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Subject: Notification 2023/505/DK

Draft Order on weapons and ammunition that may be used for hunting, etc.

Delivery of comments pursuant to Article 5(2) of Directive (EU) 2015/1535 of 9 September 2015

Sir,

Within the framework of the notification procedure laid down by Directive (EU) 2015/1535, the Danish authorities notified to the Commission on 18 August 2023 the draft 'Order on weapons and ammunition that may be used for hunting, etc.' under the reference 2023/505/DK.

According to the notification message, the notified draft contains rules on the practice of bow hunting with cages and arrows for large deer game (crown game, canned game and security game) and other general requirements, including for ammunitions. On the latter, it establishes a ban on the use of projectiles in rifled weapons containing a concentration of lead equal to or greater than 1% by weight. The order enters into force on 1 December 2024.

Examination of the notified draft has prompted the Commission to issue the following comments.

Article 3(31) of the REACH Regulation (EC) 1907/2006¹ defines a restriction as ‘any condition for or prohibition of the manufacture, use or placing on the market’.

For the purposes of the REACH Regulation, the above-mentioned ban on the use of lead containing projectiles amounts to a restriction on the use of lead in projectiles in ammunition for rifled weapons where such a concentration of lead is equal to or greater than 1% by weight, and would constitute a restriction on the inclusion and use of such lead in such containing projectiles.

The Commission draws the attention of the Danish authorities to the judgment of the EFTA Court in Case E-9/16 (EFTA Surveillance Authority v Norway) of 14 July 2017 in which the Court ruled that, where an EEA State adopts a national measure restricting the free movement of a chemical substance, the restrictions procedure under the REACH Regulation must be triggered, if not already underway, as a consequence of the obligation on the EEA State to initiate the procedure under Article 69(4) of the REACH Regulation. The Court further held that such national measure will be provisional and cannot be maintained in contravention of the final outcome of the REACH restrictions procedure.

In this regard, the Commission would like to remind the Danish authorities that it is considering a possible restriction on the placing on the market and use of lead in ammunition, i.e. gunshot used in terrains other than wetlands and bullets used both in wetlands and in terrains other than wetlands, to address the concerns posed by those articles. The Commission received the ECHA opinion on 27 February 2023 on that restriction proposal and it is preparing a draft text.

Therefore, to the extent that the notified draft intends to ban lead in projectiles and in ammunition for rifled weapons, covered by the above-mentioned potential restriction, if the Danish authorities proceed to adopt the notified draft, the Commission expects them to consider the adopted national measures as provisional and to take into account the final outcome of the ongoing REACH restrictions procedure in line with the EFTA Court’s ruling in Case E-9/16.

The Commission invites the Danish authorities to take the above comments into account.

The Commission furthermore reminds the Danish authorities that once the definitive text has been adopted, they are required to communicate it to the Commission in accordance with Article 5(3) of Directive (EU) 2015/1535.

For the Commission

¹ 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/EC, OJ L 396, 30.12.2006, p. 1.

Kerstin Jorna
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