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Guide to managing and minimizing criminal risk exposure in group operations





Veolia Environnement is taking charge

In every country where Veolia Environnement conducts business the laws provide, to one degree or another, for criminal penalties designed to ensure compliance with those statutory or regulatory provisions that the respective countries deem especially important for the optimal functioning of their business sectors and their economies in general.

Veolia Environnement has devoted significant resources to ensure compliance with all laws and regulations in the countries where it conducts business. These measures include recommendations made as part of its “Ethics, Commitment, and Responsibility” program, preparation of various “Compliance Handbooks,” and specific training initiatives such as those in the field of competition and antitrust law.

Compared to the other types of legal exposure that the Group inevitably faces, criminal liability represents a uniquely grave risk. It can apply against both persons and corporate entities. Moreover, the punishments foreseen in criminal law can impact the property or ownership rights of both individuals and corporations, and can also include imprisonment for individuals or prohibitions on conducting business for corporations.

A specific communication and training program is therefore essential, so that all Veolia Environnement group employees will be better equipped to identify those areas of business law for which a risk of criminal sanctions exists. Undertaking such a program will better shield the employees themselves and the Veolia Environnement group companies that employ them against such risk.

Such is the goal of this “Guide to Managing and Minimizing Risk Exposure in Group Operations.” This guide should be considered as one important tool aimed at ensuring that Veolia Environnement remains positioned to take full advantage of its reputation for excellence and of the other well-earned benefits flowing from its creativity, technical prowess, commercial strength, and ability to adjust to satisfy the evolving needs of its clients.

Antoine Frerot, *Chairman and Chief Executive Officer of Veolia Environnement*

Introduction

In the various countries where it operates, the Veolia Environnement group is under a duty to adhere to an incalculable number of rules that apply in a variety of sectors of business law.

A failure to comply with certain of these rules – whether they concern positive duties to act in a certain manner or, instead, prohibitions on conduct – could give rise to criminal penalties. Although some countries where the Group does business are more likely than others to impose criminal penalties for a failure to respect mandatory legal rules, all of our host countries do in fact apply criminal sanctions in a manner consistent with their respective legal traditions and legal and judicial frameworks.

Legal requirements that could potentially expose the Group to criminal liability should therefore be understood to constitute both legal duties that govern our operations and a risk that should not be overlooked by anyone.

Social obligations governing conduct: Today an important new trend is emerging. Stock markets, investors, and clients no longer assess companies based solely on their economic and financial results; they now also take into account the manner in which these results were achieved. Because legal standards that provide for criminal penalties are viewed as matters of corporate ethics, compliance is no longer just a matter of legal duty, but is now also something that can seriously impact -- for good or for bad -- the company's results and goodwill. Compliance thus constitutes a matter of priority for our operations. Its importance rises to the same level as matters such as the optimization of technology and market performance.

A serious risk: Criminal cases are quite unlike cases involving purely civil or commercial concerns. Civil and commercial cases implicate only stakes of a private nature that exist between individuals or corporations. Such cases are generally resolved through an award of damages. Criminal matters, by contrast, involve acts that are considered to be harmful to society as a whole. They are handled by a prosecutor, who represents the interests of society and who acts on his or her own initiative or in response to a criminal complaint. A criminal conviction can lead to a sentence imposing imprisonment, a total or partial prohibition on certain activities or on the holding of a certain positions (insofar as individuals are concerned), a ban on participating in public works projects, the loss of certain civil and political rights, or, finally, the payment of fines (in amounts which can be significant). An award of damages can also be entered to compensate victims.

Generally speaking, a given country's criminal laws are applicable whenever a forbidden act has been carried out or produces effects within its borders. However, a country's laws may be applicable even when the forbidden conduct was not carried out within the country's territory or did not have any effect there. Laws aimed at preventing corruption constitute an example of this type of law. It is rather well known that the United States follows this approach, but it is not alone in doing so. Indeed, numerous other countries, including the United Kingdom, Germany, France, and China, take the same approach. The different corporate entities constituting an international brand, as well as their management personnel, are thus exposed to significant risk and may be subject to investigation and prosecution both in France and



abroad for the same set of facts. For instance, in matters relating to competition and antitrust law, securities law, or anti-corruption law, violations committed in one country can produce effects in a second country on the functioning of markets, on the rights of shareholders, or on government. As a result, a violation may become the subject of criminal proceedings in the second country. The many different varieties of corporate and business criminal charges that can be lodged against a company and its employees constitute a highly specific type of risk compared to the other types of legal risk that a company must confront.

It is the unique nature of the consequences presented by corporate and business crime that has motivated both the decision to distribute this Guide and the training initiatives that accompany its distribution. Briefly stated, the uniqueness of this area of law can be explained by the following characteristics:

- the fact that it comprises an integral part of ethical corporate behavior;
- the seriousness of the consequences that could result from a criminal conviction, from both a financial point of view (criminal fines)

and an operational one (for example, a ban on individuals carrying out certain activities or on holding certain positions, or a ban on companies bidding on certain works projects, or entering into contracts with the State);

- the possibility of damaging the company's image and the reputation of its management personnel (which can be of a nature and dimension far more serious than what might exist in the case of simple administrative or civil fines);
- the fact that the risk is borne by both the corporate entity and by those individuals who act on its behalf or upon its instruction (management personnel and in some cases other staff members), with the possibility of a sentence of imprisonment being imposed on such individuals;
- the fact that an act committed in one country can give rise to an investigation and prosecution in another.

In order to minimize the risk of criminal liability that could be imposed upon the Veolia Environnement group, in terms of the chances of it occurring and the seriousness of its effects, the following actions should be implemented:

Raising awareness about the fields of law in which criminal infractions are the most frequent

The risk of criminal prosecution is on the rise for companies and their employees in many countries. Criminal infractions are harshly penalized in certain countries, such as France and the United States; by contrast, the risk of prosecution may seem to be lower in other countries due to inconsistent or only sporadic enforcement or even because the prohibited behaviors may appear to be a part of the everyday way of doing business there. It is nevertheless extremely important to keep the risk of criminal prosecution in one's consciousness at all times. One particular reason for this is that certain laws can be applied beyond the geographic borders of the country that enacted them. A second reason for remaining vigilant is that the very status of being a foreign company can sometimes be a factor that aggravates exposure in certain places, even if this is usually just an "unwritten" rule.

The purpose of this Guide is therefore to call your attention to the different risks and to highlight the most significant examples. Of course, the matters addressed in this Guide are not exhaustive. Accordingly, if a given behavior or situation strikes you as incompatible with legal or ethical obligations, you should raise the matter with your supervisor or the Legal, Human Resources, Finance or other appropriate department. The Veolia Environnement Ethics Committee is also available on a confidential

basis to all employees.

Criminal prosecutions are most commonly initiated against companies or their employers in the following areas:

- Corruption – both private and public;
- The use of intermediaries, consultants, middlemen, etc.;
- The Group's operating activities (worker health and safety, environmental compliance, etc.);
- Violations relating to accounting or to corporate documentation, including violations concerning registration requirements;
- Misuse or misappropriation of corporate property, conflicts of interest;
- Embezzlement, theft, and fraud;
- Obstruction of justice.

Assessment of certain risk sectors

1. Corruption

a. Corruption of Public Employees

The notion of corruption of a public employee consists of the promising or granting of any type of advantage to a public employee so that he or she will either act or refrain from acting in a manner that amounts to favorable treatment for the company. Similarly, it is forbidden for a public employee to solicit or to accept any type of advantage in exchange for either acting or refraining from acting in a manner that would be inconsistent with the duties of his or her position. Agreeing to request of this type is prohibited. Also, a person who has knowledge of actual, current, or possible infractions but does nothing to verify their existence or, if pos-



sible, to stop them may equally be susceptible to prosecution.

Every country outlaws and prosecutes the corruption of its public officials and employees. Moreover, as a result of the United States Foreign Corrupt Practices Act ("FCPA", the UK Bribery Act) and the adoption into local law by all 38 OECD (Organisation for Economic Co-operation and Development) countries – including France – of the OECD Convention on Combatting Bribery of Foreign Public Officials (an international treaty entered into by countries in which the Group carries out a very large percentage of its activities), any act of corrup-

tion of a public official committed abroad is strictly forbidden. As such, any act of corruption of a public official committed abroad by employees of a French firm, or by employees of a subsidiary of a French firm, or by a foreign sales agent working for that firm or one of its subsidiaries, can result in the criminal liability of the firm, not only in the country where the infraction was committed but also in France. Likewise, a French company with shares listed on a United States stock exchange could be prosecuted by the American authorities for acts of corruption committed in a foreign country, even a country that is not an OECD member.

In addition, the company could be prosecuted in the United States if the actual reason for a particular disbursement were misrepresented in the accounts of one of its foreign subsidiaries, no matter the amount of the transaction.

Invitations and gifts given to public officials are forbidden in some countries, no matter what their value. In other countries, however, the value of gifts and invitations must not exceed the amount that is usually considered as falling within the customary rules of courtesy. Questions regarding permissible entertainment and gifts should be directed to your Division's Legal department.

The recent incorporation into national laws of several different international anti-corruption treaties has increased the ability of national authorities to prosecute effectively acts of corruption committed outside their borders.

The notion of public official should be construed broadly. It should be understood to refer to any beneficiary of an elective mandate, any public employee, any person paid with public funds, their family members or close personal friends, or any entities in which they hold interests that have the capacity to influence a decision involving the use of public funds. In some countries labor union officials are also covered by the anti-corruption laws.

Warning signs include:

- Promotional activities and transactions in risky countries;
- Excessive or unusually high compensation in the absence of reasonable explanations therefor that are clear and specific;

- Payments made to third parties or made outside the country in which the service was provided;
- The use of shell companies or of cash payments.

It is important to be aware of, and to respect, the different national laws governing these questions. Particular attention should be paid to laws relating to contributions to political parties. On this latter point, you should consult the Group Policy relating to "Prohibitions Applicable to Payments and Aid Payments Made During Electoral Seasons" and to any applicable local regulations. All acts related in any way to the corruption of public officials are absolutely and categorically prohibited in all countries where Veolia Environnement does business.

b. Private Corruption

Private corruption consists of the promising or granting of any type of advantage to a person who is not a public official, so that he or she will act in a manner that violates the duties of his or her position. Conversely, it is forbidden for any person who is not a public official to solicit or to accept any type of advantage in exchange for either acting or refraining from acting in a manner that would be inconsistent with the duties of his or her position. Agreeing to requests of this type is prohibited. All acts of private corruption are forbidden. In particular, all purchases must conform to the Group's Purchasing Charter. In the same vein, any promise or delivery of an undue advantage that is designed to influence the purchasing decision of a private company is strictly forbidden.

2. Risks Tied to the Use of Intermediaries

Veolia Environnement and its Divisions will not use third parties ("intermediaries") to do that which they do not themselves have the right to do. In cases where a Division is permitted to use an intermediary and elects to do so, the Division shall comply with the Group Policy¹ in order to have assurances regarding the integrity of the intermediaries and agents working with it. Proceeding in this way will ensure that the selection of such service providers is pre-approved, and will provide oversight over the scope of their work and their compensation. It will also allow for verification, under strict rules in the context of a framework contract, that the contracted-for services are effectively being performed.

Warning signs include:

- Recruitment of individuals who do not undergo an initial screening process;
- Requests by local authorities for the recruitment of particular intermediaries;
- Recruitment of individuals whose regular activity does not consist of the representation of third parties;
- Recruitment of individuals not possessing the skills or resources needed to carry out the mission being conferred upon them;
- Agreement to a "success fee" (i.e., compensation linked to results) that is very high or unlimited;
- Recruitment of individuals unwilling to commit to the Group's values and policies;
- Requests for payment in another country or through a third party;
- A request by the agent to have sole and exclusive contact with the relevant public officials.

¹ Policy relating to the operations of intermediaries and the provision of commercial services.



3. Risks Tied to Operations

The Group's day-to-day operations necessarily expose its different constituent companies and their employees to the risk of criminal proceedings. In fact, many laws and regulations in the fields of occupational hygiene, work hazards, labor law and environmental protection carry with them the possibility of criminal sanctions.

- In relation to offenses involving physical harm, the employer or its managers may be found criminally liable in the event of involuntary harm to an individual, based on the principle of respect for the individual or failure to respect the duties of safety and due care. In fact, the penalty may be increased if the accident is the result of a deliberate violation of a duty of safety or due care imposed by law or regulation.

- The illegal supply of employees ("prêt illicite de main d'œuvre") is an offense that is outlawed by the French Labor Code, which criminalizes the carrying out of profit-making operations whose sole purpose is the furnishing of employees (except in the case of certain defined exceptions). Care is thus required in situations where subcontractors and outside service providers are used to provide contract laborers. In such cases, it may be appropriate to include specific and detailed contractual obligations that provide the Group assurances regarding the compliance by such providers with applicable laws.

- The Group's primary activity is the furnishing of services in the environmental sector. Failure to adhere to mandatory laws on environmental protection not only exposes the relevant

corporate entities and their employees to criminal sanctions, but also negatively affects the value of the services the Group provides, our brand image, and our potential for business development.

- It is essential to ensure the proper maintenance of all vehicles and equipment and machinery used by the Group, as well as the keeping of accurate paperwork relating thereto. It can be expected that a detailed inspection will be undertaken by public authorities in the event that our vehicles or equipment were to be involved in an accident resulting in fatalities, bodily injury or significant environmental damage. A maintenance defect or paperwork irregularity could lead to prosecution of the company and/or the responsible individuals.

The utmost vigilance is therefore called for re-



garding adherence to all laws and regulations applicable to operational matters.

4. Competition/Antitrust Law

France, the European Union, the United States, and most of the countries in which the Veolia Environnement group operates have adopted strict rules to ensure the proper functioning of market competition forces. Although these rules bear characteristics reflective of the different legal systems in which they were enacted, they share a common purpose: namely, to ensure healthy, functional relationships between clients and service providers and vigorous competition among companies present in the same business sector. Violations of competition law which are the most serious and the most likely to constitute a crime include the following: responses to calls for tenders for which a clandestine agreement was first reached with other bidders on the terms to be proposed, secret commercial agreements (cartel agreements) among competitors, and predatory

pricing practices. Veolia Environnement has made available to its employees written materials and specific training programs on competition law, including the handbook entitled "Competition Law Compliance Guide" issued in 2009. Naturally, the Legal department should be consulted in the event of a specific doubt or inquiry about the legality of any given practice.

5. Corporate Documentation and Accounting

Accounting is a tool for managing and auditing companies. It constitutes a key element for the Group's managers, shareholders, and partners, as well as for certain other third parties, including lenders and other creditors. Failure to respect rules on corporate accounting records damages the company's credibility and can give rise to criminal charges.

Despite its primary focus on the fight against corruption, the American FCPA, referred to earlier, also contains provisions addressing accounting matters and internal control/audit. In practice, it is the failure to respect accounting rules that gives rise to the greatest number of FCPA prosecutions. Stated in summary fashion, the FCPA's accounting-related provisions mandate:

- Accounting documents that reflect a firm's operations in a true and accurate manner, and with sufficient detail.
- A system of internal control/audit (including at foreign subsidiaries) that provides reasonable assurances that the accounts of the relevant entity have been drawn up in a



true and accurate manner, that the transactions reflected therein were authorized in the normal course of business, and that measures have been put in place to avoid unauthorized transactions and to prevent transactions from not being booked in the accounts or from being improperly booked.

Corporate documents and documents delivered to third parties must set out a true and accurate account of the facts related therein. This requirement applies, in particular, to data and information on matters of cost and price furnished to clients or to administrative authorities.

Particular vigilance is necessary concerning the numerous formal written instruments that a firm generates, including minutes of board of directors meetings, attendance lists for general shareholders meetings, and invoices, to list just a few examples. It should be noted in this connection that any of the following could give rise to a civil action and/or criminal prosecution in the United States: a failure to institute internal control mechanisms, applying such controls poorly, the deliberately improper recording by any individual of one or more transactions (for instance, in a computer system/program used for the reimbursement of expenses), and not correcting or investigating suspicious transactions.

In France, the Criminal Code makes it a crime to generate or to use fake or forged documents.

6. Misuse or Misappropriation of Corporate Property

In France, the crime of misuse or misappropriation of corporate property (“abus de biens sociaux”) by a company’s managers consists of their “making use, in bad faith, of the assets or credit of the company, in a manner that they know to be adverse to the company’s interests, either for personal purposes or to advantage another company or firm in which they have direct or indirect interests.”

The cases issued by the French courts have adopted a broad view of the types of managers who may be prosecuted for misuse or misappropriation of corporate property; this interpretation encompasses both actual, title-holding managers and de facto managers.

Other countries’ laws include similar or slightly differing definitions of this crime; such laws could provide the legal basis for simultaneous prosecution of the same set of facts.

7. Embezzlement, Theft, and Fraud

Embezzlement of funds, fraud, and theft are three criminal infractions that could be perpetrated against a firm by employees or outside individuals seeking to obtain an unearned benefit for themselves. These same crimes could also be committed by a firm itself, acting through its employees against its clients, suppliers, subcontractors, or partners, for example. In some instances, what might appear to be a mere breach of contract may actually amount to a crime, and this risk is especially elevated whenever the client is a governmental entity or when a governmental authority is for some other reason involved in the transaction at issue.

8. The Crime of Obstruction

The crime of obstruction is characterized by behavior that has the effect, whether intended or not, of preventing the normal functioning of a body that represents the interests of employees, or of preventing the normal execution by an employees’ representative of his or her mission. The legal texts that render such obstruction criminal are numerous and quite diverse in nature. In particular, the different applicable laws tend to increase the number of the different organs and individuals who can potentially be victims of the crime (such as works councils and other related organs, including those known in France as “comités d’établissement” and “comités centraux d’entreprise”). The crime of obstruction does not exist in Middle Eastern countries, where, as a general rule, union representation does not exist.

9. Other Important Sectors Involving Exposure to Criminal Risk

A large number of other criminal infractions that arise under the ordinary, generally applicable rules of law are of such a nature that they

run the risk of being committed in the course of business dealings. They include, by way of example, breach of trust, creation or use of fake or fraudulent documents, computer fraud, and various infractions resembling corruption.

Here are some illustrations:

• Influence Peddling

Influence peddling involves obtaining an advantage for someone in order that the said person will exert his or her influence so as to obtain from a third party favorable treatment for a company (active influence peddling) or in order that he or she will be inclined to use his or her own influence to advantage a third party (passive influence peddling). In some countries, influence peddling is treated as a form of corruption and the same criminal punishments apply. In other countries and regions, such as the Middle East, influence peddling does not exist *per se* as a separate crime.

• Patronage

The crime of patronage may apply under a given set of facts as a complement to whatever

other laws and regulations may be applicable. Patronage implies the granting of an unfair advantage in violation of the principle of open access to public works projects or to concessions of public services, and in violation of the rule of equality of candidacies. A company that receives such an advantage may be indicted and prosecuted for both patronage and the crime of receiving and concealing stolen assets. Vigilance is called for in relations with public instructing parties in order to ensure that the Group does not enjoy any undue advantages.

• Obstruction of Justice

The different forms of obstruction of justice made criminal by the law are oftentimes committed in tandem with other crimes, such as violations of the rules of competition law. The risk of prosecution for obstruction of justice could exist, for instance, if an employee sought, in the context of an investigation, to conceal a potentially questionable practice by destroying or fabricating evidence, by seeking to influence testimony, or by refusing investigators access to certain archives or witnesses.

Need for a specific focus on compliance in light of the high risk of criminal liability

The minimization of exposure to criminal prosecution must involve, first and foremost, a specific focus on compliance that targets the different high risk areas identified above. It is only through ensuring respect of those mandatory provisions of business law that

carry penal sanctions that the Group can protect itself and its employees against the risk of prosecution.

This compliance initiative should, in part, take the form of personnel training programs, including, naturally, management training programs.

In instances where there exists a doubt about the relevance or the meaning of a mandatory provision of law carrying criminal law penalties, consultation of the Division's Legal department is obligatory.

The assignment of management of risk exposure to the appropriate level in the group's hierarchy is another means of minimizing such risk

Frequently in matters of corporate and business crime, the behavior that forms the object of a conviction results from insufficient vigilance or a lack of care in the implementation of risk-prevention tools.

Adopting appropriate delegations of power should allow the persons designated as the responsible parties (i.e., the beneficiaries of said delegations) to perform their oversight and risk management duties more effectively than could senior managers, who are necessarily more removed on a day-to-day basis from the details of every transaction.

Proper control over in-house and external communications

The proper handling and control over both in-house and external communications is essential.

It is a common error to assume that oral communications cannot be traced back to their author or that writings which appear entirely informal or personal in nature (such as handwritten notes made in the margins of a document, Post-It® notes, diaries, and e-mails) cannot give rise to legally relevant consequences. The jurisprudence is replete with examples of writings found in companies' files that on first consideration may have seemed perfectly innocuous, but which were in fact used as evidence of wrongdoing.

The same degree of care should be observed in

relation to external communications, to guard against wrongly generating suspicions that Veolia Environnement or a member of its staff was involved in committing an infraction.

To sum up:

- Be aware of and sensitive to the Group's exposure from its worldwide operations to liability for corporate and business crime infractions.
- Always seek the assistance of management and of your Divisions's in-house Legal, Human Resources and Finance departments in cases of doubt – never make a final determination on your own when confronted with a question as to the legality of a given situation.
- Never run the risk of harm to your own good reputation or that of the Veolia Environnement group for what you perceive to be a benefit for the Group.

