

Swiss Defend Seven-Year Delay to HSBC Money-Launder Probe

Don't Miss Out —

Follow us on:

by Giles Broom

12:01 AM CET

February 24, 2015

(Bloomberg) -- Swiss prosecutors are scrambling to explain why they took seven years to probe suspicions of money laundering aroused by data stolen from HSBC Holdings Plc's private bank in Geneva.

Inspired by Feb. 8 disclosures by the Washington-based International Consortium of Investigative Journalists that HSBC did business with arms dealers, blood-diamond traffickers and other criminals, Geneva prosecutors last week seized client records from the bank's offices in the city. That leaves the Swiss Attorney General Michael Lauber defending years of inaction as federal prosecutors focused instead on apprehending the data thief Herve Falciani.

"I know this situation must look shocking," Lauber told weekly Swiss magazine L'Hebdo in an interview published Feb. 18. "But you have to understand the legal circumstances around this information are very delicate."

Lauber says prosecutors weren't entitled to scrutinize the Falciani files for money-laundering offenses because mining stolen data contravenes the 80-year-old bank secrecy rules that helped Switzerland become the world's biggest center for offshore wealth. That didn't deter Geneva prosecutors Olivier Jornot and Yves Bertossa, who say the trove of information dubbed Swiss Leaks gave them cause to investigate. The Swiss have been stung into action, concludes Matthew Parish, managing director of Geneva law firm Gentium Law.

Sincerest Apologies

"The Swiss didn't want to get involved," said Parish, commenting on the initial reluctance of federal prosecutors to investigate. "It's difficult to refute the suggestion that the Geneva prosecutor's bank search was driven in substantial part by a need to be seen to be doing something, rather than driven by a new set of facts or evidence."

In a full-page advertisement published a week after the ICIJ disclosures, HSBC Chief Executive Officer Stuart Gulliver offered "sincerest apologies" for its Swiss private bank and wrote that the unit had been "completely overhauled."

HSBC's review of its Geneva-based business may have reassured the Swiss federal prosecutors, said Parish. The Swiss unit's wealth management assets dropped by 43 percent to \$68 billion from 2007 to 2014, while Gulliver said 106 of 140 clients mentioned in files by ICIJ and other media are no longer with the bank.

HSBC, which last week said it has cooperated with the Swiss authorities since becoming aware of the data theft in 2008, declined to comment further.

Machine Gun

HSBC's CEO Gulliver is struggling to contain a political storm unleashed by new details about tax evasion at the same time as he's exiting businesses, cutting ties with some customers and spending billions on compliance at the London-based bank. Chairman Douglas Flint will be questioned by U.K. lawmakers on Wednesday in London over his role as finance director at the time.

While concluding that Swiss federal prosecutors weren't obliged to probe HSBC on the basis of the data stolen by Falciani, Peter V. Kunz, professor for business and comparative law at the University of Bern, notes that a lack of resources has historically hobbled the pursuit of money launderers in Switzerland.

"Money laundering investigations are rather rare and judgments against bankers are even rarer," Kunz said in a phone interview last week. "Swiss money-laundering laws are quite strict, as good as other nations, but the execution of the law isn't as strict. We don't go into banks with a machine gun in hand."

Swiss Leaks

Media reports, also carried in newspapers including The Guardian and Le Monde, gave the Geneva prosecutors the opportunity to investigate HSBC, said Kunz. Under Swiss law, they can access client records as far back as 2000, a year after HSBC acquired two private banks in Geneva from Edmond Safra.

"We opened the investigation based on the information we read in the scope of the Swiss Leaks disclosures," Henri Della Casa, a spokesman for the Geneva prosecutors' office, said by telephone. "The logical next step was to obtain elements from the bank to see if there are indications of a suspicion of money laundering."

The arguments of the attorney general, who says press reports aren't sufficient reason to open an investigation, are seen by some lawyers as a matter of legal interpretation. While evidence obtained illegally usually wouldn't be used by a prosecutor, it may be justified where the offenses are serious, said Simone Nadelhofer, a lawyer with LaLive in Zurich.

Drug Cartels

While Swiss federal prosecutors opened an investigation into Falciani, the software technician ICIJ says stole account details on more than 100,000 people from HSBC's Geneva office and turned them over to the French government, no criminal inquiry into money laundering had been disclosed before Wednesday. HSBC account holders included drug cartels, arms dealers and fugitive diamond merchants, according to ICIJ.

Swiss lawmakers want to clarify the role of the Financial Market Supervisory Authority, which has carried out two separate anti-money laundering investigations at HSBC since

Falciani stole the account data. While Finma probes penalized the bank for inadequate anti-money laundering controls, they did not prompt a criminal inquiry by the attorney general.

Finma did everything it should have in relation to HSBC, David Wyss, director of the regulator's enforcement division, said in an interview in Bern on Tuesday.

Imposing Restrictions

"We were quick in addressing the issues," said Wyss, commenting on Finma's move to prevent HSBC and other banks from taking on more politically exposed persons, which include foreign politicians and those with family or business ties to them. "We imposed new supervisory restrictions on the scope of the bank's activities."

The next steps are up to the criminal authorities, he said.

"There's some rivalry between the Geneva and federal prosecutors' offices," said Benjamin Borsodi, a lawyer with Schellenberg Wittmer in Geneva. "Finma investigated HSBC but what exactly they transferred to the federal prosecutor, if anything, is really difficult to say."

If Geneva prosecutors confirm their suspicions, the probe may spread to other private banks that managed money for the same clients, according to Borsodi. More than half of the 6.1 trillion Swiss francs (\$6.4 trillion) at the country's 283 banks are managed for foreign clients, according to a report last year by the Swiss Bankers Association.

Damaging Image

Finma and the federal prosecutors' office both declined to say what information they shared about HSBC. Lawmakers plan to question the regulator's officials about their oversight of the bank at a committee hearing in April.

"Like everyone else we've been following the stories in the media and we've seen that the Geneva prosecutor has opened an investigation," said Markus Stadler, a Green-Liberal party lawmaker, who called for the hearing. "It is clear that any violation of anti-money laundering laws would damage Switzerland's image."

To contact the reporter on this story: Giles Broom in Geneva at gbroom@bloomberg.net

To contact the editors responsible for this story: Mark Bentley at mbentley3@bloomberg.net
Dylan Griffiths, John Viljoen