

**THE RE-EXPORT OF PRE-CONVENTION/  
ANTIQUÉ IVORY FROM THE  
EUROPEAN UNION**

**August 2014**

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**Report prepared for the European Commission**

**Contract 07.0307/2013/662839/SER/ENV.E.2**



**TRAFFIC**  
the wildlife trade monitoring network

Report prepared by TRAFFIC for the European  
Commission under Contract  
07.0307/2013/662839/SER/ENV.E.2

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**Suggested citation:** Mundy, V. (2014). *The Re-export  
of pre-Convention/antique ivory from the European  
Union*. Report prepared for the European  
Commission.

## Introduction

The illicit trade in elephant ivory has escalated progressively since 2007, driven by the continued growth of Asian markets for illegal ivory which shows little to no signs of abating (UNEP *et al.*, 2013; Milliken *et al.*, 2012). Globally, illicit ivory trade activity appears to have reached its highest level since the mid-1990s, with recent increases in the frequency and magnitude of large-scale ivory seizures indicative of the involvement of organised crime in illegal trade (Milliken *et al.*, 2012). The most recent analysis of data reported to the Elephant Trade Information System (ETIS), the monitoring system for tracking ivory trade under CITES, found that illicit ivory trade activity and the weight of ivory behind this trade is now approximately three times greater than in 1998 (Milliken *et al.*, 2012). These findings from ETIS, together with results of the CITES MIKE<sup>1</sup> programme, have given rise to widespread concern over the impacts of current levels of poaching on elephant populations, as current demand for ivory exceeds that which may be supplied sustainably (UNEP *et al.*, 2013). Based on these data, it has been suggested that elephants are facing the most serious conservation crisis since the ban on international trade in ivory was imposed under CITES in 1989 (Milliken *et al.*, 2012).

In light of the threat to elephant populations posed by the illicit ivory trade, a number of NGOs have called upon the European Union (EU) to place restrictions on its domestic ivory trade, as well as imports and re-exports<sup>2</sup> into and from the EU. Legal markets for antique/pre-Convention ivory are considered to provide an opportunity for the laundering of poached ivory into legal trade, while also stimulating demand in consumer markets.<sup>3</sup> Several Member States (MS) have also requested the tightening of EU rules on the trade in pre-Convention ivory, due to recent increases observed in the re-export of ivory reported by some MS and the concern that intra-EU trade is occurring with a view to subsequent re-export of ivory from the EU. However, any decision to place additional restrictions on the EU trade in ivory, e.g. by way of a guidance document similar to that issued recently for rhino horn, would need to be fully justified in terms of the impact of the EU ivory market on the current poaching crisis and conservation status of wild elephant populations and the contribution that any restrictions could make to halting/reversing these trends.

The aim of this report is to provide the European Commission and the MS with more detailed information and analysis on the EU trade in antique/pre-Convention ivory, to inform any potential decisions to restrict/control this trade. The focus of the current report is on the re-export of pre-Convention ivory from the EU as this is considered the most pressing issue given that overseas markets would appear to pose a more immediate and severe threat to the status of elephant populations in the wild. However intra-EU trade will be discussed to the extent relevant to re-export issues (e.g. where internal trade certificates are provided as proof of legal acquisition for the purposes of applications for re-export).

## Methods

The CITES Management Authorities of the 28 EU MS were contacted in July 2014 and were requested to complete a questionnaire covering various issues relating to the re-export of antique/pre-Convention ivory from the EU, namely:

- whether any stricter domestic measures have been enacted with regard to the trade in ivory;

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<sup>1</sup> Monitoring the Illegal Killing of Elephants.

<sup>2</sup> This report uses the term “re-exports” throughout; however, it is noted that in some cases the relevant transaction will be an “export” (e.g. where the ivory is derived from an animal that was captive-bred in the EU). “Re-exports” therefore should be taken to include both re-exports and exports.

<sup>3</sup> See, for example, responses of the Environmental Investigation Agency (EIA), Humane Society International (HSI) and the Species Survival Network (SSN) to the February 2014 EU consultative communication on wildlife trafficking.

- the processes for assessing applications for permits for the re-export of antique/pre-Convention ivory, in particular: (a) the difficulties faced when processing applications for the re-export of/internal trade in pre-Convention/antique ivory; (b) who bears the burden of proving the legal origin of the antique/pre-Convention ivory specimen concerned; (c) the level/type of evidence accepted as proof of legal origin in support of any such application; and (d) whether contact is made to the MS that issued an internal EU trade certificate, where this document is produced as evidence of legal acquisition in support of a re-export certificate application;
- the feasibility of registering ivory stockpiles held by private individuals/entities and how this may be approached in practice (where MS were already registering ivory stockpiles, they were requested to provide information on their experiences of registration and any elements of best practice that could be shared with other MS);
- the industry sectors (or other stakeholders) that would be affected by any future decisions to restrict re-exports of antique/pre-Convention ivory from the EU.

Due to the tight timeframe for undertaking this research and for obtaining input from the MS, responses were received from just over half of the MS as follows: Austria, Croatia, Czech Republic, Denmark, Finland, France, Germany<sup>4</sup>, Greece, Hungary, Ireland, Italy, Netherlands, Slovenia, Slovakia and the UK<sup>5</sup>. Therefore the views of certain MS of relative importance in terms of the EU ivory trade<sup>6</sup> could not be obtained, in particular Belgium, Portugal and Spain. However, the responses obtained provide a useful overview of the current situation, with many MS citing similar experiences and difficulties, which would appear to be shared across the EU. A copy of the questionnaire sent to the MS is attached as Annex 1.

Information provided in response to the questionnaire was further supplemented by information provided by MS to the European Commission in their replies on the action points arising from the 66<sup>th</sup> meeting of the Management Committee (COM). This included: (i) data on MS re-exports of pre-Convention ivory from the EU (numbers of applications/certificates issued, quantities and types of specimens re-exported, and main countries/territories of destination for re-exported ivory); (ii) data/observations on internal trade in pre-Convention ivory and, specifically, whether internal trade is happening with a view to further re-export outside of the EU; and (iii) MS views on whether specific guidance should be adopted with regard to the re-export of ivory products from the EU.

Finally, a rapid assessment of the EU's role in the global ivory trade was carried out in support of recommended approaches to addressing re-exports of pre-Convention ivory from the EU. This involved:

- the analysis of certain key aspects of CITES trade data on re-exports of ivory from the EU for the ten-year period 2003-2012<sup>7</sup> (see below for further explanation);
- a review of the results of previous analyses of data on ivory seizures involving the EU, including the analysis of data reported by EU Member States to EU-TWIX for the period 2007-2011 and presented at the 27<sup>th</sup> meeting of Enforcement Group (EG), and recent briefings on important and emerging enforcement trends prepared for the years 2011 to 2013;
- a review of selected relevant publications by *inter alia* CITES, TRAFFIC and other NGOs, for example, the most recent analysis of ETIS data prepared by TRAFFIC for consideration by the CITES Parties at CoP16; the comprehensive survey of key European ivory markets published by

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<sup>4</sup> A representative of the German CITES MA noted that, due to time constraints, it was not possible to consult other persons in charge of issuing CITES permits/certificates in Germany, however he provided personal comments on the issues contained in the questionnaire.

<sup>5</sup> Information received from Belgium, Poland, Spain and Sweden was received too late to be considered in the analysis, however it is included in the compilation of MS responses provided to the European Commission with this report.

<sup>6</sup> E.g. according to reported seizures data, CITES export/re-export data and information from previous market surveys.

<sup>7</sup> 2012 being the most recent year for which comprehensive data were available at the time of writing.

Martin and Stiles in 2005; and the rapid response assessment *Elephants in the Dust –The African Elephant Crisis* produced as an inter-agency collaboration between UNEP, CITES, IUCN and TRAFFIC in 2013.

Regarding the analysis of CITES trade data, export/re-export data were extracted from the UNEP-WCMC<sup>8</sup> CITES trade database in July 2014 for the period 2003-2012, inclusive. This time period was chosen in order to place increases in re-exports in recent years into the longer-term context. Data for Elephantidae spp., *Elephas* spp. (Asian Elephant) and *Loxodonta* spp. (African Elephant) were extracted for the 28 EU MS, plus the following six regions which form part of the EU territory and for which data are recorded separately in the CITES trade database: French Guiana, Gibraltar, Guadeloupe, Martinique, Saint-Martin and Reunion.

Comparative tabulations, which compare the imports and exports by individual CITES Parties, were used for this analysis. Reported data from both importing and exporting Parties were considered, although exporter data are primarily cited in the discussion below as the review is focused on re-exports from the EU and data reported by the EU MS. As the dataset included all elephant products, and not just ivory, the non-ivory items were removed to leave records with the following terms:

- Raw ivory: tusks, ivory pieces and ivory scraps
- Worked ivory: ivory carvings and carvings

Analyses were carried out in Excel under the categories “raw” and “worked” ivory, separating these further into sub-categories where interesting trends were discerned. Analyses focused on numbers of records in the CITES trade database, rather than the quantities of ivory involved, as the majority of records did not provide the weight of ivory (only number of pieces). Trade terms such as “ivory pieces”, “ivory scraps”, “ivory carvings” and “carvings” can refer to a range of different sizes/types of item, therefore numbers of pieces does not provide any insight on the total quantity of ivory in trade. Trade records involving whole “tusks” were, however, analysed for the number of pieces involved as this provides information on the number of elephants involved (e.g. two whole tusks will always equate to one or two individuals) and comparisons can be made more easily over time.

The discussion below focuses on trade reported with purpose code T (commercial trade) and with source code O (pre-Convention). It is noted that records reported with source code U (unknown) may also include some pre-Convention specimens, however it was considered prudent to exclude these from the analysis so as not to over-estimate re-exports of ivory declared as pre-Convention.<sup>9</sup>

The report is structured as follows. **Section 1** provides an overview of recent trends in the global ivory trade and describes the EU’s role as an ivory market and supplier, including an analysis of ivory re-export data from the EU. **Section 2** describes how the EU and individual MS are addressing the ivory trade, including stricter measures enacted at the national level and how applications for certificates to re-export ivory from the EU are currently being assessed. **Section 3** discusses a number of potential options for additional actions/measures to further restrict/control ivory re-exports from the EU, including the registration of stockpiled ivory in the MS and trade restrictions. Conclusions and recommendations are provided at the end of the report.

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<sup>8</sup> United Nations Environment Programme World Conservation Monitoring Centre.

<sup>9</sup> Of the 4651 records in the CITES trade database involving elephant ivory items for the period 2003-2012, only 170 were reported with source code U. These included 4 records involving whole tusks - 7 tusks in total.

## Section 1: Overview of recent trends in the global ivory trade and the position of the EU

In the years leading up to 2006, levels of illicit ivory trade remained at or slightly above 1998 levels, according to weight and transaction indices derived from ETIS data (UNEP *et al.*, 2013). From 2007 onwards, however, illegal ivory trade activity has shown a gradual increase, with a major surge in 2011 (Milliken *et al.*, 2012; UNEP *et al.*, 2013). Large-scale<sup>10</sup> ivory shipments have been increasingly seized (Milliken *et al.*, 2012), primarily originating in African ports (Dar es Salaam, Mombasa and also West Africa) and destined for China and Thailand (UNEP *et al.*, 2013). Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong), Malaysia, the Philippines and Viet Nam have also been identified as major transit countries/territories (UNEP *et al.*, 2013), while large-scale shipments of ivory have been occasionally intercepted in Europe during transit to Asian markets (Milliken *et al.*, 2012).

In terms of the types of products in the illicit ivory trade (according to ETIS data):

- A steady increase has been seen in transactions involving large quantities of raw ivory over 100 kg. This is of particular concern, suggesting a significant increase in the supply of raw ivory.
- An increase has been seen in the scale of worked ivory transactions across the smaller weight classes, indicating growth in end-use ivory market demand (Milliken *et al.*, 2012).

Today, China is the largest destination market for illegal ivory (Milliken *et al.*, 2012). However, until the 1980s, Europe was one of the leading importers and manufacturers of ivory globally, along with other traditional ivory markets such as North America and Japan (UNEP *et al.*, 2013). Demand from these markets has declined over the past two decades, with the imposition of the 1989 CITES trade ban (with the up-listing of the African Elephant to Appendix I effective from 18 January 1990), and increasing consumer awareness of the negative impacts of ivory trade on elephant populations. In contrast, the Chinese market continues to grow without respite, linked to recent changes in wealth and consumer spending patterns (UNEP *et al.*, 2013). Trends in consumer spending in China<sup>11</sup>, are strongly correlated with PIKE<sup>12</sup> trends in Africa reported by the CITES MIKE Programme (CITES, 2011; 2012a, cited in UNEP *et al.*, 2013). This relationship does not hold for other traditional destination markets for ivory such as the EU (UNEP *et al.*, 2013).

### *Ivory markets in the EU*

In the EU, the trade in ivory is strictly regulated through the provisions of *Council Regulation (EC) No. 338/97*. In summary, trade is allowed under prescribed conditions for antique ivory (“worked” specimens acquired before 3 March 1947) and pre-Convention ivory (“raw” or “worked” items acquired before the date on which CITES or the EU Wildlife Trade Regulations became applicable to them in the country in which they were acquired<sup>13</sup>). An overview of current EU law on trade in

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<sup>10</sup> Defined by ETIS as shipments of at least 500 kg

<sup>11</sup> As measured by private consumption expenditure (IMF, 2012, cited in UNEP *et al.*, 2013)

<sup>12</sup> Proportion of Illegally Killed Elephants (PIKE) trends (defined as the total number of illegally killed elephants found divided by the total number of carcasses encountered per year for each site)

<sup>13</sup> It is noted that the EU Wildlife Trade Regulations do not include the concept of “pre-Convention” specimens as understood by other CITES Parties. Consequently, CITES pre-Convention certificates issued by third countries are normally not accepted in the EU. The rules in the EU are based on the date when the provisions of the EU Wildlife Trade Regulations or CITES became applicable to the specimen in the EU Member State of concern (i.e. when the EU Member State joined CITES or became a Member of the EU), and not only on the date the species was listed in the CITES Appendices or the EU Wildlife Trade Regulations Annexes. Therefore, for example, the relevant “pre-Convention” reference date for African Elephant ivory items acquired or imported into the EU is not necessarily January 1990 when the species was up-listed to CITES Appendix I – for further details see **Figure 8** of the Reference Guide to the EU Wildlife Trade Regulations (European Commission and TRAFFIC, 2013, at p.71) on the application of the derogation relevant for export or re-export of “pre-Convention/pre-Regulation” specimens from the EU, contained in Article 5(6)(ii) *Regulation (EC) No 338/97*. It should be ensured that this derogation is being implemented uniformly across the 28 EU Member States.

antique and pre-Convention ivory is provided in **Table 1**. Trade in “new” ivory (i.e. that does not fulfil the requirements to be considered antique (worked) or pre-Convention) is not permitted within or to/from the EU for commercial purposes.

**Table 1: Overview of current EU law on trade in antique and pre-Convention ivory**

<b>Internal trade</b>	
Antique	<ul style="list-style-type: none"> <li>○ Items can be traded commercially within the EU and no internal trade certificate is required (Art. 62(3) <i>Regulation (EC) No 865/2006</i>).</li> </ul>
Pre-Convention	<ul style="list-style-type: none"> <li>○ Items can be traded commercially within the EU (Art. 8(3)(a) <i>Regulation (EC) No. 338/97</i>), although an internal trade certificate must be issued in accordance with Art. 10 of <i>Regulation (EC) No. 338/97</i>.</li> <li>○ For the purposes of issuance of an internal trade certificate, the applicant must be able to prove to the satisfaction of the competent Management Authority that the specimens have been legally acquired (Art. 59(1a) <i>Regulation (EC) No 865/2006</i>).</li> </ul>
<b>Import</b>	
Antique	<ul style="list-style-type: none"> <li>○ Items can be imported for commercial purposes, although an import permit issued by the CITES Management Authority of the MS of destination is required.</li> <li>○ Before the Management Authority can issue an import permit, it needs to be satisfied that: (i) the specimen was legally obtained in the country of origin, through the presentation of an export permit or re-export certificate; and (ii) there are no other conservation factors that prevent the issue of an import permit (Arts. 4(1) and 4(5) <i>Regulation (EC) No 338/97</i>).</li> </ul>
Pre-Convention	<ul style="list-style-type: none"> <li>○ As a general rule, items cannot be imported into the EU for commercial purposes (unless this is a “re-introduction”, i.e. the specimen has previously been exported or re-exported).</li> </ul>
<b>Re-export</b>	
Antique	<ul style="list-style-type: none"> <li>○ Items can be re-exported for commercial purposes, although a re-export certificate issued by the CITES Management Authority of the MS of re-export is required.</li> <li>○ Before the Management Authority can issue a re-export certificate, it must be satisfied that there are no other factors relating to the conservation of the species which prevent issuance of the re-export certificate (Art. 5(2)(b) and (d) <i>Regulation (EC) No 338/97</i>). Evidence must also be presented to show that the specimens were legally acquired/imported into the EU (Art. 5(3) <i>Regulation (EC) No 338/97</i>).</li> </ul>
Pre-Convention	<ul style="list-style-type: none"> <li>○ Items can be re-exported for commercial purposes, although a re-export certificate issued by the CITES Management Authority of the MS of re-export is required.</li> <li>○ See under Antique above for relevant conditions for issuance of a re-export certificate.</li> </ul>

**Source:** adapted from the Reference Guide to the EU Wildlife Trade Regulations (European Commission and TRAFFIC, 2013)

Surveys of EU ivory markets carried out over the past decade have shown that relatively large ivory markets still exist in Germany and the UK, with smaller markets in Belgium, France, Italy, Portugal and Spain (UNEP *et al.*, 2013, citing Martin and Stiles, 2005; Knapp and Affre, 2007; Martin and Martin, 2009). These findings are in line with the most recent analysis of ETIS data, which found that Belgium, France and Portugal have very modest domestic trade in ivory, while Germany has an active domestic ivory trade (Milliken *et al.*, 2012). A summary of the key findings of selected EU ivory market surveys published since 2005 is provided in **Table 2**.

In general, these surveys found significant declines in the demand for newer ivory, but continuing demand for antiques, particularly in the UK (UNEP *et al.*, 2013 citing Martin and Stiles, 2005). The majority of worked ivory seen for sale in Europe was either manufactured/imported prior to the 1989 CITES ban or made more recently from raw ivory imported prior to 1989 (although much of the worked ivory lacks documentation) (Martin and Stiles, 2005). The active ivory craftsmen observed in Germany and France were found to have their own registered, legal stocks of raw ivory and did not need to import raw ivory from outside of the EU (Martin and Stiles, 2005).

**Table 2: Key findings of selected EU ivory market surveys published since 2005**

MS	Author(s) (year)	Findings
<b>Belgium</b>	Knapp and Affre (2007)	<ul style="list-style-type: none"> <li>○ Diversity of elephant ivory objects found for sale</li> <li>○ Majority of traders did not have a precise idea of the age of the ivory objects for sale</li> <li>○ Belgium no longer appears to be involved in the production of worked ivory products necessitating a large amount of raw tusks.</li> </ul> <p><u>Illegal trade</u></p> <ul style="list-style-type: none"> <li>○ Items generally declared as antiques by traders, however the age of several items was considered suspicious</li> <li>○ Some ivory items observed for sale in shops appeared very similar to those frequently seized by Belgian authorities, indicating that part of the ivory sold in Belgium, although older in appearance, could be relatively new ivory the appearance of which has been modified</li> </ul>
<b>Portugal</b>	Martin and Martin (2009)	<ul style="list-style-type: none"> <li>○ Lisbon antique ivory trade found to be larger relative to those in Spain and Italy</li> <li>○ At least four artisans in Portugal crafting ivory part time – using very small amounts of pre-Convention ivory from legal stockpiles</li> <li>○ Nearly all ivory items seen for sale were made before the 1989 CITES trade ban (e.g. Angolan ivory objects seen for sale in Lisbon carved in the 1960s and early 1970s)</li> <li>○ Very few new ivory items end up for sale in outlets in Lisbon</li> <li>○ According to traders, the turnover of newer (pre-Convention) ivory items has declined sharply since the 1989 CITES trade ban</li> </ul> <p><u>Illegal trade</u></p> <ul style="list-style-type: none"> <li>○ Significant amounts of ivory, new and old, are successfully smuggled into Portugal, often hand-carried through airports, especially from Angola and Mozambique. However, most of this ivory is intended for personal possession at home (relatively little found for sale in retail outlets).</li> <li>○ The internet is also a source of new ivory items smuggled into Portugal, but again nearly all is intended for personal use and not for sale</li> <li>○ Fake antiques made from new ivory have been carved in the past, however it is unlikely that this practice continues today (items not as good quality as original antiques and sell for less)</li> </ul>
<b>Germany</b>	Martin and Stiles (2005)	<ul style="list-style-type: none"> <li>○ Majority of ivory items found for sale in Germany were made by German craftsman after the 1989 CITES trade ban, however older items were also seen for retail sale especially in Berlin and Frankfurt am Main</li> <li>○ Number of ivory craftsmen in Germany declined by two-thirds since the ivory bans</li> <li>○ Some companies have phased out ivory as a raw material and replaced it with mammoth tusks</li> <li>○ In 2004, the town of Erbach had the most ivory craftsman (7-10 in 2004, consuming around 300 kg of ivory per year), also craftsmen in Michelstadt</li> <li>○ In 2004, almost all of retail buyers of new and old ivory objects in Germany were Germans – little illegal export of these items</li> <li>○ Total amount of raw ivory in stockpiles is unknown, however the Erbach Ivory Museum reportedly has a stock of around 18-20 tonnes</li> </ul> <p><u>Illegal trade</u></p> <ul style="list-style-type: none"> <li>○ Ivory items are smuggled into Berlin in passengers' luggage – mostly small pieces of worked ivory brought in by Africans from Africa. There seems to be some coordination in this illicit trade between traders in Africa with vendors originating in the same African countries working in Berlin.</li> </ul>



MS	Author(s) (year)	Findings
UK	Martin and Stiles (2005)	<ul style="list-style-type: none"> <li>○ Numerous retail outlets found to be selling ivory (market larger than expected)</li> <li>○ Ivory manufacturing greatly reduced compared with the 1980s, such that virtually no raw ivory is now used</li> <li>○ The main UK firms formerly making piano keys and bagpipe parts have stopped using ivory. No legal ivory craftsman remain.</li> <li>○ Relatively significant amounts of ivory found in major antique markets in London</li> <li>○ Over 95% of ivory items observed for retail sale in London were carved before the 1989 CITES ban</li> <li>○ Very few of the ivory items observed for sale were recently-made/new items</li> <li>○ In 2004, the main buyers of ivory objects in London retail outlets were non-resident Americans</li> </ul> <p><u>Illegal trade</u></p> <ul style="list-style-type: none"> <li>○ There have been cases reported of people using illegal raw ivory to make items for sale in England</li> </ul>
Spain	Martin and Stiles (2005)	<ul style="list-style-type: none"> <li>○ In 2004, there were apparently no legal ivory craftsman active in Spain (however, numbers of tusks and raw ivory pieces seized since 1992 indicated that craftsmen were operating in Spain)</li> <li>○ Ivory items seen for sale in antique shops and markets, however demand for ivory relatively low</li> <li>○ Asian items (old and new) made up over 40% of total number of items seen</li> </ul>
France	Martin and Stiles (2005)	<ul style="list-style-type: none"> <li>○ Raw ivory importing companies apparently no longer operate</li> <li>○ Significant amounts of raw ivory held in private hands (e.g. brought back from Africa by French colonial administrators and business people, and by ivory traders and craftsmen)</li> <li>○ In 2004, there was more ivory on offer than there was demand. Number of professional ivory craftsmen declined to approximately 41 in 2004</li> <li>○ Following 1989 CITES trade ban, majority of outlets stopped selling ivory in response to falling demand and pressure from environmental activists.</li> <li>○ Large amounts of East Asian worked ivory imported in the 1970s and 1980s. Asian items (old and new) made up over 50% of the total number of items seen</li> <li>○ Demand for inexpensive ivory items fell drastically after 1989 CITES ban, although market for expensive items not hit as hard</li> <li>○ The town of Dieppe had a predominance of new ivory items on display, due to the presence of active ivory craftsmen</li> </ul>
Italy	Martin and Stiles (2005)	<ul style="list-style-type: none"> <li>○ No evidence of ivory working found</li> <li>○ Commercial ivory found to be relatively rare</li> <li>○ Asian items (old and new) made up over 20% of items seen</li> <li>○ Minimal demand for ivory</li> </ul>

### *The EU's role in the illegal ivory trade*

The market surveys described above and in **Table 2** observed some examples of illegal trade and there are suspicions that newer ivory may be making its way into the European market, for example East Asian “antique” objects seen in France, Italy and Spain that looked recently crafted and were offered for lower prices than would be expected for true antiques (Martin and Stiles, 2005). According to Martin and Stiles (2005), China smuggles out worked ivory to European destinations, making it likely that a certain proportion of the East Asian items seen in Europe are being sold illegally. Internet sales are also considered to facilitate marketing of illegal ivory in the EU, with law enforcement facing difficulties in regulating the sale of illegal ivory on, for example, internet auction sites (Interpol, 2013; IFAW, 2004, cited in UNEP *et al.*, 2013). In their 2005 survey of key EU ivory markets, Martin and Stiles found extremely few African ivory items for sale, concluding that most of the ivory objects that they had previously seen or heard about in Africa that were apparently destined for Europe must have been for private buyers rather than re-sale. Similarly Martin and Martin (2009) surmised that the majority of new ivory items smuggled into Portugal from Angola in passenger baggage are likely intended for personal possession rather than re-sale. Martin and Stiles (2005) noted that most of the worked ivory sold in Europe lacks proper documentation, but that in the majority of cases this is likely due more to the administrative burden of obtaining documentation than to purposeful illegal activity.

Recent analyses of seizure data reported by the EU MS would appear to support the results of the above market surveys. According to an analysis of seizure data in EU-TWIX for the period 2007-2011, a total of 546 seizure records were reported by MS, representing a total of 7616 specimens (of which 211 were tusks, the rest carvings, ivory pieces, etc.) and an additional 425 kg of ivory reported by weight (Mundy-Taylor, 2013). However, the scale of seizures taking place in the EU appeared relatively small compared to larger seizures reported in other regions, with none of a scale that would be considered typically indicative of organised criminal activity. This is in line with recent analyses of ETIS data, the findings of which show that, when larger ivory transactions are considered, the EU plays a relatively small role compared to other regions (Underwood *et al.*, 2013)<sup>14</sup>.

According to data submitted to the Commission for recent reports on important and emerging enforcement trends, ivory (primarily worked items) is regularly seized from postal parcels and the baggage of passengers travelling from West and Central Africa while in transit in EU MS *en route* to mainland China, Hong Kong, Singapore, Taiwan, Thailand and Viet Nam. Worked ivory products destined for the EU have also been seized, but in most cases these would appear to involve smaller items destined for personal possession rather than for re-sale.

It is, however, noted that more significant cases involving the interception of larger quantities of raw or semi-worked ivory have taken place in the EU in recent years, although information is lacking on whether this ivory is derived from recent poaching activities. For example:

- Between January and July 2014, there were five ivory seizures involving Vietnamese nationals living in the Czech Republic and travelling from the Czech Republic to Viet Nam. Three seizures took place at Prague airport, and two in Germany (the individuals concerned wished to leave the EU from Frankfurt airport). The total weight of ivory involved was 183.3 kg, which was seized as follows: January – 33.05 kg (Czech Republic); May – 60 kg (Germany); June – 31 kg (Germany);

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<sup>14</sup> See **Annex 2** for information on relative numbers of transactions across regions based on bias-adjusted ETIS seizure data.

June – 35.5 kg (Czech Republic); July – 23.7 kg (Czech Republic) (CITES News – Czech Republic, 110-112/2014).

- In December 2013, 82 kg of whole and cut tusks were seized from the vehicle of a Portuguese trader in France. This was one of the largest seizures made by French Customs in recent years (French Customs, Communiqué de presse, 16 December 2013).
- In 2012, 60 kg of ivory was intercepted by Belgian authorities upon export from Belgium to Viet Nam. The ivory, which had been concealed in wooden clocks, was detected during the X-ray of a shipment of personal effects. A subsequent search of the premises of the sender revealed an additional 100 kg (approx.) of ivory in another shipment of antique clocks, which was already prepared for export to Viet Nam (Belgium Customs Airport News, 15/2012).

Fraudulent internal EU trade certificates have been detected alongside ivory to be smuggled out of the EU. In May 2014, for example, 60 kg of ivory was detected by German authorities in the baggage of two Vietnamese citizens travelling from the Czech Republic to Viet Nam via Germany. A falsified Belgian internal trade certificate accompanied the ivory, on which both the weight and the length of the tusk had been modified (Belgian CITES Management Authority (MA), message shared via EU-TWIX, 19 May 2014). Similar cases have been reported: for example, Sweden is currently investigating two cases where tusks claimed as pre-Convention and observed for sale at auctions were proven by laboratory tests to be more recent than declared (information provided to TRAFFIC by Finnish CITES MA, pers. comm., July 2014).

In addition, recent cases show that Chinese buyers purchase antique ivory items legally in EU MS, with a view to smuggling the items out of the EU to China. In January 2013, for example, two men were arrested at Shanghai airport for attempting to smuggle 37 ivory items (in addition to 10 rhinoceros horns and a libation cup) from France to China. The items were reported as having been purchased at auction houses, antique shops and fairs in Paris<sup>15</sup>. Similarly in June 2013, a Chinese antique dealer was sentenced to 7 years in prison for attempting to smuggle 14 ivory figurines (together with 4 rhinoceros horns and 3 decorative items made of rhinoceros horns) purchased in Paris from France into China<sup>16</sup>.

Such precedents have given rise to concerns among the NGO community in relation to large sales of pre-Convention ivory carried out recently in the EU (in accordance with relevant legislation) and the intended end-destination of the ivory sold<sup>17</sup>. In March and May 2014, for example, two sales of pre-Convention raw and carved elephant tusks (weighing a total of 1.4 tonnes) took place in France through the intermediary of the Cannes Auction House. Buyers reportedly included Chinese citizens, with prices reaching EUR 1000 per kg.<sup>18</sup>

#### *Commercial re-exports of ivory from the EU*

According to the CITES trade data for the period 2003-2012, commercial re-exports<sup>19</sup> of pre-Convention ivory have increased progressively since 2007, based on numbers of trade records in the CITES trade database (**Figure 1**). Increases have been seen in re-exports involving both worked ivory (carvings) and raw ivory (tusks, ivory pieces, ivory scraps) from the EU (**Figure 1**), with re-exports involving tusks showing a particularly pronounced upward trend after 2007 (**Figure 2**). The most

<sup>15</sup> [http://www.china.org.cn/china/2013-03/21/content\\_28313004.htm](http://www.china.org.cn/china/2013-03/21/content_28313004.htm)

<sup>16</sup> <http://www.robindesbois.org/english/animal/ON-THE-TRAIL-1.pdf>

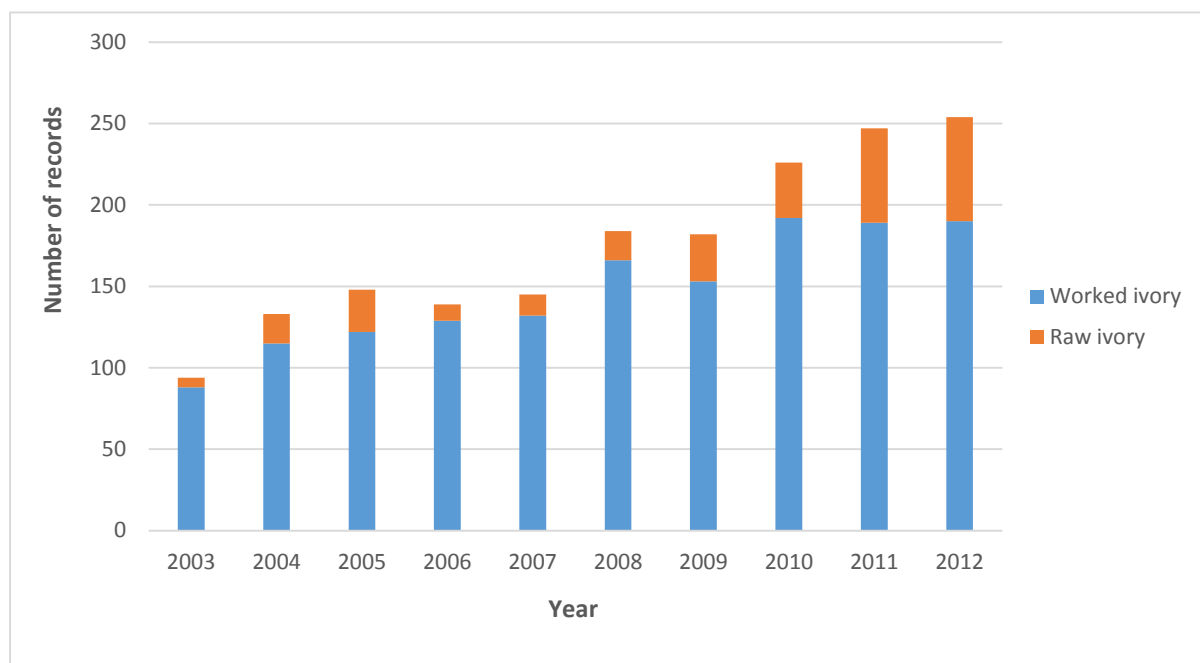
<sup>17</sup> For example, HSI and SSN in their responses to the EU's February 2014 consultative communication on wildlife trafficking.

<sup>18</sup> <http://www.robindesbois.org/english/animal/French-Riviera-Pensioners-Endangering-Elephants.html>

<sup>19</sup> Including both re-exports and exports.

recent analysis of EU MS CITES Annual Report data carried out by UNEP-WCMC identified a “notable increase” in EU exports of African Elephant ivory carvings reported as pre-Convention in 2012, suggesting that this trend may require further consideration by the COM (UNEP-WCMC, 2014).

**Figure 1: Re-exports of pre-Convention ivory for commercial purposes from the 28 EU MS for the period 2003-2012, exporter reported data**



Source: UNEP-WCMC CITES Trade database

Figure 2 shows that the number of whole elephant tusks re-exported from the EU for commercial purposes fluctuated at low levels (fewer than 10 tusks per year) between 2003 and 2007 before jumping markedly in 2008 owing to the re-export of 79 tusks from Italy to mainland China<sup>20</sup> (country of origin: Kenya)<sup>21</sup> and several smaller transactions such as the re-export of 12 tusks from Estonia to Hong Kong (country of origin: unknown). From 2009 onwards there has been an annual increase in the number of tusks re-exported for commercial purposes from the EU as well as in the number of transactions, with importer reported quantities generally appearing higher than those reported by the exporting EU MS (e.g. a shipment of 70 tusks reported as imported by Hong Kong from Germany in 2009 which does not also appear to be reflected in the exporter’s reports). These discrepancies in the reported exporter and importer data warrant closer inspection (in case, for example, numbers of tusks have been altered on legal export permits in order to move greater quantities).

In terms of the weight of ivory involved in commercial re-exports from the EU during the period 2003-2012 (according to exporter data):

- Over 2.3 tonnes of raw ivory (ivory pieces, tusks) were reported as re-exported, nearly all of which was exported from 2007 onwards.

<sup>20</sup> It is noted that this transaction appears in Hong Kong’s import data, rather than that of mainland China.

<sup>21</sup> In 1979, elephant tusks were declared a “prohibited export”, but provision was made to allow government authorities the right to export ivory that had been legally purchased from the government’s stockpile and paid for in foreign exchange, thus some residual ivory trade continued into the 1980s. Currently, however, only non-commercial personal effects held under Certificates of Ownership can be legally exported or imported under Kenyan policy. All other trade is prohibited. (T. Milliken, TRAFFIC, pers. comm., 16.8.14).

- Over 1.2 tonnes of worked ivory (carvings) were reported as re-exported, 57% of which was re-exported in 2011 and 2012.

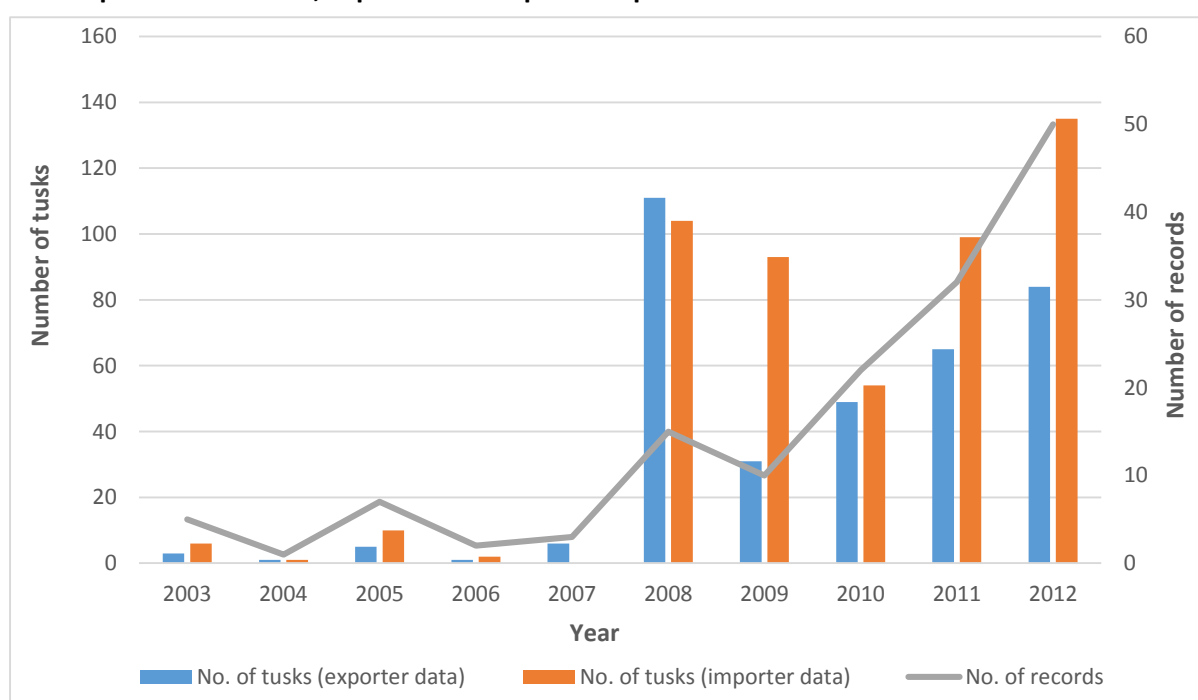
Overall, however, the number of records for which the weight of ivory items was provided accounts for a very small proportion of the total (24 of 277 raw ivory records and 75 of 1393 worked ivory records). The quantities above therefore vastly under-represent the total weight of raw and worked ivory re-exported from the EU during this ten-year period and should be viewed with caution.

It is possible to estimate the total weight of tusks re-exported from the EU during the period 2008-2012 (when the upward trend in re-exports of raw ivory is observed) using an estimated average weight range per individual tusk. Based on a range of 3.5 kg – 7.5 kg (T. Milliken, TRAFFIC, pers. comm., 16.8.14), the estimated total weight of re-exported tusks would amount to:

- Between 1.19 and 2.55 tonnes (approx.), if exporter reported data are used.
- Between 1.70 and 3.64 tonnes (approx.), if importer reported data are used.

To put this into context, considering all large-scale (500 kg or larger) ivory seizure data from 2000-2013, the mean weight per seizure is 1.747 tonnes, although there is considerable variability between years (T. Milliken, TRAFFIC, pers. comm. based on ETIS data, 19.8.14). In contrast, the raw ivory trade from the EU averages approximately 450 kg per annum over the five-year period 2008-2012.

**Figure 2: Re-exports of pre-Convention elephant tusks for commercial purposes from the 28 EU MS for the period 2003-2012, exporter and importer reported data**

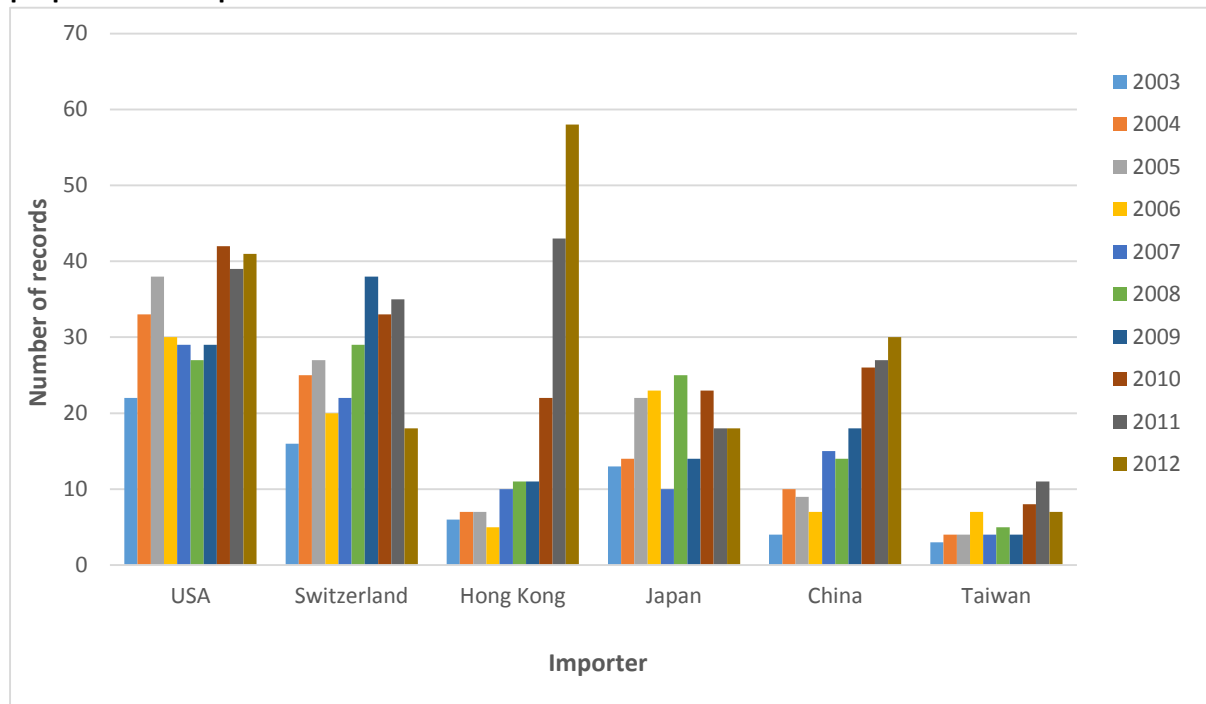


**Source:** UNEP-WCMC CITES Trade Database

The main importers of pre-Convention (raw and worked) ivory for commercial purposes from the EU over the period 2003-2012 are depicted in **Figure 3**. It can be seen that the number of commercial re-exports of ivory to Hong Kong and mainland China have increased over this ten-year period, with

a particularly marked increase after 2009. Commercial re-exports to the US and Taiwan have also fluctuated at slightly above-average levels after 2009.

**Figure 3: Main importers\* of pre-Convention (raw and worked) ivory from the EU for commercial purposes for the period 2003-2012**



**Source:** UNEP-WCMC CITES Trade Database

\*The top 5 importers and Taiwan (the 8<sup>th</sup> most important importer of ivory from the EU during the period 2003-2012 based on number of records and included in **Figure 3** due to trends in imports observed between 2010 and 2012).

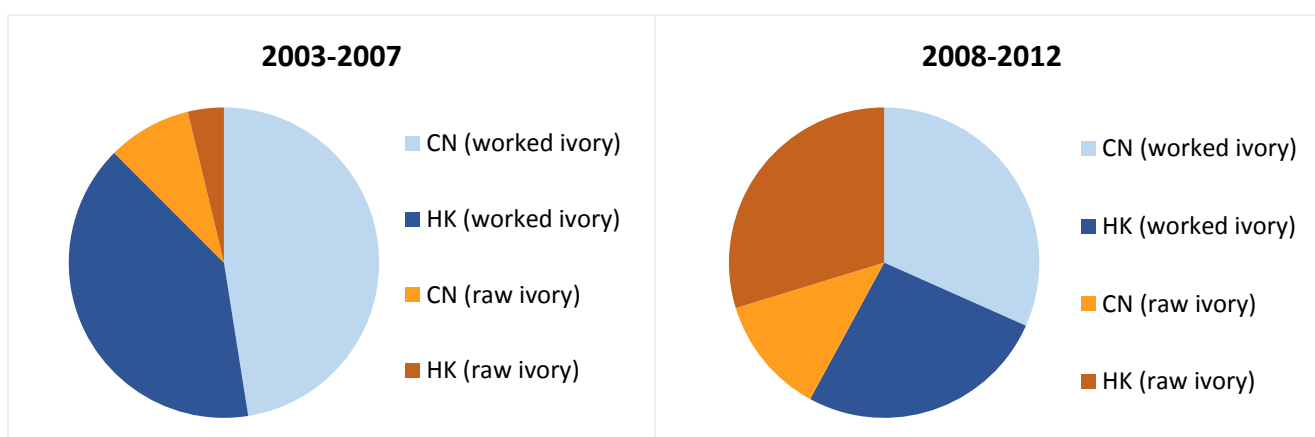
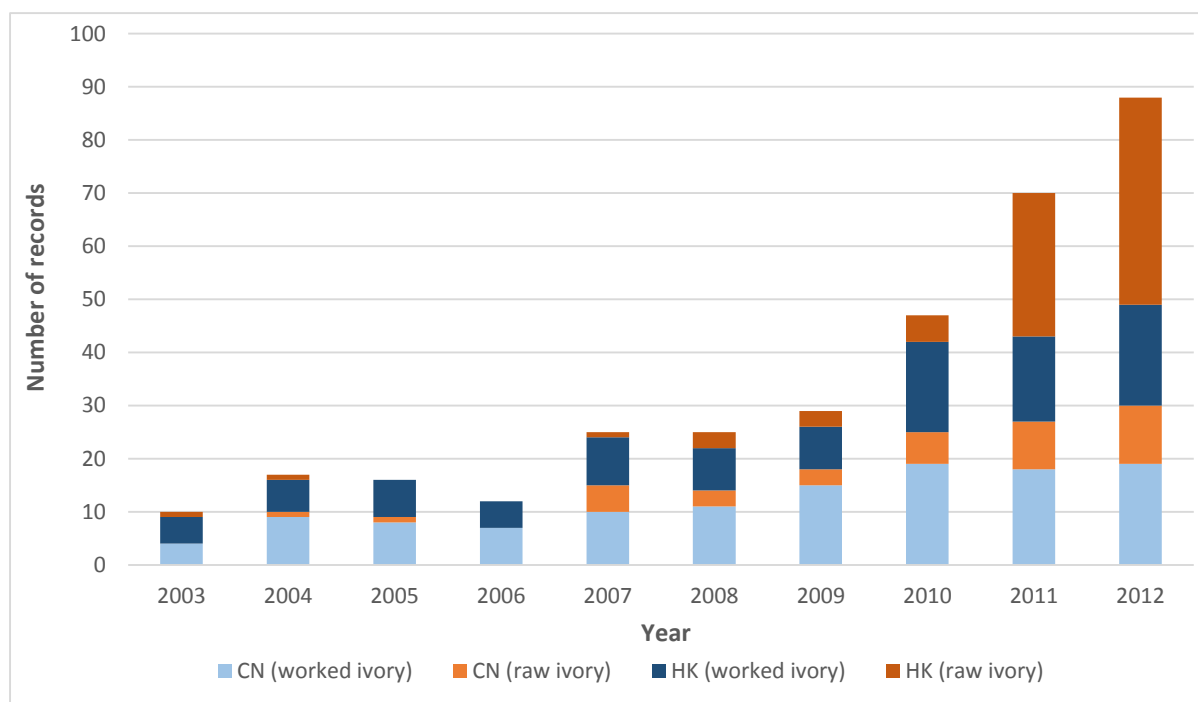
**Figure 4** shows that the proportion of commercial ivory re-exports involving raw ivory to mainland China and Hong Kong from the EU has increased since 2007, and notably to Hong Kong in 2011 and 2012. Mainland China and Hong Kong commercially imported a total of 304 tusks declared as pre-Convention from the EU during the period 2003-2012<sup>22</sup>: this represented 84% of the total number of whole tusks commercially imported by mainland China and Hong Kong from all over the world for this period<sup>23</sup> (all sources; excluding one large transaction involving 4054 tusks exported from Botswana in 2008<sup>24</sup>). Overall, 530 records involving raw ivory and worked ivory products destined for mainland China and Hong Kong were reported in the CITES trade database for the period 2003-2012. Of these, two-thirds (or 353 records) concerned pre-Convention ivory items re-exported from the EU MS.

<sup>22</sup> According to exporter data.

<sup>23</sup> According to exporter data.

<sup>24</sup> This was part of the legal one-off sale of ivory (reported as imported by China in 2009).

**Figure 4: Re-exports of pre-Convention ivory from the 28 EU MS to mainland China and Hong Kong for commercial purposes for period 2003-2012**



**Source:** UNEP-WCMC CITES Trade Database.

**Notes:** CN – mainland China; HK – Hong Kong

An overview of information provided by the EU MS to the European Commission on numbers of re-export certificate applications received and issued in recent years is provided in **Table 4**. Six of the EU MS (Austria, France, Germany, Hungary, Netherlands and Portugal) stated definitively that they have observed an increase in the number of re-export certificate applications over the past few years, in line with the trends observed from the longer-term CITES trade data described above. Germany and Hungary observed particular increases in re-exports of raw ivory in the form of tusks/ivory pieces: in the case of Hungary, applications for the commercial re-export of raw tusks have all involved ivory coming from other EU MS (France, Germany), accompanied by internal EU trade certificates. Portugal noted a degree of variability in the number of re-export certificates issued between 2006 and 2010, with a gradual increase since 2011 (accompanied by a pronounced increase in the number of internal EU trade certificates issued). Commercial re-exports of ivory from

Portugal have mainly concerned pre-Convention specimens imported from Angola and Mozambique prior to 1974 and re-exported by private owners to mainland China, Hong Kong and Singapore.

Spain noted a small increase in the number of re-export certificate applications received, as well as in the number of specimens, but advised that this should be viewed with caution. Recently, Spain has also observed an increasing number of requests for advice on the requirements to re-export raw ivory to Asian countries.

Several MS noted that either no applications for the re-export of ivory had been received in recent years or that the numbers of applications received/certificates issued were so small that it was not possible to discern any significant trends (Bulgaria, Croatia, Czech Republic, Denmark, Finland, Greece, Ireland, Latvia, Sweden and Slovakia).

In addition, a number of MS considered that internal EU trade was occurring with a view to further re-export of ivory from the EU (Czech Republic, France, Germany and Latvia). The case of a German company was highlighted, which appears to have purchased raw ivory legally across the EU since 2007 with the aim of re-exporting that ivory to mainland China/Hong Kong via (subsidiary) companies in Germany and other MS using internal EU trade certificates as a basis for re-export applications (Bulgaria, Germany). Co-operation between the German and other MS CITES MAs has resulted in the rejection of several re-export certificate applications from this company.

**Table 3** and the Notes to **Table 4** provide information on numbers of tusks and weight of raw ivory (ivory pieces) re-exported from the EU in recent years, where information was supplied to the European Commission by the MS. Particularly significant amounts of raw ivory appear to have been re-exported/approved for re-export by Germany in 2007, 2009 and 2013 (possibly also 2012) and the Netherlands in 2013 (see **Table 3**): Germany reported that the tusks were primarily destined for China, and the ivory pieces primarily for China and Switzerland, while no country of destination was reported by the Netherlands. It is also noted that, in 2012, Hungary rejected an application for the re-export of 41 tusks to China for commercial purposes, and in 2013 two applications for the re-export of a total of 6 tusks were also rejected (destination not reported).

**Table 3: Information provided by EU MS on raw ivory trade (numbers of tusks (TUS) and weight of ivory pieces (IVP) re-exported)**

	Austria	Germany	Italy	Hungary	Netherlands	Spain
2007		0 TUS 1010 kg IVP				
2008		12 TUS				
2009		34 TUS 841 kg IVP				
2010		11 TUS 9 kg IVP			1 TUS	
2011	63 TUS	8 TUS	1 TUS (P)	4 TUS (mainly T)	0 TUS	2 TUS (P)
2012	(all T)	2 TUS 200 kg IVP	3 TUS (T)	11 TUS (mainly T)	25 TUS	2 TUS (P)
2013		47 TUS 2 kg IVP	1 TUS (P)	9 TUS (mainly T)	104 TUS	2 TUS (P)

**Source:** information provided by the MS to the European Commission in response to the Action Points for COM 66.

**Notes:** (P) – for personal use; (T) – for commercial trade.



**Table 4: Number of (raw and worked) ivory re-export certificates issued (in bold) by EU MS during the period 2007 to 2013 and applications received (in brackets), all purposes and sources**

Year	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
<b>2007</b>						<b>137</b>																							
						(139)																							
<b>2008</b>						<b>165</b>																							
						(171)																							
<b>2009</b>						<b>186</b>	<b>10</b>																<b>70</b>						
						(191)																							
<b>2010</b>						<b>175</b>	<b>8</b>				<b>n/a</b>										<b>67</b>	<b>4</b>	<b>24</b>						
						(176)															(67)								
<b>2011</b>	<b>38</b>	<b>54</b>	<b>0</b>		<b>0</b>	<b>195</b>	<b>17</b>	<b>0</b>	<b>3</b>	<b>7</b>	<b>0</b>	<b>355<sup>2</sup></b>	<b>0</b>	<b>2</b>	<b>1</b>	<b>12</b>			<b>0</b>	<b>19</b>	<b>1</b>	<b>40</b>		<b>0</b>	<b>n/a</b>	<b>0</b>	<b>n/a</b>		
	n/a	n/a	(0)		(0)	(201)	n/a	n/a	n/a	n/a	(0)		(0)	(2)	n/a	n/a			n/a	(19)	n/a	n/a		n/a	n/a	(0)	(908)		
<b>2012</b>	<b>35</b>	<b>48</b>	<b>0</b>		<b>0</b>	<b>189</b>	<b>8</b>	<b>0</b>	<b>3</b>	<b>33</b>	<b>0</b>	<b>423</b>	<b>0</b>	<b>7</b>	<b>0</b>	<b>11</b>			<b>0</b>	<b>22</b>	<b>5</b>	<b>47</b>		<b>0</b>	<b>n/a</b>	<b>0</b>	<b>n/a</b>		
	n/a	n/a	(0)		(0)	(205)	n/a	n/a	n/a	n/a	(0)		(0)	(8) <sup>3</sup>	n/a	n/a			n/a	(26) <sup>5</sup>	n/a	n/a		n/a	n/a	(0)	(868)		
<b>2013</b>	<b>52</b>	<b>52</b>	<b>0</b>		<b>0</b>	<b>203</b>	<b>16</b>	<b>0</b>	<b>2</b>	<b>47</b>	<b>0</b>	<b>423</b>	<b>0</b>	<b>3</b>	<b>2</b>	<b>16</b>			<b>0</b>	<b>60</b>	<b>7</b>	<b>60</b>		<b>0</b>	<b>n/a</b>	<b>0</b>	<b>n/a</b>		
	n/a	n/a	(0)		(0)	(219) <sup>1</sup>	n/a	n/a	n/a	n/a	(0)		(0)	(5) <sup>4</sup>	n/a	n/a			n/a	(63) <sup>6</sup>	n/a	n/a		n/a	n/a	(0)	(1027)		

**Source:** Information provided by the EU MS to the European Commission in response to the Action Points for COM 66. No information was received from CY, LT, LU, MT and RO (these cells have been left blank in the above table)

**Notes:** AT – Austria, BE – Belgium, BG – Bulgaria, CY – Cyprus, CZ – Czech Republic, DE – Germany, DK – Denmark, EE – Estonia, EL – Greece, ES – Spain, FI – Finland, FR – France, HR – Croatia, HU – Hungary, IE – Ireland, IT – Italy, LT – Lithuania, LU – Luxembourg, LV – Latvia, MT – Malta, NL – Netherlands, PL – Poland, PT – Portugal, RO – Romania, SE – Sweden, SI – Slovenia, SK – Slovakia, UK – United Kingdom.

<sup>1</sup> 13 permits not yet used (still valid), 2 applications pending

<sup>2</sup> Unclear if applications received or certificates issued

<sup>3</sup> 1 permit rejected (41 TUS to CN: purpose T, weight a total of 946 kg)

<sup>4</sup> 2 permits rejected (4 TUS and 2 TUS, destination not reported)

<sup>5</sup> Includes 7 applications for a total of 64 TUS. Of these, 4 applications for a total of 25 tusks were authorised (3 applications rejected or withdrawn)

<sup>6</sup> Includes 38 applications for a total of 108 TUS. Of these, 36 applications for a total of 104 tusks were authorised (2 applications rejected or withdrawn)

## Section 2: Current EU and MS measures in relation to the ivory trade

### *Stricter domestic measures*

A summary of MS stricter domestic measures in relation to the ivory trade is provided in **Table 5**. This information was provided either directly to TRAFFIC via the questionnaire sent to MS in July 2014, or to the European Commission in response to the Action Points for COM 66.

It appears from feedback received that the majority of MS do not have any stricter domestic measures in place in relation to the ivory trade. There are, however, precedents set by some MS with regard to the registration of raw/worked ivory by those involved in the crafting of ivory/manufacture of ivory products (France and Italy) and for the marking/registration of ivory/ivory products (Hungary). Slovakia is also considering introducing a registration requirement for ivory in 2015-2016.

The market surveys described above also provide some information on EU MS with experience of registering ivory stockpiles. Of those countries for which survey data are available, Germany, France and Portugal were found during the surveys to have raw ivory stockpiles and these are registered with the relevant governments (Martin and Stiles, 2005; Martin and Martin, 2009). Between 1986 (when registration began) and 2008, the Portuguese government had marked 1614 tusks weighing nearly 20 tonnes: much of this was brought back by Portuguese nationals living in the former colonies of Angola and Mozambique prior to 1975 (Martin and Martin, 2009). In 2004, the total raw ivory stockpile in France and Germany was not known for either country, but based on available information these would appear to be significant (in excess of 20 tonnes for Germany, and estimated at 50 tonnes in France in 2000) (Martin and Stiles, 2005).

In addition, several MS have implemented measures to further restrict trade in certain forms of ivory. Some MS have ceased issuing intra-EU trade certificates and re-export certificates for raw/unworked ivory (Sweden, UK), or are considering implementing guidance to restrict such re-exports (Germany). Elsewhere, pre-Convention ivory is generally not permitted to be traded for commercial purposes (with the exception of pre-1947 worked specimens) (Denmark).

**Table 5: Stricter domestic measures implemented in the EU MS in relation to ivory trade**

EU MS	Stricter domestic measures? [Y/N]	Details/comments
AT	N	
BE		
BG		
CZ	N	<i>However, regional CITES MAs must report to the central MA regarding all submitted applications for internal trade certificates to allow for proper co-ordinated assessment and checking of legal origin.</i>
CY		
DE	N	<i>Considering implementing guidance note to restrict commercial re-exports of raw elephant ivory based on "other factors pertaining to conservation status".</i>
DK	N	<i>But do not usually allow pre-Convention ivory to be traded for primarily commercial purposes (except pre-1947 worked specimens)</i>
EE		
EL	N	
ES		
FI	N	

EU MS	Stricter domestic measures? [Y/N]	Details/comments
FR	Y	<i>Craftsmen holding and working ivory must be licensed and maintain an up to date register (does not apply to those who hold but do not work ivory, e.g. antique dealers)</i>
HR	N	
HU	Y	<i>Obligatory registration - all ivory and ivory products must be registered and marked</i>
IE	N	
IT	Y	<i>Manufacturers of ivory items must keep an up to date register (all Annex A and B specimens, does not include retailers)</i>
LT		
LV	N	
LU		
MT		
NL	N	
PL		
PT		
RO		
SE	Y	<i>Intra-EU certificates and re-export certificates are not issued for raw ivory (2011 onwards)</i>
SI	N	
SK	N	<i>However, will suggest an obligation of ivory registration in new legislation to be prepared in 2015-2016</i>
UK	Y	<i>Intra-EU certificates and re-export certificates are not issued for commercial trade in whole unworked ivory tusks. Intra-EU trade certificates are only issued for small numbers of pre-Convention worked specimens such as violin bows, bagpipes and other musical instruments. Generally, the only specimens that may be used commercially are those covered by the "worked" definition i.e. that do not require a certificate.*</i>

**Source:** information provided by MS in response to TRAFFIC questionnaire (July 2014); MS replies to COM 66 Action Points provided to the European Commission. Blank cells indicate no information provided.

**Notes:** AT – Austria, BE – Belgium, BG – Bulgaria, CY – Cyprus, CZ – Czech Republic, DE – Germany, DK – Denmark, EE – Estonia, EL – Greece, ES – Spain, FI – Finland, FR – France, HR – Croatia, HU – Hungary, IE – Ireland, IT – Italy, LT – Lithuania, LU – Luxembourg, LV – Latvia, MT – Malta, NL – Netherlands, PL – Poland, PT – Portugal, RO – Romania, SE – Sweden, SI – Slovenia, SK – Slovakia, UK – United Kingdom.

\*the UK's stricter measures are currently the subject of review.

### *Assessment of applications for re-export certificates concerning pre-Convention ivory*

Based on responses received to the TRAFFIC questionnaire, when assessing applications for certificates for the re-export of ivory from the EU, the burden of proof lies on the applicant to satisfy the CITES MA concerned that the specimens were legally acquired. Ireland noted that if "DNA proof" were to be required, it would request that the applicant meet the cost of this. Latvia noted that in suspicious cases it would ask the advice of an independent expert.

Regarding the evidence required from the applicant to establish pre-Convention status and legal acquisition/importation into the EU, this varied between MS and was generally determined on a case-by-case basis. Types of evidence that may be accepted include:

- Expert determination/opinion of age of specimen, document from certified auctioneer/auction house (in the case of the Netherlands, where the applicant is represented by a renowned auction house, a subscription to the auction house catalogue is accepted as sufficient evidence).
- Results of ivory dating/forensic analyses (particularly in relation to raw ivory tusks).
- Copy of import permit, Customs papers, or other documentation for import (e.g. that makes it possible to trace the import in relevant databases).
- Valid internal EU trade certificate issued by an EU MS.

- Seller's receipt or invoice, deed of gift or inheritance documents.
- Data in internal registration database (e.g. for Hungary), unique marking of specimen (Croatia noted that marking is preferred).
- Witness statement/affidavit or signed declaration from the owner (e.g. France requires applicants to support the document provided in support of legal import into the EU with an affidavit as follows "*Je suis informé(e) qu'une déclaration mensongère en vue d'obtenir d'une administration publique un avantage indu est passible de deux ans d'emprisonnement et de 30 000 € d'amende*"<sup>25</sup> - response of the French CITES MA to the TRAFFIC questionnaire).
- Old photographs, letters, newspaper articles or other original reports/publications that provide evidence of the origin of the specimens (e.g. where the object is allegedly an heirloom which was moved as part of the relocation of a family or as part of a bequest). Other ancillary evidence to support explanation of legal acquisition, e.g. proof of work service of the person who acquired the specimen (e.g. in Africa), copies of passport stamps, etc.

Most MS require a combination of different types of evidence to establish legal importation/acquisition, particularly where CITES documents, original import papers or expert determination/forensic analyses verifying the age of the ivory are not available/possible. The evidence required would also appear to depend on the date and type of acquisition (e.g. gift, import or commercial transaction).

In general, the evidence requirements do not vary according to the type of ivory specimen concerned (e.g. stricter requirements for ivory in a raw/unworked state). An exception is in Hungary, where the CITES MA undertakes a thorough investigation of available proof and applies strict evidence requirements in the case of re-export of raw ivory. Latvia noted that, as cases involving raw pre-Convention ivory are more suspicious, it could be useful to impose stricter evidence requirements for these specimens to facilitate regulation of trade.

In addition, Germany noted that evidence will differ in practice for raw ivory (for which age determination may be possible where fragments can be taken) as compared to worked specimens (for which expert assessments must be considered). France also reported that, as the age of raw ivory cannot be assessed "in routine" (e.g. by experts based on the style of carving and crafting techniques), the processing of applications is significantly more demanding than for worked specimens.

Where an internal EU trade certificate issued by an EU MS is presented as evidence of legal acquisition/importation for the purposes of a re-export certificate application, the majority of MS reported that they would always consult the issuing MS regarding its validity. The remaining MS noted that they would only consult the issuing MS if they had concerns regarding the certificate's validity or if they had questions regarding the legal origin of the ivory concerned. Some MS request additional information in support of an internal EU trade certificate provided as evidence of legal acquisition; other MS would not request additional information or would only do so where the information on the certificate is unclear or when there are doubts/concerns as to the certificate's validity. Finland, for example, noted that if the certificate lacks identification markers (e.g. photographs, descriptive details, information on the weight/length of the tusks) or is especially old, additional evidence might be requested (e.g. a receipt or a deed of transfer if the certificate is transaction specific, to allow the specimen to be traced back to its previous owner, and any additional details of the item and its background not already noted on the certificate).

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<sup>25</sup> Unofficial English translation: "I am aware that a false declaration made with the aim of obtaining an individual advantage from a public administration, is punishable by 2 years imprisonment and a fine of EUR 30 000".

The most commonly cited difficulty associated with assessing applications for the re-export of ivory from the EU concerned verification of legal acquisition/importation (Austria, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Netherlands and Slovenia). The main issues reported were:

- Lack of experts able to determine the age of a particular specimen (Latvia) or certified laboratory for dating specimens (Greece)
- Dating of specimens costly (Greece)
- Age of specimens estimated (Slovenia)
- Country of origin not known as ivory inherited (Slovenia)
- Lack of documentation to prove legal origin (documents lost) (Denmark, Slovenia)
- Verifying the legality of internal EU trade certificates issued by other MS, e.g. the marking of ivory in photographs attached to the certificate does not always match the information on the certificate (Netherlands) and deviations from the length and weight stated on the certificate, which make it difficult to confirm the identity of the specimen concerned (e.g. for raw tusks) (Austria).
- Time involved in obtaining appropriate evidence of acquisition/ancillary evidence in support of application (Ireland)

The following difficulties were also noted:

- Increasing numbers of enquiries are being received regarding the commercialisation of family heirlooms but which often lack sufficient evidence in support of legal acquisition and for which dating techniques are prohibitively expensive (Greece).
- Enforcement issues created by the lack of a requirement under EU law to obtain internal EU trade certificates for antiques (Germany).
- Understanding whether a specimen meets the “worked specimens” derogation, i.e. discretion/judgment required to interpret the requirement “*except where the whole surface has been carved*” (CITES Resolution Conf. 10.10 (Rev. CoP16)) given that the whole surface is rarely likely to be carved (UK).

### **Section 3: Options for additional actions/measures to further restrict/control ivory re-exports from the EU**

#### *Registration of stockpiles and marking*

According to CITES Resolution Conf. 10.10 (Rev. CoP16), CITES Parties in whose jurisdiction there is an ivory carving industry, a legal domestic trade in ivory, an unregulated market for or illegal trade in ivory, or where ivory stockpiles exist, are urged to ensure they have put in place comprehensive internal legislative, regulatory, enforcement and other measures to:

*“maintain an inventory of government-held stockpiles of ivory and, where possible, of significant privately held stockpiles of ivory within their territory, and inform the Secretariat of the level of this stock each year before 28 February, indicating: the number of pieces and their weight per type of ivory (raw or worked); for relevant pieces, and if marked, their markings in accordance with the provisions of this Resolution; the source of the ivory; and the reasons for any significant changes in the stockpile compared to the preceding year;”* (CITES Resolution Conf. 10.10 (Rev. CoP16)).

However, for 2014, very few countries complied with this provision including MS of the EU.

MS were requested to provide their views on the feasibility of registering stockpiles of ivory held by private individuals/entities in their territories as a possible approach to regulating EU re-exports of

pre-Convention/antique ivory. A number of MS recognised certain advantages of such an approach (Finland, Hungary, Italy, Latvia, Slovenia and Slovakia), for example, it helps:

- to provide a better overview/clearer estimate of the amount of ivory held in stockpiles in the EU and to improve regulation and control (Latvia, Slovakia);
- to assist in assessing whether a certain specimen is of pre-Convention stock (Finland);
- to regulate trade especially in raw ivory, provided obligations are set out at European level (Italy); and
- to address the re-export of antique ivory from the EU, provided that the objectives and criteria for such registration are clearly defined (Slovenia).

Several MS reported that systems of ivory registration are already in place in their territories, or that registration of ivory had been carried out previously. The details provided by these MS are set out in **Table 6** below.

In addition, according to Martin and Martin (2009), Portugal started to register ivory tusks held in the country in 1986, with privately owned ivory required to be registered since 2004 (all items, including personal effects, whether commercial or not). However, by 2008/2009, most items had not yet been recorded (Martin and Martin, 2009). Between 2006 and 2008, Portuguese CITES authorities issued around 1000 certificates per year for ivory, some recording more than one item (Portuguese CITES MA, pers. comm. to Martin and Martin, September 2008).

**Table 6: Registration of ivory stockpiles in the EU MS**

MS	Details of registration system
<b>Denmark</b>	<ul style="list-style-type: none"> <li>• One company registered producing fiddles/violins. Uses a tiny amount of ivory annually and has an old stockpile. No marking requirements (as too difficult to mark such small pieces).</li> </ul>
<b>France</b>	<ul style="list-style-type: none"> <li>• Pre-Convention stockpiles of professionals were registered at the national level prior to June 1999.</li> </ul>
<b>Germany</b>	<ul style="list-style-type: none"> <li>• Requires the marking of ivory before an internal EU trade certificate can be granted</li> <li>• Marking requirement restricted to: (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 (see <i>CITES Resolution Conf. 10.10 (Rev. CoP16)</i>)</li> <li>• In addition: <ul style="list-style-type: none"> <li>○ generally those who acquire, handle, process or circulate animals or plants of specially protected species (all Annex A and B species) for commercial purposes, i.e. with the aim of financial gain, are required to keep records of their actions;</li> <li>○ local authorities in charge of issuing certificates for commercial use in Germany should have information regarding ivory stockpiles used for commercial purposes.</li> </ul> </li> </ul>
<b>Hungary</b>	<ul style="list-style-type: none"> <li>• Obligatory registration of raw tusks and ivory products.</li> <li>• All items must be registered and marked with a registration code.</li> <li>• After marking, items are photo-documented and the records and photographs maintained together.</li> <li>• In the case of re-export applications, the marking is required to comply with the requirements set out in <i>CITES Resolution Conf. 10.10 (Rev. CoP16)</i>.</li> </ul>
<b>Italy</b>	<ul style="list-style-type: none"> <li>• When law 150/1992 entered into force in 1992, it provided the obligation to declare to the enforcement authority (within 90 days of the date of entry into force of the legislation) the possession of specimens of species listed in Appendix I or Annex C1 to <i>Regulation (EEC) No. 3626/82</i> (including ivory; excluding personal and household effects). The obligation was intended to record (without penalty) those specimens held at the date of entry into force of the law; it is no longer mandatory to declare the possession of pre-Convention ivory specimens.</li> </ul>

**Source:** MS responses to TRAFFIC questionnaire (July 2014)

Several MS considered the registration of ivory stockpiles to be overly burdensome, impractical and/or unnecessary (Croatia, Czech Republic, Denmark, France, Greece, Ireland and the UK), for example in terms of:

- the number of individuals/entities and amount of ivory potentially involved, especially in MS with large stocks (Denmark, Finland, France);
- the lack of human and other resources to implement such a system (e.g. enforcement personnel, experts) (Croatia, France), particularly if this were to apply to all antique, privately-held ivory/ivory in museums etc. (UK)
- the limited powers of inspectors (Croatia)/lack of legal basis (France);
- both the recording of stockpiles and the verification/documentation that each specimen is actually pre-Convention (Greece);
- the difficulties of marking smaller/worked ivory items and allocating responsibilities for marking (UK);
- the lack of awareness of registration requirements of concerned individuals/entities (Croatia, France), and the difficulties of refusing CITES applications where the individual/entity is able to present valid documentation (Denmark);
- the difficulties associated with engaging certain individuals in the registration process, e.g. those possessing pre-Convention ivory specimens as heirlooms (Greece), and with collecting data on specimens held by private individuals/entities (e.g. personal and household effects) (Ireland).
- the recording/tracking of all future transactions/movement/exchange of such specimens (Ireland, UK).

Other issues raised included the difficulty of compiling information at the State level where currently no database is available (Germany) and the need to decide who will pay for the cost of permanently marking a specimen, the alternative being regular spot checks of stockpiles by inspectors which is likely to be even more costly (Finland). The need to consider age determination of stockpiled ivory (or at least spot checks of larger stockpiles) was also noted, to address the issue of newer ivory entering via the first stockpile registrations (Finland).

A number of MS noted the importance of distinguishing between raw, unworked ivory (e.g. tusks) held across the EU, compared to worked items such as jewellery, antiques, musical instruments etc. held, for example, by museums, antiques dealers or private individuals. While registration could be an option to be considered for the former, it would seem that extending the requirement of registration to the latter category of items would likely result in significant administrative burdens. The UK noted that they would need to see firm evidence that trade in antique ivory and other worked specimens has an impact on poaching or trafficking before introducing a system of registration of such specimens. The UK did, however, respond that there may be a case to consider the registration of stockpiles of raw, unworked tusks, particularly if it can be shown that trade in such items has an impact on poaching levels or can be used to disguise trade in illegally sourced ivory.

MS provided several suggestions regarding the design of stockpile registration systems/requirements, some of which could help to address some of the concerns identified above. These include:

- (i) limiting the registration requirement to raw tusks (Germany, Italy);

- (ii) requiring stockpile registration in very specific cases only, and on a voluntary basis (France)<sup>26</sup>;
- (iii) requiring registration where there is a corresponding request to re-export a specimen (Greece) or when ivory is commercially used (Germany);
- (iv) issuing guidelines on how to register/keep such information (Germany);
- (v) requiring the permanent marking of tusks and larger pieces of ivory (Finland, Germany);
- (vi) stipulating that the ivory holder/owner should cover the costs of permanent marking (Finland);
- (vii) using other documentation to back up identification (and legal origin) (Finland);
- (viii) recording both the number of items concerned and the quantity in weight (kg) (as sizes of items vary considerably) (Germany).

Belgium previously noted in its response to the Action Points arising from COM 66 that it would support a legal obligation requiring the marking of ivory tusks for commercialisation (whether for internal EU trade or re-export). It is currently looking at developing a method for the marking of ivory tusks, however the country lacks the legal basis to make this mandatory.

To ensure better traceability, Germany also suggested a marking requirement for whole tusks of any size, and cut pieces of ivory that are both 20 cm or more in length and one kilogramme or more in weight (in accordance with *Resolution Conf. 10.10 (Rev. CoP16)*), which could be made obligatory through additional Guidance. Germany have suggested a ban on the commercial re-export of such ivory specimens, thus the marking obligation would apply only in relation to the issuance of internal EU certificates, until such time any ban on re-exports were to be lifted. Estonia agreed with the introduction of marking requirements in line with *Resolution Conf. 10.10 (Rev. CoP16)* for the purposes of internal EU certificates as a means of improving traceability.

Finally, it is noted that some MS disagreed with stockpile registration as an approach altogether. The Czech Republic, in particular, suggested that it would be more appropriate for the EU to support the development of practical forensic techniques for dating ivory that could provide results within a short time frame.

### *Trade restrictions*

The recently observed increase in re-exports of ivory from the EU (as well as other issues relating to the consideration of applications for certificates for internal trade/re-export of ivory within/from the EU and inconsistencies in implementation across MS) have prompted several MS to request Guidance on ivory trade similar to that issued on the export, re-export and intra-EU trade in rhino horn.<sup>27</sup>

In the case of ivory, however, there is some divergence of opinion amongst MS as to the appropriate extent of trade restrictions that should be outlined in any Guidance. Some MS consider the situation

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<sup>26</sup> France provided information on their previous experience of registering stockpiles of Pernambuco *Caesalpinia echinata* (App. II/Annex B). In 2007, violin and bow makers were invited to report to the CITES MA on their Pernambuco stockpiles, in response to which the CITES MA carried out spot checks of a number of stockpiles. According to the information provided, this was possible because the stockpile holders were limited in number and well-identified. Such registration is not considered possible in France for CITES species such as Malagasy ebonies and rosewoods, for example, which may concern thousands of cabinet makers, musical instrument makers and timber traders, etc. It is assumed that the same argument would hold for ivory.

<sup>27</sup> The current version of the rhino horn Guidance document prepared by the Commission services and endorsed by the COM provides that MS are entitled not to deliver export or re-export permits for rhino horns (whether considered “worked specimens” or not), except in cases where it is amply clear that the permit will be used for legitimate purposes. According to the Guidance, the Commission services and the COM consider that, in the current circumstances, in the light of the precautionary principle, and unless there comes to light conclusive scientific evidence to the contrary, MS should consider that there are serious factors relating to the conservation of rhino species that militate against the issuance of export and re-export permits. The Guidance also states that MS should, as a temporary measure, in principle not grant any certificate for rhino horn under Article 8(3) of *Regulation (EC) No. 338/97* (Guidance document: Export, re-export and intra-Union trade of rhinoceros horns, June 2014)



similar to that of rhino horn<sup>28</sup>, warranting the implementation of similar restrictions on intra-EU trade in ivory and re-exports (Czech Republic, Poland and Slovakia). Other MS, however, consider that restrictions should be limited to certain types of ivory specimens: e.g. the temporary ban on commercial re-exports of raw ivory<sup>29</sup> being considered by Germany. Some MS, moreover, would appear less convinced of the need to restrict re-exports, e.g. Spain, which considers the situation different to that of rhino horn – an article scarce in trade with fewer stocks. The UK considers that any ban on trade in ivory antiques would be particularly economically damaging, and that the impacts upon the antique sector should be fully assessed before consideration is given to the introduction of new measures.

The USA is in the process of introducing stricter national measures to prohibit commercial imports/re-exports of ivory, and to place significant restrictions on domestic resale (prohibition between States and within a State, unless pre-Convention origin can be established). By way of justification for such measures, the US Fish and Wildlife Service argues that legal ivory trade can serve as a cover for illegal trade, citing the example of a seizure of more than two million dollars-worth of illegal elephant ivory from two New York City retail stores in 2012.<sup>30</sup>

Several NGOs favour a similar approach in the EU, as outlined in their responses to the EU consultative communication on wildlife trafficking issued in February 2014. Arguments provided in support of an EU moratorium or ban on all commercial trade in ivory within the EU and imports/re-exports to/from the EU (at least until the poaching crisis is fully addressed) include the following<sup>31</sup>:

- Parallel legal trade can provide a cover for illegal wildlife trade, enable poached ivory to be laundered into legal trade as pre-Convention, provide opportunity for fraud and corruption, and undermine enforcement. Recent large sales of ivory to foreign nationals (e.g. in France) are of particular concern in this regard.
- The scope for abuse of legal trade in ivory has been flagged by expert UN bodies, e.g. UNODC – *“the trade in illicit ivory is only lucrative because there is parallel licit supply, and ivory can be sold and used openly. Ivory would lose much of its marketability if buying it were unequivocally an illegal act, or if ownership of these status goods had to be concealed”* (UNODC, 2010, at p.278)
- Legal trade sends a confusing message to consumers, negates demand reduction campaigns, stimulates demand by creating new consumer segments, and can create speculation in the market and further trafficking.
- EU environmental policy is founded on the precautionary principle, providing MS with grounds and opportunity to take action beyond CITES as already seen in relation to rhino horn.
- Precedents have already been set by other jurisdictions such as the USA in relation to ivory (and by the EU with its stricter measures for rhino horn).
- Action by the EU would encourage other countries to take similar legal and regulatory measures and set an example to influence other countries with significant ivory markets.
- Action by the EU would also be in line with the recent European Parliament resolution on wildlife crime, which calls on MS to introduce moratoria on all commercial imports, exports and

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<sup>28</sup> Characterised by, for example, a recent surge in global demand, particularly from the Asian market; a surge in the prices of specimens and levels of poaching; the high value of the material; and the risk of fuelling market demand even in the case of legal specimens (response of CZ to the COM 66 Action Points)

<sup>29</sup> Whole tusks of any size, and cut pieces that are both 20 cm or more in length and one kilogram or more in weight - *Resolution Conf. 10.10 (Rev. CoP16)*

<sup>30</sup> <http://www.fws.gov/international/travel-and-trade/ivory-ban-questions-and-answers.html>

<sup>31</sup> See responses of Wildlife Conservation Society (WCS), HSI, EIA, SSN, Eurogroup For Animals and Robin des Bois.

domestic sales and purchases of tusks and raw and worked ivory products until wild elephant populations are no longer threatened by poaching.

- The difficulties associated with distinguishing between pre-Convention legal ivory from illegal ivory mean that it is often difficult to prosecute offenders.
- Recent cases provide evidence that ivory products purchased legally in the EU are being smuggled into consumer markets, e.g. by Chinese nationals into China. Ivory trade investigations carried out by EIA have also revealed how Chinese traders discuss exploiting loopholes in the legal ivory trade system.<sup>32</sup>

An important issue to consider (when assessing whether trade restrictions are justified) is whether recently poached ivory is being brought into the EU and attempted to be legally re-exported (as pre-Convention material), e.g. to Asia. Evidence of such illegal activity would be indicative of the inadequate implementation of trade controls and regulation of trade, as well as misuse of the current EU legal framework. This would suggest that trade restrictions (or equivalent measures) may be warranted.

According to recently observed increases in ivory re-exports from the EU to mainland China and Hong Kong, increasing quantities/shipments of ivory are leaving the EU apparently legally (i.e. accompanied by valid re-export certificates) and destined for Asian markets (see **Section 1** above). Increasing re-exports of raw ivory to mainland China and Hong Kong have been especially noted. Pre-Convention ivory is being commercialised in the EU with a view to further re-export to Asia: e.g. the case of the German company (detailed above) purchasing ivory across the EU for further re-export to mainland China and Hong Kong via counteragents in various MS (e.g. Bulgaria). Other MS have observed increases in requests for advice on applicable requirements to re-export raw ivory to Asian countries (Spain).

However, in spite of the data on increased ivory re-exports from the EU, it is unclear whether illegal ivory (e.g. from recent poaching activities) is currently being brought into the EU and attempted to be re-exported under re-export certificates issued in accordance with EU law. There are undoubtedly cases of fraudulent EU CITES documents in circulation, and it is possible that falsified/forged internal EU trade certificates are being used as a basis for re-export certificate applications. In addition, several recent cases involving the smuggling of ivory from EU MS to Asia indicate that illegal re-exports of ivory from the EU are occurring. This could suggest that criminals may also be re-exporting illegal ivory through formal CITES channels; however examples of cases are yet to be reported.

While recent cases involving the smuggling of raw ivory (e.g. from Belgium and the Czech Republic to Viet Nam) are cause for concern, it is important to make the distinction between the “laundering” of ivory into legal trade (e.g. where certificates are being used to fraudulently re-export ivory from the EU as legal, pre-Convention material) and trade which occurs outside of the legal framework altogether (e.g. where ivory is smuggled out of the EU and not declared). The implementation of measures such as re-export restrictions would not address cases of smuggling, only the attempted re-export of illegal ivory using “legal” re-export channels. Cases of wholly illegal trade would need to be addressed by increased enforcement effort and other measures, such as improved co-operation between MS authorities, and increased focus on controls of exports.

Nevertheless, in view of the current poaching crisis and recent re-export trends, MS could decide that a precautionary approach is warranted, justifying the imposition of a (temporary) ban on the

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<sup>32</sup> EIA response to the EU consultative communication on wildlife trafficking issued in February 2014.

commercial re-export of raw ivory from the EU. This could be limited to, for example, commercial quantities of whole, unworked tusks (e.g. more than one to two tusks) and possibly also (larger) unworked ivory pieces for which recent upward trends have been especially pronounced and which have given rise to particular concern.

In addition to the considerations above, it is also necessary to consider the impact that any re-export restrictions would have on stakeholders in the EU. A summary of MS responses on this issue is provided in **Table 7**. It can be seen that a (temporary) ban on the re-export of antique and/or worked ivory would likely have an impact on a wider range of stakeholders than a ban limited to raw (unworked) ivory, with auction houses, antique dealers, musical instrument traders and other industry sectors affected. The UK noted in particular that *“whilst no calculation has been made of the value of the market in objects containing ivory, a ban would not only be economically damaging, but would undermine the legitimate trade in antique cultural objectives. Consideration of any action impacting on this sector should be fully assessed before consideration is given to the introduction of new measures”*. A ban on the re-export of raw (unworked) ivory would impact fewer stakeholders, primarily a few specialist traders dealing in raw ivory (e.g. in Germany and the Netherlands) and private individuals wishing to commercialise items (e.g. where items are inherited from individuals returning to the EU with ivory from former colonies). These impacts could be mitigated if a strictly regulated internal EU market were allowed to continue, providing traders/private individuals with an option for the commercialisation of their ivory within the EU.

**Table 7: Impacts on relevant stakeholders of a ban on commercial re-export of antique/pre-Convention ivory from the EU**

	<b>Worked ivory</b>	<b>Raw (unworked) ivory</b>
<b>Austria</b>	n/a	n/a
<b>Croatia</b>	No industry that would be substantially affected	No industry that would be substantially affected
<b>Czech Republic</b>	Minimum legal trade - no serious impact	Minimum legal trade - no serious impact
<b>Denmark</b>	Primarily auction companies, possibly also musicians and companies trading musical instruments	No impacts foreseen
<b>Finland</b>	Little ivory in Finland. Mostly in the property of private persons (old hunting trophies, antiques/collectables) or institutions (museums, stately homes)	
<b>France</b>	Antique dealers, auction houses, musical instrument makers, cabinet makers/restorers, private persons	Private persons who own ivory
<b>Germany</b>	Auction houses	Specialised traders/companies buying ivory in the EU with the purpose of re-export to China (Hong Kong), especially to attain better profit
<b>Greece</b>	Companies trading antique jewellery	No processing industries in Greece
<b>Hungary</b>	Private individuals only	Private individuals only
<b>Ireland</b>	Auction houses involved in antique trade, possibly also private individuals with inherited specimens (although could still trade items within the EU)	Possibly private individuals with inherited specimens (although could still trade items within the EU)
<b>Italy</b>	Possibly antiques/auction houses, jewellers, manufacturing and private individuals	Possibly private individuals
<b>Latvia</b>	Owners and traders of antique and high quality musical instruments (e.g. pianos)	
<b>Netherlands</b>	Antique dealers, auction houses and museums	One or two dealers in pre-Convention raw ivory
<b>Slovakia</b>	No sectors/stakeholders affected	No sectors/stakeholders affected

<b>Slovenia</b>	n/a	n/a
<b>UK</b>	Antiques trade, private collectors, museums and other exhibitions.	

**Source:** information provided by MS in response to TRAFFIC questionnaire (July 2014)

### *Additional issues warranting guidance*

According to several MS, Guidance on re-exports (and intra-EU trade) in pre-Convention/antique ivory would facilitate a common understanding of these issues and consistent implementation of EU law across the MS (Latvia, Sweden, Slovenia and Slovakia). As noted above, issues warranting additional guidance include the implementation of trade restrictions, marking requirements for raw ivory, and the registration of stockpiles. In addition, the following concerns have been raised by MS that could benefit from guidance:

- the need for a requirement for binding/obligatory photo documentation of ivory specimens (especially raw whole tusks) to accompany internal EU certificates, as well as information on how the weight (when the tusk was weighed) and length (how it was measured) were measured and the circumference at the base, to allow for effective evaluation of the identity of tusks and exclude possible misuse (Austria)<sup>33</sup>.
- Dealing with imports of ivory as hunting trophies and re-exports potentially from another MS (EU certificates do not show the purpose of the import and allow unspecified exemptions of Article 8 of *Council Regulation (EC) No. 338/97*) (Bulgaria).
- Increasing co-operation between MS authorities, e.g. encouraging authorities to consult the MS that issued an internal EU certificate where this is presented as proof of legal acquisition for the purposes of a re-export certificate application (Germany).
- Clarifying issues relating to the categories/use of EU certificates (Greece).
- Dealing with inherited ivory, where the tusks or other Annex A items are not eligible for sale and the heirs do not want or cannot keep these specimens (France).
- Clarifying what documentation is acceptable as evidence of date of legal acquisition (Italy).

### **Conclusions and recommendations**

#### *Assessment of applications for certificates for the re-export of pre-Convention ivory from the EU*

Based on the responses received from the MS, when assessing applications for certificates for the re-export of ivory from the EU, the burden of proof lies on the applicant to satisfy the CITES MA concerned that the specimens were legally acquired. In terms of the evidence required from the applicant to establish pre-Convention status and legal acquisition/importation into the EU, this varies between MS and is generally determined on a case-by-case basis. Most MS require a combination of different types of evidence to establish legal importation/acquisition, particularly where CITES documents, original import papers or expert determination/forensic analyses verifying the age of the ivory are not available/possible. In general, the evidence requirements do not vary according to the type of ivory specimen concerned; however, at least one MS applies stricter evidence requirements in the case of re-export of raw ivory.

<sup>33</sup> Austrian CITES MA, *in litt.* to the European Commission (29.4.14)

Where an internal EU trade certificate issued by an EU MS is presented as evidence of legal acquisition/importation for the purposes of a re-export certificate application, the majority of MS reported that they would always consult the issuing MS regarding its validity.

### *Trade restrictions*

The trade data clearly show that commercial re-exports of ivory/the number of re-export certificate applications have increased in recent years across several EU MS. Of particular concern are increasing re-exports of raw ivory, primarily in the form of tusks but also ivory pieces. Since 2011, applications have been submitted for the re-export of relatively large amounts of tusks (and also raw ivory pieces) from MS including Germany, Hungary and the Netherlands (large, at least, when viewed in the longer-term EU context). Trends in the re-export of pre-Convention worked ivory specimens are less clear, however would also appear to be characterised by an increase in recent years. For both raw and worked ivory re-exports, mainland China and Hong Kong are the main destinations for this increased trade and markets of particular concern in terms of global demand driving the poaching of elephants in the wild. It is also known that ivory is being traded internally in the EU with a view to further re-export, specifically again to mainland China and Hong Kong.

In spite of these data on ivory re-exports from the EU, what is less clear is the extent to which illegal ivory (e.g. from recent poaching activities) is currently being brought into the EU and attempted to be re-exported using re-export certificates issued in accordance with EU law. There are undoubtedly cases of fraudulent EU CITES documents in circulation, and it is possible that falsified/forged internal EU trade certificates are being used as a basis for re-export certificate applications. In addition, several recent cases involving the smuggling of ivory from EU MS to Asia indicate that illegal re-exports of ivory from the EU are occurring. This could suggest that criminals may also be re-exporting illegal ivory through formal CITES channels; however examples of cases are yet to be reported.

In view of the above and feedback received from the MS, MS could find that the currently available information may justify the imposition of a ban on the commercial re-export of raw ivory from the EU based on the precautionary principle – a central tenet of EU policy. Such a ban could be implemented on a temporary basis (e.g. until the poaching crisis is addressed) and be limited to commercial quantities (e.g. more than one or two items) of whole, unworked tusks and possibly also (larger) unworked ivory pieces, as deemed appropriate. There are precedents in the EU in terms of the implementation of such measures, and impacts on stakeholders in the MS would appear to be relatively limited. A temporary ban on the re-export of raw ivory from the EU would primarily affect private individuals with raw ivory in their personal possession, and a limited number of specialised traders. Impacts should not be felt on antique dealers and other industry sectors such as musical instrument manufacturers or ivory craftsmen - an issue of particular concern in several MS.

### *Other approaches*

As an alternative to a (temporary) ban on re-exports, MS may wish to impose stricter evidence requirements in relation to certain more suspicious transactions, e.g. involving larger quantities of raw pre-Convention ivory such as more than one to two tusks, and subject these larger transactions to particular scrutiny. The most recent UNEP-WCMC analysis of EU CITES Annual Report data also encourages MS to ensure that pre-Convention ivory claims are subject to close scrutiny to ensure legitimacy of EU trade (UNEP-WCMC, 2014). Additional restrictions could also be implemented to facilitate the regulation of trade, e.g. requiring the prior issuance and review of import permits from destination countries such as China for EU re-exports, to ensure that the governments of those

countries are engaged, and the ivory in question is imported in such a way that it becomes part of the monitored legal system. This may also result in a reduction in discrepancies between reported ivory exports and imports, as have been identified for recent years in this study.

The mandatory registration of raw ivory stockpiles in the EU and associated marking of ivory specimens is another possible alternative to the implementation of restrictions on re-exports of pre-Convention ivory from the EU, and would be in line with the requirements of *CITES Resolution Conf. 10.10 (Rev. CoP16)* (in respect of which the EU is presently non-compliant). Stockpile registration would assist the EU MS in obtaining information on the amount and origin of ivory in the EU and in improving control over stockpiled ivory as and when it is commercialised. While registration of all ivory specimens (raw and worked) would appear overly burdensome, impractical and unnecessary at the present time, the registration of raw ivory stockpiles may be more feasible (whole ivory tusks and larger ivory pieces), with systems already in place in a number of MS. As some MS are home to particularly large raw ivory stockpiles, registration/marketing could be considered on a voluntary basis or be carried out at the time of commercialisation of ivory within the EU (i.e. when an application for an internal EU trade certificate is submitted). Whole tusks and larger specimens could be marked in accordance with the provisions of *CITES Resolution Conf. 10.10 (Rev. CoP16)*.

It is important to note, however, that measures/approaches such as stockpile registration and the marking of ivory specimens would not address the concerns expressed by some that, for example, legal ivory trade may send a confusing message to consumers or that additional supply could contribute towards the creation of new consumer segments. However, based on the information in this report, it is not possible to comment on the validity of such arguments.

This report has highlighted a need for further information/evidence as to whether recently poached ivory is being brought into the EU and attempted to be re-exported legally under EU re-export certificates. This could be addressed by further monitoring of the EU ivory trade (e.g. requiring prior issuance and review of import permits from destination countries to highlight instances where false documents might be used *vis-à-vis* Asian countries) and an assessment of the origin of raw ivory in stockpiles in the EU (e.g. through spot checks of particularly large stockpiles). Understanding of this issue could also be improved by increasing enforcement effort to detect cases of illegal trade<sup>34</sup>, and the subsequent application of forensic tests to determine the origin and age of ivory seized.

### *Recommendations*

In addition to the above approaches, the following recommendations are suggested to improve the monitoring and control of ivory trade in the EU, in support of any (temporary) ban on the re-export of raw ivory from the EU and/or to inform further measures/actions.

MS are recommended to:

- Improve reporting of ivory trade data to the CITES trade database, to include both the quantity of ivory concerned (in kg) as well as the number of specimens (so that trends in the quantity of ivory over time can be discerned, especially for worked specimens).

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<sup>34</sup> It is noted that any further enforcement work to address ivory issues would need to be considered in the context of wider priority setting in relation to wildlife trade-related crime in the EU. The February 2014 consultative communication on the EU approach to wildlife trafficking and April 2014 expert conference identified a need for comprehensive data *inter alia* to inform priority setting. Against this background, the EnviCrimeNet and Europol have recently launched the Intelligence Project on Environmental Crime (IPEC), which follows on from the findings of Europol's Serious and Organised Crime Threat Assessment (SOCTA, 2013), and the separate Threat Assessment on Environmental Crime (Europol, 2013). Information generated through this project can assist MS authorities and the European Commission in determining wildlife crime priorities, to ensure that limited resources are directed towards the priorities identified.

- In conjunction with the European Commission, follow-up on identified discrepancies in importer/exporter data in relation to commercial re-exports of pre-Convention ivory from the EU.
- Increase their use of EPIX (the Electronic Permit Information eXchange) (or of another central CITES permit/certificate database) to facilitate the exchange of CITES permit data among the MS and the verification of details of CITES permits issued for antique/pre-Convention ivory in the EU.
- Consult in all cases with relevant MS when considering applications for trade in raw ivory (e.g. the MS of original import, or the MS that issued a previous transaction-specific certificate) or, in the case of worked specimens, where applications are deemed suspicious or particularly significant (e.g. in terms of the quantity of ivory involved, evidence provided).
- In conjunction with the European Commission, support the development of practical, cost-effective and rapid forensic techniques for dating ivory in the EU and ensure that these are available/accessible in all MS.<sup>35</sup>
- Carry out spot checks on known and particularly large raw ivory stockpiles in the EU, with a view to determining the origin and legality thereof.

The European Commission is recommended to:

- Request MS to provide data on internal EU trade/re-export certificates at regular (e.g. six-monthly) intervals and carry out regular monitoring of these data to detect any important and emerging trends in EU ivory trade.
- Support the development of Guidance to assist MS in assessing applications for certificates for intra-EU trade and re-export of pre-Convention/antique ivory from the EU and facilitate the harmonisation of procedures across MS. It is recommended that the Guidance provide advice *inter alia* on:
  - (i) the evidence that may be accepted as proof of legal acquisition, and the circumstances in which more stringent evidence should be requested;
  - (ii) the circumstances in which other MS should be consulted with regard to internal EU trade/re-export certificates;
  - (iii) the appropriate methods for weighing, measuring, marking and/or photographing ivory specimens, in order to ensure the identity of a specimen can be accurately determined using the information recorded on a certificate;
  - (iv) the marking requirements applicable to particular ivory specimens and the allocation of responsibilities for carrying out marking/the costs thereof.
- In conjunction with the MS, support the development of practical, cost-effective and rapid forensic techniques for dating ivory in the EU and ensure that these are available/accessible in all MS.

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<sup>35</sup> For example, evidence from radiocarbon dating has been accepted by a court in the UK (see <http://www.tracenetwork.org/wp-content/uploads/2012/08/Wildlife-Crime-use-of-forensics-FWG-April-2014.pdf> at p.51). The ongoing research project funded by Germany on the determination of age and geographical origin of African Elephant ivory may also provide a basis for further work in this regard. For further information see: <http://www.cites.org/eng/cop/16/inf/E-CoP16i-19.pdf>.

**Additional information:**

Following the finalisation of this report, an analysis of EU CITES Annual Report data carried out by UNEP-WCMC revealed the following trends in elephant ivory/trophy imports (e.g. imported into the EU as hunting trophies, personal effects, etc.) that could warrant further investigation/monitoring in light of trends in ivory re-exports from the EU described in this report. In particular:

- For African Elephant populations listed in Annex A of the EU Wildlife Trade Regulations, wild-sourced imports in 2012 included 100 “trophies” and 16 tusks primarily reported as purpose “H” and “P”. This equated to approximately 113 - 121 individuals and represented a 41% increase compared to imports in 2011. The top exporters of trophy items in 2012 were Tanzania and Mozambique.
- For African Elephant populations listed in Annex B of the EU Wildlife Trade Regulations, wild-sourced imports in 2012 included 175 tusks and 130 “trophies” primarily reported as purpose “H” and “P”. This equated to approximately 373 – 468 individuals and represented an 87% increase compared to 2011. The top exporters of trophy items in 2012 were Zimbabwe and Botswana (UNEP-WCMC, 2014).

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## Annex 1 – Questionnaire to the EU MS (July 2014)

### Determining an approach to the (re-)export of pre-Convention/antique ivory from the European Union:

Questions for the CITES Management Authorities of the EU Member States

July 2014

#### PART 1:

##### Stricter domestic measures

- 1.1. Have any stricter domestic measures been enacted by your country with regard to the trade in ivory?  
(If yes, please provide details of these measures and reference to any relevant legislation)

#### PART 2:

##### Assessing applications for re-export/internal trade certificates for pre-Convention/ antique ivory

- 2.1. What difficulties are faced when processing applications for the re-export of pre-Convention/antique ivory?
- 2.2. Who bears the burden of proving the legal origin of the antique/pre-Convention ivory specimen(s) concerned?
  - a. *Re-export certificate application:*
  - b. *Internal trade certificate application:*
- 2.3. What evidence is accepted as proof of legal origin in support of such an application?
  - a. *Re-export certificate application:*
  - b. *Internal trade certificate application:*
- 2.4. Does the type/level of evidence accepted (as proof of legal origin) vary according to the specimen(s) concerned (e.g. stricter requirements for the re-export of raw pre-Convention ivory)?
- 2.5. Where an applicant provides an internal trade certificate issued by another EU Member State as proof of legal origin for the purposes of an application for the re-export of a specimen:
  - a. *Is the Member State that originally issued the internal trade certificate consulted regarding the re-export certificate application? AND/OR*
  - b. *Is any additional documentation/evidence requested as proof of legal origin, in support of the internal trade certificate provided?*

### **PART 3:**

#### **Registration of ivory stockpiles**

- 3.1. Do you consider that registering ivory stockpiles held by private individuals/entities in the EU is a feasible/practical approach to regulating the re-export of pre-Convention/antique ivory from the EU? *(Please provide reasons for your answer)*
- 3.2. Is there a system currently in place in your territory for the registration of pre-Convention ivory stockpiles? *(If so, please provide details of how any such system functions in practice, including details of any marking requirements)*
- 3.3. Do you have any experiences or elements of best practice to share on the issue of stockpile registration (whether from your country's experience of registering stockpiles of ivory or any other CITES-listed species – e.g. timber)?

### **PART 4:**

#### **Impact on industry and other stakeholders**

- 4.1. Which industry sectors (or other stakeholders) do you consider will be affected by any future decisions to restrict re-exports of pre-Convention/antique ivory from the EU? *(Please provide details if possible – e.g. how much ivory is estimated as currently held by a particular sector, what is the expected severity of impact, etc.)*

**Thank you for your feedback!**

**Annex 2 – Relative numbers of transactions across regions and ivory classes (1996 – 2011)  
based on bias-adjusted ETIS seizure data (Underwood *et al.*, 2013)**

