

New European regulation on the trade of ivory and objects containing ivory

Music Industry Statement on the Definition of Musical Instruments Pre-1975

January 13, 2022

As a preamble, we wish to express our support for the measures taken by the European Commission to regulate the ivory trade in order to protect elephants from poaching and the trafficking that accompanies it. The instrument making professionals that we represent have long since adapted to the use of substitute materials for the manufacture of new instruments.

However, as they are currently formulated, these new rules present inconsistencies that expose our sector to very heavy consequences, without any benefit for the achievement of the objectives of the text.

During the four years prior to the publication of this text on December 30 last, our representative organizations worked closely with the Commission. This coordination led to the recognition of the relevance of exemptions applicable to musical instruments. It is indeed recognized that the total amount of legal ivory present on existing instruments or used for restoration only represents a very small volume. It is also recognized that the value of an instrument is never based on the ivory it contains but only on its artistic and technical qualities and the reputation of the luthier or maker who made it.

The main aspects of these new rules are indeed in this direction, providing that

- **The manufacture of new musical instruments or bows containing ivory is now prohibited;**
- **The repair and restoration of old instruments with ivory is possible**, if the instruments in question contain ivory dating from before 1975¹;
- **The sale of pre-1975 musical instruments containing ivory is allowed under certain conditions.** ²

Unfortunately, the text introduces a new criterion, in total contradiction with the very nature of musical instruments and their life cycle. Thus, to benefit from these exemptions, a musical instrument "**must be or have been recently used by a performer**". This criterion is clearly incompatible with the reality of our sector and creates legal uncertainty.

The life span of a musical instrument usually exceeds, by far, the life span of the musician. This is especially true of high quality instruments. Bows, violins or pianos can last for centuries. During these very long periods, they may be temporarily neglected, entrusted to a specialist for maintenance or restoration, or played alternately with other instruments by the same performer. It is therefore extremely common for an instrument whose intrinsic vocation is to be played not to be played for a given period. This has no effect on its purpose or nature.

If this criterion of "recently played" - which is very difficult to assess (what is the scope of "recently"?) - were to be strictly applied, all the old instruments in the process of being restored or needing to be refurbished before being put back on the market would no longer be able to be sold and would ipso facto disappear from our cultural heritage. Many bows currently in the inventory of violin makers and waiting for a buyer would become non-transferable and would see their value reduced to nothing, which would be a tragedy for the violin makers themselves, but also for the musicians, whose instruments and bows often represent the investment of a lifetime, sometimes to the detriment of the acquisition of a home..

This concerns the entire sector: instrument makers, performers (both professional and amateur), foundations, ensembles and, more generally, all custodians and owners of musical instruments. The concert audience is also affected by this: indeed, the availability, transmission and circulation of these instruments of high artistic and technical value contributes to the excellence of the performances offered to the public, the best artists always seeking the best instruments - which are often also those with the longest life span.

We are convinced that the undesirable consequences described above were neither intended nor anticipated by the Commission. We also understand that the objective of this unfortunate formula is exclusively to remove from the benefit of the exemption those instruments whose destination is not musical, but exclusively decorative. We therefore propose to seek a solution that will allow this objective to be achieved without inflicting irreparable damage on the music sector.

¹ "The CITES Convention 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 earlier date (1975) as a reference", page 3 of the revised Guidance Document - EU regime governing trade in ivory of 16 December 2021.

² Definition of the pre-1975 musical instrument in the new European regulation: "*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.*"

A first option would be to amend the revised guidance document 2021/C528/03 as follows:

Current version ³	Amended version
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.	Pre-1975 musical instrument: a musical instrument containing legally acquired pre-1975 ivory which is, or could be used by a performing artist and is thus not merely a decorative object.

Otherwise, the notion of “recently played” should be clarified to take into account the very long life of musical instruments and the natural intermittence of their use. If this solution were to be adopted, it would be necessary to ensure that it is easily practicable and does not give rise to any legal uncertainty.

We are at your disposal to clarify the above elements if necessary and to discuss with you the possible options in more detail.

See below the presentation of the **signatories of this statement** (in alphabetical order)

³ Extract from the *Revised Guidance Document: EU regime governing ivory trade*, dated 16 Dec. 2021 (4.A, page 7): “These exceptions apply to items whose value is not related to the ivory they contain. Moreover, with the controls recommended, these exceptions are highly unlikely to contribute to elephant poaching or illegal trade in ivory, while contributing to the preservation of important artistic, cultural or historical values.”



Asociace výrobců hudebních nástrojů ČR (AVHN). The Association of Musical Instruments Makers of the Czech Republic connects juristic and physical persons – producers of musical instruments, their parts and accessory. The purpose of this association is to protect, support and to realize the common interests of its members from the standpoint of the economic-interprise intensions incl. technical and professional goals.

The Association takes care of creating the mutual solidarity and importance of awareness of the mission in the cultural area. The Association represents and defends the common interests of its members towards the state offices and authorities, towards foreign formations and organisations. As a CAFIM member – “Confederation of the European Music Industries” – the Association supports the international cooperation within the framework of the European Union.

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Bundesverband der deutschen Musikinstrumentenhersteller e.V. The National Association of German Musical Instruments Manufacturers is the official body representing the German Music Industry. Its principal objectives are to promote members' common interests through advice and support in commercial, technical and all other relevant issues; to cultivate exchange of experience between members and other associations in the realms of music worldwide; to represent the interests of German manufacturers of musical instruments and accessories vis-à-vis German and other European as well as supranational and overseas public authorities, associations and other institutions; and to draft expert opinions and furnish of information to public authorities in the sectors of musical instrument manufacture and the appurtenant field of accessories.

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Confederation of European Music Industries. The Confederation of European Music Industries (CAFIM) used to gather European musical instrument manufacturers only. On May 5, 1977, as unification within Europe gradually progressed, the confederation came to cover the entire branch. Today CAFIM represents the music trade in the whole of Europe including wholesalers, retailers and importers. Its general objectives are to promote and safeguard the interests of the European musical instrument industry as well as those of practicing musicians in every conceivable way.

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French Musical Instrument Organisation. French Musical Instrument Organisation (*La Chambre Syndicale de la Façture Instrumentale, CSFI*) was founded in 1890 in Paris. It gathers companies and craftsmen who make, distribute and export musical instruments and their accessories. The CSFI also welcomes resellers and other instrument makers associations (violin, guitar, piano). Its main objectives are the protection of its members and of the musical instrument making as a whole and the development of the instrumental practice for everybody.. www.csfi-musique.fr

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International Association of Violin and Bow Makers. (*EILA: Entente Internationale des Luthiers et Archetiers*). Founded in 1950 in Europe, the Entente Internationale is an association of violin and bow makers from around the world. The Entente was established with the aim of bringing together master craftsmen on the basis of friendship and exchange and for taking any steps deemed pertinent to defending their working conditions, developing understanding of their art, perfecting teaching methods for their students and combining the strengths and talents of each member in order to promote a revival in the art of violin and bow making. www.eila.org

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International Federation of Musicians. The *International Federation of Musicians (FIM)*, founded in 1948, is the only body representing musicians' unions globally, with members in about 65 countries covering all regions of the world. FIM is recognised as an NGO by diverse international authorities such as WIPO (World Intellectual Property Organisation), UNESCO (United Nations Educational, Scientific and Cultural Organisation), the ILO (International Labour Office), the European Commission, the European Parliament or the Council of Europe. www.fim-musicians.org

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National Association of Music Merchants. NAMM, the National Association of Music Merchants (NAMM), established in 1901, is the not-for-profit association that strengthens the \$17 billion global music, sound and event technology products industry. The association's global trade shows serve as the crossroads for professionals seeking the newest innovations in music, recording technology, sound, stage and lighting products. NAMM member programs and services promote music making for people of all ages and to create a more musical world. NAMM has supported the development of a global music coalition advocating for sustainable use of world's natural resources alongside reliable regulations that support fair trade and has funded advocacy events and participation in CITES events.

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PEARLE* Live Performance Europe, is the 'Performing Arts Employers Associations League Europe'. Pearle* represents through its member associations the interests of more than 10000 organisations in the music, performing arts and live entertainment sector. This includes profit as well as non-profit organisations, ranging from micro-enterprises to organisations with over 250 employees. Pearle* is recognised by the European Commission as a European sectoral social partner, representing the employers in the European sectoral social dialogue committee live performance. www.pearle.eu

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