

Paris, December 21, 2021

## New European regulation on trade in ivory and ivory-containing objects

### Urgent need to modify the definition of musical instruments

The new European regulation concerning the trade of ivory - in raw form or worked into objects - will be published in the Official Journal of the EU on 31 December 2021. It will enter into force on January 19, 2022.

This text tightens the existing regulations, by strengthening the trade bans, in line with the decisions taken in the framework of CITES. The objective is to fight elephant poaching and ivory trafficking.

During the 4 years of elaboration of the new regulation, the musical instrument professionals together with representatives of musicians and orchestras were involved as stakeholders.

It was agreed that exemptions would be made for musical instruments, given the low volumes of ivory used for musical instruments, the ivory used being old, legal and, in some cases, recovered from other instruments.

The text that has just been published provides for musical instruments that :

- **The manufacture of new musical instruments or bows containing ivory is now prohibited;**
- **The repair and restoration of antique instruments with ivory is possible**, if the instruments in question contain ivory dating from before 1975<sup>1</sup> ;
- **The sale of pre-1975 musical instruments containing ivory is allowed under certain conditions**<sup>2</sup>.

These measures are in line with what was discussed.

However, **the way in which the musical instrument has been defined in this regulation (on page 2, page 10 and page 15 of the regulation) is problematic**. Indeed, in order to distinguish the musical instrument from another type of object that may contain ivory, it has been chosen to define it by its use: "it must be or have been recently used by a performer". (see footnote 2).

This seems to us to be very problematic.

Indeed, **the life cycle of a musical instrument exceeds the life of the musician and its playing periods can be interrupted without denaturing its function as an instrument**. This is particularly true of pianos and bows, which can easily survive the centuries.

We are talking about artistic and patrimonial pieces whose value is directly linked to their making and to the luthier or maker who made them and not to the fact that they contain ivory. Thus, old pianos may have remained in family or heritage homes for years and not necessarily be in usable condition today. What will

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<sup>1</sup> CITES has been applicable to African elephants since 26 February 1976 and to Asian elephants since 1 July 1975. For the sake of simplicity, this guidance document uses only the earliest date (1975) as a reference", page 3 of the Revised Guidance Document - EU Ivory Trade Regime of 16 12 2021

<sup>2</sup> Here is the definition of the pre-1975 musical instrument: *a musical instrument containing legally acquired pre-1975 ivory which is, or has been until recently, used by a performing artist and is thus not merely a decorative object.*

happen to the French heritage of Érard and Pleyel pianos, for example, or to forte pianos if it is impossible to restore and sell them?

In the same way, valuable bows - again, this value being linked to the hand that made these objects - can be preserved by families, foundations, passionate collectors, and also integrated into the stocks of violin makers.

**The text, as written, renders these instruments non-transferable and thus reduces their value to nothing.** The text also prohibits the future trade of instruments by professional instrument makers - as they are not performing musicians - which risks moving the entire market outside the EU.

The restoration of old instruments is also impacted since - according to the definition of this text - only instruments played or recently played will be eligible for restoration.

This means condemning instruments awaiting restoration that could be used again and that are artistic pieces. It is also a blow to a profession and to an activity with a high heritage value.

This would lead, on the one hand, to a very important economic loss for a sector already weakened by the current health crisis. And, on the other hand, to an enormous cultural loss for the European heritage.

**The instrument making professionals welcome the spirit of this text and respect the formal prohibition of the manufacture of any new instrument or bow containing ivory. However, in order for the text to be fully applicable, they ask that a modification of the definition of musical instrument be adopted as soon as possible.**

Proposed changes to the definition include:

*"a musical instrument containing legally acquired pre-1975 ivory [that] is not merely a decorative object" OR*

*"is, or has been [delete: 'until recently'] or could be used as an instrument by a performing artist and is thus not merely a decorative object" OR*

*"is, or has been [delete:'until recently'] used as an instrument by a performing artist and is thus not merely a decorative object"*