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*Plenary sitting*

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**B9-0365/2020**

18.11.2020

## **MOTION FOR A RESOLUTION**

pursuant to Rule 112(2) and (3), and (4)(c) of the Rules of Procedure

on the draft Commission regulation amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards lead in gunshot in or around wetlands (D064660/06 – 2020/2771(RPS))

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on behalf of the ID Group

**B9-0365/2020**

**European Parliament resolution on the draft Commission regulation amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards lead in gunshot in or around wetlands (D064660/06 – 2020/2771(RPS))**

*The European Parliament,*

- having regard to the draft Commission regulation amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards lead in gunshot in or around wetlands (D064660/06),
- having regard to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC<sup>1</sup> ('the REACH Regulation'), in particular Article 68(1) thereof,
- having regard to the opinion delivered on 3 September 2020 by the Committee referred to in Article 133 of the REACH Regulation,
- having regard to Article 5a(3)(b) of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>2</sup>,
- having regard to Rule 112(2) and (3), and (4)(c) of its Rules of Procedure,

***Scope of the restriction***

- A. whereas the Commission requested the European Chemicals Agency (ECHA) for an opinion in the context of the Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA) which requires contracting parties to phase out the use of lead gunshot for hunting in wetlands as soon as possible; whereas 23 Member States already have legislation on the use of lead gunshot over wetlands and the other Member States do not have the necessary infrastructure for the implementation of such legislation in place; while the draft Commission regulation does not make any distinction between game species or purposes for shooting, and instead substantially widens the scope of the restriction and introduces new elements that were not adequately addressed in the ECHA opinion<sup>3</sup>;

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<sup>1</sup> OJ L 396, 30.12.2006, p. 1.

<sup>2</sup> OJ L 184, 17.7.1999, p. 23.

<sup>3</sup> Opinion of 9 March 2018 of the Committee for Risk Assessment (RAC) and the Opinion of 14 June 2018 of the Committee for Socio-economic Analysis (SEAC) of ECHA on an Annex XV dossier proposing restrictions on

- B. whereas the Commission considers that, in order to improve enforcement, and given the difficulty for enforcement authorities in catching hunters in the act of actually discharging gunshot, the restriction should also cover ‘possession’ of lead gunshot while going wetland hunting, whether or not the gunshot is actually used within a wetland; whereas it is unavoidable for many hunters or shooters to cross wetlands while going shooting, effectively extending the ban further beyond wetlands with the sole justification of enforceability; whereas the ease of enforcement should not be accepted as a reason for making an unproportioned restriction that limits the basic rights of the Union citizens;

### ***Definition of wetlands***

- C. whereas the definition of wetlands is a key factor in determining the enforceability of the proposed restriction, and the scope of the restriction should not be ambiguous or disproportionate to the level of risk; whereas the definition of wetlands used for site designation under the Convention on Wetlands of International Importance (Ramsar Convention) includes all water areas, irrespective of their size, whether permanent or temporary, natural or artificial, marsh, fen or peatland, which makes it too broad and ambiguous to apply to the restriction on lead in gunshot, as it is impossible for a shooter to reliably identify such water areas while on an unfamiliar terrain, or when the water is not visible or permanent, or while on a peatland, etc.;
- D. whereas 23 Member States already have legislation on the use of lead gunshot over wetlands and none apply the full Ramsar Convention definition of wetlands due to the problems with the enforceability and compliance; whereas ECHA did not recommend applying the full Ramsar Convention definition of wetlands as its application under the REACH Regulation would become too difficult; whereas the Commission proposes to use the Ramsar Convention definition of wetlands for the restriction, without proper justification, causing legal uncertainty to shooters and complicating the enforcement of the restriction and in many situations making the restriction a *de facto* ban;

### ***Buffer zones beyond wetlands***

- E. whereas buffer zones, in which expelling gunshot is fully prohibited, are used only in very few Member States in well-defined wetland sites with clear boundaries; whereas ECHA in its opinion did not recommend buffer zones, considering it sufficient to restrict expelling a lead gunshot ‘where spent gunshot would land within a wetland’; consequently, the Committee for Socio-economic Analysis (SEAC) of ECHA did not assess the socio-economic impacts or proportionality of buffer zones;
- F. whereas the Commission included in its draft regulation, without any evidence, a 400-metre buffer zone, which was later amended to a 100-metre buffer zone, in order to improve enforcement; whereas it is impossible for a shooter to identify buffer zones while on an unfamiliar terrain, when the water is not visible or permanent, etc. thereby making the restriction disproportionate and in many situations a *de facto* ban; whereas the introduction of a buffer zone gives rise to legal uncertainty for shooters and enforcement officials alike, while also exceeding the mandate given to ECHA to assess

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lead in gunshot, <https://echa.europa.eu/documents/10162/07e05943-ee0a-20e1-2946-9c656499c8f8>.

the implications of a ban on lead gunshot in wetlands;

### ***Outdoor shooting ranges***

- G. whereas outdoor shooting ranges used by hunters and target shooters are usually located near water, while those shooting ranges are not adequately addressed in the draft Commission regulation; whereas environmental permits for outdoor shooting ranges can be used to ensure that any risks to the environment are being monitored and controlled, while in at least one Member State such permits are required by law; whereas in the draft Commission regulation, outdoor shooting ranges located within the restriction zone are not excluded from its scope, leading to confusion about whether practice shooting at a shooting range would also be restricted, in such a case hindering even professional and Olympic athletes from practicing and competing in their respective shooting sports;
- H. whereas practice shooting at a shooting range usually involves expelling a large number of shots, the risk of contamination in these areas is controlled while the cost of replacing lead gunshot with other suitable materials would be disproportionately high; whereas the replacement of lead gunshot with other materials might lead to unintended environmental consequences that should be thoroughly assessed prior to the restriction of lead gunshot; whereas switching to steel gunshot would require major infrastructural work in many shooting ranges, and the cost of such a change has not been assessed in the socio-economic analysis; whereas all socio-economic implications of a ban on lead gunshot at the outdoor shooting ranges within the proposed restriction area should be thoroughly assessed prior to the ban, in order to ascertain proportionality of the restriction;

### ***Animal welfare and biodiversity***

- I. whereas alternative products have different densities and hardness, leading to less efficient transfers of kinetic energy; whereas this provokes non-lethal wounds or fatal perforating wounds with an increased animal suffering incompatible with the art and practice of hunting;
- J. whereas tungsten was initially perceived as being immobile in the environment, supporting its use as an alternative to lead in munition; whereas recent studies report movement and detection of tungsten in soil and potable water sources, increasing the risk of human exposure<sup>4</sup> and raising questions about its effects on biodiversity; whereas the use of lead gunshot in wetlands currently constitutes about 8-10 % of all shooting with lead gunshot in the Union; whereas the majority of lead gunshot is used in sport shooting and in hunting in terrestrial environments, and current stocks will still have value for years to come;
- K. whereas smooth-bore weapons require the use of a plastic skirt with steel-based ammunition, which is *de facto* found in the environment;

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<sup>4</sup> Wasel, O., Freeman, J.L., 'Comparative Assessment of Tungsten Toxicity in the Absence or Presence of Other Metals', *Toxics* 2018, 6(4), 66.

### *Technical concerns*

- L. whereas weapons which use substitutes to lead are subject to greater wear and tear and pressure, which can lead to the use of more ammunition, lack of precision with more non-lethal wounds, and increased costs for the owners;
- M. whereas steel gunshot requires costly and polluting manufacturing processes, almost exclusively in China; whereas the process of using shot towers to produce lead ammunition is clean and mainly based in the Union; whereas the capacity of producing ammunition should be considered as being strategic with an objective to maintain production and jobs within the Union;

### *Costs*

- N. whereas, according to Article 68(1) of the REACH Regulation, the decision by the Commission shall take into account the socio-economic impact of the restriction, including the availability of alternatives; whereas while current affordable prices for lead and steel gunshot are comparable, bismuth and tungsten-based gunshot cartridges are, and are likely to remain, about four to five times more expensive than the lead and steel alternatives; whereas the draft Commission regulation states that the ‘cost of the proposed restriction would be borne mainly by hunters, and that the cost increase to hunters was reasonable’, but it does not consider the genuine scope of the restriction nor the economic impact on other shooting than hunting, both of which can become prohibitive; whereas it is more than surprising that the price study carried out in the Annex XV restriction report prepared by ECHA is based exclusively on British manufacturers’ products; whereas the price decrease of steel gunshot foreseen by ECHA in that report is unlikely to happen because volumes for steel gunshot will remain insignificant in comparison to the steel market;
- O. whereas sport shooters normally fire a large number of rounds while practising, and the price and availability of replacement materials in gunshot would affect in particular these shooters; whereas the use of steel gunshot is not always possible or feasible and is even prohibited for competing in certain shooting sports, leaving the practitioners of these shooting sports with no affordable alternatives should the use of lead gunshot be restricted; whereas the Commission does not take into account the cost of replacement of shotguns that cannot be modified and therefore used with steel gunshot;
- P. whereas there is no estimate of the costs for sport shooters affected by the restriction; whereas modifications are necessary in some outdoor shooting ranges to allow for shooting with steel gunshot, the only affordable alternative to lead gunshot, while steel may also become problematic due to its effects on the soil; whereas all these factors and the enforcement costs in the Member States should have been included in the socio-economic analysis;

### *Transition period*

- Q. whereas while the draft Commission regulation acknowledges the need to modify certain shotguns due to the proposed restriction, it does not take into account that the infrastructure for proofing shotguns (proof houses) is only available in 11 European

countries<sup>5</sup>; whereas an adequately long transition period is needed for producers to have enough time to increase production capacities of alternative gunshot, to sell and allow for the use of stocks of lead gunshot in storage and to modify shotguns when necessary, especially in the Member States without the necessary infrastructure for the modifications;

- R. whereas, for environmental reasons, the use of steel gunshot is prohibited on many shooting ranges and the transition period should be long enough to take this fact into account; whereas ECHA proposed a transition period of 36 months, based on the stakeholder feedback, which the draft Commission regulation shortened to a mere 24 months;

### ***Legality and enforceability***

- S. whereas Union law should be intelligible and enforceable; whereas in this case there is a real possibility of an increase in litigation related both to the difficulty for operators to correctly identify wetlands, including the buffer zones, and to the lack of clarity concerning the use, but also possession of lead gunshot in and around wetlands; whereas, in such conditions of uncertainty as to the applicability of the rules, there would be a proliferation of uncertain and complicated situations concerning the scope of the prohibition;
- T. whereas the provision in the draft Commission regulation prohibiting the mere possession of lead gunshot within the restriction area would violate the presumption of innocence and the citizens' right of defence; whereas the reversal of the burden of proof proposed by the Commission is incompatible with the principle of the rule of law, hence the possible violation should in fact refer to the use and not to a hypothetical use of prohibited gunshot;
- U. whereas hunters, having so far contributed to voluntary nature management in the Member States, would also feel harassed and falsely accused by the draft Commission regulation, to the extent that it threatens their collaboration with the national public administrations in the management of natural environments, the control of alien species and similar activities that are entrusted to hunters in many Member States;
- V. whereas while there is no safe level of lead consumption for humans and one of the goals of the REACH Regulation is to protect human health, the consumption of game meat is not prohibited anywhere in the Union; whereas while the gunshot may leave traces of lead in the game meat, the part of the meat polluted by the gunshot is generally removed and not consumed, rendering the risk for human health negligible;
1. Opposes adoption of the draft Commission regulation;
  2. Considers that the draft Commission regulation exceeds the implementing powers provided for in the REACH Regulation;
  3. Considers that the draft Commission regulation fails to respect the principle of

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<sup>5</sup> Austria, Belgium, Czech Republic, Finland, France, Germany, Hungary, Italy, Slovakia, Spain and the United Kingdom.

proportionality;

4. Calls on the Commission to withdraw the draft regulation and submit a new one to the committee without delay;
5. Considers that any new restriction should be practical and proportionate, exclude shooting ranges for which possible risks are already controlled and include a clear and unambiguous definition of wetlands, limiting the scope to permanent water bodies, to ensure legal certainty and enforceability;
6. Considers that a new risk assessment and a thorough socio-economic analysis must accompany any new restriction, considering the full scope of the planned restriction, in order to ascertain proportionality of the measure;
7. Instructs its President to forward this resolution to the Council and the Commission, and to the governments and parliaments of the Member States.