

# The CumEx fraud in Germany: Organised crime with government support

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Banks and big shareholders relieved the German treasury of at least €31.8 billion (\$US37.5 billion) between 2001 and 2016 alone. Including similar cases in other European Union (EU) countries, the stolen money amounts to over €60 billion.

This is the conclusion of a report on the so-called CumEx transactions prepared by tax expert Professor Christoph Spengel from the University of Mannheim for a German parliamentary commission of inquiry. The term CumEx is derived from Latin, meaning “with without,” and refers to the disappearing nature of the fraudulent dividend payments.

Only known cases of fraud are included, the number of unreported cases is presumably much higher.

The CumEx transactions are not simply tax evasion, but organised fraud. The banks had taxes refunded to them they never paid.

The crème de la crème of the international financial industry was involved. In Germany, all the well-known major banks were involved—Deutsche Bank, Commerzbank, even state banks or institutions that are partly state-owned, such as DekaBank, as well as investment funds and private investors.

They were supported by an army of financial lawyers and tax consultants. The tax authorities and finance ministers turned a blind eye. Members of parliament from all parties voted for laws that made fraud possible in the first place.

While fare dodgers who do not pay a fine of €60 quickly end up behind bars, not even one of those responsible for what is probably the biggest robbery in German history is in jail. Two British stockbrokers, who were sentenced by the Bonn Regional Court in March this year in a test case for tax evasion to the tune of €447.5 million, got off with mild suspended sentences.

In the meantime, more than 100 banks on four continents and around 1,000 people responsible are being investigated. However, the proceedings are dragging on slowly and the defendants are hoping to be saved by the statute of limitations.

The fraudulent model of CumEx transactions was simple and easy to see through. It always occurred around the date of the dividend payment. Blocks of shares moved from one hand to the other, with (Cum) entitlement to dividend payment or without (Ex) if the share was acquired after that date. Although the capital gains tax of 25 percent plus 5.5 percent solidarity surcharge was only paid once, several temporary owners of the share packages subsequently had the tax refunded.

This obvious fraud was considered a “legal business model” in the financial sector. Everyone knew that something was rotten, but no Federal Finance Minister from 1999 to 2017—Hans Eichel (Social Democratic Party, SPD), Peer Steinbrück (SPD) and Wolfgang Schäuble (Christian Democratic Union, CDU)—took measures that would have prevented the fraud. On the contrary, the financial jugglers’ legal firms were able to rely on laws that the governments had introduced since the 1990s.

\* In December 1999, the Federal Fiscal Court (Germany’s highest court for tax and customs matters) confirmed that the “beneficial ownership” of

shares is transferred to the buyer at the time the contract is concluded, i.e., before the share package is delivered later. In doing so, it provided the financial jugglers with the legal basis for their fraud, the so-called “short sale.” This involves selling and reselling shares that are not yet in the possession of the seller. They can thus pass through several owners at lightning speed without becoming their property.

\* When this scam increased, at the end of 2002, the Association of German Banks got cold feet and drew the attention of the Finance Ministry to the problem of double tax certificates in the case of short sales of share packages, to protect its members from liability risks in these transactions. The SPD-Green Party government did not react for a long time, “because no other practicable technical-organisational procedure could be found that would not have affected the competitive situation of credit institutions,” according to a Bundestag (federal parliament) investigation report.

\* It was not until five years later that changes were made to the Annual Tax Act 2007. However, this law did not hinder tax fraud, but acted as a fire accelerant, because now foreign banks were being brought on board. A confessed insider told the TV show Panorama “that from 2007, when this new law came into force, industry, investment bankers, lawyers, tax consultants and auditors knew exactly how to do it. There was now a blueprint, black on white in the Federal Law Gazette.”

\* Another 2012 law was then supposed to put a stop to tax fraud. New research and searches of financial institutions and law firms have now revealed that tax fraud continued, but with more sophisticated tricks.

All governments bowed to the interests of the financial industry. The current federal Finance Minister, Olaf Scholz (SPD), was partly responsible in his tenure as Hamburg’s mayor for the fact that the tax authorities failed to reclaim an unjustly paid tax refund of €46.8 million from the Warburg Bank before the statute of limitations kicked in. At a hearing in the Bundestag, Scholz explained that the Hamburg tax authorities had not wanted to take the risk of a legal dispute with Warburg.

The sheer scale of the tax fraud and the complicity of the state show that these are not simply offences committed by disparate criminal individuals. The financialisation of the economy—the shift of the accumulation of profit and wealth from the real economy into speculative transactions—has increasingly blurred the line between business and crime.

Over the past 25 years, similar financial scandals have occurred at ever shorter intervals. Enron, WorldCom and Bernard Madoff in the US or Wirecard in Germany are just a few of the best-known cases. In 2008, the swindle with rotten mortgages, in which all the major banks in the world participated, brought the global economy to the brink of collapse. Governments and central banks reacted by pumping trillions into the banks, which had one main effect—criminal speculative transactions were fueled even further.

This is the background against which the close personnel links between the world of politics and the financial sector should be understood, which

made the fraudulent CumEx transactions possible in the first place.

Lobbyists who were paid by banking associations and were thus able to exert direct influence on the drafting of corresponding financial market legislation, worked in the highest tax authority of the federal government, the Federal Central Tax Office (BZSt).

For example, lawyer Arnold Ramacker was financed by the Association of German Banks (BdB) for several years in the 1990s after a career in the Finance Ministry in North Rhine-Westphalia, as a judge at the Düsseldorf Finance Court and finally as a consultant in the Federal Ministry of Finance. He was significantly involved in the drafting of corresponding bills on stock trading.

Investment bankers and business lawyers recognized the opportunity for extra profits from these transactions. Many left their management positions in the major banks and established their own business, specializing in CumEx transactions.

A good example is Hanno Berger, a lawyer for tax and financial products, who after a career as a government official—as the highest ranking tax bank auditor in Hesse—continued his career in the private sector and, after several stations in US law firms, founded his own tax consultancy, with which he boosted the fraud business for numerous investors and financial institutions. When Berger's firm came under the scrutiny of the judiciary, he dissolved it and moved to Switzerland. In court, he is being defended by leading Free Democratic Party (FDP) politician Wolfgang Kubicki and other lawyers.

Nobody should be under the illusion that the far too late investigations by the judiciary or the tame legislative proposals of the Bundestag will change anything about these conditions.

The judiciary only became active after a clerk at the Cologne tax office had received a strange demand for tax refunds of almost €54 million from an American one-man pension fund in 2011. Investigative journalists looked into the fraud, data from whistle-blowers with secret information were bought; but it was not until 2015 that the Bundestag set up a commission of inquiry.

In terms of personnel, the tax investigation offices are hopelessly outnumbered by the army of business lawyers representing the financial institutions accused. There can be no talk of an “equality of arms,” a phrase used by the daily *Süddeutsche Zeitung*, quoting an investigator from the public prosecutor's office.

An 830-page report from June 2017 by the Bundestag investigative commission provides insight into the actors and describes their criminal activities, which were already verifiable in the 1970s and have rapidly increased in scale since the turn of the millennium.

State supervision of the financial sector is hampered by legal provisions. Wolfgang Schäuble, federal Finance Minister from 2009 to 2017, for example, justified the lack of supervision of the financial sector with the “strict obligation of secrecy.” He professed no such scruples when he ensured the Greek population had to strip naked to pay off debts to international banks.

Moreover, if there is “an overriding public interest” in the prosecution of a tax offence, this duty of confidentiality does not apply. But this does not include the CumEx transactions, as the Federal Financial Supervisory Authority (BaFin) wrote in its 2016 annual report. “Banks are often caught between the conflicting priorities of legality and legitimacy. Not everything legal is also legitimate,” writes BaFin. In other words: It may be morally reprehensible, but it is legal.

The federal government confirmed this in its response to a minor question in the Bundestag: BaFin does not examine “any concrete individual transactions of the supervised institutions,” but monitors the organisational requirements. In other words, BaFin checks whether the transactions—including criminal ones—are “properly” accounted for.

The big banks that were caught out are now relying on a statute of limitations to cover them for the criminal offences and tax refunds,

because according to Paragraph 47 of the German Fiscal Code, the state's claims to collect the tax debt expire when the criminal offence is time-barred. A new law passed by the Bundestag on 29 June extends the statute of limitations for organised fraud from 10 to 25 years. However, the accused's lawyers claim that the legislation cannot change the rules retroactively.

The Left Party's parliamentary faction abstained in the Bundestag when the law was passed. But it too is relying on the capitalist state, which had its hand in all the fraud, to put a stop to the capitalist robbers. In the Bundestag's investigative committee, it called for the establishment of a “federal financial police force” to combat organized financial crime.

There is no legal reform that would stop the criminal machinations of the financial industry. The German judiciary condemns the poor when they take food with an expired best before date from dumpsters outside shops—while the rich can escape punishment for billions of dollars in fraud with an army of law firms.

The parties in the governing grand coalition—CDU/CSU (Christian Social Union) and SPD—reject any responsibility in the majority report of the committee of inquiry. “This committee of inquiry was not necessary,” they write, “all accusations justifying its creation have been refuted. The committee has become convinced that the authorities from which it has consulted files and heard witnesses have worked properly and dutifully.”

In the coronavirus crisis, the grand coalition is once again throwing hundreds of billions of euros down the throats of the same banks that stole from the treasury. At the same time, it is preparing mass redundancies and wage cuts, reopening schools despite rising infection rates and driving workers back into the factories at risk to their health and lives to squeeze the money stolen from the public purse and freely handed over to the banks and corporations.

This irresponsible and criminal policy can only be stopped by an independent working class movement fighting for a socialist programme. The banks and financial speculators must be expropriated, and their assets confiscated. Economic life must serve the needs of the whole of society, not the maximisation of profits by the wealthy minority.



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