



Европейски парламент Parlamento Europeo Evropský parlament Europa-Parlamentet Europäisches Parlament  
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Parlament Ewropew Europees Parlement Parlament Europejski Parlamento Europeu Parlamentul European  
Európsky parlament Evropski parlament Euroopan parlamentti Europaparlamentet

23/10/2018, Brussels

Dear Steven,  
Dear Verena,

The just published Cum-Ex-Files have demonstrated professional organized financial criminality and tax arbitrage on an unprecedented level in Europe. The consortium of European journalists, coordinated by the nonprofit investigative journalism newsroom Correctiv in my constituency of North Rhine-Westphalia, has published evidence that dividend arbitrage deals such as Cum-Ex and Cum-Cum trading practices continue and are now a European phenomenon. The damage to ordinary tax payers is estimated at a minimum of 55 bn Euros and is likely to be much higher. These trading practices are not organized by ordinary criminals but with the help of financial institutions, lawyers, accountants and tax advisers. The journalists speak of Europe's largest tax scandal. This scandal is so damaging as it seems to involve hundreds or even thousands of professionals in the financial sector even after all the wrongdoing before the outbreak of the financial crisis 2007/2008 and following. The size of the scandal clearly constitutes a threat to the integrity of the financial system and financial markets. The tax scandal is even more damaging as again public institutions were unable or unwilling to stop the massive theft of tax payers' money after they failed to prevent all the wrongdoing before 2007/2008. Also our credibility in the European institutions is at stake. The mandate of the European Supervisory Authorities foresees to contribute "to ensure the integrity, transparency, efficiency and orderly functioning of financial markets".

Dividend arbitrage and similar tax-driven trading practices fall mainly in the area of competence of ESMA and EBA. Therefore, I would like to ask you a four questions:

1. Article 22 paragraph 4 of the ESA regulations foresees that the European Supervisory Authorities may "upon a request from one or more competent authorities, the European Parliament, the Council or the Commission, or on its own initiative, conduct an inquiry into a particular type of financial activity or type of product or type of conduct in order to assess potential threats to the integrity of financial markets or the stability of the financial system and make appropriate recommendations for action to the competent authorities concerned". The Cum-Ex/Cum-Cum-scandal constitutes such a threat to the integrity of financial markets caused by a "financial activity or type of product or type of conduct". As many of the deals appear to be legal from a financial services law point of view, even if some of them may constitute illegal activities mainly from a tax law point of view, such an investigation is not only a matter for criminal investigations but should be driven forward from a supervisory and regulatory perspective. Therefore, I would like to ask you: Could you commit to trigger such an inquiry on ESMA's own initiative? From my point of view such an inquiry should be decided without any delay because of the exigent circumstances as the theft and/or loss of tax payers money is ongoing. Such an inquiry should strive to analyse, measure, detail and name the role of different market players in these deals. Furthermore, it should detail the value chain of the respective deals including the financial instruments, activities and practices involved. As special funds were created



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for these deals, the legal nature of these funds and their investment companies, asset managers, depositories and custodians should be established. Tax data from all 28 member states could be matched with financial market data in order to get insights in the link between the tax interests and securities trading. The role of banks, insurances and other market participants in hedging and short selling in the framework of such deals should be investigated as well as of banks, insurances, investment companies and depositories in securities lending or other reuse of securities. The mission for such an inquiry should be worded in a way that it does not only look at those arrangements which have been published by the consortium of journalists. The call should rather analyse the use of complex financial products, instruments and/or practices for aggressive tax avoidance, fraud and evasion in a wider sense including all forms of “dividend arbitrage”. Furthermore, the inquiry should analyse whether the powers of Art. 9 (5) in the ESAs’ regulations should be used in combination with Art. 40 MIFIR to prohibit certain financial instruments, activities or practices.

2. Article 31 of the ESMA regulation foresees that ESMA “shall fulfil a general coordination role between competent authorities, in particular in situations where adverse developments could potentially jeopardise the orderly functioning and integrity of financial markets or the stability of the financial system in the Union”. This scandal constitutes a threat to the integrity of financial markets in the EU. Therefore, I would like to ask you to ensure such a general coordination role in overcoming this crisis.
3. Could ESMA provide me without much delay with recent data for all EU-28, ideally from 2005 until today, to demonstrate how trading of major stocks developed over time at the different exchanges in ESMA’s competence. (a bit outdated example of the sort of data for Germany here: <https://projects.propublica.org/graphics/dividend/>)? Could ESMA also complement this data with a preliminary assessment whether it regards the fluctuations as tax driven?
4. Which measures has ESMA taken so far to investigate or even to curb the practice of dividend arbitrage and similar practices? Could you detail which type of research ESMA conducted, which conferences or meetings were organized and how much human resources were invested?

I would be delighted about a positive answer.

Best regards,

Sven Giegold, MEP  
ESMA founding rapporteur