

Dear Sven,

I am writing to you in response to your email dated 21 October 2018 on the possible implications for the integrity of financial markets of “cum-ex” and “cum-cum” transactions.

ESMA took note of the release in the press of the “cum-ex” files. ESMA also acknowledges that, on the basis of the information available at this stage, it seems that a significant number of financial institutions are involved in these tax-driven trading practices. Consequently, such practices are relevant to ESMA to the extent that they may constitute a violation of the financial markets regulations within ESMA’s remit.

Therefore, following the press news and your email, ESMA immediately launched a preliminary fact-finding exercise to identify whether similar practices have been identified in other EU jurisdictions and whether these practices may constitute a violation of financial markets regulation.

At this stage, the analysis carried out by ESMA indicates that the “cum-ex” and “cum-cum” schemes represent essentially a tax-related issue. In this context, no evidence of abusive practices related to financial markets regulation have been identified. In particular, ESMA notes that short-sale transactions and securities lending transactions are legitimate practices subject to their own regulatory regime. From a preliminary analysis undertaken by ESMA staff, we find it difficult to conclude that the cases described by the media show a breach of the financial markets regulatory regime.

However, ESMA does not rule out taking, at a later stage, any action within its competences and powers as determined by Regulation (EU) 1095/2010, if further evidence or any future developments show a direct link to a violation of financial market rules.

As regards your request for data between 2005 and 2018, given the magnitude of the data gathering required and that, at this stage, the described schemes seem to be solely tax-related, we consider that it would exceed the remit and resources of ESMA.

I remain at your disposal should you have any further comment on this issue.

Yours sincerely,

Steven Maijoor

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Chair

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