

## **Forum**

# **Advice on Enforceability on Restriction proposal regarding LEAD GUNSHOT**

## **Final Version**



| Version | Adoption          |
|---------|-------------------|
| Final   | 15 September 2017 |

## 1. Preface

### ***Advice of the Forum on the enforceability of a proposed Annex XVII restriction***

#### ***Preface***

According to Article 77(4) of the REACH Regulation the Forum shall examine proposals for restrictions with the view to advising on enforceability.

On 7.04.2017, ECHA submitted the Annex XV report, concerning the proposal for a new entry in Annex XVII. The dossier conforming the requirements of Annex XV proposals was submitted to the Forum for consultation on 22.06.2017.

This advice was elaborated according to the Working Procedure for developing Forum advice on enforceability of the Annex XV proposals for restriction and the Activity Plan of the Forum Working Group (WG) on enforceability of the proposed restriction.

### ***Proposed restriction***

*Brief title: restriction on the use of lead gunshot in or over wetlands.*

|                         |   |
|-------------------------|---|
| Lead and lead compounds | <ol style="list-style-type: none"><li>1. Shall not be used in gunshot for shooting with a shot gun within a wetland or where spent gunshot would land within a wetland.</li><li>2. Lead gunshot shall not be in the possession of persons in wetlands;</li><li>3. For the purposes of paragraphs 1 and 2:<ul style="list-style-type: none"><li>• “shot gun” means a smooth-bore gun,</li><li>• “gunshot” means pellets used in quantity in a single charge or cartridge in a shotgun;</li><li>• “lead gunshot” means any gunshot made of lead, or any alloy or compound of lead with lead comprising more than 1% of that alloy or compound;</li><li>• “wetlands” are defined according to Article 1(1) of the Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention).</li></ul></li><li>4. Paragraphs 1 and 2 shall apply 36 months from entry into force of the restriction;</li><li>5. Member States may, on grounds of human health protection and environmental protection, impose more stringent measures than those set out in paragraphs 1 and 2. Member States shall inform the Commission of such measures.</li></ol> |
|-------------------------|---|

## Forum's advice on the enforceability of the proposed restriction

### **Abstract**

Forum comes to the conclusion that the proposed restriction deviates considerably from the typical range of duties of chemical inspectors by the approach to enforce "using" and "possession" of lead gunshot. Furthermore it is obvious that confinement to wetlands and surrounding areas, from which spent gunshot pellets can land within a wetland, is posed with considerable problems for enforcement. For that reason it is advocated either to

- (a) expand the restriction to use of lead gunshot for hunting in general which can be regarded equivalent to a restriction of the placing on the market. This would ease terms for enforcement substantially as enforcement of a restriction for placing on the market is a standard market surveillance activity. It is to point out that in some MS a general ban of lead gunshot already exists, or
- (b) examine if the proposed restriction can be covered under other community legislation

The wording of the restriction needs some adjustment and clarifications, particularly "possession" is a non-defined term in REACH. Forum questions whether "possession" is equivalent to "keeping" according to the definition of Art. 3 (24) of REACH.

Dismantling and preparation of gunshot cartridges for performing laboratory analysis of pellet lead concentrations could necessitate involvement of versed specialists in handling explosives/ammunition and might require specific permits.

Forum provides suggestions for rewording some paragraphs of the proposed restriction.

### **Scope of the restriction**

#### **General**

The scope of the proposed restriction, based on the Ramsar Convention (wetland), would pose serious problems from the enforcement perspective. It is evident that enforcing of "using" and in particular of "possessing" of goods by members of the general public (e.g. consumers) being subject to a REACH restriction is not within the range of existing provisions in national REACH implementation legislation in Member States and not within standard duties of chemical inspectors in most of the Member States (see Annex II). The meaning of "possessing" of lead gunshot in wetlands is largely unclear, especially who is affected (only hunters with a shot gun, any resident in a wetland storing gun shot, other visitors?). Irrespective of this need for clarification, Forum has serious doubts about "possessing" being covered by Art. 67 and 69 of REACH. Paragraph 67(1), 69(1) and 69(4) of these articles are addressing manufacture, placing on the market or use by economic actors but not possession of a substance on its own, in a mixture or in an article by a member of the general public. Likewise Forum cannot share the opinion that

“possession” would be part of “use” considering the definition of “use” in Art. 3 (24) of REACH which is obviously related to use by economic actors including storage and keeping.

Therefore, it should also be examined if the proposed restriction can be covered under other community legislation e.g. environmental, nature or wildlife directives, police forces etc. which already enforce similar legislation, for which it can be expected that enforcement is more straightforward. It is not clear from the dossier if this option has been considered.

The proposed territorial extension of the ban of using lead gunshot to neighborhood areas in order to protect wetland from landing of spent gunshot pellets would make it necessary to define a border line and to determine these neighborhood areas by decree. Otherwise identification and prosecution of offences would pose nearly unresolvable situations for enforcement. It can be assumed that additional 300 m is a reasonable distance for defining neighborhood areas.

It is not understood why shooting of land-related birds (and other animals) with lead gunshot is not in the scope of the proposal. One of the specific arguments in the report that birds take pellets of gunshot for nutrition possibly can be applied to other herbivorous birds, like pheasants and partridges, too. Also the note that predators and scavengers may ingest lead by eating up dead birds and by that give reason to remarkable impact on their population seems to be also applicable to other herbivorous birds. In any case enforcement of the restriction applicable to any type of terrain is more straightforward compared to a restriction limited to wetland. This is especially true, once the restriction is adjusted into a general restriction for the placing on the market and the use of lead gunshot.

In the note of DG GROW to ECHA (GROW/D1/GL/nt Ares.ddg1.d.1(2015)5962998) dated 3 December 2015, it is already highlighted that there is a possible need for a restriction of lead in gunshot in other terrains than wetlands. It is also highlighted that a timing for an extended restriction should be subject to discussion of ECHA with Commission Services.

In the light of such considerations for an extended restriction for lead in gunshot in wetlands and in other terrains than wetlands it needs to be emphasised that enforceability of a restriction for lead in gunshot can be much more practical once the restriction will cover all kind of terrain and will be in form of a total ban of lead in gunshot. Consequently, combining regulatory efforts for banning the use of lead in gunshot in all kind of terrains with a demonstrated risk has a relevant advantage in terms of enforceability of such a restriction.

In the report it is described that lead gunshot can be substituted by steel gunshot and that the limitation of lead with 1 % would take into account that replacement of lead by bismuth or tungsten could entail a residual content of lead up to 1 % for production reasons. On the other hand it is referred to that ammunition with these latter replacement metals is significant more expensive. For that reason

Forum considers it justifiable to determine the threshold limit with 0,1 % w/w of lead, irrespective the composition of the metal the pellets are made of. Standard analytical laboratory methods are capable to cover also a limit value of 0,1% w/w of lead.

### **Derogations**

According to the territorial limitation of the ban on wetlands it is obvious that shooting other animals than waterfowls outside a wetland with lead gunshot is not prohibited. For that reason marketing of lead ammunition is allowed further. It could be an improvement from the perspective of enforcement (avoiding expensive sample taking, sample preparation and laboratory tests for lead content) to pose an obligation for labelling of cartridges for containing lead pellets (considering the limit value for lead).

### ***Sampling and preparation***

Taking samples of cartridges will not cause any problems, but dismantling of cartridges for preparation analysing the lead content of the pellets might necessitate the experience of specialists versed in explosives which can have negative impact on testing costs. It is to mention that sampling of ammunition could only be allowed for authorised officials as handling of ammunition might require a license according to national weapon legislations.

Dismantling and preparation of gunshot cartridges for performing laboratory analysis of pellet lead concentrations could necessitate involvement of versed specialists in handling explosives/ammunition and might require specific permits.

### ***Analysis of substance(s)***

Although the dossier does not give any information about analytical methods it is to assume that analytical determination of lead as a metal, in compounds or in alloys used as pellets can be performed by suitable standard analytical methods (ICP, AAS, XRF; related to the high content also gravimetric methods).

### ***Wording of the restriction***

Forum provides the following suggestions for rewording the proposed conditions of the restriction:

- The first paragraph of the proposed entry expresses a general ban of gunshot containing “lead and lead compounds” for using in wetlands, whereas the definition given in paragraph 3, 3<sup>rd</sup> indent, sets a limitation for lead or any alloy or compound of lead for the manufacturing of gunshot up to 1 %. For reasons of clarification the threshold value should be expressed as “w/w” in

the gunshot and should refer to the metal content ("*expressed as lead*") by the fact that wording of the proposal covers lead, lead compounds and alloys. Furthermore paragraph 1 and paragraph 3, 3<sup>rd</sup> indent, could easily be combined: "*Lead and lead compounds – shall not be used in lead gunshot made of lead or any alloy or compound of lead with an amount of lead (expressed as metal) equal or greater than 1 % by weight in the gunshot for shooting with a shot gun within a wetland or where spent gunshot would land within a wetland*".

- Forum recommends an obligation for labeling of cartridges containing pellets of lead gunshot made of lead or any alloy or compound of lead with a content exceeding the threshold value.
- Subject to Forum's opinion that "possession" by members of the general public (consumers) cannot be addressed in enforcement actions for a restriction, "possession in wetlands" has to be defined.
- For avoiding misinterpretation definition of "wetlands" should be modified in such a manner that it is clear that the term is applicable not only to officially identified Ramsar wetlands: "*wetlands' means any area covered by the definition provided for in Article 1(1)...*". The full text of the definition of wetland preferably should be included within the restriction entry (e.g. as a foot note).

### ***Practicability/Enforceability***

The territorial limitation of the ban on wetlands and surrounding areas in connection with the additional aspects "using" of lead gunshot as well as being in "possession" of individual members of the general public give rise to numerous difficulties for enforcement. By the fact that inspections and taking samples of cartridges in weapon shops is ineffective as long as lead gunshot is allowed in areas other than wetlands, enforcement activities have to take place at wetlands. Due to REACH implementing legislation in Member States and due to interpretation by most Member States of the non-applicability of enforcement actions on REACH restriction provisions to consumers, it is to be concluded that REACH enforcement authorities (chemical inspectors) in most of the Member States do not have the authority for inspecting individual members of the general public which are not professionals.

Another enforcement approach could be confiscation of dropped (dead) birds and checking of gunshot pellets in the carcass. Except this has to be done by nature/wildlife inspectors it would be impossible to find who was the user of the ammunition for posing a penalty.

### ***Miscellaneous***

Paragraph 5 of the proposed entry enables Member States for imposing more stringent measures. Given the restriction as proposed, such an additional measure that could be recommended to Member States could be a national requirement for focused instruction/training of hunters.

The dossier is pointing out that at least in four Member States a total ban of lead gunshot already is in force. It is to highlight that the most predominant effort of Forum is to harmonize enforcement by performing common enforcement projects. As a prerequisite for such common projects a harmonized and comparable legal basis in all MS is necessary.

Enforceability of the proposed restriction of lead in gunshot ammunition would be remarkable easier and much more unproblematic if a comprehensive ban for placing on the market of lead gunshot would be imposed. In addition, a labeling requirement for cartridges of lead gunshot can considerably improve enforceability as the labeling requirement can help in avoiding testing of samples of gunshots.

In case it is envisaged to specifically extend national enforcement authorities involved in enforcement of restrictions in Member States according to Art 67 and Annex XVII of REACH and particularly to extend with respect to the proposed new entry on lead shots, it needs to be considered that a transitional time of 36 months for the coming into force of the restriction could be short. It can be expected, that involvement of additional national enforcement bodies (e.g. nature inspectors) can require considerable preparatory work for changes in REACH implementing legislation in Member States as authorities from different state levels might be involved (e.g. federation level and level of federal states).

Annexes:

Annex I: Member State considerations on enforcement involving REACH enforcement bodies and enforcement involving non-REACH enforcement bodies

Annex II: Answers from nine Member States regarding enforcement actions targeting consumers

[REDACTED]

[REDACTED]

| [REDACTED] | [REDACTED] |
|------------|------------|
| [REDACTED] | [REDACTED] |

|   |                   |
|---|-------------------|
|   | <p>[REDACTED]</p> |
| ■ | <p>[REDACTED]</p> |

[REDACTED]

[REDACTED]

[REDACTED]

| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
|------------|------------|------------|------------|------------|------------|
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

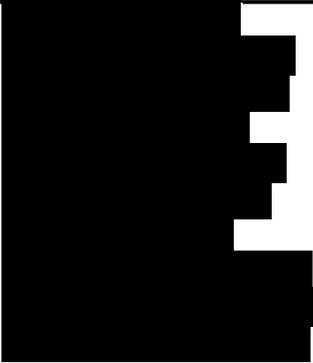
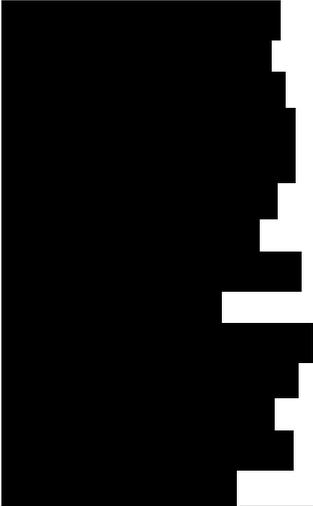
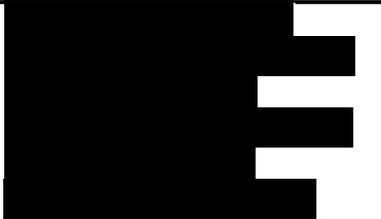
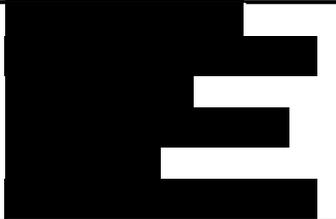
|            |            |            |            |  |  |
|------------|------------|------------|------------|--|--|
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |  |  |
|------------|------------|------------|------------|--|--|

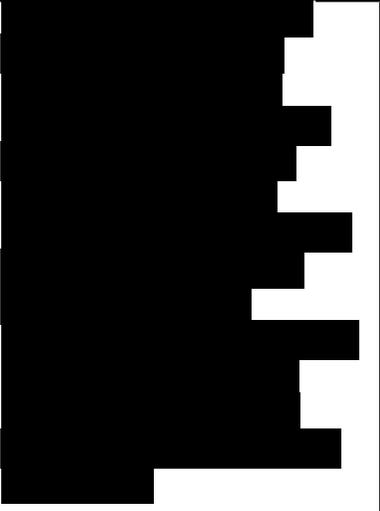
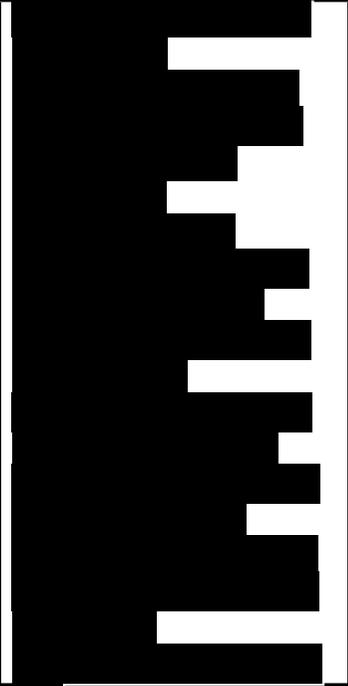
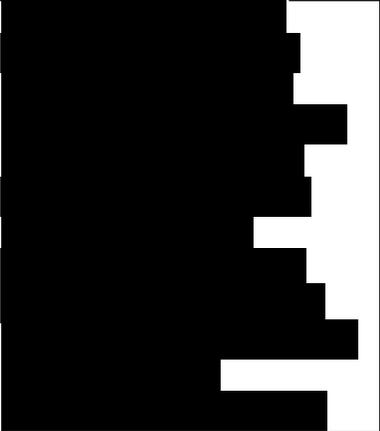
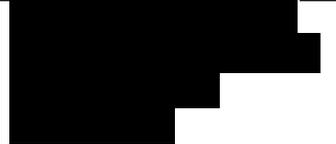
|  |  |  |  |  |  |
|--|--|--|--|--|--|
|  |  |  |  |  |  |
|  |  |  |  |  |  |

|            |            |            |            |            |            |
|------------|------------|------------|------------|------------|------------|
|            | [REDACTED] |            |            | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |            |            |            |
| [REDACTED] | [REDACTED] |            | [REDACTED] |            |            |
| [REDACTED] |            |            |            |            | [REDACTED] |

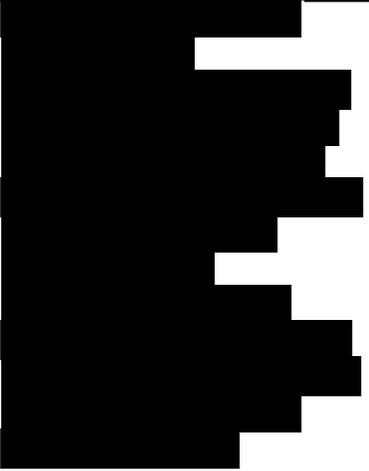
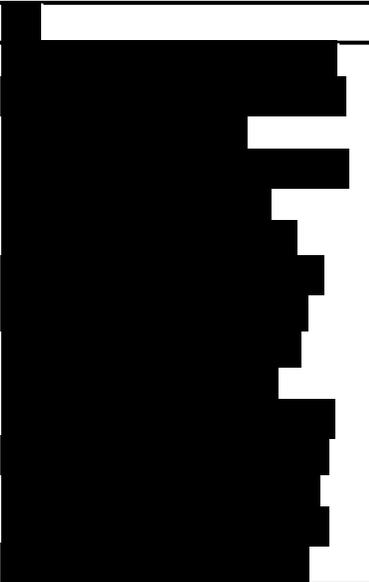
|  |  |  |  |  |  |
|--|--|--|--|--|--|
|  |  |  |  |  |  |
|--|--|--|--|--|--|

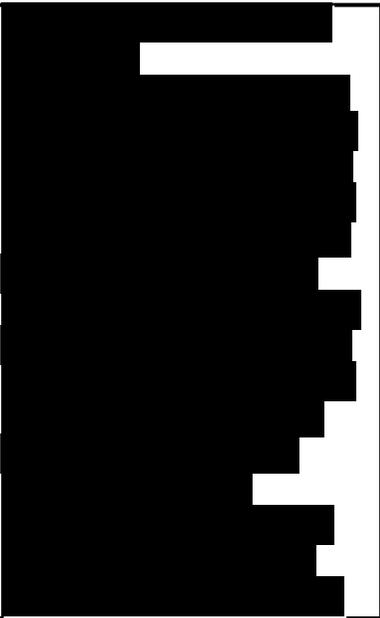
|  |  |  |  |  |  |
|--|--|--|--|--|--|
|  |  |  |  |  |  |
|--|--|--|--|--|--|

|   |   |  |  |  |  |
|---|---|--|--|--|--|
|   |   |  |  |  |   |
|   |   |  |  |  |  |
|  |  |  |  |  |  |

|   |  |  |   |  |  |
|---|--|--|---|--|--|
|   |   |  |   |  |  |
|  |  |  |  |  |  |

|  |            |  |  |  |  |
|--|------------|--|--|--|--|
|  |            |  |  |  |  |
|  | [REDACTED] |  |  |  |  |
|  | [REDACTED] |  |  |  |  |
|  | [REDACTED] |  |  |  |  |

|   |  |   |   |  |  |
|---|--|---|---|--|--|
|   |   |   |   |  |  |
|  |  |  |  |  |  |

|  |   |  |  |  |  |
|--|---|--|--|--|--|
|  |  |  |  |  |  |
|--|---|--|--|--|--|