

# *Due Diligence Obligations of a Subsidiary Company – Case Study*

Réka Miléna SZENTE

National Food Chain Safety Office – Directorate of Priority Affairs – Department of EUTR

*26<sup>th</sup> Meeting of the Multi-Stakeholder Platform on Protecting and Restoring the World's Forests, including the EUTR/FLEGT - with a focus on the implementation of the EUTR and FLEGT Regulation*  
*11 April, 2024*

Hungarian CA had a case where the operator was a subsidiary company (S) of a parent company (P) based in another EU Member State.

### **Company S**

- legal person established and registered in HU;
- imports timber products directly from third countries and places them on the market in the course of its own commercial activity;

### **Company P**

- established in another EU MS
- parent company of several subsidiaries throughout the EU
- not a monitoring organization
- has not registered in HU EUTR Reg.

## ***The Case***

- HU CA ascertained that company S is an operator (jurisprudence; competence)
- examined its due diligence obligations – EUTR Article 4. (2)-(3) and Article 6. (see also Guidance Document – Due Diligence)
  - does Company S have a Due Diligence System specified for its own commercial activity?
  - does Company S exercise due diligence?

## ***Facts & Findings***

- Company S acknowledged the lack of its own DDS (information approved by Company P)
- Company S stated that it can reach information on the timber products from the information system of Company P
- Company P analyses the risk with regards to the timber products imported and placed on the market by Company S
- The DDS of Company P does not contain any information specified for the activities of Company S (or the products/scope of products placed on the market specifically by Company S)
- Company S did not have any documented procedural framework on any of it.
- Company P had a due diligence system, BUT Company P is NOT a monitoring organisation
- Company P was unable to explain why its subsidiaries do not have their own due diligence systems

HU CA got to the conclusion that  
**Company S did not fulfil its Due Diligence obligations set out by  
EUTR Article 4. (2)-(3) and Article 6**

### **Sanctions**

- obligation for Company S to establish its own DDS specified to its activity (and indication of the EUTR Reg. No. on its website and other advertising spaces)
- **total fine (~11.500 EUR)** imposed (**Lack of DDS** – 3700 EUR, lack of registration, fail of EUTR Reg. No. in advertisements)

Legal remedy against the decision of the CA – appeal to the Administrative Court (High Court)

***Preliminary  
Ruling  
procedure  
(C-117/24)***

The Administrative Court found that the core element of the case requires EU law interpretation – therefor initiated a preliminary ruling procedure before the CJEU

**Question that requires the decision of the CJEU**

**Should Article 4(2) and (3) of Regulation (EU) No 995/2010, read in conjunction with Article 6(1) of that regulation, be interpreted as meaning that it is consistent with those provisions for the operator to have access to the elements, referred to in Article 6(1) of the regulation, of the due diligence system maintained and evaluated by its parent undertaking or used by its parent undertaking and established by a monitoring organisation within the meaning of Article 8 [of that regulation]?**

## ***HU CA Position***

### **HU CA answer is NO**

Each operator is required to have its own DDS which is specified exactly to its very own commercial activity, and mirrors the characteristics thereof.

Exercising due diligence is the obligation of the operator.

The operator is the subsidiary company registered in HU which places timber or timber products on the EU market for the first time.

As such – the subsidiary company shall:

- maintain and regularly evaluate its OWN DD System,
- operate accordingly (use the DD System properly)

OR

- use a due diligence system established by a monitoring organization referred to in Article 8 of the EUTR.

## Q & A

### Questions:

Have any of the CAs ever had a similar case? IF yes, what was the outcome.

Do any of the CAs have a position contrary to ours regarding the DDS obligations of operators, including subsidiary companies.



***Thank you for your attention!***

[eutr@nebih.gov.hu](mailto:eutr@nebih.gov.hu)  
[szenter@nebih.gov.hu](mailto:szenter@nebih.gov.hu)  
[halimd@nebih.gov.hu](mailto:halimd@nebih.gov.hu)