


(European) Mercy for Jérôme Kerviel? (updated)

Jérôme Kerviel was a young trader with a promising future. Today, a French criminal court ordered him to pay his employer Société Générale € 4.9 BILLION in damages. The court has also sentenced him to serve 3 years in prison. Unsurprisingly, Mr Kerviel has already announced that he will appeal. 

€ 5 billion is a high sum that Mr Kerviel will likely have difficulties paying. The court has forbidden him to be a trader again. That will not help. Given his current salary (he is in computers now), journalists have calculated that he may need to work 177,000 years to pay his debt. After all, as journalists have also reported, € 5 billion is the GDP of Benin.

It seems that some innovative legal argument would be welcome here. On the top of my hat, two come to mind.

First, Mr Kerviel may want to pay nothing at all. What about trying insolvency? Unfortunately, it is not available for him in France, as he is a mere employee. But it might be elsewhere in Europe. If he settles in such country, could he after a while take advantage of local insolvency law, and obtain recognition of the judgment in France under the insolvency regulation?

Readers have pointed out to me that it might be enough for Mr Kerviel to move inside France. Alsace and Moselle have kept a special insolvency regime (French Commercial Code, Art. L 670-1), that German debtors particularly fancy, and which is open to everybody, including employees. The geographic requirement is to be domiciled in one of these two regions. Mr Kerviel could thus move to Metz or Strasbourg and, if he could show that he would have genuinely settled there, benefit from local insolvency law. However, the rule of French law which does not allow debts resulting from criminal offences to be cancelled in such cases, also applies in Alsace and Moselle. But maybe other jurisdictions would allow the cancellation for even such debts.

Secondly, Mr Kerviel may want to pay his debt, and think that he would thus need to be back in business again. Would the ban of the French criminal court be

recognised outside of Europe? Could he practice in other major financial centers of the world?

UPDATE: Société Général people have told the French press that they would not insist that Mr Kerviel pay the entire sum. When asked whether that meant that they did not intend to ask for any payment, they said that it only meant that they would be happy to explore whether they could reach an agreement with Mr Kerviel. Well, even if Mr Kerviel was fortunate enough to settle for 1% of the entire sum, he would still need 1,770 years to meet his new obligation. In any case, he announced this morning on a French radio that he was not asking anything to SocGen.