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Dear chair, dear Members of the European Parliament, dear fellow panellists, dear colleagues,

Thank you very much for giving me the opportunity to share my experiences regarding the CUM/Ex and CUM/CUM scandal that has and still does cost us – the taxpayer – billions of Euros, Kronen and maybe also Pounds etc.

(1) [prevention]

When I initiated the parliamentary investigation on CumEx in the German Bundestag, my motivation was not to discover criminal activities from the past. That is what courts should do and the Cologne prosecutor does a good job investigating. My intention was to make sure we learn from the failures of our public institution and so prevent similar cases from happening in the future. The history of dividend stripping – tax driven transaction – in Germany since the early 1990s tells us that the dealmakers have varied their approaches a lot over time, adapting smoothly to changes in law and in administration. It would be completely naïve to assume that the law that stopped CumEx in Germany in 2011 and the law that tried to constrain CumCum in 2016 were able to stop any such activity for the future. As long as we won't get the supervisory authorities and tax offices up to speed, we will never win the race against those finance experts who constantly design new tricks with which money is diverted from taxpayers pockets' to their bank or investment fund.

Having read hundreds of documents from our federal ministry of finance from the 1990s I was only waiting for the next trick to be discovered. So I wasn't surprised at all when a new fraudulent mechanism was discovered last week. A trick that – again no surprise – apparently started exactly at the time when CumEx was stopped in 2011. This time the trick is to create more than one American Depositary Receipts per share. The German finance ministry got knowledge of the new trick not by vigilant supervisors, not by thorough tax authorities, but by investigative journalists. The reason is complacency: Instead of learning from past

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mistakes and making sure government authorities find out about such new tricks earlier the finance ministry thought the job was done once the CumEx trades were stopped. The findings of the parliamentary probe have been ignored even though our report unveils plenty of shortcomings from which the right conclusions have not yet been drawn and actions not yet been taken.

(2) European co-operation

In 2005 Dutch newspapers write about a court decision about a bank employee who was fired. The publications show that during the case hearings CumEx trades play a role. If German authorities would have heard about that case they could have reacted a lot sooner.

In 2008, Switzerland stopped CumEx and thereby protecting the Swiss taxpayers. Germany ignored that move and needed three more costly years to stop the trades in Germany, partially organised by Swiss banks.

Denmark's taxpayers suffered a loss of 1,7 billion Euro when the same persons that were active in Germany until 2011 moved on.

European co-operation in combatting financial crime would have saved the European taxpayer a lot of money.

3 [role of bank supervisors]

BaFin, the German banking supervisor had no clue what was going on. Even when newspapers reported on CumEx, BaFin leadership considered themselves not responsible as they considered CumEx to be a matter solely for the tax authorities. They argued that they were exclusively responsible for the solvency of financial institutions, not for taxes. They got the answer in 2015 when a German bank (Maple bank, an subsidiary of a Canadian bank) had to be wound up because tax authorities claimed back the wrongfully refunded taxes. This consumed

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the capital of the bank. Too late BaFin learned that financial crime IS a solvency issue.

But my point goes beyond that: The fraud cases CumEx are built upon two components: The laws that are violated are tax laws. But the instruments used are Financial Instruments and the persons who commit these crimes or allow them to be committed are those under the supervision of the banking supervisors.

Michael Sell, then head of the tax division of the German ;Ministry of Finance called the co-ordinated activity of numerous bank employees to steal taxpayers' money – and I quote “organized crime”. How do you want to check if bank managers are “fit and proper” if you don't even try to discover financial crime committed within their banks?

(4) ESMA

The only authorities that can prevent these crimes in time are the financial market supervisors. The new ADR-trick was discovered first by the US financial market authority SEC, not by the German tax authorities. BaFin could have discovered the dividend arbitrage easily within the data they had available: Firstly, a whistleblower offered information as early as 2007 but got no reply. Secondly, BaFin could have seen the tremendous trading volume caused by CumEx around the dividend ex-date by simply looking at the daily trading volume (XXX fold more than during the rest of the year). Investigating the reason for it would have led to CumEx. One reason for the enormous damage to the German taxpayer caused by CumEx is the conception of the supervisor BaFin, not to be in charge when banks and funds and their employees violate laws other than the specific financial market laws.

We learned in our parliamentary probe that BaFin – the German supervisor – was not informed about different attempts by the German ministry of finance to stop CumEx. Hence they continued to authorising the establishment of investment funds that were set up for the sole

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purpose of undertaking cum/ex activities. If BaFin would have been informed about suspicions the ministry had about CumEx, the NCA could have prevented the establishments of those vehicles that were key in the later CumEx deals. Let me use a comparison: BaFin could have stopped the criminals by preventing the purchase of the murder weapon.

According to the 2010 Regulation establishing ESMA the EU watchdog is responsible to ensure the orderly functioning and integrity of financial markets. Isn't it a case of integrity of financial markets when numerous funds are set up whose sole purpose is criminal activity?

(5) Insurance

It is very probable that German shares owned by insurance companies was also used in CumEx and CumCum. Otherwise the huge trading volume around the dividend ex-date would not have been possible. So I also see a role for insurance supervisors. However, in our investigation the role of insurance companies could not be covered. I hope EIOPA can investigate that.

(6) whistleblower

Let me make one more point:

All crucial information to uncover the CumEx scandal – just like all the other big tax scandals like panama papers and Luxleaks – were provided to the authorities and prosecutors by whistle blowers. This shows how important these brave people are in the fight against crime. In order to support and encourage people to make information about criminal activities available to competent authorities or the public we need much better whistleblower protection schemes. Your colleagues in the Juri-Committee (Rechtsausschuss) are fighting for that. Unfortunately, Germany of all countries is now arguing to exempt accountants, tax advisors and officials from the best possible protection. That is

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unacceptable and makes me wonder whose side the German government is on.

Back up:

Only last week journalists have revealed another way the financial services industry has found to collect tax refunds for taxes that were never paid. So another way of stripping public finances in order to boost “investment” returns for some.

Banks used so called American Depository Receipts (ADR) that were established at least half a century ago to enable US investors to invest in foreign and particularly European markets. These securities are issued by US banks or brokers and are supposed to be a mirror of a foreign share that is in custody at a related custodian abroad. So if the US investor has a claim to a tax refund because he is not a (fully) taxable person in Germany he will be able to rightfully get the refund via the chain of custodians.

What the fraudsters managed to do, however, was to again create more claims for tax refunds than physically should have been possible. That is: more than one tax refund per share for which a dividend had been paid out. And they went even further by employing what is called a pre-ADR.

Pre-ADRs provide the US entity the possibility to create an ADR even though the partner custodian doesn't hold the actual share yet. As far as I understand the US regulations the legal requirement is that the share is owned by at least a customer or a broker that is related to the US entity. But what happened is that greedy institutions created pre-ADRs out of thin air. What has now been referred to as “phantom shares”. And then

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they claimed a tax refund for a dividend that has never been paid out and henceforth also not been diminished by a tax charge.

They were able to draw up the tax refunds to get a claim because of a loophole in the German tax rules.

Apparently this rule that allowed domestic depository banks to provide tax declarations automatically has been stopped by the authorities just this past week or so.