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LUXEMBOURG AMCHAM REPORT



Q1 2015



How Minister Mutsch Plans to Increase Female Leadership

business in Luxembourg

In 2009 the American Chamber of Commerce in Luxembourg (AMCHAM) produced the third edition of *Working in Luxembourg*, a business and professional guide which provides an overview to help professionals/business owners understand the rules, practices and customs of the Luxembourg business environment, as well as the realities and cultural context of the workplace environment, the government and social support systems. This publication has been enormously successful, most notably due to the way in which the information is presented—in a simplified, non-legal manner—and as it also includes reference materials and contact information.

We are currently revising the book and plan to issue the new edition in autumn 2015, under the new title *Business in Luxembourg*, to better reflect the new content of the guide. In addition to being distributed in hard copy (book) format, USB cards will also be available. The USB cards, roughly the size of a credit card, are easily transportable. We anticipate these USB cards will be distributed at various international trade missions, both for government and private business uses.



Please contact Natalia Durus to discuss the placement of your advertising in the book or on USB cards.
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Publication Aim and Intended Users

The purpose of *Business in Luxembourg* is to facilitate the establishment of new business in Luxembourg. Intended users include:

- Government officials and business leaders (both U.S. and Luxembourg) involved in trade and investment
- Business professionals either located in Luxembourg or considering Luxembourg as a business location for their European activities
- Relocation company professionals or HR managers looking to provide a welcome package to newcomers to the Grand Duchy
- Other individuals curious about the business or legal structure of Luxembourg.

2015: A Big Year for Luxembourg!

We plan to issue the next edition in autumn 2015 for several reasons. First, in 2015 AMCHAM Luxembourg celebrates its 20th anniversary in the Grand Duchy! Second, the Presidency of the Council of the European Union will be held by Luxembourg during July–December 2015. And finally, the much discussed Transatlantic Trade & Investment Partnership (TTIP) may be signed in 2015 (during the Luxembourg Presidency)—this would be the biggest bilateral trade partnership of its kind. AMCHAM Luxembourg, as the largest English-speaking networking organization in Luxembourg, already has positioned itself as the think tank to help promote the Grand Duchy, and we will continue to push for Luxembourg to be well-positioned in 2015 as the best place for setting up European headquarters for international companies!

Find out more about
upcoming events.



www.amcham.lu





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The American Chamber of Commerce in Luxembourg a.s.b.l. is an international voluntary organization of business persons committed to promoting English-speaking networking opportunities and business relations in the Grand Duchy.

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A WORD From the Chairman

Dear AMCHAM Members and Friends,

Welcome to the March 2015 issue of the AMCHAM news magazine, **connexion**.

We have been very busy since the return from the Christmas holidays with the launch of 4 new committees (Education, Legal, Real Estate and our Newcomers orientation committee, New2Lux). With these new committees, we now have eleven committees in total and this means that for every issue that the international business community will face, we have a committee to focus on that issue, providing information and lobbying on your behalf.

The Executive Committee and I are very pleased that we are able to celebrate our 20 years anniversary this year by offering such complete service to our membership and the broader Luxembourg community. Be on the lookout for our special celebrations during this year... and our end-of-the-year launch of the 4th edition of our comprehensive Business in Luxembourg book.

As you can see from our FINCOM event on Shadow Banking to our Legal committee event on the 10 critical legal issues for women in Luxembourg, we offer a broad range of topically interesting subjects for the first and second language English speaking professional community. We may be 20 years old, but we remain focused and hungry to be the best and most performant private international business and professional organization in Luxembourg. If your company is not already an AMCHAM member, contact the ladies in our office and Join us! All nationalities of business and professional activities are welcome.

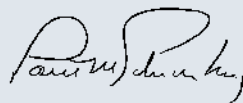
As part of our ongoing promotion of women in business, this issue will feature an article from the Minister of equal opportunities, Mrs. Lydia Mutsch, explaining government policy objectives from women at board level and photos and an article from the latest Female Board Pool event.

Mark for agendas to sign up and join us for our 111 event on 27 April with Serge Allegrezza from STATEC and Félix Braz, the Minister of Justice. All during the past year we have been lobbying to make it easier for international companies to establish themselves: quickly (ONE DAY), at low cost (ONE EURO), for ONE PERSON. Likewise we are trying to make this new corporate activity simple to administer and with exemption from the current minimum income tax. Starting entrepreneurial activities is hard and we need to help these activities to thrive. Join us on 27 April to lobby the government to support this idea.

We likewise are working on the next of our Town Hall Meetings with the Politicians. So keep an eye on our website for the announcement of the date... and for announcements of the activities from all our committees.

We acknowledge with sadness the departure of Ambassador Mandell from the US Embassy. For three years our Ambassador and his wife, Julie, gave their all making friends for America by serving the people as well as the state. Thank you, Mr. Ambassador, for your friendship and your service. You will be missed.

With respect, appreciation
and my very best greetings,



Paul Michael Schonenberg
Chairman and CEO,
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How Minister Mutsch Plans to Increase Female Leadership

By Lydia Mutsch, Minister of Equal Opportunities

Photo: Ministère de l'Égalité des Chances

Let us start with a few numbers:

The current situation of women in economic decision-making is as follows:

- **11% of board members in listed companies;**
- **15% of board members in companies where the state is shareholder;**
- **19% of board members in public institutions;**
- **21% in leadership positions in private companies with more than 100 employees;**
- **25% in leadership position in the public service.**

The rate of women in senior management positions in the public service was at 48% in 2014; however, the actual rate of women in leadership positions is 25% and has stagnated since 2011.

The government aims to achieve a 40% representation of women in the nomination process for boards of administrations for companies in which the state is a shareholder.

In the private sector, women are under-represented at the decision making level with only 20% of women holding leadership positions in companies with more than 100 employees.

Private companies, at this stage, will not have legally binding quotas in order to ensure a more balanced representation between men and women on their leadership level. The companies are however encouraged to take voluntary action in order to ensure that gender equality targets are met. That is why the Ministry's "Positive Action" program helps to draw attention to the inequalities between women and men within the framework of professional life and helps to change the way we think, which in turn helps to increase job satisfaction for both women and men at their work place. Through closer partnerships with the private sector, we can achieve gender equality, together.

The vision of this government is to achieve 40% female leadership in the public sector by 2019. Numerous studies have shown that diversity on boards of administration have a positive effect on the company. With our 40% goal, we want to inspire the private sector, through voluntary action, to follow suit and narrow the gender gap. One of the initiatives that my Ministry supports is the "Female Board Pool". I strongly recommend companies in the private sector to make use of it. Moreover, I encourage women who have the drive and the will to hold a position on a board to join the Female Board Pool.



A prerequisite for the realization of these objectives is a consistent and strict assessment of the evolving situation. My Ministry is committed to conducting the follow-up.

The government actively supports the EU Commission's directive that seeks to promote female leadership on boards of administration as well as boards of directors for companies that are publicly listed.

To get more women into leadership positions, we have to get and above all, keep them on the job market. In order to achieve that, we must find a better life work balance and enhance the environment in which women have more flexibility in accessing the labor market as well. Furthermore, we must find a way to challenge the current form in which women bare the bigger burden of unpaid domestic work.

The transversal character of the Ministry's activities involve a large number of partners who will have to become more involved in the realization of gender equality across all of their projects.

We do not just need more women in economic decision-making; we need more women involved in the political process.

Following the 2011 municipal elections, the majoritarian communes (direct election) elected 19, 4% women as municipal councilors. The communes, which vote according to proportional representation, elected 23.9% female councilors. Currently, 16 out of 60 members of the Chamber of Deputies are women (26.6%) and 5 out 18 Ministers are women as well (27.7%). In my opinion that is not enough!

In order to achieve greater equality in the political procedure, the coalition partners are in the process of amending the law on financing of political parties by introducing a binding quota. What this means is that all political parties that wish to receive full campaign funding must have 40% of the underrepresented sex on the electoral list. Failure to comply with the quota will result in a financial sanction, that is to say a smaller financial aid from the government.

Contrary to popular belief, political quotas and subsequent sanctions have proven effective with regard to engaging the underrepresented sex, in this case women, in the political process. My intention is to get more women involved in the political process. I want to see more women in politics as well as in leadership positions in Luxembourg. That is my goal!

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Farewell Message to AMCHAM Members

By Robert A. Mandell, U.S. Ambassador to Luxembourg

Photo: US Embassy Luxembourg

Over the past nearly three and half years, it has been my great privilege and honor to serve President Obama as the U.S. Ambassador to the Grand Duchy. I have greatly enjoyed working together with the Government and the people of Luxembourg, as well as with the American Chamber of Commerce in Luxembourg, to expand on the strong partnership between our two countries.

So it is with a measure of sadness that I announced my resignation as Ambassador effective February 27, 2015. Though I hate to leave this beautiful country, the time has come for me and my wife Julie to return to private life in the United States.



Julie Walker Mandell and Robert A. Mandell

The United States and Luxembourg share not only significant history – most especially the hardships of World War II and the famous Battle of the Bulge, of which we just commemorated the 70th anniversary in 2014 -- but also common values of freedom, openness, and dedication to economic growth for all. Both our countries' strength comes largely from a successful "melting-pot" of immigrants and is enhanced by an unwavering commitment to progress.

During my time here, the U.S. Embassy in Luxembourg and I were pleased to collaborate closely with AMCHAM on a myriad of issues impacting the American business community and its Luxembourg trading partners and to participate in a variety of AMCHAM events. I was especially proud to share the stage with AMCHAM's chairman Paul-Michael Schonenberg, on Paul's favorite topic and our priority economic policy goal with Europe, the Transatlantic Trade and Investment Partnership (T-TIP). He did an exceptional job in describing the huge benefits of this treaty. We also addressed the challenges of the U.S. FATCA law for the corporate sector and private citizens, and we met jointly with U.S. Department of Commerce officials on the occasion of their visit to Luxembourg.

Going forward, I strongly believe that Luxembourg is on track to continue its proactive strategy to diversify beyond the dominant financial services industry with the sectors of logistics, information and communications technology, clean energy, and biotechnology leading the way. Luxembourg has demonstrated resilience in the face of adversity, such as during the economic crisis of 2008 and subsequent fiscal constraints, and most especially, adaptability to change according to new international standards, such as complying with new OECD regulations and the EU automatic exchange of information for tax purposes. I believe that Luxembourg is poised to embark on a new era of trade and business, and U.S. companies should continue to benefit from this stable, multicultural, and pro-business environment. Bilateral trade with the U.S. should grow to new heights, in particular after the enactment of the Transatlantic Trade and Investment Partnership, and AMCHAM is right here to help shepherd in this exciting new time for trade and business.

Thank you, AMCHAM, for all the wonderful memories and cooperation – I wish all of your members and staff the very best for the future.

19[&]20 MAY

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The 111 Company

By Pedro Castillo, Paul-Michael Schonenberg and Jed Grant

Photo: Laurent Weber

Let's speed up the process for creating a company in Luxembourg...
and, while we are at it, let's lower the cost as well!



Pedro Castillo (BGL BNP Paribas), Paul Michael Schonenberg (AMCHAM Luxembourg), Jed Grant (Sandstone)

Over the past several years there has been more and more buzz about encouraging entrepreneurship in Luxembourg: The University has created an entrepreneurship masters degree; the Chamber of Commerce has created a dedicated office to help people fill out the paperwork - and they provide great service! Every month there are several entrepreneur focused conferences for women, men, young people, older people, and all the full range of nationality and linguistic communities provided by a broad range of organizations - the AMCHAM entrepreneur/small business Committee included!

But despite all these activities, we in AMCHAM, and our friends, have continued to be told the same feedback: It is more complicated, more expensive and takes more time to set up a company than people expected... and this discourages people from making their dreams into realities.

So, last year we in AMCHAM discussed this and brainstormed about what we could do to make things easier for entrepreneurs to start their own companies. Pedro Castillo, the Vice Chair of our Entrepreneur/Small Business Committee was the originator of the idea of the 111 company: allowing ONE person to set up a company in ONE day, for ONE Euro. What a perfect sound bite that perfectly captures what Entrepreneurs need and want! Thank you Pedro!

This 111 initiative led to our letter request to the government last year and an AMCHAM event... and even a supportive online petition by another organization supporting us and urging the government to act. And then some time passed... and some more time...

So at Christmas time, when we normally write a letter to the Prime Minister and his principle Ministers to give our assessment of the attractiveness of Luxembourg to international investors, we raised the issue again...and then we had several meetings and discussions with important government people.

We said:

- It is not enough to talk the talk, Luxembourg needs to walk the walk too... Would be entrepreneurs need 111!
- Reforms making it faster, less expensive and easier for individuals to become masters of their own company are critical to more entrepreneurship in Luxembourg. We need 111!
- In addition to 111, we need simplified administration which does not require the expensive services of a notary or accountant... and exemption from a minimum corporate tax would be nice too.

Are you curious to see if and how the government will deal with this? Join us on 27 April for a Town Hall Meeting to discuss this subject with Felix Braz, the Minister of Justice, Serge Allegrezza from Statec and several AMCHAM speakers including Pedro Castillo and Jed Grant. The event is hosted by the Luxembourg Chamber of Commerce with first comments by Carlo Thelen. See www.amcham.lu for details and to register to attend. 111 companies... the time is now! Join us!

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The Opportunities and Pitfalls of Art Investing

By Aude Lemogne (Link Management)

Photos: Laurent Weber



In the wake of the summer 2011, when financial markets entered another painful period of turmoil, investors' burgeoning appetite for tangible assets evolved into a more powerful trend. Simultaneously passionate art collectors kept broadening their collections far beyond the possibilities of their private space, prompting stronger needs for storage and public showcasing of artworks.

With existing collections expanding and new entrants broadening international demand, the art market keeps benefiting from continuous expansion. The growth of Sotheby's auction sales volume illustrates this dynamic perfectly: total auction sales grew by 35.2% between 2012 and 2014, according to Skate's, reaching an all-time high of \$5.15 billion in 2014.

In this context of continuous expansion, the market has also become increasingly driven by trends. A particular strong and much discussed trend is the emergence of young artists that receive almost instantaneous commercial recognition.

Oscar Murillo embodies perfectly well this new breed of artists who achieve stellar performances in auctions over a period of just a couple of years.



Aude Lemogne (Link Management)

Murillo is mostly known for his large-scale paintings composed of rough-hewn, stitched canvases that incorporate fragments of text as well as studio debris. The Murillo success story started with a residency in the Rubbell foundation, awarded in 2012, which caught the attention of all major US collectors and subsequently of the rest of the world in a matter of months. He epitomizes the increased influence of mega collectors. Indeed through their independent exhibition space, they are able to attract significant media attention and they have the capability to compete with public institutions to support and validate the career of an artist.

Collectors all over the world keep track of trendy artists through social media networks, specialised art media and art advisors sniffing out up-and-coming stars of the art world. As demand for such artists outweighs the number of works offered in galleries (primary market), competition at auctions sales (secondary market) are reinforced. This constitutes the ideal setting for new records and reinforces trends by generating even more media attention.

Obviously this encourages speculative behaviours as the significant gap between primary and secondary market offers quick and easy gains. Gains can be quite significant with returns up to 3000% observed for Oscar Murillo.

Nevertheless caution is required as these trends can stall as quickly as they appeared.

In most cases the speculative frenzy around these artists calms down after one or two years and the artists are often unable to sustain the momentum going forward. Indeed such accelerated commercial recognition is very disruptive for young artists. An art insider brilliantly declared recently:

'The road is littered with artists who have been chewed up and spit out'.

Participating in fluctuant trends demands perfect market timing, which calls for access to privileged information and for a profound understanding of the involvement and interests of various stakeholders implicated in the promotion of an artist.

Any novice art collector should thus remain wary of such hyper inflated art trends and rather dedicate himself to shaping his own preferences, in accordance with his personal inclinations.



Venetia Lean (Banque Havilland)



Aude Lemogne (Link Management), Charles Oakes (Charles Oakes & Co), Paul-Michael Schonenberg (AMCHAM Luxembourg)



Marita Ruiter (Galerie Clairefontaine), Karin Schintgen (BGL BNP Paribas)



Henk van Eldik (Mutual Fund Consulting), Paul-Michael Schonenberg (AMCHAM Luxembourg), Aude Lemogne (Link Management)

The Suited Learning Environment for My Son

An interview with Olger Draijer

By AMCHAM Luxembourg

Photo: Olger Draijer

Ensuring a proper educational environment for their expat children is one of the most important challenges faced by expat parents. In Luxembourg the local schools are not always the optimal solution for older expat children who may then turn to the private school solution. However, different children have different needs and parents do sometimes choose a third option.

Olger Draijer, Managing Partner of Leadership Solutions Europe and Chairman of the Dutch Trade Forum, is a parent who made the decision to move his son from one of the schools in Luxembourg to an American Golf Academy school. He did that in the hope that this would be a better learning environment for his son, that his son would be happier, better adjusted and achieve the academic and personal success that both he and his son wanted.

Olger, please give us a little bit of background leading up to this decision.

I was sitting on the beach with my son last year in May and we had a father-son talk about how things were going on in Luxembourg. My son Arthur said:

A: Dad, you don't understand.

O: Ok, what is it this time that I don't understand?

A: You don't understand to what extent I hate school.

O: Ok.....but, what makes it that you hate it so much?

A: I just don't like to sit in class for such a long time. From 11.30 or 12:00 onwards I just can't sit still any longer.

O: What is it that you want us to do because there are not too many options we have in Luxembourg? [This wasn't really new to me of course.]

A: I want to join a Golf Academy.

O: Oeps..., a Golf Academy...and where do you want to do that? [My first thought was UK as its closer to home.]

A: I want to do it in the US.

O: Why do you want to do it in the States? [We had been to the States twice.]

A: I like the US mentality, people say "hi" on the street. I would like to go to a nice area in the States where I can play golf all year long. If I go to the UK it's probably summer, spring, a bit in the fall, but that's it. And thirdly, I think that the American system fits my personality better and it's also good for my English."

This is what he said at the age of 14!! We wouldn't have done this for the other children, but Arthur is very independent for his age and he knows very well what he wants. We came back home and the idea was to do it in a year's time because he has some talent to play golf. I did a little surfing on the Internet and

found a golf academy on Hilton Head Island in South Carolina that has an agreement with a private high school. The JPGA, Junior Players Golf Academy sends their students children to school in the morning and there's golf and fitness in the afternoon. But you only get to do golf/fitness if you work hard and do your best at school. They get up at 6 in the morning; school starts at 7.15 (They do solid academics in the morning: English, Algebra, Science, etc..) and goes until 12:30 pm. Very nice website, they explain how they take care of the children, but the information we found missing on the website were the fees. We gave them a call and found their selection and acceptance process to be very thorough. Despite being a commercial business, the feeling of family and camaraderie amongst the staff was evident, which immediately helped us to feel comfortable dealing with them. They walked us through the selection process: interview, recommendation letters, a video of his swing, a second interview with a head coach followed by a similar process for being accepted in the school. But since he was 14, they recommended that he joins the same year as it was going to be the first high school year. That's why everything happened very quickly. We did all the paperwork over the summer; had interviews for them to know how motivated Arthur was. The consequence was that he had a very short holiday break.

When was the first time after he went to school that you saw him again?

I took him there and I stayed with him for four days, went over and had a short visit in early November and then he came back to Luxembourg for the Christmas break.

How has he liked this experience and do you think that you made a good decision for your son?

One word: fantastic! Of course, we were very cautious because it's not an easy thing to send your son to the other side of the world. You think of not seeing your son for a long period of time, so it was very emotional, both for his mother and for me. Then you see him growing, you see him being happy, you

see him evolving, you see him becoming an adult in a very short period of time. He's doing his own laundry, for example. For him it was the perfect fit to funnel his energy in a better way, with the consequence that the performance at school increased big time. At the same time he knew he could play golf in the afternoon. The Junior Players Golf Academy's approach is very positive. The European School system fits some students really well, while others are not the perfect profile for the European School. And that was Arthur's case.

If he's going to school for just the morning, are you comfortable that the way that's done gives him sufficient academic challenge to stay competitive with his peers globally and to prepare himself for university?

They do a full academic program and the only thing they skip is the theatre classes and soft subjects like that. When you look at the year schedule, they only have three weeks of holidays which is far less than we would have here in Europe. So in terms of hours he's making, I think he makes the same number of hours. After golf practice in the afternoon, there's eating together and they socialize; each house has a house mum that cooks for them and takes care of them. And then it's homework hours. So the hours he spends at school and doing homework are at least sufficient to graduate on the highest level and to go to any college in the world he would like to attend. All options are open, including golf. The aim of the Golf Academy is to get a scholarship for the students to go to college afterwards. That's their aim, to make them so good in golf, that they get a full scholarship.

Now more than six months have passed: from the time you had the father and son talk on the beach and the father and son talk at Christmas time, what has changed?

The boy became a man. Of course, he's not a 100% man, but he is very quickly getting there. He picks up his own responsibilities. You learn very quickly when your parents are not around. And for that the American system is very tough. Let me give you one example. He broke his foot one week before Christmas so he missed a few classes. The first week back he was at school until 6 o'clock every evening to make sure that all the work he couldn't do before Christmas was being delivered the week after. So that's the system. It's very tough but they know it; there's no escape but it's all positive, they help you achieve it. One difference with the European School is that his current school classes are smaller and they get more attention and probably that fits Arthur's profile better as well. He's very proud of what he achieved, he's happy to be there and he was extremely happy to go back, so he was really visiting Europe.

I wonder if it was emotionally difficult for you as parents to take the child that you love at age 14 and send him so far away. How did that go and how have you worked it out for coming to peace with that?

There was a lot of crying at the beginning. The advantage now is that we all have smart phones and face time and skype. And the way they communicate with the parents is very nice. So there is a weekly update to the parents on what they have been doing, they send out a lot of pictures as well. We agreed not to call Arthur too often because he is on a very tight schedule and they don't have time to spend hours and hours on a daily basis to talk to parents and grandparents. We decided to minimize it during the week and talk a little bit longer over the weekend. There's Facebook, so the reason for me being on Facebook is to follow a little bit what the children are doing because they post a lot of pictures on what they do with their friends, so you can easily keep track on what's going on. There are apps on which you can follow the score when they play golf tournaments. And of course, when you talk to him



you see him all happy and just seeing that he's found a sort of peace in himself makes you very proud as a parent. Although it's difficult not to see him every day you are very happy with the fact that he is in good hands. The way they take care of the children is extremely professional, they have 6 coaches for 24 children. The environment is very competitive, with the coaches they really work towards something, to get the best of them. That is an American expression, but it's really true. They customize their input towards every individual kid, be it on the golf or at school, and that is fantastic. That costs money but you see what it can bring.

One last thing I want to mention is that they accept kids for summer sessions. It gives the potential full time student and their family a chance to "test the waters" and see if it really fits their child's profile.

Together with Arthur we agreed on one thing, we said:

"This is one big adventure. We think it fits you really well, but you never know until you do it. When it's not working out well, you just come back half a year or one year later. We would have lost a little bit of money, but we would have gained an experience of a lifetime."

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Demystifying Shadow Banking

Photos: Laurent Weber

The speakers focused on the following issues:

- Which activities fall within the concept of “shadow banking”?
- Is this type of financing also used in Luxembourg and how substantial are these activities in Luxembourg?
- Which are the current regulatory trends?
- What is the potential impact of such regulatory trends, in particular on the asset management and banking sectors?



Francis Kass, Nathalie Dogniez, Benoit Sauvage



Francis Kass, Partner (Arendt & Medernach)



Paul-Michael Schonenberg
(AMCHAM Luxembourg)



Henk van Eldik
(Mutual Fund Consulting)



Nathalie Dogniez, Partner (PwC)



Paul-Michael Schonenberg (AMCHAM Luxembourg), Viktor Kneip (KNEIP)



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EXPLORING THE SOCIAL, POLITICAL AND BUSINESS ENVIRONMENT OF LUXEMBOURG

The LSC, the Chamber of Commerce's training institute, is partnering with the American Chamber of Commerce in Luxembourg (AMCHAM) and the "Office Luxembourgeois de l'Accueil et de l'Intégration" (OLAI), to offer a series of courses on Luxembourg's economy and its institutions. This evening class will start on June 3, 2015, and meet on a weekly basis.

The course is especially targeted at foreign residents and professionals with English as first or second language who are interested in a better understanding of Luxembourg's economy and the national economic news. Particular emphasis will be put on critically assessing the results, i.e., the outcomes and impact of the national policy-making process. Where possible, considerations as to how the current institutional settings affect policy outcomes will be made.

The detailed programme is available on the website www.lsc.lu/economy



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Luxembourg Tax Rulings 2.0

By Frank Muntendam, AMCHAM Tax Committee Chairman, EY Luxembourg & Marc Schmitz, EY Luxembourg



Frank Muntendam (EY Luxembourg)



Marc Schmitz (EY Luxembourg)

The Luxembourg practice of providing advance certainty in tax matters to taxpayers and investors wishing to set up operations in Luxembourg recently witnessed some interesting developments.

The intention to establish a uniform procedure and to anchor a solid framework for advance tax clearances had already been expressed by the government in its governmental program of December 2013. The government thus outlined its willingness to continue providing investors and taxpayers, whether already established in Luxembourg or not, with upfront legal security for transactions and operations intended to be realized in the Grand-Duchy. This commitment has become a reality with the law of 19 December 2014 on the implementation of the so-called 'Package for the Future' – the first part of which embedded

the administrative practice of requesting an advance decision. The procedure for requesting an advance decision in tax matters has been further complemented by the grand-ducal regulation of 23 December 2014.

All of these new rules entered into force as of 1 January 2015. One of the core novelties is the creation of a dedicated Tax Ruling Commission, which is given a central role in the overall assessment process. The handling and processing of requests from taxpayers have become more and more complex and intensive, and thus have obliged the tax authorities to make additional investments in technical and human resources. The additional costs triggered are to be passed on to taxpayers to a certain extent: since January 2015, requesting an advance decision has become a payable administrative service.

The content remains the same...

The adoption of a dedicated legal provision providing for the possibility to request an advance tax ruling does not entail a change from, but rather ensures continuity with, the past. The wording of the law is clear: an advance decision is a confirmation of the application of the tax law to a precise fact pattern, as was the case under the former administrative practice. In no circumstance does it create by itself a tax exemption or a tax reduction which is not foreseen by law. As is already the case for advance pricing agreements for intragroup financing transactions, advance tax decisions are valid for a period of five tax years, which also coincides with the statement of limitation period for the assessment and collection of taxes. During this period, tax authorities are in principle bound by the decision they have issued, unless one of the following triggering events causes the decision to cease to have effect:

- 1 it appears that the information provided for in the request was incomplete or inaccurate,
- 2 the effective implementation differs from what has been described in the request, or
- 3 the advance decision appears afterwards to be no longer compliant with domestic, European or international law (e.g. following a change in legislation).

In order to further increase transparency, the decisions rendered by the tax authorities will be published, in an anonymized summary only, in the annual activity report of the direct tax administration. Such publication will certainly constitute a useful doctrinal source for all taxpayers as regards the application of fiscal laws for specific fact patterns and should limit the need to revert to advance decisions for identical situations or operations.

Nowadays, tax transparency is however not only a domestic concern, but also plays a significant role in cross-border situations. The Ministry of Finance has thus announced, in a statement made in December 2014, its intention to further reinforce the exchange, upon request, of information on tax rulings with other countries, according to the provisions of the relevant double tax treaties or EU Directives and agreements concerning administrative cooperation and mutual assistance in tax matters. Luxembourg further supports European and international actions in this field, being mainly:

- the initiative of the European Commission to draw up a directive aiming at introducing a mandatory automatic exchange of information on tax rulings between the competent authorities of the EU Member States, and
- BEPS Action 5 on countering harmful tax practices, which looks into compulsory spontaneous exchange of information on rulings related to preferential regimes.

...but the form changes

A major innovation of the new tax ruling procedure is the creation of a Tax Ruling Commission ("Commission des décisions anticipées" or CDA), that will play an essential role in the overall tax ruling process by taking a position on all requests relating to the taxation of enterprises.

As was the case in the past, the request for a tax ruling must be made to the Chief tax inspector of the competent taxation office, respectively to the Director of the direct tax administration in case the competent taxation office is not yet known. The request has to be made in writing and must mandatorily contain information relating to, for example, the identity of the applicant and the proposed operation(s), as well as an analysis of the legal questions and an assurance that the information required for the assessment of the request is complete and reflects reality (bona fide statement).

The Chief tax inspector then submits the request to the CDA for its position each time the request relates to the taxation of enterprises. The CDA is composed of civil servants and officers of the tax directorate and of the taxation offices upon appointment by the tax director. Given the variety and the complexity of the requests filed, it is likely that the composition of the CDA may vary depending on the field of expertise required and that it may rely on sub-committees for specific matters (for example transfer pricing matters). The CDA may also invite the applicant to provide further information during a meeting. After deliberation, the CDA forwards its position for execution to the head tax inspector, so that the advance decision is taken by the latter.

This new tax ruling procedure is not a new or additional step in the overall assessment process. As a consequence, it is not possible to lodge an appeal against a negative decision. If a taxpayer decides to proceed despite a negative answer to his request, he may only claim against the tax assessment, which will presumably deviate from the tax return filed to reflect the divergent position of the tax administration.

It is also important to recall that applying for an advance tax ruling is a taxpayer's right and not an obligation and the interpretation of the tax laws is the same for both taxpayers that seek certainty in advance about the tax consequences of their actions and those that do not.

A payable service for enterprises

The law provides for the payment of a specific fee for the processing of a tax ruling request, the amount ranging between EUR 3,000 and EUR 10,000 depending on the complexity of the request and the volume of work required. The exact amount will be fixed by the director of the direct tax administration upon receipt of the request; the fee is due and payable in full within one month following the receipt of the decision defining the amount of the fee. The request will only be processed following receipt of the payment. Furthermore, the payment is final and irreversible and cannot be refunded, even in case of withdrawal of the request, or in case of refusal or a negative answer once the request has been processed.

Conclusion

The government's decision to anchor this important process of obtaining upfront confirmation of the application of the tax laws in a given fact pattern is highly welcomed. In particular, the setting-up of the CDA as well as the publication of summarized tax rulings, albeit on an anonymous basis, will certainly contribute to ensuring a consistent application of the tax legislation by all taxation offices and to increasing tax transparency. Now that the legal framework is set, it will depend on the practical execution to ensure that the tax ruling process continues to be an efficient process, as was the case in the past.

Dismissals Based on Economic or on Performance Reasons

Photos: Laurent Weber



Christophe Ernzen, André Marc, Sabrina Bodson, Gilles Dall'Agnol (ALLEN & OVERY)

On 18 November 2014, ALLEN & OVERY and AMCHAM co-hosted a seminar on the topic “Dismissals based on economic reasons or on performance reasons: case-law developments and practical input”. The aim of the seminar was to eliminate confusion and misleading assumptions by better understanding the approach of the Luxembourg labour courts in the dismissal procedure.

After a brief introduction by Paul-Michael Schonenberg, AMCHAM’s Chairman and CEO who emphasized the importance of treating people with respect and dignity especially in the sensitive framework of a dismissal procedure, several members of ALLEN & OVERY’s employment law department, headed by André Marc, Partner, provided the audience with an updated picture of the dismissal procedure for economic or performance reasons through recent case law developments and practical tips.

Christophe Ernzen, Employment Law Associate, first explained the conditions under which an employer can envisage to dismiss an employee who does not achieve his/her objectives or who is incompetent. He made a distinction between situations where objectives have been agreed by the parties (for instance in the employment contract) and situations where no objectives have been fixed. He also highlighted the necessity to document underperformances issues. An important point were the possible obstacles which could jeopardize the validity of a dismissal, such as previous positive appraisals, the official

acknowledgment of a lacklustre market or previous bonus payments linked to performance.

Sabrina Bodson, Employment Law Associate, addressed the issue of dismissals based on economic reasons by recalling the basic rule that the employer, as bearer of the risks, has the power of management (implying a decision-making power) with respect to the undertaking’s economic policy and internal organisation. Recent case law indeed confirmed that employers have a right to take restructuring measures “at any time” if necessary for the proper functioning of the undertaking, without the need to wait for a substantial degradation of its financial situation. Within a group context, with regard to the question about the level where employers have to assess the economic situation to justify a dismissal, she explained that the contradictory trends in case law have been resolved as case law now considers that the sole situation of the employing entity has to be taken into account, without any need to take into consideration the group’s overall financial or economic situation.

Gilles Dall’Agnol, Employment Law Senior Associate, outlined the link between dismissals based on economic reasons and dismissals based on performance reasons, by discussing in detail the particularities of each situation and the dismissal procedure that employers have to follow. He noted that in both cases, only a dismissal with notice may be considered, and further emphasized the importance of having an exhaustive and detailed letter of grounds as the reasons for dismissal stated therein



Christophe Ernzen
(ALLEN & OVERY)

André Marc

Sabrina Bodson

Gilles Dall'Agnol

are the only ones taken into consideration by the courts. He also gave some practical tips to avoid some recurring errors, for example, an employer cannot validly dismiss for performance reasons just after the end of the employee's trial period, as this is a contradiction between the employer's decision to let the employee pass the trial period and the decision to dismiss the employee for performance reasons shortly afterwards. In another example related to dismissals based on economic reasons, he mentioned that generic terms, such as a current economic crisis, bad economic environment or decline in turnover are not considered by courts as valid grounds. He concluded his presentation by sharing several examples based on recent case law showing the financial risks, in case a court considers the dismissal as abusive.

André Marc, specialist in collective dismissals, who negotiated the vast majority of social plans in the Luxembourg financial sector over the past decade, explained the basis of this legal concept. He illustrated in which cases the obligation to negotiate a social plan is triggered and, if such an obligation is given, the mandatory content of the social plan. This notably includes the obligation to negotiate social measures, such as extended notice periods, outplacements, trainings or family indemnities. He then outlined the advantages and the disadvantages of the social plan procedure. Noting that its clear legal framework allows to lay-off a maximum number of employees in a minimum period of time, within a mandatory time frame for negotiations, but it may also be quite costly. André concluded with some practical tips about the strategic planning and the mistakes to avoid.



For any questions about this topic or other employment law issue, André Marc can be contacted at andre.marc@allenoverly.com or (+352) 44 44 55 724.

Increasing the Number of Women on Boards of Directors

By Rita Knott

Photos: Rita Knott

Two speakers from the latest Female Board Pool Training express their opinions



Anne Canel, Independent Director & Founder @ACCM

It's currently impossible to be unaware of the numerous studies showing the benefits of diversity in boards. I particularly like this US one: companies with at least one female board member outperformed companies with no women on the board by 26% (share price performance)*.

In my own experience as a board member, more than any gender question, it is the hunger for results, and the energy put forth by female directors, that are the most powerful tools for development of the firm.



Anne Canel, Independent Director & Founder @ACCM

The Female Board Pool (FBP) is connected to the IFPM Center for Corporate Governance at the University of St. Gall/Switzerland (www.female-board-pool.com). It was founded in Switzerland in 2005, in Luxembourg in 2010 and in Belgium in 2013, where each platform is locally managed. The FBP is endorsed by, and represents, one of nine measures of the Ministry of Equal Opportunities in Luxembourg aiming to achieve a better balance between women and men in decision making positions.

* <http://images.huffingtonpost.com/2015-02-23/20150220TheStateofWomeninLeadershipHiRes0218152.png>

Steen Foldberg, Managing Director, JULIUS BAER INVESTMENT SERVICES, Luxembourg

With the recent legislation changes (to promote gender equality in management positions) in Europe and Luxembourg, along with the increased need for talent and an increased focus in this area, two important aspects have emerged: (1) the development of the pool of women who are available, prepared and ready to take on additional challenges and responsibilities; and (2) the benefits for the companies to change and embrace a more equal representation of women in senior leadership and board positions.

My own interest into diversified work groups and the potential to include more women into senior leadership dates back a long way to when I was given responsibility for several teams in a hectic banking environment. These teams consisted of currency and interest traders and international relationship managers. However, whereas the men dominated these leadership positions, almost all the women had more back-office functions. As such, this was, and to a certain extent still is, a very normal set up in a banking environment.

Nevertheless, I began to notice how these different teams functioned—how the culture was different, the language, the roles of the individuals, the success factors and the remuneration. One team responsible for international payments consisted of only women while two of the trading desks only had men. What I noticed was that these teams of single gender were the teams that clearly underperformed when compared to teams of mixed gender.

As a result, I decided to try to mix the teams and to recruit new team members of different gender onto the teams. The beginning was not easy, and I am happy that I was not the man who joined the international payment group. He had a tough time, but when the second and third men were added, the balance in the group, along with the well-being and the performance of the team improved dramatically. Likewise, it was not easy to add female traders to the trading desk. Luckily, the first woman who joined was a very robust and assertive woman. As with the previous situation, after adding more female talent, the language improved, and while the performance also improved, there was also less risk taking. Consequently, I realized the importance of having more women in senior positions.

My personal experience is also backed up by numerous scientific studies, among others, from McKinsey, which concluded that companies with a high equal number of women and men (in leadership positions), had higher stock prices and increased profits. Furthermore, it has also been proven that women are more balanced risk takers and that decisions that involving people are more successful, because women consider the human aspects more, and therefore devote a higher degree of effort to ensure that organizational changes are more likely to succeed.

Today in most European countries, there are more women graduating from university than men; it would be very mindless not to use this pool of talent, especially when the benefits of equal gender representation have already been established and taking into consideration the demographic challenges we face in Europe.

This is not just about the board, though. It begins with the first promotions, because there needs to be fair and equal representation at each level in the organisations. I believe that a company that has a better allocation of men and women is a better organization; it services its clients better, understands its clients better, makes more balanced decisions, provides



Steen Foldberg, Managing Director, JULIUS BAER INVESTMENT SERVICES, Luxembourg

for a better work life balance, and has a better retention rate. Not to mention, it also provides a more enjoyable atmosphere in the workplace.

Personally, I am not a fan of legislative quotas, but I like the suggestion, because it forces the issue and it raises the debate. However, in order to achieve gender equality, I believe one of the biggest challenges to be overcome is that many women lack the confidence to position themselves for the driver's seat, and too often, underestimate their qualities and/or abilities. Furthermore, companies' organisational model and culture must also sponsor and cater for an improved support and encouragement system for women combining a top position with parenting.

The Female Board Pool (FBP) is a platform facilitating contact between experienced and future female board members and corporations and organisations. Women wishing to register on this confidential platform may do so after participation in one of the best practice corporate governance trainings organized in and offered in Luxembourg on a monthly basis by the MCMC asbl (House of Coaching, Mentoring and Consulting. www.mcmc.lu), in cooperation with the Diversity Committee of the American Chamber of Commerce. The next dates will be 24.4. and 20.5.2015 (contact: info@female-boardpool.eu).

Companies from the private sector and organisations from the public sector may contact the NGO MCMC to obtain (free-of-charge) profiles of competent and committed "board ready" and "board active" women when they have a vacancy for a board position (www.femaleboardpool.eu).



Rita Knott

Fresh CEOs' Views of the Luxembourg ICT Market 2015

Photos: Laurent Weber

Jean-François Willame (Tango), Karim Michel Sabbagh (SES) and Peter Gille (neXus) talked about how they see the near future in terms of opportunities and threats for the Luxembourg ICT market.



Jean-François Willame (Tango), Karim Michel Sabbagh (SES), Peter Gille (neXus)



Jean-François Willame (Tango)



Karim Michel Sabbagh (SES)



Peter Gille (neXus)



Gary Cywie (Allen&Overy)



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Women Matter

10 Topics for Women to know in Luxembourg, from personal rights to work environment, through asset management and networking

Photos: Robin Jensen

Mrs. Marjorie Allo (AMMC Law) talked about the challenges of working and living in Luxembourg by exploring Luxembourg’s legal environment and by assessing both public and private initiatives aimed at improving life inside and outside of the workplace.



Marjorie Allo (AMMC Law)



Marios Paras (Taplow), Marjorie Allo (AMMC Law)



Marios Paras (Taplow)



Petra Buderus (Stiftung Hëllef Doheim), Marchal Griveaud Pascale (We&CO)



Levy Magalonga (Prologis), Dagmar Svetinska (Prologis), Abba Lassed (Prologis)



Leadership on a Round the World Yacht Race

By Brendan Hall

Photos: Clipper Ventures, 2009

Winning the Clipper Round the World Yacht Race was no easy task. There were 10 highly competitive, determined teams at the start line, but when those teams crossed the finish line 10 months later, there was only one winner.

When my crew and I aboard Spirit of Australia crossed that start line in the River Humber in September 2009, we wanted to win the race. It had been my personal ambition and focus for nearly two years before the start. I worked myself to the bone and prepared my boat and my crew to the highest level to give us the best fighting chance. After circumnavigating the globe, we sailed back up that famous river at the end of the race. We were clear winners, 22 points ahead of our nearest rivals.

It was the team achievement of a lifetime.

The Clipper race is the only round-the-world race open to amateur sailors. The race motto is 'raced by people like you'. The crews of all 10 competing yachts were regular people with regular jobs, who wanted to take part in an epic adventure. Many of them had never sailed before deciding to take part in the race. The race is contested on 10 identical 68' ocean

racing yachts, so any result on the water is down to the grit and determination of the team on board, not because their equipment is superior.

It was my challenge as the skipper to take the 44 people, who were allocated to my team by the race organisers, and turn them into a cohesive, disciplined and high-performing sailing unit. I had to keep them safe, train them to sail our yacht, fast, and keep the torch of motivation burning for the 10 months it took us to circumnavigate the world.

Winning the race felt like a daunting task at first – I was the youngest and least experienced of the 10 skippers who were selected to lead a team and the others had some very impressive racing achievements under their belts already.

What became clear to me during the early stages of the race was that this was a contest of team management. The best sailor wasn't going to win this race – it was the skipper who could motivate and manage their team the best. In my early



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pre-race preparation, I performed a rigorous self-analysis of my leadership traits, good and bad. I interviewed past skip-pers and learned about how they managed their teams. I devoured business leadership books. My preparation was focussed more on my development as a people manager than as a racing sailor.

This was the approach I took to the race and in the end, it brought us home victorious.

Together, my team and I faced enormous challenges and genuine danger on our journey. The ocean takes no prisoners. It waits patiently and bides its time. Then, when we least expect it, it will reach up and take what it wants from us, usually violently, always successfully. This is the danger, and attraction, of racing between the continents. Managing a team in this environment poses huge challenges to a leader. Some I overcame easily, others I struggled with every day.

I learned a lot from the race, about myself, about being a good leader, about making mistakes and learning from them and managing a very diverse crew. Despite ocean yacht racing being a highly technical sport, our success in the race came down to factors which were entirely human: Energy, persistence and support. From these, we created a high performance team culture, exemplified by daily meetings with an open forum, a no-blame ethos, fast conflict resolution and knowledge sharing.

Key to the development of the team, was my willingness to devolve responsibility to the crew as the race progressed. By the end of the race, I was acting in a strategic and supportive role, which freed up my time to concentrate on planning and weather analysis, where my skills would add the greatest value to our performance. It was difficult for me at first, as is the case with many leaders, but I knew the control strings needed to be loosened for the team to grow and reach its full potential. I have since learned that this is called servant leadership, and it resonates deeply with my feelings about what makes a successful leader.



Join us for an event with Brendan Hall on Mai 21st 2015!

The event is co-organized by EMCC Luxembourg (European Mentoring and Coaching Council) and AMCHAM Luxembourg. For details and registration, please go to the AMCHAM website:

www.amcham.lu/events/

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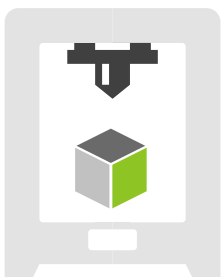
1. The Internet of Things really is things, not people



2. Drones: high-profile and niche



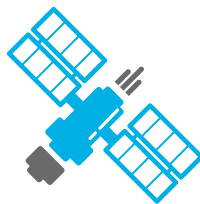
3. 3D printing is a revolution: just not the revolution you think



4. Click and collect booms in Europe



5. Smartphone batteries: better but no breakthrough



6. Nanosats take off, but they don't take over



7. The re-enterprization of IT

8. Short form video: a future, but not the future of television



9. The 'generation that won't spend' is spending a lot on media content



10. Print is alive and well...at least for books



11. One billion smartphone upgrades



12. The connectivity chasms deepen: the growing gap in broadband speeds



13. Contactless mobile payments (finally) gain momentum

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Ways to Laugh: An Issue of Gender Diversity?

By AMCHAM Luxembourg

Laughter is something we all do. Many of us have noticed that we do it differently for reasons which have to do with our personality (we are different people, with different dispositions, character, temperament...), our upbringing (our sociocultural background has its imprint on us), the overall context and the specific situation we are in (women only, men only or mixed environment), and hierarchical relationships (equal or subordinate relationships). Some of you might have read studies attesting that laughter is good for one's health, and two years ago you might have participated in a health & wellness work-shop on laughter organized by AMCHAM.

Laughter has been discussed as a relevant phenomenon in certain settings: a challenging situation (for instance, in a conversation recorded by an emergency call helpline), an environment of high responsibility (imagine the conversation between the pilot and the co-pilot in an airplane cockpit), or in a general public sphere (for example, a press conference question-answer exchange when politicians try not to lose face). If you are the one initiating the laughter, that usually isn't a problem. Yet, if you are in a reaction position, the decision to join somebody in laughter can be a tough call.

What does research say about the patterns of joining in laughter? What does laughter do in interaction?

To laugh means to agree. If someone, in a laughing voice, categorizes you as a career woman, how do you react? Joining that person in laughter would mean you agree and not joining in would mean that you disagree.

To laugh means to affiliate. If you are at a company's New Year party and someone says, in a laughing manner that John, the company's CEO should give the speech, because he's the only one everyone listens to, you might join that person in laughter.

To laugh means to avoid. If you have to react to something that you don't know the answer to, you might laugh instead of just keeping silent.

To laugh means to clear the air and to set the space for collaboration. In a business encounter negotiation, laughter can help to lower the pressure. Laughter does not necessarily get things done, but it serves to clear the air before going back to the main matter of business and to establishing the space for collaboration.

In human interaction, laughter does many things in terms of power regulation and trouble management, even if corporate cultures do not provide guidance for the management of laughter in interaction.

Yet, research shows there are confirmed systematics in the way women laugh and men laugh. Moreover, the way in which they organize laughter when interacting together shows differences, which have been looked at in scientific research. Gail Jefferson for example distances herself from gender categories like "female" and "male" and argues that there is a woman way of doing things and a man way of doing things.

"I tend to think of them [male and female] as something like careers rather than conditions, i.e. as constructed rather than biologically intrinsic, where a mass of features are worked upon

in order to fit them into the two available-and-used categories, 'male' and 'female'. (...) I'll refer to the actor-categories, not as 'male' and 'female', but as the comic book favorites, Tarzan and Jane." (Jefferson, 2004)

Basing her results on data, Jefferson lists six different ways of laughter between women and men. Speaking about Janes and Tarzans, this is what she says:

1. **A Jane will join a Tarzan's laughter although she herself didn't see anything to laugh about.**
2. **If he himself didn't see anything to laugh about, a Tarzan will not join a Jane's laughter.**
3. **A Jane will not join a Tarzan's laughter if he is being difficult.**
4. **A Tarzan will join a Jane's laughter if he is being, e.g., gallant.**
5. **A Jane will not join a Tarzan's laughter if it's in the course of his talking about a trouble he's had.**
6. **A Tarzan will join a Jane's laughter if it's in the course of her talking about a trouble she's had. (Jefferson, 2004)**

As a conclusion, women are willing to join in laughter unless there is trouble of some sort (disagreement, self-deprecating assessments, talk about some sort of trouble, etc.) while men are resistant to joining in laughter unless they are being charming, or following an expression of trouble expressed by women.

Do these findings hold for the international business context? Jefferson's findings are confirmed by the data of an AMCHAM project that looks at how business people interact with each other. Look at the example below where Kim engages in laughter and Camille doesn't join. While discussing the advancement of some of the projects, the participants refer to the last meeting's minutes. Kim points to Camille's previous suggestion of inviting RF to Luxembourg as a speaker to an event (information recorded in the minutes) and wants to know if Camille had done any follow up on the topic:

Kim: you may discover that you were in fact mentioned (in the minutes) ha ha...

Camille: yeah

Is this an example of doing laughter the woman way or the man way?

Watch this space...more to follow!

The current article is based on a portion of the findings of the research project "Business in English: the Process of Construction of Business Expertise/Knowledge in English among Multilingual/Multicultural Cross Sector Professionals" carried out by the American Chamber of Commerce in Luxembourg (AMCHAM Luxembourg). Contributors to the project: Paul-Michael Schonenberg (AMCHAM Luxembourg), Natalia Durus (AMCHAM Luxembourg), Gudrun Ziegler (Ministry of Education, Luxembourg & multi-LEARN Institute), Charles Max (University of Luxembourg).

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