

FACE PRESS RELEASE

European Federation for Hunting and Conservation



What does the new regulation on banning lead shot over wetlands mean for Europe's hunters?

Brussels, 3 December 2020 - After months of scrutiny, long delays and widespread criticism from various stakeholders, the new regulation banning lead shot over wetlands is expected to take effect from January 2023¹ onwards in all EEA countries. The text of the regulation is here with translations in the different languages: <https://ec.europa.eu/transparency/comitology-register/screen/documents/064660/6/consult>

Most EU Member States already have national laws in place except for Poland, Ireland, Romania, Slovenia and Malta. It is important to note that waterbird hunting is not a popular activity in Slovenia and Malta has very few wetlands.

How is this regulation different?

- The definition of "wetlands" is much broader than existing national laws. For example, it includes peatlands with and without visible water, and potentially covers any ground after heavy rain.
- An aggravated element is that all wetlands have a fixed buffer zone of 100 meters around them. Discharging lead shot in or within 100 metres of wetlands is prohibited regardless of the species being hunted.
- Anyone carrying lead shot within 100 meters of 'wetlands' will be presumed guilty of wetland shooting unless that person can demonstrate that it is intended for any other type of shooting.

The definition of "wetlands":

Hunters and enforcement officers will need clear guidance to understand, for example, how to deal with small areas of temporary water and what constitutes a peatland (including forestry on peat soil) for the purpose of this regulation. This is not an easy task because there is a general lack clarity on how to define peatlands.

Following widespread criticism from the European Federation for Hunting and Conservation (FACE), its members and partners on how the Ramsar definition lacks legal certainty, the European Commission (EC) recently stated that the definition of wetlands should be interpreted "**proportionately**" and that they might consider issuing guidelines. FACE believes this is necessary for effective implementation. The EC also stated that **national authorities are best placed to take into account the specificities of the different territories and to issue guidance** to their enforcement authorities or to stakeholders, on how the definition of wetlands should be correctly interpreted, in line with the **objective** (protecting waterbirds) and **proportionality**.

The EC's late intervention suggesting the need for guidance acknowledges that the definition of wetlands used in this regulation is too complex without guidance. However, it is questionable whether national guidelines, or other national advice on the scope of the regulation are compatible with the general principles of EU law. This is because EU regulations are, in principle, directly applicable (unlike EU directives) and should not require guidance for their application.

Banning "carrying" of lead shot:

If a hunter is carrying lead shot within 100 meters of a wetland, but is not waterbird/wetland shooting, he/she can prove by any means acceptable to the enforcement authorities that it is another type of shooting they are undertaking. A hunter could justify this by saying that he/she was merely passing through the wetland to hunt elsewhere. It will be of course challenging for a hunter carrying lead shot to prove that he/she is not going wetland shooting because a typical day's hunting includes time crossing water features and wet ground. For example, if an enforcement officer finds a hunter

¹ Questa data dipende dalla data di pubblicazione del regolamento nella Gazzetta ufficiale dell'UE. Una volta pubblicato, il regolamento potrebbe essere impugnato dinanzi ai tribunali dell'UE da uno Stato membro o da un cacciatore ritenuto "direttamente interessato" dal regolamento in questione. I tribunali nazionali che si occupano di future cause riguardanti il regolamento possono anche chiedere chiarimenti sull'interpretazione del regolamento alla Corte di giustizia europea (la cosiddetta pronuncia pregiudiziale). Considerando la non chiarezza del regolamento, questa è una possibilità concreta.

within 100 metres of wetlands carrying a lead shot, it is easy for the hunter concerned to claim a 'positive' ("*I am hunting partridge elsewhere*"), but in many cases difficult to demonstrate a 'negative' ("*I am not hunting ducks within 100 metres of wetlands*").

Enforcement authorities need to be acutely aware of this as well as the various laws that protect citizens fundamental rights. This aspect of the regulation needs to be carefully considered with respect to enforcement at national level. In this context, it will be important for national hunting associations to demand an assessment of whether the reverse burden of proof is compatible with national constitutions, the EU Treaties and the Charter of Fundamental Rights of the European Union.

Future actions: What needs to happen in the next two years?

The EC needs to work with relevant stakeholders in producing EU guidance to ensure this regulation is understandable to hunters and enforcement officers. National hunting associations must work with their governments to create national instructions that minimise as much as possible any disproportionate consequences emerging from the ambiguous definition of wetlands. At the same time, it will be important to explore how the new provision on banning the carrying lead shot can be enforced at national level, without being in breach of citizens' fundamental rights.

National hunting associations will need to remain active in awareness-raising to ensure hunters know what is coming in two years. National hunting associations particularly in Poland, Ireland, Romania, Slovenia and Malta must remain very active in awareness-raising and in providing advice on what shotguns are suitable for non-lead shot. Organising events to test non-lead shot have proved to be popular in several countries and help hunters to prepare for the transition.

With respect to firearms, national advice should consider whether countries are members of CIP, how best to check/test shotguns, and what implications exist for hunting insurance in the event of an accident with the use of non-lead shot². Following the advice of their national hunting associations, hunters should check whether their shotguns are suitable for non-lead shot. For shotguns, it is important to differentiate between those where steel shot is available in many countries (**10/12/16/20 calibres**) and those shotguns where it is not (**24/28/.410 calibres**). Aside from calibre complexities, shotguns can be categorised as follows:

- **Suitable:** Shotguns capable for use with non-lead shot without testing/modification;
- **Limited suitability:** Shotguns capable for use with a limited range of non-lead shot cartridges without testing/modification (e.g. standard pressure, limited range of shot sizes);
- **Unsuitable:** Shotguns that are currently unsuitable for steel shot, which require modification (e.g. to choke or chamber), or replacement and/or testing to ensure they support the pressures of alternatives.

Generally, the best approach is to facilitate and encourage hunters to check whether their shotguns are suitable and test non-lead shot, for example, in a clay shooting range. Most hunters in Europe use steel shot to comply with existing laws on lead shot over wetlands mainly because it the same price as lead shot. Other more expensive options are available, such as bismuth and tungsten.

For further information, please contact your national hunting association.

##END##

² The *Commission internationale permanente pour l'épreuve des armes à feu portatives* ("Permanent International Commission for the Proof of Small Arms" – commonly abbreviated as C.I.P.) is an international organisation which sets standards for safety testing of firearms.