

Link between Elephant Poaching, Illegal Ivory Trade and the EU Domestic Ivory Market¹

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1. Evidence that loopholes in EU ivory trading rules provide opportunities for poached ivory to be laundered into legal markets

There is increasing evidence that illegal ivory (post-1947) is being sold as antique, using exemptions which permit worked ivory declared to be "antique" (acquired before 1947) to be moved freely within the EU without any permit. Worked ivory declared as pre-Convention (acquired before 1976 for African elephant and 1975 for Asian elephant) can still be re-exported with a certificate. These loopholes are enabling the laundering of illegally imported ivory through the EU's markets.² The ivory pieces are sometimes treated to look antique and sold with forged permits. During hearings for the 2018 Ivory Act in the UK, the CITES Management Authority stated that "The UK Border Force has seized multiple ivory items which have been subject to artificial stains or ageing techniques, which are clearly destined for the antique market. Studies have shown that where outlets [are] offering legal and illegal ivory side-by-side, revenue and profits become intermingled and difficult to separate".³

Studies showing that a legal domestic ivory market provides opportunities for laundering illegal ivory, further fuelling the elephant poaching crisis, are numerous.⁴ Research focusing on the EU undertaken by **INTERPOL** and **TRAFFIC**, as well as NGOs such as the **International Fund for Animal Welfare (IFAW)**, **Robin des Bois**, **Save the Elephants**, **Elephant Action League** and **Avaaaz** in collaboration with **Oxford University**, supported by evidence from the **UK's Border Force** and observations by **WWF**,⁵ has uncovered numerous examples in the last 15 years (see details in Annex). In the most recent report published by **TRAFFIC**, it was found that "based on number of records, the EU plays a role as a re-exporter of illegal ivory", with several Member States expressing their concerns that newly worked ivory items are being presented as antiques, generally in on online platforms, and subsequently re-exported.⁶ Evidence of abuse of the EU ivory antique exemption through online auction sites and markets has also been presented in a BBC documentary in 2016.⁷ In 2014, a study carried out for the European Commission on the re-export of pre-Convention / antique ivory from the EU found that the number of EU import certificates recorded was higher than the recorded export certificates.⁸ No explanation was offered for this discrepancy, but in light of the studies referred to above, the findings provide further evidence of problems with the EU antiques market.

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² According to a 2013 study by INTERPOL of online ivory sales in Europe, 60% of the illegal worked ivory items identified as having been sold from within the EU were illegally imported as personal effects. INTERPOL, IFAW (2013) *Project Web: An investigation into the ivory trade over the internet within the European Union*

³ Defra, *Ivory Bill Factsheet – overview*, 23 May 2018

⁴ Bennett, E. L. (2015). *Legal ivory trade in a corrupt world and its impact on African elephant populations*. Conservation Biology, 29(1), 54-60.; Harvey, R. (2015). *Preserving the African elephant for future generations*. South African Institute of International Affairs, July; Lemieux, A. M., & Clarke, R. V. (2009). *The international ban on ivory sales and its effects on elephant poaching in Africa*. The British Journal of Criminology, 49(4), 451-471

⁵ <https://www.independent.co.uk/news/uk/home-news/ivory-tea-stained-1947-law-uk-parliament-debate-a7564171.html>

⁶ TRAFFIC *Examining options for possible restrictions on ivory trade in and from the EU – Summary of EU Member States responses to the European Commission questionnaire. Prepared for the European Commission*. March 2018 (revised January 2019)

⁷ <https://www.bbc.co.uk/programmes/b0813xr2>

⁸ Mundy, V. (2014). *The Re-export of pre-Convention/antique ivory from the European Union*. Report prepared for the European Commission

2. Evidence that the EU is among the world's largest exporters of ivory

An analysis of the CITES Trade Database export data for elephant ivory and ivory products for 2006–2015 revealed the EU as the single largest exporter of ivory items by number of reported transactions; in 2014 and 2015 alone, over 20,000 worked ivory products were exported. The majority of the exports were reported to be for commercial purposes, and the largest importers were China and Hong Kong.⁹ The European Commission reported in February 2016 that between 2003 and 2014 the EU had re-exported 2.8 tonnes of raw ivory and 4.1 tonnes of worked ivory.¹⁰ A more recent analysis by TRAFFIC that includes data submitted by Member States on exports in 2016, found the main exporters of worked ivory from the 28 EU Member States during 2012 to 2016 were the UK, Italy, France, and Germany.¹¹ Overall, exports were lower in 2016, and although the data are incomplete this is believed to be related to trade restrictions announced by China. China has since closed its market and Hong Kong is phasing theirs out. However, the online ivory trade is still highly prevalent in the EU, as evidenced by a 2018 study of online wildlife trade carried out by IFAW, which found that of more than 5,000 adverts offering to sell almost 12,000 items, worth \$4m in total, 11% of the adverts were for ivory.¹² Although the EU temporarily suspended re-exports of raw ivory from 1 July 2017,¹³ worked ivory continues to be (re-) exported.

3. Momentum and international support for closure of domestic ivory markets is increasing

In recent years, the international view on the ivory trade, in range, transit, and consumer countries has changed dramatically, which is reflected in the increasing number of countries closing or considering closure of their domestic ivory markets, as well as by high-level political declarations and agreements, including:

- **UN General Assembly's** adoption of its first-ever resolution on wildlife trafficking¹⁴ on 25 September 2015 and the adoption of a **Sustainable Development Goal (SDG)** to address illegal wildlife trade.¹⁵
- The motion adopted at the **International Union for Conservation of Nature (IUCN)** World Conservation Congress on 10 September 2016 calling on governments to close their domestic markets for commercial trade in raw or worked elephant ivory.¹⁶ This is now official IUCN Resolution WCC 2016 Res. 11.¹⁷

In June 2016, the US enacted a near-total ban on export and import of elephant ivory, followed by China's landmark ban on ivory trade at the end of 2017, and Hong Kong's phase-out of trade

⁹ *EU Ivory Trade: The Need for Stricter Measures*. Paper submitted to the European Commission, January 2017 on behalf of 30 international, European and African NGOs

¹⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0038&from=EN>

¹¹ TRAFFIC, *Examining options for possible restrictions on ivory trade in and from the EU – Summary of EU Member States responses to the European Commission questionnaire*, p. 10. Prepared for the European Commission, March 2018 (revised January 2019)

¹² IFAW (2018) *Disrupt: Wildlife Cybercrime: uncovering the scale of online wildlife trade*

¹³ COMMISSION NOTICE. GUIDANCE DOCUMENT *EU regime governing intra-EU trade and re-export of ivory* (2017/C 154/06) 17 May 2017 http://ec.europa.eu/environment/cites/pdf/guidance_ivory.pdf

¹⁴ UNGA A/69/L.80, "Tackling illicit trafficking in wildlife" http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/69/314

¹⁵ Target 15.7 of Goal 1 which states: *Take urgent action to end poaching and trafficking of protected species of flora and fauna and address both demand and supply of illegal wildlife products*. Paragraph 9 of the document includes a Vision of a world "...in which humanity lives in harmony with nature and in which wildlife and other living species are protected." http://www.un.org/ga/search/view_doc.asp?symbol=A/69/L.85&Lang=E and <https://sustainabledevelopment.un.org/post2015/summit>

¹⁶ <https://portals.iucn.org/congress/motion/007>

¹⁷ <https://portals.iucn.org/library/node/46428>

between 2018 and 2021. Taiwan's ban on ivory trade will enter into force on 1 January 2020. Singapore is the most recent Asian country to announce it is considering a domestic ban.¹⁸

In 2016, the African Elephant Coalition (AEC), including 28 range States, backed a proposal submitted to the Convention on International Trade in Endangered Species (**CITES**) by its member countries calling for the urgent closure of *all* domestic ivory markets.¹⁹ A groundbreaking recommendation was adopted, although language was added which has since been used to justify keeping some domestic ivory markets open, including in the EU (further detailed below).

Within the EU, in the absence of concerted action at EU level to close its domestic ivory market (other than the temporary suspension of re-exports of raw ivory in 2017), Member States have been taking their own initiatives. **France** restricted domestic ivory trade in 2016 through a ministerial decree,²⁰ and **Luxembourg** enacted a domestic ban in 2018.²¹ The **UK** government has adopted a ban on commercial dealing in ivory in the UK, which will enter into force at the end of 2019 subject to narrow and limited exemptions.²² In **Belgium**, a legislative proposal for a new law on ivory trade²³ was put to the Chamber of Representatives on 26 June 2018 that would ban all domestic ivory sales with limited exceptions for antique worked ivory specimens. The legislative proposal was unanimously agreed by the Chamber of Representatives' Committee for the Economy, Scientific Policy and Education²⁴ on 19 March²⁵ and is expected to be adopted in Parliament in early April. A motion for a resolution calling for an EU ivory ban was also introduced in the Belgian Senate in November 2018,²⁶ and adopted on 22 February 2019.²⁷

The **Czech Republic** and **Austria** only allow re-exports of worked ivory for personal, education or scientific use, while the **Netherlands** banned re-exports of raw and worked ivory (except antique ivory) in 2015 for commercial purposes,²⁸ and the minister for agriculture has further declared that trade in raw ivory will be banned from March 2019. However, while the EU allows an open internal market and exports of worked ivory to continue, these measures are only as good as the weakest link among the 28 Member States in the Union.

4. The CITES loophole on domestic ivory markets is facilitating illegal trade

At the 17th Conference of the Parties to CITES (CoP17) in 2016, the proposal by the African Elephant Coalition to close all domestic ivory markets, together with a similar one by the US, resulted in a **recommendation by the CoP** that:

¹⁸ <https://www.reach.gov.sg/participate/public-consultation/agrifood-veterinary-authority-of-singapore/proposed-ban-on-sales-of-ivory-ivory-products-in-singapore>

¹⁹ CITES CoP17 Doc. 57.2 *Closure of domestic markets for ivory*, submitted by Angola, Burkina Faso, Central African Republic, Chad, Côte d'Ivoire, Ethiopia, Gabon, Kenya, Niger and Senegal. paragraphs 10-15

²⁰ Arrêté du 16 août 2016 relatif à l'interdiction du commerce de l'ivoire d'éléphants et de la corne de rhinocéros sur le territoire national ORF n°0190 du 17 août 2016 texte n° 4

²¹ <https://environnement.public.lu/fr/actualites/2018/07/cites.html>

²² <https://services.parliament.uk/Bills/2017-19/ivory/stages.html>

²³ <http://www.dekamer.be/FLWB/PDF/54/3202/54K3202001.pdf>

²⁴ Commission pour l'Economie, Politique Scientifique, Education, Institutions Scientifiques et Culturelles nationales, Classes Moyennes et Agriculture

²⁵ <http://www.lachambre.be/kvvcr/showpage.cfm?section=%7Cflwb&language=fr&cfm=flwbn.cfm?lang=N&dossierID=3202&legislat=54>

²⁶ <http://www.senate.be/www/webdriver?MltabObj=pdf&MlcolObj=pdf&MlnamObj=pdfid&MltypeObj=application/pdf&MlvalObj=100663991>

²⁷ <http://senate.be/www/webdriver?MltabObj=pdf&MlcolObj=pdf&MlnamObj=pdfid&MltypeObj=application/pdf&MlvalObj=100664035>

²⁸ TRAFFIC, *Examining options for possible restrictions on ivory trade in and from the EU – Summary of EU Member States responses to the European Commission questionnaire*, p. 10. Prepared for the European Commission. March 2018 (revised January 2019)

*all Parties and non-Parties in whose jurisdiction there is a legal domestic market for ivory that is contributing to poaching or illegal trade, take all necessary legislative, regulatory and enforcement measures to close their domestic markets for commercial trade in raw and worked ivory as a matter of urgency.*²⁹

Several Parties, mostly those seeking to re-open the international trade in elephant ivory with which the EU aligned, argued that the link between legal domestic ivory markets and poaching and/or illegal trade could not be proved beyond doubt. In order to appease these countries, the qualifying language highlighted in bold above was inserted in the CoP recommendation,³⁰ enabling Parties to avoid closing their domestic ivory markets by relying on this defence (a view that is widely shared). The defence was used by several Parties in response to a request by the CITES Secretariat for information on the status of their domestic ivory markets at the October 2018 CITES Standing Committee meeting in Sochi, Russia.³¹

5. Loopholes in EU regulations are providing a cover for poached ivory and failing to comply with CITES

The European Commission's Guidance published in May 2017 recommending a suspension in the re-export of raw ivory³² was a welcome step, but fails to deal with the problem presented by worked ivory, which remains on sale in markets, auction houses, antique shops and online across many EU Member States, as well as the trade in worked ivory within the EU (intra-EU trade). EU Wildlife Trade Regulations permit intra EU sale of ivory that was acquired before the international trade ban entered into force in 1990. Furthermore, no certificates are required to move ivory within the EU, or to buy and sell ivory if it is claimed to be "antique" (i.e. a worked ivory item acquired before 1947).³³

The lack of EU requirements for worked ivory to be accompanied by a certificate of authenticity to be sold as "antique", has led to dealers, auctioneers and sometimes government agencies largely having to rely on their "knowledge and experience",³⁴ or statements from third party specialists³⁵ to determine the age of a piece rather than the more reliable scientific testing such as Isotope analysis.³⁶ The European Commission has acknowledged that the pre-1947 derogation is sometimes abused and that post-1947 items are offered for sale on the EU market and presented as pre-1947 items which need no certificates.³⁷

Furthermore, the EU does not implement the recommendations in CITES Res. Conf. 10.10 (Rev.CoP16) to require ivory importers, exporters, traders and manufacturers to be registered or licensed, or that ivory stockpiles are inventoried. Nor does it have specific recording, inspection and enforcement procedures to monitor the movement of ivory. In the latest reports of Member States to the Commission on intra-EU trade between 2012 and 2016, only three Member States

²⁹ CITES Res. Conf. 10.10 (Rev CoP 17) *Trade in Elephant Specimens* <https://www.cites.org/sites/default/files/document/E-Res-10-10-R17.pdf>

³⁰ Ibid

³¹ Including the EU and Japan. CITES SC70 Doc. 49.1 Annex 2 *Implementation of provisions relating to domestic ivory markets contained in Resolution Conf. 10.10 (Rev. CoP 17) Responses provided by Parties to Notification 2017/077*. October 2018

³² COMMISSION NOTICE GUIDANCE DOCUMENT *EU regime governing intra-EU trade and re-export of ivory* (2017/C 154/06) 17 May 2017

³³ Ibid

³⁴ Cox, C. (2017) *The Elephant in the Sale Room*, The School of Law, University of Portsmouth, Portsmouth, UK

³⁵ European Directorate General for the Environment (2018) *Detailed analytical report of the public consultation on ivory trade in the European Union*. A TRAFFIC Report prepared for the European Commission

³⁶ Schmidberger A. et al (2018): Development and application of a method for ivory dating by analyzing radioisotopes to distinguish legal from illegal ivory <https://www.ncbi.nlm.nih.gov/pubmed/29957512>

³⁷ European Commission (2019) *Background on elephant ivory trade in the EU and possible additional measures*. Non-paper prepared by DG Environment for the stakeholder Meeting on ivory trade, Monday 28 January 2019

reported data on intra-EU antique ivory trade. The lack of available data was linked to the fact that certificates are not required for antique ivory.³⁸

Registration / licensing, inventories and recording, inspection and enforcement procedures to monitor ivory movement are all measures which the CITES resolution governing ivory trade urges countries to take if they have “an ivory carving industry, a legal domestic trade in ivory, an unregulated market for or illegal trade in ivory, or where ivory stockpiles exist”.³⁹ **It must be concluded, therefore, that the EU regulations fail to comply with CITES.** Furthermore, enforcement efforts and evidence required for proof of legal acquisition vary significantly between Member States. These loopholes were confirmed by the **Environmental Law Institute (ELI)** in an analysis carried out for the CITES Secretariat prior to the 70th meeting of the Standing Committee (SC70) in October 2018.⁴⁰

In the absence of a strictly enforced, near-total ban on the EU’s domestic ivory market, the loopholes will continue to provide opportunities for illegally obtained (or poached) ivory to be laundered and sold. The recent trend of poached ivory increasingly being processed within Africa and subsequently exported⁴¹ further increases the risk that the EU’s regulatory loopholes are being exploited.

Conclusion: call to protect elephants for future generations

The European Union is rightly perceived as a global leader on biodiversity conservation and has a critical role to play in ending the global ivory trade once and for all. But the failure to close its own domestic market to end the laundering of worked ivory and reduce demand globally is at odds with this. *All* domestic ivory markets, illegal and legal, contribute to killing African and Asian elephants and need to be closed as a matter of urgency. China has made outstanding progress and led the way in Asia, while most member countries in the African Elephant Coalition have acted to close their own markets.⁴² In contrast, the EU’s open market for ivory, along with Japan’s ivory market, is undermining global action to close domestic markets worldwide. It is urgent that the EU goes further than a temporary suspension of the re-export of raw ivory and enacts a clear ban on its trade in all ivory, including exports and intra-EU trade (preferably through an amendment to the EU Wildlife Trade Regulations, and in the interim through revising the guidance). Regulating markets through stricter controls has been tried and tested over many years in other major consumer countries and has failed. The European Commission and Member States are therefore encouraged to take the strongest possible action, both at the EU level, and at the 18th CITES Conference of the Parties in May 2019. By working together, the threat of the ivory trade can be ended, protecting elephants in Africa and Asia for future generations.

³⁸ TRAFFIC, *Examining options for possible restrictions on ivory trade in and from the EU – Summary of EU Member States responses to the European Commission questionnaire*. Prepared for the European Commission, March 2018 (revised January 2019)

³⁹ CITES Res. Conf. 10.10 (Rev CoP 17) *Trade in Elephant Specimens* <https://www.cites.org/sites/default/files/document/E-Res-10-10-R17.pdf>

⁴⁰ CITES SC70 Inf. 19 *Controls on domestic trade in selected Appendix I listed species Part I: elephant ivory Annex: country profiles, an analysis of domestic controls in nine countries*, prepared by the Environmental Law Institute (ELI), October 2018

⁴¹ Particularly chopsticks, name seal blocks, bangles, beads and pendants, CITES SC70 Doc. 49.1 Annex 1 *Status of elephant populations, levels of illegal killing and the trade in ivory: a report to the CITES Standing Committee* p. 23, October 2018

⁴² CITES SC70 Inf. 21 *Status of Closure of Domestic Markets in African Elephant Coalition Member States – September 2018*, submitted by Liberia and Sierra Leone on behalf of the African Elephant Coalition

Annex

Evidence that the EU's Domestic Ivory Market provides opportunities for poached ivory to be laundered into legal markets

- **Martin and Stiles** reported in 2005 that much of the worked ivory sold in the EU lacks documentation and that 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 appeared to have been recently crafted and were offered for lower prices than would be expected for true antiques. *Martin, E., and Stiles, D., (2005) Ivory Markets of Europe, a survey in France, Germany, Italy, Spain and the UK. Save the Elephants.*
- In 2012, **IFAW** investigators tracked 669 online auctions and advertisements offering ivory for sale domestically and internationally in five countries (France, Portugal, Spain, the UK and Germany). Overall the results showed a high volume of trade with hundreds of potentially illegal items (either claim of legality with no documentation offered, or no claim of legality) offered for sale on websites. A further study in 2018 of online wildlife trade found that of more than 5,000 adverts offering to sell almost 12,000 items, worth \$4m in total, 11% of the adverts were for ivory. *IFAW (2012) Killing with keystrokes 2.0: IFAW's investigation into the European online ivory trade. IFAW (2018) Disrupt: Wildlife Cybercrime: uncovering the scale of online wildlife trade.*
- In 2013, **INTERPOL** tracked 660 online advertisements for predominantly worked ivory, around 50% of which were sold as “antiques”. The findings of the study raised doubts over the “antique” nature of the pieces in all but 28 cases due to the lack of documentation, suggesting that the ivory was from more recently killed elephants. *INTERPOL, IFAW (2013) Project Web: An investigation into the ivory trade over the internet within the European Union.*
- Examples from *On the Trail*, the quarterly bulletin with information and analysis on animal poaching and smuggling published by French NGO **Robin des Bois**, include: Chiswick Auctions in West London was sold a carved ivory authenticated by its experts as dating from before 1947. The ivory was seized by a police unit specialized in art trafficking. Scientific analysis revealed that the ivory came from an elephant killed in the 60s (Bulletin n°6 p. 97, 19 August 2014); The carbon-14 dating of worked ivory seized from eBay vendor proved that the objects came from elephants that were alive in the 1970s (n°14 p. 98, 13 September 13 2016).
- A 2016 survey by **TRAFFIC** of physical and online markets in the UK confirmed the ongoing availability of ivory. While the vast majority were sold as antiques, very few dealers were able to provide proof of age or documentation to prove legal acquisition. *Lau, W., Crook, V., Musing, L., Guan, J. and Xu, L. (2016) A rapid survey of UK ivory markets. TRAFFIC, Cambridge, UK.*

- **WWF's** chief adviser on wildlife in the UK, Heather Sohl stated: “We have evidence that ivory, which dates from after 1947 is being sold in the UK as antique ivory. It is not always easy to identify modern, post 1947 ivory, and ivory that has been poached on elephants before 1947. Some pieces of ivory are tea-stained to make it look older. They are literally dipped in tea to stain the piece”. *Chloe Farland, Ivory stained with tea to make it look older and bypass the law sold in UK, WWF says, The Independent, 7 February 2017*
- A report by the **UK House of Commons** published on 28 June 2018, states: “The **UK Border Force** has seized multiple ivory items which have been subject to artificial stains or ageing techniques, which are clearly destined for the antique market. Studies have shown that where outlets [are] offering legal and illegal ivory side-by-side, revenue and profits become intermingled and difficult to separate”. *Ares, E. and Pratt, A. The Ivory Bill, Briefing Paper Number 7875, House of Commons, 28 June 2018, quoting Defra, Ivory Bill Factsheet – overview, 23 May 2018.*
- A radiocarbon analysis carried out by **Oxford University** in 2018 on 109 pieces of worked ivory, purchased from 10 countries across Europe (Belgium, Bulgaria, France, Germany, Ireland, Italy, the Netherlands, Portugal, Spain and the UK) through antique dealers and private sellers, both online and in shops, found that 74% of sampled worked ivory items claiming to be antiques were in fact shown by the tests to be from modern ivory. **Avaaz**, in collaboration with **Oxford University** and **Elephant Action League** (2018) *Europe's deadly ivory trade: Radiocarbon testing illegal ivory in Europe's domestic antique trade.*
- The latest report prepared for the European Commission by **TRAFFIC**, published in January 2019, highlights concerns from several Member States, including Czech Republic, that new worked ivory items are being presented as antiques, and reports the seizure of such items advertised online. This is echoed by the UK government reporting that online platforms are often used for obtaining ivory – both legally and new items being sold as antiques - which are then shipped out of the EU. Evidence reported shows that seizures of elephant ivory on import into the EU and in transit between 2014 and 2016 have mainly involved ivory carvings and ivory pieces, with the majority of seizure records reporting unknown country of export, while the report also notes an increase in the average quantity of commercial re-exports of worked ivory specimens from the EU (as reported by the EU) between 2012 and 2016, the majority of which were antique. This implies that worked ivory is being smuggled into the EU and re-exported as “antique”. The report itself acknowledges that “based on number of records, the EU plays a role as a re-exporter of illegal ivory” as 40% of the seizures were made on re-export. *TRAFFIC (2019) Examining options for possible restrictions on ivory trade in and from the EU – Summary of EU Member States responses to the European Commission questionnaire. Prepared for the European Commission.*