



EU IVORY TRADE: THE NEED FOR STRICTER MEASURES

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Cover photograph: consignment of raw ivory tusks at premises of a Hong Kong ivory trader in 2016, including tusks cross referenced to 2015 Belgian CITES documents alongside unmarked ivory (© Alex Hofford)

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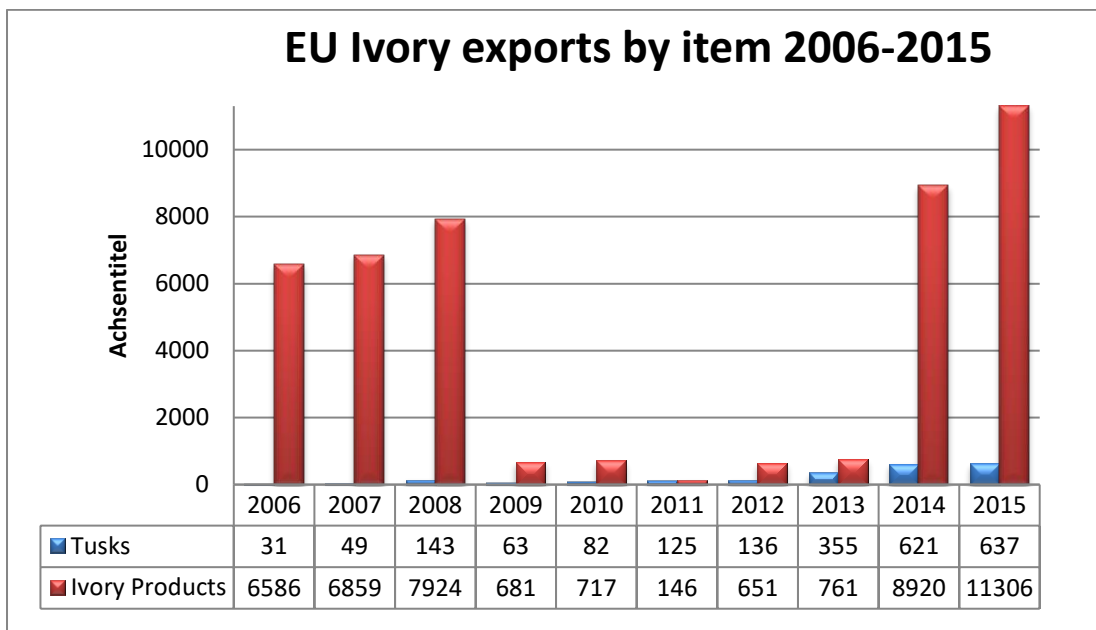
1. THE THREAT TO WILD ELEPHANTS

Elephants are facing the most serious ivory poaching crisis since the international ban on ivory trade was imposed by CITES in 1989. The Great Elephant Census (GEC) in 2016 revealed a huge decline in savannah elephants: about 144,000 (or 30%) were lost across 15 African countries between 2007 and 2014. The IUCN African Elephant Specialist Group estimated the total continental elephant population at about 415,000 in 2016. Asian elephants are also poached for their ivory.

Elephant poaching costs human lives, notably those of wildlife rangers, and has been linked to organized crime, armed militias and regional terrorist groups. It results in economic, social and political disruption, and is particularly damaging to local communities and tourism in developing countries.

2. CHARACTERISTICS OF THE EU IVORY MARKET

Contrary to the public perception that an international ban on commercial ivory trade exists, significant legal commercial trade in raw and worked ivory continues, including within and from the EU. An analysis¹ of the CITES Trade Database export data for elephant ivory and ivory products for 2006–2015, reveals the EU to be the single largest exporter of ivory items by number of reported transactions. The majority of these exports are reported to be for commercial purposes, and the largest importers are China and Hong Kong, where parallel legal and illegal ivory trades are known to exist. The data also reveal that EU ivory exports have increased sharply in recent years.



¹ See Annex A

The figures reveal a dramatic increase in numbers of both raw and worked ivory items exported from the EU in the last two years for which data are available. **In 2014 and 2015 the EU exported 1258 tusks** – more than the combined total for the previous 8 years. Almost half of worked ivory leaving the EU over the last decade was exported in 2014 and 2015. Record amounts of both raw and worked ivory exported from the EU over the last decade were set in 2014. These records were then surpassed by new export highs recorded in 2015.

In terms of countries to which ivory items were exported by EU Member States, China was the primary recipient with 16,569 (35.8%) ivory items plus 2,376 kg of ivory by weight, followed by the United States with 13,943 ivory items (30.1%) and Switzerland with 2,891 ivory items (6.3%). There were significant discrepancies between reported exports by EU countries, and reported imports by importing countries. Moreover, while the majority (90.4%) of EU ivory export transactions were reported as pre-convention (source code 'O'), the source of 4.2% of exports was reported as "wild" (source code 'W') and of 4.6% as unknown (source code 'U'), raising questions about their legality.

While the total weight of the ivory exported from the EU is not precisely known, 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**. Moreover, an additional 3 to 6.5 tonnes of whole tusks – that had not been recorded by weight – are estimated to have been re-exported between 2008 and 2014.²

Data from the Hong Kong government confirm the sharp increase in imports of worked ivory pieces from the EU from 1,572 pieces in 2014 to 10,761 pieces in 2015.³

Relatively large ivory markets still exist in the UK and Germany, with smaller markets in Belgium, France, Italy, Portugal and Spain.⁴ Martin and Stiles reported in 2005 that much of the worked ivory 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.⁵ Moreover, internet sales facilitate the marketing of ivory in the EU and enforcement authorities are facing serious difficulties in enforcing EU regulations.^{6,7}

3. EVIDENCE FOR EUROPE'S ROLE IN ILLICIT IVORY TRADING

Recent seizures confirm the increased role of Europe as a transit route and consumer market for poached ivory. Since the end of 2015 an **unprecedented number of large seizures were made in the EU**:

² <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0038&from=EN>

³ see Annex B

⁴ Mundy, V. 2014: The Re-export of pre-Convention/antique ivory from the European Union. Report prepared for the European Commission. http://ec.europa.eu/environment/cites/pdf/Ivory%20report_Nov%202014.pdf

⁵ <http://savetheelephants.org/wp-content/uploads/2014/03/2005MarketsofEurope.pdf>

⁶ Interpol 2013. Project Web: An investigation into the ivory trade over the internet within the European Union. <http://www.ifaw.org/sites/default/files/Project%20Web%20-%20PUBLIC.pdf>

⁷ IFAW 2012 Killing with keystrokes: IFAW's investigation into the European online ivory trade <http://www.ifaw.org/sites/default/files/FINAL%20Killing%20with%20Keystrokes%202.0%20report%202011.pdf>

- In November 2016 Austria's customs authorities seized a record stockpile of 90 tusks (weighing 563.74 kg). In a search of two apartments after three tusks had been traded in a public street in Vienna. The seller and buyer were both Austrian citizens.⁸
- On 20 May 2016 German authorities made a record seizure of 625 kg of tusks, cut ivory pieces and carvings at Schoenefeld airport in Berlin. This led to a second seizure of 570 kg near Koblenz and the discovery of an illegal ivory workshop, with cutting and grinding machines.⁹ Investigations are ongoing, but the German government stated that the seizure seems to involve "old ivory, such as trophies, from all over Europe."¹⁰
- In May 2016 Spanish authorities seized 744 kg ivory (74 tusks). The seller had reportedly inherited the tusks and attempted to legitimise them using a falsified hunting permit from Mozambique (dating back to 1970) for one elephant.¹¹
- In May and June 2016 French authorities seized a total of more than 470 kg of ivory on three different occasions: two at Charles de Gaulle airport, one in a car north of Paris.^{12,13}
- In November 2015, 110kg of ivory was seized in Heathrow Airport in London.¹⁴

Large ivory seizures are acknowledged to signal involvement of organized criminal networks. Several cases involve nationals from third countries: for example the large seizures in Germany and France mentioned above and five seizures in 2014 involved Vietnamese nationals living in the Czech Republic.¹⁵

In 2015, ivory was the second most commonly seized wildlife product in the EU, with 1,043 specimens and 554 kg seized. Significant numbers of parcels containing smuggled ivory were discovered during targeted customs operations in the UK (157 records in 2015 sold via the internet and destined for China) and in Germany.¹⁶ During the period 2009–2014, ivory was the most frequent wildlife product intercepted by the UK Border Force, accounting for over 40% of seizures.¹⁷

Other recent examples of illegal trade within the EU include:

- Two UK antique dealers were found guilty of offering illegal ivory on eBay in 2016^{18,19} and another in 2014.²⁰

⁸ https://english.bmf.gv.at/Largest_ivory_seizure_.html

⁹ <http://www.reuters.com/article/us-germany-customs-ivory-idUSKCN11F2FX>

¹⁰ Written response by the German Environment ministry to Parliamentary questions, published 21 December 2016

<https://kleineanfragen.de/bundestag/18/10738-elfenbeinhandel-in-deutschland>

¹¹ http://spanishnewstoday.com/744-kilos-of-illegal-ivory-seized-in-madrid_75536-a.html#action

¹² <http://www.douane.gouv.fr/Portals/0/fichiers/actualites/2016-06/2016-06-08-dossier-de-presse-saisie-de-plus-de-350-kg-d-ivoire-en-ile-de-france.pdf>

¹³ http://www.robindesbois.org/wp-content/uploads/ON_THE_TRAIL_13.pdf

¹⁴ <http://www.bbc.co.uk/news/uk-england-london-34905000>

¹⁵ Mundy, V. 2014: The Re-export of pre-Convention/antique ivory from the European Union. Report prepared for the European Commission. http://ec.europa.eu/environment/cites/pdf/Ivory%20report_Nov%202014.pdf

¹⁶ http://ec.europa.eu/environment/cites/pdf/2015_overview_important_seizures_in_EU.pdf

¹⁷ <http://www.wwf.org.uk/updates/nearly-3000-seizures-illegal-wildlife-products-made-uk-border-force>

¹⁸ <http://www.mirror.co.uk/news/uk-news/despicable-ivory-trader-told-think-9215763>

¹⁹ <http://www.express.co.uk/news/nature/710597/Crack-UK-wildlife-crime-unit-smashes-plot-to-sell-ivory-on-eBay>

²⁰ http://www.wandsworthguardian.co.uk/news/10962682.Ivory_trader_fined_just___1_375_for_selling_whale_and_dolphin_bone/

Wandsworth Guardian 24 January 2014

- In February 2016 nine ivory objects, including one tusk were seized in a consignment shop in Sicily, Italy.²¹
- In July 2016 members of the criminal group Rathkeale Rovers, which has been involved in the illegal trade in rhino horn in the EU, were arrested on a road near Poitiers, France with 4 tusks “with valid but intriguing certificates.” One of the certificates stated that the owner was a French-Vietnamese director of an export-import company dealing with antiques and cosmetics, based in the Seine Saint Denis geographical department, north of Paris.²²
- In May 2016, 16 tusks (212 kg) had been seized from the above mentioned export-import company of antiques and various merchandise in Seine Saint Denis, north of Paris. The investigation had started in September 2015 when 4 tusks (43 kg) were uncovered in a car along the route Paris-Poitiers-Bordeaux.²³ In December 2013 another 82 kg of ivory had been seized from a car on the A1 near Poitiers.²⁴
- In 2015, as part of Operation Cobra III, 43 ivory objects were seized in the Netherlands.²⁵
- In May 2014 French customs seized 208 ivory objects and 1746 pearls in a shop in Saint Denis that were offered without proof of legal acquisition.²⁶

Auction houses in the EU have repeatedly been found to offer ivory illegally:

- UK: In May 2016 Christie’s was fined £3250 for offering a product for sale that contained unworked ivory.²⁷
- Scotland: In May 2016 the auction house LS Smellie and Son was sentenced £1500 for acquisition and offer of raw elephant tusks.²⁸
- Germany: In 2015, a court ruled about the seizure of a tusk from an auction house in Munich.²⁹
- Sweden: In 2014, two cases were investigated where tusks claimed as pre-Convention and observed for sale at auctions were proven by laboratory tests to be more recent than declared.³⁰
- UK: In 2014, carved ivory, which had been wrongly dated by its experts as dating from before 1947, was seized from Chiswick Auctions in West London.³¹
- Spain: In March 2013, Spanish authorities seized 111 pieces of ivory from two auction houses. The pieces had been artificially aged in order to conceal their date of origin.³²

Evidence of abuse of the EU ivory antique exemption through online auction sites and markets was presented in a recent BBC documentary. Radiocarbon dating of nine items offered

²¹ http://www.robindesbois.org/wp-content/uploads/ON_THE_TRAIL_12.pdf

²² http://www.robindesbois.org/wp-content/uploads/ON_THE_TRAIL_14.pdf

²³ http://www.robindesbois.org/wp-content/uploads/ON_THE_TRAIL_13.pdf

²⁴ <http://www.20minutes.fr/societe/1264275-20131216-20131216-poitiers-saisie-82-kg-divoire-delephant-douane>

²⁵ [http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/578957/IPOL_IDA\(2016\)578957_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/578957/IPOL_IDA(2016)578957_EN.pdf)

²⁶ <http://www.douane.gouv.fr/Portals/0/fichiers/actualites/2016-06/2016-06-08-dossier-de-presse-saisie-de-plus-de-350-kg-d-ivoire-en-ile-de-france.pdf>

²⁷ <https://www.antiquestradegazette.com/news/2016/christie-s-fined-3250-for-offering-unworked-elephant-ivory-trophy/>

²⁸ http://www.robindesbois.org/wp-content/uploads/ON_THE_TRAIL_13.pdf

²⁹ <http://www.sueddeutsche.de/muenchen/auktionshaus-klagt-elfenbein-stoesszahn-wird-wohl-eingezogen-1.2535864>

³⁰ Mundy, V. 2014: The Re-export of pre-Convention/antique ivory from the European Union. Report prepared for the European Commission. http://ec.europa.eu/environment/cites/pdf/Ivory%20report_Nov%202014.pdf

³¹ http://www.robindesbois.org/wp-content/uploads/ON_THE_TRAIL_6.pdf page 97

³² [http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/578962/IPOL_IDA\(2016\)578962_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/578962/IPOL_IDA(2016)578962_EN.pdf)

for sale revealed that four were not antiques at all and two others had been reworked illegally. As many as 500–1000 ivory pieces are estimated to be sold weekly through UK online auctions.³³

An Interpol report on the ivory trade via internet auction sites in ten EU countries that was carried out in cooperation with Member State authorities in 2013 concluded that “**law enforcement is unable to distinguish legal ivory from illegal ivory in advertisements**” and that “the effective control of advertisements on the Internet has become an almost impossible task.”³⁴

A 2016 report by TRAFFIC³⁵ on the UK ivory trade described lax or poorly understood EU controls with information available on official websites incomplete and in some cases inaccurate. Most ivory items on sale claimed as antique had no documents or proof of their age attached, nor were such documents immediately available on request. **Traders often encouraged ivory purchasers to export products illegally** by post or in hand-baggage without official EU documentation. While no comparable recent reports are available from other Member States, it is quite possible that the situation described by TRAFFIC is similar in other Member States.

According to a report by TRAFFIC to the EU Commission “**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 Vietnam 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. Similar cases have been reported...³⁶.
- In April 2016 police in Germany seized at least seven tusks from a rented car that were accompanied by forged permits.³⁷

Moreover, some **EU companies** (e.g. in Germany and the Netherlands, with subsidiary companies in other Member States) specialize in purchasing ivory from across Europe and then re-exporting it to Asia. Reportedly, a company based in Germany has used internal EU trade certificates as a basis for re-export applications (e.g. from Germany and Bulgaria). CITES authorities in several instances rejected such applications because of lack of proof of legal acquisition.³⁸

Large ivory stockpiles are known to exist in several EU Member States. The UK alone is estimated to have imported tusks from more than 1 million elephants during the colonial era.³⁹ Several other EU countries including Belgium, France, Portugal, Spain and Germany also imported large quantities of ivory from African colonies. According to a written response by the German government to questions posed by Members of Parliament the amount of ivory in the possession of the commercial ivory carving industry in the Odenwald region was reduced significantly from

³³ <http://www.bbc.co.uk/programmes/b0813xr2>

³⁴ Interpol 2013: An Investigation into the ivory trade over the internet within the European Union <http://www.ifaw.org/sites/default/files/Project%20Web%20-%20PUBLIC.pdf>

³⁵ TRAFFIC 2016: http://www.trafficj.org/publication/16_A_Rapid_Survey_of_UK_Ivory_Markets.pdf

³⁶ Mundy, V. 2014: The Re-export of pre-Convention/antique ivory from the European Union. Report prepared for the European Commission. http://ec.europa.eu/environment/cites/pdf/Ivory%20report_Nov%202014.pdf

³⁷ <http://www.br.de/nachrichten/unterfranken/inhalt/elfenbeinfund-a3-wuerzburg-102.html>

³⁸ Mundy, V. 2014: The Re-export of pre-Convention/antique ivory from the European Union. Report prepared for the European Commission. http://ec.europa.eu/environment/cites/pdf/Ivory%20report_Nov%202014.pdf

³⁹ Milliken, T, (Traffic) 2016, quoted in <http://www.express.co.uk/news/nature/705713/Elephant-slaughter-shock-report-shows-thousands-ivory-products-sale-Britain>

13.5 tonnes (more than 1,000 tusks) registered in 2007 to 2.3 in 2014.⁴⁰ However, no public information is available on what happened to this ivory.

Two dossiers, compiled by Robin des Bois in their regular publication “On The Trail” summarising over 60 cases of illegal ivory trade in the last three years involving the EU, are included as Annex C.⁴¹

4. LEGAL IVORY FUELS ILLEGAL TRADE AND CONSUMER DEMAND IN A GLOBAL MARKET

Ivory exports from the EU constitute one of several legal and illegal sources of ivory feeding a global market for ivory, particularly in key destinations for ivory in Asia. Regional, national and local markets are inextricable components of this indivisible global market. As documented above, legal exports of raw and worked 'pre-Convention' ivory items from the EU have risen substantially in recent years. China and Hong Kong are the largest importers of this “legal” EU ivory. Asian markets play a key role in transnational illegal ivory trade. China is the world’s largest destination market for illegal ivory⁴².

A wealth of evidence is now available that unquestionably shows that the domestic legal ivory market in China is perpetuating illegal trade in ivory.⁴³ For example in 2013, the owner of a licensed ivory carving factory was convicted for smuggling a total of 7.7 tonnes of ivory from Africa to China.⁴⁴ Hong Kong is the city with the world’s largest legal ivory retail market with an ivory licensing system which is fraught with significant loopholes enabling ivory trafficking.⁴⁵ Recent investigations have also documented how Japan’s legal domestic ivory trade control system is plagued by loopholes and undercut by weak legislation. No meaningful control exists at even the most basic level.⁴⁶ Indeed, EU ivory markets have been accused of fuelling illegal trade in mainland China⁴⁷ and Hong Kong.⁴⁸

A recent BBC documentary⁴⁹ showed ivory legally exported from the EU ends up in the hands of the same traders in Hong Kong who were also buying and selling recently poached ivory.⁵⁰ There

⁴⁰ Written response by the German Environment ministry to Parliamentary questions, published 21 December 2016

<https://kleineanfragen.de/bundestag/18/10738-elfenbeinhandel-in-deutschland>

⁴¹ See Appendices 2 and 3 attached. Full English version of the cases available at [http://www.robindesbois.org/en/a-la-trace-bulletin-dinformation-et-danalyses-sur-le-braconnage-et-la-contrebande/](http://www.robindesbois.org/en/a-la-trace-bulletin-dinformation-et-danalyses-sur-le-braconnage-et-la-contrebande). Original in French <http://www.robindesbois.org/a-la-trace-bulletin-dinformation-et-danalyses-sur-le-braconnage-et-la-contrebande/>

⁴² See, e.g., UNEP et al. (2013), Elephants in the Dust – The African Elephant Crisis. A Rapid Response Assessment at 40, 67

⁴³ See, e.g., EIA (Nov. 2014), Vanishing Point - Criminality, Corruption and the Devastation of Tanzania’s Elephants, <http://eia-international.org/vanishing-point-criminality-corruption-and-the-devastation-of-tanzanias-elephants>; EIA (March 2012), Blood Ivory: Exposing the Myth of a Regulated Market, <http://eia-international.org/bloodivory-exposing-the-myth-of-a-regulated-market>; Elephant Action League (2015), Blending Ivory: China’s old loopholes, new hopes

⁴⁴ EIA 2014: In Cold Blood: Combating organised wildlife crime, <http://eia-international.org/in-coldblood-combating-organised-wildlife-crime>.

⁴⁵ WWF-Hong Kong 2015: The Hard Truth: How Hong Kong’s Ivory Trade is Fuelling Africa’s Elephant Poaching Crisis; WildAid (2015), The Illusion of Control: Hong Kong’s ‘Legal’ Ivory Trade; Elephant Action League (2015), Blending Ivory: China’s old loopholes, new hopes.

⁴⁶ EIA 2015: Japan’s Illegal Ivory Trade and Fraudulent Registration of Ivory Tusks, <http://eia-global.org/news-media/fraudulent-tusk-registration-fuels-ivory-trade-in-japan>.

⁴⁷ http://news.xinhuanet.com/2015-03/27/c_1114787367.htm

⁴⁸

<https://www.hk01.com/%E5%9C%8B%E9%9A%9B/21141/%E9%A6%99%E6%B8%AF%E6%98%AF%E8%B1%A1%E7%89%99%E6%9C%80%E5%A4%A7%E4%B8%AD%E8%BD%89%E7%AB%99-%E6%8F%AD%E7%A7%98%E5%90%88%E6%B3%95%E5%A4%96%E8%A1%A3%E4%B8%8B%E7%9A%84%E8%A1%80%E8%89%B2%E8%B5%B0%E7%A7%81%E9%8F%88>

⁴⁹ <http://www.bbc.co.uk/programmes/b0813xr2>

⁵⁰ As investigations of trade outlets have shown (eg in Hong Kong) legal and illegal traders are mutually supportive. The key challenge for ivory smugglers is to sell. A major option is to establish and cultivate contacts with legal traders because they provide transport

have also been seizures of ivory in Asia exported from the EU. For example, in October 2015, Shijiangzhuang Customs Anti-Smuggling Bureau in China seized six ivory carvings from a mail parcel sent from France.⁵¹ In August 2014, Fuzhou Customs in China seized 37 ivory products mailed or transported in person from the UK to China,⁵² thereby cracking a UK-based criminal syndicate involved in ivory smuggling.⁵³ Vietnam has over the last three years, repeatedly seized ivory that was exported from France (see Annex C). In July 2016 eight parcels containing raw ivory were seized in Vietnam that had been exported from the Czech Republic.⁵⁴

A recent TRAFFIC report notes that according to traders, **the principal buyers of ivory antiques in the UK in recent years are East Asian citizens**, from mainland China, Japan and Hong Kong, as well as European citizens, such as Germans, Austrian and Portuguese.⁵⁵ This directly links the ivory market in the EU with consumers from Asian countries, and undermines the impact of demand-reduction campaigns in such markets. By failing to prohibit ivory exports from the EU, the EU also stands to undermine China's recent decision to close its domestic ivory market by end of 2017.

5. GAPS AND WEAKNESSES IN EXISTING AND PLANNED EU IVORY CONTROLS

The EU is the only section of the global ivory market that is controlled regionally and relies heavily on import and export controls at EU external borders. Those countries with the weakest external border controls will inevitably be targeted by those wishing to evade import controls, or re-export ivory. The absence of border controls between the EU's 28 Member States means ivory, including illegal ivory, can easily be moved within the entire region without adequate enforcement or inspection measures.

Loopholes resulting from exemptions for pre-1947 and pre-Convention specimens

The EU's attempts to control internal ivory commerce are seriously hampered by the fact that 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 pre-1947 worked item). Reports on the internet trade, the recent carbon dating of alleged "antique" items by the BBC, and convictions of antiques dealers and auction houses (see above) clearly show that this loophole is exploited by unscrupulous traders.

The wide exemption permitting trade in "antique" ivory without certificates is contained only in the implementing regulation (Commission Regulation 865/2006), which was laid down by the Commission under the Committee procedure – it is not included in the Council regulation and was never specifically sanctioned by the Council or Parliament. It is inconsistent with the minimum standard set by CITES which requires pre-Convention specimens to have an (individual) certificate issued by a Management Authority (Article VII.2).

channels and storage facilities, as well as communications with potential customers and access to CITES permits. Laundering in this way allows the legal trade to solve all the logistic, bureaucratic and financial problems faced by the smugglers. As long as there is a domestic market open somewhere, the illegal trader or poacher will hope to supply the raw material or the finished product. This is something we can extrapolate from our knowledge of business history. On the other side, the interest of the legal traders is also served by their role in laundering ivory. They have a sunken investment (eg a shop, licenses, craftsmen and their tools) but they face restrictions on the supply of the raw material. Laundering is a favourable option to continue in business and prop up profitability.

⁵¹ <http://www.customs.gov.cn/publish/portal171/tab63131/info761382.htm>

⁵² http://news.xinhuanet.com/english/china/2014-11/28/c_133820933.htm

⁵³ <http://www.davidshepherd.org/news-events/news/uk-based-smuggling-racket-cracked-in-china/>

⁵⁴ http://www.robindesbois.org/wp-content/uploads/ON_THE_TRAIL_14.pdf

⁵⁵ TRAFFIC 2016: http://www.trafficj.org/publication/16_A_Rapid_Survey_of_UK_Ivory_Markets.pdf

Also, the EU Regulation allows Member States to issue pre-Convention certificates for ivory claimed to have been acquired before 1990, in contradiction to CITES Resolution Conf. 13.6 (Rev. CoP16) which only accepts the validity of such certificates for ivory dated from before 1976 when African elephants were first listed on the CITES Appendices.

In addition, there is no uniform date across the EU for pre-Convention ivory. Provisions in the EU Regulation to reflect the different dates when Member States joined CITES further weaken elephant protection, by confusing EU rules on ivory trade and their enforcement across all Member States.

Although CITES Resolution 10.10 (Rev. CoP17) has for many years been calling for a number of strict measures to strictly regulate legal ivory markets, **the EU does not require that ivory importers, exporters, traders and manufacturers are registered or licensed and that ivory stockpiles are inventoried.** Nor does it have specific recording, inspection and enforcement procedures to monitor the movement of ivory. Instead enforcement efforts and evidence required for proof of legal acquisition vary significantly between Member States.

Finally, it is extremely difficult – and often even impossible – to distinguish legal from illegal ivory. Documentary evidence is often lacking or not verifiable. Radiocarbon dating, though costly and time-consuming, can help determine whether an elephant lived before the start of nuclear bomb testing in the early 1950s – but it cannot establish the date when the animal was killed or whether the ivory derived indeed qualifies under the “antiques” or “pre-Convention” exemption.

The EU lacks a consistent, mandatory and permanent ban on all ivory re-exports

Inconsistent policies among EU Member States combined with freedom to move ivory internally within the EU inevitably encourages traders to focus on Member States which continue to issue export permits for ivory. An EU-wide recommendation in the form of guidance to suspend the issuing of permits for the re-export of raw ivory would not be binding and would provide no legal security. Moreover, ending re-exports of raw ivory only, when exports of worked ivory form a large and increasing share of the trade, would represent an inconsistent, piecemeal approach and would not be in accordance with the precautionary principle.

6. VIEWS OF EUROPEAN PARLIAMENT, MEMBER STATES AND THE PUBLIC

Two resolutions were passed by the European Parliament (EP) in recent months, repeating calls for the closure of domestic ivory markets and an end to EU participation in the international ivory trade first made in 2014 when the scale and impact of recent ivory poaching and smuggling was becoming clear.

The first resolution⁵⁶ passed on 15 September 2016 concerning EU strategic objectives for the upcoming 17th CITES CoP in South Africa *“Recalls the call made in its resolution of 15 January 2014 on wildlife crime on all 28 of its Member States to introduce moratoria on all commercial imports, exports and domestic sales and purchases of tusks and raw and worked ivory products until wild elephant populations are no longer threatened by poaching;”*.

⁵⁶ 2016/2664(RSP) [http://parltrack.euwiki.org/dossier/2016/2664\(RSP\)](http://parltrack.euwiki.org/dossier/2016/2664(RSP))

The second EP resolution concerning the EU Action Plan against wildlife trafficking was passed in October 2016, and called for “*a full and immediate ban at EU level on trade, export or re-export of ivory and rhinoceros horns.*”

An opinion poll carried out by TNS in September 2016 in the UK suggested that 85% of respondents supported a complete ban on all trade in ivory. Only 8% of the persons surveyed were aware that buying and selling ivory is still legal.

A petition to the EU institutions for the closure of the European ivory trade has gathered more than 263,000 signatures since December 2016.⁵⁷

France has already taken measures restricting its own ivory trade. The Netherlands has indicated it is considering domestic measures as well. In the UK, a Parliamentary petition calling on the government to adhere to its 2010 and 2015 manifesto commitments and shut down domestic ivory trade had over 95,000 signatures as of mid-January 2016.⁵⁸ The UK government has announced that it will issue a public consultation document on stricter measures against the ivory trade as an initial step towards fulfilling its manifesto commitments to end ivory trade. In a Parliamentary debate in the UK on 8 December 2016, almost all the MPs who spoke supported closure of ivory markets.

7. RECENT INTERNATIONAL COMMITMENTS AND DEVELOPMENTS AFFECTING THE IVORY TRADE

In September 2016 at the **International Union for the Conservation of Nature’s World Conservation Congress** a Resolution was passed calling for the unconditional closure of domestic markets for elephant ivory.⁵⁹ This was supported by EU states present at the Congress.

A **CITES Resolution**⁶⁰ passed unanimously in October 2016 at the 17th meeting of the Conference of the Parties recommended that Parties, whose markets contribute to illegal trade or poaching, should “*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.*” The condition added to the resolution about markets contributing to poaching or illegal trade is manifestly met in the case of the EU, given the fact that illegal ivory is sold in the EU and transiting through it, the indivisibility of the ivory market, the intermingling of ivory legally exported from the EU with poached ivory in consumer markets, and the contribution that exports of EU ivory make to maintaining consumer markets in Asia which pose a dangerous threat to elephants.

Another resolution passed at CoP17⁶¹ urges all Parties to implement well-targeted, species-specific, evidence-based **demand reduction campaigns** for endangered wildlife and to: “*enhance policy, legislation and law enforcement in this regard.*” Parties are also required to engage key consumer groups and target “*the motivations for the demand*”, including the “*speculative nature of the demand*”. The continued trade in ivory products from the EU conflicts with the demand reduction campaigns called for by CITES and many other agreements.

The EU is a signatory to the **London Declaration** on Illegal Wildlife Trade which includes among its actions “*eradicating demand and supply*” and “*prohibiting commercial international trade in*

⁵⁷ <https://www.rainforest-rescue.org/petitions/1076/tell-the-eu-to-ban-the-ivory-trade-now>

⁵⁸ <https://petition.parliament.uk/petitions/165905>

⁵⁹ <https://portals.iucn.org/congress/motion/007>

⁶⁰ <https://cites.org/sites/default/files/document/E-Res-10-10-R17.pdf>

⁶¹ <https://cites.org/sites/default/files/document/E-Res-17-04.pdf>

*elephant ivory until the CITES Conference of the Parties determines, informed by scientific analysis, that the survival of elephants in the wild is no longer threatened by poaching.*⁶² This declaration has subsequently been reinforced by other declarations, to which the EU is also a signatory.

The US has tightened up regulations at the federal level to institute a near-total ban on ivory sales and several of the country's largest ivory markets including New York, Hawaii and California, have implemented even stronger bans on ivory sales. Hong Kong, the single largest ivory trading centre, has announced its intention to phase-out its ivory commerce over a 5 year period through a three-phase process.⁶³ Following a crucial bilateral agreement between the US and China in 2015, China has already banned most commercial imports of ivory and announced on 30 December 2016 that it will close its commercial processing and trade in ivory by end of 2017.

The EU now needs to ensure that its own regulations complement these important developments in Asia and America. **Inaction or weak measures by the EU risk delaying or preventing action by important consumer countries.**

8. CONCLUSION & RECOMMENDATIONS

The EU is obliged to act according to the **Precautionary Principle**. Article 191(2) of the Treaty on the Functioning of the EU provides that EU environmental policy is to be based on the precautionary principle. Pursuant to that principle, *"if an action or policy has a suspected risk of causing harm to the public or to the environment, in the absence of scientific consensus that the action or policy is harmful, the burden of proof that it is not harmful falls on those taking the action."* This is also a fundamental principle of CITES and EU Council Regulation 338/97.

With the closure of several global significant ivory markets outlined above, there is a strong risk that by maintaining a legal, commercial ivory trade the EU will stoke global demand for the product and provide a cover by which ivory poached from diminishing elephant populations can be laundered into trade. The precautionary principle clearly requires that the domestic ivory trade as well as all exports are banned.

Based on data on ivory seizures and incidents of illegal ivory sales in the EU, it is clear that the EU is implicated in the illegal trade in ivory and helps fuel transnational wildlife crime. While the EU has invested hundreds of millions dollars in range states' anti-poaching and enforcement efforts, the EU can no longer ignore the call for closure of domestic ivory markets by range states battling the elephant poaching crisis and must act to support the announcements by China and Hong Kong to close their domestic ivory markets. There has been a significant increase in raw and worked ivory exports from the EU to Asian markets and it is time that the EU urgently puts an end to all ivory exports and closes domestic ivory markets in the EU.

Given the **active market** and **large stockpiles of ivory** remaining in some Member States, the EU has a vital role to play in implementing recent IUCN and CITES decisions aimed at closing domestic markets swiftly and effectively, and in strengthening its own legislation, public education and enforcement efforts. Efforts to reduce demand in major consuming countries and to improve

⁶²https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/281289/london-wildlife-conference-declaration-140213.pdf

⁶³ <https://www.hongkongfp.com/2016/12/21/hong-kongs-ivory-trade-to-be-gradually-banned-by-the-end-of-2021/>
<https://www.hongkongfp.com/2016/12/21/hong-kongs-ivory-trade-to-be-gradually-banned-by-the-end-of-2021/>

anti-poaching initiatives in range states, will continue to be undermined and rendered ineffective as long as the EU's ivory market persists.

It is understood that the Commission is proposing guidance to Member States in line with the EU Action Plan against Wildlife Trafficking published earlier this year. This would include an "aim" to suspend exports of only raw pre-Convention ivory by ensuring Member States do not issue permits and to guarantee that only legal ancient ivory items are traded in the EU.

Stronger measures than mere guidelines are necessary to stop the ivory trade and the use of the EU as a transit point and destination for illegal ivory and as a source of ivory and ivory products which fuel demand in consumer countries.

We recommend that such measures include the following steps implemented in two stages:

Stage 1

We support the swift use of Commission guidance, but only as a first step and on condition that these are followed by changes to the mandatory framework for ivory under the EU Regulations.

We advocate that the guidance include a recommendation not to issue permits for (re-) export of raw and worked ivory, as both have been found in illegal trade and fuel demand. Also, a full export ban would be consistent with the ban on imports implemented by China as the main consumer country, as well as with measures to tighten rules in other CITES Parties. It will also support campaigns to reduce demand for ivory in China and other markets, including demand-reduction initiatives funded by the EU. We believe swift guidance to this effect issued as early as possible in 2017 would demonstrate the EU's commitment to the growing international consensus that the ivory trade must be brought to an end in the interest of elephants, and in the interest of addressing the loss of human lives, economic opportunities, and fighting organized crime.

We would also recommend that, as a positive step in reducing demand for ivory in accordance with the EU Action Plan and the CoP17 resolution, the guidance should encourage Member States to routinely destroy stockpiles of seized ivory, and seek voluntary engagement of the public in disposing of privately held ivory.

Stage 2

The EU should introduce a mandatory, comprehensive, permanent ban on all external commercial trade in ivory (imports, exports and re-exports) and a prohibition on commercial intra-EU trade in ivory.

We believe that measures to achieve a total ban should be possible through a combination of further guidelines (on withholding intra-EU permits) and through the amendment of the EU Wildlife trade regulations. Exemptions for commercial trade should be limited to bona fide antique items containing a small proportion and quantity of ivory, e.g. inlaid furniture or musical instruments - and all such trade should require permits. This would be similar to the approach taken in the US.