

Overview of the French legal framework applicable to private protection officers

Who are private protection officers, commonly known as bodyguards, and above all how is their action legally regulated?

These are two questions that this article will try to answer quickly through a brief overview of the legal and regulatory provisions applicable to individuals who, on a professional basis, carry out activities aimed at protecting the physical integrity of people.

For a long time, the terms “private security” appeared to be an oxymoron insofar as security fell within the sovereign power of the State. Indeed, as early as 1932, the *Conseil d’Etat* (French Administrative Supreme Court) prohibited the delegation of administrative police activities to private individual entities^[1].

Yet, the existence of private security could no longer be ignored in France. Framework Law No. 83-629 of July 12, 1983 regulating private security activities recognized the existence of private security actors. However, this Law limited their activities essentially to mere guarding and surveillance activities.

Today, the private security industry comprises 175,000 agents and more than 11,000 companies^[2]. It is a rapidly expanding market.

The French government could no longer ignore this situation and decided to go beyond the 1983 Law and its various amendments with the promulgation of the 2021 Global Security Law of May 25, 2021^[3]. This Law had several objectives: structuring the private security industry, better supervising the effective exercise of private security activities, reinforcing controls and sanctions, and strengthening the prerogatives of private protection officers.

But what was the impact of this Law on those who are vulgarly called “bodyguards”? More generally, what is their field of action and what is the legal framework that governs their action since the adoption of the 2021 Global Security Law?

Definition of private protection officers

Private protection officers are mentioned in Article L.611-1 3° of the French Internal Security Code, which is the first Article of Title I *“Private activities of surveillance and guarding, transport of funds, physical protection of people and protection of ships”* of Book 6 of said Code. Their mission is to *“protect the physical integrity of people”*.

Conditions for exercising this professional activity

Pursuant to Article L. 612-1 of the French Internal Security Code^[4], it is necessary in order to carry out, on a professional basis, activities aimed at protecting the physical integrity of people to be a natural person or a legal entity registered with the Registry of Trade and Companies (RCS). Failure to comply with this provision is punishable by three years’ imprisonment and a fine of 45,000 euros^[5].

Legal entities engaged in the business of protection of the physical integrity of people must provide proof that they have taken out a professional liability insurance policy, prior to starting their activities^[6].

It should be noted that a company that carries out the activity of protection of the physical integrity of people may not engage into another business^[7]. For example, a company that carries out a guarding activity within the meaning of Article L. 611-1 1° of the French Internal Security Code *“is not entitled to argue that it could carry out, on an ancillary basis, a mission of protection of the physical integrity of people”*^[8]. Also, for example, a company engaged in the business of protection of the physical integrity of people may not subcontract to two other companies, surveillance and guarding activities; otherwise, this would be a breach of the provisions set forth in Article L. 612-2 of the French Internal Security Code^[9]. Failure to comply with this provision is punishable by three years’ imprisonment and a 45,000 euro fine^[10].

With respect to subcontracting, the 2021 Global Security Law aimed to limit cascade subcontracting. The objective was to make the prime contractor accountable. As such, a company responsible for performing a contract related to the activity of human surveillance or guarding of movable or immovable property may not subcontract the performance of all the services provided for under the contract^[11]. Failure to comply with this provision is punishable by a fine of 45,000 euros^[12].

However, it must be noted that this total prohibition of subcontracting does not apply to the activity mentioned in the third paragraph of Article L611-1 of the French Internal Security Code, namely the activity that consists in *“protecting the physical integrity of people”*. As such, for this activity, nothing seems to prevent the subcontracting of the whole contractual assignment.

Of course, in this case, the subcontractor must have the necessary license/approval to carry out such an assignment. Moreover, applicable legal provisions provide that subcontracting the exercise of a private security activity to a company without the license/approval required for subcontractors is punishable by three years’ imprisonment and a fine of 45,000 euros^[13].

Also, concerning subcontracting, it must be pointed out that subcontracting the exercise of an activity that qualifies as a private security activity to a company employing persons without a professional card is punishable by two years' imprisonment and a fine of 30,000 euros^[14]

Lastly, temporary employment agencies are required to ensure, on the one hand, that the internal security companies or services carrying out private security activities that call upon their services are duly authorized to carry out these activities and, on the other hand, that the employees they provide for the exercise of these activities meet the legal and regulatory requirements required for the exercise of their duties^[15].

License requirements - Granting and withdrawal

It is absolutely necessary to hold a license in order to administer, manage or have a shareholding interest in a legal entity that carries out the activity of protection of individuals^[16]. Failure to comply with this provision is punishable by three years' imprisonment and a fine of 45,000 euros^[17].

In order to be granted this license, the following requirements must be met:

- Be a French national or a national of a Member State of the European Union or of a State that is a party to the European Economic Area Agreement;
- Not have been convicted of a crime or offense entered in Bulletin No. 2 of the criminal records or, for foreign nationals, in an equivalent document;
- Not be the subject of an expulsion order that has not been repealed or a prohibition to stay on the French territory not fully implemented;
- Not have been the subject of a bankruptcy judgment or another professional prohibition measure and not have been the subject of a decision of an equivalent nature in another Member State of the European Union or another State that is a party to the European Economic Area agreement;
- Not carry out one of the activities incompatible by their nature^[18] with the activity of protection of individuals;
- Not exercise the activity of private research agent;
- Provide proof of professional competence.

The license may not be granted if the administrative investigation shows that the conduct of the applicant or his/her actions are contrary to honor, probity, good morals or are likely to jeopardize the safety of people or property, public security or State security, and are incompatible with the performance of the above-mentioned duties.

It is important to remember that the individual or company who has been granted the license is in no event the holder of any prerogatives of public power^[19].

The license may be withdrawn or suspended under certain conditions^[20].

The license can be withdrawn for several reasons, in particular when the director or manager no longer meets the applicable requirements or when all or part of the company's capital is made up of funds contributed directly or indirectly by the perpetrator of a crime or offense in the context of a money laundering operation. This requires strict control and the use of compliance in order to protect the company.

Article R. 612-2 of the French Internal Security Code sets out the elements to be provided for the license application.

The issuance and use of a professional card

The delivery of the professional card that allows to be employed or posted to participate in an activity of protection of individuals is conditioned upon several requirements provided for under Article L. 612-20 of the French Internal Security Code:

- Not have been convicted of a crime or offense entered in Bulletin No. 2 of the criminal records;
- It does not result from the administrative investigation that the conduct of the applicant or his/her actions are contrary to honor, probity, good morals or are likely to jeopardize the safety of people or property, public security or State security, and are incompatible with the exercise of the profession;
- Not be the subject of an expulsion order that has not been repealed or a prohibition to stay on the French territory not fully implemented;
- For a foreign national, have a residence permit allowing him/her to work on the national territory;
- Provide proof of professional competence, including knowledge of the principles of the French Republic;
- For a national of a Member State of the European Union, a State party to the Agreement on the European Economic Area, or a third-party country, provide proof of sufficient knowledge of the French language to carry out a private security activity.

It should be noted that the applicable requirements to access training that will constitute proof of professional competence^[21] are the same as those for the issuance of a professional card except, of course, for the requirement relating to professional competence.

If the individual meets all these requirements, he/she will be issued a professional card that can be withdrawn if he/she no longer meets any of these requirements.

Other reasons for withdrawal of the professional card are set forth in Article L. 612-20 of the French Internal Security Code.

The renewal of the professional card is conditioned upon the completion of continuing training courses^[22].

The individual operator, the director or the manager of a company or secondary establishment engaged in the business of protection of the physical integrity of people must provide proof of professional competence[23]. When he/she actually carries out a private security activity, he/she must also hold a professional card.

Advertising by private protection agents

A legal entity engaged in the business of protection of the physical integrity of people must be careful not to give the appearance of a public service or of a service that falls within the sovereign power of the State.

Indeed, the name of the company must *“avoid any confusion with a public service, in particular a police service”*[24]. It must, therefore, be explicitly mentioned on all documents and materials intended for third-parties that the company is a private law entity.

Failure to comply with these provisions is punishable by a fine of 3,750 euros[25].

In addition, any materials of informative, contractual or advertising nature originating from a private company engaged in the business of protection of the physical integrity of people must reproduce in an explicit and comprehensive way all the elements that allow for the identification of the license which it has been granted.

Similarly, it must be explicitly mentioned that the company’s license does not confer upon it any prerogatives of public power[26].

It is strictly forbidden to mention the status of former police officer or former military officer that one of the company’s directors or employees may have[27].

Any natural person or legal entity using the services of a company engaged in the business of physical protection of people can ask for the references of the professional card of each employee (or subcontractor) taking part in the performance of the contractual services. In this case, the service provider must provide this information without delay[28].

Failure to comply with these provisions is punishable by a fine of 3,750 euros[29].

The carrying of weapons by private protection officers

Private protection officers can be authorized to be armed only when they ensure the protection of a person exposed to exceptional risks to his/her life[30].

This authorization is subject to specific terms and conditions[31].

Private protection officers authorized to carry weapons must follow training courses on a regular basis[32].

Dress code applicable to private protection officers

Individuals who exercise the activity of physical protection of people are not required to wear a specific outfit

unlike the other individuals mentioned by the French Internal Security Code^[33].

In addition to the various above-mentioned penalties that may be imposed, Article R. 617-1 of the French Internal Security Code provides for several fines in case of non-compliance with the above-mentioned provisions. More specifically, Article R.617-5 of said Code relating to the physical protection of people provides that the individual operator, the manager, the director or the employee of a company engaged in the business of physical protection of people is punished by a 5th class fine whenever:

- He/she does not carry a copy of the authorization referred to in Article R. 613-88 of the French Internal Security Code during the performance of the assignment, in breach of Article R. 613-89 of said Code;
- He/she does not, during the performance of the assignment, carry weapons in an inconspicuous manner, in breach of Article R. 613-91 of the French Internal Security Code;
- He/she does not, during the performance of the assignment, carry loaded weapons in their holster, in “safe” position, or unloaded weapons, in breach of Article R. 613-91 of the French Internal Security Code;
- He/she does not keep, when off duty, weapons, their components, and ammunition under the conditions provided for in Article R. 613-91 of the French Internal Security Code;
- The individual who is the holder of the license referred to in Article L. 612-9 of the French Internal Security Code and who has not carried out any of the assignments referred to in Article R. 613-88 for a period of eighteen months does not get rid of category B weapons within a period of three months and under the conditions set forth in Articles R. 312-74 and R. 312-75 of said Code, in breach of Article R. 613-92 of said Code.

Finally, it should be noted that there are administrative controls to ensure that all these provisions are duly complied with.

Failure to comply with these controls is punishable by the penalties provided for in Article L617-14 of the French Internal Security Code which stipulates *inter alia* that:

- Obstructing the performance of controls carried out under the conditions provided for in Article L. 611-2 of the French Internal Security Code by the agents mentioned in the first paragraph of said Article is punishable by a 15,000 euros fine;
- The same penalty shall be imposed for obstructing the performance of controls provided for in Articles L. 634-1 and L. 634-3 of the French Internal Security Code, when they relate to the activities mentioned in Article L. 611-1 1^o to 3^o of said Code.

Articles L. 617-15 and L. 617-16 of the French Internal Security Code provide for additional penalties applicable to individuals or legal entities wherever the above-mentioned penalties are applied.

[1] Assembly of the *Conseil d'Etat*, June 17, 1932

[2] Page 8 of the 2020 annual report of the National Council for Private Security Activities, (*Conseil National des Activités Privées de Sécurité*, also known by its acronym "CNAPS")

[3] Law No. 2021-646 of May 25, 2021 for a global security preserving freedoms, also known as the 2021 Global Security Law

[4] (Article 2-II of the Law No. 2014-742 of July 1, 2014

[5] Article L. 617-1, 1° of the French Internal Security Code

[6] Article L. 612-5 of the French Internal Security Code

[7] Article L. 612-2 of the French Internal Security Code and CSI and Article 2, para. 2 and 3 of Law. No. 83-629 of 12 July 1983

[8] Versailles Administrative Court of Appeals, February 2, 2012, Sté Torann France, No. 09VE0226)

[9] Marseille Administrative Court of Appeals, September 18, 2020, Sté Absolute Protec, No. 18MA03694.

[10] Article L. 617-1, 3° of the French Internal Security Code

[11] Article L. 612-5-1 of the French Internal Security Code

[12] Article L. 617-2-1 of the French Internal Security Code

[13] Article L. 617-4 of the French Internal Security Code

[14] Article L. 617-7 of the French Internal Security Code. See for example Criminal Chamber of the *Cour de Cassation* (French Supreme Court), December 8, 2015 No. 15-80.951 and Criminal Chamber of the *Cour de Cassation* (French Supreme Court), January 23, 2018, No. 17-81.231 (conviction for employing persons carrying out a surveillance or guarding activity who did not hold a professional card)

[15] Article R. 611-2 of the French Internal Security Code

[16] Article L. 612-6 of the French Internal Security Code

[17] Article L. 617-3, 2° of the French Internal Security Code

[18] These activities are listed in Article R. 611-1 of the French Internal Security Code

[19] Article L. 612-14 of the French Internal Security Code

[20] Article L. 612-8 of the French Internal Security Code

[21] Article L. 612-22 of the French Internal Security Code

[22] Article L. 612-20-1 of the French Internal Security Code

[23] Article R. 612-3 of the French Internal Security Code

[24] Article 2, para. 1 of Law No. 83-629 of 12 July 1983, Article L. 612-3 of the French Internal Security Code

[25] Article L. 617-2 of the French Internal Security Code

[26] Article L. 612-15 of the French Internal Security Code

[27] Article L. 612-15 of the French Internal Security Code

[28] Article L. 612-15 of the French Internal Security Code

[29] Article L. 617-6 of the French Internal Security Code

[30] Article L. 613-12 of the French Internal Security Code

[31] Articles R. 613-88 to R. 613-92 of the French Internal Security Code

[32] Article R. 612-38 of the French Internal Security Code

[33] Article R. 613-2 of the French Internal Security Code

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