre-1947 worked ivory.

Our key concerns and recommendations are summarised below:

Firstly, we are concerned that the trade restrictions on worked ivory are only partially addressed in Commission Regulation 865/2006 (with the rest being in the guidance document), while those on raw ivory are currently only included in the guidance document. We strongly recommend that Commission Regulation 865/2006 be amended to ensure consistency and enforceability of the rules.

Secondly, we contend that the requirement that antique ivory can be traded with a certificate is still too broad. A *de minimis* provision further restricting the issuance of certificates for antique ivory is needed to avoid a flood of applications for certificates that will likely overwhelm authorities, thus increasing the risk of ivory from poached elephants or otherwise obtained illegally being laundered through the system and sold as antique. We urge the Commission to consider applying a *de minimis* criterion as operated by other jurisdictions, which restrict exemptions for antique worked items to those containing less than 5% of ivory by volume and less than 200g of ivory by weight.

Thirdly, we believe that exceptions regarding pre-1975 musical instruments should only apply when the volume of ivory in the instrument is less than 20% of the total volume of the material of which the instrument is made.

Finally, we strongly maintain that a witness statement/affidavit or signed declaration from an applicant for a certificate to trade antique worked ivory should not be accepted as a satisfactory proof of legal acquisition. Declarations in support of legal acquisition/origin should be provided by independently approved/recognised experts only.

We are also concerned that the use of the term 'suspend' (vs 'prohibit' or 'ban') may create the expectation that the suspension will someday be lifted, which could lead individuals to acquire, retain or stockpile ivory and items containing ivory. We recommend the use of the terms 'prohibit' or 'ban'.

In summary, while we greatly appreciate that the Commission's proposed amendments to Commission Regulation 865/2006 and the draft revised guidance document on the EU regime governing trade in ivory are a step in the right direction, we are concerned that, unless the aforementioned loopholes are addressed, the new proposed measures and their good intentions could be significantly undermined.

We therefore urge the Commission to further revise and strengthen the proposal currently on the table to deliver on the longstanding request of the European Parliament and EU citizens, and the majority of African elephant range States, and respond to the European Council Conclusions of 16 October 2020 calling for the closure of the EU domestic ivory market.

As the EU prepares to present its proposals for an ambitious new global framework for post-2020 at the upcoming 15th meeting of the Conference of the Parties to the Convention on Biological Diversity, it is critical the Commission demonstrates its leadership role, setting the example for the international community by delivering on its commitment to end the EU ivory trade.

Yours sincerely,

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