

FINLAND

Laura Sainio, Anniina Järvinen, Tero Pikkarainen,
Johanna Vanninen & Annika Schauman
Hannes Snellman Attorneys

This chapter forms part of:

ENVIRONMENTAL, SOCIAL & GOVERNANCE
Law Over Borders Comparative Guide 2023

www.globallegalpost.com/lawoverborders

1. How is “ESG” in Finland defined in a corporate/commercial context, and what are its major elements?

There is not one exhaustive definition of the term “ESG” under Finnish law. However, simply put, ESG refers to environmental, social, and governance aspects of sustainability, and in Finland, ESG is generally defined as corporate responsibility.

The Consumers’ Union of Finland, for example, defines corporate social responsibility as advancing sustainable development in companies, which includes, *inter alia*, that the company’s operations are reliable, economical, socially acceptable, and respectful towards the environment. Furthermore, socially responsible businesses respect human rights, evaluate their environmental impact, report on, and are open about, their operations. These principles are also applied to companies’ subcontractors and cooperation partners.

Although corporate responsibility in Finland is not a new phenomenon as such, Finnish companies’ ESG-related strategies and core operations are still developing and going through a turning point. Currently, many companies in Finland are evaluating the new interfaces and requirements of corporate responsibility and how to better incorporate ESG into their businesses. At the same time, corporate responsibility in Finland is becoming more regulated.

From a company law perspective, the purpose of a company is to generate profit to its shareholders, unless otherwise provided in the company’s articles of association (the Companies Act 624/2006). While ESG considerations are not explicitly mentioned as part of the purpose of a company under the Companies Act, the related preparatory works (Government Bill 109/2005) indicate that the generation of profit in the long term and the increase of the value of the company’s shares often require companies to operate in a socially acceptable way, even when not required to do so by mandatory law.

2. What, if any, are the major laws/regulations in Finland specifically related to ESG?

National legislative initiative on corporate responsibility

Even though there are several laws in Finland relating to various ESG themes, there is currently no specific legislation or regulation in Finland regarding corporate responsibility. The Finnish Government has, however, been considering enacting such law. The aim of the new legislation would have been to lay down provisions on companies’ due diligence obligations with regard to any adverse effects on human rights and the environment in their business operations. In this respect, in March 2022, the Finnish Ministry of Economic Affairs and Employment published a memorandum investigating the potential due diligence obligations that could apply to Finnish companies. The memorandum assessed in more detail the legislative options for meeting the due diligence obligations, the effect of the obligations on human rights, the environment, and companies, as well as the conditions for implementing the legislation. However, the memorandum did not include concrete regulatory proposals on, for example, the scope of companies that would be subject to the legislation. Instead, it presented alternative legislative solutions, such as different options for the scope of the obligation.

At the moment, it is expected that the national legislative initiative on corporate responsibility will not progress while the European Union's proposal for a directive on corporate sustainability due diligence is simultaneously being prepared.

In terms of ESG reporting, listed companies, credit institutions, and insurance companies that employ more than 500 employees on average are, pursuant to the Accounting Act (1336/1997), required to prepare a statement of non-financial information. The statement must include information regarding how the reporting entity handles:

- environmental matters;
- social and employee-related matters;
- respect for human rights; and
- anti-corruption and bribery matters.

The statement relates to the national implementation of the EU Directive on Non-Financial Reporting (2014/95/EU) and is expected to be amended in line with the adoption and national implementation of the EU Directive on Corporate Sustainability Reporting (CSRD).

Financial and insurance markets

In the context of financial and insurance markets, Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment (the Taxonomy Regulation), which aims to create uniform criteria for sustainable investments, applies to certain issuers and financial market participants. In addition, entities such as asset managers, investment firms, insurance companies, and credit institutions are also subject to Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (the Sustainable Finance Disclosure Regulation) and related regulations and guidelines. The ESG amendments in the EU Directive on Markets in Financial Instruments (2014/65/EU) (MiFID II) regarding sustainability preferences apply to banks and investment firms that manufacture and distribute financial products. Moreover, from 22 November 2022, sustainability objectives and factors have to be integrated into financial product governance. The Finnish Financial Supervisory Authority (FIN-FSA) supervises financial market participants' and issuers' compliance with the Taxonomy Regulation, the Sustainable Finance Disclosure Regulation, and the MiFID II ESG amendments, and has also issued some local regulatory guidance on these issues. In terms of financial and insurance market supervision, climate change-related risks and effects on the financial sector are one of the FIN-FSA's strategic priorities, and the regulator has also expressed the aim to place an emphasis on the supervision of responsible investments reporting in the future.

3. What other laws/regulations in Finland touch on ESG themes?

Environmental

The most important piece of environmental legislation is the Environmental Protection Act (527/2014), pursuant to which companies must organise their operations in such a way that environmental pollution can be prevented in advance, and if it cannot be fully prevented, it must be limited to the lowest level possible.

Other major laws regarding environmental needs are, for example, the Nature Conservation Act (1096/1996), the Act on Environmental Impact Assessment Procedure (468/1994), the Waste Act (646/2011), the Chemicals Act (599/2013), the Forest Act (1093/1996), the Water Act (587/2011), and the Mining Act (621/2011). Additionally, the Finnish Land Use and Building Act (132/1999) is undergoing a reform process focusing on improving the effectiveness of the legislation towards climate change mitigation through, *inter alia*, proposing more extensive requirements for reducing the climate effect of buildings.

The Finnish Government supports sustainable industries by means of several regulations, such as the Act on Production Subsidy for Electricity Produced from Renewable Energy Sources (1396/2010) and the Government Decree on Granting Aid to Businesses for the Promotion of the Circular Economy and Sustainable Green Growth (1197/2020). The new Climate Change Act (423/2022), which entered into force on 1 July 2022, makes it possible to initiate legal proceedings against the Finnish Government on the basis that the Government's climate plans are deemed insufficient. Furthermore, the Act sets new climate targets and lays down provisions on the national climate change policy plans.

Social

There are a number of laws related to the social component of ESG. The most essential piece of this type of legislation is perhaps the Occupational Safety and Health Act (738/2002). The aim of this act is to improve the working environment and working conditions to protect and maintain employees' ability to work, and to prevent occupational accidents, diseases and other work-related health risks. In addition, the Non-Discrimination Act (1325/2014), the Act on Equality between Women and Men (609/1986), and the Consumer Safety Act (920/2011) are other significant examples of Finnish laws related to social issues.

Governance

There are also a number of regulations, often based on EU directives, addressing corporate governance issues.

Such regulations include, for example, the Accounting Act (1336/1997) (see also Question 6 below), which relates to sustainability reporting. Also, pursuant to the Securities Market Act (746/2012), listed companies must prepare a corporate governance statement to be either included in the issuer's board report or issued as a separate statement. Publication of the corporate governance statement increases transparency relating to good corporate governance practices. As a result of the national implementation of the EU Directive on Non-Financial Reporting, the corporate governance statement must include, among other things, a description of the principles concerning the diversity of the board of directors (including factors such as age, gender, and occupational and educational background). Other legislation concerning the "G" aspect of ESG includes, for example, the Act on Preventing Money Laundering and Terrorist Financing (444/2017), which aims to prevent money laundering and terrorist financing, promote their detection and investigation, and reinforce the tracing and recovery of the proceeds of crime.

Antitrust laws and sustainability

With regard to the relationship between antitrust laws and sustainability issues, the Finnish Competition and Consumer Authority (FCCA) has yet to issue any further guidance or decisions. The FCCA is expected to carefully follow the European Commission's approach to sustainability arguments in competition law analysis. However, the FCCA's final approach remains to be seen.

Financial and insurance markets

Apart from the Sustainable Finance Disclosure Regulation, the Taxonomy Regulation, and MiFID ESG amendments, the financial and insurance sector is generally not subject to any national ESG legislation. However, for example, certain Finnish insurers are required by law to invest pension funds profitably and securely, which can be interpreted to mean, among other things, also investing in environmentally sustainable targets. In addition, entities subject to the Act on Supplementary Pension Funds and Supplementary Pension Foundations (947/2021) are obliged to take environmental, social, and governance factors into account in their operations. Social themes, in turn, can be seen to be present in, for example, a currently pending legislative proposal that aims to restrain the indebtedness of Finnish households.

4. What, if any, litigation or enforcement activity has Finland seen related to ESG?

The first climate change case has been filed by Greenpeace against the Finnish government on an administrative law question in relation to the government's climate report on 28 November 2022. Otherwise there is currently no public litigation or enforcement activity relating specifically to ESG in Finland.

With respect to the prevention of greenwashing, the Finnish Consumer Ombudsman has issued guidelines on marketing statements that relate to the environmental effects of a product (1992, revised in 2001 and 2019).

5. What are the major non-law/regulatory drivers of ESG trends and developments in Finland?

Soft non-binding laws

Many larger Finnish companies have publicly stated their commitment to the UN Sustainable Development Goals or other non-binding international frameworks and seek to implement such goals in their strategy, policies, and procedures.

Several organisations, such as asset managers and private equity fund managers, have voluntarily committed to certain soft law principles, such as the United Nations' Principles for Responsible Investing (UN PRI), and many investors require that, for instance, fund managers take these principles into account in their operations.

Stakeholders

The Finnish Government, as well as institutional and other investors in listed companies, are some of the key stakeholders in engaging in ESG-related matters and promoting ESG aspects on companies' agenda. Pursuant to the Programme

of the Finnish Prime Minister Sanna Marin's Government, dated 10 December 2019, the Finnish Government aims to transform Finland into a socially, economically, and ecologically sustainable society by 2030. Also, pursuant to the Government resolution on the state ownership policy, dated 8 April 2020, all state-owned companies must base their operations on corporate social responsibility. In their decision-making, companies must take into account not only economic factors, but also the social, regional, and environmental impact of their activities.

Even though institutional investors are not subject to legislation imposing ESG-related requirements on their investments, some have implemented a responsible investment strategy or policy and committed to different initiatives that support responsible investing, such as the UN PRI. Consequently, certain institutional investors have stated that they emphasise ESG factors in their investments and exclude from their investments companies acting in certain industries, such as tobacco or controversial weapons, or companies whose activities are in breach of international standards. After the war in Ukraine started, many companies have also ceased their businesses in Russia due to ethical reasons and public pressure. Also, several institutional investors require specific ESG reporting from fund managers, which requires the fund managers to put in place ESG-related policies and measures for promoting and following up on ESG-related questions in their portfolio.

In particular, foreign institutional investors that have invested in Finnish public companies may rely on the ESG-related recommendations given by proxy advisors, such as the Institutional Shareholder Services group of companies (ISS). For example, the latest international sustainability proxy voting guidelines, published by ISS on 17 January 2023, also concern Finland and, among other things, include recommendations to generally vote in favour of social and environmental proposals that seek to promote good corporate citizenship while enhancing long-term shareholder and stakeholder value. In addition to institutional investors, certain non-governmental organisations are also active in promoting ESG targets, and there have been examples of NGOs proposing to include ESG-related targets in listed companies' articles of association.

Also, based on a study issued by Finance Finland in 2022, interest in green and sustainability-linked financing (e.g., loans and bonds) has grown generally in the market, and Finnish retail investors are increasingly interested in the sustainability of their investments and take, for example, possible effects on the climate into account when making investment decisions. Although there is interest in responsible investing, many investors find it difficult to assess the climate impact of their investments and companies in the financial sector work hard to make the sustainability features of investment products easier for retail investors to understand.

National Contact Points (NCPs)

The Committee on Corporate Social Responsibility of the Ministry of Economic Affairs and Employment acts as the Finnish National Contact Point for the effective implementation of the OECD Guidelines for Multinational Enterprises together with the Ministry of Economic Affairs and Employment.

The Ministry is responsible for the corporate social responsibility in the Finnish Government. Furthermore, the Committee functions in pursuit of a stronger national and international social responsibility policy, and economically, socially, and ecologically responsible operation and production methods among enterprises and other organisations.

6. Are the laws, regulations and obligations highlighted in Question 2 primarily related to corporate disclosure?

The requirements included in the Accounting Act relate to corporate disclosure concerning ESG aspects by means of the publication of a statement of non-financial information. In the statement, companies must describe their operating model and the principles that the company applies in managing its environmental matters, social and employee-related matters, human rights-related matters, and anti-corruption and anti-bribery matters, as well as the outcome of those principles. In relation to those, the company must also disclose the principal risks that are relevant considering the scope and extent of the company's operations, business relationships, products and services, and how the company manages those risks. In addition, the company must also disclose the non-financial key performance indicators that are relevant to its business. The statement of non-financial information must be included in the company's board report or issued as a separate statement and published annually for each financial period.

In the reporting, many large and listed companies use the international Global Reporting Initiative (GRI) Standards.

In the financial and insurance sector, the disclosure obligations consist of both outcome-based disclosures, such as the TCFD-based reporting framework established by Finance Finland, and processes for measuring outputs, for example, the forthcoming regulatory technical standards under the Sustainable Finance Disclosure Regulation.

7. Which sectors are most impacted by ESG in Finland? How significant is ESG investment in Finland?

Private equity

Private equity fund managers are impacted by ESG through the Sustainable Finance Disclosure Regulation and the Taxonomy Regulation, which require these actors to consider and disclose ESG-related matters in their operations and when marketing their products to fund investors. The Finnish Venture Capital Association has also taken an active role in promoting awareness and measures to be taken in connection with said regulation within the private equity field in Finland. Fund managers also see an increased interest from their investors in receiving information and reporting in relation to ESG-related measures, events and policies of the funds and their underlying portfolio companies. ESG due diligence is also becoming an increasingly important element of the investment processes of private equity fund managers.

Hedge funds/asset managers

Similarly to private equity fund managers, hedge fund managers and asset managers are also impacted by ESG in Finland through the Sustainable Finance Disclosure Regulation and the Taxonomy Regulation. Several asset managers are emphasising ESG in their investment operations, for example, through employing personnel focusing on ESG analysis in relation to the investment activities and by requesting their investment targets to report certain ESG-related information, for example, in connection with the due diligence process. Our understanding is that asset managers are integrating ESG in their operations more actively as a result of both the general trends of focusing on ESG and increased interest from their clients.

Banks

In addition to being subject to the Sustainable Finance Disclosure Regulation and the Taxonomy Regulation, banks are placing more and more emphasis on considering ESG-related risks in their lending operations due to, among other things, the FIN-FSA's requirement for the entities supervised by it to consider the risks and effects deriving from climate change in their operations. Banks are also increasingly providing financing specifically for sustainable purposes: for example, certain banks provide corporate loans and consumer loans that are labelled as 'green' due to being used for financing acquisitions, investments, or projects with an environmentally friendly impact. Furthermore, sustainability-linked financing products (such as loans and bonds) are increasingly offered by banks.

8. What are the trends in Finland regarding ESG governance?

ESG-related considerations are subject to increasing attention, especially among listed companies that are already subject to ESG-related reporting requirements and public scrutiny. ESG matters are common on the agendas of the boards of directors of listed companies and usually considered by the entire board instead of specially appointed committees. The implementation of the contemplated EU Directive on Corporate Sustainability Due Diligence will likely further increase the duties of boards of directors and the need to discuss and monitor the relevant ESG matters by companies' boards of directors. We have also seen a significant increase in ESG-specific roles in listed companies and the financial services sector, as companies aim to prepare for the demands of the future regulations and challenges and opportunities relating to their operating environment.

9. To what extent are ESG ratings or ESG benchmarks relied upon in Finland?

ESG rating agencies

ESG ratings are commonly used by institutional investors and fund managers as part of investment decision-making and assessing the sustainability of investments. Certain Finnish companies also utilise ESG ratings in describing

the ESG characteristics of their business and operations to their investors. Sustainalytics, MSCI, and ISS ESG are commonly used ESG rating providers in Finland. Certain financial market actors have also provided their retail investor customers with access to ESG rating data.

10. What is the role of the private markets versus public markets in driving ESG developments in Finland?

Private companies

As one example of private company-related developments in ESG reporting, the Nordic Accountant Federation (NAF), consisting of three accounting organizations in Finland, Sweden, and Norway, issued its own reporting standard in 2021, the Nordic Sustainability Reporting Standard (NSRS), which is targeted towards small and medium enterprises (SMEs) in the Nordic region and aims to support SMEs in their sustainability reporting practices.

Public companies

Many public companies have emphasised ESG considerations in their operations and seek to take ESG-related issues and risks into account in their risk mapping and risk mitigation, transactional due diligence, and commercial decision-making, in preparation for the contemplated EU Directive on Corporate Sustainability Due Diligence. In addition, many large companies regularly publish sustainability reports and, as mentioned earlier in Questions 2 and 6, certain entities are required by law to report on certain ESG-related topics. It can also be expected that public companies will want to align with ESG demands from institutional and other shareholders referred to above in the Stakeholders section of Question 5.

Nasdaq stock exchanges in the Nordic countries, including Finland, are also promoting a Green Equity Designation to listed companies. The designation would be available for companies that have over 50% of their turnover derived from activities considered green and continue to invest a significant share in green activities. Obtaining the designation would require concluding an application process with an assessment by an approved reviewer, which are currently CICERO Shades of Green and Moody's ESG Solutions.

Government-owned organizations

As mentioned above in Question 5, pursuant to the Government resolution on the state ownership policy, dated 8 April 2020, all state-owned companies must base their operations on corporate social responsibility and take into account in their decision-making not only the economic factors, but also the social, regional, and environmental impact of their activities. In addition, in summer 2022, the Finnish Government proposed amendments to the Act on Public Procurement and Concession Contract, with the aim to increase the consideration of environmental aspects and corporate responsibility in public procurement. For example, serious environmental offences would be considered grounds for exclusion from procurement for candidates, tenderers, and subcontractors.

11. What are the major challenges in terms of compliance for companies under ESG obligations?

In the financial and insurance sector, the major challenges can be seen to relate to ensuring comparability between ESG data generated under different frameworks and by different data providers. This imposes challenges in assessing the ESG impacts of investments. For example, comparing different sustainability-linked and green financing products may be challenging when the company-specific green financing frameworks include different parameters to be monitored.

For asset managers and investors, some challenges are also posed by differing ESG reporting standards and formats, which makes comparability between target companies and funds more difficult. On the other hand, institutional investors also impose varying requirements in respect of ESG reporting, which might be deemed burdensome, in particular by fund managers.

12. What information sources are most relevant for ESG considerations in Finland?

The Ministry of Economic Affairs and Employment is responsible for corporate social responsibility (CSR) issues in the Finnish Government. CSR-related issues are also dealt with by the Ministry for Foreign Affairs (external economic relations, development policy), the Prime Minister's Office (State's ownership policy, sustainable development), and the Ministry of the Environment (environmental responsibility). Ministries coordinate their efforts and discuss them with stakeholders. CSR issues are also dealt with by the Committee on CSR, which works under the Ministry of Economic Affairs and Employment.

With regard to NGOs, Finnwatch seeks to promote ecologically, socially, and economically responsible business conduct by influencing companies, economic regulation, and public discourse. In addition, the Finnish Corporate Responsibility Law Association was established in 2020. The purpose of the association is to organise events, publish writings, and promote dialogue related to social responsibility.

In the financial and insurance sector, industry associations such as the Finnish Venture Capital Association and Finance Finland provide guidance to their members in ESG and sustainability issues. Finland's Sustainable Investment Forum (Finsif) serves as a platform for sharing knowledge and facilitating the integration of sustainability factors in investment decisions. In addition, certain institutional investors also employ private measurement frameworks such as the Task Force on Climate-related Financial Disclosures and the Carbon Disclosure Project.

13. Has Finland developed a Taxonomy related to ESG?

Apart from the EU Taxonomy framework, there is no national Finnish taxonomy.

14. What does the future hold for ESG in Finland?

As mentioned above in Question 2, it is expected that the national legislative initiative on corporate responsibility will not progress while the EU proposal for the EU Directive on Corporate Sustainability Due Diligence is simultaneously being prepared. As the contemplated EU Directive would be implemented in the national legislation and, as the political pressure is growing, it is anticipated that ESG in Finland will become more regulated in the future. Despite Finnish companies' strong commitment to the respect of human rights, the monitoring systems of complying with different fields of ESG are still insufficient and will likely be enhanced.

AUTHOR BIOGRAPHIES



Laura Sainio

Laura Sainio is an Associate in Hannes Snellman's Competition and Regulatory team in Helsinki. Laura advises domestic and international clients in a wide range of competition law matters, including antitrust, merger control, compliance, ESG, state aid, litigation, and investigation matters. Laura graduated from the University of Turku in 2018 and joined Hannes Snellman the same year. Prior to graduation, Laura gained experience at other international business law firms. Laura is a member of the Finnish Bar Association, the Finnish Competition Law Association and the International Association of Young Lawyers.



Anniina Järvinen

Anniina Järvinen is a Partner on Hannes Snellman's M&A team in Helsinki. She specialises in corporate and securities market law. Anniina has extensive experience in advising clients, *inter alia*, in relation to general corporate governance and capital markets matters. Anniina graduated from the University of Helsinki in 2012 as LL.M. and joined Hannes Snellman the same year. Prior to joining Hannes Snellman, Anniina worked for the Finnish Financial Supervisory Authority in the conduct of business supervision department. She has also worked at an international law firm in London.



Tero Pikkarainen

Tero Pikkarainen is an Associate on Hannes Snellman's M&A team in Helsinki. Tero advises clients on mergers and acquisitions, as well as general corporate, commercial, and contract law.



Johanna Vanninen

Johanna Vanninen is an Associate on Hannes Snellman's Dispute Resolution team in Helsinki. Johanna specialises in dispute resolution, advising clients mainly in the field of general contract law disputes, and assisting in advocating commercial cases before state courts and arbitral tribunals. She is a member of Young Arbitration Club Finland, as well as The Law Society of Finland. Johanna gained her Master of Laws degree from the University of Helsinki, having also spent a semester as a visiting student at LUISS Guido Carli University in Rome, Italy.

Continued on the next page.

Continued from the previous page.



Annika Schauman

Annika Schauman is a Managing Associate in Hannes Snellman's M&A team in Helsinki. Annika advises clients in the field of domestic and cross-border mergers and acquisitions and, in particular, private equity transactions, and she also offers corporate, commercial, and contract law advice. Annika has several years' experience in leverage finance, business strategy, and board work. Annika worked as an associate at EQT Partners in Stockholm and Helsinki in 2014–2018, and before that, she gained experience as an analyst at Access Partners in Stockholm and Helsinki and as an analyst trainee at J.P. Morgan Chase Investment Bank in London. Annika is a member of the Finnish Bar Association.