

NEO Group: Has the ECJ Rendered Beneficial Ownership Irrelevant?

EU Tax Focus, 22/2026 (15 October 2026)

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1. Introduction

The interpretation of anti-abuse rules is alive and kicking at the EU level. After the introduction of the general anti-abuse rule (GAAR) in both the [Parent-Subsidiary Directive \(2011/96\)](#) (PSD) and the [Anti-Tax Avoidance Directive \(2016/1164\)](#) (ATAD), it was up to the Court of Justice of the European Union (ECJ) to interpret the concept. On 15 October 2026, the ECJ issued its judgement in the case of [NEO Group](#) (Case C-203/25) on the interpretation of the PSD GAAR. The author examines the implication of this judgement for the role of beneficial ownership and for the threshold for establishing abuse.

2. The ECJ's anti-abuse doctrine

In 2019, the ECJ's decided in the [Danish](#) cases (Joined Cases C-116/16 and C-117/16) that taxpayers should not be entitled to the benefits of the PSD in abusive situations. In those cases, the issue concerned conduit companies that were formally placed between the dividend distributing company and the actual beneficial owner of the dividend. Without a conduit company, the dividend distribution could not have benefited from the PSD's withholding tax exemption, because the actual recipient was not a resident of an EU Member State. As a result, the withholding tax exemption could be denied on the distribution to the conduit company as well.

The ECJ indicated that the EU's anti-abuse rules, including the PSD GAAR, contains a subjective and an objective element. To meet those requirements, it should be determined whether, based on objective facts and circumstances, the situation under examination was created to artificially meet certain requirements to obtain a tax benefit, thereby defeating the object or purpose of the PSD. To that end, all facts and circumstances need to be taken into account. In its judgment in the Danish cases, the ECJ identified some indicators for determining whether a company qualifies as a conduit company. These are, amongst others, that the sole activity of the company is the receipt of dividends and their transmission to the beneficial owner; and that those dividends are held for a short period. These can be determined based on the relevant data on, in particular, the company's management, balance sheet, cost structure and expenditure incurred, staff, and premises and equipment. According to the ECJ, the qualification as a conduit entity is not only based on a contractual or statutory dividend payment obligation, but can also occur if the company "in substance" does not have the right to use and enjoy the dividends. Therefore, in the author's opinion, the qualification as a conduit company is closely related to the entity not qualifying as the beneficial owner of the dividends.

In 2025, the ECJ confirmed in [Nordcurrent group](#) (C-228/24) the subjective and objective elements within the GAAR's definition. Besides that, it ruled that the conduit company as identified in the Danish cases was merely an example of an abusive situation. The facts and circumstances to be taken into account are not solely those existing at the moment of the dividend distribution under discussion, as anterior and posterior facts could also impact the qualification of an arrangement as abusive.

3. NEO Group

Before the ECJ delivered its judgement in *Nordcurrent group*, the Lithuanian court made a reference for a preliminary ruling in the case *NEO Group*, on the interpretation of the PSD GAAR. According to the facts of the case, a Cypriot individual held all the shares in a company registered in Belize which, in turn, held all the shares in a Cypriot company. That Cypriot company held all the shares in a Lithuanian resident company. The Lithuanian company distributed a dividend to its Cypriot parent company, which can be considered the beneficial owner of the dividends and performing genuine activities. The situation is in scope of the PSD and would technically meet the requirements for obtaining the withholding tax exemption.

However, the Lithuanian tax authorities denied the withholding tax exemption based on the PSD GAAR. This decision was based in particular on the facts and circumstances relating to the shareholding in the Cypriot company. The Belizean company transferred the shares in the Cypriot company to another, newly incorporated Cypriot company, also directly held by the Cypriot individual holding the shares in the Belizean company. According to the tax authorities, the dividends formed part of an artificial chain of transactions, ultimately transferring funds to the individual and eroding the Cypriot tax base. The question was referred to the ECJ concerning the interpretation of the PSD GAAR in respect of the dividend distribution by the Lithuanian company.

In its [judgment](#) issued on 15 October 2026, the ECJ confirmed the earlier approach in the Danish cases and *Nordcurrent group*. The ECJ reiterated that the finding of abuse requires both the subjective and objective elements, the fact that conduit companies are merely an example of abuse and that all facts and circumstances – also anterior and posterior to the actual dividend distribution – should be taken into account in establishing abuse. In answering the Lithuanian court, the ECJ agreed that indicators of abuse can be found in the fact that amounts transferred in a chain of transactions are similar or identical to the initial dividend distribution by the Lithuanian company, but that this is not a general presumption of abuse. Besides that, in order to indicate abuse, it is not required that redistributions take place shortly after the initial dividend distribution; they can also take place on an ongoing basis over a certain period of time. Therefore, the ECJ concluded that the denial of the withholding tax exemption by the Lithuanian tax authorities was in line with the PSD GAAR.

4. Should the ECJ have stopped its examination at a certain level?

Even though the author fully understands the ECJ's interpretation, in his view the ECJ erred by not clarifying how the facts and circumstances defeated the objective of the PSD. The effect of it is disproportionate, and could have been avoided by allocating more relevance to the genuine nature of the Cypriot dividend-receiving company. In

itself, of course, beneficial ownership is not a constitutive requirement for obtaining the benefits of the PSD. The concept of beneficial ownership is not referenced in the PSD at all, unlike in the [Interest and Royalties Directive \(2003/49\)](#). The fact that bilateral tax treaties would require a dividend to be paid to the beneficial owner before being granted reduced withholding tax rates is considered irrelevant by the ECJ, if that would lead to an interpretation contrary to EU law. In other words: when the dividend is distributed to the beneficial owner, this does not qualify as a safe harbour for the PSD GAAR. This may, however, raise questions, given that the beneficial ownership requirement can operate as an anti-abuse rule.

In defining the elements of the PSD GAAR, the ECJ does not necessarily add novelties in its *NEO Group* judgment. It can be considered in line with earlier case law. It could, however, be questioned whether the ECJ took a broad approach by looking beyond the beneficial owner of the Lithuanian dividends.

In itself, as is apparent from the Lithuanian court's referring judgment, the parties agree that the Cypriot company directly receiving the dividend is the beneficial owner of that dividend. After that, the referring court, however, appears to randomly refer to the Cypriot individual "ultimate beneficial owner" (UBO) as "beneficial owner". The beneficial owner and UBO are, in the author's opinion, totally different concepts. By referring to the individual as the beneficial owner, all the – potentially abusive – transactions taking place in Cyprus are taken into account as relevant facts and circumstances for application of the PSD GAAR as well.

Advocate-General Kokott was more nuanced in her [Opinion](#) in the *NEO Group* case. She suggested that a dividend distribution to a parent company that is the beneficial owner as a rule should be considered genuine and, as such, benefit from the withholding tax exemption. That could be different if the dividend distribution to the beneficial owner would be part of an abusive overall plan. AG Kokott explains that as follows: "Such an abusive overall plan can be considered to exist, for example, where the Parent-Subsidiary Directive is exploited to generate income for the final beneficiary (meaning the natural person behind the group of companies) which cannot be taxed in respect of him or her. That is the case, for example, where a subsidiary distributes dividends to its parent company which is the beneficial owner in order to conceal them by means of further transactions through 'non-cooperative offshore jurisdictions', with the result that the State of residence of the final beneficiary does not receive any information about the 'final' distribution and is therefore unable to tax it." As that would not be the case in *NEO Group*'s situation, the question in relation to the applicability of the withholding tax exemption should be limited to the first dividend distribution by the Lithuanian company to its Cypriot direct shareholder. The author concurs with AG Kokott, because the initial dividend distribution by the Lithuanian company is not necessary for the transactions taking place between the Belizean company and the Cyprus company and individual. As such, that initial distribution should have been examined on its own merits and, thus, qualified as not abusive. That would also have better fitted point 8 of the preamble to [Directive 2015/121](#), indicating that it would be more proportionate to only subject the non-genuine parts or steps of an arrangement to the PSD GAAR.

In general, the ECJ is rather silent on the motivation of another relevant element of the actual PSD GAAR, i.e. that the series of arrangements should "defeat the objective of the PSD". The objective of the PSD is to exempt dividends and other profit distributions paid by subsidiary companies to their parent companies from withholding taxes as well as of eliminating the double taxation of such income at the level of the parent company, in order to facilitate the grouping together of companies at the EU level. Even though the author can acknowledge that the

Cypriot transactions could be considered undesirable, they do not in themselves defeat the purpose of the PSD. Of course, it should be emphasized that abusive situations must be countered. The author, however, would prefer AG Kokott's suggestion to treat beneficial ownership as a presumption of a genuine situation unless it is part of an overall abusive plan. This would also be more in line with point 113 of the Danish cases, where the existence of the withholding tax exemption is explained as a necessary mechanism to avoid double taxation, while a levy of withholding tax would especially be allowable for EU outbound dividend distributions. As such, the initial dividend distribution in the *NEO Group* case to the genuine Cypriot parent company should have been exempt from Lithuanian withholding tax.

Alternatively, in *NEO Group's* group structure, the ECJ could have countered the potential abuse where it would actually take place: in Cyprus. That is what the ATAD GAAR could also establish. Essentially, that would also better fit the approach that seems to underlie the ECJ's decision. Where, in the judgement, the relation between beneficial ownership and abuse is debated from a tax treaty's perspective, the ECJ references point 12.5 of the [OECD Commentary](#) to Article 10. The Commentary mentions that being the beneficial owner does not exclude the possibility that treaty benefits may not apply if abuse exists, implying the application of the Principal Purpose Test. From that perspective, the author understands the ECJ taking a closer look at the Cyprus transactions. In EU law, however, the specific anti-abuse requirement (PSD GAAR) is not in the same legal instrument as the overall GAAR (ATAD). In tax treaty law, this would be different because both beneficial ownership and the PPT are in the same instrument, i.e. the treaty. As a result, it is logical that the PPT can overrule beneficial ownership. As both the PSD GAAR and ATAD GAAR are in different directives, the ECJ's interpretation of the PSD GAAR was, to the author's opinion, too broad by examining beyond the initial dividend distribution. Steps to counter the abuse should have taken place in Cyprus, for instance by means of the ATAD GAAR. This would also be more proportionate, as the initial dividend distribution has no relation with the potential abuse in Cyprus. In other words, the abuse in Cyprus could also have taken place without the initial dividend distribution by the Lithuanian company. If Cyprus would not fight the abuse, the European Commission could start an infringement procedure against Cyprus for the improper implementation of the ATAD GAAR.

One of the effects of the ECJ's *NEO Group* judgement is that a taxpayer will no longer be certain on whether they are entitled to a withholding tax exemption. In principle, tax authorities can take into consideration anything happening in the chain of companies up to the UBO. If it is demonstrated that only one of the companies or individuals up the chain would benefit from the withholding tax exemption, the subjective element would already be met. This approach may result in lowering the threshold for abuse. The ECJ, however, should in principle have stopped its analysis at the level of the genuine Cypriot parent company that was also the beneficial owner of the dividend, especially because the dividend distribution to that company was not necessary in the potentially abusive transactions at that company's shareholder level.

5. One final remark

By its judgment, the ECJ may have diminished the role of the beneficial ownership requirement and also have given rise to concerns on legal certainty. Formally, it should be recalled that the ECJ in principle only confirmed that the Lithuanian interpretation of the PSD GAAR is not contrary to EU law. It does not oblige other Member States to do the same. Still, it does open doors for other Member States' interpretations of the PSD GAAR. In that

respect, the author hopes that the approach adopted in Lithuania will not serve as a model for other Member States.

IBFD References:

- > EU tax law developments are reported daily on the IBFD [Tax News Service](#) page.
- > For IBFD summaries of ECJ judgments, see the [ECJ Case Law](#) IBFD collection.
- > N. Mitrakou, "[Tax Abuse in Case of Dividend Flows under the PSD: AG Opinion in Neo Group](#)", EU Tax Focus 20/2026 (11 Sept. 2026), IBFD.
- > Aistė Medelienė, "[Advocate General Kokott's Opinion in NEO Group \(Case C-203/25\): Key Clarifications on the Anti-Abuse Rule under the EU Parent-Subsidiary Directive](#)", *European Taxation* 66, no. 9 (2026).