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COMMISSION REGULATION (EU) .../...

of **XXX**

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

(Text with EEA relevance)

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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/EC¹, and in particular Article 68(1) thereof,

Whereas:

- (1) Annex XVII to Regulation (EC) No 1907/2006 lays down restrictions on the manufacture, placing on the market and use of certain dangerous substances, mixtures and articles. Entry 63 of that Annex contains restrictions with respect to lead (CAS No 7439-92-1, EC No 231-100-4) and lead compounds.
- (2) The Union and 23 Member States are Contracting Parties to the Agreement on the Conservation of African-Eurasian Migratory Waterbirds² (AEWA). Contracting Parties are required under paragraph 4.1.4 of the Action Plan annexed to AEWA to endeavour to phase out the use of lead shot for hunting in wetlands as soon as possible in accordance with self-imposed and published timetables.
- (3) Article 4(2) of Directive 2009/147/EC of the European Parliament and of the Council³ requires Member States to pay particular attention to the protection of wetlands, and particularly to wetlands of international importance, in the taking of conservation measures with regard to regularly occurring migratory species.
- (4) On 3 December 2015, the Commission asked the European Chemicals Agency ('the Agency') pursuant to Article 69(1) of Regulation (EC) No 1907/2006 to prepare a dossier with a view to extending the restriction on lead and lead compounds in Annex XVII to that Regulation in order to control the risk to the environment and human health posed by the use of lead or lead compounds in gunshot used for shooting in wetlands ('the Annex XV dossier'). At the same time, the Commission also asked the

¹ OJ L 396, 30.12.2006, p 1.

² https://www.unep-aewa.org/sites/default/files/basic_page_documents/agreement_text_english_final.pdf

³ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.01.2010, p.7).

Agency to start collecting information on other uses of lead ammunition, including hunting in terrains other than wetlands and target shooting, and on the use of lead weights for fishing.

- (5) On 21 June 2017, the Agency published the Annex XV dossier⁴ proposing the introduction of a restriction on the use of lead and lead compounds in gunshot for shooting with a shotgun within a wetland or where spent gunshot would land within a wetland. The Agency also proposed introduction of a restriction on the possession of lead gunshot in wetlands in order to enhance enforceability of the proposed restriction on the use of lead gunshot for shooting. The Agency concluded that the use of lead gunshot in wetlands leads to a risk to waterbirds that ingest spent lead gunshot, leading to toxicological effects, including death.
- (6) The number of waterbirds estimated to die in the Union from lead poisoning is in the order of one million every year. The use of lead gunshot also leads to a risk to species that feed on birds contaminated with lead gunshot, and a risk to humans from consuming waterbirds shot with lead gunshot, although the latter risk was assessed by the Agency only qualitatively. Exposure to lead by humans is associated with neurodevelopmental effects, impaired renal function and fertility, hypertension, adverse pregnancy outcomes and death.
- (7) The Agency concluded that lead-free gunshot alternatives, such as steel and bismuth gunshot, are widely available, technically feasible and have better human health and environmental hazard and risk profiles than lead gunshot. Moreover, steel gunshot, the most likely alternative to be used, is available at a comparable price to that of lead gunshot.
- (8) Legislation preventing or reducing the use of lead gunshot in wetlands exists in the majority of Member States, but the disparities between them result in different levels of risk reduction. The Annex XV dossier demonstrated that Union-wide action is necessary to address the risks arising from the use of lead gunshot in wetlands in a harmonised manner. Furthermore, the migration routes of migratory birds typically cross several Member States and therefore birds could ingest spent lead gunshot in Member States where no or more limited measures are in place.
- (9) The Agency suggested a transitional period of three years for introduction of the restriction.
- (10) On 9 March 2018, the Agency's Committee for Risk Assessment (RAC) adopted an opinion pursuant to Article 70 of Regulation (EC) No 1907/2006 with respect to the Annex XV dossier. In that opinion, RAC concurred with the Agency's conclusion that ingestion of spent lead gunshot by waterbirds causes toxicological effects, including death. As to human health, RAC concluded that lead is highly toxic and that no threshold has been established either for neurodevelopmental effects in children or for blood pressure or renal effects in adults, so any exposure to lead therefore constitutes a risk. RAC concluded that the proposed restriction is an appropriate Union-wide measure to address the identified risks.
- (11) RAC strongly supported a shorter transitional period than the three years proposed by the Agency. The reason given was that each year of delay would result in approximately 4 000 additional tonnes of lead being released into wetland areas, resulting in the death of somewhere in the order of 1 million birds.

⁴ <https://echa.europa.eu/documents/10162/6ef877d5-94b7-a8f8-1c49-8c07c894fff7>

- (12) On 14 June 2018, the Agency's Committee for Socio-economic Analysis (SEAC) adopted an opinion pursuant to Article 71(1) of Regulation (EC) No 1907/2006, concluding that the proposed restriction is an appropriate Union-wide measure to address the identified risks, taking into account the fact that the socio-economic benefits of the measure would be proportionate to the socio-economic costs. In addition, SEAC concluded that the cost of the proposed restriction would be borne mainly by hunters, and that the cost increase to hunters was reasonable.
- (13) SEAC considered that a shorter transitional period than the three years suggested in the Annex XV dossier could pose a challenge in terms of implementation for those Member States that currently have only a limited or no ban on the use of lead gunshot in wetlands, although SEAC did also acknowledge that a shorter transitional period might be feasible, having regard to the fact that lead-free gunshot is already available on the market, that infrastructure for proofing gunshots is available in nearly all Member States and that, in terms of increased costs for early replacement of guns, a shorter transitional period would have only a minor impact.
- (14) The Forum for Exchange of Information on Enforcement was consulted during the restrictions process in accordance with Article 77(4)(h) of Regulation (EC) No 1907/2006 and its recommendations were taken into account.
- (15) On 17 August 2018, the Agency submitted the opinions of RAC and SEAC⁵ to the Commission.
- (16) Taking into account the Annex XV dossier, the opinions of RAC and SEAC, the socio-economic impact and the availability of alternatives, the Commission considers that there is an unacceptable risk to the environment and a potential risk to human health stemming from the discharge of lead gunshot in or around wetlands, which needs to be addressed on a Union-wide basis. It is therefore appropriate to introduce a restriction on the act of discharging lead gunshot in or around wetlands.
- (17) Given the difficulty for enforcement authorities in catching hunters in the act of actually discharging gunshot, the Commission agrees with the Agency that the restriction should also include the act of being in possession of lead gunshot. This will make it possible to enforce the restriction on discharging gunshot far more effectively and will therefore ensure the effectiveness of the restriction in addressing the risks identified to the environment and human health.
- (18) As noted in the RAC and SEAC opinions, a restriction on being in possession of lead gunshot should, however, apply specifically to possession whilst shooting, as opposed to possession in some other context, for example when transporting gunshot across wetlands for delivery elsewhere. The Commission considers, moreover, that the restriction on possession should be directly linked to the particular type of shooting within the scope of the restriction (shooting in or around wetlands). This is in view of the fact that comments submitted during the public consultation on the Annex XV dossier indicated that, in some Member States, hunters involved in other types of shooting are quite likely to walk through different types of terrain, wetlands as well as other terrains, on a typical day's shooting. The Commission also considers that, in order to aid enforcement, the restriction on possession should cover not only possession while out wetland shooting, but also possession as part of going wetland shooting, in other words where there is a close connection with the actual shooting.

⁵ <https://echa.europa.eu/documents/10162/b092e670-3266-fb5d-6296-544eaccb5d4a>

This would cover, for example, possession while heading out on, or returning home from, a day's wetland shooting or possession by someone helping hunters on a shooting expedition.

- (19) Given the practical difficulties in proving the particular type of shooting that a person found in possession of lead gunshot is intending to do, it is appropriate to establish a legal presumption that anyone found in or around wetlands in possession of lead gunshot while out shooting, or as part of going shooting, is presumed to be in possession of that gunshot while out wetland shooting, or as part of going wetland shooting. In other words, it would be for that person to show that he or she was actually intending to go shooting elsewhere and was merely passing through the wetland area in order to go shooting elsewhere.
- (20) As regards geographical scope, the Agency proposed that the restriction on discharging lead gunshot should apply not only in wetlands but also in areas where "spent gunshot would land within a wetland". The Commission notes that there was some support in RAC for quantitatively defining a fixed buffer zone around wetlands (of, say, 300 metres) rather than relying on a test based on where spent gunshot would land. The Commission agrees that a fixed buffer zone is likely to make it easier to enforce the restriction. The restriction should therefore apply to discharging lead gunshot not only in wetlands but also in a fixed buffer zone around wetlands, defined quantitatively. Given the nature of the identified risks to the environment and human health, the Commission considers it appropriate to proceed on the side of caution in setting the size of the buffer zone. The Commission notes that, during the public consultation on the Annex XV dossier, the German Environment Agency suggested that a safety zone of at least 500 metres around wetlands should be established to address the risk of lead gunshot flying into and contaminating wetlands. The Commission also notes that legislation in the German state of Mecklenburg-Vorpommern prohibits the use of lead gunshot in a buffer zone of 400 metres enclosing all types of wetland. In view of these comments and considerations, the size of the fixed buffer zone should be set at 400 metres around wetlands.
- (21) The Agency proposed that the restriction on being in possession of lead gunshot should be confined to possession actually in wetlands. RAC noted in its opinion that a prohibition also on possession in the fixed buffer zone around wetlands could improve enforcement. In view of the enforcement advantages and effectiveness of the restriction as a result of not having to catch hunters in the actual act of discharging lead gunshot, the Commission considers it appropriate to apply the restriction on being in possession of lead gunshot not only to possession in wetlands but also to possession in the fixed buffer zone around wetlands.
- (22) As gunshot is generally not designed or placed on the market specifically or exclusively for use in or around wetlands, a restriction on the placing on the market of lead gunshot would affect shooting in all terrains. Therefore, the restriction should be limited to the discharge and being in possession of lead gunshot.
- (23) The restriction should apply to gunshot containing a concentration of lead equal to or greater than 1%. 1% is the concentration limit applied for the purposes of the "non-toxic" gunshot approval process in the United States of America in order to avoid a significant toxicity danger to migratory birds and other wildlife, or their habitats. Moreover, a 1% concentration threshold for the restriction is considered to be sufficient to address the risks posed by lead-containing shot material whilst also being

readily achievable by producers of alternative gunshot, given that some of those alternatives are likely to contain lead as an impurity.

- (24) It is appropriate to mirror the definition of “wetlands” used in the Convention on Wetlands of International Importance (Ramsar Convention) signed in Ramsar on 2 February 1971 for the purposes of the restriction, as was proposed by the Agency and confirmed in the opinions of RAC and SEAC, since that definition is comprehensive, covering all types of wetlands (including peatlands, where many waterbirds are also found, and since the Ramsar Convention has also developed a classification system for wetland types to help in the identification of wetlands.
- (25) Stakeholders should be allowed sufficient time to take appropriate measures to comply with the restriction and Member States should be allowed sufficient time to prepare for its enforcement. Taking into account the views expressed by RAC and SEAC regarding the feasibility and appropriateness of a shorter transitional period than the three years proposed by the Agency, and taking account particularly of the estimated impact each year of introducing more lead into wetlands through the use of lead gunshot, application of the restriction should be deferred for only 18 months.
- (26) In September 2018, the Agency published the results of an investigation report⁶ reviewing the available information on various uses of lead including, among other things, in shot used in terrestrial environments. Since the investigation report found, inter alia, that the available information suggested that the use of lead gunshot in terrestrial areas posed a risk to both human health and the environment, the Commission requested the Agency in 2019 to prepare an Annex XV dossier with a view to a possible restriction on the placing on the market and use of lead in ammunition and in fishing tackle⁷.
- (27) Moreover, in their opinions on the Annex XV dossier on the use of lead gunshot for shooting in wetlands, RAC and SEAC indicated their agreement with the Agency’s view that a ban on the placing on the market and use of lead gunshot in all terrains would result in a higher level of environmental protection and would be more effective from the point of view of practicality and enforceability.
- (28) In some Member States, the restriction introduced by this Regulation may give rise to particular difficulties due to the specific geographical conditions in that Member State. For Member States with a significant proportion of wetlands in their territory, a ban on discharging and being in possession of lead gunshot in and around wetlands could in practice have a similar effect to a total ban on all shooting across the whole territory since hunters of all kinds would almost inevitably find themselves frequently in or near wetlands. Moreover, the resources that would have to be devoted to the enforcement of a restriction targeted only at areas in and around wetlands may not be much smaller, and may indeed be greater, than the resources needed to enforce a restriction covering their territory as a whole.
- (29) Given the difficulties described in the preceding recital, the need for the measure to be not only effective, but also simple and fair on the hunting community as a whole, and also the results of the Agency’s investigation report and the views of RAC and SEAC summarised in recital (27), the Commission considers that those Member States where

⁶ https://echa.europa.eu/documents/10162/13641/lead_ammunition_investigation_report_en.pdf

⁷ https://echa.europa.eu/documents/10162/13641/rest_lead_ammunition_COM_request_en.pdf/f607c957-807a-3b7c-07ae-01151001d939

such difficulties are likely to arise should be given the option to impose a different restriction in their territory which would prohibit both the placing on the market of lead gunshot, and also the discharging and being in possession of lead gunshot throughout their territory, whether in wetlands or elsewhere, in connection with any type of shooting.

- (30) In the interests of legal certainty, it is important to identify clearly the Member States who are to be eligible to make use of that option if they want. The option should be available to those Member States where at least 20% of their territory is made up of wetland areas. A 20% threshold equates broadly speaking to those Member States who are likely to experience the difficulties described in recital (28).
- (31) Since the restriction that could be imposed by those Member States making use of the option would be more stringent than the one limited to areas in and around wetlands, it is appropriate to set a longer transitional period for the introduction of that restriction. That longer transitional period should be set at 36 months, which corresponds to the transitional period originally suggested by the Agency in the Annex XV dossier.
- (32) For reasons of transparency and legal certainty, the Member States making use of the option should be required to notify the Commission of their intention and to communicate the measures adopted by them to give effect to it within certain deadlines, and the Commission should make the notices of intention as well as copies of the adopted national measures publicly available without delay.
- (33) Regulation (EC) No 1907/2006 should therefore be amended accordingly.
- (34) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 133 of Regulation (EC) No 1907/2006,

HAS ADOPTED THIS REGULATION:

Article 1

Annex XVII to Regulation (EC) No 1907/2006 is amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President
Jean-Claude Juncker