



Hugo-Maria Schally
Directorate-General for Environment
European Commission
1049 Brussel
Belgium

Brussels, 6th February 2019

Subject: European Commission non-paper on elephant ivory trade in the EU and possible additional measures

Dear Mr Schally,

We, the undersigned organisations, are writing to provide input to the European Commission non-paper on elephant ivory trade in the European Union (EU) and possible additional measures. We thank you for the organisation of a second EU stakeholder meeting on ivory trade in the EU, on Monday 28th January 2019 and for presenting a draft proposal on EU ivory trade. However, we are concerned that the EU response to restricting such trade is inadequate and does not go far enough to address key concerns presented to the Commission as part of the 2017 public consultation.

Allowing the sale of ivory reinforces its social acceptability and makes it a desirable product to own or even invest in, further fuelling demand (including in Asia), the illegal market, trafficking, and poaching, and stimulating transnational wildlife crime. Ivory trafficking exacerbates conflict, corruption, and poverty, and thus also weakens local, national and transnational security and governance. We note that most elephant range States have implemented domestic ivory bans and have encouraged all countries to close their ivory markets as well, and that consumer states such as the US, China, France, Luxembourg and the UK have taken strong steps to close their commercial domestic ivory markets. Several other key jurisdictions (including Hong Kong SAR of China, Singapore, Taiwan, and Australia) are in the process of considering or implementing restrictions on domestic ivory trade, highlighting the global shift away from ivory as a commodity.

We greatly appreciate the commitment and contributions of the EU and its Member States to the conservation of elephants in the wild, and to ending elephant poaching and ivory trafficking. We welcome the efforts from the European Commission to present a proposal to further restrict ivory markets in the EU. Unfortunately, the new proposals from the European Commission outlined in the non-paper presented at the stakeholder meeting are overly complex, will be difficult to understand and enforce, are inconsistent with stricter domestic measures taken by several Member States, undermine international commitments made by the EU to close its domestic ivory market, and fall well short of the action required by the EU and its Member States to seriously tackle elephant poaching and ivory trafficking.

We urge the EU to act in two phases, first, by amending the guidance as soon as possible, second, by making changes to the EU legislation ((EC) No 865/2006).

Supporting information

Research focusing on the EU undertaken by INTERPOL¹ and TRAFFIC,² as well as NGOs such as the International Fund for Animal Welfare (IFAW),³ Robin des Bois,⁴ Save the Elephants, Elephant Action League and Avaaz in collaboration with Oxford University,⁵ supported by evidence from the UK's Border Force and observations by WWF,⁶ has uncovered numerous examples of illegal ivory trade in the last 15 years.

In the most recent report published by TRAFFIC, (March 2018), it was found that “based on number of records, the EU plays a role as a re-exporter of illegal ivory”, with 15 of the 28 EU Member States reporting significant seizure records involving elephant ivory and expressing their concerns that newly worked ivory items are being presented as antiques, generally in online platforms, and subsequently re-exported.⁷ In 2016, the highest volume of specimens of elephant ivory carvings and tusks were seized inside the EU.

On raw ivory

We believe that a 10-year transition period for phasing out intra-EU commercial trade in raw ivory is far too long; it will undermine the intent of the measure, and pose significant enforcement challenges. We urge the EU to adopt a moratorium on the issuance of certificates for trade in raw ivory as soon as possible. We consider that a maximum transition period of 1 year is more than sufficient and in line with swift changes brought about by EU guidance on ivory and rhino horn in the past and by other large consumer countries such as China.

We strongly oppose the proposal's support for processing new ivory products in the EU by allowing use of raw ivory to produce new ivory items or musical instruments. This raises serious enforcement concerns and would continue to stimulate demand for worked ivory items, as well as enabling laundering of illegal ivory through the legal system. This is a potentially very harmful provision.

On worked ivory

The EU proposal would not only continue to allow a large amount of worked ivory to be traded within the EU but would also allow exports including to markets in Asia, which poses a significant risk of facilitating laundering of illegal ivory and continued poaching and trafficking. The proposal's complicated rules for four sets of dates would make enforcement impossible.

TRAFFIC's latest report highlights concerns from several Member States that new worked ivory items are being presented as antiques, and reports the seizure of such items advertised online.⁸

During hearings for the 2018 Ivory Act in the UK, the CITES Management Authority stated that “The UK Border Force has seized multiple ivory items which have been subject to artificial stains or ageing techniques, which are clearly destined for the antique market. Studies have shown that where outlets [are] offering legal and illegal ivory side-by-side, revenue and profits become intermingled and difficult to separate”.⁹

¹ INTERPOL, IFAW (2013) Project Web: An investigation into the ivory trade over the internet within the European Union

² Lau, W., Crook, V., Musing, L., Guan, J. and Xu, L. (2016) A rapid survey of UK ivory markets. TRAFFIC, Cambridge, UK.

³ IFAW (2012) Killing with keystrokes 2.0: IFAW's investigation into the European online ivory trade. IFAW (2018) Disrupt: Wildlife Cybercrime: uncovering the scale of online wildlife trade.

⁴ Examples from On the Trail, the quarterly bulletin with information and analysis on animal poaching and smuggling published by French NGO Robin des Bois, include: Chiswick Auctions in West London was sold a carved ivory authenticated by its experts as dating from before 1947. The ivory was seized by a police unit specialized in art trafficking. Scientific analysis revealed that the ivory came from an elephant killed in the 60s (Bulletin n°6 p. 97, 19 August 2014); The carbon-14 dating of worked ivory seized from eBay vendor proved that the objects came from elephants that were alive in the 1970s (n°14 p. 98, 13 September 13 2016).

⁵ Avaaz, in collaboration with Oxford University and Elephant Action League (2018) Europe's deadly ivory trade: Radiocarbon testing illegal ivory in Europe's domestic antique trade.

⁶ WWF's chief adviser on wildlife in the UK, Heather Sohl stated: “We have evidence that ivory, which dates from after 1947 is being sold in the UK as antique ivory. It is not always easy to identify modern, post 1947 ivory, and ivory that has been poached on elephants before 1947. Some pieces of ivory are tea-stained to make it look older. They are literally dipped in tea to stain the piece”.

⁷ TRAFFIC (2018) Examining options for possible restrictions on ivory trade in and from the EU – Summary of EU Member States responses to the European Commission questionnaire. Prepared for the European Commission. March 2018 (revised January 2019)

⁸ TRAFFIC (2018) Examining options for possible restrictions on ivory trade in and from the EU – Summary of EU Member States responses to the European Commission questionnaire. Prepared for the European Commission.

⁹ Defra, *Ivory Bill Factsheet – overview*, 23 May 2018

Coupled with the absence of specific recording, inspection and enforcement procedures to monitor the movement of ivory, the lack of EU requirements for worked ivory to be accompanied by a certificate of authenticity to be sold as “antique” represents a major loophole to EU rules on ivory trade, poses significant challenges to effective enforcement **and must be closed**.

Way forward

We recommend that EU rules be harmonised with the stricter domestic measures that have been developed to date.

We recognize that some very limited exemptions may be prudent. We call for a prohibition of all ivory imports into and re-exports from the EU and intra-EU trade for commercial purposes, with **ONLY** the following limited exemptions:

- Musical instruments made prior to 1975, containing less than 20% ivory by volume, and which should be accompanied by documentation establishing an uninterrupted chain of custody.
- "*De minimis*" items made prior to 1947, containing less than 5% ivory by volume.
- Sales to and between officially accredited museums.

We note that the above restrictions would not apply to non-commercial inheritance, transfer, bequest, gifting or donations.

These rules would make regulations far less complicated for both the public and enforcement officials. It would also ease the burden on management authorities responsible for implementing the new rules.

Drawing from the guidance document (2016/c 15/02) on the export, re-export, import and intra-Union trade of rhinoceros horns, a suspension of exports and intra-EU trade in raw ivory and post-1947 worked ivory can be achieved by amending the existing guidance on ivory with limited exemptions as suggested above. This could be a crucial immediate step with an outlined commitment that legislation will subsequently be adopted.

As intra-EU trade of pre-1947 worked ivory is currently possible without a certificate, restriction of trade in pre-1947 ivory will require a change of Commission Regulation 865/2006 as a second step.

The burden of proof to demonstrate the age of an item must in all cases rest with the seller in accordance with the precautionary principle, and to reduce unnecessary burden on enforcement officials. As regards the requirement for potential sellers of ivory items to demonstrate reliably, using approved scientific evidence, that an ivory item meets any age-related restrictions, we recommend, in order to ensure conformity, that the EU provides details of approved methods for obtaining such evidence. We submit that isotope analysis (Strontium and Thorium) is currently the only established scientific method that provides precise and unambiguous results¹⁰.

Conclusion

We urge the EU to act in two phases, first, by amending the guidance as soon as possible, second, by making changes to the EU legislation ((EC) No 865/2006).

Measures aimed at further restricting the ivory trade within, to and from the EU should focus on achieving:

1. **Consistency** - EU Member States should all operate on the same basis and those who have already enacted stricter domestic measures, including France, Luxembourg, the Netherlands and the UK, should not have to weaken their measures. In other words, harmonization should be upwards.
2. **Simplicity** - The more complicated the protocols are the less likely they will be implemented effectively. Anything complicated will create unnecessary difficulties for EU enforcement agencies.
3. **Coherence** - The EU should operate on the basis of 'best available evidence' which means we need to listen to and respect the opinions of other stakeholders including wardens, rangers, field operatives,

¹⁰ <https://www.sciencedirect.com/science/article/pii/S0379073818303360>

and the majority of African nations, as well as scientists and experts, who believe there is increasing evidence linking EU domestic ivory trade with elephant poaching and smuggling.

4. **Leadership** - Currently the EU lags behind other jurisdictions in banning domestic ivory trade. The majority of elephant range States are looking to the EU for closure of its domestic ivory markets and the EU must respond with meaningful and prompt action in line with CITES Resolution Conf. 10.10 (Rev. CoP17), and WCC-2016-Res-011 on closure of domestic markets for elephant ivory. If the EU wishes to continue to be seen as a world leader in the promotion of global biodiversity and protection of our diminishing wildlife, and not risk to be isolated on this issue at the up-coming CITES CoP18, bold action on its domestic ivory market is urgently required.

Yours faithfully,

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Andrea Hoepfner

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