It couldn’t happen to me... could it?

Individuals can be personally liable for environmental, health and safety offences in most European jurisdictions. Is your business doing enough to manage the risks?

Liability for environment, health and safety (EHS) offences can fall primarily on the company or on an individual or on both. The position varies from jurisdiction to jurisdiction, and in some cases liability can be criminal and can attract substantial prison sentences and/or fines. Although still relatively uncommon in most jurisdictions, personal prosecutions are becoming more frequent in the EU. In some countries (e.g. France) currently only individuals and not companies can be liable.

Personal liability is most common where there is:

– **Direct individual responsibility** for an incident;
– **Serious actual impact** and consequences arising from the incident;
– Evidence of putting **profit above safety**;
– A **poor relationship** with the regulator; and/or
– Evidence of **structural failures** in the organisation (e.g. over-reliance on key personnel, poor documentation, incomplete identification of compliance obligations, insufficient employee and contractor training etc).

Significantly, the European Commission has recently published a draft Directive which would require Member States to criminalise a wide range of environmental breaches. Under the proposals, Member States would be required to apply effective criminal sanctions, including jail terms of up to 10 years, against individuals for committing these offences.

**Steps to reduce prosecution risk**

Steps to reduce the risk of prosecution will differ according to the jurisdiction, and the particular circumstances of the incident. On the whole, however, risk of prosecution will be reduced if ‘adequate’ measures have been taken to avoid EHS incidents. Businesses should consider:

– Delegation of responsibility to sufficiently experienced and qualified individuals;
– Documented processes and clear paper trails;

Quick-guide reference tables to key personal liability and risk management issues for EHS offences in nine European jurisdictions.

For an overview of the position in Belgium, England and Wales, France, Germany, The Netherlands, Poland, Russia, Spain and Turkey [click here](#).
– Formal and transparent organisational structures;
– Effective monitoring and reporting systems;
– Risk assessments and regular review of systems and processes;
– Adequate training; and
– Adequate selection, training and on-going supervision of contractors.

Managing your response to regulatory action

Don’t panic! If there is an EHS incident and the regulators investigate or threaten to do so it is important to carefully manage your response and to understand your rights and obligations.

In managing your response you should consider:

– **Communication**: Channel all communications to regulators, third parties and workforce through an identified manager;
– **Records**: Keep own records of the incident (e.g. photos) and conduct internal investigation (use legal professional privilege where possible);
– **Advice**: Get legal and communications advice (separate legal representation for the company and the individual is prudent);
– **Mitigation**: Prepare a detailed explanation of circumstances and proposed remedial plan (with lawyers) to pre-empt regulatory action; and
– **Process**: Try to manage the regulatory process on your terms (e.g. by asking for postponement of interviews for internal investigation).

Need help?

Contact us. We have one of the world’s leading environment, health and safety teams. Our global team has internationally recognised capability and experience in advising clients on EHS risks and in helping them to develop and implement effective EHS governance structures and training courses. We have represented clients in complex prosecutions and our global reach allows us to provide a seamless service to companies that operate in multiple jurisdictions.

**Editor**: Vanessa Havard-Williams **Email**: vanessa.havard-williams@linklaters.com

---

This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts at Linklaters, or contact the editors.

© Linklaters. All Rights reserved 2007

Please refer to [www.linklaters.com/regulation](http://www.linklaters.com/regulation) for important information on the regulatory position of the firm.

We currently hold your contact details, which we use to send you newsletters such as this and for other marketing and business communications.

We use your contact details for our own internal purposes only. This information is available to our offices worldwide and to those of our associated firms.

If any of your details are incorrect or have recently changed, or if you no longer wish to receive this newsletter or other marketing communications, please let us know by emailing us at marketing.database@linklaters.com