

**COMMISSION NOTICE
GUIDANCE DOCUMENT**

EU regime governing intra-EU trade and re-export of ivory

(2017/C 154/06)

The purpose of the present guidelines is to provide an interpretation of Council Regulation (EC) No 338/97⁽¹⁾ recommending that EU Member States (i) suspend the (re)export of raw ivory items and (ii) ensure a strict interpretation of the provisions in EU law authorising intra-EU trade in ivory and the (re)export of worked ivory.

1. Background and justification

(i) The international and EU legal framework governing ivory trade

Both the African Elephant *Loxodonta africana* and the Asian Elephant *Elephas maximus* are included in the Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which gathers 183 Parties, including the EU and all EU Member States. Under the current CITES regime, international trade in ivory⁽²⁾ is banned, with strictly limited exemptions (notably for items acquired before the provisions of CITES started to apply to ivory). The CITES Convention does not regulate domestic trade in ivory.

The CITES Convention is implemented in the EU through Regulation (EC) No 338/97 and associated Commission Regulations (EU Wildlife Trade Regulations). In the case of elephant ivory (as for other species listed in Annex A to Regulation (EC) No 338/97), the EU has in addition adopted measures which are stricter than CITES provisions.

As a result, trade in ivory is strictly regulated in the EU through the EU Wildlife Trade Regulations and trade to, within and from the EU of ivory for commercial purposes is generally not permitted.

Intra-EU trade and the re-export of ivory for commercial purposes are only permitted under the following conditions:

— intra-EU trade is authorised for ivory items imported into the EU before the elephant species was listed in Appendix I of CITES (18 January 1990 for African elephant and 1 July 1975 for Asian elephant)⁽³⁾. Intra-EU trade can only occur if a certificate has been issued to this effect by the relevant EU Member State, except for 'worked specimens' (see definition below) acquired before 3 March 1947, which can be traded in the EU without a certificate.

— re-export from the EU is authorised for ivory specimens acquired before the date on which CITES became applicable to them, i.e. 26 February 1976 for African elephants and 1 July 1975 for Asian elephants⁽⁴⁾.

(ii) The international context: a surge in elephant poaching and ivory trafficking driven by a growing demand from Asia

In recent years, elephant poaching has reached very high levels. Between 20 000 and 30 000 African elephants have been reportedly killed every year since 2011⁽⁵⁾. This has led to a widespread decline of the African elephant populations, jeopardising the recovery of the species observed between 1990 and the mid-2000's.

⁽¹⁾ Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ L 61, 3.3.1997, p. 1).

⁽²⁾ The reference to ivory in this guidance document relates to ivory only from elephant.

⁽³⁾ Pursuant to Article 8(3)(a) of Regulation (EC) No 338/97.

⁽⁴⁾ See Article 5(6)(ii) of Regulation (EC) No 338/97. The CITES Convention applied from 26 February 1976 to African elephants with the listing of the species in Appendix III by Ghana; Asian elephants were listed in CITES Appendix I on 1 July 1975.

⁽⁵⁾ Nelleman, C., Henriksen, R., Raxter, P., Ash, N., Mrema, E. (Eds). (2014). *The Environmental Crime Crisis — Threats to Sustainable Development from Illegal Exploitation and Trade in Wildlife and Forest Resources*. A UNEP Rapid Response Assessment. United Nations Environment Programme and GRID-Arendal, Nairobi and Arendal.

Along with this significant increase in the level of poaching of African Elephants, the illicit trade in ivory has escalated, driven by the continued growth of the demand for ivory in Asian markets. According to the Elephant Trade Information System (ETIS) (¹), between 2010 and 2015 approximately 39 tonnes of raw ivory were seized per annum and seizures of worked ivory have steadily increased over the years, averaging ca. 5,6 tonnes per annum (²). The movement of such large scale ivory consignments reflects the fact that transnational organised criminal networks have been getting increasingly involved in illegal trade in ivory.

In response to this surge in elephant poaching and ivory trafficking, the international community has adopted numerous commitments, through Resolutions by the UN General Assembly and the UN Environmental Assembly, as well as at several high level Conferences.

A number of new measures were agreed at the 17th Conference of the Parties to the CITES Convention (CITES CoP17) in October 2016, aiming to strengthen the enforcement of the rules against elephant poaching and ivory trafficking, reduce the demand for illegal ivory and reinforce the scrutiny on the legality of ivory present in domestic markets.

CITES Resolution 10.10 (Rev. CoP17) on trade in elephant specimens urges Parties to put in place comprehensive internal legislative, regulatory, enforcement and other measures for ivory trade/domestic markets. This Resolution also recommends 'that all Parties and non-Parties in whose jurisdiction there is a legal domestic market for ivory that is contributing to poaching or illegal trade, take all necessary legislative, regulatory and enforcement measures to close their domestic markets for commercial trade in raw and worked ivory as a matter of urgency' and recognises that 'narrow exemptions to this closure for some items may be warranted; any exemptions should not contribute to poaching or illegal trade'.

(iii) An increasing level of legal trade in ivory from the EU to Asia

Commercial re-exports of both raw and worked ivory from the EU carried out in line with Regulation (EC) No 338/97 ('legal re-exports') have considerably increased in recent years, with a pronounced upward trend in the re-exports of ivory to East Asia (see box 1).

Box 1

Levels of legal re-export of ivory from the EU — basic facts and figures

Elephant tusks are the specimens which represent the largest share of the re-export of **raw ivory** items from the EU. While the number of tusks re-exported annually from the EU was always below 100 units between 2006 and 2012 (except for 2008 where it reached 111 items), this figure increased considerably in 2013 (reaching more than 300 items) and more markedly in 2014 and 2015 (more than 600 items each year). Nearly all elephant tusks re-exported in 2014 and 2015 from the EU were destined to China or Hong Kong SAR.

In addition to trade in tusks, the EU Member States also reported **trade in raw ivory in the form of ivory pieces** over the last decade. There appears to have been a general decline in re-exports of ivory pieces reported by weight, but a general increase of re-exports reported by number of specimens (with large fluctuations between years), suggesting that trade in this commodity has remained relatively constant over the last decade. The actual quantities of ivory pieces are, however, very difficult to quantify, as pieces could vary enormously in size.

The number of **worked ivory** items re-exported from the EU has increased in recent years, with data reported by EU Member States showing a marked increase since 2012. The highest quantities were reported in 2015 as far as trade in individual specimens (10 000 ivory items re-exported in 2015) is concerned. It should be noted however that trade is reported in different units by Member States. In addition to trade in individual items, trade has also been reported in mass (kg). Re-exports of ivory reported by Member States in mass have been fluctuating considerably, reaching their highest levels in 2012 (ca. 600 kg, in addition to 7 000 individual items) and ca. 200 kg in 2015.

(¹) The Elephant Trade Information System (ETIS) was set up by CITES Resolution Conf. 10.10 (Rev. CoP17) on Trade in elephant specimens, with the objectives to, inter alia, 'i) measuring and recording levels and trends, and changes in levels and trends, of illegal elephant killing and trade in ivory'. ETIS produces a comprehensive report on worldwide ivory seizures before each CITES Conference of Parties. The latest reports, carried out in 2016 for CITES CoP17, are available here:
<https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-57-06-R1.pdf>
<https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-57-06-R1-Add.pdf>

(²) For 50 % of the ETIS records, CITES Parties did not specify weight of ivory seized.

The re-export of worked ivory items encompasses many different types of objects (including antiques, musical instruments or various other kinds of carvings). The main destination markets for these items are China and Hong Kong SAR, but smaller levels of trade to other countries have also been reported, notably the USA, Switzerland, Japan and the Russian Federation).

The data used to assess levels of trade are from the re-export records reported by EU Member States as part of their CITES annual reports, in line with Article 15(4) of Regulation (EC) No 338/97

(iv) EU initiatives against wildlife trafficking with regard to intra-EU ivory trade and export of ivory

The Communication on an EU Action Plan against wildlife trafficking⁽¹⁾ invites the EU and its Member States to implement a comprehensive strategy against wildlife trafficking. This Communication notably foresees (under Action 2 'further limit trade in ivory within and from the EU') that the European Commission should issue guidelines 'to ensure uniform interpretation of EU rules with the aim to suspend the export of raw pre-Convention ivory and guarantee that only legal ancient ivory items are traded in the EU by the end of 2016.'

In its conclusions in June 2016 on this Communication, the Council of the European Union urged 'Member States not to issue export or re-export documents for raw pre-Convention ivory from elephants on the basis of EU guidelines and to consider further measures to put a halt to commercial trade in ivory from elephants'.

These present guidelines were developed in response to these calls.

The increasing demand for ivory from Asia is one of the most important drivers for the current high levels of elephant poaching and ivory trafficking. Through the present guidelines, the EU will contribute to reduce such demand and support the efforts by important destination markets for wildlife products, such as China which adopted in 2016 specific measures to restrict the import of ivory items in its territory and has announced that it will phase out its domestic ivory market by the end of 2017. These guidelines also aim at making sure that ivory of illegal origin is not traded within or from the EU and that legal trade in ivory cannot be used as a cover for illegal ivory.

The present guidelines address first the re-export of ivory from the EU (section 3) and then intra-EU trade in ivory (section 4).

2. Status of the document

The present guidance document was discussed and developed in cooperation with Member States' representatives gathered in 'Group of Experts of the Competent CITES Management Authorities'.

This notice is intended to assist citizens, businesses and national authorities in the application of Regulation (EC) No 338/97 and its Implementing Regulations. This guidance document does not replace, add to or amend the provisions of the Council Regulation and of its Implementing Regulations; furthermore it should not be considered in isolation but used in conjunction with this legislation. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The document shall be published electronically by the Commission, and may be published by the Member States.

The document will be reviewed by the Commission, in consultation with the 'Group of Experts of the Competent CITES Management Authorities', in the second semester of 2019. However, the Commission and the Member States will pay specific attention to concerns over the domestic trade in ivory, as well to the re-export of worked ivory from the EU, with a view to considering whether changes to the present guidance are required on these points before the second semester 2019.

⁽¹⁾ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0087&from=EN>

3. Guidance on the interpretation of EU rules on re-export of ivory

(i) Guidance on the re-export of raw ivory

The rules governing the re-export of raw ivory⁽¹⁾ specimens acquired before the date on which CITES became applicable to them are laid down in Article 5 of Regulation (EC) No 338/97.

Pursuant to Article 5(2)(d) of Regulation (EC) No 338/97, when assessing applications for re-export of raw ivory, Management Authorities need to be 'satisfied, following consultation with the competent Scientific Authority, that there are no other factors relating to the conservation of the species which militate against issuance of the export permit'.

These provisions need to be interpreted in light of the circumstances described in section 1 as well as in view of the specific features relating to international trade in raw ivory. Raw ivory represents the largest share of ivory entering international illegal trade worldwide. This is evidenced by the data reported by CITES Parties to ETIS, which show that seizures of illegal raw ivory represent the large majority of ivory seized worldwide. Raw ivory mainly consists of tusks, which are difficult to differentiate from another. The risks that the legal re-export of raw ivory is used as a cover for the illegal trade in illegal raw ivory are bigger than for worked ivory, despite the fact that legal tusks can only be traded if they marked.

Suspending the re-export of raw ivory from the EU will ensure that tusks of legal origin are not mixed with illegal ivory and help destination countries implement their actions to reduce the demand for ivory, which constitute an important step in addressing illegal trade in ivory and the current elephant poaching surge.

The Commission recommend that, in the current circumstances, in the light of the precautionary principle, and unless conclusive scientific evidence to the contrary comes to light, Member States should consider that there are serious factors relating to the conservation of elephant species that militate against the issuance of re-export certificates for raw ivory.

Consequently, in line with Regulation (EC) No 338/97, the Commission recommends that Member States should, as a temporary measure and from 1 July 2017, not issue re-export certificates for raw ivory, except in exceptional cases, where the Management Authority of the Member State concerned is satisfied that the item:

1. is part of a genuine exchange of cultural goods between reputable institutions (i.e. museums);
2. is an heirloom moving as part of a family relocation;
3. is being moved for enforcement, scientific or educational purposes.

In any such exceptional cases, it is recommended that Management Authorities follow the guidance outlined in this document in relation to acquiring suitable evidence of legal origin of the specimens (Annex I to this document), marking (Annex II) and, where relevant, coordination with other Member States and third countries (sub-section (iii)).

(ii) Guidance on re-export of worked ivory

Contrary to raw ivory, 'worked ivory' encompasses many different types of specimens. This includes items which have been in trade legally for decades (for example musical instruments or antiques) and it is not clear whether a complete suspension of re-export for such items would have a tangible impact against international illegal ivory trade. In view of the increase in re-exports of worked ivory from the EU in recent years, there is however a need to strengthen scrutiny on the implementation of the current rules.

In all cases, it is imperative that EU Member States exercise a high level of scrutiny in relation to applications for re-export of worked ivory, to make sure that they only deliver the relevant documents when the conditions set out under EU law are met which guarantee that the ivory is of legal origin. With a view to avoiding that ivory items which do not fulfil the required conditions are exported, it is recommended that the conditions for issuing such re-export certificates are strictly interpreted.

⁽¹⁾ It is recommended that EU Member States use the definition of 'raw ivory' contained in CITES Resolution Conf. 10.10 (Rev. CoP17), according to which:

- a) the term "raw ivory" shall include all whole elephant tusks, polished or unpolished and in any form whatsoever, and all elephant ivory in cut pieces, polished or unpolished and howsoever changed from its original form, except for "worked ivory"; and
- b) "worked ivory" shall be interpreted to mean ivory that has been carved, shaped or processed, either fully or partially, but shall not include whole tusks in any form, except where the whole surface has been carved'.

In order to assess the conditions under which such trade can be authorised, it is recommended that EU Member States apply the guidance on the 'evidence to demonstrate legal acquisition' contained in Annex I to the present document and on 'marking, registration and other requirements for the issuance of certificates' contained in Annex II.

It is particularly important for the applicant applying for the re-export certificate to demonstrate that the specimens were acquired before the date on which CITES became applicable to the items concerned. If such evidence cannot be provided by the applicant, then no certificate should be delivered.

If issued, the certificate should describe the item concerned with sufficient detail so that the certificate can only be used for the specimen concerned. In addition, and where legislation allows, Member States may consider collating, verifying and recording identities of the applicant and, where possible, of the purchaser (e.g. by keeping a copy of their identification documents).

(iii) Coordination within and between EU Member States as well as with 3rd countries

Where regional/local CITES Management Authorities are responsible for the issuance of CITES documentation, it is recommended that Member States ensure that the regional authorities report to the central CITES Management Authority regarding all submitted applications for re-export certificates/intra-EU certificates. This would ensure proper coordinated verification of legal acquisition and consistency in the assessment of applications. This could be supported by the establishment of national databases to store relevant information.

Where an intra-EU certificate issued by an EU Member State is presented as evidence of legal acquisition for the purposes of a re-export certificate application, the Member State that issued the intra-EU trade certificate should be consulted regarding its validity. This should apply for all applications involving ivory, but particularly in the case of raw items.

Furthermore, additional restrictions/controls may apply in relation to re-export to certain countries/territories that have introduced stricter domestic measures in relation to trade in ivory, such as mainland China, Hong Kong SAR and the United States of America (USA). Before issuing a re-export certificates for ivory, the Member State concerned should inform the CITES authorities of the country of destination so that the country of destination can verify that the importation of that specimen is in line with existing regulations.

4. Guidance for the implementation of EU law for intra-EU trade in ivory

It is recommended that EU Member States follow the guidance outlined below, based on current best practices in EU Member States, for the assessment of applications for certificates for intra-EU trade in ivory and the interpretation of the provisions of EU law on intra-EU trade in ivory 'worked specimens'.

Since the CITES decision to ban international ivory trade in 1989, the demand for ivory in Europe has considerably decreased. EU Member States have not been identified under CITES as important destination markets for ivory of illegal origin. Most of the intra-EU trade consists of ivory antiques. There have been however instances of illegal trade in ivory items occurring within the EU. Different approaches also exist in between Member States in the handling of applications for certificates for commercial use of ivory specimens within the EU and in relation to intra-EU trade in ivory 'worked specimens'. The EU has a responsibility to ensure commercial use of ivory in the EU is strictly controlled and regulated, as per CITES Resolution 10.10 (Rev. CoP17) and Regulation (EC) No 338/97. Increased vigilance and controls over intra-EU trade in ivory items are therefore necessary, in relation to applications for intra-EU trade in ivory as well as to ascertain the legality of intra-EU trade in 'worked specimens'.

In this context, and in view of the different regimes applying to each of these cases, it is recommended that Member States follow the specific guidance below for each of the following cases:

- intra-EU trade in ivory items (point (i) below),
- the specific cases of intra-EU trade of 'worked specimens' (point (ii) below).

(i) Guidance on the intra-EU trade of ivory items

Intra-EU trade of Annex A specimens is generally prohibited under Article 8(1) of Regulation (EC) No 338/97. Article 8(3) authorises Member States to derogate from this prohibition if certain conditions (listed in subparagraphs (a) to (h)) are met. However, the use of the term 'may' in Article 8(3) makes it clear that Member States are not obliged to grant a certificate for intra-EU trade when those conditions are met (except if otherwise required by Union law, such as in application of the principle of proportionality). When deciding about granting or not granting a certificate, the authority has to use its discretionary powers in an appropriate manner.

The consequence is that Article 8(3) cannot be considered as conferring a right to a certificate for intra-EU trade for any applicant, even when one of the conditions laid down in subparagraphs (a) to (h) is met. Moreover, Article 8(3) is subject to the precautionary principle and, as discussed above, the burden of proof for demonstrating the legitimacy and consistency of a transaction with the objectives of Regulation (EC) No 338/97 will therefore rest with the applicant.

When receiving an application for commercial use of ivory within the EU under Article 8(3), a Member State is entitled under Union law to refuse to grant a certificate, even when one of the conditions laid down in subparagraphs (a) to (h) is met, provided the refusal is compatible with the principle of proportionality (i.e. the refusal is appropriate to protect species of wild fauna or flora or to guarantee their conservation, and the refusal does not go beyond that which is necessary to achieve that aim). The Commission and the Group of Experts of the Competent CITES Management Authorities are of the view that this will be the case where the legitimacy and consistency of a transaction with the objectives of Regulation (EC) No 338/97 have not been conclusively demonstrated by the applicant.

Member States have a responsibility to avoid issuing certificates which could facilitate any illegal activities and should therefore handle those applications for intra-EU trade in a way to minimise this risk to the maximum extent possible. Member States are recommended to ensure maximum scrutiny in handling applications for intra-EU certificates and interpret strictly the conditions for issuing such certificates, especially for raw ivory.

To this end, it is recommended that EU Member States apply the guidance on the 'evidence to demonstrate legal acquisition' contained in Annex I to the present document and on 'marking, registration and other requirements for the issuance of certificates' contained in Annex II.

A key element under Article 8(3)(a) (i.e. specimens 'acquired in, or (...) introduced into, the Community before the provisions relating to species listed in Appendix I to the Convention or in Annex C1 to Council Regulation (EEC) No 3626/82 (2) or in Annex A became applicable to the specimens'), is that an applicant applying for an intra-EU certificate must demonstrate that the specimens were acquired or introduced into the EU before 18 January 1990 for African Elephant and 1 July 1975 for Asian Elephants. If such evidence cannot be provided by the applicant, then no certificate should be delivered.

If delivered, the certificate should describe the item concerned with sufficient detail so that it is clear that the certificate can only be used for the specimen concerned — this is especially important for raw ivory which is likely to have fewer identifying features. In addition, and where legislation (') allows, Member States may consider collating, verifying and recording identities of the applicant and of the purchaser (e.g. by keeping a copy of their identification documents). A condition specific to intra-EU trade in raw ivory could also be laid down which obliges the seller to inform the authorities of the purchaser's identity.

When applications for intra-EU trade of ivory are made under Article 8(3)(c), Member States are reminded that, as the import of ivory (as personal effects, notably hunting trophies) is only possible for non-commercial reasons, there is no possibility for their owners to be granted a certificate for a commercial purpose within the Union under Article 8(3)(c).

(ii) Specific Guidance on the intra-EU trade of ivory 'worked specimens'

The EU Regulation contains specific provisions governing intra-EU trade of 'worked specimens' that were acquired more than 50 years previously', defined in Article 2w of Regulation (EC) No 338/97 as 'specimens that were significantly altered from their natural raw state for jewellery, adornment, art, utility or musical instruments, more than 50 years before the entry into force of the Regulation, i.e. before 3 March 1947, and that have been, to the satisfaction of the management authority of the Member State concerned, acquired in such conditions. Such specimens shall be considered as worked only if they are clearly into one of the aforementioned categories and require no further carving, crafting or manufacture to affect their purpose'. 'Worked specimens' as defined by the EU Wildlife Trade Regulations are also often referred to as 'antiques'. However, it is important to note that antiques acquired before 1947, but that remain substantially unaltered from their natural state do not qualify as 'worked specimens' under Regulation (EC) No 338/97.

(') Especially laws on protection of personal data.

The commercial use of 'worked specimens' in the EU is regulated under Article 8(3)(b) of Regulation (EC) No 338/97 and Article 62(3) of Commission Regulation (EC) No 865/2006. If an item fulfils the conditions under Article 2(w) of the Council Regulation to be considered a worked specimen, then no certificate is needed for its commercial use within the EU.

In order to ensure a common interpretation of the 'worked specimen' definition across EU Member States, the European Commission, in cooperation with the EU Member States, developed internal guidance on this topic⁽¹⁾. This guidance, which is not specific to ivory, covers aspects such as acceptable proof that the item was acquired prior to 3 March 1947; typical examples of items falling under the definition 'significantly altered from their natural raw state' and the categories of 'jewellery', 'adornment' etc.; and the renovation and 'reworking' of specimens.

Overall, it is recommended that Member States interpret the definition of worked specimens narrowly, as per the following steps:

- the owner of a specimen who wishes to sell it has first to demonstrate that the specimen was acquired '50 years before the entry into force of Regulation (EC) No 338/97', i.e. before 3 March 1947,
- secondly, the fact that an ivory tusk is simply mounted on a plaque, shield or other type of base, without any other alteration of its natural state should not be sufficient to consider the product a 'worked specimen' under Article 2(w) of Regulation (EC) No 338/97,
- thirdly, the requirement under Article 2(w) that the alteration was carried out for 'jewellery, adornment, art, utility, or musical instruments' should also be given strict and thorough consideration, as it appears that in recent cases the artistic nature of the alteration (such as significant carving, engraving, insertion or attachment of artistic or utility objects, etc.) was not clear, in which case the conditions in Article 2(w) were not met,
- the guidance document produced by the European Commission on 'worked specimens' should be consulted for further guidance on interpretation of the term.

In addition, although intra-EU certificates are not required for commercial trade of 'worked specimens' within the EU, it is recommended that Member States monitor their domestic markets of antique ivory, including carrying out regular checks to see if traders have evidence of the age and/or origin of antique ivory for sale, and consider making it mandatory for traders to declare the age and origin of antique ivory items for sale, both on websites and in physical stalls/shops.

It should be finally noted that the re-export of 'worked specimens' from the EU requires the issuance of a re-export certificate, in line with Article 5(6)(i) of Regulation (EC) No 338/97. It is recommended that the Member States use the guidance in section 3(ii) when assessing applications for re-export certificates for such items.

⁽¹⁾ See C(2017) 3108.

ANNEX I

Evidence to demonstrate legal acquisition*General considerations*

For both re-export and intra-EU certificates, it is the responsibility of the applicant to demonstrate to the satisfaction of the CITES authority in the EU Member State concerned that the conditions for the issuance of the documents are met, and especially that the ivory specimens were legally acquired (⁽¹⁾).

As applications for re-export/intra-EU certificates may differ significantly (in terms of the circumstances of original acquisition of the ivory, the quantity to be re-exported/traded, and the declared origin/age of the specimens), Member States will generally need to assess the evidence furnished by the applicant on a case-by-case basis.

While it is clear that legal acquisition needs to be demonstrated in all cases, Member States should consider following a risk-based approach when assessing applications for the re-export of/intra-EU trade in ivory. Transactions may give rise to varying degrees of scrutiny depending on the quantity of ivory to be re-exported/traded; the form of the ivory (e.g. antique, worked or raw); the circumstances in which the ivory was originally acquired (e.g. part of a commercial transaction or as a gift/inheritance); and the date on which the original acquisition took place. Member States will be required to use their judgment when determining, based on the nature of the transaction, the type/quantity of evidence required in support of the application.

Member States should subject transactions for intra-EU trade in raw ivory to a greater level of scrutiny, for example, in the case of applications involving unworked tusk(s) or larger unworked ivory pieces, in particular where an application is for more than one whole tusk/item. Member States may also consider applying greater scrutiny to intra-EU certificate applications for raw ivory that was acquired more recently or as part of a commercial transaction (as opposed to a gift or inheritance).

It is important to note that the type of proof of legal origin will depend on the manner of acquisition. For example:

- If the ivory item was imported by the applicant him/herself before entry into force of the Convention, the applicant may be required to prove that he/she lived or worked in the country of export. Old photographs, contracts, extracts from a birth certificate, extracts from the population register or a declaration of him/herself and/or other family members may be accepted as proof that the applicant lived abroad. The applicant will also need to prove that the ivory item was legally acquired/imported into the EU (see *Types of evidence* below).
- If the ivory item was purchased in the EU, the applicant must demonstrate that the item was legally acquired, or that the piece meets the requirements of a pre-1947 worked specimen (see *Types of evidence* below).

Types of evidence

The following evidence should generally be preferred in support of re-export and intra-EU certificate applications:

- Original CITES import permit issued to the applicant and endorsed by Customs or original import (e.g. Customs) documents. The document(s) should be verified, if possible, against information in relevant databases, e.g. national Customs databases, databases of issued CITES permits.
- Intra-EU trade certificate. In such a case, the issuing EU Member State should be consulted to verify the validity of the certificate concerned. Where the information provided on the intra-EU certificate is unclear, or there are doubts/concerns as to the validity of the certificate/legality of the ivory, additional information should be requested from the applicant and/or issuing authority. Additional evidence might be requested if, for example, the certificate lacks identification markers (e.g. photographs, descriptive details, information on the weight/length of the tusks) or is especially old. Member States may request any evidence providing additional details of the item and its background not already noted on the intra-EU certificate. A receipt or a deed of transfer could also be requested, especially if the certificate is transaction specific, to show that the current owner acquired the specimen directly from the certificate holder.

(¹) See Article 5(3) and (6) of Regulation (EC) No 338/97 for re-export certificates; and, for intra-EU trade certificates, Article 8(3) of Regulation (EC) No 338/97 in combination with Article 59 of Regulation (EC) No 865/2006.

- Results of radiocarbon dating/isotope analysis to determine age (also origin) of the specimen ⁽¹⁾, bearing in mind that determining the age is not sufficient in itself to prove legal acquisition.
- Expert opinion, in the form of a determination of age by a recognised, independent expert, for example, an individual affiliated to a university/research institution, a consultant to court/approved by judicial process, or an approved/recognised expert ⁽²⁾. Expert opinions may be considered as satisfactory evidence for both worked and unworked ivory (e.g. where forensic analysis cannot be used). For antique worked ivory, the age determination may be made based on the style of carving and crafting techniques.

Where the evidence described above is not available, applicants should be required to present a combination of other forms of evidence to demonstrate legal acquisition (see other forms of evidence below). Member States should ask the applicant to furnish as many different types of evidence as possible in support of their application. As noted above under *General considerations*, the amount and type of evidence that will constitute satisfactory proof of acquisition will depend on the nature of the application and associated risk. Where commercial quantities of raw ivory are the subject of an intra-EU certificate application, Member States should consider accepting only the evidence listed under the first three bullet points above.

Other forms of evidence that may constitute satisfactory proof of legal acquisition include (preferably a combination of) the following:

- Original CITES export permit from the country of export or original export (e.g. Customs) document. The document(s) should be verified, if possible, against information in relevant databases.
- For ‘worked specimens’ containing ivory, a document from an approved/recognised expert.
- A receipt or invoice, a deed of gift or inheritance documents, such as a will.
- Old photographs of the ivory item (with a date, recognisable person, or at the place of origin), an old hunting permit (or other documents relating to a hunt), insurance documents, letters, or old public documents (such as newspaper articles or other original reports/publications that provide evidence of the origin of the specimens).
- Other ancillary evidence to support the explanation of legal acquisition such as proof of work service of the person who acquired the specimen (e.g. in Africa) or copies of passport stamps.
- A witness statement/affidavit or signed declaration from the owner. Member States may consider requesting that the applicant provides an affidavit in support of the certificate issued, stating that they are aware of the consequences of a false declaration. A witness statement/affidavit should still be supported by other evidence such as photographs or receipts/invoices.
- For worked specimens or music instruments manufactured in the EU, a confirmation by the manufacturer or an expert that the instrument was produced on the territory of an EU Member State before the date of the relevant CITES listing.

Where, in light of evidence furnished by an applicant in support of a re-export/intra-EU certificate application, there remain doubts as to the legal acquisition of the ivory concerned, Member States should consider consulting an independent expert or requiring forensic analysis to verify the age of the specimen; the cost should be borne by the applicant.

⁽¹⁾ The UNODC Guidelines on Methods and Procedures for Ivory Sampling and Laboratory Analysis provides an overview of laboratory test options available as well as guidelines on taking samples for testing, including a list of equipment and materials needed for ivory sampling (see UNODC. (2014) *Guidelines on Methods and Procedures for Ivory Sampling and Laboratory Analysis*. United Nations, New York, especially 14.2.2 Isotopes (page 30 et seq. and 46); available at https://www.unodc.org/documents/Wildlife/Guidelines_Ivory.pdf). Cf. as well the website www.ivoryid.org.

⁽²⁾ If using expert opinion from auctioneers, potential conflicts of interest may arise, which needs to be carefully considered.

ANNEX II

Marking, registration and other requirements for the issuance of certificates

Permanent marking of ivory products is not mandatory under EU law before an intra-EU certificate is granted, but this is done already by some Member States. In addition, import permits and re-export certificates can only be issued by EU Member States for some ivory products if they are marked (see Article 64(1)(d) and Article 65(1) of Regulation (EC) No 865/2006) and CITES Resolution 10.10 (Rev. CoP 17) also encourages the marking of 'whole tusks of any size, and cut pieces of ivory that are both 20 cm or more in length and one kilogram or more in weight'.

In that context, it is recommended that Member States consider permanently marking: (i) whole tusks of any size, and (ii) cut pieces of ivory that are both 20 cm or more in length and one kilogram or more in weight. Marking allows a certificate to be connected to the ivory items concerned and improves traceability in the system.

It is recommended that such marking be carried out in accordance with CITES Resolution 10.10 (Rev. CoP 17): 'whole tusks of any size, and cut pieces of ivory that are both 20 cm or more in length and one kilogram or more in weight, be marked by means of punch-dies, indelible ink, or other form of permanent marking, using the following formula: country-of-origin two-letter ISO code, the last two digits of the year/the serial number for the year/and the weight in kilograms (e.g. KE 00/127/14). It is recognized that different Parties have different systems for marking and may apply different practices for specifying the serial number and the year (which may be the year of registration or recovery, for example), but that all systems must result in a unique number for each piece of marked ivory. This number should be placed at the "lip mark", in the case of whole tusks, and highlighted with a flash of colour.'

The Resolution mentions that marking should indicate the country of origin; if this country is not known when an EU Member State operates the marking, the ISO code indicated should be the one of the country of marking. Member States may consider it appropriate to stipulate that the ivory holder/owner covers the costs of permanent marking.

Once the item has been permanently marked, the code should be entered into an electronic database to facilitate future verification together with the certificate number and all relevant information such as length, weight and pre-Convention status. Information should be recorded at the national level, where possible. If information is recorded at the regional/local level, there should be some mechanism for information sharing with/oversight by the central (national) CITES authority. After marking, it is also advised that the items be photo-documented and the records and photographs maintained together.

Member States have reported problems in verifying the validity of intra-EU certificates, which make it difficult to confirm the identity of the specimen concerned (for raw tusks). To address these issues, Member States are advised to:

- Require photo documentation of the ivory specimens (especially raw whole tusks) and, where permitted by national systems, to ensure that the photographs are affixed/appended to the intra-EU certificate concerned. The photographs should be scanned and kept with the records of the certificate issued. Features that could be documented (and which would assist in identification) include characteristic colouration, cracks or other damage; curvature of the tusk; and the base (e.g. cleanly cut or frayed). Photographs of the entire tusk and of the base would be useful. Should the tusk contain an engraving, a photograph that shows details and position on the tusk should also be included. Photographs of the ivory for which a certificate is issued is particularly important where the ivory has not been marked.
- Include details on the certificate of how the weight and length of the ivory item were measured, as well as the circumference at the base. Regarding the weight, relevant information includes when the weight was determined (was the item weighed at the time of issuing the certificate, or has older information on weight been used?) and whether the weight includes any attachments to the tusk (such as a cap over the base or an attachment to fix

the tusk to a wall) which may have been removed for subsequent weighing. Regarding the length, relevant information includes whether the length specified is the outer or inner length, and whether this is from tip to base (or some other measurement).

- Record both the number of items concerned and the quantity in weight (kg) (as sizes of items vary considerably).
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