ECJ: Italian Trust Mandates May Be Subject to Beneficial Ownership Transparency Rules

eucrim
European Law Forum: Prevention • Investigation • Prosecution

News

Joscha Kanstinger

On 21 May 2026, the ECJ delivered its judgment in Joined Cases C-684/24 and C-685/24 *(Across Fiduciaria SpA and Others)*, concerning the application of EU anti-money laundering transparency requirements to Italian trust mandates (*mandati fiduciari*), particularly with regard to the reporting and disclosure of beneficial-ownership information.

Unlike a traditional trust, the Italian legal model at issue does not involve a transfer of ownership: the assets remain with the person entrusting them, while the trust company administers them in its own name. The case therefore required the ECJ to determine whether such an arrangement can nevertheless qualify as trust-like under Art. 31 of Directive (EU) 2015/849 as amended by Directive (EU) 2018/843 (hereafter referred to as the "Anti-Money Laundering (AML) Directive") and whether the rules governing access to the resulting beneficial-ownership information are compatible with the rights guaranteed by Arts. 7, 8 and 47 of the EU Charter of Fundamental Rights.

AUTHOR

Joscha Kanstinger
Rechtsreferendar
Hanseatisches Oberlandesgericht Hamburg

Preprint eucrim 2026, Vol. 21(1)
ISSN: 1862-6947
https://eucrim.eu

The judges in Luxembourg found no grounds for calling the validity of Art. 31 into question. They held that the provision is sufficiently precise to satisfy the principle of legal certainty and that access to beneficial-ownership information limited to persons demonstrating a legitimate interest is compatible with Arts. 7 and 8 of the Charter. They also ruled that Italian trust mandates may qualify as legal arrangements similar to trusts even when ownership of the assets is not transferred, as they can pose the same risk of concealing beneficial ownership and therefore necessitate the same level of transparency. Lastly, although decisions on exemptions from disclosure may be entrusted to an administrative authority, Art. 31(7a) of the AML Directive, read in the light of Art. 47 of the Charter, precludes national rules that do not allow the reviewing court to grant interim measures where an exemption is refused.

Background of the cases and questions referred

Several Italian trust companies challenged, before the *Tribunale amministrativo regionale per il Lazio* (Regional Administrative Court, Lazio, Italy), national measures classifying their trust mandates as legal arrangements similar to trusts within the meaning of Art. 31 of the AML Directive. As a result of this classification, the companies are required to report information on the beneficial owners concerned for inclusion in a special section of the Italian business register. Once registered, this information can be accessed by third parties demonstrating a legitimate interest upon application to the competent chamber of commerce. The chamber of commerce also decides on applications by beneficial owners for an exemption from disclosure.

Although its decisions are subject to judicial review, the reviewing court is unable to grant interim relief where an exemption was refused.

Following the dismissal of their actions, the companies appealed to the *Consiglio di Stato* (Council of State, Italy), which referred several questions to the ECJ. In essence, the Council of Sate asked the ECJ:

- Is Art. 31 of the AML Directive, which regulates the beneficial ownership transparency, tracking, and registration requirements for trusts and similar legal arrangements, sufficiently precise to satisfy the principle of legal certainty and do the rules governing access to beneficial-ownership information comply with the rights to respect for private life and to the protection of personal data under Arts. 7 and 8 of the Charter?
- Can the concept of "other types of legal arrangements having a structure or functions similar to trusts" in Art. 31 of the Directive encompass arrangements under which ownership of the assets is not transferred to the person entrusted with their administration?
- Does Art. 31(7a) of the Directive, read in the light of Art. 47 of the Charter, permit an administrative authority to decide on exemptions from disclosure where the reviewing court is unable to grant interim relief?

The ECJ's reasoning on the validity of Art. 31 of the AML Directive

The ECJ first examined whether the reference in Art. 31(1), (2) and (10) of the AML Directive to "other types of legal arrangements having a structure or functions similar to trusts" is sufficiently precise to satisfy the principle of legal certainty. It recalled that this principle does not prevent the EU legislature from using abstract legal concepts or leaving national authorities with some discretion, provided that the scope and exercise of this discretion are defined with sufficient clarity to enable the persons concerned to ascertain the extent of their obligations and regulate their conduct accordingly.

The Court found that these requirements are satisfied. Given the diversity of legal arrangements recognised under the laws of the Member States, the EU legislature was entitled to adopt a functional concept capable of encompassing different national models, rather than attempting to provide an exhaustive list.

Moreover, Art. 31(10), read in the light of Recital 29 of Directive 2018/843, requires Member States to notify the Commission of the types and defining features of legal arrangements they consider similar to trusts. The Commission is, in turn, required to publish this information in a consolidated list. According to the Court, this mechanism provides sufficient clarity as to which national arrangements fall within the scope of Art. 31 and enables the persons concerned to identify the obligations applicable to them. Therefore, the ECJ concluded that there are no grounds to call into question the validity of Art. 31(1), (2) and (10) in the light of the principle of legal certainty.

Second, the ECJ examined the compatibility of Art. 31(4), first subparagraph, point (c) of the AML Directive with the rights to respect for private life and the protection of personal data guaranteed by Arts. 7 and 8 of the Charter, insofar as it requires Member States to make information identifying the beneficial owners of such legal arrangements available to third parties.

While the Court acknowledged that this interferes with these fundamental rights, it found that the interference is justified. This is because the measure pursues the legitimate objective of preventing money laundering and terrorist financing by enhancing transparency regarding the natural persons who ultimately own or control assets. Such transparency helps create an environment that is less susceptible to misuse for illicit purposes. Extending access beyond competent authorities and obliged entities must be considered justified, as scrutiny by third parties with a legitimate interest provides an additional layer of oversight and can contribute to the detection and prevention of suspicious arrangements.

The ECJ also determined that the interference does not exceed what is strictly necessary to achieve this objective. Unlike the regime examined in *Luxembourg Business Registers (→ eucrim 4/2022, 244–245)*, Art. 31 does not grant unrestricted access to a potentially unlimited number of persons. Rather, access is limited to persons who can demonstrate a legitimate interest in the prevention or combating of money laundering, terrorist financing or the associated predicate offences. Moreover, Art. 31(7a) permits access to be restricted in exceptional circumstances where disclosure would expose the beneficial owner to serious and disproportionate risks.

The ECJ's reasoning on the scope of Art. 31

Turning to the scope of Art. 31, the ECJ held that Italian trust mandates may qualify as "other types of legal arrangements having a structure or functions similar to trusts" by arguing that:

The wording of the provision calls for a broad interpretation capable of accommodating the diversity of trust-like arrangements recognised across the Member States. Accordingly, a legal arrangement need not replicate every characteristic of a traditional trust in order to fall within the scope of Art. 31. Since the features of such arrangements vary significantly between Member States and are shaped by their respective legal systems, the transfer of ownership cannot be regarded as an indispensable structural requirement.

The objective of Art. 31 is to ensure the effective prevention of money laundering by enhancing transparency with regard to trust-like legal arrangements and preventing the concealment of beneficial ownership. From this perspective, the formal transfer of ownership is not decisive. Even when the assets remain legally owned by the person entrusting them, such arrangements can pose the same risk of concealing the identity of the beneficial owner. Excluding them from the scope of Art. 31 would therefore jeopardise the effectiveness of the transparency regime established by this provision.

The ECJ's reasoning on exemptions and judicial protection

Lastly, the ECJ examined whether decisions concerning exemptions from access to beneficial-ownership information can be entrusted to an administrative authority. According to the Court, Art. 31(7a) of the AML Directive does not, in principle, require such decisions to be taken by a court, and therefore permits the Italian system, under which the competent chambers of commerce determine whether an exemption from disclosure should be granted.

However, entrusting the initial decision to an administrative authority does not relieve Member States of their obligation to ensure effective judicial protection under Art. 47 of the Charter. The administrative decision must therefore remain subject to review by a court empowered, where necessary, to grant interim measures in order to preserve the full effectiveness of its final decision.

Although the Italian rules provide for judicial review of decisions taken by the chambers of commerce, they do not allow the reviewing court to grant interim protection where an exemption was refused. Art. 31(7a), read in the light of Art. 47 of the Charter, therefore precludes the Italian rules to that extent.

Put in focus

The judgment further clarifies the limits established in the *Luxembourg Business Registers* case (see above). While unrestricted public access to beneficial-ownership information disproportionately interferes with the rights to privacy and data protection, access based on a demonstrated legitimate interest can strike an appropriate balance between these fundamental rights and the objective of effectively preventing money laundering. At the same time, the ECJ takes a functional approach to trust-like arrangements: their inclusion within the transparency regime depends on their structure, effects and potential to conceal beneficial ownership, rather than on their formal classification or the transfer of ownership. However, broad transparency obligations must be accompanied by effective procedural safeguards: where an exemption from disclosure is refused, judicial protection must include the possibility of granting interim measures.

About eucrim

eucrim is the leading journal which regularly informs about current developments in European criminal and "criministrative" law.
All news items are freely accessible at: https://eucrim.eu/news/
Stay informed by emailing to eucrim-subscribe@csl.mpg.de to receive alerts for new releases of issues.
The project is co-financed by the Union Anti-Fraud Programme (UAFP), managed by the European Anti-Fraud Office (OLAF).

Co-funded by
the European Union