



Plenary sitting

7.11.2018

MOTION FOR A RESOLUTION

pursuant to Rule 123(2) of the Rules of Procedure
on the Cum-Ex Scandal

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The Cum Ex Scandal: financial crime and the loopholes in the current legal framework

The European Parliament,

- having regard to the Capital Markets Union, one of whose primary objectives is to ensure “the integrity, transparency, efficiency and orderly functioning of financial markets”,
- having regard to Article 1, paragraph 5 of the Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Securities and Markets Authority (‘ESMA Regulation’) requiring ESMA to contribute to the integrity, transparency, efficiency and orderly functioning of financial markets,
- having regard to Article 9 of the ESMA Regulation, which gives the Authority a leading role in promoting transparency and fairness in financial markets, to monitor financial activities, issue recommendations and warnings, and temporarily prohibit or restrict such activities if they represent a threat to the objectives stated in Article 1 above,
- having regard to Article 22, paragraph 4, of the ESMA Regulation, which foresees that upon a request from the Parliament, ESMA can “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”,
- having regard to Article 31 of the ESMA Regulation, which 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”,
- having regard to Article 40 of the Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, that gives ESMA intervention powers to temporarily prohibit or restrict the marketing, distribution or sale of certain financial instruments, certain types of financial activity or practice when (a) the proposed action addresses a significant threat to the orderly functioning and integrity of financial markets or commodity markets or to the stability of the whole or part of the financial system in the Union, (b) regulatory requirements under Union law that are applicable to the relevant financial instrument or activity do not address the threat; and (c) competent authorities have not taken action to address the threat or the actions that have been taken do not adequately address the threat,
- having regard to the European Parliament’s plenary debate on the Cum-Ex scandal on 23rd of October 2018,
- having regard to the Cum-Ex and Cum-Cum revelations made by a Consortium of Investigative Journalists lead by the German non-profit media organisation Correctiv,

- having regard to the parliamentary inquiry in the German Bundestag regarding the scandal, which culminated in a report 18/12700¹ in June 2017,
 - having regard to the investigations by the German and the Danish fiscal authorities,
- A. whereas the European Union's Single Market principles are based on the proper functioning and efficiency of markets, and the compliance with and transparency of trading rules;
 - B. whereas the proper functioning of markets and the sustainability of European Welfare States is only guaranteed when there is no abuse by certain market participants and all actors contribute their fair share;
 - C. whereas combatting tax avoidance and tax fraud is a necessary condition to ensure fairness and is a priority of the European Institutions;
 - D. whereas the Cum-Ex files have demonstrated professional organized financial criminality on an unprecedented level in Europe taking advantage of cross-border tax loopholes and legal trading practices;
 - E. whereas the consortium of European journalists has published evidence that the fraudulent Cum-Ex and Cum-Cum trading practices continue, despite having been identified as early as 2011, and are a cross-border, European phenomenon;
 - F. whereas the damage to ordinary tax payers is estimated at a minimum of EUR 55 billion and is likely to be much higher;
 - G. whereas past damages based on Cum-Ex and Cum-Cum trading practices were estimated to EUR 2 billion in Denmark and EUR 30 billion in Germany;
 - H. whereas the investigation by the consortium of European journalists indicates Spain, Italy and France as allegedly main target markets for Cum-Ex trading practices, followed by Norway, Finland, Poland and the Czech Republic;
 - I. whereas these trading practices are not organized by ordinary criminals but with the help of financial institutions, lawyers, accountants and tax advisers which are important market actors in the European capital market;
 - J. whereas public institutions were unable or unwilling to stop the theft of tax payers' money;
1. Strongly condemns the tax fraud and theft of European taxpayers' money, and the tax avoidance practices, due to the Cum-Ex and Cum-Cum trading schemes;
 2. Urges all Member States to thoroughly investigate and analyse the financial practices surrounding dividend payments in their jurisdictions, to identify the loopholes in their tax laws that generate opportunities for exploitation by tax fraudsters and avoiders, to analyse

¹ <https://dip21.bundestag.de/dip21/btd/18/127/1812700.pdf>

any potential cross-border dimension and to put an end to all these ongoing harmful tax practices;

3. Urges the Member States to review and update bilateral double-taxation agreements between Member States and with third countries to close loopholes that incentivise tax-driven trading practices with the purpose of tax avoidance;
4. Calls on the Member States reported as allegedly main market targets for dividend arbitrage trading practices, particularly Spain, Italy, France, Finland, Poland and the Czech Republic, to thoroughly investigate potential frauds and practices of financial institutions, lawyers, accountants and tax advisers in their jurisdictions;
5. Requests the European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA) to conduct an inquiry according to Article 22 of the ESMA Regulation into the use of complex financial arrangements for aggressive tax avoidance and evasion, including all forms of dividend arbitrage (such as the Cum-Ex and Cum-Cum trading schemes uncovered by the consortium of journalists), to assess their potential threat to the integrity of financial markets and the stability of the financial system;
6. Requests the inquiry to establish what failed in the coordination and surveillance task of financial supervisors, stock exchanges and tax authorities across Member States that allowed these tax theft schemes to continue for years despite having been identified and investigated since 2011;
7. Requests the inquiry to analyse, measure, detail and name the role of different market players and their share along the value chain generated by these deals: banks, investment companies, asset managers, insurers, hedgers, depositories and custodians;
8. Requests the inquiry to establish the legal nature of the funds used for this purpose and to review the licences of the market participants involved in fraudulent trading practices;
9. Requests the inquiry to include recommendations for action to the competent authorities and to make its results and conclusions publicly available;
10. Requests the European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA) to consider a ban on tax-driven financial instruments, activities or practices, in particular, on dividend arbitrage, if their perpetrators fail to prove that these complex financial arrangements have a substantive economic purpose other than tax avoidance;
11. Appeals the Council to trigger Article 18 of the ESMA Regulation to guarantee a swift and coordinated European response, with the commitment of the European Securities and Markets Authority and the European Banking Authority to intervene in the face of a continued threat to the integrity of the European financial system, which allowed the stealing of EU taxpayers' money, given the eminently cross-border nature of these arrangements;

12. Appeals the Commission to review and if necessary reinforce the Council Directive 2011/13/EU on administrative cooperation in the field of taxation¹ with a view to enhance the automatic exchange of information between tax administrations, e.g. by including all capital gains in its limits, and improve the surveillance mechanisms for cross-border trading;
13. Appeals the Commission to consider the necessity of a European framework for capital income taxation that reduces incentives destabilizing cross-border financial flows that generate fiscal competition among Member States and undermine tax bases that guarantee the sustainability of European Welfare States;
14. Calls on the Member States to invest in and modernize the tools available to fiscal authorities, and to devote the human resources necessary, with the aim to improve surveillance and reduce timing and informational gaps between administrations and taxable persons, with a view to avoid as much as possible that claims to tax refunds can be exercised and reimbursed without proof that the taxes have actually been paid.
15. Calls on the European Commission, the European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA) to substantially increase its human and financial resources in the fight against financial crime.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0016&from=en>