

NARRATIVE REPORT ON LUXEMBOURG



PART 1: NARRATIVE REPORT

Luxembourg: history of a tax haven

Overview and background

The Grand Duchy of Luxembourg is ranked sixth in our 2015 Financial Secrecy Index, based on a moderate secrecy score of 55 and a very large share of the market for offshore financial services, at nearly 12 percent of the global total. It is one of the most-improved jurisdictions in our index.

Sandwiched between Germany, France and Belgium at the heart of Europe, this tiny constitutional monarchy has a population of just over half a million, allowing its enormous financial sector to achieve a strong degree of ‘capture’ over the political system, media and culture of the entire Duchy. Criticism of the sector, and discussion about its relationship to society, are rare.

As in Switzerland, the offshore financial sector has been underpinned by a history of political stability. This is bolstered by Luxembourg’s position at the geographical heart of Europe, catering largely to its immediate neighbours – and also its role as a [founder member](#) of the European Union. This latter factor has provided Luxembourg privileged access to the European market that other offshore centres cannot match; and Luxembourg also enjoys considerable political support from European economic élites who benefit from its offshore services. These factors have often protected it against being blacklisted or pressured to change.

Until recently we were calling Luxembourg the “Death Star” of financial secrecy in Europe, due to its highly aggressive stance in fighting European transparency initiatives. Yet Luxembourg has arguably made more improvements than most jurisdictions since our last Financial Secrecy Index was published, and it has recently joined various international transparency initiatives. We attribute this *relative* change of heart above all to the evolving international climate on transparency, combined with high-profile global scandals that have cast the tax haven in a highly negative light. These changes also coincide with the departure of Prime Minister Jean-Claude Juncker, arguably the most important architect of the secretive modern tax haven. (Indeed, Juncker’s successor, Xavier Bettel, has [stated that](#) “I am fed up with being accused of being a defender of a tax haven and a hotbed of sin”.)

Yet of course the tax haven was always nurtured and promoted by an élite consensus that goes far beyond Juncker, underlining the fact that external pressures are the core driver of change.

Rank: 6

Chart 1 - How Secretive?

55
Secrecy
Score

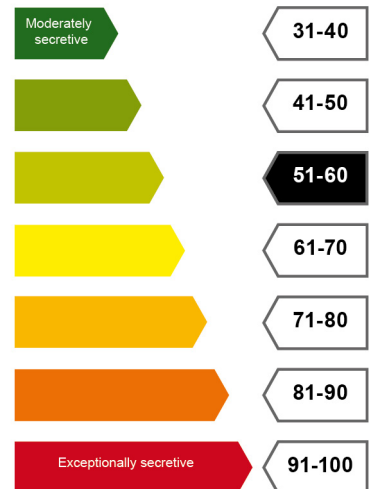
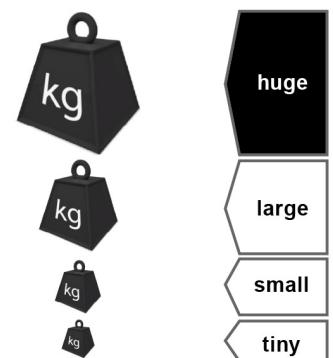


Chart 2 - How Big?



Luxembourg accounts for slightly over 11.6 per cent of the global market for offshore financial services, making it a huge player compared with other secrecy jurisdictions.

The ranking is based on a combination of its secrecy score and scale weighting.

Read more
 → [Full data](#)
 → [Luxembourg on TJN Blog](#)
 → [Full Methodology](#)

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Despite these improvements, Luxembourg remains one of the world's most important secrecy jurisdictions, hosting a range of financial and other activities that foster illegality or abuses elsewhere – including a new high-security 'freeport' warehouse to store assets such as paintings, gold bars or bearer bonds, with ample opportunity for financial mischief.¹ Financial secrecy is based significantly on the privileged nature of professional lawyer-client relationships, rather than classic Swiss-styled banking secrecy. For instance, investors can hide behind Luxembourg companies whose officers are bound by these relationships not to divulge details of who owns them.

Luxembourg takes secrecy seriously: breaking professional secrecy [can result](#) in a prison sentence, and the whistleblowers who exposed the so-called "Luxleaks" scandal are at the time of writing (Sept 2015) on trial for this very reason. And while Luxembourg has taken action to improve its previously poor track record on providing offshore secrecy, it has continued to expand its role in helping multinational corporations to avoid paying tax in other countries, and it remains a centre of lax financial regulation, which potentially poses global financial stability risks.

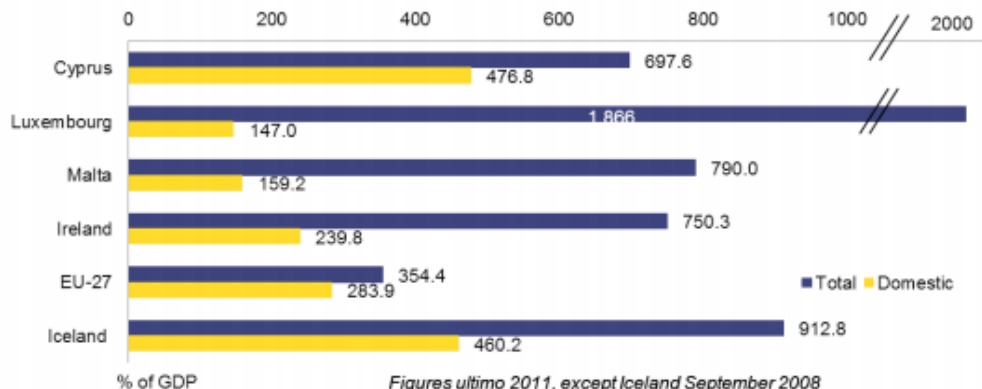
More broadly, Luxembourg is also one of the world's most important financial centres, and its offerings go far beyond the provision of secrecy – though most of these sectors depend quite heavily on offering regulatory escape from other countries' rules. Luxembourg is the

most important private banking and wealth management centre in the Eurozone, with 143 banks holding [nearly \\$800 billion](#) in assets, of which over \$300 billion is in the secretive private banking sector (nearly half of private banking assets are owned by 'ultra high net worth individuals' holding over US\$20m each.) It is the world's [second largest](#) investment fund centre after the United States – and fund management, with assets under management worth [over \\$2.5 trillion](#), is the most important part of the financial centre.

Luxembourg also has a long history in hosting international bonds; it is a big player in insurance and reinsurance; and in structured finance and securitisation vehicles. It is the world's [second largest centre](#) for the domicile of hedge funds, after the United States. Outside the traditionally-defined financial sector it also runs a lucrative line in hosting holding companies of transnational corporations, and facilitating the setting up of structures – notably its now infamous 'tax rulings' – to help them avoid and evade tax. It is strenuously seeking to build up an industry based on [Islamic finance](#), and despite its historically European (particularly German) focus, it is actively courting offshore financial players in Asia: notably China ([pp6-7](#)). Despite being landlocked, Luxembourg even has an offshore [shipping registry](#).

The graph below, based on [end-2012 data](#) from the European Commission, shows the extreme size of bank assets relative to the economy – another pointer to financial 'capture.'

Chart 3: Banks' assets in percent of GDP in international perspective



Sources: ECB, Central Bank Iceland, Ameco

History of Luxembourg's offshore financial centre

Pre-history

Although Luxembourg today rivals Switzerland in size and scope as a European secrecy jurisdiction, the origins of its financial sector are far younger.

There is some dispute as to when Luxembourg emerged as a nation: it has been an autonomous political unit since the 10th Century and a long history of being a Duchy, owned over the centuries by successive European powers. The ancient Saxon name of its capital city Lucilinburhuc was “Little Fortress”, symbolising its strategic position astride major military (and trading) routes linking Germanic and Frankish territories. Interestingly, historical trading ‘nodes’ have often ended up as secrecy jurisdictions, as our reports on [Singapore](#), [Hong Kong](#), and [Dubai](#) attest. Independence was formally ratified in 1867, but even then it remained a possession of the Kings of Netherlands and only slowly did it gain true independence, eventually formally abandoning political neutrality and joining NATO after the Second World War.

The discovery of large iron ore deposits and the emergence of a strong iron and steel industry in the early years of the 20th Century, bolstered by policies that insisted on transforming the ore locally, underpinned an era of rapid growth. Its history as a financial centre stems from three factors: first, tax-free and secrecy facilities for non-resident corporations, dating from 1929 (though only economically significant until much later); second, the emergence of offshore Eurobond activity in the early 1960s, particularly involving German banks wanting to take advantage of almost nonexistent banking regulation in Luxembourg; and third, banking secrecy which was *de facto* in place from the outset, but decisively strengthened and solidified with the [1981 Banking Act](#).

Luxembourg has sought to create and tailor specific legislation in sector after sector through a “light-touch”, tax-light, rather

secretive ‘offshore’ model, with a historically heavy emphasis on “keeping assets based in Luxembourg secret from national tax authorities,” as a top Luxembourg regulator [explained](#). Its ranking in first place on the Heritage Foundation’s [index](#) for “investment freedom” is testament to this lax approach, and goes a long way towards explaining why Luxembourg has become so important in global investment funds today.

Offshore: early beginnings

Luxembourg’s first real steps as an offshore financial centre began in 1929 with a new legal regime for companies, under which transnational corporations could establish ‘holding company’ subsidiaries in Luxembourg, set up purely to own assets elsewhere, that would be exempt from income and capital gains tax. European companies quickly noticed that such structures could be used to escape tax, in considerable secrecy. This was classic ‘offshore tax haven’ activity.

However, for many years this sector made a relatively modest contribution to Luxembourg GDP; it was only in the 1960s that the Luxembourg financial sector began to take off. The big milestone – a top Luxembourg financier [suggested](#) this was Luxembourg’s financial “Big Bang” – was the launch in July 1963 of the world’s first ever offshore Eurobond, for the Italian motorways company Autostrade. Until then, under the constraints of the Bretton Woods architecture which heavily restricted cross-border financial activities, bonds were largely domestic affairs: French investors would raise funds for French companies in French Francs, for example.

Though the nuts and bolts of the Autostrade deal itself were mostly hammered together in the City of London, the bond offering was listed on the Luxembourg stock exchange, at the suggestion of Edmond Israel, the deputy to City banker Siegmund Warburg. Luxembourg was chosen not just for its position in Europe but also for its lack of financial sector regulations: [there were, for example](#) no stamp duties; no withholding taxes, and the bond issue [did not](#)

[even](#) require a prospectus.

The bond offering was a financial success and many others followed rapidly: by year's end 1963 there were already 93 bonds listed in Luxembourg (and four decades later, that figure had grown to about 20,000.) Eurobonds were bearer bonds: classic tax evasion and secrecy instruments because no withholding tax was charged: and whoever physically held them in their hands was entitled to the income and capital. Beth Krall, a banker who worked in a Luxembourg bank's back office in the Eurodollar boom years, gives a flavour of those times:

“We were dealing with those ‘Belgian dentists’ who keep bonds under the mattresses,” Krall remembers. “Sometimes they all came in at once – what we called the coupon bus would arrive [or, as [some called it](#), the *train des fraudeurs*]. They came from Belgium, Germany, the Netherlands, filling the lobby, spilling out the door, getting angry, waving their coupons and getting their cheques.’ The vaults held, among other things, *enveloppes scellées* (sealed envelopes) relating to ‘Henwees’ – HNWI or high net worth individuals. ‘We didn’t know what the hell was in there,’ she said. ‘The private bankers and relationship managers put those things in there – we never had an inkling.” ([Treasure Islands p216](#))

The launch of the Eurobond markets (and the wider “[Euromarkets](#)”, which included currencies too) marked a new era in the globalisation of finance that would within a few years break apart the high-growth “golden age” Bretton Woods era and replace it with a new era of rapid financial expansion: an era also marked by greater volatility and frequent economic crises, mushrooming debt, lower growth and rising inequality.

The Euromarkets got a large boost [in 1965](#) when U.S. President Johnson, worried about Vietnam-era deficits, tried to restrain U.S. companies from sending capital abroad to invest overseas: in response, U.S. corporate

giants started seeking ever more funding from Euromarket centres such as Luxembourg for their non-U.S. investments. As European and U.S. corporates began to notice Luxembourg's *laissez-faire*, see-no-evil approach to corporate business, bankers from these countries rapidly followed. Parallel to the Eurobond markets, Luxembourg widened its spectrum of activities to private banking and investment funds in particular, and kept expanding into new sectors with specific pieces of legislation designed to tempt the world's hot money.

Less dramatically, the business of setting up secretive letter box companies in Luxembourg for foreign individuals and multinationals was quietly gathering pace. As early as 1973 France and Germany demanded a crackdown on these, but Luxembourg's role as a European Union founder and member enabled it to lobby to head off any action: efforts [continue today](#).

The collapse of Luxembourg iron ore mining from the 1970s – the last iron mine closed in 1981, and the steel industry was by then a shadow of its former self – saw policy makers increasingly seeking to bolster the financial sector, which by 1981 was already the [dominant contributor](#) to GDP, rapidly dwarfing all other sectors. The Banking Act of 1981 for the first time legally bound bankers to keep their client information secret, formalising practices that had long been in place.

Luxembourg's small size and incestuously connected élites have enabled the offshore financial sector to achieve and maintain a remarkable degree of ‘political capture’. This capture explains why major political decisions relating to financial services can be taken quickly and with little or no democratic consultation or kerfuffle – ideal for the tumultuous and rapidly expanding offshore sector in a period of intense race-to-the-bottom dynamics. Already well embedded, the offshore model had become the unopposed centrepiece of national development strategy.

Laxity is followed by . . . criminal activity

Luxembourg's regulatory laxity, tolerance of secrecy and tax-free benefits attracted large-

scale criminality of course. Much of this has undoubtedly been hidden from view by the secrecy, but many important cases have come to light.

One of the earliest concerned the global fraudster Bernie Cornfeld, who [established](#) his first mutual fund in Luxembourg in 1962. It was aimed specifically at tax-evading people around the world. As Tom Naylor's account put it ([p19](#)):

“When Bernie Cornfeld, the architect of the world's largest and most successful offshore mutual fund, bought his first airplane, the joke went around his Investors Overseas Services (IOS) that he was about to start “Capital Flight Airlines.” It was only partly apocryphal. If Bernie Cornfeld did not invent the modern technology of capital flight, he did far more than most of his contemporaries to put it to work in an imaginative, systematic and profitable way.”

Cornfeld's empire collapsed in the 1970s.

The [default in 1982](#) of Luxembourg-registered Banco Ambrosiano Holdings S.A., one of the largest in Europe's recent history, was at the core of another global scandal that erupted into world media with “God's Banker” Roberto Calvi hanging under Blackfriars Bridge in London. The tale, which involved allegations about the Italian Mafia, the Vatican, secret services and Masonic lodges, was never satisfactorily unravelled. Luxembourg's role in supplying the financial secrecy that enabled large-scale loans to mysterious entities was rarely mentioned, other than in passing.

Later, the Bank of Credit and Commerce International (BCCI), widely regarded as the most criminal bank in history (though it has stiff competition nowadays), incorporated itself jointly in Luxembourg and Cayman, with headquarters in London. Each financial centre provided the tax-free status and required lack of scrutiny – and this structure allowed each to point at the others when scandal hit. This model allowed BCCI to involve itself in

the financing of terrorism, drugs smuggling, slavery, trafficking in nuclear materials, tax evasion, fraud, racketeering and much more, with – at least until Robert Morgenthau and (TJN Senior Adviser) Jack Blum [began probing](#) its U.S. activities in the late 1980s-- no questions asked.

Luxembourg has also played a role in numerous European political scandals: for instance the giant “[Elf Affair](#)” that saw the international operations of France's Elf Aquitaine serve as a giant slush fund for the use of all major French political parties and intelligence services that became so extensive and corrupt that they destabilised the French state. As the former head of Elf testified in court, by the 1990s the French intelligence services were so intertwined with this system that they had become, in his words ([p252](#)), “a great brothel, where nobody knows any more who is doing what.” Luxembourg, along with Switzerland and a few other mostly European tax havens, was a central node in the network of secret dirty money.

The role of Luxembourg in the more recent “[Karachi affair](#),” implicating such top French officials as Nicolas Sarkozy and Edouard Balladur, is testament to the Grand Duchy's ongoing involvement in French corruption at the highest levels of state. Various other links to potentially destabilising European political scandals – including a [major emerging Mafia scandal](#) in Italy – all add up to further evidence of Luxembourg's hellraising role in European politics and economics.

Overall, these scandals led to Luxembourg switching tack somewhat in the 1990s, along with the Cayman Islands and other jurisdictions, by effectively choosing to move upmarket. Sordid drug-dealing profits would henceforth be frowned upon; now it would be high finance: asset management, shadow banking and the like. These, of course, all carry their own risks, including infestation by criminal actors (not least tax evaders and avoiders, market riggers, Ponzi scheme operators, and so on) as subsequent years would show.

Nevertheless, scandals have continued

to emerge. In March 2010, for instance, newspapers reported that Luxembourg hosted US\$4 billion in assets for North Korean leader Kim Jong-Il, which were shifted there after Swiss banks tightened up procedures. As the *Telegraph* newspaper [reported](#):

“Mr Kim’s operatives then withdrew the money - in cash, in order not to leave a paper trail - and transferred it to banks in Luxembourg. The money is the profits from impoverished North Korea selling its nuclear and missile technology, dealing in narcotics, insurance fraud, the use of forced labour in its vast gulag system, and the counterfeiting of foreign currency.”

Luxembourg For Finance, the financial industry’s lobbying arm, told TJN in 2011 that that particular report was untrue.

The modern ‘captured state’ and its treatment of critics

As already noted, one of Luxembourg’s key selling point for the world’s mobile hot money has long been Luxembourg’s role as a state ‘captured’ by offshore financial services, which has effectively removed the possibility of democratic opposition to the sector. While lawmakers are not responsive to public pressure, they are extremely responsive to the wishes of offshore finance. As the Luxembourg Bankers’ Association (ABBL) boasts, one of Luxembourg’s core [strengths is](#) “easy access to decision-makers; limited red tape” – a testament to the fact that local democratic consultation is generally not allowed to intrude.

With commuters from across the border making up [nearly 45 percent](#) of the workforce, and foreigners making up [over 70 percent](#) of the working population, Luxembourg always had a strong international orientation, fitting its fast-developing ‘offshore’ character. The media is rarely critical.

This stability for finance has been embedded in the dominance of the right-wing political party, the Chrëschtlesch Sozial Vollekspartei (CSV) which has strongly supported financial secrecy

and the financial centre’s ‘offshore’ orientation – and which has been the largest political party in every election from 1919 to the present day. But the ‘capture’ extends far beyond politics. Mike Mathias, a Green Party politician and former head of the Cercle, [stated](#) in 2014:

“The financial sector weighs on people’s minds, and they defend it without thinking. . . it’s very clear in every day talk: what is good for the financial sector is good for the country. . . . Very few people dare to raise their voice to criticise the impact of this policy on the country. There is no political courage to face up to the heft of the financial lobby.”

“‘Finance’, in the current era, is not just a sector of the economy; it is at the core of a new social settlement in which the fabric of our society and economy has been reworked.”

This has practical impacts: Luxembourg analyst Jérôme Turquey [has described](#)

“an insulated culture that systematically excludes any information that could contradict its reigning picture of reality . . . dishonest professionals fail to be pushed out of business, in large part because of Luxembourg’s small size where ‘everybody knows everyone else’ – and this creates conflicts of interest.”

The rare internal critics of and challengers to the offshore financial sector can be dealt with rather harshly. For example, in October 2008 Arlette Chabot, information director for French TV station France 2, had to write a [craven apology](#) to Luxembourg after airing a programme (which was admittedly rather short on specifics) critical of its financial secrecy. In July 2009, when a group of non-governmental organisations

(NGOs), the [Cercle de Coopération](#), published a report criticising Luxembourg's status as a secrecy jurisdiction and pointing out the conflict with its foreign aid policies, the response was ferocious. Prime Minister Jean-Claude Juncker in a long [speech](#) lambasted it as a 'primitive study' and told the NGOs that they should refrain from criticising the financial sector; the Cercle was forced to withdraw the study within a week. (The Luxembourg Bankers' Association cited 'inaccuracies' in the report yet has so far failed to offer correct statistics when challenged to do so; the study is available [here](#).)

Another victim of the Luxembourg financial consensus is Denis Robert, a French journalist whose 2001 book *Revelation* about the Luxembourg-based clearing house Clearstream, alleging its role in facilitating money-laundering and flows of dirty money, led to him being subjected to almost sixty lawsuits in French, Belgian and Luxembourg courts,² and pursued for years afterwards.

The conflict between financial sector governance and wider political governance is consistent with a pattern common in offshore centres, particularly smaller ones, where offshore financial actors can effectively tell the executive and even the judiciary how to behave: and for the executive, they are happy to do whatever brings revenue – so the financial sector actors don't generally need to exert much pressure to get what they want.

For instance, Luxembourg's financial regulator, the Commission de Surveillance du Secteur Financier (CSSF), is riddled with conflicts of interest. As the IMF [politely reported](#) in 2011,

“The current legal framework does not sufficiently guarantee the full operational independence of the CSSF; the CSSF is placed under the direct authority of the Minister; its missions include the “orderly expansion” of Luxembourg's financial center; its general policy and budget are decided by a Board whose members are all appointed by the government upon proposals from supervised entities and

the Minister.”

A regulatory framework of this nature, anchored in an aim of drumming up as much business as possible, is directly at odds with the notion of proper supervision, and it accords with the classic offshore offering to capital owners that is crudely summarised, “we won't steal your money, but we will turn a blind eye if you want to steal someone else's.”

The conflicts of interest are legion. In September 2013, investor-protection group Protinvest complained to EU Commissioner Michel Barnier, highlighting conflicts of interest, [notably](#) the appointment by Finance Minister Luc Frieden of his senior adviser Sarah Khabirpour to the board of the CSSF, while she also sits on the board of Banque Internationale a Luxembourg, one of the country's biggest banks, and is a director of the Luxembourg Stock Exchange – both institutions the CSSF regulates. As the *Financial Times* [summarised](#):

“Ms Khabirpour's multiple jobs showcase the cosy relationships that tie Luxembourg's business community, which centres largely on fund management, to its regulators and political leaders.”

What may be still more striking is that Luxembourg's courts seem to have effectively been captured, so that they will side with financial sector players -- particularly large financial sector players -- against smaller challengers, whether or not the law says they should.

A well-known case here involved the U.S.-based fraudster Bernie Madoff, who built up an international Ponzi scheme and defrauded investors of billions. Insolvency practitioners seeking redress for the defrauded investors have been particularly coruscating about Luxembourg because of the authorities' apparent determination to protect financial sector players at all costs – in violation of the law. In a series of searing public letters (for example, [here](#), [here](#) and [here](#)), the insolvency practitioners Deminor, operating on behalf of

2,500 Maddoff investors stated in 2011 that:

“Our clients and their financial advisors have relied on the safeguards in place in Luxembourg, an international financial centre that openly prides itself as having an efficient system aimed at the protection of investors. . . . none of these institutions has been held accountable to date . . . these courts have so far denied access to justice to the numerous investors who followed the CSSF’s advice”

A May 2013 *Financial Times* [article](#) on the topic quoted a fund consultant as saying that regulatory lapses are on the rise in Luxembourg, amid fierce competition in laxity with Dublin in particular (see more [here](#)). By 2015, it seemed [little had changed](#): Luxembourg’s supreme court denied the right of European investors to claim damages from Luxembourg-based custodian banks and auditors, apparently in violation of the law.

“European investors have been deprived of their rights by the Luxembourg courts to enforce claims derived from EU law, despite the blatant liability of service providers based in Luxembourg. . . financial institutions and other professionals in charge knowingly turned a blind eye on the risks in order to protect their commercial relationships and collect additional fees. . . the reality is that more than 6 years after the revelation of the fraud, [none] of these service providers have been held accountable by a court in Luxembourg.”

A Luxembourg-based correspondent added these striking words, sent to us by email:

“One very important aspect of the Luxembourg financial centre is the absolutely scandalous discrepancy between the texts of the law, and their application in everyday judicial life. . . . while international pressure managed to force Luxembourg to adapt stricter

legal constraints to the financial activities under its jurisdiction, looking into the lack of judicial application of said constraints becomes even more important.

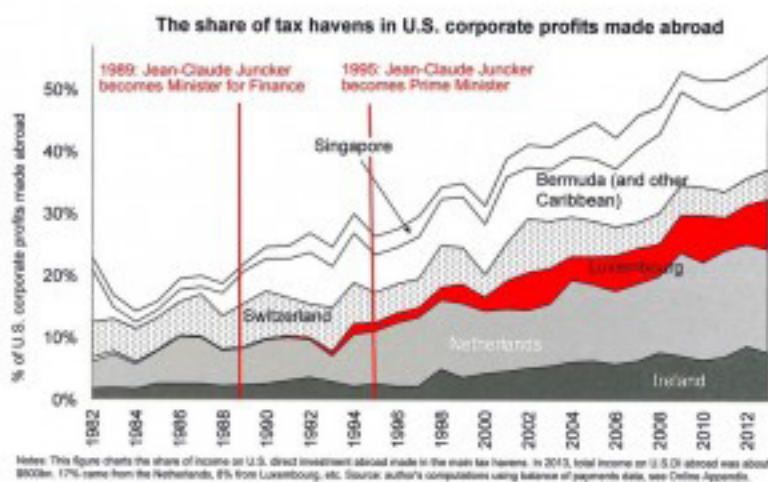
Unlike in larger countries, there is no such thing as an independent representation of any civil interests in a tiny country like Luxembourg. You just don’t make it in this country unless you’ve proven your absolute loyalty to the system in place, including being ok (if not more) with all of its malpractices.”

The Luxleaks scandal – and questions about Jean-Claude Juncker

Another huge global scandal, this time almost wholly centred on Luxembourg, goes by the name of “[Luxleaks](#)”. This exploded into international headlines in November 2014 when Luxembourg-based whistleblowers exposed a [huge trove of documents](#), which were then publicised by the International Consortium of Investigative Journalists (ICIJ)³, showing how the accounting giant PWC and others had helped multinationals from around the world – including IKEA, AIG, Deutsche Bank, Walt Disney Co., Pepsi and many other household names – slash their global tax bills using Luxembourg-based structures. These featured ‘tax rulings’ (sometimes known as ‘comfort letters’) effectively amounted to rubber-stamp authorisation by the Luxembourg tax authorities for highly abusive and complex schemes to challenge hundreds of billions of dollars to Luxembourg, in many cases cutting their effective tax rates to less than one percent of the profits that they had shuffled into Luxembourg. Although the cases do not primarily revolve around secrecy, it is telling that the only people to have been penalised or incriminated as a result of the exposure of these widespread abuses are whistleblower Antoine Deltour, and another as yet unnamed whistleblower, who provided the information to the world’s media.

Jean-Claude Juncker, who had recently stepped down as Prime Minister amid a scandal over the secret services, roundly denied any involvement in the scandal. Yet the nature of his denials, and the history of Luxembourg, are instructive.

A graph of one aspect of this offshore activity points not only to Juncker's role, but also to the history of Luxembourg's involvement in offering corporate tax avoidance services.



Source: Gabriel Zucman, 2014; historical details added by David Walch, Attac-Austria. (Note, however, that Bermuda is not in the Caribbean)

Juncker himself explicitly denied involvement in these activities that led up to Luxleaks:

“The Luxembourg tax authorities are very allergic to the idea of ministerial interference,” he said. “I think you have (an) exaggerated idea of (the) power of the prime minister in this respect.”

This is noteworthy in several respects. First, as already explained, the offshore model involves reassuring flighty global capital by effectively ring-fencing the offshore sector against political interference: Juncker's words confirm this exactly. Second, Juncker's role was instead to sustain political support for the offshore model, rather than tinkering with its details. And this is confirmed by what [he said in 2007](#), after single-handedly torpedoing European efforts to tackle these abuses:

“We have not made ourselves extremely popular in Europe. . . . an essential interest of Luxembourg was at stake and therefore today I had no other possibility than to say no.”

This flatly contradicts his denials of responsibility for these abuses, which is also contradicted by a [recent article](#) in Luxembourg's leading daily newspaper, *Wort*, which reported that Juncker was alerted as early as 1997 that the special deals being negotiated by bureau 6 of the tax authorities may have been “questionable” and “should be accompanied by “a maximum of guarantees” to make sure they did not contradict tax law. “

However we should also stress that the tax haven strategy was supported by the entire Luxembourg establishment. As the long-standing representative of that establishment, Juncker certainly carries a significant share of responsibility: but he did

not stand alone..

Secrecy in Luxembourg today

Since Juncker stepped down as Prime Minister in December 2013, Luxembourg has begun to make major strides in improving its record on cooperating with other countries – at least in the area of secrecy. How instrumental his departure has been in unlocking these changes is a matter of debate, but the timing is intriguing.

The changes to Luxembourg's secrecy regime since then has been fairly rapid.

In our last Financial Secrecy Index in 2013 we described Luxembourg as the “Death Star” of financial secrecy in Europe, on account of its intransigent role in opposing and seeking to undermine European transparency initiatives, as described below. The [assessment of Luxembourg's anti-money laundering regime](#) by the Financial Action Task Force in 2010 was devastating: of 49 assessed criteria, only one was rated as compliant, nine as largely

compliant, 30 as partially compliant, and nine as non-compliant. Luxembourg was [peer reviewed in July 2013](#) by the OECD's Global Forum, which not only reported a litany of problems, but also ranked Luxembourg as only one of three jurisdictions (out of 81 assessed) that were judged to be noncompliant. For instance, it [reports](#):

“Luxembourg has the legal framework and compulsory powers in place to access information under its updated and new agreements but has failed to use the powers in practice in a number of cases . . . information on the banking statements was partly unreadable, which prevented the requesting jurisdiction from using the information, Luxembourg stated that the information had been blacked out directly by the banks and the Luxembourg tax authorities never accessed the original documents. When the banking statements were received by the Luxembourg tax authorities, partially unreadable, the Luxembourg tax authorities did not request the original documents, which means that the Luxembourg tax authorities accepted the decision of the banks on the relevance of the information without seeing the information. Luxembourg refused to provide the complete documents to the requesting jurisdiction on the basis that the information was not relevant for their investigations, without having seen the original documents.”

The reports highlight not only the scale of Luxembourg's historical intransigence on secrecy, but it also once again illustrates the 'captured state' where tax authorities were unwilling or unable to carry out their expected role in requiring financial sector actors to obey the law.

Yet in a series of moves since Juncker's departure, things have changed rapidly.

- At the time of writing Luxembourg is among

just 14 jurisdictions to have committed to the OECD's emerging global standard of information exchange, known as the [Common Reporting Standards \(CRS\)](#), with implementation due to begin in 2017. Other jurisdictions have committed or partly committed, but at a later date. The group of 14 are the first movers. However, information will only be exchanged with selected jurisdictions.

- Luxembourg is among 94 jurisdictions that [have engaged](#) with U.S. Foreign Account Tax Compliance Act (FATCA: see our [USA narrative report](#);) this is primarily about the U.S. seeking information about its own taxpayers, though with some reciprocity. IN March 2014 Luxembourg signed an Intergovernmental Agreement (IGA, for which it has also got credit on the 2015 FSI).

- For a long time, Luxembourg was one of two recalcitrants (alongside Austria) inside the European Union which refused to sign up to the automatic information exchange provisions of the EU's Savings Tax Directive (EU-STD). Worse, it played the biggest blocking role when the European Commission was trying to push through powerful amendments to tighten up on loopholes and expand its scope. This position changed in [March 2014](#) when all 28 EU member states signed up to the amendments, after Luxembourg and Austria finally dropped their opposition. (However, the EU STD is was at time of writing in the process of being replaced by the CRS; via its implementation through another directive, the Directive on Administrative Cooperation, or DAC.)

- A particularly worrying development that we had flagged in our previous Luxembourg report was the introduction of a Private Foundations Law, which would have been a development of particular concern, creating an important new way for extremely wealthy people to escape scrutiny, tax and regulation. However, the threatened legislation was withdrawn in December 2014.

- It is perhaps also significant that some of the first major public local criticism of the offshore financial sector – by [Luc Dockendorf and Benoît](#)

[Majerus](#) in December 2014 – occurred after Juncker’s departure.

This particular bit of Luxembourg history, and the intriguing timing, could have relevance far beyond Luxembourg itself, given that Juncker at the time of writing is President of the European Commission. His powerful role overseeing the construction of the Luxembourg secrecy jurisdiction poses serious questions for him to answer. As the *Financial Times* reported of his appointment:

The appointment . . . has sparked speculation that the Grand Duchy has won a powerful protector. Chris Lenon, former global head of tax at Rio Tinto, the mining group, says: “This isn’t a poacher turned gamekeeper, it looks more like the poacher in charge of the gamekeepers.”

Read more:

- [Full data for Luxembourg](#)
- [Luxembourg on TJN Blog](#)
- [Full Methodology](#)
- Mediapart (in French): [Comment le Luxembourg s’est construit en trou noir de la finance mondial](#) – a series in three parts, Dec 2013 and Jan 2014.
- OECD Global Forum, peer review for Luxembourg, July 2013
- Luxembourg financial centre: facts and figures, [Luxembourg for Finance](#).
- The [Luxleaks files](#): International Consortium of Investigative Journalists (ICIJ)
- This 2007 [New York Times story](#), looking at Luxembourg’s lobbying in defence of special tax privileges enjoyed by the likes of iTunes, Skype, eBay, AOL, Amazon and other big Internet companies, provides an example of its role (and to see a photo of iTunes’ massive European holding company, illustrating its ‘letter box’ nature, click [here](#).)
- [Fragen aus entwicklungspolitischer Sicht, Cercle de Coopération a.s.b.l., July 23, 2009](#)




¹ Legislation was [amended in 2015](#) to bring the freeport within the scope of money laundering laws, and while an exhaustive examination of this is beyond the scope of this report, it appears likely that large gaps remain.

² French courts in 2004 and 2008 ruled that he had failed to prove his allegations and that he should pay multiple damages; his French publisher estimated that the claims for damages exceeded its annual turnover. Important evidence that would have supported Robert’s case was removed (and presumably destroyed) in Luxembourg police raids on the family homes and workplace of Regis Hempel, one of the key players in the affair. However, Robert won a final victory in the [French Court de Cassation](#) in February 2011 which [ruled that](#) he was protected by freedom of speech and of the press. (When Robert, fresh from his victory, staged an art exhibition in Luxembourg shop, the owner [complained](#) that passersby spat at his window.)




³ The documents were exposed originally by Edouard Perrin, a French television journalist, but they only gained proper global traction when the ICIJ began working with a range of international media to publicise the scandal.

PART 2: LUXEMBOURG'S SECRECY SCORE





TRANSPARENCY OF BENEFICIAL OWNERSHIP – Luxembourg

- 1  *Banking Secrecy: Does the jurisdiction have banking secrecy? Luxembourg partly curtails banking secrecy*
- 2  *Trust and Foundations Register: Is there a public register of trusts/foundations, or are trusts/foundations prevented? Luxembourg partly discloses or prevents trusts and private foundations*
- 3  *Recorded Company Ownership: Does the relevant authority obtain and keep updated details of the beneficial ownership of companies? Luxembourg partly maintains company ownership details in official records*






KEY ASPECTS OF CORPORATE TRANSPARENCY REGULATION – Luxembourg

- 4  *Public Company Ownership: Does the relevant authority make details of ownership of companies available on public record online for free, or for less than US\$10/€10? Luxembourg does not require that company ownership details are publicly available online*
- 5  *Public Company Accounts: Does the relevant authority require that company accounts are made available for inspection by anyone for free, or for less than US\$10/€10? Luxembourg requires company accounts to be available on public record only for a fee*
- 6  *Country-by-Country Reporting: Are all companies required to publish country-by-country financial reports? Luxembourg partly requires public country-by-country financial reporting by some companies*

EFFICIENCY OF TAX AND FINANCIAL REGULATION – Luxembourg

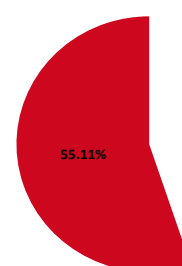
- 7  *Fit for Information Exchange: Are resident paying agents required to report to the domestic tax administration information on payments to non-residents? Luxembourg does not require resident paying agents to tell the domestic tax authorities about payments to non-residents*
- 8  *Efficiency of Tax Administration: Does the tax administration use taxpayer identifiers for analysing information efficiently, and is there a large taxpayer unit? Luxembourg partly uses appropriate tools for efficiently analysing tax related information*
- 9  *Avoids Promoting Tax Evasion: Does the jurisdiction grant unilateral tax credits for foreign tax payments? Luxembourg partly avoids promoting tax evasion via a tax credit system*
- 10  *Harmful Legal Vehicles: Does the jurisdiction allow cell companies and trusts with flee clauses? Luxembourg does allow harmful legal vehicles*

INTERNATIONAL STANDARDS AND COOPERATION – Luxembourg

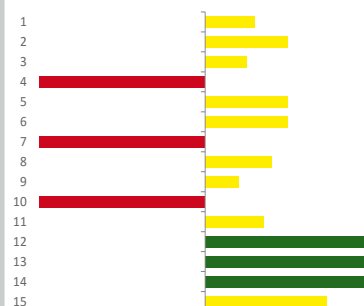
- 11  *Anti-Money Laundering: Does the jurisdiction comply with the FATF recommendations? Luxembourg partly complies with international anti-money laundering standards*
- 12  *Automatic Information Exchange: Does the jurisdiction participate fully in multilateral Automatic Information Exchange via the Common Reporting Standard? Luxembourg participates fully in Automatic Information Exchange*
- 13  *Bilateral Treaties: Does the jurisdiction have at least 53 bilateral treaties providing for information exchange upon request, or is it part of the European Council/OECD convention? As of 31 May, 2015, Luxembourg had at least 53 bilateral tax information sharing agreements complying with basic OECD requirements*
- 14  *International Transparency Commitments: Has the jurisdiction ratified the five most relevant international treaties relating to financial transparency? Luxembourg has ratified the five most relevant international treaties relating to financial transparency*
- 15  *International Judicial Cooperation: Does the jurisdiction cooperate with other states on money laundering and other criminal issues? Luxembourg partly cooperates with other states on money laundering and other criminal issues*

Secrecy Score

Luxembourg - Secrecy Score



Luxembourg KFSI-Assessment



Notes and Sources

The ranking is based on a combination of its secrecy score and scale weighting (click [here](#) to see our full methodology).

The secrecy score of 55 per cent for Luxembourg has been computed by assessing its performance on 15 Key Financial Secrecy Indicators (KFSI), listed on the left. Each KFSI is explained in more detail, [here](#).

Green indicates full compliance on the relevant indicator, meaning least secrecy; red indicates non-compliance (most secrecy); and yellow indicates partial compliance.

This paper draws on data sources including regulatory reports, legislation, regulation and news available as of 31.12.2014 (with the exception of KFSI 13 for which the cut-off date is 31.05.2015).

Full data on Luxembourg is available here: <http://www.financialsecrecyindex.com/database/menu.xml>

All background data for all countries can be found on the Financial Secrecy Index website: <http://www.financialsecrecyindex.com>