



Mutual Learning Programme

DG Employment, Social Affairs and Inclusion

Peer Country Note - Finland

**Peer Review on “Enhancing whistleblower protection
through better collaboration between responsible
authorities – a tool to prevent and tackle
work-related crime”**

Norway, 14-15 February 2019



EUROPEAN COMMISSION

Directorate-General for Employment, Social Affairs and Inclusion

Unit A1 - Employment and social aspects of European semester

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1 Legal framework

Finland does not have specific rules and procedures concerning whistleblowers related to the work-related crime or any other crimes. In whistleblowing situations generally applicable labour laws and rules on dispute settlement mechanism and court proceeding are applied.

Finland received recommendations on the topic from the OECD and UN (UNCAC) in order to better protect whistleblowers.

The Commission proposals on Whistleblowers' Protection provides legislative changes in Finland because it does not have generally applicable legal procedures and obligations to have an internal channel in private or public entities to handle notifications on breaches of EU rules. Many authorities supervise the observance of law. In order to do this work, they process reports on different kinds of malpractice received from private persons. In addition, especially bigger companies have established internal channels to handle suspected malpractice (see 1.5.).

1.1 The Constitution of Finland

The Constitution of Finland guarantees the basic right for everyone. Freedom of expression and the right of access to information as well as freedom of assembly and freedom of association are guaranteed to everyone.

Section 12 - Freedom of expression and right of access to information

Everyone has the freedom of expression. Freedom of expression entails the right to express, disseminate and receive information, opinions and other communications without being prevented to do so by anyone. More detailed provisions on the exercise of the freedom of expression are laid down by an Act. Provisions on restrictions relating to pictorial programmes that are necessary for the protection of children may be laid down by an Act.

Documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act. Everyone has the right of access to public documents and records.

More information: <https://oikeusministerio.fi/en/constitution-of-finland>

1.2 The Employment Contracts Act

The Employment Contracts Act (55/2001) is a basic working life law to be applied to work performed in an employment relationship regardless of the nature of that work or the form of employment. The Act is applied to employment relationships in which an employee or employees together make a personal commitment to work for the employer under the employer's direction and supervision against a wage or salary or other compensation. The establishment of an employment relationship requires that all of the above-mentioned criteria are fulfilled. In practice, overall consideration is practiced to determine whether an employment relationship exists, taking into account the intentions of the contracting parties, the name of the contract, the contract's terms and the actual working conditions. The Act is basically mandatory by nature.

The Employment Contracts Act decrees entering into an employment contract;

- the obligations of the employer and employee;
- the prohibition of discrimination (both in the employment relationship and the recruitment process);
- the determination of the minimum terms of employment;
- the employee's right to family leaves; laying off an employee;

- terminating the employment contract; liability for damages;
- employment contracts of an international nature; and
- the position of employee representatives.

Employees' obligations

- General obligation
- Occupational safety and health obligation
- Prohibition on engaging in competing activity
- Prohibition on divulging confidential business and trade information
- Agreement on non-competition

The Act's provisions on the *general obligation of the employer* are presented as objectives. They are an expression of the employee's loyalty obligation to be applied in employment relationships. The provisions also mean that the interests of the employee must be taken into account. Violation of the general obligation does not by itself cause the employer liability but it does become significant when the nature and fulfilment of the employer's other obligations are assessed.

Employees have a general obligation of loyalty towards their employer. In their activities, employees must avoid everything that conflicts with the actions reasonably required of employees in their position. This obligation begins when the contract is made, and it also extends in some degree to the employee's free time. The employee may not, for example, act during his/her free time in a way which could harm the employer's business.

An employee always has the right to contact competent authority like an occupational and safety authority or an equality ombudsman in a matter concerning his/hers workplace or other workplace.

Prohibition on Divulging Confidential Business and Trade Information

During the employment relationship, the employee may not utilize or divulge to others the employer's confidential trade or business information. Confidential business and trade information includes information on working methods, computer programs, output, formulas and customer registers. In determining the confidentiality of such information, the essential criterion is that the employer needs to keep the information confidential and that divulging it would cause harm to the enterprise.

1.3 Sector specific legislation concerning whistleblowers and other measures

There are certain amendments in sectoral legislation that improve whistleblower protection and/or provide requirements for establishing whistleblowing mechanism. The additions are summarised below.

- A section in the Trade Secrets Act; revealing misconduct and exercising the freedom of expression; stipulates that for the purpose of protecting the general public interest in order to reveal misconduct or illegal activity, use or disclosure of trade secret shall not be unlawful.
- The Law Enforcement Data Protection Act obliges the competent authorities to establish procedures by which suspected violations of the act may be confidentially reported to them. The reporting procedure shall include appropriate and adequate measures to arrange the appropriate processing of reports. The reporting procedure shall moreover include instructions to safeguard the protection of the reporting person's identity.

- Act on Providing Insurance requires the establishment of whistleblowing procedures, allowing the employees to report any suspected violations of the Act and relevant EU Regulation. The Act further stipulates on whistleblower protection, confidentiality and their data protection.
- Act on detecting and preventing money laundering and terrorist financing states that obliged entities shall have in place whistleblowing procedures, i.e. procedures allowing its employees or agents to report any suspected violations of this Act and the provisions issued thereunder by means of an independent channel within the obliged entity. The act further stipulates that the supervisory authorities and lawyers associations shall maintain a system enabling them to receive reports of suspected violations of the provisions of the Act.

The new Trade Secrets Act

The new Trade Secrets Act in Finland (595/2018) entered into force on 15 August 2018. The Act implements the EU Trade Secrets Directive in Finnish law.

The definition of a trade secret has been harmonized and according to the new definition, the first requirement is that information must not be generally known or readily accessible to persons that normally deal with the kind of information in question. Secondly, the definition of a trade secret requires that the information has economic value in business activity. The third element of the definition requires that the trade secret holder has taken reasonable steps in order to keep the information secret. Previously, the terms used in the legislation varied and the provisions relating to the protection and enforcement of trade secrets were scattered in different acts.

Under the new Trade Secrets Act, **the unlawful acquisition, use and disclosure of trade secrets are prohibited**. There are some limitations included in the act as well. Certain activities, such as independent discovery are not considered unlawful. In addition, reverse engineering of a lawfully acquired product is as a point of departure permitted. The new Trade Secrets Act also includes provisions on whistleblowing, enabling a person in certain circumstances to report misconduct and illegalities without the threat of being held liable for trade secret misappropriation.

The Action plan against the shadow economy and economic crime

Other measures advancing the possible amendment of whistleblower protection legislation have been taken. For example, the Action plan against the shadow economy and economic crime for 2016-2020 includes a project "Enhancing the prevention, identification and detection of corruption". One of its aims is to improve whistleblower protection and reporting corruption. More specifically, to facilitate anonymous and confidential reporting on concerns about corruption, to strengthen the capabilities of authorities receiving these reports, so they are able to deal with the reports in an effective and confidential manner, and to enhance the cooperation between these authorities, and to strengthen the essential structures and mechanisms of whistleblower protection. The project was implemented in years 2017-2019.

Legislation on whistleblowing will most likely be amended during the following years, however national initiatives are on hold due to the upcoming EU whistleblower protection directive. The proposed EU – whistleblower protection directive (COM(2018) 218 final) provides for the implementation of an internal and external whistleblowing reporting process, which will give employees and external persons the opportunity to report breaches of EU law and ensures that such reports will be followed up. At the time of this reply, the directive is being prepared/negotiated at EU level and it is under the trilogy process.

The Ministry of Justice has set up a working group to coordinate the work related the directive. The directive defines the minimum level of regulation; hence it enables further measures concerning whistleblower protection in the national regulation. EU Commission has also encouraged the member states to consider more horizontal regulation on national level.

2 Authorities combating grey economy and economic crime

Our aim is one labour market with fair terms. Increasing mobility for workers, cross border services and migration bring more people to our labour market either temporary or for longer period. Unfair competition, social dumping, violation of labour laws and collective agreements are not new phenomena, but these are persistent and widening. To combat these phenomena requires cooperation, joint actions and information sharing between authorities and social partners. Enforcement authorities are guardians for functioning of labour market.

A large number of different authorities with a broad range of tasks take part in combating the grey economy and economic crime, notably:

- *The Ministry of the Interior* coordinates the work connected to the grey economy. It appointed a Steering Group for the prevention of economic crime representing a broad range of ministries and other public authorities. The Steering Group formulated a proposal for a strategy to combat the shadow economy, which was approved by the Ministerial Committee on Economic Policy.
- *The Ministry of Finance* is responsible for taxation.
- *The Ministry of Social Affairs and Health* is in charge of social security and occupational safety and health and *Regional State Administrative Agencies* are in charge of the supervision and direction of standards and practices in workplaces.
- *The Ministry of Economic Affairs and Employment* is in charge of fair competition between companies and non-discrimination in working life. When promoting the functioning of the market, MEAE shall, however, be ensured that enterprises observe the rules of conduct of social importance.
- *The Ministry of Justice*

The aim of **occupational safety and health enforcement** is to ensure healthy and safe workplaces and a fair working life. A key issue is supporting workplaces' independent safety management. Occupational safety and health enforcement choices are guided by a framework plan for 2016–2019, which outlines key issues with regard to directing and focusing enforcement.

Essential in terms of effectiveness is a proactive, risk-based and comprehensive approach. Enforcement is also carried out on the initiative of customers. The shadow economy in its different forms has been identified in various sectors. An operating environment analysis identified a number of factors that correlate with lack of compliance with occupation safety and health legislation and problems related to working conditions. For this reason, enforcement should, as far as possible, be targeted at sectors and workplaces that use a lot of foreign labour and atypical employment relationships, and where the shadow economy is evident. In identifying these workplaces, it is important to cooperate with other authorities and utilise information gathered in occupational safety and health supervision.

OSH authorities supervise working conditions and OSH legislation. More information and advice for workers and employers: <https://www.tyosuojelu.fi/web/en/about-us/contact>

Finland has shifted from the use of criminal penalties to administrative sanctions in sanctions related to posted workers.

3 The shadow economy and economic crime and anti-corruption websites

The shadow economy and economic crime

On the shadow economy and economic crime website, different public authorities introduce their operations in relation to the shadow economy. The website content is produced in collaboration with the ministries and public agencies appearing on these pages.

The new website on the grey economy and economic crime **www.grey-economy-crime.fi** provides summarised information on the grey economy and economic crime in Finland. The website is maintained through the cooperation of the authorities engaged in combating the grey economy. Further information on the authorities is available under the section **About this website**. The website will support the decision-making of authorities and political decision-makers. The information it provides will enhance society's capabilities to react rapidly to the phenomena and harm associated with the grey economy and economic crime. In addition, the website will provide companies and citizens with information on how to act or protect themselves against such harm.

<https://www.vero.fi/en/grey-economy-crime/>

Anti-Corruption website

In addition, Finland has a new **Anti-Corruption.fi** website. The new website aiming to increase awareness about corruption and its prevention in Finland. The website provides both ordinary citizens and professional operators with information and tools for creating a transparent and just society.

It is important to strive to recognise and prevent corruption in our surroundings. To be able to do that, there is a need for awareness of the different forms corruption can take and the adverse effects it can have. Therefore, raising awareness is one of the most important goals for anti-corruption work in Finland.

Finland's anti-corruption objectives and measures are defined in the draft anti-corruption strategy. The long-term objective is to create a society where corruption cannot take hold or go unnoticed.

The Anti-Corruption.fi website is managed and maintained by the Department for Criminal Policy and Crime Prevention of the Ministry of Justice. The website's contents are produced by the anti-corruption cooperation network, which is the local anti-corruption body in Finland.

There is no designated anti-corruption agency investigating suspected cases of corruption in Finland. Many authorities do, however, accept and process reports on different kinds of malpractices.

<https://korruptiontorjunta.fi/en/home>

<https://korruptiontorjunta.fi/en/report-corruption>

