Downloaded from Blogs on 11.10.2026 02:20

By PwC Deutschland | 17 June 2026

More rigorous asset recovery in Cum/Ex transactions

The Bundesrat has tabled a draft bill (21/6377) aimed at strengthening asset recovery in relation to Cum/Ex short-selling transactions and all those involved. The aim is to clarify that confiscation from a third party is unambiguously possible even if that party received the proceeds ‘for the offence’ as an “advanced payment”.

Downloaded from Blogs on 11.10.2026 02:20

The proposed amendment will add the text ***"or for"*** to Section 73b (1) Sentence 1 No. 1 of the German Criminal Code, so that proposed amended provision will read:

Section 73b (1): An order for confiscation under Sections 73 and 73a is directed against a person other than the perpetrator or an accomplice if

1. that person has gained something through **or for** the offence and the perpetrator or accomplice acted on their behalf,

In its explanatory notes to the amendment bill, the Bundesrat notes that, in criminal Cum/Ex short-selling transactions, not only the investors and the participating German credit institutions on the buy-side benefit from the transactions, but also, in particular, the so-called short sellers and their accomplices, who are indispensable to the functioning of Cum/Ex short-selling transactions. They trigger the second, criminal payment cycle, which leads to the issue of the second tax certificate to the short seller, which in turn results in the unauthorised refund of withholding tax and solidarity surcharge not actually withheld. Any payments made to the short sellers are paid at a very early stage of the Cum/Ex transactions – before the tax return is filed or the withholding tax is even refunded by the tax authorities – via e.g. options, futures and other financial derivatives or through other contractual arrangements. Consequently, in these cases, the short sellers do not acquire the proceeds **'through the offence**' (i.e. through the [commission of the] offence) within the meaning of Section 73(1) of the German Criminal Code, as this would not be possible before the attempt begins. With the Cum/Ex criminal act, the attempt begins at the earliest upon the submission of the relevant (corporate) tax return. In the period prior to this, it is possible, according to Federal Court of Justice case law, to obtain benefits **'for the offence**' (so-called 'advance payment' cases). The term "for the offence" refers to benefits obtained which are granted to a participant in return for their unlawful conduct, but which do not depend on the offence actually being committed (Federal Court of Justice, decision of 8 February 2023 – 1 StR 376/22).

The proposed amendments are intended to provide clarification and thus to avoid the unsatisfactory situation whereby the short sellers – who are generally among the (co-)initiators of the cum/ex short-selling schemes – are able retain the millions they received for their involvement.

Source:

German Bundestag – News in Brief from 15 June 2026

Keywords

criminal charges, cum-ex, organised crime