SOME REFLECTIONS ON THE DECISION OF THE CJEU

IN

JOINED CASES C-428/24 & C-476/24 *FZ AR : RE THE FREEZING OF ASSETS HELD IN A TRUST* EU:C:2026:409:

In this interview Aidan O'Neill KC - who acted for the intervener (anonymised as FZ GO AG) before the Court of Justice of the European Union in Joined Case C-428/24 and C-476/24 *FZ AR : re the freezing of assets held in a trust* which was handed down on 21 May 2026 https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62024CJ0428 - reflects on the CJEU decision and its broader implications.

Question 1: What was the history of the FZ case prior to its getting to the CJEU in Luxembourg ?

This case started off life as a judicial review challenge brought before the Administrative court in Lazio, Italy as to the legality of the decision of the Italian authorities to freeze the shares and assets of an Italian incorporated company which the CJEU refers to by the anonymised initials **FZ AR**.

The justification given for this freezing order was that the Italian authorities claimed that the Italian incorporated company and its assets could be said either ultimately to "belong to" or to be "controlled by" an individual who was subject to restrictive measures ("sanctions") which had been imposed by the European Union in view of Russia's military aggression against Ukraine.

The Italian company concerned challenged this decision on the basis that the two identified individuals who had been named as subject to sanctions had - certainly by the time when the decision to freeze the Italian company assets had been made - no legal power either to dispose of the company's assets, or to exercise any control over their management.

2. **Question 2: How did this case get to CJEU ?**

The Italian company was a wholly owned subsidiary member of worldwide corporate group, the holding company of which was incorporated and based in Switzerland. The bulk of the shares in the Swiss holding company – referred to by the court as **FZ GO AG** - were ultimately held under a discretionary trust established in Bermuda.

The settlor – and the original named beneficiary of this discretionary trust was an individual – whom the CJEU anonymised as "ZU". Prior to being placed on the EU sanctions list in 2022, the settlor ZU had been formally excluded from being a beneficiary under the trust and was replaced as named beneficiary of this trust by his spouse, who is referred to by the CJEU as "TU". TU was then also placed on the EU sanctions list annexed to Council Regulation (EU) No 269/2014 of 17 March 2014 (as amended) concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

The reason given by Council for subjecting ZU to sanctions was ***not*** for any alleged wrongdoing on his part - such as association with, or participation in, or facilitation of, Russia's actions against Ukraine. Instead he was sanctioned because he was "a businessperson involved in economic sectors providing a substantial source of revenue to the Government of Russia". And the General Court of the European Union has held that the

> "*mere fact of belonging to the category of leading businesspersons operating in Russia is sufficient to justify the adoption of the necessary restrictive measures … without there being any need to provide evidence of a link between being a leading business person and the Russian regime, or between being a leading businessperson and providing support to that regime or benefiting from it*": Case T-297/23 *Timchenko* v *Council* under appeal, EU:T:2025:352 (judgment of 2 April 2025) at paragraph 86.

And TU was sanctioned simply because she was married to ZU and - as a potential object of certain irrevocable non-exhaustive discretionary trusts – was assessed to be linked to him by common financial interests.

The terms of the discretionary trust which held the bulk of the shares in the Swiss holding company **FZ GO AG:** barred any transfer of assets held in trust to, or for the benefit of, any persons subject to sanctions; and prohibited any such sanctioned persons from exercising any form of control over the trust or over the trust assets.

All this notwithstanding, the Italian authorities imposed freezing measures on the company **FZ AR**. The Italian authorities argued that the fiduciary structure of the trust had ***not*** resulted in a genuine economic disassociation from ZU as the original settlor of the funds and economic resources which were contributed to the discretionary trust to become trust assets. The Italian authorities claimed that, notwithstanding this trust settlement, ZU was still able to exercise substantial influence over the trust assets and the operation of the discretionary trust. Accordingly, the Italian company's shares and assets were said to be, *in practice,* available to and/or controlled by ZU (and/or TU), in their respective capacities as original settlor/named beneficiary of this Bermudan discretionary trust.

3. Question 3: how were you able to appear in the CJEU in this case ?

I called to the Irish Bar in December 2020. I therefore retained my rights of audience before the CJEU, which were otherwise generally lost to those holding purely UK legal qualifications with the end of the post-Brexit implementation period on 31 December 2020.

Because the case before the CJEU turned centrally on the concept of a "trust" – which is common law concept little known or understood within the civilian traditions of the legal systems of continental Europe – it was thought important to have, as part of the legal team representing the companies whose shares and assets had been frozen by the order at issue, a lawyer from a common law jurisdiction who also had a background in EU law

Since the case was a preliminary reference to the CJEU from Italy, the language of the case was Italian. This meant that the written and oral pleadings by the lawyers who were appearing before the CJEU had to be made in Italian. So a good knowledge and understanding of legal Italian was also an essential requirement in and for this case.

This spoken Italian language rule applied to all parties appearing at the hearing, including the Council of the European Union and the European Commission. The judges who made up the bench posed their questions, however, in French or in English; and while the court allowed for its questions to be replied to in the language in which they had been posed, Italian had to be used for the lawyers' opening and closing oral submissions to the court.

4. **Question 4: What were the legal issues before the CJEU ?**

Article 2 of Council Regulation (EU) No 269/2014 provides that:

> *"1. All funds and economic resources belonging to, owned, held or controlled by any natural or legal persons, entities or bodies, or natural or legal persons, entities or bodies associated with them, as listed in Annex I, shall be frozen.*
>
> *2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies, or natural or legal persons, entities or bodies associated with them, as listed in Annex I.*"

The Italian court asked the Court of Justice to determine whether or not - as a matter of EU sanctions laws - the terms "belonging to" or "controlled by" any sanctioned individuals (as used in Article 2 of the 2014 Russia Sanctions Regulation) encompassed funds and economic resources which had been placed in trust, in a situation where the trustees were ***not*** permitted under the terms of the trust deed (or under Bermudan law, as the general applicable law of the trust) to transfer or otherwise treat of these trust assets to the benefit of the original settlor, or of any nominated beneficiary of the discretionary trust.

5. Question 5: What was the outcome of the FZ AR preliminary reference to the CJEU ?

In its judgment, the Luxembourg EU Court found that the terms “belonging to” and “control” as used in Article 2 of Council Regulation (EU) No 269/2014 were to be interpreted *extensively* with a view to ensuring the effectiveness of the EU law sanctions regime against Russia.

To this end, the Court picked up the concept “beneficial ownership” - which has been used as a term of art by the EU legislature in the context of EU money laundering legislation (see for example Articles 22(5), 60 and 62(1)(f) of the Sixth Money Laundering Regulation (EU) 2024/1624) whose purpose is to ensure *transparency* in financial transactions so as *to avoid criminality* - and applied it to the wholly different legal context of restrictive measures or sanctions (which allow for the freezing of the funds and economic resources of designated persons *regardless of any allegation of criminality* against them).

The Court accordingly concluded as follows (at paras 92-94 – emphasis added):

> *“92. [Article 2 of Council Regulation (EU) No 269/2014] refers to all legal and factual situations in which a person holds power enabling that person to use, benefit from, dispose of or have influence over the funds and economic resources concerned.*
>
> *93 In order to ensure the effectiveness of that provision, the concept of ‘belonging to’ must be interpreted as covering not only situations in which such power over the funds and economic resources concerned can be legally established, but also situations in which a person or entity holds such power de facto, despite the fact that, from a legal perspective, the holder of that power is a different person or a different entity.*
>
> *94 Similarly, the concept of ‘control’ encompasses all situations in which a natural or legal person is able to influence the decisions of another person, even in the absence of any legal link between those persons or of any link in terms of ownership or equity participation”.*

This reading of the regulation meant that freezing measures were *not* restricted to those assets in the formal ownership of, or legally belonging to, sanctioned individuals. Instead, freezing orders could cover all and any the assets from which sanctioned individuals might derive or obtain economic benefit, with the Court noting (at paras 117-119):

> *“117. … [T]he trusts at issue in the main proceedings are discretionary trusts, set up and governed according to the law of Bermuda. It has been argued before the Court that, in the context of such trusts, the beneficiaries have no right of ownership over the trust assets so long as the trustee does not decide to exercise the trustee’s discretionary power in their favour, and that they cannot influence the trustee or claim entitlement to trust assets or to payments made against the funds held in the trust. The trustee manages the trust independently and in the best interests of the beneficiaries, whether*

current or future, and decides at the trustee's discretion whether and when to distribute benefits to the beneficiary and the amount of such benefits.

118 However, even though, before such a distribution, the beneficiary formally has no rights over the funds and economic resources held in the trust, the fact that they are managed in the interests solely of that beneficiary constitutes an indication that those funds and economic resources <u>may</u> "belong to" or may be "controlled by" the beneficiary.

119 Indeed, the beneficiary <u>may</u> exercise influence over the funds and economic resources held in the trustor over the decisions made by the trustee in respect of them, and <u>may</u> use, benefit from or dispose of those funds and those economic resources, <u>without that influence or that ability being formalised in legal instruments</u>."

Accordingly the EU Court concluded that assets might lawfully be frozen even in the absence of any <u>*legal*</u> link between the trust assets and the person subject to sanctions, at least in circumstances where it might be inferred that the named sanctioned individuals had, *de facto*, power or influence over those trust assets and/or over the decisions made by the trustees in relation to the trust assets.

The factual circumstances from which such relevant *de facto* power might be inferred were said to include: the relationships between the beneficiary or settlor and the other persons involved in the trust; and the relationships between the director of the companies subject to freezing measures and the beneficiary or settlor. Other possibly relevant circumstances included issues around the allocation of the economic resources in the trust to activities intended primarily, even if indirectly, for the beneficiary or the settlor.

The CJEU also held that the presence of "needlessly complex legal structures" – highlighting in particular where the beneficiary or settlor held a majority of the capital of, or voting rights, in any corporate trustee, and/or where the terms of trust deeds were changed shortly <u>*before*</u> sanctions come into force – might be sufficient to draw the inference of such *de facto* power being retained, and able to be exercised over trust assets by the sanctioned individuals, such as to open these trust assets to sanctions freezing orders.

The CJEU therefore formally answered the Italian court's question as follows (emphasis added):

"the funds and economic resources held in a trust, the beneficiary of which is included on the list in Annex I to Council Regulation (EU) No 269/2014, <u>must</u> be regarded as 'belonging' to or as being 'controlled' by that beneficiary, within the meaning of [Article 2(1)] of that provision, <u>even though the law applicable to the trust and the clauses of the instrument setting up the trust prohibit that beneficiary from performing any act of enjoyment or disposal of those funds and economic resources throughout the period during which that beneficiary is included on that list or, in any event, throughout the period during which their</u>

<u>enjoyment or disposal would constitute an infringement of EU law</u>, provided that the beneficiary in question is able to use, benefit from or dispose of the funds and economic resources held in the trust or to have influence over them or over the decisions made by the trustee in respect of those funds and economic resources."

6. Question 6: What are the implications of this decision more widely ?

With this decision the CJEU has taken a "robust" approach to the use of discretionary offshore trusts as a vehicle for wealth management. Even where such fiduciary settlements have been put in place ***<u>before</u>*** any of those associated with these trusts (whether as settlor or as possible beneficiary) were listed by the EU as being subject to "restrictive measures", the CJEU holds that ensuring the "effectiveness" of EU sanctions regime is the Court's primary concern.

And the CJEU appears to proceed on the basis that the more legally complex a trust settlement is, the greater the presumption that it is, in practice, a sham mechanism intended and designed for illicit tax evasion and/or for (pre-emptive) sanctions circumvention.

While such prioritisation of "substance" over "form", of "economic reality" over "legal nicety" certainly makes sanctions more politically effective, it does so by increasing the powers of the (EU and national) sanctions authorities, and by lessening the protections which the law might be thought to afford individuals, even against whom no specific wrongdoing is alleged.

In the case of individuals whom the EU legislature decides to list in Annex 1 to the Russian Sanctions Council Regulation (EU) No 269/2014, the CJEU sees such favouring of public power over individual rights as, instead, justified by broader geo-political considerations, asserting (at para 113) that:

> *"the protection of Ukraine's territorial integrity, sovereignty and independence and the bringing to an end of the Russian Federation's infringement of international law and of the principles of the UN Charter … not only is such as to justify negative consequences, even significantly negative consequences, for certain operators, but also dictates that the regulation in question must be interpreted in such a way as to ensure the effectiveness of the restrictive measures it establishes and to prevent the effect of those measures from being neutralised or those measures from being circumvented."*

Yet nowhere – in this or in any other decision - does the EU Court explain how or why sanctioning specific named individuals who have no known (or even *alleged*) connection with Russia's war effort against Ukraine might be said to further the undoubtedly legitimate aims of protecting "Ukraine's territorial integrity, sovereignty and independence and the bringing to an end of the Russian Federation's infringement of international law and of the principles of the UN Charter".

But one should not single out the EU courts in this regard. As Lord Leggat makes clear in his lone dissenting judgment in *Shvidler v Foreign Secretary* [2025] UKSC 30 [2026] AC 607, the

UK Supreme Court majority in that case (Lord Reed, Lord Sales, Lady Rose, and Lord Richards) was not willing to ask similar questions of the UK Government, when determining just who it might subject to sanctions. Instead, the UKSC majority afforded the UK sanctioning authorities the broadest (and effectively unreviewable) discretion in this regard such that Eugene Shvidler - who left the USSR in 1989 before the Russian Federation was formed and was never a citizen of that state but was, instead, naturalised as a British citizen in 2010 and who has five children, all of whom are British – was left unable successfully to challenge before the UK courts the UK government's decision to subject him to anti-Russia sanctions. And this notwithstanding - as Lord Leggat concluded at para 324 - that

> *"[T]he restrictions imposed on Mr Shvidler strike at the very heart of his right to live his own life as he chooses. I do not consider that the reasons relied on by the UK Government come close to justifying such a drastic curtailment of his liberty. The restrictions are unjust and disproportionate to any contribution which they would rationally be expected to make to the purposes of the Russia (Sanctions) (EU Exit) Regulations 2019. Although I am alone in doing so, I deprecate and would declare unlawful the removal of basic freedoms to which Mr Shvidler should be entitled as a citizen of this country. I would allow his appeal."*

7. Question 7: What broader conclusion do you draw from all this ?

The decision of the CJEU in Joined Cases C-428/24 & C-476/24 *FZ AR* and of the UKSC majority in *Shvidler* [2025] UKSC 30 seem to reflect a fundamental shift in the concept of "legality" and the courts' role in enforcing it. These decision show a far greater readiness on the part of the courts of the EU and the UK to uphold the lawfulness of the public authorities' decisions to subject individuals to draconian sanctions restrictions, without requiring the sanctioning authorities' to show proper justification for the same.

Rather than being at the forefront of the protection of individuals' fundamental rights, the courts have instead – at least in these two cases – significantly deferred to the views of the sanctioning public authority as to how the balance between the interests of the sanctioned individual and of the general community should be struck. Politics appears to trump law, even before the courts. We seem to be going backwards, towards an old *wartime* legal world order, such as was decried in the middle of the First World War by Lord Shaw of Dunfermline in his dissenting judgment in *R (Zadig) v Halliday* [1917] AC 260 at 289:

> "[L]et the public end sanctify, as may be the case, this private wrong: the generality of a power to issue a regulation covers the case; it is *intra vires*. We shall have to consider in a little while how much on this principle of generality, – this principle that during the war the Government may do what it likes – how much is repealed. Let us pursue the inquiry as to how much the power embraces. Against regulations, in their generality, as thus construed, nothing can stand. No rights, be they as ancient as *Magna Carta*, no laws, be they as deep as the foundations of the Constitution: all are

> swept aside by the generality of the power vested in the Executive to issue 'regulations.' *Silent enim, leges inter arma* .

Lord Shaw's remarks were taken up by Lord Atkin, a quarter of a century and another world war later, in his lone dissenting judgment in *Liversidge v Anderson* [1942] AC 206 at 244:

> 'I view with apprehension the attitude of judges who on a mere question of construction when face to face with claims involving the liberty of the subject show themselves more executive-minded than the executive. … In this country, amid the clash of arms, the laws are <u>*not*</u> silent. They may be changed, but they speak the same language in war as in peace. It has always been one of the pillars of freedom, one of the principles of liberty for which on recent authority we are now fighting, that the judges are no respecters of persons and stand between the subject and any attempted encroachments on his liberty by the executive, alert to see that any coercive action is justified in law ' .

Ultimately the lesson to be taken from the *FZ AR* and *Shvidler* decisions might be as a call to arms for human rights defenders, both before and within the courts, in the face of this seeming ongoing reformation of the world's legal orders, national, supranational and international. As the playwright Robert Bolt famously put matters in *A Man for All Season*:

> "**William Roper**: "So, now you give the Devil the benefit of law!"
>
> **Sir Thomas More**: "Yes! What would you do? Cut a great road through the law to get after the Devil?"
>
> **William Roper**: "Yes, I'd cut down every law in England to do that!"
>
> **Sir Thomas More**: "Oh? And when the last law was down, and the Devil turned 'round on you, where would you hide, Roper, the laws all being flat? This country is planted thick with laws, from coast to coast, Man's laws, not God's! And if you cut them down, and you're just the man to do it, do you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake!"