

# Business crime and investigations in France

by Antoine Kirry, Frederick T. Davis and Alexandre Bisch, *Debevoise & Plimpton LLP*

Country Q&A | Law stated as at 01-Mar-2020 | France

---

A Q&A guide to business crime in France.

The Q&A gives a high level overview of matters relating to corporate manslaughter, environmental and health and safety offences. This Q&A is part of the global guide to financial and business crime law.

To compare answers across multiple jurisdictions, visit the business crime *Country Q&A tool*.

For a full list of jurisdictional Q&As visit [global.practicallaw.com/financialcrime-guide](https://global.practicallaw.com/financialcrime-guide).

---

## Corporate manslaughter

- Regulatory provisions and authorities

- Offences

- Defences

- Enforcement

## Conviction and sanctions

### Safeguards

## Health and safety offences

- Regulatory provisions and authorities

- Offences

- Defences

- Enforcement

## Conviction and sanctions

### Safeguards

## Environmental offences

- Regulatory provisions and authorities

- Offences

- Defences

- Enforcement

- Prosecution authorities

## Conviction and sanctions

## Contributor profiles

Antoine Kirry, Partner

Frederick T. Davis, Retired Partner

Alexandre Bisch, International Counsel

# Corporate manslaughter

## Regulatory provisions and authorities

1. What is the main legislation relevant to corporate manslaughter?

Corporations or other legal entities (other than the French state) can be held criminally liable for offences committed on their behalf by their organs or representatives (*Article 121-2, Criminal Code*). Corporations can be prosecuted for most existing criminal offences, including manslaughter. Manslaughter (that is, involuntary homicide) is defined in Article 221-6 of the Criminal Code (*see Question 2*).

## Offences

2. What is the specific offence that can be used to prosecute corporate manslaughter?

Manslaughter is defined as "causing the death of another, in the circumstances and according to the distinctions laid down by Article 121-3 of the Criminal Code, by clumsiness, imprudence, distraction, negligence or breach of a duty of safety or prudence imposed by statute or regulation" (*Article 221-6, Criminal Code*).

Article 121-3 of the Criminal Code addresses the issue of *mens rea*. Under Paragraph 3 of Article 121-3, when the law so provides, an ordinary crime (*délit*), such as manslaughter, can be committed by a fault of imprudence, distraction, negligence or the breach of a duty of safety or prudence imposed by statute or regulation "where it is established that the offender has failed to show normal diligence, taking into consideration where appropriate

the nature of his role or functions, of his capacities and powers and of the means then available to him."

When a natural person is prosecuted for manslaughter, a distinction must be made between two situations:

- If there is a direct causal link between the act and the harm, the individual will be criminally liable on the basis of simple fault (*faute simple*) if the requirements of Paragraph 3 are met.
- If the causation is only indirect, the individual is only criminally liable on the basis of aggravated fault for either:
  - an obvious deliberate breach of a particular duty of care or security set out by statute (*faute délibérée*); or
  - an established fault which exposed another to a particularly serious risk of which they must have been aware (*faute caractérisée*).

(*Article 121-3, Paragraph 4, Criminal Code.*)

When a corporation is prosecuted for manslaughter, this distinction does not apply; a legal entity is always criminally liable if it satisfies the test for a simple fault.

A corporation will be held criminally liable for corporate manslaughter (or any other crime) if the offence was committed on its behalf by a person or group qualifying as an organ or representative (*Article 121-2, Criminal Code*). An "organ" is generally a person or group exercising powers inherent to their position or derived from a corporation's bye-laws or internal governance. A representative is generally someone to whom specific responsibilities have been delegated by the corporation. Court decisions continue to explore who may qualify as an organ or representative.

## Defences

3. What defences or exemptions are available and who can qualify?

While there are no specific defences available for corporate manslaughter, the general statutory grounds for absence or attenuation of criminal liability may apply. This includes:

- Insanity (for individuals).

- Duress.
- Mistake of law.
- Command by a lawful authority.
- Self-defence.
- Incapacity.

(Articles 122-1 to 122-8, Criminal Code.)

It is possible to challenge any of the required elements of the offence and of the corporate responsibility. For example, corporations can avail themselves of a defence of this kind by arguing that the acts were committed by an organ or a representative that cannot bind the corporation.

Whatever the offence, there is a generally available defence for a corporation if the alleged wrongdoing took place before a corporate merger. The Cassation Court regularly prohibits criminal proceedings against an acquiring company for acts previously committed by the absorbed company. The European Court of Justice took a different stance on this issue in a March 2015 decision, holding that a merger by acquisition results in the transfer to the acquiring company of the obligation to pay a fine imposed by final decision (adopted after the merger by acquisition) for infringements of employment law committed by the acquired company before the merger. However, the French Cassation Court reaffirmed its prior ruling in an October 2016 decision.

## Enforcement

4. Which authorities have the powers of prosecution, investigation and enforcement in cases of corporate manslaughter? What are the authorities' powers of prosecution, investigation and enforcement, and what are the consequences of non-compliance?

## Prosecution authorities

Under French law, ordinary crimes such as corporate manslaughter are usually pursued by the Public Prosecutor (*Procureur de la République*). When an investigation is complete, the matter deemed to be supported by evidence is referred to trial, generally before the first instance criminal court (*Tribunal correctionnel*) for a trial without a jury.

In unusually complex or large cases, the Public Prosecutor may refer the matter to an Investigating Magistrate (*judge d'instruction*), who then conducts an investigation and decides whether to refer the matter to trial before the first instance criminal court.

## Prosecution powers

Both the Public Prosecutor and the Investigating Magistrate (who work in collaboration with the police) have a full range of investigative powers. The powers available to them in cases of corporate manslaughter are the same as in cases involving most other ordinary crimes. These include (where appropriate, and subject to certain procedures) wiretaps, "dawn raids" of premises, interrogation, arrest and other police powers.

The procedures for an investigation vary depending on the type of investigation. Investigations can take three forms:

- **Flagrant offence investigation led by the Public Prosecutor (*enquête de flagrance*).** This takes place when a crime punishable by imprisonment is in the process of being committed or has just been committed, or if the suspect is found in the possession of something which would implicate his/her participation in the offence. The investigation allows for a wide variety of immediate temporary detention, interrogation, search and seizure powers.
- **Preliminary investigation led by the Public Prosecutor (*enquête préliminaire*).** This may be used in any case, regardless of the nature of the crime. Suspects generally must give their consent to searches or seizures. In general, no coercive measures are allowed.
- **Judicial investigation led by an Investigating Magistrate (*information judiciaire or instruction*).** This occurs when the latter is appointed by a Public Prosecutor. The Investigating Magistrate enjoys very broad powers of arrest, interrogation of witnesses and suspects, search and seizure.

The procedures governing such prosecution powers are found in the Code of Criminal Procedure (*Code de Procédure Pénale*).

## Powers of interview

**Custody procedure.** When there are one or more plausible reasons to suspect that a person has committed or attempted to commit a crime or offence punishable by a prison sentence, the police, the Public Prosecutor or the Investigating Magistrate can summon a suspect for questioning under a custody procedure (*garde à vue*). This custodial interview only applies to natural persons suspected of manslaughter. In the case of corporate manslaughter, the representative of a legal entity cannot be summoned (in this capacity) for such an interview. The representative of a legal entity prosecuted for corporate manslaughter (or any other criminal wrongdoing) may not be subjected (in this capacity) to any coercive measures other than those that apply to witnesses (*Article 706-44, Code of Criminal Procedure*).

**Non-custodial regime.** Suspects may alternatively be questioned under a non-custodial regime (*audition libre*). They must give their consent and must be notified of the date and nature of the offence, as well as of their right to attorney representation and right to leave the interview whenever they choose (*Article 61-1, Code of Criminal Procedure*).

**First interview.** If there is serious and corroborated evidence which indicates that a corporation has committed corporate manslaughter (or any other ordinary crime), the entity will be summoned to appear (through its representative) before an Investigating Magistrate for a first interview (*interrogatoire de première comparution*) before being formally put under investigation (*mis en examen* status).

Non-compliance with investigative demands can lead to several consequences. For a police investigation or a criminal investigation led by an Investigating Magistrate, non-compliance with a specific order can result in immediate arrest and other criminal consequences.

## **Powers of search/to compel disclosure**

The Public Prosecutor and the Investigating Magistrate can conduct dawn raids on premises and seize documents. These powers will differ depending on the type of investigation (*see above, Prosecution powers*).

## **Powers to obtain evidence**

The Public Prosecutor and the Investigating Magistrates have broad powers to obtain evidence (including evidence held by third parties) by interviewing the targeted person or third parties, conducting dawn raids, and obtaining wiretaps and data held by telecommunication operators. These powers will differ depending on the type of investigation (*see above, Prosecution powers*).

Authorities have the power to obtain evidence abroad. The Ministry of Justice has an Office for International Co-operation on Criminal Matters (*Bureau de l'Entraide Pénale Internationale*) which facilitates such co-operation (often under mutual legal assistance treaties (MLATs) or memoranda of understanding (MOUs)).

In May 2017, the European Investigation Order (*Décision d'Enquête Européenne*) entered into force (*Articles 694-15 to 694-49, Code of Criminal Procedure*). Created by Directive 2014/41/EU of the European parliament and of the council regarding the European Investigation Order in criminal matters (Investigation Order Directive), this new regulation aims to simplify and expedite cross-border criminal investigations within the EU. It enables judicial authorities in one EU member state to request that evidence be gathered and transferred from another EU member state. The framework under the Investigation Order Directive replaced the previously existing, fragmented legal framework for obtaining evidence within the EU.

## **Power to arrest**

The representative of a legal entity prosecuted for corporate manslaughter (or any other criminal wrongdoing) may not be subjected (in this capacity) to any coercive measures

other than those applicable to witnesses (*Article 706-44, Code of Criminal Procedure*). The representative cannot be arrested and held for questioning by the police or put under pre-trial custody (*détention provisoire*), unless he/she is also personally suspected of having committed a standalone crime.

A natural person subject of a formal investigation by an Investigating Magistrate for an offence that carries a prison sentence of three years or more (such as manslaughter) can be taken into pre-trial custody for a four-month period (subject to several renewal periods) "if the investigation so requires, or as a precautionary measure". This measure is decided by a judge (*juge des libertés et de la détention*). This judge will only order a pre-trial detention in exceptional circumstances when other judicial controls measures and home detention with electronic bracelet appear to be insufficient.

The French police will enforce a European arrest warrant that has been issued elsewhere in the EU. The French police will also execute a "red notice" received from Interpol as a preliminary to a possible extradition to another country at the request of its authorities.

## **Court orders or injunctions**

The Public Prosecutor can (in his/her initial submission and at any point during the judicial investigation procedure) ask that the Investigating Magistrate undertake all acts that are necessary to understand the truth, including any measures necessary to provide a security (*Article 82, Code of Criminal Procedure*).

The Investigating Magistrate carries out all acts which he/she deems necessary for his investigation and issues orders accordingly. If the corporate entity is already under investigation for an alleged offence of corporate manslaughter, the Investigating Magistrate may impose one or more of the following obligations:

- Depositing a security. The amount, payment time and number of installments are determined by the Investigating Magistrate.
- Giving personal and real guarantees to uphold the victim's rights within a time limit, for a length of time and an amount determined by the Investigating Magistrate.
- Placement under the supervision of a proxy appointed by the Investigating Magistrate for a renewable six-month-period, in respect of the activity in the course of which the offence was committed.

(*Article 706-45, Code of Criminal Procedure*).

Violation by the corporation of these obligations is a criminal offence (*Article 434-43 and 434-47, Criminal Code*) and is punishable by a criminal fine of up to EUR150,000 and one or more of the following additional penalties:

- Prohibition from exercising (directly or indirectly) one or more social or professional activities for up to five years.

- Placement under judicial supervision for up to five years.
- Permanent closure or closure for up to five years of one or more of the company's establishments that was used to commit the offences in question.
- Disqualification from public tenders for up to five years.
- Prohibition from public securities offerings or listings on regulated markets for up to five years.
- Prohibition from drawing cheques (except those allowing the withdrawal of funds by the drawer from the drawee or certified cheques) and from using payment cards for up to five years.
- Confiscation of property that was used or intended for the commission of the offence or of property resulting from the offence.
- Posting a public notice or disseminating the decision.

5. Which authority makes the decision to charge and on what basis is that decision made? Are there any alternative methods of disposal and what are the conditions of such disposal?

If no Investigating Magistrate is appointed, the Public Prosecutor can charge the offence and turn the case over to the first instance criminal court for trial (*citation directe*). The summons must state the facts and the legal provision (*Article 390-1, Code of Criminal Procedure*).

In complex cases, the Public Prosecutor may request the presiding judge of the local court to appoint an Investigating Magistrate. In some circumstances, victims can apply to an Investigating Magistrate for a criminal investigation and can participate in it as civil parties (*parties civiles*). In certain circumstances, a non-governmental organisation with a pre-existing demonstrable interest in the subject matter may also be considered a civil party to a criminal investigation.

The Public Prosecutor determines the scope of the Investigating Magistrate's involvement in the case. If the Investigating Magistrate decides that important and consistent evidence exists which implicates culpability of a particular person or legal entity (including a company in case of corporate manslaughter), the person or entity will be put under formal investigation (*mise en examen*). At this point, the party can engage in all of the following actions:

- Accessing the file compiled by the Investigating Magistrate.



- Filing formal demands with the Investigating Magistrate. The party can (for example, request that an expert be appointed to give an opinion on a particular issue, or request the exploration of further aspects of the case).
- Submitting observations relevant to the Investigating Magistrate's ultimate decision as to whether to turn the case over to the court.

After the completion of the Investigating Magistrate's investigation of the case, the Public Prosecutor issues a non-binding submission that either there is no sustainable case (and, as a result that the charges should be dropped), or that the case should be turned over to the court for trial in whole or in part. The party may also file submissions at this stage. The Investigating Magistrate must then give his/her final closing order. Through this order, the Investigating Magistrate can either drop some or all of the charges or turn the case over for trial. The case will be turned to trial if the Investigating Magistrate "considers that the fact amounts to an ordinary crime" (*Article 179, Code of Criminal Procedure*).

Since March 2004, a pre-trial guilty plea procedure also exists for some ordinary crimes, including business crimes (*comparution sur reconnaissance préalable de culpabilité*). However, the pre-trial guilty plea procedure does not apply to offences involving deliberate or involuntary personal assault (such as corporate manslaughter) (*Articles 495-7 to 495-16, Code of Criminal Procedure*).

## Conviction and sanctions

6. What are the penalties for corporate manslaughter?

Under French criminal law, the principal sanction incurred by corporate entities is a fine. The maximum amount of fine is five times that which is applicable to natural persons (*Article 131-38, Criminal Code*).

A legal entity convicted of corporate manslaughter would usually face a maximum criminal fine of EUR225,000 (*Article 221-6, Paragraph 1, Criminal Code*). The maximum amount of that fine is increased to EUR375,000 if the death was caused by an obviously deliberate breach of a particular duty of safety or care imposed by statute or regulation (*Article 221-6, Paragraph 2, Criminal Code*).

A legal entity can also incur one or more of the following additional penalties (*Article 221-7, Criminal Code*):

- Prohibition from exercising (directly or indirectly) one or more social or professional activities (either permanently or for up to five years).

- Placement under judicial supervision for a maximum period of five years.
- Confiscation of property that was used or intended for the commission of the offence or of property resulting from committing the offence.
- Posting a public notice of the decision, or disseminating the decision through the written press or through any form of communication to the public by electronic means.

Judges can impose sentences up to the maximum amount. Under certain circumstances (such as recidivism or aggravating elements) enhanced sanctions may be applicable.

## Safeguards

7. Are there any measures in place to safeguard the conduct of investigations? Is there a process of appeal? Is there a process of judicial review?

The conduct of criminal investigations is subject to the provisions of the European Convention on Human Rights (ECHR), the French Constitution and Code of Criminal Procedure. When led by a Public Prosecutor, the conduct of investigations can be reviewed at trial. When an Investigating Magistrate is appointed to lead the proceeding, the conduct of investigations may be reviewable before trial by the Investigating Chamber (*chambre de l'instruction*), a dedicated chamber of the Court of Appeals. During an investigation, some coercive measures (such as pre-trial custody) can only be decided by a judge (*juge des libertés et de la détention*).

The professional secrecy (*secret professionnel*), which is the French near-equivalent of attorney-client privilege, protects all communications between lawyers and their clients from being disclosed. A lawyer must not share with any third party (including a Public Prosecutor) information obtained from their client, even if the client gives permission to do so. If a lawyer violates this privilege, they may be subject to criminal and professional sanctions. The professional secrecy therefore provides significant protection to individuals under investigation.

The investigation of the Public Prosecutor or the Investigating Magistrate is confidential (*Article 11, Code of Criminal Procedure*). Formal participants in the investigation (magistrates, clerks, police officers, experts) are bound by confidentiality, but the accused, the victim and journalists are not. Lawyers are not bound by Article 11, but by Article 2 bis of the National Code of Ethics (*Règlement Intérieur National*), which provides for a similar duty of secrecy. A lawyer cannot share copies of documents on file automatically with his/her client. He/she can only do so under specific conditions under Article 114 of the Code of Criminal Procedure. Violation of this confidentiality is a criminal offence

punished by a one-year prison sentence and a EUR15,000 fine (*Article 226-13, Criminal Code*).

## Health and safety offences

### Regulatory provisions and authorities

8. What are the main regulatory provisions and legislation relevant to health and safety offences?

The Labour Code sets out multiple obligations relating to health and safety. Article L.4121-1 of the Labour Code provides one of the main obligations and requires the employer to take the necessary measures to ensure and protect the employees' safety, and physical and mental health. Such measures include:

- Taking steps to prevent occupational risks.
- Providing information and training.
- Putting in place an adequate organisation and the necessary means.

Breaching the various health and safety obligations are criminal offences, under both the Labour Code and the Criminal Code (*see Question 9*).

### Offences

9. What are the specific offences relating to health and safety?

An employer or agent who disregards (by their own fault) their health and safety obligations faces a criminal fine and imprisonment (*for sanctions, see Question 6*).

Persons other than the employer or the agent may also face a similar criminal fine if they disregard specific health and safety obligations (*Article L.4741-9, Labour Code*).

If health and safety obligations are disregarded, the employer may also be criminally responsible for:

- **Endangering the lives of its workers (Article 223-1, Criminal Code).** This involves "the direct exposure of another person to an immediate risk of death or injury likely to cause mutilation or permanent disability by the manifestly deliberate violation of a specific duty of prudence or safety imposed by statute or regulation".
- **Causing unintentional injury (Articles 222-19 and 222-20, Criminal Code).** This involves "causing a total incapacity to work in excess of three months to another person by clumsiness, imprudence, distraction, negligence or the breach of a duty of prudence or safety imposed by statute or regulation".
- **Manslaughter (Article 221-6, Criminal Code).** This involves "causing the death of another, in the circumstances and according to the distinctions set out in Article 1213, by clumsiness, imprudence, distraction, negligence or the breach of a duty of prudence or safety imposed by law or regulation".

Under Article 121-2 of the Criminal Code, corporations can be held criminally liable for the above offences committed on their behalf by their organs or representatives.

## Defences

10. What defences or exemptions are available and who can qualify?

While there are no specific defences available for health and safety offences, the general statutory grounds for absence or attenuation of criminal liability may apply. These include:

- Insanity.
- Duress.
- Mistake of law.
- Command by a lawful authority.
- Self-defence.
- Incapacity.

(Articles 122-1 to 122-8, Criminal Code.)

Another available defence is to challenge the existence any of the required elements of the offence and, where applicable, the corporate responsibility (see [Question 3](#)).

## **Enforcement**

11. Which authorities have the powers of prosecution, investigation and enforcement in cases of health and safety offences? What are the authorities powers of prosecution, investigation and enforcement, and what are the consequences of non-compliance?

### **Prosecution authorities**

The Public Prosecutor and the Investigating Magistrate are the prosecuting authorities (see [Question 4](#)).

### **Prosecution powers**

See [Question 4](#).

### **Powers of interview**

See [Question 4](#).

### **Powers of search/to compel disclosure**

See [Question 4](#).

### **Powers to obtain evidence**

See [Question 4](#).

### **Power of arrest**

See [Question 4](#).

### **Court orders or injunctions**

When a corporate entity is put under investigation for an alleged criminal health and safety offence, it may be subject to one or several obligations (see [Question 4](#)), the violation of which is a criminal offence.

When an individual is put under formal investigation for an alleged criminal health and safety offence, he/she may be subject to measures that could restrict his or her liberty. An individual may also be ordered to pay a bond to guarantee his or her appearance in court or to secure the reparation of damages caused by the alleged crime.

12. Which authority makes the decision to charge and on what basis is that decision made? Are there any alternative methods of disposal and what are the conditions of such disposal?

The Public Prosecutor or the Investigating Magistrate decides whether to charge the offence (*see Question 5*). They may do so on the basis of reports transmitted by the French labour inspection authority.

In the specific context of those violations of the Labour Code (which are punishable by less than one year of imprisonment), a pre-trial criminal settlement (*transaction pénale*) between the French labour administration and the alleged offender is available (*Article L.8114-4, Labour Code*).

## Conviction and sanctions

13. What are the sanctions for health and safety offences?

Sentences in France are indeterminate in the sense that there are no objective sentencing guidelines. Judges can therefore impose any sentence up to the maximum applicable to the offence and the case.

For a conviction for violations of health and safety obligations on the basis of Article L.4741-1 of the Labour Code, the maximum penalty is a fine of EUR10,000 (for a natural person) or EUR50,000 (for a legal entity). In the case of recurrence, this increases to one year of imprisonment and a fine of EUR30,000 (for a natural person) or EUR150,000 (for a legal entity). As an additional penalty, the court may order that the judgment be posted on the doors of the sentenced person's premises and inserted (in full or in extracts) in newspapers of its designation. In the event of a second offence, the court may prohibit the offender from certain conduct for up to five years. Failure to comply with this prohibition is punishable by imprisonment for two years and a fine of EUR9,000 (*Article L.4741-5, Labour Code*).

For a conviction for endangering the lives of workers, the maximum sanctions are imprisonment of one year and a fine of EUR15,000 (for a natural person) or a fine of EUR75,000 (for a legal entity).

For a conviction for unintentional injury, the maximum sanctions are two years' imprisonment and a fine of EUR30,000 (for a natural person) or a fine of EUR150,000 (for a legal entity). In the event of a deliberate breach of a particular duty of prudence or safety imposed by statute or regulation, this maximum amount increases to three years' imprisonment and a fine of EUR45,000 (for a natural person) or a fine of EUR225,000 (for a legal entity).

For the conviction for manslaughter, see [Question 6](#).

Corporate entities found guilty of the Criminal Code provisions above may also incur one or more of the following additional penalties:

- Prohibition from exercising (directly or indirectly) one or more social or professional activities, either permanently or for up to five years.
- Placement under judicial supervision for up to five years.
- Confiscation of property that was used or intended for the commission of the offence, or of property resulting from committing the offence.
- Posting a public notice of the decision, or disseminating the decision through the written press or through any form of communication to the public by electronic means.

*(Article 221-7, Criminal Code.)*

Other convictions and sanctions resulting from a failure to comply with the measures imposed by health and safety authorities include:

- Failure by employer to comply with measures taken by the regional office for employment (known as DIRECCTE): up to one year of imprisonment and a fine of EUR3,750 (*Article L.4741-3, Labour Code*).
- Failure by employer to comply with measures taken by the labour inspection supervisory officer pursuant to Articles L.4731-1 or L.4731-2 of the Labour Code: up to one year of imprisonment and a fine of EUR3,750 (*Article L.4741-3-1, Labour Code*).
- Failure by employer to comply with decisions made by the labour inspection supervisory officer pursuant to Articles L.4731-1 or L.4731-2 of the Labour Code: maximum fine of EUR10,000 per worker involved in the offence (*Article L.4752-1, Labour Code*).
- Failure by employer to comply with requests for audits made by the labour inspection supervisory officer: fine of up to EUR10,000 (*Article L.4752-2, Labour Code*).

## Safeguards

14. Are there any measures in place to safeguard the conduct of investigations? Is there a process of appeal? Is there a process of judicial review?

See [Question 7](#).

## Environmental offences

### Regulatory provisions and authorities

15. What are the main regulatory provisions and authorities responsible for investigating environmental offences?

Criminal environmental offences are outlined in both the Criminal Code and the Environmental Code (see [Question 16](#)).

In a memorandum to Public Prosecutors dated 21 April 2015, the French Ministry of Justice issued non-binding guidelines regarding the prosecution of environmental offences (*Circulaire du 21 avril 2015 relative aux orientations de politique pénale en matière d'atteintes à l'environnement*).

### Offences

16. What are the specific offences relating to the environment?



The Criminal Code contains only one specific criminal offence relating to the environment: "ecologic terrorism", which is defined as "the introduction into the atmosphere, on the ground, in the soil, in foodstuff or its ingredients, or in waters, including territorial waters, of any substance liable to imperil human or animal health or the natural environment" (*Article 421-2, Criminal Code*).

Although not directly related to the protection of the environment, several other provisions are also used as legal bases for prosecution when damage to the environment occurs:

- Endangering the lives of others (*Article 223-1, Criminal Code*).
- Unintentional injury (*Articles 222-19 and 222-20, Criminal Code*).
- Manslaughter (*Article 221-6, Criminal Code*).

The Environmental Code contains many specific criminal offences relating to the environment (for example, to water pollution, air pollution, nuclear materials, protected species, ozone-depleting substances and ship-source pollution). The following are examples of such offences:

- **Water pollution (*Article L.216-6, Environmental Code*)**. This is "the act of directly or indirectly disposing of, discharging in or letting flow into surface, groundwater and seawater within the limits of territorial boundaries, one or more substances of any kind whose actions or reactions cause, even if only temporarily, harmful effects on health or damage to fauna and flora, with the exception of damage referred to in Articles L.218-73 and L.432-2 of the Environment Code, or significant modifications to the normal regimen of water supply or limitations in the use of bathing waters".
- **Violation to the protection of farmed fish and their habitat (*Article L.432-2, Environmental Code*)**. This involves "discarding, dumping or releasing into the waters referred to in Article L.431-3, directly or indirectly, any substance whose action or reactions have destroyed the fish or impaired its nutrition and reproduction or its food value".

Corporate bodies can be held criminally liable for these offences, if such offences are committed on their behalf by their organs or representatives (*Article 121-2, Criminal Code*).

## Defences

17. What defences or exemptions are available and who can qualify?

There are no specific defences for environmental offences. However, the general statutory grounds for absence or attenuation of criminal liability may apply (*Articles 122-1 to 122-8, Criminal Code*). Another available means of defence is to challenge any of the required elements of the offence and, where applicable, the corporate responsibility (see [Question 3](#)).

## Enforcement

18. Which authorities have the powers of prosecution, investigation and enforcement in cases of environmental offences? What are the authorities powers of prosecution, investigation and enforcement, and what are the consequences of non-compliance?

## Prosecution authorities

Environmental offences are usually prosecuted by Public Prosecutors. In unusually complex or large cases, the Public Prosecutor may refer the matter to an Investigating Magistrate.

In addition to working with standard police units, Public Prosecutors and Investigating Magistrates usually work in conjunction with one of numerous police units specialized in environmental matters, including the OCLAESP (*Office central de lutte contre les atteintes à la santé publique et à l'environnement*) and the ONEMA (*Office national de l'eau et des milieux aquatiques*).

Complex criminal environmental cases are usually handled by Public Prosecutors or the Investigating Magistrates of one of the two specialised offices located in Paris and Marseilles (*Pôles de santé / environnement*).

## Prosecution powers

See [Question 4](#).

## Powers of interview

See [Question 4](#).

## **Powers of search/to compel disclosure**

See [Question 4](#).

## **Powers to obtain evidence**

See [Question 4](#).

## **Power of arrest**

See [Question 4](#).

## **Court orders or injunctions**

See [Question 4](#).

Also, in the context of environmental crimes, if a natural or legal person is convicted, the court may impose measures such as repair and restoration to remedy the damage caused to the environment. This injunction may be accompanied by a maximum daily penalty of EUR3,000 for a period of up to one year (*Article L.173-5, Environmental Code*).

## **Prosecution authorities**

19. Which authority makes the decision to charge and on what basis is that decision made? Are there any alternative methods of disposal and what are the conditions of such disposal?

The Public Prosecutor and/or the Investigating Magistrate decide whether to charge an offence.

In some circumstances, victims can apply to an Investigating Magistrate for a criminal investigation, and can participate in the investigation (and in a trial) as civil parties (*parties civiles*). In the case of environmental crimes, under some circumstances, officially approved associations for the protection of the environment may exercise the rights of a civil party (*Articles L.141-1 et seq, Environmental Code*).

Alternatively, before the Public Prosecutor presses charges, a settlement procedure (*transaction*) is available to natural and legal persons suspected of environmental crimes that are not punishable by more than two years' imprisonment. The fine must not exceed one-third of the amount of the criminal fine incurred (*Article 173-12, Environmental Code*). This procedure does not imply an admission of guilt and does not amount to a conviction.

A pre-trial guilty plea procedure (*comparution sur reconnaissance préalable de culpabilité*) (Articles 495-7 to 495-16, *Code of Criminal Procedure*) also exists for most ordinary crimes, including environmental crimes. However, it does not apply to offences involving deliberate or involuntary personal assault. This procedure therefore does not apply to environmental crimes prosecuted as manslaughter.

In a bill dated January 29, 2020, currently before the French Parliament, the French Government is proposing the creation of a French-style deferred prosecution agreement mechanism that would apply to corporations in cases of environmental offences.

## Conviction and sanctions

20. What are the penalties for environmental offences?

The Criminal Code and the Environmental Code provide for sanctions that apply to the numerous environmental offences, for example:

- Water pollution: two years' imprisonment and a fine of EUR75,000.
- Violation to the protection of farmed fish and their habitat punishable: two years' imprisonment and a fine of EUR18,000.

The principal sanctions incurred by natural persons are imprisonment and a fine. The principal sanction incurred by legal persons is up to five times the fine which is applicable to natural persons (*Article 131-38, Criminal Code*).

Natural persons convicted for an offence listed by the Environmental Code face the following additional penalties:

- Posting a public notice of the decision or disseminating the decision.
- Confiscation of the instrument which was used or intended to be used for the commission of the offence, or of the direct or indirect product of the offence.
- Immobilisation for up to one year of the vehicle, vessel, boat or aircraft used by the convicted person to commit the offence, if the convicted person is its owner.
- Prohibition from performing the profession in the exercise of which the offence was committed for up to five years.

(*Article L.173-7, Environmental Code*.)

Legal persons face the following additional penalties:

- Placement under judicial supervision for up to five years.
- Permanent closure or closure for up to five years of one or more of the company's establishments that was used to commit the offences in question.
- Disqualification from public tenders, either permanently or for up to five years.
- Prohibition from public securities offerings and listings on regulated markets, either permanently or for up to five years.
- Confiscation of property that was used or intended for the commission of the offence, or of property resulting therefrom.
- Posting a public notice of the decision or disseminating the decision.

(Article L.173-8, *Environmental Code*.)

## Contributor profiles

### Antoine Kirry, Partner

#### Debevoise & Plimpton LLP

T +33 1 40 73 12 12

F +33 1 47 20 50 82

E [akirry@debevoise.com](mailto:akirry@debevoise.com)

W [www.debevoise.com](http://www.debevoise.com)

**Professional qualifications.** Admitted to the Bar: New York and Paris

**Areas of practice.** Criminal, regulatory and civil litigation; investigations involving US and French laws.

**Languages.** English, French

#### Publications

- Co-author of *Privilege 2019 - France Chapter*, part of the *Know How* series published by *Global Investigations Review* (November 2019).
- Co-author of the France chapter of (*ICLG Guide to Business Crime 2020* (October 2019)).

- Co-author of *The International Investigations Review – 9th Edition – France*, published in *The International Investigations Review (August 2019)*.
- Co-author of *Financial & Business Crime in France: an Overview, Financial & Business Crime Global Guide 2018/19 (November 2018)*.
- Co-author of *Deux insuffisances du mécanisme anticorruption de la loi Sapin II*, article exploring potential shortcoming for the Sapin II regime in France, published in *La Semaine Juridique (May 2018)*.

## Frederick T. Davis, Retired Partner

### Debevoise & Plimpton LLP

T +33 1 40 73 12 12

F +33 1 47 20 50 82

E [ftdavis@debevoise.com](mailto:ftdavis@debevoise.com)

W [www.debevoise.com](http://www.debevoise.com)

**Professional qualifications.** Admitted to the Bar: New York and Paris

**Areas of practice.** Criminal, regulatory and civil litigation; investigations involving US and French laws.

**Languages.** English, French, German

**Professional associations/memberships.** An elected Fellow of the American College of Trial Lawyers. The French government named him a Chevalier of the National Order of Merit of France. He is a recipient of the Thurgood Marshall Award of the New York City Bar Association. He taught a full academic course at Harvard Law School as the Nomura Lecturer on International Law and is currently teaching two courses as a Lecturer in Law at Columbia Law School relating to comparative and transnational criminal law.

### Publications

- Author of *American Criminal Justice: An Introduction*, published by Cambridge University Press (2019).
- Co-author of *Privilege 2019 - France Chapter*, part of the Know How series published by *Global Investigations Review (November 2019)*.
- Co-author of *The International Investigations Review – 9th Edition – France*, published in *The International Investigations Review (August 2019)*.

- Co-author of *The Challenges of Managing Multi-jurisdictional Criminal Investigations*, published in *The International Investigations Review* (August 2019).
- Co-author of *Financial & Business Crime in France: an Overview, Financial & Business Crime Global Guide 2018/19* (November 2018).
- Co-author of *The Foreign Corrupt Practices Act*, published in *Business and Commercial Litigation in Federal Courts, Third Edition* (2011).

## Alexandre Bisch, International Counsel

### Debevoise & Plimpton LLP

T +33 1 40 73 12 12

F +33 1 47 20 50 82

E [abisch@debevoise.com](mailto:abisch@debevoise.com)

W [www.debevoise.com](http://www.debevoise.com)

**Professional qualifications.** Admitted to the Paris Bar

**Areas of practice.** Criminal, regulatory and civil litigation; investigations involving US and French laws.

**Languages.** English, French

### Publications

- Co-author of *Privilege 2019 - France Chapter*, part of the *Know How* series published by *Global Investigations Review* (November 2019).
- Co-author of the France chapter of *ICLG Guide to Business Crime 2020* (October 2019).
- Co-author of *The International Investigations Review – 9th Edition – France*, published in *The International Investigations Review* (August 2019).
- Co-author of *Financial & Business Crime in France: an Overview, Financial & Business Crime Global Guide 2018/19* (November 2018).
- Co-author of *Deux insuffisances du mécanisme anticorruption de la loi Sapin II*, article exploring potential shortcoming for the Sapin II regime in France, published in *La Semaine Juridique* (May 2018).

---

**END OF  
DOCUMENT**