Basic information

2018/2900(RSP) RSP - Resolutions on topical subjects	Procedure completed
Resolution on the cum-ex scandal: financial crime and loopholes in the current legal framework **Subject** 7.30.30.06 Action to combat economic fraud and corruption	

Key events

Date	Event	Reference	Summary
23/10/2018	Debate in Parliament		
29/11/2018	Decision by Parliament	T8-0475/2018	Summary
29/11/2018	Results of vote in Parliament		
29/11/2018	End of procedure in Parliament		

Technical information

Procedure reference	2018/2900(RSP)
Procedure type	RSP - Resolutions on topical subjects
Procedure subtype	Resolution on statement
Legal basis	Rules of Procedure EP 136-p2
Stage reached in procedure	Procedure completed

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Motion for a resolution		B8-0551/2018	29/11/2018	
Motion for a resolution		B8-0552/2018	29/11/2018	
Text adopted by Parliament, single reading		T8-0475/2018	29/11/2018	Summary

European Commission

Document type	Reference	Date	Summary
Commission response to text adopted in plenary	SP(2019)92	26/03/2019	

Resolution on the cum-ex scandal: financial crime and loopholes in the current legal framework

2018/2900(RSP) - 29/11/2018 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution on the cum-ex scandal: financial crime and loopholes in the current legal framework.

The resolution was tabled by the EPP, S&D, ALDE, Greens/EFA, and GUE/NGL groups. The cum-ex scandal refers to **dividend arbitrage schemes** that involved EU Member States' financial institutions, including several large well-known commercial banks. It refers to the practice of trading shares in such a way as to conceal the identity of the actual owner and to enable both or multiple parties involved to claim withholding tax refunds on capital gains tax that had only been paid once. Parliament **strongly condemned the tax fraud and tax avoidance** which has led to publicly reported losses of Member States' tax revenue, amounting to as much as EUR 55,2 billion according to some media estimates, which are a blow to the European social market economy. The scandal was revealed to the public through a collaborative investigation between 19 European news media outlets led by the German non-profit media organisation CORRECTIV. The consortium of European journalists identifies Germany, Denmark, Spain, Italy and France as allegedly the main target markets for cum-ex trading practices, followed by Norway, Finland, Poland, Denmark, the Netherlands, Austria and the Czech Republic, the practices identified potentially involve an unknown number of EU Member States as well as countries of the European Free Trade Association (e.g. Switzerland).

Inquiry needed: Parliament asked the European Securities and Markets Authority and the European Banking Authority to conduct an inquiry into dividend arbitrage trading schemes such as cum-ex or cum-cum in order to assess:

- potential threats to the integrity of financial markets and to national budgets;
- the nature and magnitude of actors in these schemes;
- whether there were breaches of either national or Union law;
- the actions taken by financial supervisors in Member States;
- what failed in the coordination and surveillance tasks of financial supervisors, stock exchanges and tax authorities across the Member States which allowed these tax theft schemes to continue for years despite having been identified.

The EBA was asked to make **appropriate recommendations for reform** and for action to the competent authorities concerned.

Criminal investigation: Parliament stressed the urgent need to **end white-collar impunity** and ensure better enforcement of financial regulations. National competent authorities were urged to open criminal investigations, use legal tools to freeze suspicious assets, launch inquiries into the management boards potentially involved in this scandal and impose appropriate and dissuasive **sanctions** on the parties involved. Parliament felt that not only tax advisers but also lawyers, accountants and banks, as perpetrators and enablers of these crimes, should be brought to justice.

Exchange of information: Members underlined that these new revelations seem to indicate possible shortcomings in national taxation laws and in the current systems of exchange of information and cooperation between Member State authorities. Accordingly, they called on Member States to effectively implement the **mandatory automatic exchange of information** in the field of taxation. They also called for:

- all Member States' tax authorities to nominate **Single Points of Contact** (SPoCs) in line with the OECD's Joint International Taskforce on Shared Intelligence and Collaboration. The Commission was urged to facilitate cooperation between them;
- national tax authorities to reap the full potential of Council Directive (EU) 2018/822 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (**DAC6**), including the use of group requests;
- **DAC6 to be strengthened** in order to require the mandatory disclosure of dividend arbitrage schemes and all information on capital gains, including the granting of dividend and capital gains tax refunds;
- coordinated action between national authorities in order to guarantee **recovery of illegally obtained resources** from public accounts.

Parliament deplored the fact that the Commissioner in charge of taxation does not recognise the need to extend the existing system for the exchange of information between national tax authorities.

Analysis of dividend payments: all Member States identified as allegedly being the main target markets for dividend arbitrage trading practices were asked to analyse dividend payment practices in their jurisdictions, to identify the loopholes in their tax laws that generate opportunities for exploitation by tax fraudsters and to put an end to all these harmful tax practices.

New rules: Parliament asked the Commission to:

- start working immediately on a proposal for a **European financial police within the framework of Europol** with its own investigatory capacities, as well as on a European framework for cross-border tax investigations;
- revise the Directive on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States in order to tackle dividend arbitrage practices;
- assess the **role of Special Purpose Vehicles** (SPVs) and Special Purpose Entities (SPEs) revealed by the cum-ex papers and, where appropriate, to propose limiting the use of these instruments;
- consider the need for a **European framework for capital income taxation** that reduces incentives that destabilise cross-border financial flows, generate fiscal competition among Member States and undermine tax bases that guarantee the sustainability of European welfare states;
- consider a legislative proposal for an **EU Financial Intelligence Unit**, a European hub for joint investigative work and an early warning mechanism.

Lastly, Parliament welcomed the Commission proposal to amend, among other regulations, the Regulation establishing the EBA in order to reinforce the role of the EBA in anti-money laundering supervision of the financial sector.