

Euro Tax Flash from KPMG's EU Tax Centre

CJEU decision on the application of the anti-abuse rule under Parent-Subsidiary Directive

Issue 586

October 16, 2026

At a glance: On October 15, 2026, the [CJEU ruled in C-203/25](#) that the Parent-Subsidiary Directive (PSD) anti-abuse provision may apply even where the immediate parent company carries on genuine economic activities, is recognized as the beneficial owner of the dividends and is not a conduit company.

Taxpayer impact: The judgment confirms that genuine economic activity and beneficial ownership at the level of the direct parent company are not, in and of themselves, sufficient to exclude a finding of abuse. Tax authorities may take into account transactions carried out in other jurisdictions, including events occurring after the dividend payment and advantages obtained by other participants in the structure, including the ultimate beneficial owner.



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CJEU – Lithuania – Parent-Subsidiary Directive – Anti-abuse rule – Beneficial ownership – Genuine economic activity – Withholding tax exemption on dividends – Non-genuine arrangement - Artificial arrangement – Tax advantage – Taxation of cross-border profit distributions – International Tax

On October 15, 2026, the Court of Justice of the European Union (CJEU or the Court) rendered its [decision in case C-203/25](#), on the interpretation of the anti-abuse provision in the Parent-Subsidiary Directive (the PSD or the Directive).

Key findings of the CJEU

Broad scope of the PSD anti-abuse provision and assessment of the arrangement as a whole

The Court confirmed that the PSD anti-abuse provision has a broad scope and is not limited to situations involving conduit companies. Importantly, the existence of genuine economic activity at the level of the direct parent company is not sufficient, by itself, to rule out abuse. Tax authorities must assess the arrangement as a whole and may consider all relevant facts and circumstances across the wider chain of transactions. In the case at hand, this included the transfer of shares, loan arrangements and assignments of receivables involving entities other than the immediate dividend recipient. The Court also noted that recognition of beneficial ownership under a tax treaty does not prevent the application of the PSD anti-abuse rule.

Correspondence between dividend amounts and the timing of transfers may constitute indicators of a non-genuine arrangement

Building on its previous "Danish cases" jurisprudence, the Court confirmed that tax authorities may take into account:

- the similarity between dividend amounts received by the parent company and amounts ultimately transferred through the wider structure;
- the onward transfer of funds within the group; and
- the timing and frequency of such transfers.

The Court clarified that abuse cannot be presumed solely because amounts correspond or because dividends are transferred onwards. Equally, the anti-abuse rule is not limited to situations where funds are transferred shortly after receipt. Repeated transfers over a longer period may also be relevant indicators when viewed in the context of the overall arrangement.

Anti-abuse assessment may extend to transactions carried out outside the Member State of the distributing subsidiary

The Court held that national tax authorities are entitled to take a holistic view of the arrangement when applying the anti-abuse provision. This includes considering:

- transactions carried out in other jurisdictions;
- events occurring after the dividend payment; and
- tax advantages obtained by parties elsewhere in the structure, including the ultimate beneficial owner (UBO).

The Court rejected the argument that the relevant tax advantage must arise at the level of the distributing subsidiary.

The relevance of the distributing subsidiary's knowledge in assessing the alleged abusive arrangement

The Court finally addressed whether the withholding tax exemption can be denied without proving that the distributing subsidiary itself knew, or could have known, about the abusive arrangement. The Court concluded that such knowledge is not required. Whilst abuse requires both objective and subjective elements, the subjective element need only be demonstrated in relation to at least one participant in the chain of transactions or the ultimate beneficial owner. Limiting the analysis to the knowledge of the distributing subsidiary would undermine the effectiveness of the PSD anti-abuse provision.

Background

The plaintiff is a Lithuanian entity wholly owned by a Cypriot parent company (HoldCo One). In 2016 and 2017, the parent company received dividends from the plaintiff and another Lithuanian entity. The plaintiff considered that the payments were exempt from dividend withholding tax under the local rules implementing the Parent-Subsidiary Directive (PSD).

In February 2017, the shares in HoldCo One were sold by a Belize company, the grandparent of the Lithuanian plaintiff, to a newly set-up Cypriot entity (HoldCo Two) while the purchase price remained payable by HoldCo Two (the loan). Despite this sale, the ultimate beneficial owner of the dividends (UBO), an individual not resident in Lithuania, who owned both the Belizean and Cypriot companies, remained unchanged. Following the sale, the Belize company assigned the loan to the UBO.

In 2017 and 2018, HoldCo Two granted loans (the loan arrangements) and assigned receivables to the UBO. The combined amount of these loans and receivables was subsequently set off against the outstanding amount of the UBO's receivable against HoldCo Two that was created in connection with the sale of the shares in HoldCo One. Over that period, HoldCo Two did not pay out any dividend to its shareholder (UBO).

Following a tax audit, the Lithuanian tax inspectorate concluded that the dividends paid by the Lithuanian entity to HoldCo One should not have benefited from the PSD exemption and were instead subject to the standard 15 percent withholding tax. The Lithuanian tax authorities did not challenge the beneficial owner status of HoldCo One nor did they challenge the fact that HoldCo One actually carried on an economic activity. However, they argued that the transactions involving the dividends formed part of a non-genuine arrangement aimed at obtaining a tax advantage, thus triggering the application of the anti-abuse rule under the PSD as transposed into Lithuanian law³. In particular, the Lithuanian tax authorities concluded that economically, the dividends were ultimately paid to the UBO, through a chain of artificial transactions.

Following an appeal raised by the taxpayer, the Lithuanian Tax Disputes Commission (Disputes Commission) acknowledged the CJEU's rulings in joined cases [C-116/16 and C-117/16](#), commonly referred to as the "Danish cases". Nonetheless, the Disputes Commission noted that the case at hand is different since the dividends were paid to an entity with genuine economic activity which, in the tax authorities' view, participated in a chain of non-genuine transactions.

On this basis, the Disputes Commission expressed doubts about the interpretation of the anti-abuse provision¹ of the PSD and referred to the CJEU the following questions:

- Is it compatible with the PSD anti-abuse provision for a national tax practice to deny a withholding tax exemption on dividends paid to a genuine parent company established in another EU Member State, on the ground that the dividend is a part of a chain of non-genuine transactions?
- Can a chain of dividend transfers be presumed to be artificial or abusive based solely on the similarity of amounts involved at different stages of the transactions?
- Is it compatible with the PSD anti-abuse provision for a national tax practice to deny tax benefits on a cross-border dividend payment based on a chain of non-genuine transactions that occurred entirely after the dividend payment and in another EU Member State?
- Can the tax advantage be attributed to the plaintiff if it was ultimately realized by another party – i.e., the ultimate beneficiary, through a chain of non-genuine transactions?
- Can the anti-abuse rule under the PSD apply if the dividends were passed over on a continuous basis – i.e., from one year to one month, instead of "very soon after their receipt" as mentioned in the Danish cases?
- What is the relevance of the plaintiff's knowledge or intent to undertake non-genuine transactions when applying the anti-abuse rules under the PSD.

On May 21, 2026, Advocate General Juliane Kokott of the CJEU [recommended](#) that the Court find that a withholding tax exemption under the Parent-Subsidiary Directive may be denied in exceptional cases (case C-203/25). In the AG's view, this could apply even where the parent company receiving the dividends is the beneficial owner and carries out genuine

¹ Under Article 1(2) of the PSD, Member States are required not to grant the benefits of the PSD to an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the PSD, are not genuine having regard to all relevant facts and circumstances. An arrangement or a series of arrangements are to be regarded as not genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality. Under

economic activities, but it passes the dividends on to the UBO through an artificial arrangement.

The AG stressed that to determine the purpose of an arrangement, all relevant circumstances must be taken into account, in particular the awareness of the person who decides to implement it, which is generally the controlling shareholder. According to the AG, an abusive overall plan exists, for example, where the PSD is used to generate income for the UBO that cannot be taxed in their hands. This could be the case where dividends are channeled through non-cooperative offshore jurisdictions, so that the UBO's state of residence receives no information about the final distribution.

The AG also took the view that abuse of a Member State's national tax law does not, as a rule, constitute abuse within the meaning of the PSD. However, abuse under the PSD may exist where the subsidiary distributes profits to its parent company, which is the beneficial owner, for the purpose of evading taxes in the UBO's Member State.

For more details, please refer to Euro Tax Flash [Issue 580](#).

CJEU decision

Broad scope of the PSD anti-abuse provision and assessment of the arrangement as a whole

The Court first focused on whether the anti-abuse provision in the PSD may apply where dividends are paid to a parent company that carries on genuine economic activities and is not a conduit company, but forms part of a broader chain of transactions containing one or more allegedly non-genuine elements. In addressing this question, the Court recalled that the PSD seeks to eliminate withholding taxes and double taxation on cross-border profit distributions within the EU. The Court then reiterated its settled case-law according to which EU law contains a general anti-abuse principle. The Court noted that the anti-abuse provision introduced by Directive 2015/121² reflects that principle in the context of the PSD.

The Court further recalled that two cumulative conditions must be met for benefits under the PSD to be denied:

- the arrangement or series of arrangements must be non-genuine, meaning that it is not put in place for valid commercial reasons reflecting economic reality; and
- one of the principal purposes of the arrangement must be to obtain a tax advantage that defeats the object or purpose of the Directive.

The Court first focused on the condition related to the existence of a non-genuine arrangement. The Court emphasized that the anti-abuse provision must be interpreted by reference not only to its wording, but also to its context and objectives. In this regard, the Court reiterated its settled case law that, based on the wording, context and objectives of the provision, the PSD anti-abuse rule applies broadly to all types of non-genuine arrangements and is not limited to arrangements displaying specific characteristics. Accordingly, whether an arrangement is non-genuine must be determined through an objective assessment of all relevant facts and circumstances. Where a structure consists of several transactions or steps, the analysis cannot focus solely on a single element of the arrangement or on the circumstances existing at a particular point in time, but must consider the overall series of arrangements. The Court also confirmed that it is for the national tax authorities seeking to deny PSD benefits to establish the constituent elements of an abusive practice, although they cannot be required to produce evidence that would be impossible to obtain.

Applying those principles, the Court rejected the argument that the PSD anti-abuse provision is limited to arrangements involving conduit companies. Referring to the Danish cases, the Court recalled that the interposition of a conduit entity is merely one example of a potentially abusive arrangement. Consequently, the fact that the immediate parent company carries on genuine economic activities and is not a conduit company does not, in and of itself, exclude the existence of an abusive practice.

According to the Court, focusing solely on the economic activity of the immediate recipient of the dividends would be inconsistent with the requirement to assess the arrangement as a whole. Instead, all relevant facts and circumstances forming part of the broader chain of transactions must be taken into account. In the case at hand, those elements included the transfer of shares in HoldCo One and the loan arrangements and the assignment of receivables between HoldCo Two and the UBO.

The Court also addressed the interaction between the PSD anti-abuse provision and the Lithuania-Cyprus double tax treaty. Referring to the OECD Commentary to the Model Tax Convention, the Court noted that beneficial ownership does not automatically entitle a taxpayer to double tax treaty benefits in abusive situations. More fundamentally, the Court reiterated that double tax treaties concluded between Member States cannot be relied upon to achieve a result contrary to EU law. Consequently, the recognition of beneficial ownership under a tax treaty does not, in and of itself, prevent the application of the PSD anti-abuse provision.

² Directive 2015/121 amends Directive 2011/96/EU, which is designed to prevent double taxation of dividends and other profit distributions paid by parent companies to their subsidiaries across different EU Member States.

The Court therefore concluded that the PSD anti-abuse provision does not, in principle, prevent a Member State from denying a withholding tax exemption where a dividend distribution forms part of a broader chain of transactions containing one or more non-genuine elements, even where the immediate parent company carries on genuine economic activities and is not a conduit company.

Correspondence between dividend amounts and the timing of transfers may constitute indicators of a non-genuine arrangement

The Court also provided guidance on the interpretation of the anti-abuse provision in the PSD and, in particular, on whether the correspondence between dividend amounts transferred through a chain of transactions and the timing of those transfers may constitute relevant indicators when assessing the existence of an abusive practice.

The Court recalled its findings in the Danish cases, where the onward payment of dividends, in whole or in substantial part and within a very short period following their receipt, was regarded as an indication of an arrangement aimed at benefiting unduly from the withholding tax exemption provided by the PSD. Building on that case-law, the Court held that, in assessing the existence of an abusive practice, national tax authorities may also take into account the correspondence between the amount of dividends received by the parent company and the amounts ultimately received, through the chain of transactions, by the person controlling the entities involved. The Court nevertheless emphasized that neither of these elements can, in isolation, give rise to a general presumption of abuse.

The Court further clarified that, whilst a rapid onward transfer of dividends may constitute a relevant indicator, a short interval between the receipt and subsequent transfer of dividends is not required for the purposes of the anti-abuse provision. According to the Court, transfers carried out on a recurring basis over a longer period may also be relevant in assessing whether a chain of transactions contains one or more non-genuine elements.

The Court therefore concluded that both the similarity of the amounts transferred through a chain of transactions and the fact that such transfers take place continuously over a certain period may constitute relevant indicators for the purposes of identifying a non-genuine arrangement, without prejudice to the need for the national tax authorities to verify, on the basis of all relevant facts and circumstances, whether the constituent elements of an abusive practice are present.

Anti-abuse assessment may extend to transactions carried out outside the Member State of the distributing subsidiary

The CJEU then examined whether the anti-abuse provision in the PSD, as interpreted in light of the principle of proportionality, precludes a Member State from levying withholding tax on dividends where the transactions deemed to be non-genuine were carried out outside that Member State and the resulting tax advantage was obtained by another person within the wider structure.

The Court first noted that, when assessing whether an arrangement is abusive, national tax authorities must conduct a comprehensive examination of all relevant facts and circumstances, including transactions carried out outside the Member State seeking to deny the benefits of the Directive. The CJEU further recalled its previous case law – in particular case C-228/24 (Nordcurrent), based on which national tax authorities may also take into account events occurring after the arrangement was put in place when assessing whether it is genuine.

Applying those principles, the Court held that the anti-abuse provision of the PSD does not require the tax advantage that runs counter the Directive's objective or purpose to be demonstrated in relation to the distributing subsidiary. Instead, the advantage may be obtained by the ultimate individual controlling the group, resident in another Member State. The Court further noted that such undue advantages could not be addressed if the Member State granting the exemption were prevented from taking into account transactions carried out outside its territory using the dividends received under that exemption.

The Court also rejected arguments based on the principle of proportionality. The CJEU took the view that allowing national tax authorities to assess the entire arrangement is both suitable and necessary to combat abusive structures that can only be identified through a holistic analysis of the relevant transactions. In addition, the Court reiterated its settled case-law, in particular the Danish cases, that taxpayers cannot rely on the fundamental freedoms guaranteed by the Treaty on the Functioning of the European Union to challenge measures that are intended to prevent abusive practices.

The Court therefore concluded that the anti-abuse provision of the PSD, read in light of the principle of proportionality, does not preclude a national practice under which withholding tax is imposed on dividends where the deemed non-genuine transactions were carried out outside that Member State by non-resident individuals or legal entities, including the person who obtains the tax benefit through the dividend exemption, regardless of where in the transaction chain that benefit is obtained.

The relevance of the distributing subsidiary's knowledge in assessing the alleged abusive arrangement

Finally, the CJEU examined whether a Member State may deny the withholding tax exemption under the PSD without proving that the distributing subsidiary itself knew, or could have known, that the dividend payment formed part of a chain of transactions or that some – or all of those transactions, lacked genuine commercial substance.

The Court recalled its settled case-law, based on which merely classifying a subsidiary as a non-genuine arrangement is not sufficient to justify the denial of PSD benefits under the related anti-abuse provision. Instead, it must also be established that the arrangement was implemented with the principal objective, or one of the principal objectives, of obtaining a tax advantage that defeats the object or purpose of the Directive.

The Court recalled that an abusive situation can be evidenced in the combined presence of:

- objective circumstances, in which the purpose of the EU Directives is circumvented, despite a formal observance of the conditions required for their application; and
- subjective elements – the existence of a wholly artificial arrangement, as well as an intention to obtain a (tax) advantage.

The Court further noted that dividend distributions may form part of a broader series of decisions taken within a corporate group. Against this background, the Court considered that limiting the assessment of the subjective element solely to the level of the distributing subsidiary – by verifying whether it knew or could have known about the existence of abuse, would undermine the effectiveness of the Directive's anti-abuse provision. The Court therefore held that it is sufficient for the subjective element to be demonstrated in relation to at least one company participating in the chain of transactions, or the individual who ultimately benefits from the tax advantage.

The Court concluded that the anti-abuse provision of the Parent-Subsidiary Directive does not preclude a national practice whereby withholding tax is imposed without establishing the distributing subsidiary's knowledge of the abusive arrangement, as long as it is demonstrated that another group company involved in the arrangement, or the ultimate beneficial owner, knew or could have known of the existence of the chain of transactions aimed at obtaining the tax advantage.

ETC Comment:

The judgment is notable because it confirms and further develops the interpretation of the PSD anti-abuse provision established in case C-228/24. Whilst that earlier case concerned the exemption of dividends received from corporate income tax, the Court has now applied the same principles in the context of the withholding tax exemption for outbound dividends, clarifying that the broad interpretation of the Directive's anti-abuse rule also applies in the case of outbound payments.

In line with the AG's opinion, the Court clarifies that, whilst onward payments of dividends in comparable amounts and shortly after receipt, constitute an indication of abuse, such elements do not automatically establish abuse. The Court also clarifies that the distributing subsidiary's knowledge of the existence of abusive arrangement is irrelevant, as long as it can be demonstrated that another group company or the UBO could have been aware of abuse.

The judgment leaves unaddressed several important aspects of Advocate General Kokott's Opinion. In particular, the AG drew a distinction between abuse of the PSD and abuse of domestic tax rules in another Member State, suggesting that alleged abuse of domestic legislation in the state of the ultimate beneficiary should not, as a general rule, justify the denial of PSD benefits by the Member State of the distributing subsidiary. In this context, the AG placed considerable emphasis on the need for a direct link between the abusive element of the arrangement and the tax advantage granted under EU law. In the AG's view, it is only where the arrangement is designed to obtain a tax advantage that runs counter to the purpose of the PSD itself that the source Member State may deny the Directive's benefits. While the Court confirmed that the anti-abuse assessment may extend to transactions carried out outside the Member State of the distributing subsidiary and to advantages obtained elsewhere within the structure, it did not expressly engage with the AG's distinction or provide further guidance on circumstances that could lead to a benefit contrary to the object and purpose of the Directive.

The judgment is also noteworthy for its comments on the interaction between the PSD anti-abuse provision and double tax treaties. The CJEU noted that it is for the referring court to interpret national law and the relevant double tax convention, which that referring court considers must be interpreted in light of the commentary on the OECD Model Tax Convention. However, the CJEU took the opportunity to note that according to the commentary on the relevant article of the OECD Model Tax Convention (Article 10), which was published in 2014 after the conclusion of the relevant double tax treaty in 2013, the fact that the recipient of the dividends is the "beneficial owner" of the dividends does not mean that the treaty relief is automatically due, as regard must be had to whether the provision is being misused to obtain the advantage. Furthermore, the Court reiterated that tax treaties concluded between Member States cannot be relied upon to achieve a result contrary to EU law. This seems to suggest that qualifying for relief, at least if such relief provides for a benefit similar to the PSD's benefit, under an applicable tax treaty does not preclude the application of the PSD anti-abuse provision.

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