

SUMMARY

FACE SUBMISSION TO THE SEAC DRAFT OPINION

Inappropriately timed consultation: Because of the targeted public consultation on RAC's (risk) assessment ending on 6 October 2022, the current consultation is premature from a legal perspective, as SEAC cannot assess the socio-economic impacts of the suggested restrictions when an "unacceptable risk" has not been definitively and finally established.

Untenable transition period for lead shot: Transition periods are critical issues for stakeholders. For lead shot: (a) ECHA must demonstrate that the production capacity of non-lead shot would be sufficient to accommodate an increased demand within the proposed 18 months (it is not for the stakeholders to demonstrate that it is insufficient); (b) lead shot manufacturers need time for an orderly and non-disruptive adaptation to the new framework; (c) a short transition would entail shotgun ammunition shortages (ref. to the statement of ammunition producers provided); (d) 18 months would be far too short for hunters to replace and/or modify shotguns (and have them proofed where required); and (e) the proposed 18 month transition period has no precedent elsewhere, e.g. the Assembly Bill 711 in California granted a four-year period to phase out lead ammunition in order to "*minimise the disruption of hunting activities*".

Misplaced reference to the REACH wetlands restriction: According to SEAC, the wetland restriction will lead to an increase in nonlead production capacities. However, out of 27 Member States, only 5 (Greece, Ireland, Poland, Romania, and Slovenia) are without wetland/waterfowl regulations on the use of lead shot. Therefore, only a limited increase in nonlead production capacity is foreseeable as a result of this Regulation which comes into effect in February 2023.

ECHA's problematic human health risk assessment: ECHA's assessment is currently based on a hypothetical model with tenuous assumptions and enormous uncertainties: (a) IQ loss can be claimed but not empirically validated; (b) comparing metallic lead in game meat with water-soluble lead in, for example, beef (the threshold of 0.1 mg/kg) is like comparing "apples with oranges"; (c) ECHA's assumption of "*50 % bioavailability of metallic lead compared to lead ions for children*" is meaningless without knowing the bioavailability of lead ions (not indicated); (d) ECHA's IQ loss model is based on a hypothesis that 12 µg Pb/L in children would decrease the IQ score by one point. However, at least 12 studies show that Pb/L levels children in the EU Member States are already above that level, and in any case, IQ cannot be measured to a level of accuracy of one point; (e) chronic kidney disease (CKD) can be empirically validated by a research whether there is a statistically significant difference in the prevalence of CKD between hunters and population in general; and (f) ECHA's approach (alleged IQ loss) is, whether intended or not, a serious assault on hunting and an age-old traditional way of life and culture.

Downplayed evidence: As SEAC continues to downplay the REACHLaw survey (where over 18,000 hunters have responded), the costs associated with the of lost

hunters and hunting days are repeated in FACE's submission. ECHA's own figures (6 000 000 hunters in EU27 × annual budget of €3 000) show that hunting generates an annual revenue of around € 18 billion. Every single percentage point of ceased hunters would cause an economic loss of €180 million. As regards the lead ban in California, the California Department of Fish and Wildlife estimated that the ban would cause a 5 percent decline in hunting activity. Using that estimate as a proxy, at least 300 000 (6 000 000 × 0.05) hunters will stop their hunting activity with an annual economic loss of €900 million at the minimum in EU27.

Proposed (full) restriction cannot be complimentary to wetlands restriction: ECHA considers that the restriction proposal would, if accepted, be "*complementary to the existing restriction on the use of lead gunshot in wetlands*". This would be against common sense and logic: Instead of complementary, the wetland restriction would be obsolete, as the object it is intended to protect (i.e. waterfowl in and around wetlands) would be fully covered by the new restriction concerning lead ammunition in general.

Missing data is a source of bias: ECHA's risk assessment is lacking robust knowledge about the probabilities and outcomes, which is irrational and unscientific. For example, ECHA is missing data on secondary poisoning of birds (no data), transition period for lead shot (seeking information), labelling of lead bullets (technical feasibility), muzzle loaders (seeking information), retailers' information duty (no data), gunshot manufacturers' investments for alternatives (no data on investments needed), cost to the industry (no data on raw material etc costs), cost to hunters (no data - assumptions), number of lead bullets used (no data - assumptions), alternative ammunition for airguns (scarce data), price difference lead and non-lead bullets (scarce data), rifle or barrel replacement (no data), risk management measures for shooting ranges (costs missing), availability of alternatives (no sufficient data), home casting (no data), benefits of the restriction (no data - assumptions), groundwater contamination from shooting ranges (no data), cost effectiveness of the proposed restriction (limited data), enforcement (no data - assumptions), sport shooting with bullets (no data on consequences of a restriction), and voluntary military training (no data on consequences of a restriction).

Zero-risk approach with large calibre (≥ 5.6 mm) centrefire rifles: SEAC makes an error of law. The EU land area covers over 4 million km² (400 000 000 hectares) and the estimated lead emission reduction over 20 years would be 2200 tonnes (2 200 000 000 grams). The avoided lead emission would thus be 5.5 grams/hectare over 20 years, and an annual reduction of 0.275 grams/hectare. An approach seeking to exclude all environmental risk ('zero-risk' approach) is not recognised by case-law and such an approach would be contrary to the principle of proportionality.

Zero-risk approach with vintage/historic firearms: SEAC makes an error of law by equating any emissions, like an annual reduction of 0.002 grams/hectare (800 000 grams/400 000 000 hectares) related to hunting with vintage and/or muzzle loading weapons, with an unacceptable environmental risk. Any approach seeking to exclude all environmental risk ('zero-risk' approach) is not recognised

by case-law and such an approach would be contrary to the principle of proportionality.

Not all tungsten shots can be used in non-proofed shotguns: SEAC considers that tungsten shots can be used in non-proofed shotguns. There are two kinds of tungsten gunshots: tungsten mixed with metal powder and tungsten mixed with plastics. Tungsten mixed with metal powder could be unsafe to use in shotguns without proof either for standard steel load or high-performance steel.

Equal treatment in sport shooting: In addition to ISSF and FITASC, at least the following international organisations have international competitions in the EU: International Practical Shooting Confederation, Steel Challenge Shooting Association, International Defensive Pistol Association, International Metallic Silhouette Shooting Union, The World Hunter Field Target Association, Single Action Shooting Society, European Benchrest Shooting Federation, European Field Target Federation, and Muzzle Loaders International Confederation. Shooting activities represented by those organisations are comparable to the shooting activities represented by ISSF and FITASC. If the proposed RMMs would hinder or even terminate those activities in the EU, the intended restriction would constitute unfavourable treatment (a breach of the principle of equal treatment) compared to the activities represented by ISSF and FITASC, which cannot be justified and would thus be arbitrary.

Unbalanced cost-benefit analysis: The estimated total costs of the intended restriction would be disproportionate to the estimated regulatory benefits. ECHA has only monetised avoided mortality of birds, avoided IQ loss in children and avoided CKD in adults. Against estimated annual costs of €2 141 - 7 308 million, ECHA has calculated around €191.5 - 259 million in benefits. Ratios of 11:1 and 28:1 demonstrate a clear imbalance between costs and benefits: a restriction would do more harm than good. ECHA tries to justify the proposed measure by "*significant unquantified benefits*", which however are based on arbitrary assumptions, and stakeholders are left without any evidence proving rationality and justification of those assumptions.

Disregard of the C.I.P.: (a) The C.I.P. Convention has a legal status in the EU, as Directive 91/477 refers to it twice in Articles 4(2) and 11(2). ECHA has not clarified the relationship between the intended restriction, Directive 91/477, and the C.I.P. Convention; (b) the C.I.P. standards are intended to ensure the safety when steel shots are used. However, they are applicable only in the C.I.P. Member States and not in those 15 EU Member States outside the regime, where steel shots not conforming to the C.I.P. requirements may be available (for example HEVI-XII with a muzzle velocity of 457 m/s), and those may be used at shooter's own risk; (c) C.I.P. has no testing protocols for alternatives to be used in antique muzzle loading firearms, their reproductions and breech loading firearms, and the existing firearms have been tested only for lead. Nonlead ammunition (if available) can therefore not be placed on the market in the C.I.P. EU Member States, but they can be sold (if available) and used in non-C.I.P. EU Member States. If those firearms are not excluded from the intended restriction, it would lead to a breach of the principle of equal treatment (or non-discrimination) between hunters in C.I.P. EU Member States and hunters in non-C.I.P. EU Member States.