



## FIM PEARLE\* JOINT POSITION PAPER ON THE EUROPEAN COMMISSION NON-PAPER “CLOSING THE GAPS IN EU RULES FOR IVORY TRADE” OF 23 SEPTEMBER 2019

Brussels, 4 October 2019

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### 1. Introduction

FIM and Pearle\* - Live Performance Europe thank the European Commission for the opportunity to give input to the non-paper “Closing the gaps in EU rules for ivory trade”, discussed at the stakeholder meeting of 4 October 2019 in Brussels.

We are aware of the current poaching crisis and welcome the initiative of the European Commission to adapt and harmonise EU legislation on ivory with the aim to ban illegal cross-border trade in ivory and protect elephants.

Whilst we endorse the urgent need to further protect elephants, we would like to recall that the cross-border movement or sales and repairs of musical instruments have no impact on poaching or illegal trade of ivory.

### 2. General comments on the proposed exemption for musical instruments

We welcome the proposed exemption, applying to both commercial and non-commercial travelling with musical instruments and including the use of raw ivory legally acquired for the production or repair of musical instruments.

A clear exemption for the movement of musical instruments<sup>1</sup> – including commercial and non-commercial travelling in the context of intra-EU trade and re-export from the EU – is essential for musicians, orchestras and music groups, as it allows them to continue to use their instruments and accessories safely, without being unnecessarily threatened with seizures or fines.

Musical instruments containing small amounts of ivory have been legally crafted for decades; as they have a very long lifespan, they are still used today and travel with musicians, orchestras, music ensembles or groups for non-commercial purposes, like a live performance, a concert, a competition or other cultural activities.

### 3. Specific remarks on part 4 of the non-paper: ‘Key issues’

#### 3.1 Intra-EU certificates (4.1 a)

We understand the necessity to introduce a time limit to the validity of *existing* intra-EU certificates and would like to find out which time limit would be proposed for new certificates. Musical instruments travel on a regular basis, generally several times per year. As the evidence required to establish legal acquisition is not going to change over time, and given that musical instrument certificates significantly increase the costs and administrative burden of touring for musicians, orchestras and music groups, we advocate the use of one single certificate and the possibility to use it multiple times within a three-year timeframe.

#### 3.2 The evidence to demonstrate legal acquisition

The Commission has proposed that certificates be issued based on tightened rules, which can demonstrate the age of the ivory items. In the non-paper “Background on elephant ivory trade in the EU and possible additional measures” which was drafted in preparation of the stakeholders meeting of January 28, 2019, the Commission refers to “approved

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<sup>1</sup> As already mentioned in the amended Commission Guidance Document of 17 May 2017

scientific evidence and methods". The Commission non-paper of 23 September 2019 highlights the need to introduce close scrutiny of the evidence to demonstrate legal acquisition.

While we understand the necessity to keep track of a musical instrument's origin, we wish to reiterate the following concern (already highlighted in our statement of 6 February 2019): small parts of ivory in a musical instrument cannot be dismantled and examined by means of an intrusive method without being severely damaged or destroyed. The instrument itself may be exposed to a risk of irrecoverable damage during such operation. For these reasons, musicians, orchestras and music groups believe that the only reasonable and efficient way to provide the required evidence is to rely on the opinion of recognised experts, as referred to in Annex I of the above mentioned Commission non paper.

### 3.3 Harmonisation of intra EU trade on ivory (4.1 (b) ii)

The wording of Article 8 of Regulation 338/97, stating that an exemption from the general prohibition of commercial intra EU trade "may be granted", does not provide sufficient legal certainty and bears the risk that ivory rules be enforced differently in different Member States. Musicians and orchestras would thus have to deal with different treatments and obligations. We therefore ask the Commission to include a clear definition of the sale of a musical instrument and remain available for any discussion on that matter.

### 3.4 The use of the Musical Instrument Certificate (4.2)

The text mentions a "particular type of certificate to facilitate trans-border movement of instruments (with parts) made from CITES-listed species". We strongly recommend that the Musical Instrument Certificate, which seems to be referred to in this sentence, be the only certificate required for cross-border travels with musical instruments, be it international or intra-EU, to avoid redundant administrative burdens and costs for musicians, orchestras and music groups.

## **4. Conclusion**

We wish to reiterate that we welcome the proposed exemption of musical instruments from the EU ivory ban. This exemption will allow the continued use of historical and antique musical instruments that many performers play worldwide because of their outstanding quality and unique characteristics, thus contributing to the dissemination of culture by European world-class musicians, orchestras and ensembles.

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

**PEARLE\* – Live Performance Europe**, is the 'Performing Arts Employers' Associations League Europe'. Pearle\* represents through its member associations the interests of more than 10,000 organisations including orchestras, music ensembles, groups, festivals, concert halls and producers across Europe. This includes profit as well as non-profit organisations, ranging from micro-enterprises to companies over 250 employees. Pearle\* is recognised by the European Commission as a European sectoral social partner, representing the employers in the European sectoral social dialogue committee live performance.