



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

21 November 2024*

(Reference for a preliminary ruling – Environment – Regulation (EU) No 995/2010 – Obligations of operators who place timber and timber products on the market – Article 2(a) to (c) – Concepts of ‘timber and timber products’, ‘placing on the market’ and ‘operator’)

In Case C-370/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Najvyšší správny súd Slovenskej republiky (Supreme Administrative Court of the Slovak Republic), made by decision of 26 April 2023, received at the Court on 13 June 2023, in the proceedings

Mesto Rimavská Sobota

v

Ministerstvo pôdohospodárstva a rozvoja vidieka Slovenskej republiky,

THE COURT (Fifth Chamber),

composed of I. Jarukaitis, President of the Fourth Chamber, acting as President of the Fifth Chamber, D. Gratsias (Rapporteur) and E. Regan, Judges,

Advocate General: T. Čapeta,

Registrar: S. Spyropoulos, Administrator,

having regard to the written procedure and further to the hearing on 15 May 2024,

after considering the observations submitted on behalf of:

- the Slovak Government, by E.V. Larišová, acting as Agent,
- the Hungarian Government, by M.Z. Fehér and R. Kissné Berta, acting as Agents,
- the European Commission, by A. Tokár and C. Valero, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 July 2024,

gives the following

* Language of the case: Slovak.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 2(b) of Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (OJ 2010 L 295, p. 23).
- 2 The request has been made in proceedings between Mesto Rimavská Sobota (Municipality of Rimavská Sobota, Slovakia) and the Ministerstvo pôdohospodárstva a rozvoja vidieka (Ministry of Agriculture and Rural Development, Slovakia) ('the Ministry of Agriculture') concerning the legality of a fine imposed on that municipality on the ground that it had failed to put in place a due diligence system within the meaning of Article 4(2) and Article 6 of Regulation No 995/2010.

Legal context

European Union law

- 3 Recital 31 of Regulation No 995/2010 provides:

'Since the objective of this Regulation, namely the fight against illegal logging and related trade, cannot be achieved by the Member States individually and can therefore, by reason of its scale, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 [TEU]. ...'

- 4 Article 1 of that regulation, entitled 'Subject matter', provides:

'This Regulation lays down the obligations of operators who place timber and timber products on the internal market for the first time, as well as the obligations of traders.'

- 5 Article 2 of that regulation, entitled 'Definitions', provides:

'For the purposes of this Regulation, the following definitions shall apply:

- (a) "timber and timber products" means the timber and timber products set out in the Annex, with the exception of timber products or components of such products manufactured from timber or timber products that have completed their lifecycle and would otherwise be disposed of as waste, as defined in Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste [(OJ 2008 L 312, p. 3)];
- (b) "placing on the market" means the supply by any means, irrespective of the selling technique used, of timber or timber products for the first time on the internal market for distribution or use in the course of a commercial activity, whether in return for payment or free of charge. It also includes the supply by means of distance communication as defined in Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts [(OJ 1997 L 144, p. 19)]. The supply on the internal market of timber products derived from timber or timber products already placed on the internal market shall not constitute "placing on the market";

(c) “operator” means any natural or legal person that places timber or timber products on the market;

...

(f) “legally harvested” means harvested in accordance with the applicable legislation in the country of harvest;

(g) “illegally harvested” means harvested in contravention of the applicable legislation in the country of harvest;

(h) “applicable legislation” means the legislation in force in the country of harvest covering the following matters:

– rights to harvest timber within legally gazetted boundaries,

...

– third parties’ legal rights concerning use and tenure that are affected by timber harvesting, ...

...’

6 Article 4 of that regulation, entitled ‘Obligations of operators’, provides:

‘1. The placing on the market of illegally harvested timber or timber products derived from such timber shall be prohibited.

2. Operators shall exercise due diligence when placing timber or timber products on the market. To that end, they shall use a framework of procedures and measures, hereinafter referred to as a “due diligence system”, as set out in Article 6.

3. Each operator shall maintain and regularly evaluate the due diligence system which it uses ...’

7 Article 6 of Regulation No 995/2010, entitled ‘Due diligence systems’, provides, in paragraph 1 thereof:

‘The due diligence system referred to in Article 4(2) shall contain the following elements:

(a) measures and procedures providing access to the following information concerning the operator’s supply of timber or timber products placed on the market:

– description, including the trade name and type of product as well as the common name of tree species and, where applicable, its full scientific name,

– country of harvest, and where applicable:

(i) sub-national region where the timber was harvested; and

(ii) concession of harvest,

- quantity (expressed in volume, weight or number of units),
 - name and address of the supplier to the operator,
 - name and address of the trader to whom the timber and timber products have been supplied,
 - documents or other information indicating compliance of those timber and timber products with the applicable legislation;
- (b) risk assessment procedures enabling the operator to analyse and evaluate the risk of illegally harvested timber or timber products derived from such timber being placed on the market.
- Such procedures shall take into account the information set out in point (a) as well as relevant risk assessment criteria, including:
- assurance of compliance with applicable legislation, which may include certification or other third-party-verified schemes which cover compliance with applicable legislation,
 - prevalence of illegal harvesting of specific tree species,
 - prevalence of illegal harvesting or practices in the country of harvest and/or sub-national region where the timber was harvested, including consideration of the prevalence of armed conflict,
 - sanctions imposed by the UN Security Council or the Council of the European Union on timber imports or exports,
 - complexity of the supply chain of timber and timber products.
- (c) except where the risk identified in course of the risk assessment procedures referred to in point (b) is negligible, risk mitigation procedures which consist of a set of measures and procedures that are adequate and proportionate to minimise effectively that risk and which may include requiring additional information or documents and/or requiring third party verification.'

8 Article 19 of that regulation, entitled 'Penalties', provides, in paragraph 1 thereof:

'The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented.'

9 The annex to that regulation, entitled 'Timber and timber products as classified in the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 [of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1)], to which this Regulation applies', includes the following entries:

- 4401 Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms
- 4403 Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared

...'

Slovak law

- 10 As is apparent from Paragraph 1(1)(a) thereof, the Zákon č. 113/2018 Z. z. o uvádzaní dreva a výrobkov z dreva na vnútorný trh a o zmene a doplnení zákona č. 280/2017 Z. z. o poskytovaní podpory a dotácie v pôdohospodárstve a rozvoji vidieka a o zmene zákona č. 292/2014 Z. z. o príspevku poskytovanom z európskych štrukturálnych a investičných fondov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov (Law No 113/2018 on the placing of timber and timber products on the internal market and amending Law No 280/2017 on the provision of support and subsidies to agriculture and rural development and amending Law No 292/2014 on subsidies provided from European structural and investment funds and amending certain laws, as amended) of 14 March 2018 (No 113/2018 Z. z.), in the version applicable to the dispute in the main proceedings ('the Timber Law'), governs the rights and obligations of operators who place timber and timber products on the market.
- 11 Paragraph 4 of the Timber Law provides:
- '(1) An operator who places timber and timber products on the internal market is required to apply a due diligence system ... The due diligence system shall be established in paper or electronic form before timber and timber products are placed on the internal market.
- (2) The operator is required to manage and evaluate the due diligence system on a regular basis ...
- (3) An operator who places on the internal market timber and timber products from trees or bushes harvested on the territory of the Slovak Republic and who is the owner, administrator or forest manager of forest land ... must also be required to include in the due diligence system information, documents and records provided for in the specific regulations, as well as information on the logging process, the handling of timber and timber products, the transport and placing on the internal market of timber and timber products and related documents.
- ...'
- 12 Under Paragraph 17(1)(c) of the Timber Law, an operator commits an administrative offence if 'it fails to operate a due diligence system or regularly maintain and evaluate the due diligence system referred to in Paragraph 4(1), (2), (3) or (5) [of that law] ...'. Paragraph 17(5)(b) of that law provides that 'the supervisory authority shall impose a fine of between EUR 2 000 and EUR 10 000 for an ... administrative offence referred to in subparagraph (1) ... (c) ...'.

The dispute in the main proceedings and the question referred for a preliminary ruling

- 13 By decision of 10 April 2019, the Slovenská lesnícko – drevárska inšpekcia (Slovak Forestry and Timber Inspectorate, Slovakia) imposed a fine of EUR 2 000 on the Municipality of Rimavská Sobota, on the basis of Paragraph 17(5) of the Timber Law, on the ground that, as an operator, within the meaning of Article 2(c) of Regulation No 995/2010, it had failed to put in place a due diligence system, within the meaning of Paragraph 4(1) to (3) of the Timber Law. That decision was confirmed by decision of the Ministry of Agriculture on 25 June 2019.

- 14 The Municipality of Rimavská Sobota brought an action against that decision, which was dismissed by judgment of the Krajský súd v Banskej Bystrici (Regional Court, Banská Bystrica, Slovakia). The Municipality of Rimavská Sobota brought an appeal on a point of law against that judgment before the Najvyšší správny súd Slovenskej republiky (Supreme Administrative Court of the Slovak Republic), the referring court.
- 15 According to the referring court, the Municipality of Rimavská Sobota sold timber by merely indicating to purchasers the trees to be harvested, or the land used for that harvest, which was carried out by the purchasers themselves, under the supervision of municipal employees.
- 16 The parties to the main proceedings disagree as to whether the Municipality of Rimavská Sobota is an ‘operator’ within the meaning of Article 2(c) of Regulation No 995/2010. The Municipality of Rimavská Sobota submits that that classification does not apply to it because it does not sell timber which has already been harvested, but the right to harvest standing timber.
- 17 For its part, the Ministry of Agriculture maintains that, since the Municipality of Rimavská Sobota ‘[placed] on the market’, within the meaning of Article 2(b) of Regulation No 995/2010, it is an ‘operator’ within the meaning of Article 2(c) of that regulation and is therefore required to comply with the obligations laid down in Article 4(2) thereof. According to the information provided by the referring court, the Ministry of Agriculture relies on the fact that the Municipality of Rimavská Sobota sold timber directly, which the purchasers had to harvest and transport themselves, without, however, transferring to the purchasers the right to harvest and manage a part of the forest concerned. In the view of the Ministry of Agriculture, it is only in the situation of such a transfer that purchasers could be regarded as ‘forest managers’ within the meaning of the relevant provisions of Slovak law and would thus have the information necessary in order to be able to put in place a due diligence system, as required by Article 4(2) of that regulation.
- 18 The referring court is of the opinion that the case before it raises a question of interpretation of the concepts of ‘placing on the market’ and ‘operator’ within the meaning of Article 2(b) and (c) of Regulation No 995/2010.
- 19 In those circumstances, the Najvyšší správny súd Slovenskej republiky (Supreme Administrative Court of the Slovak Republic) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is Article 2(b) of Regulation [No 995/2010] to be interpreted as meaning that the placing on the market of timber also constitutes a sale for consideration of raw timber or fuel wood within the meaning of [the annex] to that regulation, if, under the harvest concession agreement, the purchaser harvests the timber under the direction and supervision of the seller?’

Admissibility

- 20 The Slovak Government submits that the request for a preliminary ruling is inadmissible on the ground that, as formulated, the question referred invites the Court to apply Regulation No 995/2010 to the facts of the case in the main proceedings.

- 21 In that regard, it should be recalled that, in proceedings under Article 267 TFEU, which are based on a clear separation of functions between the national courts and the Court of Justice, the national court alone has jurisdiction to find and assess the facts in the case before it and to interpret and apply national law. It is for the Court of Justice, by contrast, to provide the national court that made a reference for a preliminary ruling with guidance on the interpretation of EU law that may be necessary for the outcome of the case in the main proceedings, while taking into account the indications contained in the order for reference as to the national law applicable to that case and to the facts characterising the latter (see, to that effect, judgment of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraph 134 and the case-law cited).
- 22 In the present case, the question referred, according to its actual wording, concerns the interpretation of the concept of ‘placing on the market’ within the meaning of Article 2(b) of Regulation No 995/2010. It will be for the referring court to apply that provision, as interpreted by the Court of Justice, to the facts of the dispute in the main proceedings, taking account of some useful indications provided by the Court of Justice in that regard to enable the referring court to decide the case before it (see, to that effect, judgment of 12 September 2024, *Chaudfontaine Loisirs*, C-73/23, EU:C:2024:734, paragraph 38).
- 23 Accordingly, the request for a preliminary ruling is admissible.

Consideration of the question referred

- 24 By its question, the referring court asks, in essence, whether Article 2(a) to (c) of Regulation No 995/2010 must be interpreted as meaning that a natural or legal person that concludes a contract by which it authorises the other party to the contract to harvest, on its direction or under its supervision, wood in the rough or fuel wood must be regarded as being an ‘operator’ ‘placing on the market’ ‘timber and timber products’, within the meaning of that provision.
- 25 According to settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 5 September 2024, *W. GmbH*, C-67/23, EU:C:2024:680, paragraph 70).
- 26 According to Article 2(c) of Regulation No 995/2010, the concept of ‘operator’ means any natural or legal person that places timber or timber products on the market.
- 27 Under Article 2(b) of that regulation, the notion of ‘placing on the market’ covers ‘the supply by any means, irrespective of the selling technique used, of timber or timber products for the first time on the internal market for distribution or use in the course of a commercial activity, whether in return for payment or free of charge’.
- 28 The term ‘supply’ in Article 2(b) of that regulation must, according to its usual meaning, be understood as referring to the transfer of ownership of a quantity of timber or timber products.

- 29 The concept of ‘timber and timber products’ covers, under Article 2(a) of Regulation No 995/2010, ‘timber and timber products set out in the Annex [to that regulation], with the exception of timber products or components of such products manufactured from timber or timber products that have completed their lifecycle and would otherwise be disposed of as waste, as defined in Article 3(1) of Directive [2008/98]’.
- 30 It follows from the annex to Regulation No 995/2010 that the concept of ‘timber and timber products’, within the meaning of that regulation, includes ‘wood in the rough’ and ‘fuel wood’ but not ‘standing wood’, that is to say, timber from trees which are intended to be felled but which have not yet been felled, since that type of timber is not included in that annex.
- 31 It follows from those factors that a natural or legal person must be regarded as being an ‘operator’, ‘placing on the market’ ‘timber and timber products’, within the meaning of Article 2(a) to (c) of Regulation No 995/2010, where, irrespective of the selling technique used, it transfers for the first time and for the purposes of distribution or use in the course of a commercial activity, the right of ownership in wood in the rough or fuel wood to a person who carries out transactions in the internal market.
- 32 Consequently, that wood in the rough or fuel wood must be regarded as having been placed on the market by an operator, within the meaning of that regulation, where, after having been harvested, it is the subject, for the first time and irrespective of the selling technique used, of a transfer of ownership for the purposes of distribution or use in the course of a commercial activity.
- 33 As regards the context of Article 2(b) of Regulation No 995/2010, it should be noted that, under Article 4(1) thereof, ‘the placing on the market of illegally harvested timber or timber products derived from such timber shall be prohibited’. In accordance with Article 2(g) of that regulation, the concept of ‘illegally harvested’ means timber ‘harvested in contravention of the applicable legislation in the country of harvest’. The concept of ‘applicable legislation’ means, in accordance with the first and fourth indents of Article 2(h) of that regulation, the legislation in force in the country of harvest, covering, inter alia, rights to harvest timber within legally gazetted boundaries and third parties’ legal rights concerning use and tenure that are affected by timber harvesting.
- 34 It follows from those provisions that Regulation No 995/2010 does not govern the conditions for the creation of the right of ownership of the timber harvested by tree felling or the procedures for the acquisition or transfer of that right.
- 35 Those conditions and procedures are therefore governed by the applicable national law, namely the law of the State in whose territory the land concerned is situated. It is therefore on the basis of the consequences arising, in accordance with that national law, from the transaction at issue that it is necessary to determine whether that transaction constitutes ‘placing on the market’, within the meaning of Article 2(b) of Regulation No 995/2010, of timber or timber products.
- 36 The objective pursued by Regulation No 995/2010, as is apparent from recital 31 thereof, is to fight against illegal logging and related trade. To that end, in accordance with Article 1 of that regulation, it lays down, in particular, the obligations of ‘operators’, within the meaning of Article 2(c) of that regulation, that is to say, persons who place timber and timber products on the market for the first time.

- 37 In order to facilitate the attainment of that objective, the application of national law makes it possible to determine with certainty whether, in a given case, a natural or legal person has the status of owner of the timber harvested at the time of its first sale to a third party, so much that it must be classified as an ‘operator’, ‘placing on the market’ ‘timber or timber products’ within the meaning of Article 2(a) to (c) of that regulation, and must assume the obligations resulting from those legal classifications.
- 38 It follows that a contract, such as that referred to by the referring court, under which the forest manager concerned authorises the other party to the contract to fell, on its direction or under its supervision, certain trees in that forest and to harvest the timber resulting from the felling of those trees, may constitute ‘placing on the market’ within the meaning of Article 2(b) of Regulation No 995/2010, where that contract has the effect, under the applicable national law, of transferring ownership of that timber, once harvested, between that forest manager and that other party to the contract.
- 39 On the other hand, where, under the applicable national law, that contract does not entail a transfer of ownership of the harvested timber, but the other party to the contract directly and automatically becomes the owner of that timber by the mere fact of felling the trees concerned, the contract concluded with the land manager cannot constitute ‘placing on the market’. Assuming that such a transaction can be classified as a supply of standing timber, it is sufficient to recall that, as is noted in paragraph 30 of the present judgment, standing timber does not come under the concept of ‘timber and timber products’ within the meaning of Regulation No 995/2010. In that case, placing on the market will occur when the person who harvested the timber in question has transferred ownership of it to a third party for the purposes of distribution or use in the course of a commercial activity.
- 40 In the present case, it is for the referring court, which alone has jurisdiction to find and assess the facts in the case before it and to interpret and apply Slovak law and, in particular, the rules governing the creation, acquisition and transfer of the right of ownership of a quantity of timber harvested, to assess whether the Municipality of Rimavská Sobota, in its capacity as manager of the forest concerned, became, after harvesting, the owner of the timber harvested by its contractual partners. If that were the case, the subsequent transfer of ownership of that timber to the contractual partners, pursuant to the contracts which the Municipality of Rimavská Sobota concluded with them, constitutes ‘placing on the market’ within the meaning of Article 2(b) of Regulation No 995/2010, provided that that transfer was made for the purposes of distribution or use in the course of a commercial activity, which is also a matter for the referring court to ascertain.
- 41 In the light of all the foregoing considerations, the answer to the question raised is that Article 2(a) to (c) of Regulation No 995/2010 must be interpreted as meaning that a natural or legal person that concludes a contract by which it authorises the other party to the contract to harvest, on its direction or under its supervision, wood in the rough or fuel wood, must be regarded as being an ‘operator’ ‘placing on the market’ ‘timber and timber products’, within the meaning of that provision, where, in accordance with the applicable national law, that other party to the contract does not directly and automatically become the owner of the timber harvested by the mere fact of felling the trees, but where, in performance of that contract, that person, while remaining the owner of that timber, transfers, after harvesting, that right of ownership to that other party to the contract.

Costs

- 42 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

Article 2(a) to (c) of Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market

must be interpreted as meaning that a natural or legal person that concludes a contract by which it authorises the other party to the contract to harvest, on its direction or under its supervision, wood in the rough or fuel wood, must be regarded as being an ‘operator’ ‘placing on the market’ ‘timber and timber products’, within the meaning of that provision, where, in accordance with the applicable national law, that other party to the contract does not directly and automatically become the owner of the timber harvested by the mere fact of felling the trees, but where, in performance of that contract, that person, while remaining the owner of that timber, transfers, after harvesting, that right of ownership to that other party to the contract.

[Signatures]