



# TRANSPARENCY INTERNATIONAL LUXEMBOURG

## **The press review**

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Vous pouvez nous joindre à cet effet par téléphone au numéro 26 38 99 29, par email [info@transparency.lu](mailto:info@transparency.lu) ou alors directement en nos bureaux situés au 11C, Bd. Joseph II, Luxembourg.

# National news

## Land

Le rapport Songa sur la corruption présumée chez Cargolux s'invite dans les coulisses de la campagne électorale. Juncker vole au secours de l'ancien ministre LSAP Jeannot Krecké

### Vengeurs masqués

06.09.2013

Véronique Poujol

Cette fois, Jeannot Krecké ne fera pas de quartier ni de cadeaux. Me Pol Urbany, l'avocat de l'ancien ministre LSAP de l'Économie, peaufine les plaintes en diffamation contre le site d'informations nuqudy.com, dont le serveur est basé à Londres – c'est à peu près tout ce qu'on sait – pour avoir colporté de graves accusations de corruption, de malversations et de délit d'initié à l'encontre de Jeannot Krecké et de celui qui fut l'un de ses principaux conseillers, Jean-Claude Knebler. L'attaque frontale du blog ressemble plutôt à un règlement de compte de vengeurs à peine masqués. L'ancien ministre et son conseiller y sont présentés de façon surréaliste et sans la moindre preuve comme des agents à la solde de l'étranger, travaillant tour à tour pour l'Inde, la Russie et le Qatar et s'étant même vendus aux Iraniens en couvrant, entre autres, du blanchiment lié à un trafic de cigarettes entre le Luxembourg et l'Iran. Commerce transitant par les avions de Cargolux. Jeannot Krecké et Jean-Claude Knebler ont apporté un démenti formel à ces allégations, qui s'appuieraient sur des informations du Service de renseignement luxembourgeois en 2008, dont la crédibilité fut mise en cause avant d'être partiellement démentie par un audit de PWC. Ce rapport Songa, dont les administrateurs de Cargolux ont eus copie, se pencherait essentiellement sur des accusations de corruption dans les anciens pays satellites de feu l'Union soviétique et ne ferait qu'un bref crochet sur le volet iranien, sans rien de vraiment tangible. Quant à l'analyse que fournira le Srel, elle serait surtout le miroir des rivalités que se livraient alors des dirigeants de Cargolux entre eux pour le contrôle de la compagnie de fret et certaines de ses routes aériennes. Il y aurait aussi de la mise en scène et un agenda caché dans cette enquête du Service de renseignement. Le directeur de l'époque Marco Mille, quelques mois avant son départ pour la firme Siemens, l'a pourtant soutenu des deux mains, bien que l'enquête un peu fourre-tout – on y retrouvera aussi, selon des sources fiables, le nom d'une ancienne commissaire européenne – ait surtout été l'œuvre du numéro trois du Srel, Frank Schneider.

## Luxembourg/Police: Une lettre rallume les débats

2013-09-12 09:23:00

**Parquet et police ont dû prendre position pour infirmer les déclarations contenues dans une lettre à Me Vogel.**

L'affaire du Bommeleeër n'a pas encore repris au tribunal de Luxembourg que, déjà, de nouvelles rumeurs courent dans le pays autour de cette affaire. Encore.

Mardi, Me Gaston Vogel, qui défend un des prévenus dans ce procès, a reçu une lettre qui affirmait qu'une unité secrète, le POSA (Peloton d'observation et de surveillance), surveillait les citoyens, hommes politiques et journalistes au Grand-Duché qui ne seraient pas en accord avec la ligne politique au pouvoir. La fine équipe du POSA serait composée de policiers mais aussi de membres de la société civile occupant des postes de commerçant ou de conducteur de bus. Les deux prévenus et leurs deux avocats, dont Me Vogel, seraient, évidemment, la cible de ce groupuscule étatique. La lettre avait troublé Vogel dont le cabinet avait été «visé» par une dégradation en juillet. Fallait-il y voir un lien?

Police:

Hier, la police grand-ducale et le parquet ont dû se fendre d'un communiqué de presse au sujet de cette unité de police, le POSA. Les autorités rappellent que l'«observation systématique relève du code d'instruction criminelle et ne se fait que sur ordre du parquet ou par mandat d'un juge d'instruction».

Elles soulignent «qu'à aucun moment, une observation n'a été ordonnée ni par un juge d'instruction, ni par le parquet à l'encontre d'un des mandataires des inculpés dans l'affaire dite du Bommeleeër, ni à l'encontre d'un des inculpés». Voilà qui est dit.

La police grand-ducale a également tenu à préciser, hier, qu'elle «n'a effectué à aucun moment des observations non soumises à une autorisation préalable à l'égard des mêmes personnes».

Elle a aussi confirmé «l'incident» qui a eu lieu le 9 juillet, vers 18 h 30, dans l'entrée de l'immeuble dans lequel se trouve notamment l'étude de Me Vogel.

Les faits ont été constatés par la police et un procès-verbal a été transmis au parquet. L'enquête est en cours. Ce jour-là, une porte vitrée avait été brisée.

## Le Luxembourg dans le viseur de Bruxelles

*Les allègements fiscaux accordés aux multinationales au Grand-Duché, en Irlande et aux Pays-Bas sont étroitement surveillés par les autorités de la concurrence européenne.*



*Le Luxembourg a-t-il accordé trop d'avantages fiscaux aux multinationales?*

«Je peux confirmer que nous collectons un certain nombre d'informations à ce sujet», a confirmé un porte-parole du commissaire européen à la concurrence, Joaquín Almunia, cité par *DPA*. Outre le Luxembourg, l'Irlande et les Pays-Bas, d'autres pays pourraient être dans le collimateur de Bruxelles. La Commission a en effet l'intention de d'enquêter pour savoir si des entreprises multinationales ont bénéficié d'aides d'État illégales sous forme d'avantages fiscaux.

Ce porte-parole réagissait à un article du *Financial Times* publié jeudi qui indiquait que des demandes d'informations avaient été envoyées aux pays concernés en juin et en juillet. Rien n'a été encore vérifié: «c'est seulement une première étape», a conclu le responsable européen. Joaquim Almunia surveille de près que le soutien des gouvernements aux entreprises ne fausse pas la concurrence au sein de l'UE. S'il s'avère que des aides illégales ont été accordées, les États devront rembourser.

La politique fiscale du Luxembourg, de l'Irlande et des Pays-Bas suscitent la colère d'autres pays: Amazon, société britannique dont le siège est au Grand-Duché n'a payé que peu d'impôts en Grande-Bretagne, la quasi exonération fiscale d'Apple en Irlande irrite au plus au point le Sénat américain tandis que les Pays-Bas sont montrés du doigt dans des avantages fiscaux concernant Starbucks ou encore Shell.

*(L'essentiel Online)*

## Financial watchdog denies conflict of interest allegations



Photo: Marc Wilwert

Luxembourg's financial regulatory body has denied allegations of a conflict of interest among its board members, whose firms are monitored by the watchdog.

The CSSF's rebuttal comes after Luxembourg not-for-profit Protinvest sent a letter to European Commissioner for Internal Market and Services Michel Barnier denouncing the Luxembourg financial sector's "poor corporate governance" as appointed by the Finance Minister.

The letter said that Minister Frieden had appointed a government advisor to financial regulatory body the CSSF. It then points out that the same individual was on the board of directors of the BIL and the Luxembourg Stock Exchange, two entities monitored by the CSSF.

Protinvest suggests that a supervisor, "who oversees themself" shows a "clear conflict of interest" and a "flagrant violation of the basic principles of good governance."

In a press statement, the CSSF refuted what it described as "unfounded allegations," saying that Protinvest is a disgruntled "customer of a financial institution."

It said that the CSSF consists of seven members appointed by the Grand Duke, of which three are proposed by the companies being monitored. These individuals, it says, have no competence in the conduct of supervision of the financial sector and are not involved in the handling of complaints.

# International/regional news

theguardian

## Law to be toughened up to stop companies benefiting from fraud

Legislative move aims to strengthen corporate criminal law to ensure companies can be held liable for their actions

Monday 2 September 2013 21.10 BST



Plans to reform the test for criminal prosecutions could boost the forepower of the Serious Fraud Office to initiate prosecutions.

Banks and other businesses benefiting from fraudulent behaviour will be more likely to join their employees in the dock under proposals being considered by ministers, borrowing from a tough US approach to corporate offending.

Plans to reform the test for criminal prosecutions could trigger a new wave of fines and criminal convictions for businesses and transform the armoury of the [Serious Fraud Office](#), marrying up with new SFO powers to reach financial settlements with companies, known as [deferred prosecution agreements](#)(DPAs).

It would also go some way to meeting the Conservative party's [pre-election pledge](#) to "strengthen corporate criminal law to ensure companies can be held liable for their actions". That 2010 promise was made in the face of widespread public frustration at the failure of criminal and regulatory authorities to bring companies and individuals to book after the 2008 banking crash.

The latest proposals are yet to win unanimous support in Westminster, with some officials — particularly within the department for business, innovation and skills — understood to be

weary of any legislative moves that could be perceived as hostile by the business lobby. In the wake of the [Libor](#)-fixing scandal, however, others in government are adamant that the credibility of the authorities policing the markets is vital to safeguarding the integrity of London as an international financial centre.

The SFO is still pursuing its investigation into Libor fixing, having secured additional funding for its inquiries from the Treasury. It has so far charged one bank trader and two money-brokers, and has yet to decide whether to bring charges against banks or other companies.

Prosecutors rarely pursue charges against companies in large fraud cases because the existing law requires that they prove a "directing mind and will" of a company was complicit in the offence. In practice, this typically means they must present evidence that board-level executives were at the centre of a fraud.

SFO director David Green, a strong supporter of reform, said: "The way companies work today, the email chain tends to get rather sparse among very senior managers ... But if a [company] has gained from dishonesty, why should it be able to chuck a few mid-ranking people overboard and sail onwards?"

New proposals borrow a criminal liability test which already exists in cases of bribery, under which companies can be prosecuted for "failing to prevent" corrupt payments even if top executives had no immediate involvement in the dishonesty.

But as well as creating this offence, the 2010 [Bribery Act](#) also offers businesses the opportunity to defend themselves by demonstrating they had in place "adequate procedures" to prevent corruption.

This test is similar to the powers available to US prosecutors, who assume vicarious corporate liability for fraudulent behaviour on the part of employees. This has armed the Department of Justice with formidable powers to take on some of the largest corporations in the world, often winning financial settlements that allow the company to accept responsibility, pay a fine and then quickly draw a line under the affair.

While proposals under consideration in the UK fall short of the aggressive US approach, critics claim such reform would criminalise what amounts to negligence — a matter not involving dishonesty and ordinarily confined to the civil courts. Green counters: "If that is so, it [corporate criminal liability for fraud] would only be for a very high degree of negligence".

He added: "[Reform] would help promote a better corporate culture in Britain. Poor corporate culture was a contributory factor in the crash."

Jonathan Fisher QC, a barrister specialising in financial crime, has been a long-standing proponent of reform, insisting that DPAs are unlikely to prove an effective tool without a credible threat of corporate prosecution. "If you put yourselves in the shoes of a company, the first thing you are going to ask yourselves in cases like these is: 'What are the chances of conviction'? If it is low, there is little point in engaging in discussions about a settlement."

A spokesman for the Attorney General's office said: "The Government has a range of policies in place in relation to fraud, and all legislation is kept under review." The proposed reform is already supported by shadow attorney general Emily Thornberry.

But the prospect of increased powers to prosecute companies, even where there is no evidence that top executives are involved in dishonesty, is likely to meet with sharp opposition from business lobby groups. They are already unhappy with the 2010 bribery laws and have pressed ministers to review them, the requirement to show businesses have in place "adequate procedures" to prevent corruption amounts to an onerous red tape burden. They are expected to lobby hard against a similar test for corporate fraud.



## **Les saisies d'argent liquide aux frontières en hausse de 500%**

2013-09-08 15:28:00



photo AFP

**Les saisies aux frontières d'argent liquide non déclaré ont bondi de 500% en un an, selon une note confidentielle des Douanes évoquée dimanche par Le Parisien/Aujourd'hui en France.**

Le volume des saisies d'argent a dépassé les 103 millions d'euros au premier trimestre 2013, soit une augmentation de 518,6% par rapport au premier trimestre 2012, selon cette note de la Direction nationale du renseignement et des enquêtes douanières. D'après Le Parisien, la forte hausse était déjà perceptible au dernier trimestre 2012 avec 102 millions d'euros saisis aux frontières. Le ministère du Budget, dont dépend les Douanes, n'a fait souhaité faire de commentaires.

"Nous ne faisons pas de commentaires sur des données non publiées, et encore moins de conjectures", a indiqué à l'AFP l'entourage du ministre délégué Bernard Cazeneuve.

La tendance observée depuis fin 2012 marque cependant une nette accélération: en 2010 et en 2011, le total saisi sur l'année n'était respectivement que de 88 millions et 84,6 millions, sur l'ensemble d'une année. Or, selon Le Parisien, le nombre de contrôles effectués reste stable d'une année sur l'autre, ce qui ne peut donc pas expliquer l'envolée récente. Selon des douaniers cités anonymement dans Le Parisien, les raisons avancées par les personnes en possession de l'argent saisi sont "majoritairement" d'ordre fiscal. "Les (sommes issues du trafic de) stupéfiants ne représentent que 10% du volume", selon un enquêteur. **La Suisse et le Luxembourg sont les premières destinations de ces flux d'argent liquide.**

Le Code des douanes stipule que tout transfert international en liquide, à l'intérieur de l'Union européenne, doit faire l'objet d'une déclaration, sauf pour les sommes inférieures à 10.000 euros. La méconnaissance de cette règle est punie d'une amende égale au quart de la somme sur laquelle a porté l'infraction présumée. En cas de saisie, les sommes non déclarées sont consignées par les douanes pendant six mois, renouvelables sur décision du parquet. La révélation de ces chiffres intervient alors que l'ex-ambassadeur de France en Irak et en Tunisie, Boris Boillon, a été arrêté le 31 juillet Gare du Nord à Paris, en possession de 350.000 euros et 40.000 dollars en liquide. L'ancien conseiller diplomatique du président Nicolas Sarkozy reconverti dans le conseil, s'apprêtait à monter dans un train pour Bruxelles au moment où les douaniers l'ont intercepté.

# Cartels and corruption with Siemens

**Date** 06.09.2013 **Author** Dirk Kaufmann, Christian Ignatzi / cd

The trial against Uriel Sharef, a former board member at Siemens, includes "particularly serious" breaches of trust and abetment. While it might end a decade-long affair, it has not ended corruption at the company.



Uriel Sharef's lawyer calls the claims "unfounded"

In 2003, a subsidiary of Siemens was accused of bribing an Argentine government official in order to receive a large contract in that country. The contract in question had to do with the production of non-forgable passports for Argentines - new documents, in other words, for 40 million citizens. According to indictment papers, Siemens is said to have paid approximately \$9.5 million (7.24 million euros) in bribes to win that contract. The Argentine "passport affair," as it became known in Germany, is supposed to have pulled many into its net: Argentine ministers and cabinet members are said to be among them.

Even former Argentine President Carlos Menem is supposed to have received money to help Siemens win the billion-dollar contract.

## **Corrupt culture**

Leading up to the "passport affair," a culture of corruption had developed at Europe's largest technology company.

"It was certainly the case that Siemens had a slush-fund system over the course of many years," said Hans Leyendecker, one of Germany's most renowned investigative journalist and a reporter on the Siemens "passport affair."

"Employees who were caught were transferred at times, and at other times even promoted," he told DW.

A long list of Siemens managers are said to have secured contracts through bribes.

Two years ago, Thomas Ganswindt, another former board member, also stood trial. He was accused of having utilized slush funds on behalf of his employer. The judge determined the defendant's personal guilt to be limited to such an extent that a plea bargain was agreed upon in May 2011. Ganswindt paid a fine of 175,000 euros.



At the Munich district court: Sharef should expect the trial to take 18 days

Things were more expensive for Siemens. The corruption affair, discovered in 2006, cost the Munich- and Berlin-based company 2.9 billion euros - largely in fines, court fees and additional tax payments. Siemens is supposed to have illegally used 1.3 billion euros to obtain lucrative contracts, making it the largest bribery scandal in Germany's economic history.

### **Learning from mistakes?**

Siemens does seem to have taken some lessons to heart, says Christian Humborg, the director of Transparency International in Germany.

"We have the impression that Siemens enacted a large-scale clean-up, and that some things have changed within the company," he told DW. While the company's reputation can't be polished clean, the firm of 400,000-plus is no longer considered a "poster-child for corruption in Germany."

Journalist Hans Leyendecker also sees new policies within the company. "When under-the-table funds are demanded for foreign contracts, Siemens doesn't do business," he said. The company, he says, now has a zero-tolerance policy. "Whoever takes slush funds is gone."

Yet negative headlines continue to trail the engineering firm. During the construction of a subway line in Brazil's largest city of São Paulo, prices are said to have been fixed by a cartel formed by international firms, Siemens among them.

Though the company has signaled its readiness to cooperate with authorities, it may only have to do so on one side of the Atlantic. In Germany, legal disputes pertaining to cartels are constrained by a "principle witness" law, giving the company hope for avoiding a fine.

The state of São Paulo, however, has already announced its intent to file a criminal case against Siemens, potentially adding another scratch to the newly-polished image of the embattled German firm.

### **Not guilty**

Uriel Sharef's trial is expected to last 18 days. The most important thing, however, is that it is conducted to completion, says the director of Transparency International in Germany.

"Only in court, when witnesses are named, can the corruption case be unwound effectively," Humborg said.

Its faults notwithstanding, Humborg at Transparency International believes Siemens is changing

Stopping the trial in exchange for a plea bargain, as in the case of Thomas Ganswindt, he added, would leave many issues in the dark.

Standing alongside Uriel Sharef is another former board member. When that trial finishes, it could be the final word on the Argentine "passport affair."

For the defense, the outcome of the proceedings is clear. Sharef's lawyer considers the accusations against his client unfounded. He is operating under the assumption that the trial will end in a not-guilty verdict, he said.

# The Economist

Offshore tax evasion

## Swiss finished?

**America arm-twists the bulk of Switzerland's banks into a painful deal**

Sep 7th 2013

WOODY ALLEN once remarked that believing in God would be easier if He would show Himself by making a large deposit in a Swiss bank account in the director's name.

Parking riches in the Alps has become a less heavenly experience in recent years, thanks to America's assault on its tax-dodging citizens and the moneymen who serve them.

Fearful that other banks could suffer the same fate as Wegelin, a venerable private bank that was indicted in New York in 2012 and put out of business, the Swiss government has been seeking an agreement with America that would allow the industry to pay its way out of trouble in one go. Instead, it has had to make do with one covering banks that are not already under investigation, which excludes some of the country's biggest institutions.

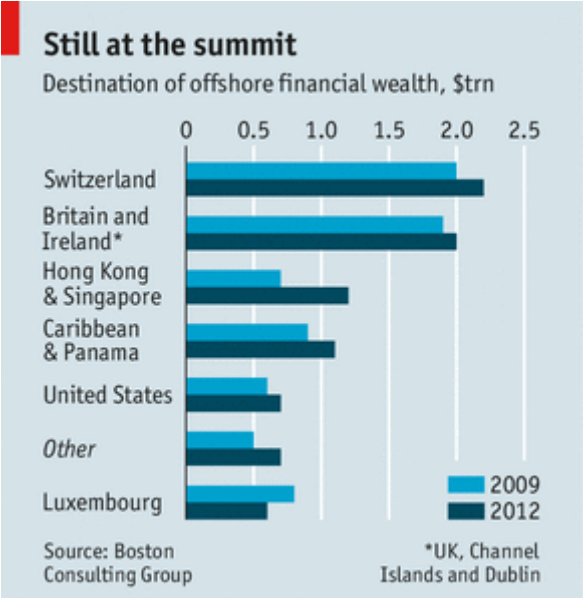
The deal is cleverly structured. Of Switzerland's 300 banks, 285 will be able to avoid prosecution if they provide certain information about American clients and their advisers, and pay penalties of 20-50% of the clients' undeclared account balances, depending on when the account was opened and other factors. Banks that persuade clients to make disclosures before the programme starts will get reduced fines. Banks will not have to take part but the legal risks are daunting for those that don't, even if they hold little undeclared American money. Those with no foreign clients will have to produce independent reports proving they have nothing to hide if they want a clean bill of health.

One Swiss newspaper likened the deal to "swallowing toads". Another called it "the start of an organised surrender". The bankers' association sees it as a necessary evil: the only way to end legal uncertainty, albeit at a cost that will strain some institutions. Small and medium-sized Swiss private banks are already struggling. In 2012 their average return on equity was 3%; the number of private banks fell by 13, to 148, mostly because of voluntary liquidations. KPMG, a consultancy, expects this to fall by a further 25-30% by 2016 as receding legal threats encourage the return of mergers.

Some of the prospective buyers in any future M&A wave still have to make their peace with the Americans. Excluded from the deal are 14 mostly large banks that have been under investigation for some time, including Credit Suisse and Julius Bär. They will have

to settle individually, with fines expected to be steep, some perhaps comparable to the \$780m paid by UBS in 2009. These banks are also under pressure from European countries that have suffered tax leakage, including Germany, whose parliament has rejected a deal that would have allowed the Swiss to make regular payments of tax withheld from clients while avoiding having to name names.

Swiss bankers gamely argue that bank secrecy remains intact, pointing out that privacy laws have not been dismantled. But banks are being bullied into providing enough information, short of actual client names, to allow the Americans to make robust “mutual legal assistance” requests that leave Swiss courts with no option but to order banks to provide clients’ personal details. The courts still have some flexibility because America has yet to ratify an amended tax treaty with Switzerland, thanks to blocking tactics by Rand Paul, a senator who argues it would violate Americans’ right to privacy. But this obstacle will eventually be cleared or circumvented.



All of which fuels speculation that Switzerland could lose its crown as the leading offshore financial centre, even though it is still well ahead of fast-growing rivals in Asia (see chart). It may find comfort in the fact that the Americans plan to use information harvested from the Swiss— including “leaver lists”, which contain data on account closures and transfers to banks abroad—to go after other jurisdictions. This is part of a “domino effect” strategy, says Jeffrey Neiman, a former federal prosecutor, aimed at forcing tax evaders “so far off the beaten path that they can’t be sure if the pirate waiting to take their money will be there when they return”.

# Spain strengthens transparency law intended to fight corruption

By Elisabeth O'Leary

MADRID | Thu Sep 12, 2013 8:43pm BST

(Reuters) - Lawmakers on Thursday passed amendments to beef up Spain's first freedom of information law, intended to attack corruption and restore plummeting public trust in politics and government.

A series of scandals has highlighted a lack of accountability in political parties and even the watchdogs charged with keeping them clean.

Spain is the only European Union nation without a law which guarantees citizens a right to information on how public funds are spent. The bill is expected to pass both houses of parliament within the next few weeks.

The original draft left out key institutions, including political parties, the royal family, lobbies, unions and employers' associations, which were included in the amendments on Thursday.

"As things stand today Spanish democracy is not comparable with Britain or Scandinavia. Personal or political behaviour which would be unacceptable there have no consequences here," said Aitor Esteban, member of parliament for Basque nationalist party PNV, which voted in favour of the amendments.

Spaniards' tolerance for graft has faded as a five-year economic slump exposes how cosy relations between politicians and [construction](#) magnates fed a disastrous housing bubble.

Under the new law, all levels of government will have to provide clearer public records on which companies have government contracts.

"NEW ERA"

For the first time the royal family, traditionally protected from scrutiny, will be forced to provide details on finances beyond their annual allowance.

The prime minister's office has touted the law as one of the most advanced in the world, but anti-corruption activists say it is merely a step in the right direction. European pressure group Access Info says the government will too easily be able to reject citizens' requests for information.

"If, for example, you ask for information about the royal family and you don't get a reply, you will probably have to go to court to enforce your request," said Helen Darbishire, the group's executive director.

Jesus Lizcano, chairman of the Madrid office of Transparency International, said the law would mark a new era for access to official information.

"This legislation is tremendously important. There are things in it that we would have wanted to develop further but there are still plenty of things we needed," he said.

The governing People's Party, under judicial investigation for alleged illegal financing, has been accused of offering the transparency legislation to clean up its image.

Opinion polls show political parties are the least trusted of any public institutions in Spain. The royal family's image has also suffered as the king's son-in-law is charged with embezzling six million euros in public funds. (Reporting by Elisabeth O'Leary; editing by Andrew Roche)