



2020/2771(RPS)

20.10.2020

DRAFT 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))

Committee on the Environment, Public Health and Food Safety

Members responsible: Alexander Bernhuber, Ondřej Knotek, Andrey Slabakov

B9-0000/2020

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/EC¹ ('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 the principle of proportionality enshrined in Article 5 of the Treaty on European Union and Protocol No 2 on the application of the principles of subsidiarity and proportionality, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union,
- having regard to the Annex XV Restriction Report of the European Chemicals Agency (ECHA) on lead in shot published on 21 June 2017,
- having regard to the Advice of the Forum for Exchange of Information on Enforcement of ECHA on the enforceability of a proposed Annex XVII restriction regarding lead gunshot adopted on 15 September 2017,
- having regard to the Opinion of the Committee for Risk Assessment (RAC) of ECHA on an Annex XV dossier proposing restrictions on lead in gunshots adopted on 9 March 2018,
- having regard to the Opinion of the Committee for Socio-economic Analysis (SEAC) of ECHA on an Annex XV dossier proposing restrictions on lead in shot adopted on 14 June 2018,
- having regard to the Opinions of RAC and SEAC of ECHA on an Annex XV dossier proposing restrictions on lead in gunshots submitted to the Commission on 17 August

¹ OJ L 396, 30.12.2006, p. 1.

2018,

- 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 Commission²,
- having regard to Rule 112(2) and (3), and 4(c) of its Rules of Procedure,
- having regard to the motion for a resolution of the Committee on the Environment, Public Health and Food Safety,

Definition of wetlands: breach of the principle of proportionality and legal certainty

- A. whereas phasing out the use of lead gunshot for hunting in wetlands is a well justified and long standing objective in line with paragraph 4.1.4 of the Action Plan annexed to the Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA) and applied by 23 Member States;
- B. whereas the scope of the draft Commission regulation is based on the broad definition of wetlands provided by the Convention on Wetlands of International Importance (Ramsar Convention), which is used to designate wetlands of international importance;
- C. whereas the definition of wetlands under the Ramsar Convention is intentionally broad to provide contracting parties to that Convention with ample opportunity to identify and designate wetland sites of international importance; whereas the draft Commission regulation applies the Ramsar Convention definition in a way that was never legally intended, thereby expanding its scope in a disproportionate manner that would create widespread legal uncertainty;
- D. whereas, in addition to the Ramsar Convention definition, the draft Commission regulation applies an additional 100 metre buffer zone; whereas buffer zones, in the sense of total exclusion zones, are only used in very few Member States that have clear and precise definitions of wetlands, i.e. obvious and permanent wetland features, while noting that SEAC did not have sufficient information to assess the socio-economic impacts of buffer zones;
- E. whereas applying this legal definition in conjunction with the 100 metre buffer zone means that every puddle must have a circular perimeter with a surface area in excess of three hectares, where both the possession and use of lead gunshot is prohibited; whereas there should be no legal ambiguity as to whether a given area at a given time is subject to the intended restriction or not, irrespective of the weather;
- F. whereas the Commission proposes, for the first time under the REACH Regulation, that consumers (i.e. hunters) shall not discharge (i.e. shoot) certain consumer products (i.e. lead gunshots), which have been lawfully placed on the Union market, in or within 100 metres of wetlands; whereas the existing restrictions are addressed not to consumers but to manufacturers, importers and distributors;

² OJ L 184, 17.7.1999, p. 23.

- G. whereas the draft Commission regulation proposes to amend the REACH Regulation by creating the new obligation on consumers (i.e. hunters) not to carry lead gunshots (i.e. consumer products) in or within 100 metres of wetlands; whereas there is no clear definition of ‘carrying’;
- H. whereas the wetland areas covered by the Ramsar Convention are identified not only by the definition itself, but by the specific areas designated (i.e. mapped) by the contracting parties;
- I. whereas the Advice of 15 September 2017 of the Forum for Exchange of Information on Enforcement and the Opinion of 14 June 2018 of SEAC, which highlighted clear problems with the Ramsar Convention definition of wetlands, was not taken into account by the Commission;
- J. whereas the intended prohibition covers all water, including the accumulation of surface water regardless of the size, such as a 1 square metre (or even smaller) area of temporary water which appears in an otherwise dry field after rain, as confirmed by the Commission;
- K. whereas the draft Commission regulation does not include a specific definition of ‘peatland’ and thereby fails to take into account the complexity of identifying and mapping peatlands, especially those that do not contain visible water and, unlike bodies of water, the fact that peatlands rarely have clear observable borders; whereas SEAC acknowledged this concern, stating that the inclusion of peatland causes difficulties in identifying certain types of wetlands in practice, for example, peatlands, marshes and fens, which could therefore cause difficulties for those shooting to know whether they are in compliance with the restriction or not, for example, in areas with a large extent of peatland and which is used for agricultural or forestry purposes;
- L. whereas the draft Commission regulation would be, in effect, impossible to comply with and enforce in practice because the areas covered by the definition are, without further specifications, not only vague but also coincidental, such as areas with small temporary bodies of standing water subject to changing weather conditions;

Enforcement

- M. whereas the scope of the draft Commission regulation is therefore highly too broad , and based on an unworkable definition of wetlands, which would be problematic to implement and disproportionate to the objective pursued;
- N. whereas the Advice of 15 September 2017 of the Forum for Exchange of Information on Enforcement stated that ‘The scope of the proposed restriction, based on the Ramsar Convention (wetland), would pose serious problems from the enforcement perspective’;
- O. whereas the draft Commission regulation does not comply with the principle of legal certainty as it does not enable those concerned to know precisely the extent of the obligations imposed on them in order to be able to ascertain unequivocally what their rights and obligations are and to take steps accordingly;

- P. whereas the definition of wetlands explicitly includes artificial areas of water and makes no exemption for bodies of water present in municipal areas, thereby expanding the restriction on the possession and use of lead gunshot to fixed buffer zones of 100 metres around urban water features including rivers, canals, fountains and ponds, which has implications for the use of lead gunshot by the police;

Principle of conferral

- Q. whereas the draft Commission regulation exceeds the implementing powers conferred by Articles 67 to 73 of the REACH Regulation by introducing additional obligations and new essential elements in such a manner that the Commission ignores the limits that are inherent to an implementing act;
- R. whereas Articles 67 to 73 of the REACH Regulation confer on the Commission certain implementing powers to restrict manufacturing, placing on the market and use of certain dangerous substances, mixtures and articles;
- S. whereas the Commission does not have wide discretion when amending Annex XVII (Restrictions on the manufacture, placing on the market and use of certain dangerous substances, mixtures and articles) to the REACH Regulation; whereas restrictions are to be adopted under Articles 69 to 73 of the REACH Regulation when there is an unacceptable risk to human health or the environment, arising from the manufacture, use or placing on the market of substances, which needs to be addressed on a Union-wide basis;

Lack of socio-economic assessment

- T. whereas while ECHA's advice of 17 August 2018 for a 36 month transition period was informed by a socio-economic assessment, taking into account the experience of Member States that phased out lead gunshot over wetlands and that five Member States have yet to legislate for the use of lead gunshot in wetlands, the Commission has proposed a much shorter transition period of 24 months without justification;
- U. whereas the Commission has proposed an option for Member States where at least 20 % of their territory is made up of wetlands to prohibit the placing on the market of gunshot containing lead without having made any socio-economic assessment of the impact on the ammunition manufacturing sector of this stricter measure;
- V. whereas the scope of the restriction is expanded substantially in the draft Commission regulation without any additional socio-economic assessment on how industry and related sectors (namely, firearms manufacturers, resellers, shippers, users, etc.) would be directly and indirectly affected by the restriction; whereas the ammunition industry is highly dependent on the European Economic Area (EEA) market (70 % turnover) and 82 % is currently reliant on lead gunshot; whereas the insufficient availability of adequate, safe and affordable substitutes for the restricted gunshot might further impact the preparedness of this industry and related sectors for such a market restriction;
- W. whereas there has been no socio-economic assessment on the impact of this restriction on farmers; whereas farmers might be obliged to replace their shotguns in order to be able to use alternative gunshot that can be more expensive than lead gunshot; whereas the costs to replace shotguns for farmers has not been adequately assessed;

- X. whereas international clay shooting competitions are based on rules that only permit the use of lead gunshot;
- Y. whereas there has been no risk or socio-economic assessment by ECHA or by the Commission on the impact of this restriction on clay shooting; whereas this issue has not been assessed even though clay shooting within 100 metres of wetlands is, by definition, wetland shooting, which is a clear manifest error of assessment by the Commission;
- Z. whereas the draft Commission regulation neglects the fact that all shooting ranges in the Union will be affected when temporary patches of water appear after rainfall, as over 600 shooting ranges have permanent water features within the 100 metre buffer zone of wetlands, which prevents EEA countries from hosting (and athletes training for) competitive World Cup and Olympic clay shooting disciplines;
- AA. whereas the lack of legal certainty caused by the imprecise definition of ‘wetlands’ and the absence of a socio-economic assessment on the effects on shooting ranges and international shooting events means that the Commission has infringed the principle of proportionality under Article 5(4) of the Treaty on European Union;

ECHA’s opinion disregarded

- AB. whereas the scientific opinion of ECHA was disregarded by the Commission with respect to the following aspects in the draft Commission regulation: the inclusion of buffer zones, and the banning of the possession of lead gunshot, which ECHA did not propose; the introduction of a 24 month transition period, instead of 36 months as proposed by ECHA, and the interpretation of the Ramsar Convention definition of wetlands, which the Commission interpreted as any body of water regardless of size;

The reversal of the presumption of innocence

- AC. whereas Article 126 of the REACH Regulation does not stipulate procedural provisions on the means of enforcement which fall within the procedural autonomy of Member States; whereas the draft Commission regulation removes the presumption of innocence and reverses the burden of proof; whereas a person found in possession of lead gunshot within the 100 metre buffer zone must prove that he or she intended to use that ammunition elsewhere than in a wetland or buffer zone;
- AD. whereas the presumption of innocence is laid down in Article 3 and Article 6(2) of Directive (EU) 2016/343 of the European Parliament and of the Council³, Article 48(1) of the Charter of Fundamental Rights of the European Union, and Article 6(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the draft Commission regulation is not an implementing measure but rather a policy decision restricted to the legislature;
- AE. whereas enforcement is helped by establishing clear rules and conditions; whereas the draft Commission regulation introduces serious legal ambiguity with regard to the interpretation

³ Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1).

of possession, an ambiguity that has also been acknowledged by SEAC and the Forum for Exchange of Information on Enforcement;

- AF. whereas restrictions on the possession of lead gunshot would undermine legal clarity and predictability because in some Member States the offence is considered a criminal offence, while in others only gives rise to an administrative fine, and because possession and intention to use are two very different legal concepts;
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 is not compatible with the content of the REACH Regulation;
 4. Considers that the draft Commission regulation goes beyond what is necessary and proportionate to address environmental risks arising from the use of lead gunshot in or around wetlands and that it therefore fails to respect the principle of proportionality;
 5. Calls on the Commission to withdraw the draft regulation and submit a new one to the committee without delay;
 6. Calls on the Commission to modify the Annex to the draft Commission regulation by amending ‘24 months’ to ‘36 months’ in the first subparagraph of paragraph 20;
 7. Calls on the Commission to modify the Annex to the draft Commission regulation by amending point (a) of paragraph 22 by adding the following text (underlined and *italics*) to the Ramsar Convention definition of wetlands: ‘areas of marsh, fen, *or* peatland *with visible surface water*, or *surface* water *bodies greater than 3 metres in width*, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres’;
 8. Calls on the Commission to modify the Annex to the draft Commission regulation by deleting point (b) of the first subparagraph of paragraph 20, point (c) of the second subparagraph of paragraph 20 and points (e) and (f) of paragraph 22;
 9. Calls on the Commission to modify the Annex to the draft Commission regulation by adding in a new paragraph that exempts shooting ranges and international shooting competitions subject to the completion of an appropriate socio-economic assessment within 2 years of the adoption of that regulation;
 10. Calls on the Commission to review the measure after 24 months from the date of entry into force of the Commission amending regulation;
 11. Instructs its President to forward this resolution to the Council and the Commission, and to the governments and parliaments of the Member States.