Question for written answer E-006167/2018 to the Commission
Rule 130
Dimitrios Papadimoulis (GUE/NGL) – (7.12.2018)

Subject: European cum-ex tax fraud scandal

Based on a survey by the German authorities as well as a large translational news media survey (cum-ex files), there are strong indications that EUR 55 billion were stolen from the State treasuries of 11 Member States through the tax fraud method, burdening taxpayers. The purpose of the fraud seems to be to conceal the identity of the actual shareholders through the exchange of shares with and without dividend rights. This provided access to claiming and eventually collecting multiple tax refunds. In Germany alone, the damage is estimated to be as high as EUR 30 billion, and Maple Bank has already filed for bankruptcy.

In view of the above, can the Commission say:

1. What steps it has taken to address the tax fraud scandal with the cum-ex method? Whether it has investigated the causes and magnitude of the damage?
2. What penalties are envisaged to be imposed on the members of the board of directors of the banks involved in the scandal, who were responsible for developing these practices?
3. What went wrong in terms of the common European rules, the European Banking Authority and the European System of Financial Supervisors to which such stock exchanges are subject, and which ultimately failed to prevent this practice? What immediate action it intends to take to fill any legislative gaps?

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Answer given by Mr Moscovici on behalf of the European Commission
(7.2.2019)

It is for Member States to administer and enforce tax laws. The Commission promotes cooperation between the Member States so that they have the information they need to do their job properly. Since 2015, the Commission has strengthened the Directive on administrative cooperation in direct taxation four times. The Commission is now evaluating this Directive to prepare possible further initiatives to strengthen cooperation further.

As to penalties in the situations referred to in the question, under Directive 2013/36/EU[1], Member States must ensure the existence of appropriate administrative penalties and measures in case of violations of the European banking legislation. Subject to the conditions laid down in national law, penalties for breaches of the obligations applying to banks may be imposed on the members of their management body. The actual application of the penalties remains within the remit of the competent supervisors. Under Article 16 of the Council Regulation (EU) No 1024/2013[2], the European Central Bank can remove at any time members from the management body of banks falling under its supervision. As regard possible criminal penalties, their imposition lies with Member States' jurisdictions.

With the exception of credit rating agencies and trade repositories, the European Supervisory Authorities' (ESAs) are not supervisors. As part of their microprudential oversight mandate they work to ensure that national financial prudential and conduct supervisors apply and enforce the EU financial services legislation in a correct and consistent manner. The application of, or supervision in regard to tax legislation does not fall into the ESAs’ remit.

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0036
[2] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1024