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Communication from the Commission supplementing the Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021

(2021/C 528/01)

Communication from the Commission of 21 September 2020 – Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021 (1) is supplemented as follows:

(1) in point 15, number 15, the figure ‘80’ is inserted in the place of the indication ‘[…]’, and two paragraphs are added, so as for the current wording of that definition to read as follows:

‘(15) “fall back electricity consumption efficiency benchmark” means 80 per cent of actual electricity consumption, determined by Commission decision together with the electricity consumption efficiency benchmarks. It corresponds to the average reduction effort imposed by the application of the electricity consumption efficiency benchmarks (benchmark electricity consumption/average electricity consumption). It is applied for all products which fall within the eligible sectors, but for which an electricity consumption efficiency benchmark is not defined.

The fall back electricity consumption efficiency benchmark shall be reduced (as from year t = 2022) by 1.09 % on an annual basis, according to the formula established in Annex II under ‘Updated efficiency benchmarks for certain products referred to in Annex I’.

(2) in point 28, point (b), the description of the factor Ct used in the formula is supplemented, so as for the current wording of that point to read as follows:

‘(b) Where electricity consumption efficiency benchmarks listed in Annex II are not applicable to the products manufactured by the beneficiary, the maximum aid payable per installation for costs incurred in year t equals:

\[
A_{\text{max}} = A_i \times C_t \times P_{t-1} \times EF \times AEC_t
\]

In this formula, \(A_i\) is the aid intensity, expressed as a fraction (e.g. 0,75); \(C_t\) is the applicable CO\(_2\) emission factor or market-based CO\(_2\) emission factor (tCO\(_2\)/MWh) (at year t); \(P_{t-1}\) is the EUA forward price at year t-1 (EUR/tCO\(_2\)); \(EF\) is the fall-back electricity consumption efficiency benchmark as defined in point 15 number 15; and \(AEC\) is the actual electricity consumption (MWh) in year t.

(3) in the table in Annex I, the description of the sector covered by the NACE code 20.16.40.15 is completed/supplemented, so as for the current wording of that description to read as follows:

‘Polyethylene glycols and other polyether alcohols, in primary forms’;

(4) the following Annex II is inserted:

ANNEX II

Electricity consumption efficiency benchmarks and annual reduction rates for products referred to in Annex I

— *Electricity consumption efficiency benchmarks for products referred to in Annex I with exchangeability of fuel and electricity*:

Products for which exchangeability of fuel and electricity was established in Section 2 of Annex I to Delegated Regulation (EU) 2019/331.

Delegated Regulation (EU) 2019/331 in Annex I established that in respect of certain products there is substitutability between fuel and electricity. For those products, it is not appropriate to set a benchmark on the basis of MWh/t of product. Instead, starting points are the specific greenhouse gases emission curves derived for the direct emissions. For those products, the product benchmarks were determined on the basis of the sum of direct emissions (from energy and process emissions), as well as indirect emissions arising from the use of the inter-exchangeable part of the electricity.

In those cases, factor “E” in the formula for the calculation of the maximum aid as referred to in point 28(a) of these Guidelines is to be replaced by the following term that converts a product benchmark laid down in Delegated Regulation (EU) 2019/331 into an electricity consumption efficiency benchmark on the basis of an average European CO₂ emission factor of 0,376 tCO₂/MWh:

Existing product benchmark from Annex section 2 from Regulation 2021/447 (in tCO₂/t) × share of relevant indirect emissions over the baseline period (%)/0,376 (tCO₂/MWh).


— *Efficiency benchmarks for products referred to in Annex I that are not listed in Table 1 of this Annex*

The fall back electricity consumption efficiency benchmark as defined in point 15 number 15 of these Guidelines is applicable for all eligible products referred to in Annex I for which an electricity consumption efficiency benchmark is not defined.

— *Updated efficiency benchmarks for certain products referred to in Annex I*

Table 1 lists the benchmark values that should be used as a starting point for the determination of the applicable efficiency benchmark for a specific year, taking into account the corresponding annual reduction rate.

That annual reduction rate describes by how much the benchmarks will be automatically reduced annually. Unless stated otherwise in Table 1, all efficiency benchmarks (including the “fall back electricity consumption efficiency benchmark”) shall be reduced (as from year t = 2022) by 1,09 % on an annual basis, according to the following formula:

\[
\text{efficiency benchmark applicable in (year } t) = \text{benchmark value in 2021} \times (1 + \text{annual reduction rate})^{(t - 2021)}
\]
<table>
<thead>
<tr>
<th>NACE4</th>
<th>Product benchmark</th>
<th>Benchmark value in 2021</th>
<th>Benchmark unit</th>
<th>Unit of production</th>
<th>Annual reduction rate [%]</th>
<th>Product definition</th>
<th>Processes covered by product benchmark</th>
<th>Relevant Prodcom code</th>
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<td>Chemical wood pulp, soda or sulphate, other than dissolving grades</td>
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<td>20.13</td>
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<td>20.13</td>
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<td>Silicon carbide</td>
<td>All processes directly or indirectly linked to the production of silicon carbide</td>
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<td>Silicon. Carbides of silicon, whether or not chemically defined</td>
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<td>Basic oxygen steel</td>
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<td>Crude steel: non-alloy steel produced by other processes than in electric furnaces</td>
<td>Secondary metallurgy, refractories preheating, auxiliaries and casting installations up to cut-off of crude steel products</td>
<td>24.10.T1.22</td>
<td>Crude steel: non-alloy steel produced by other processes than in electric furnaces</td>
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<td>24.10</td>
<td>Basic oxygen steel</td>
<td>0.60</td>
<td>Crude steel: alloy steel other than stainless steel produced by other processes than in electric furnaces</td>
<td>Crude steel: alloy steel other than stainless steel produced by other processes than in electric furnaces</td>
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<td>Crude steel: stainless and heat resisting steel produced by other processes than in electric furnaces</td>
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<td>Ferro-manganese containing by weight &gt; 2 % carbon</td>
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<td>Other ferro-manganese containing by weight &gt; 2 % carbon (excl. ferro-manganese with a granulometry of &lt;= 5 mm and containing by weight &gt; 65 % manganese)</td>
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<td>24.10</td>
<td>Ferro-manganese containing by weight &lt;= 2 % carbon</td>
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<td>Other ferro-manganese containing by weight less or equal than 2 % carbon</td>
<td>24.10.12.25</td>
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<td>Ferro-silicon</td>
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<td>Ferro-silicon, containing by weight &gt; 55 % of silicon</td>
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<td>Ferro-silicon, containing by weight &gt; 55 % of silicon</td>
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<td>Ferro-silicon, containing by weight &lt;= 55 % silicon and &gt;= 4 % but &lt;= 10 % of magnesium</td>
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<td>(refining)</td>
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<td>Unwrought non-alloy aluminium from electrolysis</td>
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<td>MWh/t product</td>
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<td>including production control units, auxiliary processes and cast house. Also include anode plant (pre-bake). In case anodes are provided from a stand-alone plant in EU, this plant should not be compensated. For anode produced outside EU, a correction may be applied</td>
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<tr>
<td>24.44</td>
<td>Unwrought refined copper</td>
<td>0.31</td>
<td>MWh/t product</td>
<td>Copper cathodes</td>
<td>1.09</td>
<td>Copper cathodes All processes directly or indirectly linked to the electrolytic refining process, including on-site anode casting where appropriate</td>
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<tr>
<td>24.44.13.30</td>
<td>Unwrought unalloyed refined copper (excluding rolled, extruded or forged sintered products)</td>
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</table>
(5) in Annex III, the numerical data is inserted in the third column of the table, so as for the current wording of that Annex to read as follows:

**ANNEX III**

**Maximum regional CO₂ emission factors in different geographic areas (tCO₂/MWh)**

<table>
<thead>
<tr>
<th>Zones</th>
<th>Applicable CO₂ emission factor</th>
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<tbody>
<tr>
<td>Adriatic</td>
<td>Croatia, Slovenia</td>
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<tr>
<td>Iberia</td>
<td>Spain, Portugal</td>
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<tr>
<td>Baltic</td>
<td>Lithuania, Latvia, Estonia</td>
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<tr>
<td>Central Western Europe</td>
<td>Austria, Germany, Luxembourg</td>
</tr>
<tr>
<td>Nordic</td>
<td>Sweden, Finland</td>
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<tr>
<td>Czechia-Slovakia</td>
<td>Czechia, Slovakia</td>
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<td>Belgium</td>
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<td>Bulgaria</td>
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<td>Poland</td>
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<td>Romania</td>
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</tbody>
</table>
COMMUNICATION FROM THE COMMISSION

Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest

(2021/C 528/02)

1. INTRODUCTION

1. This Communication gives guidance on the assessment of public financing of important projects of common European interest (IPCEIs) under Union State aid rules.

2. IPCEIs can make a very important contribution to sustainable economic growth, jobs, competitiveness and resilience for industry and the economy in the Union and strengthen its open strategic autonomy, by enabling breakthrough innovation and infrastructure projects through cross-border cooperation and with positive spill-over effects on the internal market and the society as a whole.

3. IPCEIs make it possible to bring together knowledge, expertise, financial resources and economic actors from across the Union, in a bid to address important market or systemic failures or societal challenges that could not otherwise be addressed. They are designed to bring together the public and private sectors to undertake large-scale projects of significant benefit to the Union and its citizens.

4. IPCEIs can underpin all policies and actions that seek to achieve common European objectives, in particular the European Green Deal (1), the Digital Strategy (2) and the Digital Decade (3), the New Industrial Strategy for Europe (4) and its update (5), the European Strategy for Data (6) and Next Generation EU (7). IPCEIs can also contribute to a sustainable recovery following serious economic disturbances such as those caused by the COVID-19 pandemic and support efforts to strengthen the Union’s social and economic resilience.

5. Taking into account the updated New Industrial Strategy and the Small and Medium-sized Enterprise (SME) Strategy (8), it is important that SMEs and start-ups can participate in IPCEIs and benefit from them. The Commission will take into account in its assessment any circumstances which indicate that the notified aid is less likely to unduly distort competition, for example due to its amount.

6. The deployment of IPCEIs often requires a significant participation from public authorities whenever the market would not otherwise finance such projects. This Communication sets out the rules that apply where public financing of such projects constitutes State aid, in order for State aid for IPCEIs to be considered to be compatible with the internal market. Notably, the rules aim at ensuring that such aid will not to an undue extent adversely affect trading conditions between Member States, and at limiting the effects of such aid on trade and competition to the minimum necessary.

7. Article 107(3), point (b) of the Treaty on the Functioning of the European Union provides that aid to promote the execution of an important project of common European interest may be considered to be compatible with the internal market. Accordingly, this Communication sets out guidance on the criteria the Commission will apply for assessing State aid granted to promote the execution of IPCEIs. It first sets out its scope and then provides a list of criteria the Commission will use to assess the nature and the importance of IPCEIs for the purposes of applying Article 107(3), point (b) of the Treaty. It then explains how the Commission will assess the compatibility of the public financing of IPCEIs with State aid rules.

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8. This Communication does not exclude the possibility that aid to promote the execution of IPCEIs may also be found compatible with the internal market on the basis of other Treaty provisions, in particular Article 107(3), point (c) of the Treaty. However, those Treaty provisions may not fully address the relevance, specificities and features of IPCEIs. These may require specific eligibility, compatibility and procedural rules, as set out in this Communication.

2. SCOPE

9. The Commission will apply the principles set out in this Communication to IPCEIs in all sectors of economic activity.

10. Those principles do not apply to:

(a) measures consisting of aid for undertakings in difficulty, as defined in the rescue and restructuring guidelines (9) or any successor guidelines, with the exception of undertakings which were not in difficulty on 31 December 2019 but became undertakings in difficulty on or after 1 January 2020 for as long as the Temporary Framework (10) is applied;

(b) measures consisting of aid for undertakings which are subject to an outstanding recovery order following a previous Commission decision declaring aid illegal and incompatible with the internal market;

(c) aid measures that constitute by themselves, by virtue of the conditions attached to them or of their financing method, a non-severable violation of Union law (11), in particular:

(i) aid measures in accordance with which the granting of aid is subject to the obligation for the beneficiary to have its headquarters in the Member State concerned or be predominantly established in that Member State,

(ii) aid measures in accordance with which the granting of aid is subject to the obligation for the beneficiary to use nationally produced goods or national services,

(iii) aid measures restricting the possibility for the beneficiary to use the obtained research, development and innovation results in other Member States.

3. ELIGIBILITY CRITERIA

11. In determining whether or not a project falls within the scope of Article 107(3), point (b) of the Treaty, the Commission will apply the criteria set out in sections 3.1, 3.2 and 3.3 of this Communication.

3.1. Definition of a project

12. The aid proposal must concern a single project, which is clearly defined in respect of its objectives as well as the terms of its implementation, including its participants and its funding (12).

13. The Commission may also consider eligible an ‘integrated project’, that is to say, a group of single projects inserted in a common structure, roadmap or programme aiming at the same objective and based on a coherent systemic approach. The individual components of the integrated project may relate to separate levels of the supply chain but must be complementary and significantly add value in their contribution towards the achievement of the European objective (13).

(9) Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1). As explained in paragraph 23 of those guidelines, given that its very existence is in danger, an undertaking in difficulty cannot be considered an appropriate vehicle for promoting other public policy objectives until such time as its viability is assured.


(12) In the case of research and development, when two or more projects are not clearly separable from each other and, in particular when they do not have independent probabilities of technological success, they must be considered as a single project.

(13) Hereafter a single project and an integrated project are referred to as a ‘project’.
3.2. **Common European interest**

3.2.1. **General cumulative criteria**

14. The project must represent a concrete, clear and identifiable important contribution to the Union’s objectives or strategies and must have a significant impact on sustainable growth, for example by being of major importance for the European Green Deal, the Digital Strategy, the Digital Decade and European Strategy for Data, the New Industrial Strategy for Europe and its update, Next Generation EU, the European Health Union (\(^\text{\textsuperscript{19}}\)), the new European Research Area for research and innovation (\(^\text{\textsuperscript{20}}\)), the new Circular Economy Action Plan (\(^\text{\textsuperscript{21}}\)), or the Union’s objective to become climate neutral by 2050, among others.

15. The project must demonstrate that it is designed to overcome important market or systemic failures, preventing the project from being carried out to the same extent or in the same manner in the absence of the aid, or societal challenges, which would not otherwise be adequately addressed or remedied.

16. Unless a smaller number is justified by the nature of the project (\(^\text{\textsuperscript{19}}\)), the project must ordinarily involve at least four Member States and its benefits must not be confined to the financing Member States, but extend to a wider part of the Union. The benefits of the project must be clearly defined in a concrete and identifiable manner (\(^\text{\textsuperscript{20}}\)).

17. All Member States must be given a genuine opportunity to participate in an emerging project. Notifying Member States must demonstrate that all Member States were informed of the possible emergence of a project, for example by way of contacts, alliances, meetings, or match-making events, also involving SMEs and start-ups, and given opportunity to participate.

18. The benefits of the project must not be limited to the undertakings or to the sector concerned but must be of wider relevance and application to the economy or society in the Union through positive spillover effects (such as having systemic effects on multiple levels of the value chain, or up- or downstream markets, or having alternative uses in other sectors or modal shift) which are clearly defined in a concrete and identifiable manner.

19. The project must involve important co-financing by the beneficiary (\(^\text{\textsuperscript{20}}\)).

20. Member States must provide evidence as to whether the project complies with the principle of ‘do no significant harm’ within the meaning of Article 17 of Regulation (EU) 2020/852, or other comparable methodologies (\(^\text{\textsuperscript{20}}\)). In the overall balancing of the positive effects of the aid against its negative effects on competition and trade, the Commission will consider compliance with this principle as an important factor in its assessment. In general, investments that do significant harm to environmental objectives within the meaning of Article 17 of Regulation (EU) 2020/852 are unlikely to have sufficient positive effects to outweigh their negative effects on competition and trade. The positive effects of a project in addressing important market or systemic failures or societal challenges that could not otherwise be addressed are in all cases subject to individualised assessment.

\(^{19}\) Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – ‘Building a European Health Union - preparedness and resilience’, COM(2020)724 final, 11 November 2020.


\(^{15}\) A smaller number of Member States, but not less than two, may be exceptionally justified in duly motivated circumstances, for example, if the project concerns interconnected research infrastructures, TEN-E and TEN-T projects that are of fundamentally transnational importance because they are part of a physically connected cross-border network or are essential to enhance cross-border traffic management or interoperability; or the project is financed from EU funds, in relation to which legal provisions on Member States’ collaboration require a lower number of participating Member States. In all cases, projects must be designed in a transparent manner in line with point 17.

\(^{16}\) The mere fact that the project is carried out by undertakings in different countries, or that a research infrastructure is subsequently used by undertakings established in different Member States, is not sufficient for a project to qualify as an IPCEI. The Court has upheld the Commission’s policy of considering that a project may be described as being of common European interest for the purposes of Article 107(3), point (b) when it forms part of a transnational European programme supported jointly by a number of governments of the Member States, or arises from concerted action by a number of Member States to combat a common threat. Joined Cases C-62/87 and 72/87 Exécutif régional wallon and SA Glaverbel v Commission [1988] ECLI:EU:C:1988:132, paragraph 22.

\(^{17}\) When assessing the extent of co-financing, the Commission will take into account the specificities of certain sectors and of SMEs. In exceptional, and duly motivated circumstances, the Commission may consider that aid is justified even in the absence of important co-financing by the beneficiary.

\(^{18}\) Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment (OJ L 198, 22.6.2020, p. 13). For measures which are identical to measures within Recovery and Resilience Plans as approved by the Council, their compliance with the ‘Do no significant harm’ principle is considered fulfilled as this has already been verified.
3.2.2. General positive indicators

21. In addition to the cumulative criteria in Section 3.2.1, the Commission will take positive note of the following suggested elements by Member States:

(a) the design of the project involves the Commission or any legal body to which the Commission has delegated its powers, such as the European Investment Bank and the European Investment Fund;

(b) the selection of the project involves the Commission or any legal body to which the Commission has delegated its power, provided that that body is acting for that purpose as an implementing structure;

(c) the governance structure of the project involves the Commission or any legal body to which the Commission has delegated its powers, and the participating Member States;

(d) the project involves important collaborative interactions in terms of number of partners, involvement of organisations from different sectors, or the involvement of undertakings of different sizes and, in particular, cooperation between large enterprises and SMEs, including start-ups, in different Member States and supports the development of more disadvantaged regions;

(e) the project involves co-funding or co-financing from an Union fund (21) in direct, indirect or shared management;

(f) the project involves a significant contribution by independent private investors (22);

(g) the project addresses a clearly identified and significant strategic dependency.

3.2.3. Specific criteria

22. Research & Development & Innovation (’R&D&I’) projects must be of a major innovative nature or constitute an important added value in terms of R&D&I in the light of the state of the art in the sector concerned (23).

23. Projects comprising of first industrial deployment must allow for the development of a new product or service with high research and innovation content or the deployment of a fundamentally innovative production process. Regular upgrades without an innovative dimension of existing facilities and the development of newer versions of existing products do not qualify as first industrial deployment.

24. For the purpose of this Communication, first industrial deployment means the upscaling of pilot facilities, demonstration plants or of the first-in-kind equipment and facilities covering the steps subsequent to the pilot line including the testing phase and bringing batch production to scale, but not mass production or commercial activities (24). The end of first industrial deployment is determined taking into account, inter alia, the relevant R&D&I-related performance indicators pointing at the ability to start mass production. First industrial deployment activities can be financed with State aid as long as the first industrial deployment follows on from an R&D&I activity and itself contains an important R&D&I component which constitutes an integral and necessary element for the successful implementation of the project. The first industrial deployment does not need to be carried out by the same entity that carried out the R&D&I activity, as long as that entity acquires the rights to use the results from the previous R&D&I activity, and the R&D&I activity and the first industrial deployment are both described in the project.

25. Infrastructure projects in the environmental, energy, transport, health or digital sectors, to the extent that they are not covered by points 22 and 23, must be of great importance for the environmental, climate, energy (including security of energy supply), transport, health, industrial or digital strategies of the Union or contribute significantly to the internal market, including, but not limited to those specific sectors, and can be supported for the period until becoming fully operational following construction.

(21) Union funding centrally managed by the institutions, agencies, joint undertakings or other bodies of the EU that is not directly or indirectly under the control of the Member State does not constitute State aid. State aid can be cumulated with financing from a Union fund provided that the condition in point 35 is complied with.

(22) Contribution of tangible and intangible assets, as well as land, must be accounted at market price.

(23) This might include, when relevant, progressively advancing towards the state of the art, to the extent that a participating project clearly and credibly aims at and describes how it will go beyond such state of the art.

(24) Limited sales, when necessary in the specific sector, related to the testing phase, including sample or feedback or certification sales, are excluded from the notion of ‘commercial activities’.
3.3. Importance of the project

26. In order to qualify as an IPCEI, a project must be important quantitatively or qualitatively. It should be particularly important in size or scope or imply a very considerable level of technological or financial risk, or both. To determine the importance of a project, the Commission will take into account the criteria set out in section 3.2.

4. COMPATIBILITY CRITERIA

27. When assessing the compatibility with the internal market of aid to promote the execution of an IPCEI on the basis of Importance of the project

29. Taking into account the nature of the project, the Commission may consider that the presence of important market or systemic failures or societal challenges, as well as the contribution to a common European interest, can be presumed for the individual components of an integrated project where the project fulfils the eligibility criteria set out in Section 3.

4.1. Necessity and proportionality of the aid

30. The aid must not subsidise the costs of a project that an undertaking would anyhow incur and must not compensate for the normal business risk of an economic activity. Without the aid, the realisation of the project should be impossible, or should only be possible on a smaller scale, with a more narrow scope, or not with sufficient speed, or in a different manner that would significantly restrict its expected benefits. Aid will only be considered proportionate if the same result could not be achieved with less aid.

31. The Member States must provide the Commission with adequate information concerning the aided project as well as a comprehensive description of the counterfactual scenario, which corresponds to the situation where no aid is awarded by any Member State. The counterfactual scenario may consist in the absence of an alternative project, where evidence supports that this is the most likely counterfactual, or in an alternative project considered by the beneficiaries in their internal decision-making, and may relate to an alternative project that is wholly or partly carried out outside the Union. To demonstrate the credibility of the counterfactual scenario presented by the beneficiaries, the notifying Member States are invited to provide relevant internal documents of the beneficiaries, such as board presentations, analyses, reports and studies.

32. In the absence of an alternative project, the Commission will verify that the aid amount does not exceed the minimum necessary for the aided project to be sufficiently profitable, for example by making it possible to achieve an internal rate of return corresponding to the sector or firm specific benchmark or hurdle rate. Normal rates of return required by the beneficiaries in other investment projects of a similar kind, their cost of capital as a whole or returns commonly observed in the industry concerned may also be used for this purpose. All relevant expected costs and benefits over the lifetime of the project must be considered.

33. The maximum permitted aid level will be determined with regard to the identified funding gap in relation to the eligible costs. If justified by the funding gap analysis, the aid intensity could cover all of the eligible costs. The funding gap refers to the difference between the positive and negative cash flows over the lifetime of the investment, discounted to their current value on the basis of an appropriate discount factor reflecting the rate of return necessary for the beneficiary to carry out the project, notably in view of the risks involved. The eligible costs are set out in the Annex.\(^{9}\)


\(^{10}\) The aid application must precede the starts of the works, which is either the start of construction works on the investment or the first firm commitment to order equipment or other commitment that makes the investment irreversible, whichever is the first in time. Buying of land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered as start of works.

\(^{11}\) For projects by SMEs, the counterfactual scenario may consist in the absence of an alternative project as referred to in point 32.

\(^{12}\) Where the information provided is covered by the obligation of professional secrecy, it is to be handled in accordance with Article 30 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

\(^{13}\) In case of an integrated project, the eligible costs must be detailed at the level of each individual project.
34. Where it is shown, for example by means of internal company documents, that the aid beneficiary faces a clear choice between carrying out either an aided project or an alternative one without aid, the Commission will compare the expected net present values of the investment in the aided project and the counterfactual project, account being taken of the probabilities of the different business scenarios occurring.

35. State aid to promote the execution of IPCEIs may be cumulated with Union funding or other State aid, provided that the total amount of public funding granted in relation to the same eligible costs does not exceed the most favourable funding rate laid down in the applicable rules of Union law.

36. As an additional safeguard to ensure that the State aid remains proportionate and limited to the necessary, the Commission may request the notifying Member State to implement a claw-back mechanism (\(^\text{(*)}\)). The claw-back mechanism should ensure a balanced distribution of additional gains when the project is more profitable than forecasted in the notified funding gap analysis and should apply only to those investments which reach, based on the ex post cash flow results and of State aid disbursements, a rate of return exceeding the beneficiaries' cost of capital. Any such claw-back mechanism should be clearly defined in advance in order to provide financial predictability for beneficiaries at the moment of decision-making on participation in the project. Such mechanism should be designed in such a way as to maintain strong incentives for beneficiaries to maximise their investment and project performance.

37. In its analysis, the Commission will take into consideration the following elements:

(a) specification of intended change: the Member State must clearly specify the change in behaviour which is expected to result from the State aid, that is to say whether a new project will be triggered, or the size, scope, speed or cross-border dimension of a project will be enhanced. The change of behaviour has to be identified by comparing the expected outcome and level of intended activity with and without aid. The difference between the two scenarios shows the impact of the aid measure and its incentive effect;

(b) level of profitability: where a project would not in itself be sufficiently profitable for a private undertaking to undertake, but would generate important benefits for society, it is more likely that the aid has an incentive effect.

38. In order to address actual or potential direct or indirect distortions of international trade, the Commission may take account of the fact that, directly or indirectly, competitors located outside the Union have received, in the last three years, or are going to receive, aid of an equivalent intensity for similar projects. However, where distortions of international trade are likely to occur after more than three years, given the particular nature of the sector in question, the reference period may be extended accordingly. If at all possible, the Member State concerned will provide the Commission with sufficient information to enable it to assess the situation, in particular the need to take account of the competitive advantage enjoyed by a third country competitor. If the Commission does not have evidence concerning the awarded or proposed aid, it may also base its decision on circumstantial evidence. The Commission may also take appropriate action to address competition distortions arising from subsidies received outside the Union.

39. When gathering evidence, the Commission may use its investigative powers (\(^\text{(a)}\)).

40. The choice of the aid instrument must be made with a view to the market failure or other important systemic failures which it seeks to address. For instance, where the underlying problem is lack of access to finance, Member States should normally resort to aid in the form of liquidity support, such as a loan or guarantee (\(^\text{(b)}\)). Where it is also necessary to provide the undertaking with a certain degree of risk-sharing, a repayable advance should normally be the aid instrument of choice. Repayable aid instruments will generally be considered as a positive indicator.

41. The selection of beneficiaries through a competitive, transparent and non-discriminatory procedure will be considered as a positive indicator.

4.2. Prevention of undue distortions of competition and balancing test

42. The Member States must provide evidence that the proposed aid measure constitutes the appropriate policy instrument to address the objective of the project. An aid measure will not be considered appropriate if other less distortive policy instruments or other less distortive types of aid instruments make it possible to achieve the same result.

43. For the aid to be compatible, the negative effects of the aid measure in terms of distortions of competition and impact on trade between Member States must be limited and outweighed by the positive effects in terms of contribution to the objective of common European interest.

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\(^{(*)}\) For projects by SMEs, no claw-back mechanism needs to be implemented unless in exceptional circumstances, in particular in consideration to the amounts of aid notified for such projects.


\(^{(b)}\) Aid in the form of guarantees must be limited in time, and aid in the form of loans must be subject to repayment periods.
44. In assessing the negative effects of the aid measure, the Commission will focus its analysis on the foreseeable impact the aid may have on competition between undertakings in the product markets concerned, including up- or downstream markets, and on the risk of overcapacity.

45. The Commission will assess the risk of market foreclosure and dominance. Projects involving the construction of an infrastructure (33) must comply with principles of open and non-discriminatory access to the infrastructure and non-discriminatory pricing and network operation, including those laid down in Union law (34).

46. The Commission will assess the potential negative effects on trade including the risk of a subsidy race between Member States, which may arise in particular with respect to the choice of a location.

47. In its assessment of the potential negative effects on trade, the Commission will consider whether aid is conditional on the relocation of a production activity or any other activity of the beneficiary from another Contracting Party to the EEA Agreement to the territory of the Member State granting the aid. Such a condition would appear to be harmful to the internal market, irrespective of the number of job losses actually incurred in the initial establishment of the beneficiary in the EEA, and unlikely to be compensated by any positive effects.

4.3. Transparency

48. Member States must ensure that the following information is published in the Commission's transparency award module or on a comprehensive State aid website, at national or regional level:

(a) the full text of the individual aid granting decision and its implementing provisions, or a link to it;
(b) the identity of the granting authority or authorities;
(c) the name and the identifier of each beneficiary, except business secrets and other confidential information in duly justified cases and subject to the Commission's agreement in accordance with Commission communication on professional secrecy in State aid decisions (35);
(d) the aid instrument (36), the aid element and, where different, the nominal amount of aid, expressed as the full amount in national currency granted to each beneficiary;
(e) the date of granting and the date of publication;
(f) the type of beneficiary (SME/large company/start-up);
(g) the region in which the beneficiary is located (at NUTS level II or below);
(h) the principal economic sector in which the beneficiary has its activities (at NACE group level);
(i) the objective of the aid.

49. The requirement to publish information applies with respect to individual aid awards exceeding EUR 100 000. Such information must be published after the decision to grant the aid has been taken, must be kept for at least 10 years and must be available to the general public without restrictions (37).

5. NOTIFICATION, REPORTING AND APPLICATION

5.1. Notification obligation

50. According to Article 108(3) of the Treaty, Member States must notify the Commission in advance of any plans to grant or alter State aid, including aid for an IPCEI.

51. Member States involved in the same IPCEI are invited, whenever possible, to submit a common notification to the Commission including a joint text describing the IPCEI and demonstrating its eligibility.

(33) For avoidance of doubt, pilot lines are not considered as infrastructures.
(34) Where the project involves an energy infrastructure, it shall be subject to the tariff and access regulation and to the unbundling requirements where required by internal market legislation.
(36) Grant/Interest rate subsidy; Loan/Repayable advances/Reimbursable grant; Guarantee; Tax advantage or tax exemption; Risk finance; Other. If the aid is granted through multiple aid instruments, the aid amount must be provided by instrument.
(37) This information must be published within 6 months from the date of granting. In case of unlawful aid, Member States will be required to ensure the publication of this information ex post within 6 months from the date of the Commission decision. The information must be available in a format which allows data to be searched, extracted, and easily published on the internet, for instance in CSV or XML format.
5.2. **Ex post evaluation and reporting**

52. The execution of the project must be subject to regular reporting. Where appropriate, the Commission may ask for an ex post evaluation to be conducted.

5.3. **Application**

53. The Commission will apply the principles set out in this Communication from 1 January 2022.

54. It will apply those principles to all notified aid projects in respect of which it is called upon to take a decision on or after 1 January 2022, even where the projects were notified prior to that date.

55. In line with the Notice on the determination of the applicable rules for the assessment of unlawful State aid (**38**), in the case of non-notified aid, the Commission will apply the principles set out in this Communication if the aid was granted on or after 1 January 2022, and the rules in force at the time when the aid was granted in all other cases.

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ANNEX

Eligible Costs

a) Feasibility studies, including preparatory technical studies, and the costs of obtaining the permissions necessary for the realisation of the project.

b) Costs of instruments and equipment (including installations and transport vehicles) to the extent and for the period used for the project. If such instruments and equipment are not used for their full life for the project, only the depreciation costs corresponding to the life of the project, as calculated on the basis of good accounting practice, are considered as eligible.

c) Costs of the acquisition (or construction) of buildings, infrastructure and land, to the extent and for the period used for the project. Where these costs are determined with regard to the commercial transfer value or the actually incurred capital costs, as opposed to the depreciation costs, the residual value of the land, building or infrastructure should be deducted from the funding gap, either ex ante or ex post.

d) Costs of other materials, supplies and similar products necessary for the project.

e) Costs for obtaining, validating and defending patents and other intangible assets. Costs of contractual research, knowledge and patents bought or licensed from outside sources at arm’s length conditions, as well as costs of consultancy and equivalent services used exclusively for the project.

f) Personnel and administrative costs (including overheads) directly incurred for the R&D&I activities, including those R&D&I activities related to first industrial deployment, or in the case of an infrastructure project, incurred during the construction of the infrastructure.

g) In case of aid to a project of first industrial deployment, the capital and operating expenditures to the extent and for the period used for the project, as long as the industrial deployment follows on from an R&D&I activity and itself contains an important R&D&I component which constitutes an integral and necessary element for the successful implementation of the project. The operating expenditures must be related to such component of the project.

h) Other costs may be accepted if justified, and where they are inextricably linked to the realisation of the project, to the exclusion of operating costs not covered by point (g).
COMMISSION NOTICE
Revised GUIDANCE DOCUMENT
EU regime governing trade in ivory
(2021/C 528/03)

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1. Introduction and glossary of terms

The purpose of this guidance document is to interpret Council Regulation (EC) No 338/97 (1) (the ‘Basic Regulation’) and Commission Regulation (EC) No 865/2006 (2), and recommending that EU Member States:

a) suspend the (re-)export and import of raw ivory items;

b) suspend internal EU trade in raw ivory, except for repairs of pre-1975 musical instruments and pre-1947 antiques of high cultural, artistic or historical importance;

c) suspend internal EU trade in post-1947 worked specimens with the exception of pre-1975 musical instruments;

d) restrict authorisation for import and (re-)export of worked ivory to pre-1975 musical instruments and sales of pre-1947 antiques of high cultural, artistic or historical importance to museums, and

e) ensure a strict interpretation of EU law on the remaining authorised trade.

This guidance document should be read in conjunction with Commission Regulation (EU) No 2021/2280 amending Commission Regulation (EC) No 865/2006 (3).

The following terms are used with a particular meaning for the purpose of this guidance document:

— ivory: refers only to ivory from elephants;

— 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. 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.

— pre-1947 antique: an item containing ivory which is covered by the definition of ‘worked specimens that were acquired more than 50 years previously’ in Article 2 (w) of the Basic Regulation;

— museum: ‘non-profit, permanent institution in the service of society and its development, open to the public, which acquires, conserves, researches, communicates and exhibits the tangible and intangible heritage of humanity and its environment for the purposes of education, study and enjoyment’ (4).

2. Background

a) International and EU legal framework governing ivory trade

Both the African Elephant *Loxodonta africana* and the Asian Elephant *Elephas maximus* are included in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which has 183 signatories (Parties), including the EU and all EU Member States.

Under the current CITES regime, international trade in ivory (5) is banned, with strictly limited exemptions (for items acquired before CITES started to apply to ivory). However, CITES does not regulate domestic trade in ivory.

The EU implements CITES through the Basic Regulation and associated Commission Regulations (‘EU wildlife trade regulations’). For elephant ivory (as for other species listed in Annex A of the Basic Regulation), the EU has adopted additional measures that are stricter than CITES.

As a result, the EU strictly regulates trade in ivory through the EU wildlife trade regulations. Trading ivory to, within or from the EU for commercial purposes is generally banned.


(5) The reference to ivory in this guidance document relates only to ivory from elephants.
However, national authorities can authorise ivory trade for commercial purposes under the following conditions:

— re-export can be authorised for ivory specimens acquired before the date on which CITES became applicable to them, i.e. 26 February 1976 for African elephants and 1 July 1975 for Asian elephants;

— trade within the EU can be authorised for ivory items imported into the EU before the elephant species was listed in Appendix I of CITES (18 January 1990 for African elephants and 1 July 1975 for Asian elephants) (5), if a certificate has been issued to this effect by the EU Member State in which the item is offered for sale for the first time;

— imports of pre-1947 items can be authorised as well as imports of legally acquired pre-1975 items that had been legally imported to the EU already before.

*Elephant poaching and ivory trafficking, driven by demand from Asia, remain at dangerously high levels*

Elephant poaching has reached unprecedented levels in the recent past, which has led to a widespread decline in African Elephant populations (7).

According to the CITES programme for Monitoring the Illegal Killing of Elephants (MIKE) (8), the Proportion of Illegally Killed Elephants (PIKE) level shows a steady increase starting in 2006, peaking in 2011, and thereafter a downward trend from 2011 to 2019. This suggests poaching levels are beginning to drop, but whether this will be sustained needs to be carefully examined. It also needs to be recognised that any decline in illegal ivory trade is occurring in conjunction with an overall decline in elephant populations in Africa (9). While the PIKE estimates suggest an overall decline in elephant poaching in Africa since 2011, there are significant regional differences, and overall poaching levels for African elephants remain a concern.

The illegal ivory trade also remains at high levels, although ivory prices are steadily declining, according to the 2020 World Wildlife Crime Report (10). According to a report from the Elephant Trade Information System (ETIS) (11), some 280 tonnes of elephant ivory were reported in around 8,000 ivory seizure cases between 2012 and 2017 worldwide. ETIS data also show an increase in Chinese-owned ivory processing operations within Africa, for exporting products to Asian markets (12) - with at least 24 cases from four African countries representing 1,119 tonnes of worked ivory moving from Africa to Asia in 2017 (13). The movement of such significant quantities of ivory indicates increasing involvement by transnational organised criminal networks.

*The international response*

In response to the challenges posed by elephant poaching and ivory trafficking, the international community has adopted numerous commitments, through Resolutions by the UN General Assembly and the UN Environment Assembly, as well as at several high-level Conferences.

The 17th Conference of the Parties to CITES (CoP17) in October 2016 adopted a series of measures to improve the enforcement of the rules against elephant poaching and ivory trafficking, reduce the demand for illegal ivory, and reinforce scrutiny of the legality of ivory on domestic markets. CITES Resolution 10.10 (Rev. CoP18) on trade in elephant specimens

(4) Pursuant to Article 8(3)(a) of the Basic Regulation.
(9) The Elephant Trade Information System (ETIS) was set up by CITES Resolution Conf. 10.10 (Rev. CoP17) on Trade in elephant specimens. One of its objectives is i) measuring and recording levels and trends, and changes in levels and trends, of illegal elephant killing and trade in ivory. ETIS produces a comprehensive report on worldwide ivory seizures before each CITES Conference of Parties. The latest report is available here: https://cites.org/sites/default/files/eng/cop/18/doc/E-CoP18-069-03-R1.pdf
urges Parties to put in place comprehensive internal legislative, regulatory, enforcement and other measures for ivory trade/domestic markets. This Resolution also recommends ‘that 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’ and recognises that ‘narrow exemptions to this closure for some items may be warranted; any exemptions should not contribute to poaching or illegal trade’.

The EU, like other Parties, is also requested to report to the Standing Committee and the Conference of the Parties on the measures taken to ensure its domestic market does not contribute to the current levels of poaching and trafficking.

**Legal trade in ivory from the EU has been reduced**

Commercial re-exports of both raw and worked ivory from the EU carried out in line with the Basic Regulation (‘legal re-exports’) increased considerably up to 2015.

Since the adoption of the previous version of this guidance document (*) in July 2017, re-export of raw ivory has been suspended, which led to a decrease in re-exported ivory tusks even before the ban entered into force (420 tusks re-exported in 2016, 101 in 2017).

Commercial re-exports of legal worked ivory also fell since 2016. The average number of re-export certificates per year issued by EU Member States has gone down from around 470 in the 2012-2015 period to 280 in the 2016-2018 period.

### b) EU initiatives against wildlife trafficking that affect internal EU ivory trade and re-export of ivory

The Communication on an EU Action Plan against wildlife trafficking (**) invited the EU and its Member States to implement a comprehensive strategy against wildlife trafficking (**). This Communication notably envisaged (under Action 2 ‘further limit trade in ivory within and from the EU’) that the European Commission would issue guidelines ‘to ensure uniform interpretation of EU rules with the aim to suspend the export of raw pre-Convention ivory and guarantee that only legal ancient ivory items are traded in the EU’ by the end of 2016. In its June 2016 conclusions on this Communication, the Council of the European Union urged ‘Member States not to issue export or re-export documents for raw pre-Convention ivory from elephants on the basis of EU guidelines and to consider further measures to put a halt to commercial trade in ivory from elephants’.

The Commission adopted a guidance document in May 2017 in response to these calls. The present guidance document updates and replaces the version of 2017 and responds to the Commission’s commitment in the EU Biodiversity Strategy for 2030 to further tighten the rules on EU ivory trade (**).

### 3. Status of this document

This guidance document was discussed and developed in cooperation with Member States’ representatives, sitting as the Group of Experts of the Competent CITES management authorities (the ‘Expert Group’).

It is intended to help citizens, businesses and national authorities apply the Basic Regulation and related Commission Regulations. It does not replace, add to or amend the rules in the Basic Regulation and its implementing Regulations: furthermore it should not be considered in isolation but used in conjunction with this legislation. Only the Court of Justice of the European Union is competent to authoritatively interpret EU law.

An electronic version of this guidance is also published by the Commission, and possibly by EU Member States.

The recommendations contained in this document are addressed to the Member States and remain valid in line with the precautionary principle, and unless new conclusive scientific evidence comes to light which would justify the revision of this guidance in consultation with the Expert Group.

(*) Commission Notice 2017/C 154/06
4. Justification for and summary of recommendations

The continuously high demand for ivory from Asia is one of the most important drivers for the current high levels of elephant poaching and ivory trafficking. The most recent analyses (MIKE and ETIS, see Section 2 a)) have shown a small reduction in poaching levels. Nevertheless, the numbers of poached elephants continue to be unsustainable for many populations in Africa.

Even though none of the EU Member States have been identified in the ETIS reports as countries that are implicated in the illicit ivory trade, the EU should continue to reduce the risk of contributing to the demand for ivory.

This guidance document aims to further limit the trade in potential higher-risk items and certain types of trade, while continuing to allow a limited and well-controlled trade in low-risk items. The document is based on a precautionary approach to implementing the rules on domestic ivory trading in the EU. They apply restrictions where a higher risk of trade contributing to the demand for ivory and illicit ivory trade is likely. Therefore, internal EU trade for certain limited types of items where the risk of contributing to ivory demand or illegal poaching of elephants is low or inexistent, can continue to take place subject to authorisations. The document also aims to help citizens and businesses better understand and follow the rules and enable more effective enforcement.

The following sections address re-exports of ivory from the EU (Section 5), internal EU trade in ivory (Section 6) and imports from outside the EU (Section 7) as well as issues of coordination (Section 8).

The rest of this section presents additional justifications for the need to act on each of these trade flows and provides a summary of recommendations to Member States. A more condensed summary in table format is provided in the concluding Section 9).

a) Re-exporting from the EU

Raw ivory (18) represents the largest share of ivory entering international illegal trade worldwide. This is evidenced by the data reported by CITES Parties to ETIS, which show that seizures of illegal raw ivory represent the great majority of ivory seized worldwide.

Raw ivory mainly consists of tusks, which are difficult to differentiate from one another. The risks that legal re-exports of raw ivory are used as cover for trading in illegal raw ivory are bigger than for worked ivory, despite the fact that legal tusks can only be traded if they marked.

Suspending the re-export of raw ivory from the EU ensures that tusks of legal origin are not mixed with illegal ivory and help destination countries implement their measures to reduce demand for ivory, which constitute an important step in addressing illegal trade in ivory and elephant poaching. This is the rationale for the de-facto ban on commercial re-export of raw ivory, in place since July 2017 (see Section 5 a)).

As there have been indications that worked items are also becoming increasingly involved in the international illegal ivory trade (19), there is a need to apply further restrictions to re-exports of worked ivory. Although there is no sign of legal activities in the EU contributing to poaching and illegal trafficking, the EU is committed to minimise the risk that any international trade coming from the EU would fuel the demand for ivory, and in turn incentivise poaching of elephants to meet this demand.

Therefore, the Commission’s recommendation is to also suspend the issuance of re-export certificates for worked ivory specimens, except for pre-1975 musical instruments and pre-1947 antiques of high cultural, artistic or historical importance sold to museums (see Section 5 b) for details on those exceptions). These exceptions apply to items whose to

(18) It is recommended that EU Member States use the definition of ‘raw ivory’ contained in CITES Resolution Conf. 10.10 (Rev. CoP 18), according to which:

a) the term “raw ivory” shall include all whole elephant tusks, polished or unpolished and in any form whatsoever, and all elephant ivory in cut pieces, polished or unpolished and howsoever changed from its original form, except for “worked ivory”; and

b) “worked ivory” shall be interpreted to mean ivory that has been carved, shaped or processed, either fully or partially, but shall not include whole tusks in any form, except where the whole surface has been carved.

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.

b) **Internal EU trade in ivory**

The EU has a responsibility to ensure commercial use of ivory in the EU is strictly controlled and regulated, as per CITES Resolution 10.10 (Rev. CoP18) and the Basic Regulation.

Since the CITES decision to ban international ivory trade in 1989, demand for ivory in Europe has fallen considerably. EU Member States have not been identified under CITES as important destination markets nor as transit countries for illegal ivory. Most internal EU trade consists of pre-1947 antiques.

However, there have been some instances of illegal trade in ivory items in the EU. The trade in raw ivory involves a higher risk for illegal ivory trade than the trade in worked ivory specimens. This justifies a suspension of issuing certificates for trading in raw ivory within the EU, except for the purpose of repairing pre-1975 musical instruments or pre-1947 antiques of high cultural, artistic or historical importance held by a museum or public institution.

Furthermore, the Commission's recommendation is to suspend issuing certificates for worked specimens acquired after 1947 except for pre-1975 musical instruments. This will limit the internal trade in worked items to pre-1947 antiques and pre-1975 musical instruments.

The different regime applicable to worked items is justified by the fact that a lower risk for illegal ivory trade has been identified in relation to internal EU trade of such items compared to trade in raw ivory and external EU trade in general, in particular when the items constitute pre-1947 antiques or pre-1975 musical instruments. It is highly unlikely that internal EU trade of pre-1947 antiques or pre-1975 musical instruments would contribute to illegal trade of ivory or demand for illegal ivory, given also that such remaining trade will be strictly controlled. Therefore, pre-1947 antiques and pre-1975 musical instruments can continue to be traded within the EU but will require the issuance of a certificate.

c) **Imports into the EU**

Importing ivory from outside the EU is strictly regulated. Commercial import is prohibited, except for pre-1947 antiques or re-imports of pre-Convention items previously imported legally into the EU (see Section 7).

Levels of commercial imports into the EU in recent years have been very low.

While some risk of fuelling the demand for ivory or contributing to poaching or illegal trade in general remains with regard to imports of worked specimens, pre-1975 musical instruments and pre-1947 antiques of high cultural, artistic or historical importance sold to museums are highly unlikely to present such risks.

To improve consistency with the rules proposed for internal EU trade and re-export, the Commission's recommendation is to suspend:

— issuance of import and re-import permits for raw ivory;

— issuance of import and re-import permits for worked ivory specimens, except for pre-1975 musical instruments and pre-1947 antiques of high cultural, artistic or historical importance sold to museums (see Section 7 for more on the conditions for applying the exceptions).

5. **How to interpret EU rules on re-exporting ivory**

The rules governing re-export of ivory specimens acquired before the date on which CITES became applicable to them are laid down in Article 5 of the Basic Regulation.

Under Article 5(2)(d), when assessing applications for re-exporting Annex A species, management authorities need to be ‘satisfied, following consultation with the competent Scientific Authority, that there are no other factors relating to the conservation of the species which militate against issuance of the export permit’.

This requirement needs to be interpreted in light of the circumstances described in Section 2, as well as in view of the specific features relating to international trade in ivory, for both raw and worked items.
a) **Re-exporting raw ivory**

The Commission recommends that Member States should consider that there are serious factors relating to the conservation of elephant species that militate against issuing re-export certificates for raw ivory.

Consequently, in line with the Basic Regulation, the Commission recommends that Member States should, as has been the case since 1 July 2017, not issue re-export certificates for raw ivory, except in exceptional cases, where the management authority in the Member State concerned is satisfied that the item:

1. is part of a genuine exchange of cultural goods between reputable institutions (i.e. museums); or
2. is an heirloom moving as part of a family relocation; or
3. is being moved for enforcement, scientific or educational purposes.

In any such exceptional cases, it is recommended that management authorities follow the guidance in this document in relation to acquiring suitable evidence of the specimen's legal origin (Annex I of this document), marking (Annex II) and, where relevant, coordination with other Member States and non-EU countries (Section 8).

b) **Re-exporting worked ivory**

Unlike raw ivory, worked ivory encompasses many different types of specimens. This includes items that have been in trade legally for decades (for example musical instruments or antiques).

The Commission recommends that Member States should, from the date this guidance is published, not issue re-export certificates for commercial trade in worked specimens.

Exceptionally, commercial trade can be authorised where the management authority in the Member State concerned is satisfied that:

— the item is a pre-1975 musical instrument; or

— the item is a pre-1947 antique sold to a museum, and a relevant authority responsible for cultural heritage (such as the responsible ministry) confirms its high cultural, artistic or historical importance and supports the transaction.

It is imperative that EU Member States exercise a high level of scrutiny in relation to applications to re-export such items, to make sure they only deliver the relevant documents if the conditions set in EU law are met to guarantee that the ivory is of legal origin.

In addition to the exemption on commercial re-export described above, Management Authorities can also issue a re-export certificate if they are satisfied that the item is:

1. part of a genuine exchange of cultural goods between reputable institutions (e.g. museums); or
2. an heirloom moving as part of a family relocation; or
3. being moved for enforcement, scientific or educational purposes.

It is recommended that the conditions for issuing re-export certificates for the above exceptions are strictly interpreted.

More specifically, when evaluating an application for re-export, be it commercial or for other purposes, Member States should consider the following:

— When evaluating if the specimen fulfils the definition of 'pre-1975 musical instrument', the owner should demonstrate that the item is, or has until recently been, used as an instrument by a performing artist and is thus not merely a decorative object containing ivory.

— When evaluating if the destination for a pre-1947 antique item can be considered to be a museum, it can be taken into account if the institution is a member of the International Council of Museums (ICOM) or a similar organisation.
— If the item is described as a pre-1947 antique of high cultural, artistic or historical importance, it should be demonstrated that the item fulfils the conditions of a ‘worked item acquired more than 50 years ago’. The ‘Guidance on worked specimens under the EU Wildlife Trade Regulations’ (§) provides clear instructions in this regard. A public authority competent for cultural heritage (such as the responsible ministry) should explicitly confirm the high cultural, artistic or historical importance of the item and support the transaction as a prerequisite for authorising the sale to a museum. Considerations such as repatriation of important cultural items to their country of origin can be taken into account.

— Evidence such as an invoice - or another document such as an expert valuation, detailing the age and price - and a detailed description and pictures of the item are required to demonstrate that the value of the item is intrinsic and not related to the ivory it contains.

— The identity of the seller and the buyer should both be part of the evaluation. The identity of the seller can, in some cases, provide additional information about the object. The country of destination, as well as the specific identity of the buyer, also need to be taken into consideration.

— Applications to re-export to a destination country identified by ETIS as a country involved in the illegal ivory trade require a higher level of scrutiny than other destination countries. Re-exports to Parties under the National Ivory Action Plan process (§) should be avoided.

— In general, the identity of the buyer can provide additional reassurance that the transaction is taking place for the intrinsic value of the specimen (e.g. museums, reputable collectors, musicians, or similar buyers).

It is for the applicant to provide evidence that the item falls under the exemptions described above. If the applicant cannot provide sufficient evidence to the satisfaction of the Member State authority, and reasons for doubt remain, no certificate should be delivered.

If issued, the certificate should describe the pre 1975-musical instrument or the pre-1947 antique item concerned with sufficient detail so that the certificate can be used only for the specimen concerned. In addition, and where legislation allows, Member States may consider collating, verifying and recording the identities of the applicant and, where possible, the purchaser.

It is particularly important for the applicant for a re-export certificate to demonstrate either that the musical instrument was made using legal pre-1975 ivory or that it is a pre-1947 antique, and that it has been legally acquired. The applicant can do this by submitting an intra-EU certificate for the item, which proves the legal acquisition and will normally also provide details about the age of the specimen. It is also possible that the applicant does not have a certificate: they may never have applied for one, or the item was previously covered by the exemption from the certificate requirement for ‘worked items acquired more than 50 years ago’. In such cases, the applicant needs to demonstrate general compliance with the requirements of Article 5 of the Basic Regulation.

Certificates expired by virtue of Article 11(4a) of Commission Regulation 865/2006 are no longer valid for commercial transactions. It is nonetheless recommended that the holder keeps a copy of such a certificate to use it as a proof of legal acquisition in any future applications or in case of inspections.

Member States will need to check if the item actually falls under any of the cases mentioned above, i.e. that there is a valid reason for the absence of a certificate.

To further assess the conditions under which such trade can be authorised, it is recommended that EU Member States also apply the guidance on:

— ‘Worked Specimens under the EU Wildlife Trade Regulations’;

— ‘Evidence to demonstrate legal acquisition’ in Annex I of this document;

— ‘Marking, registration and other requirements for issuing certificates’ in Annex II of this document.

(§) Of C 154, 17.5.2017, p. 15.
(§) http://cites.org/eng/niaps
6. How to interpret EU rules on internal EU trade in ivory

Trade within the EU of Annex A specimens is generally prohibited under Article 8(1) of the Basic Regulation. Article 8(3) authorises Member States to derogate from this prohibition if at least one of the conditions listed in subparagraphs (a) to (h) is met.

However, the use of the term ‘may’ in Article 8(3) makes it clear that Member States are not obliged to grant a certificate for internal EU trade when those conditions are met (except if otherwise required by EU law, such as to apply the principle of proportionality). When deciding about granting or not granting a certificate, the authority should use its discretionary powers in an appropriate manner.

The consequence is that Article 8(3) cannot be considered as conferring an absolute right to a certificate for internal EU trade to any applicant, even when one of the relevant conditions is met. Moreover, Article 8(3) is subject to the precautionary principle - so (as discussed above) the burden of proof for demonstrating a transaction is legitimate and consistent with the objectives of the Basic Regulation lies with the applicant.

When receiving an application for commercial use of ivory within the EU under Article 8(3), a Member State is entitled under EU law to refuse to grant a certificate, even when one of the conditions is met, provided the refusal is compatible with the principle of proportionality (i.e. the refusal is appropriate to protect the species and does not go beyond that which is necessary to achieve that aim). The Commission and the Expert Group believe this will be the case where the legitimacy of a transaction and its consistency with the objectives of the Basic Regulation have not been conclusively demonstrated by the applicant.

Member States have a responsibility to avoid issuing certificates which could facilitate any illegal activities and should therefore handle those applications for internal EU trade in a way that minimises this risk as much as possible. The issuance of certificates should be considered only for certain types of internal EU transactions that present no or very low risk of contributing to illegal ivory activities or demand for illegal ivory. Member States are recommended to ensure maximum scrutiny in handling applications for intra-EU certificates and strictly interpret the conditions for issuing such certificates.

To this end, it is recommended that EU Member States apply the guidance on the ‘evidence to demonstrate legal acquisition’ contained in Annex I of this document and on ‘marking, registration and other requirements for issuing certificates’ contained in Annex II.

If delivered, the certificate should describe the item concerned with sufficient detail so that it is clear that the certificate can only be used for the specimen concerned - this is especially important for raw ivory which is likely to have fewer identifying features. In addition, and where legislation allows, it is recommended that Member States collate, verify and record identities of the seller and of the buyer. Member States may lay down a condition specific to internal EU trade in raw ivory obliging the seller to inform the authorities of the buyer’s identity.

When applications for internal EU trade of ivory are made under Article 8(3)(c), i.e. ‘for purposes which are not detrimental to the survival of the species’, Member States are reminded that, because the import of ivory (as personal effects, notably hunting trophies) is only possible for non-commercial reasons, there is no possibility for their owners to be granted a certificate for a commercial purpose within the EU under this provision.

It is recommended that EU Member States follow the guidance outlined below when assessing applications for certificates for internal EU trade in raw ivory as well as worked specimens containing ivory.

a) Specific guidance on internal EU trade in raw ivory

It should be recalled that Article 11(4a) of Commission Regulation (EC) No 865/2006 (as amended) sets an expiry date for certificates for raw ivory that were issued before 19 January 2022. The Commission recommends that, as of that date, Member States should no longer issue certificates for commercial trade in raw ivory within the EU.

(22) Especially laws on protection of personal data.
However, where the management authority in the Member State concerned is satisfied that ivory is necessary for repairs of a particular item and a substitute cannot be used, a certificate allowing the sale of raw ivory can be granted exclusively for repairing the following items:

— pre-1975 musical instruments;

— pre-1947 antiques held by a museum or public institution for which a relevant authority responsible for cultural heritage (such as the responsible ministry) confirms its high cultural, artistic or historical importance and supports the need for its repair with ivory.

These cases are considered rare and very exceptional.

The certificate should be issued only if the management authority has no doubts that the raw ivory will be used for repairing such items and it is able to control and verify, if necessary, that this will be the case and that the raw ivory will not be used for any other purpose.

Member States are recommended to consider setting up their own national system for controlling the stock of raw ivory in the hands of workshops for repairs.

The management authorities should make it clear that using raw ivory for such repairs is a last resort, and urge professional restorers to instead use non-ivory substitutes whenever possible. In the rare cases where this is not possible, they can issue a transaction-specific certificate for raw ivory.

A certificate issued for the use of raw ivory for repairs should, as a minimum, include the following language in box 20:

For pre-1975 musical instruments: ‘This certificate is only valid for a single sale to a professional workshop for the exclusive use to repair legally acquired pre-1975 musical instruments’.

For pre-1947 antiques of high cultural, artistic or historical importance held by a museum or public institution: ‘This certificate is only valid for a single sale to a professional workshop, exclusively to repair [insert here the description of the item to be repaired]’.

If deemed appropriate, Member states can include the name of the professional restorer in the transaction-specific certificate.

A certificate should only be issued if the Member State is satisfied that the ivory was legally obtained before the Convention became applicable to elephants (see above, footnote 2).

The Commission also recommends that Member State mark raw ivory tusks according to Resolution Conf. 10.10 (Rev. CoP18) and include the reference of the marking in the description box of the certificate (see also Annex II).

b) **Specific guidance on internal EU trade in worked ivory**

As an exception to the general prohibition to commercialise Annex A specimens, contained in Article 8(1) of the Basic Regulation, commercial internal EU trade in all worked items containing ivory is allowed only if a certificate for this purpose has been granted by Member State authorities on a case-by-case basis (Article 8(3)(a) and (b) of the Basic Regulation).

The Commission recommends that Member States should, from the date this guidance is published, not issue certificates for commercial trade in worked ivory specimens, unless they are satisfied that the item is:

1. a pre-1975 musical instrument; or

2. a pre-1947 antique.
When evaluating an application for a pre-1947 antique, the age of the specimen and the other aspects related to the definition of ‘worked specimen’ are the main consideration (23), and Member States should only consider investigating further if there are indications that the item was illegally obtained.

For pre-1975 musical instruments, both the age and the legal acquisition should generally be scrutinised, and the management authority should only issue a certificate if it is satisfied that sufficient proof of both conditions has been provided. In addition, the owner should demonstrate that the item is, or has until recently been, used as an instrument by a performing artist and is thus not merely a decorative object containing ivory.

7. How to interpret EU rules on importing ivory

The rules governing imports of ivory specimens are laid down in Article 4 of the Basic Regulation. Pursuant to Article 4(1)(d), when assessing applications for import of Annex A species, management authorities need to be ‘satisfied that the specimen is not to be used for primarily commercial purposes’, which effectively prohibits commercial imports of ivory into the EU Member States.

An exception to this general prohibition on commercial import is possible in two specific cases:

— The specimen has previously been legally introduced into or acquired in the EU and is, modified or not, being reintroduced into the EU (Article 4.5(a) of the Basic Regulation), or

— The specimen is a worked specimen that was acquired more than 50 years previously (Article 4.5(b) of the Basic Regulation).

However, even if one of the two conditions for such an exception is fulfilled, the management authority can still refuse the application if, in consultation with the competent scientific authority, it considers that there are other factors relating to the conservation of the species which militate against issuing an import permit (Article 4.1(e)).

The Commission recommends that Member States should, from the date this guidance is published, not issue permits for commercial imports of raw ivory.

The Commission also recommends that Member States should, from the same date, not issue import permits for worked specimens.

Two exceptions for commercial trade will remain possible where the management authority in the Member State concerned is satisfied that:

— the item is a pre-1975 musical instrument; or

— the item is a pre-1947 antique sold to a museum, and a relevant authority responsible for cultural heritage (such as the responsible ministry) confirms its high cultural, artistic or historical importance and supports the transaction.

The evaluation of import applications is equivalent to re-export applications and therefore the criteria listed in Section 5 b) for issuing permits should also be applied.

Import permits allowing import of raw ivory or worked ivory specimens for non-commercial purposes can be issued in accordance with Article 4(1) of the Basic Regulation. Any such imports require the highest level of scrutiny and permits should, as a rule, only be issued if the management authority is convinced there is no risk these items could find their way into commercial trade. Based on recent trade data (imports from Africa into the EU between 2016 and 2018) it is clear that in practice, such imports are either for personal purposes, or hunting trophies, which do not allow for further commercialisation after the import took place. It is recommended to explicitly mention on the import permit the limitation that such items are only intended for personal use. The following notice can be used: ‘Import of this specimen is for personal use only. The item must remain in the property of the holder of this permit. It must be presented to competent authorities on request.’ This is also relevant for importing hunting trophies, as they are items for personal use.

(23) The definition of worked specimen includes four elements, all of which need to be assessed: the item has been manufactured/worked prior to 3 March 1947; the item has been significantly altered from its natural state; the item clearly falls into one of the categories — jewellery, adornment, art, utility or musical instrument, and requires no further carving, crafting or manufacture to effect its purpose; the management authority in the Member State concerned is satisfied that the item has been acquired in such conditions. See Guidance on Worked Specimens under the EU Wildlife Trade Regulations (OJ C 154, 17.5.2017, p. 15).
When evaluating applications for importing hunting trophies, management authorities are reminded to consider the most recent scientific advice (‘non-detritment finding’ or lack thereof), as provided by the Scientific Review Group.

Commercial use of elephant hunting trophies following import into the EU is prohibited, regardless of the origin of the elephant (24). These trophies have to remain in the hunter’s possession.

In addition to the exemption on commercial imports described above, management authorities may also issue an import permit if they are satisfied that the item:

1. is part of a genuine exchange of cultural goods between reputable institutions (e.g. museums); or
2. is an heirloom moving as part of a family relocation; or
3. is being moved for enforcement, scientific or educational purposes.

To further assess the conditions under which such trade can be authorised, it is recommended that EU Member States apply the guidance on ‘Evidence to demonstrate legal acquisition’ in Annex I of this document, and on ‘Marking, registration and other requirements for issuing certificates’ in Annex II.

8. Coordination within and between EU Member States as well as with non-EU countries

Where regional or local CITES management authorities are responsible for issuing CITES documentation, it is recommended that Member States ensure that these authorities report to the central CITES management authority regarding all submitted applications for re-export certificates and intra-EU certificates. This would ensure both coordinated verification of legal acquisition and consistency in assessing applications. This could be supported by setting up national databases to store the relevant information.

Furthermore, additional restrictions/controls may apply to re-exports to certain countries/territories that have introduced stricter domestic measures for trade in ivory, such as China, Hong Kong SAR and the United States of America. Before issuing a re-export certificate for ivory, the Member States concerned are strongly advised to make applicants aware of the possibility that stricter domestic measures are in force in the destination country. It is the responsibility of the applicant to check the conditions for importing ivory into the destination country.

If desired, a Member State can also inform the CITES authorities in the destination country, so they can check that the import of that specimen is in line with existing regulations.

Where an intra-EU certificate issued by an EU Member State is presented as evidence of legal acquisition, for the purposes of a re-export certificate (for pre-1975 musical instruments only) or an application for an intra-EU certificate, the Member State treating the application is encouraged to check the validity of the internal EU trade certificate with the Member State who issued it.

When a management authority receives an application for raw ivory where the identity of the professional restorer is known but they are located in another Member State, the issuing Member State is encouraged to contact the destination Member State to check if there are any considerations that would militate against issuing the certificate.

9. Summary of the EU regime governing commercial trade in ivory

The following table compares the ‘old’ and ‘current’ EU regime on commercial ivory trade:

- old regime - that in force before this guidance document and Commission Regulation (EU) No 2021/2280 were published;

- current regime - the rules in force since then (25).

(24) This prohibition applies to populations of elephants listed in both Annex A and B, as trade in Annex B hunting trophies is only possible for non-commercial purposes (see annotation to the Annex B listing of elephant populations of Botswana, Namibia, South Africa and Zimbabwe in the Basic Regulation).

(25) The term ‘suspended’ is used in this table where the measure has been introduced through this guidance or its predecessor. The term ‘prohibited’ refers to obligations included in the Basic Regulation and/or CITES.
For details, consult the wildlife trade regulations and relevant sections of this guidance.

<table>
<thead>
<tr>
<th>Internal EU trade for commercial purposes</th>
<th>Re-export from the EU for commercial purposes</th>
<th>Import to the EU for commercial purposes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Raw ivory</strong></td>
<td>Suspended, case-by-case authorisation possible for pre-1990/pre-1975 items - certificate required</td>
<td>Case-by-case authorisation possible for pre-1990/pre-1975 items - permit required</td>
</tr>
<tr>
<td><strong>Worked ivory: Items with ivory acquired between 1975 and 1990 - 'pre-Appendix I'</strong></td>
<td>Suspended</td>
<td>Prohibited (no change)</td>
</tr>
<tr>
<td><strong>Worked ivory: Items with ivory acquired between 1947 and 1975 - 'pre-Convention'</strong></td>
<td>Suspended, case-by-case authorisation possible for musical instruments - certificate required</td>
<td>Case-by-case authorisation possible for re-imports only - permit required</td>
</tr>
<tr>
<td><strong>Pre-1947 worked items (antiques)</strong></td>
<td>Authorised - no need for certificate</td>
<td>Case-by-case authorisation possible for musical instruments and antiques sold to museums - certificate required</td>
</tr>
</tbody>
</table>

(26) Pre-1947 antique of high cultural, artistic or historical importance held by a museum or public institution for which a relevant authority responsible for cultural heritage (i.e. responsible ministry) confirms its high cultural, artistic or historical importance and supports the need for its repair with ivory.
ANNEX I

Evidence to demonstrate legal acquisition

General considerations

For both re-export and intra-EU certificates, it is the responsibility of the applicant to demonstrate to the satisfaction of the CITES authority in the EU Member State concerned that the conditions for issuing the documents are met, and especially that the ivory specimens were legally acquired.

Member States will need to assess the evidence furnished by the applicant on a case-by-case basis.

While it is clear that legal acquisition needs to be demonstrated in all cases, Member States should consider taking a risk-based approach when assessing applications for import, re-export or internal EU trade in ivory.

Transactions may give rise to varying degrees of scrutiny depending on various aspects of the ivory to be imported/re-exported/traded:

— the quantity;
— its form (e.g. antique, worked or raw);
— the circumstances in which it was originally acquired (e.g. part of a commercial transaction or as a gift/inheritance); and
— the date it was originally acquired.

Member States will be required to use their judgment when determining, based on the nature of the transaction, the type/quantity of evidence required in support of the application.

It is important to note that the type of proof of legal origin will depend on the manner of acquisition. For example:

— If the ivory item was imported by the applicant themselves before the Convention entered into force, the applicant:
  a) may be required to prove that they lived or worked in the country of export.

  Proof of this can include old photographs, contracts, extracts from a birth certificate, extracts from the population register or a declaration by them and/or other family members.

  b) will need to prove that the ivory item was legally acquired/imported into the EU (see Types of evidence below).

— If the ivory item was (legally) purchased in the EU, the applicant must demonstrate that this happened before 1975, or that the piece was acquired under the previous derogation for pre-1947 worked specimens (see Types of evidence below).

Types of evidence

The following evidence should generally be preferred to support applications for re-export and intra-EU certificates:

— Intra-EU trade certificate. In such a case, the issuing EU Member State should be consulted to verify the validity of the certificate concerned.

If the information provided on the intra-EU certificate is unclear, or there are doubts/concerns about the validity of the certificate/legality of the ivory, additional information should be requested from the applicant and/or issuing authority.

Additional evidence might be requested, for example, if the certificate lacks identification markers (e.g. photographs, descriptive details, information on the weight/length of the tusks) or is especially old.

Member States may request any evidence providing additional details of the item and its background that is not already noted on the intra-EU certificate. A receipt or a deed of transfer could also be requested - especially if the certificate is transaction specific - to show that the current owner acquired the specimen directly from the certificate holder.
— Results of radiocarbon dating/isotope analysis to determine age (and origin) of the specimen (1), bearing in mind that determining the age is not sufficient in itself to prove legal acquisition.

— Expert opinion, in the form of a substantiated determination of age by a recognised, independent expert, for example, an individual affiliated to a university/research institution, a consultant to court/approved by judicial process, or an approved/recognised expert (2).

Expert opinions may be considered as satisfactory evidence for both worked and unworked ivory (e.g. if forensic analysis cannot be used). For antique worked ivory, the age determination may be made based on the style of carving and crafting techniques. The experts' opinions need to be duly substantiated, and give explanations about the elements of style, crafting etc. that have been considered and were decisive for the conclusion.

If the evidence described above is not available, applicants should be required to present a combination of other forms of evidence to demonstrate they acquired the ivory legally (see other forms of evidence below). Member States should ask the applicant to furnish as many different types of evidence as possible in support of their application.

Other forms of evidence that may constitute satisfactory proof of legal acquisition include (preferably a combination of) the following:

— For 'worked specimens' containing ivory, a document from an approved/recognised expert.

— A receipt or invoice, a deed of gift or inheritance documents, such as a will.

— Old photographs of the ivory item (with a date, recognisable person, or at the place of origin), an old hunting permit (or other documents relating to a hunt), insurance documents, letters, or old public documents (such as newspaper articles or other original reports/publications that provide evidence of the origin of the specimens).

— Other ancillary evidence to support the claim of legal acquisition, such as proof that the person who acquired the specimen had worked or served in the location where the ivory was acquired (e.g. in Africa) or copies of passport stamps.

— A witness statement/affidavit or signed declaration from the owner. Member States may consider requesting the applicant to provide an affidavit in support of the certificate issued, stating that they are aware of the consequences of a false declaration. A witness statement/affidavit should still be supported by other evidence, such as photographs or receipts/invoices.

— For worked specimens or music instruments manufactured in the EU, a confirmation by the manufacturer or an expert that the instrument was produced on the territory of an EU Member State before the date of the relevant CITES listing.

If, having seen the evidence furnished by an applicant in support of their application for re-export or for and intra-EU certificate, there are still doubts the ivory was legally acquired, Member States should consider consulting an independent expert or requiring forensic analysis to verify the age of the specimen. In this case, the cost should be borne by the applicant.

(1) UNODC guidelines provide an overview of laboratory test options available, as well as guidelines on taking samples for testing, including a list of equipment and materials needed to sample ivory (see UNODC. (2014) Guidelines on Methods and Procedures for Ivory Sampling and Laboratory Analysis. United Nations, New York, especially 14.2.2 Isotopes (page 30 et seq. and 46); available at https://www.unodc.org/documents/Wildlife/Guidelines-Ivory.pdf).

Cf. as well the Internet: www.ivoryid.org

(2) If using expert opinion from auctioneers, potential conflicts of interest may arise. This needs to be carefully considered.
ANNEX II

Marking, registration and other requirements for issuing certificates

Permanent marking of ivory products is not mandatory under EU law before an intra-EU certificate is granted, but this is required by some Member States. In addition, import permits and re-export certificates will only be issued by EU Member States for some ivory products if they are marked. See Articles 64(1)(d) and 65(1) of Commission Regulation 865/2006 and CITES Resolution 10.10 (Rev. CoP 17), which also encourages the marking of ‘whole tusks of any size, and cut pieces of ivory that are both 20 cm or more in length and one kilogram or more in weight’.

In that context, it is recommended that Member States consider permanently marking:

(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.

Marking allows a certificate to be connected to the ivory items concerned and improves traceability in the system.

It is recommended that this marking be carried out in accordance with CITES Resolution 10.10 (Rev. CoP 17): ‘whole tusks of any size, and cut pieces of ivory that are both 20 cm or more in length and one kilogram or more in weight, be marked by means of punch-dies, indelible ink, or other form of permanent marking, using the following formula: country-of-origin two-letter ISO code, the last two digits of the year / the serial number for the year / and the weight in kilograms (e.g. KE 00/127/14). It is recognized that different Parties have different systems for marking and may apply different practices for specifying the serial number and the year (which may be the year of registration or recovery, for example), but that all systems must result in a unique number for each piece of marked ivory. This number should be placed at the ‘lip mark’, in the case of whole tusks, and highlighted with a flash of colour.’

The Resolution mentions that marking should indicate the country of origin; if this country is not known when an EU Member State marks the ivory, the ISO code indicated should be the one of the country carrying out the marking. Member States may consider it appropriate to stipulate that the ivory holder/owner covers the costs of permanent marking.

Once the item has been permanently marked, the code should be entered into an electronic database, to facilitate future verification, together with the certificate number and all relevant information such as length, weight and pre-Convention status.

Information should be recorded at national level, where possible. If information is recorded at regional/local level, there should be some mechanism for information sharing with/oversight by the central (national) CITES authority. After marking, it is also advised that the items be photo-documented and the records and photographs maintained together.

Member States have reported problems verifying the validity of intra-EU certificates, which make it difficult to confirm the identity of the specimen concerned (for raw tusks). To address these issues, Member States are advised to:

— Require photo documentation of the ivory specimens (especially raw whole tusks) and, where permitted by national systems, to ensure that the photographs are affixed/appended
to the intra-EU certificate concerned. The photographs should be scanned and kept with the records of the certificate issued.

Features that could be documented (and which would assist in identification) include:

— characteristic colouration
— cracks or other damage
— curvature of the tusk
— the base (e.g. cleanly cut or frayed).

Photographs of the entire tusk and of the base would be useful. If the tusk contains an engraving, a photograph that shows details and its position on the tusk should also be included. Photographs of the ivory for which a certificate is issued are particularly important where the ivory has not been marked.
— Include details on the certificate of how the weight and length of the ivory item were measured, as well as the circumference at the base.

Regarding the weight, relevant information includes when the weight was determined (was the item weighed at the time the certificate was issued, or has older information on weight been used?) and whether the weight includes any attachments to the tusk (such as a cap over the base or an attachment to fix the tusk to a wall) which may have been removed for subsequent weighing.

Regarding the length, relevant information includes whether the length specified is the outer or inner length, and whether this is from tip to base (or some other measurement).

— Record both the number of items concerned and the quantity in weight (kg) (as sizes of items vary considerably).
NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Euro exchange rates (1)
29 December 2021
(2021/C 528/04)

1 euro =

<table>
<thead>
<tr>
<th>Currency</th>
<th>Exchange rate</th>
<th>Currency</th>
<th>Exchange rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>USD US dollar</td>
<td>1,1303</td>
<td>CAD Canadian dollar</td>
<td>1,4486</td>
</tr>
<tr>
<td>JPY Japanese yen</td>
<td>129,97</td>
<td>HKD Hong Kong dollar</td>
<td>8,8127</td>
</tr>
<tr>
<td>DKK Danish krone</td>
<td>7,4365</td>
<td>NZD New Zealand dollar</td>
<td>1,6625</td>
</tr>
<tr>
<td>GBP Pound sterling</td>
<td>0,84115</td>
<td>SGD Singapore dollar</td>
<td>1,5309</td>
</tr>
<tr>
<td>SEK Swedish krona</td>
<td>10,2608</td>
<td>KRW South Korean won</td>
<td>1,341,06</td>
</tr>
<tr>
<td>CHF Swiss franc</td>
<td>1,0380</td>
<td>ZAR South African rand</td>
<td>17,9471</td>
</tr>
<tr>
<td>ISK Iceland króna</td>
<td>147,40</td>
<td>CNY Chinese yuan renminbi</td>
<td>7,1994</td>
</tr>
<tr>
<td>NOK Norwegian krone</td>
<td>9,9883</td>
<td>HRK Croatian kuna</td>
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</tr>
<tr>
<td>BGN Bulgarian lev</td>
<td>1,9558</td>
<td>IDR Indonesian rupiah</td>
<td>16 112,32</td>
</tr>
<tr>
<td>CZK Czech koruna</td>
<td>24,958</td>
<td>MYR Malaysian ringgit</td>
<td>4,7269</td>
</tr>
<tr>
<td>HUF Hungarian forint</td>
<td>370,22</td>
<td>PHP Philippine peso</td>
<td>57,592</td>
</tr>
<tr>
<td>PLN Polish zloty</td>
<td>4,6037</td>
<td>THB Thai baht</td>
<td>37,888</td>
</tr>
<tr>
<td>RON Romanian leu</td>
<td>4,9499</td>
<td>BRL Brazilian real</td>
<td>6,3824</td>
</tr>
<tr>
<td>TRY Turkish lira</td>
<td>14,1525</td>
<td>MXN Mexican peso</td>
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<tr>
<td>AUD Australian dollar</td>
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<td>INR Indian rupee</td>
<td>84,3880</td>
</tr>
</tbody>
</table>

(1) Source: reference exchange rate published by the ECB.