

Name of the country: Finland

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Transposition Act = Consolidated legislation - Co-operation in a Community-scale group and enterprise (Laki yhteistoiminnasta suomalaisissa ja yhteisönlaajuisissa yritysryhmissä)

1. Presence of legally based administrative or judicial conflict solving procedures for:

		No	Yes	Unclear	brief explanation
A	SNB (including the pre-SNB phase, i.e. requesting the necessary information about the company, staff distribution, etc.)		Yes		
B	EWC based on Art. 6 agreements		Yes		
C	EWC based on art. 13 agreement	No ¹			
D	EWC based on subsidiary requirements	No, the transposition act does not seem to deal with SR EWCs at all.	The Cooperation ombudsman works in conjunction with the Ministry of Employment and the Economy for the purpose of supervising compliance with the i.e., the Act on Co-operation within Finnish and Community-wide Groups of Undertakings (335/2007). Section 6 - Issuance of an improvement notice		

¹ Büggel (2002) argues that it is not possible to ascertain whether (and if so what kind of) a distinction and difference in legal status exists between the judicial assertion of claims under Article 13 and Article 6 agreements. Büggel draws the conclusion that 'The supplementary provisions of the implementing legislation indicate that in the case of an Article 13 agreement only individual EWC members can take legal action'.



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			<p>If it becomes apparent that the employer is violating this Act or any of the acts referred to in section 1, or the provisions or regulations issued by virtue thereof, or continues or repeats an illegitimate procedure, the cooperation ombudsman shall issue a written improvement notice to remedy the illegitimate procedure or prevent its recurrence.</p> <p>The improvement notice shall specify the applicable provisions and regulations and the defects that have been observed as to compliance with them. Moreover, the improvement notice shall specify a deadline, if necessary, by which the employer must make the situation comply with the provisions and regulations.</p> <p>The cooperation ombudsman must inform the personnel representatives concerned of the improvement notice. If there are no elected personnel representatives for the workplace in question, the employer must inform the workplace of the improvement notice in the appropriate manner.</p> <p>Section 7 - Taking the matter to court</p> <p>If there are probable grounds for suspecting that an act specified as punishable under section 67 of the Act on Co-operation within Undertakings, section 46 of the Act on Co-operation within Finnish and Community-wide Groups of Undertakings, section 39 of the Act on Employee Involvement in European Companies and in European Cooperative Societies or section 4 of Chapter 47 of the Penal Code (39/1889), has been committed, the cooperation ombudsman shall notify the police of the act for preliminary investigation. Such a notification can be waived if the act can be considered minor</p>		
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			<p>in view of the circumstances and the public interest does not require a notification. The cooperation ombudsman shall have an opportunity to be heard in preliminary investigation of an act as referred to in subsection 1 above. The public prosecutor shall provide the cooperation ombudsman with an opportunity to give a statement before the consideration of charges is completed. When the case is handled in court, the cooperation ombudsman has the right to be present and speak.</p> <p>Section 8 - Conditional fine</p> <p>The cooperation ombudsman may require that the court obliges the employer or enterprise to meet their obligations within a time limit and that it imposes a conditional fine in order to encourage compliance with the obligation in question, if it is apparent that the undertaking or employer has failed to comply with the obligations as referred to in the Act on Co-operation within Finnish and Community-wide Groups of Undertakings (335/2007) (in up-and-coming legislation)</p> <p>Link to the law: https://www.finlex.fi/en/laki/kaannokset/2010/20100216</p>		
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2. Litigation on different sets of rights: presence of national provisions

		No	Yes	Which authority (e.g., court) is competent ²
A	Breaches against the provision of information to the SNB as per art. 4 (4) of Directive 2009/38/EC (information on the number of employees)/Failure to establish a SNB		Yes (Art. 18 of the EWC act)	

² Material and geographical competence.



B	Operation of the EWC: breaches and compliance with the law (statutes), agreement or Subsidiary Requirements		Yes, but only Partially: 1. no specific reference to the general principle that information and consultation must be effective and enable companies to take decisions effectively	
C	Challenging management on the use of confidentiality and secrecy/withholding information)	No		
E	Individual rights of the SNB/EWC members under national EWC legislation	No / unclear	Yes, the same as above, also applies to individual SNB/EWC members as presented in the law.	
F	(Others to be filled in)			

3. Capacity to act in court

		Brief explanation/ differences for 2A-2F above)
1	Who/which body can start a judicial procedure?	Only individual EWC members ³ / only the signatories to EWC agreements individually can go to court in the event of a dispute ⁴ . In consequence, in practice various types of EWCs might have differing capacities: EWCs established pursuant to the subsidiary requirements in view of the absence of an agreement, whose signatories could be recognised as having the right to approach courts collectively, whereas in case of EWCs established by agreement only the signing individuals could be eligible (??)
2	What legal status (ius standi) is a requirement to start a judicial procedure? (legal personality, capacity to act in courts, other forms?)	1) going to the Cooperation Ombudsman in order to get him/her to act or 2) the EWC/SNB goes to the police itself and makes a report of offence
3	What is the legal status of the EWC (legal personality or other capacity to act in court)?	EWC has no collective legal capacity, i.e., the EWC has no legal personality in Finland.
4	In case of lacking capacity to act in court: how can it be	The circumvention is done through the criminal proceedings, where any natural person can report an

³ Cf European Commission 2018 (34) which claims that “EWCs can be party in court proceedings”.

⁴ Büggel (2002) argues that it is not possible to ascertain whether (and if so what kind of) a distinction and difference in legal status exists between the judicial assertion of claims under Article 13 and Article 6 agreements. Büggel draws the conclusion that ‘The supplementary provisions of the implementing legislation indicate that in the case of an Article 13 agreement only individual EWC members can take legal action’.



	circumvented (think of representation by trade unions)?	offence, but which is usually done by the trade union actors on behalf of the EWC or SNB. Also, an individual EWC/SNB rep can issue the report to the police. Or to the Cooperation Ombudsman, for that matter.
5	Who represents the EWC in law?	EWC/SNB members as individuals. Or the trade union officials, also as individuals, per se. But if the police take the case forward and the public prosecutor prosecutes, the it's him/her that will represent the EWC also.
6	What is the capacity to act in court of joint type ('forum' or French-type) EWCs composed of both management and employees' representatives and can it be an obstacle?	No mention, but the general understanding is, that it will not be an obstacle.

4. Starting a procedure and timelines

		Brief explanation
	Which court is competent?	<p>In Finland civil actions are handled by general courts. Special courts are generally either appellate instances or else they hear cases other than those brought by individual citizens.⁵</p> <p>In civil actions (but not in non-contentious proceedings) the interested parties can, subject to certain conditions, choose a court other than the normally competent court (court of first instance).</p> <p>The right of consumers, employees or individuals claiming or receiving maintenance to file actions with the court indicated by the Code of Judicial Procedure (oikeudenkäymiskaari) cannot be restricted by agreements conferring jurisdiction except in cases where such agreements are made after the dispute arose.</p> <p>Agreements conferring jurisdiction must be made in writing, and they can be limited to a specific dispute or cover any subsequent disputes arising from a specific legal relationship.</p>
1	Does the law set conditions as to how the EWC can take a valid decision on entering a judicial procedure? Think of voting, quorum, the necessity of a physical meeting to take a decision,...	No

⁵ https://e-justice.europa.eu/85/EN/which_country_s_court_is_responsible?FINLAND&member=1



1.a	Does the law contain any requirements on the internal rules concerning question 1?	No
2	How does one file a case in court? (Who, format, steps)	First, a claimant needs to notify the police about a breach of law. So, it's all about a criminal procedure. The case can be first taken to the Co-operation Ombudsman, as mentioned above, but also the EWC can file the report of offence at any stage (as it turned out in August this year), so they don't have to wait for Ombudsman's decision. There is no appeal procedure to Ombudsman's decision if he/she decides not to go forward and the crime easily expires with the police.
3	What is the deadline to start a judicial procedure?	The time during which the prosecutor needs to prosecute is two (2) years after the actual criminal activity. So, things need to move forward quite quickly.
4	Are there other relevant deadlines in the judicial procedure?	No
5	What is the role of out of court settlements once a case has been filed?	One could argue that the Co-operation Ombudsman has one, but he doesn't, not in reality. (S)he can only decide whether to go forward with the police report or not.
6	How long does a judicial procedure typically take?	between 6 months and 1 year in the first instance; up to 3 years for appeal proceedings. ⁶ In normal civil cases yes., but with criminal proceedings it's usually quicker.
7	Is an injunction or a summary procedure possible?	Maybe the above-mentioned issuance of an improvement notice can be regarded as one. Or the up-and-coming legislation on Conditional fine.

5. Costs

		Brief explanation
1	What are the court fees for a judicial procedure?	Usually none, since this is regarded as criminal procedure, i.e., crime against the state.
2	Is legal representation by a lawyer required in a judicial procedure?	No requirement to be represented by a lawyer in criminal court hearings nor with the Co-operation Ombudsman but can help with the case.
3	Who pays the costs for:	Just a general statement on coverage of costs (cf the European Commission 2018: 58 that claims EWCs have no financial means/guarantees in court cases)
	- Legal expert	Limited to one
	- Court fees	
	- Other costs (travel/interpretation)	

⁶ Buggel 2002.



4	Does a EWC normally have an independent budget and/or an own bank account under a given national legislation?	No
5	Can the EWC be sentenced to pay the costs of the other party in the judicial procedure?	No, since EWCs are no legal entities in Finland.
6	Can the EWC <i>members</i> be sentenced to pay the costs of the other party in the judicial procedure?	No, since criminal proceedings.

6. Sanctions

		Brief explanation
	How is a breach of law classified?	Administrative offence
1	What are the sanctions for breaches of EWC laws?	Fine. Max. 30 000 EUR ⁷
2	Can the court rule to stop or reverse the companies' decision-making?	Not really; if not the Ombudsman's actions can be regarded as such.
3	Whom should fines be paid to?	The State.
4	Can a member of management be held personally liable (personal vs. corporate liability)	Yes, the law stipulates: "Any member central management, controlled undertaking or a functional unit thereof..."
5	Can individual EWC members be sentenced to pay fines or be subject to other sanctions?	Yes, in confidentiality cases ⁸
6	Can the EWC collectively be sentenced to pay fines or be subject to other sanctions?	No.

7. Out of court settlements

		Brief explanation
1.	In general, are alternative conflict resolutions available in a given country can out of court settlements be reached once a case has been filed?	Unclear: the European Commission 2018 (p.58) claims that no ADR for EWCs exists in Finland. However, another source on ADR in civil matters stipulates extensively: Alternative dispute resolution mechanisms available in Finland include: 1. Arbitration;

⁷ European Commission 2018 (18): "The Commission has received only one formal complaint on the implementation of the Recast Directive. This related to the level of sanctions in Finland."

⁸ Section 38 of the Penal Code <https://www.finlex.fi/fi/laki/ajantasa/1889/18890039001#L38> : "Secrecy offence. In breach of the obligation of professional secrecy laid down by each law or regulation or by a public authority pursuant to the law (1) disclose a confidential matter on which he has been informed in his position, post or in the performance of his duties; (2) use such a secret for his own benefit or for the benefit of another; shall be sentenced, unless the offence is punishable under section 5 of chapter 40, from an offence of professional secrecy to a fine or imprisonment for a maximum period of one year."



<p>Does it happen in practice?</p>	<p>2. Mediation and conciliation, either through private mediation services, court mediation in civil matters or conciliation in criminal matters;</p> <p>Arbitration is often preferred in cases of commercial disputes. The main centre for domestic and international arbitration is the Arbitration Institute of the Finnish Chambers of Commerce. The procedure for arbitration is defined in details in accordance with UNCITRAL rules and arbitrators are often highly specialized. Arbitral awards are final (non-appealable in general courts), binding and enforceable immediately, which allows for a faster resolution of disputes than the one offered by the court system. Finnish copyright law explicitly provides for arbitration in certain types of copyright disputes, but these disputes are not very common. Mediation and conciliation are procedures whereby a mediator assists those involved in a dispute to reach an agreement which is later sanctioned by courts. It is available in Finland on a voluntary basis in civil and some criminal cases. Private mediation services are available, but courts also offer mediation services under certain circumstances. The course of the procedure is not regulated by legislation and can be arranged to fit the circumstances of each case. The mediation process can be informal but the mediation must proceed equitably and impartially. Successful mediation results in settlements that can be rendered enforceable by a court decision. The process is therefore likely to be less adversarial than regular court procedures.⁹</p> <p>Three types of arbitration procedures are available:</p> <p>1 (Regular) arbitration: the normal procedure for every case where the parties have agreed to submit their disputes to arbitration under the rules of the Arbitration Institute. The Rules stipulate a sole arbitrator unless the parties agree otherwise. If the board of the Institute considers it appropriate, the number of arbitrators may nevertheless be three.</p> <p>2 Expedited arbitration: expedited arbitration is designed for a speedy resolution of minor</p>
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https://www.cupore.fi/images/tiedostot/pilottitutkimusraportit/pilotreport_ds10_availabilityofalternativedisputeresolutionmechanisms.pdf



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		<p>disputes (less complex, with a smaller amount in dispute) by a sole arbitrator.</p> <p>3 Ad-hoc arbitration: in cases where parties agree that the Arbitration Institute appoints the arbitral tribunal but the arbitration is not governed by the Arbitration Rules of the Finland Chamber of Commerce. In these cases, the arbitration proceedings are governed solely by the Finnish Arbitration Act (967/1992). Arbitration awards are final (non-appealable in general courts)¹⁴, binding and enforceable immediately. Thanks to the New York Convention of 1958, arbitral awards can be enforced in most countries.</p> <p>Mediation Mediation is an alternative for settling and resolving cases arising from offences and disputes, whereby a mediator assists those involved in a dispute to reach an agreement. In Finnish law, the term "mediation" (sovittelu) broadly refers to any instance in which a third party helps others reach an agreement, including in certain cases resulting from offences. Conciliation is a type of mediation involving parties seldom meeting face-to-face, more suitable for criminal cases.</p> <p>.</p> <p>There are several types of mediation methods available in Finland. The Finnish Bar Association provides private mediation services. Alternatively, if the parties wish, they may utilize publicly provided court mediation in some cases of civil disputes or criminal offences. Furthermore, a judge dealing with any civil and commercial matter has a duty to determine whether there are possibilities for settlement.¹⁰</p> <p>COURT MEDIATION In general courts a special mediation is used in all kinds of civil disputes, which is regulated in the Act on Conciliation in Civil Disputes in General Courts. The preconditions for court-annexed mediation (Suomen asianajaliitto) are: - that the matter is amenable to mediation: civil cases, other than those involving claims for</p>
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¹⁰ Oikeudenkäymiskaari [Code of Judicial Procedure], Act No. 4/1734, ch. 5, § 19, amended by Act No. 1052/1991 (Fin.), available at <http://www.finlex.fi/en/laki/kaannokset/1734/en17340004.pdf>. Sections 19 and 22. Visited on 19.6.2014.



	<p>damages based on a crime, may be referred to mediation only if the dispute is of a minor nature, taking into account the subject and the claims put forward in the case.</p> <ul style="list-style-type: none"> - that the mediation is appropriate in view of the claims of the parties - that the parties have personally and voluntarily expressed their agreement to conciliation, <p>whether the matter is already pending before the court (but before the preparation of the case has been concluded) or not.</p> <p>After receiving an initiative for mediation, the mediation offices evaluate the suitability of the case for mediation and find out the willingness of the parties to use mediation¹¹</p>
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8. Resources for EWCs

		Brief explanation
1.	Can unions provide legal support or financing for litigation?	Typically yes, they do, by representing EWCs/works councils in courts via trade Union lawyers, mainly. Very good co-operation is happening across the trade union borders in all cases to do with EWCs.
2.	What other resources are available in terms of legal support to EWCs and/or EWC members in your country (e.g., Arbeiterkammer, legal support centres)	

¹¹

https://www.cupore.fi/images/tiedostot/pilottitutkimusraportit/pilotreport_ds10_availabilityofalternativedisputeresolutionmechanisms.pdf page 11.

