PUNITIVE LIABILITY
OF HEADS OF BUSINESS
IN THE EU:
A COMPARATIVE STUDY

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FINLAND NATIONAL REPORT

Prof. Raimo Lahti
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6.2.3. Right to silence of the head of business in proceedings against the legal person.

1. Introduction

1.1. Debate on the implementation of Art. 3 of the PIF Convention

When the 1995 Convention on the protection of European communities' financial interests was nationally implemented in Finland in 1998, no specific provision on the liability of heads of business was introduced. In the Government Proposal, it was stated that the Convention did not require a more extensive liability for the liability of heads of business than what was valid law in Finland: the provisions on complicity in Chapter 5 of the Criminal (Penal) Code (CC) should also be applied in relation to the heads of business.¹

The statement of the Government Proposal was deficient, because the doctrine and case law applicable to the liability of the directors of corporations were not restricted to the use of complicity provisions but were developed into principles and rules of sui generis (see below). In 1995, two such partial revisions of the Criminal Code were carried out as part of the total reform of the Code, and both were significant for the doctrine on the liability of heads of business. Firstly, corporate criminal liability was introduced by the enactment of Chapter 9 of the Criminal Code (Act No. 743/1995; cited in Appendix 1). Secondly, the criminal liability within legal persons—i.e. the principles governing the allocation of individual criminal responsibility, especially the liability of heads of business—was partly regulated in 1995 (Act No. 578/1995), when special provisions on such liability were given for labour and environmental offences (CC 47:7; 48:7).

Considerations relating to procedural safeguards were not involved in the national implementation of the 1995 Convention.

¹ Government Proposal 45/1998, 13. At that time, the provisions on complicity were in force according to their original content in the Penal Code of 1889.
1.2. Debate on corporate criminal liability

The legislative works for drafting the partial revisions of the Criminal Code in 1995 and for the total reform of the Code mentioned above (Part 1.1) illustrate the policy debate.

Economic criminality became a source of concern for the authorities for the first time in the late 1970s. At that time, tax fraud was regarded as the most common economic crime. It was estimated that tax fraud led to a 5–10 per cent reduction in the collection of taxes. In 1980, the Ministry of Justice established a broad-based project organisation to prepare a proposal for a total reform of the Criminal Code of 1889 (39/1889). The goal was to give the highest priority to reassessment of the provisions on economic crime. Two years later, the Ministry of Justice established a separate working party to examine the factual phenomena of economic crime as well as the material legislation and control machinery on economic crime; the working group was also entitled to make proposals for the improvement of the prevention, supervision and investigation of economic crime.

These preparations led to various government measures to tighten control of economic crime. On the level of legislation, the most important action was the revision of provisions on economic crime in gradual stages of the total reform of the Criminal Code in the 1990s (1990, 1995 and 1999).² For instance, completely new provisions on subsidy offences and business offences were incorporated into Chapters 29 and 30 of the revised Criminal Code in 1990 (769/1990). A major legislative reform dealt with the introduction of corporate criminal liability in 1995 (in Chapter 9 of the Criminal Code: 743/1995), as well as provisions of labour and environmental offences (Chapters 47 and 48 of the Criminal Code: 578/1995). New clarifying provisions were also enacted on the individual criminal responsibility of directors in a corporate body in Chapters 47 and 48 of the Code (CC 47:7; 48:7).

According to the Finnish Criminal Code, a corporation may be sentenced to a corporate fine for certain enumerated, mostly economic offences. The main reasons for the introduction of this type of corporate liability, as expressed in the legislative drafts, can be summarised in the following way: the social significance

² An unofficial English translation of the Criminal (Penal) Code, as it was in force in 2015 (766/2015), is available at the website of the Ministry of Justice: https://www.finlex.fi/fi/laki/kaannokset/1889/ en18890039_20150766.pdf.
of corporate activity; the accumulation of actions and default; the lack of proportionality between offences and punishment; the difficulties in allocating individual criminal responsibility; the transfer of responsibility in hierarchical relationships; the need to direct effective sanctions in an equitable manner; and the idea that it is fair to direct reproach at a corporate body when an offence has been committed in the operations of the corporation.³

It should be noted that the allocation of individual criminal responsibility has in practice been the primary form of corporate complicity (or liability linked to organisational crime) in relation to the criminal liability of the corporation itself. This state of affairs can be explained by the facts that corporate criminal liability is still a relatively young construction in Finland and it fragmentarily covers offences to which it is applicable. However, it is increasingly applied to economic and financial offences.

Corporate criminal liability was introduced in 1995 (see above, Part 1.1). Corporate criminal liability is restricted to specific offences, mostly economic offences. PIF offences are covered by the provisions on corporate criminal liability, including, for example, subsidy offences except when it is a question of subsidies granted for personal consumption (CC 29:6–8, 9.2, 10), tax fraud when related to taxes collected on the behalf of European communities (CC 29:1–2, 9.1, 10), active corruption of officials or members of Parliament (CC 16:13–14b, 18) and money laundering (CC 32:6–7, 9, 14).

Administrative (penal) liability of legal persons is provided to cover specific infringements and, exceptionally, (criminal) offences. Finnish law does not contain a clear and uniform system or definition of administrative sanctions or administrative penal law. The field of administrative sanctions is quite heterogeneous, and sector-specific rules are laid down in laws governing the use of public authority.⁴ There are, however, several types of such sanctions already in use, but a comprehensive systematic review and rethinking of them is still


under investigation, most recently (2018) in a working group of the Ministry of Justice.

A typical feature of (punitive) administrative sanctions is that most can be imposed on legal persons as well (corporate bodies, etc.). However, the legislation is not coherent in this case either. Provisions do not always indicate explicitly whether it is possible to impose sanctions on both legal and natural persons.

Normally, a criminal sanction and a punitive administrative sanction (penalty) are not established for parallel use. However, fraudulent tax evasion has traditionally been an exception. Accordingly, minor violations of fraudulent tax evasion have been sanctioned (including when it is a question of a criminal offence) by the tax authority: a penalty fee (called a tax or customs increase) is imposed on the taxpayer (either a legal or natural person) by this administrative public authority. As mentioned above, the provisions on tax fraud (CC 29:1–3) also cover tax frauds which are related to taxes collected on behalf of European communities.

In 2013, in a separate legal Act (781/2013), a prohibition of double jeopardy was introduced for tax fraud cases (i.e. a prohibition against the cumulative use of criminal punishment and a punitive administrative fee). So, as a rule, neither may charges be brought nor court judgment passed if a punitive tax or customs increase has already been imposed on the same person in the same case (CC 29:11).

When the Market Abuse Regulation (EU No. 596/2014) and the Market Abuse Directive (2014/57/EU) were nationally implemented in Finland in 2016, the scope of punitive administrative sanctions for security markets’ offences (which are regulated in Chapter 51 of the Criminal Code) was dramatically enlarged. The Financial Supervisory Authority (FSA) may exercise supervisory powers in respect of financial markets. The FSA imposes an administrative fine for a failure to comply with or a violation of provisions in section 38 of the Act on the Financial Supervisory Authority (878/2008).

Already before the 2016 reform of market abuse legislation, administrative penalties could in quantity be several millions of euros and could be imposed for a restraint on competition (see the Competition Act of 948/2011 with the amendments up to the Act of 1078/2016). It should be noted that this competition infringement is not criminalised in Finland, and so only the administrative penalty can be imposed.
It should be noted that the introduction of corporate criminal liability was a part of the total reform of the Finnish Criminal Code and one of the major objectives of that reform was to reassess the punishability and penal regulation of economic and corporate crime.

1.3. Significant cases involving the liability of heads of business

As to the examples of case law, see below.

2. Relationship with general principals of criminal law

2.1. General information on the system of perpetration and complicity

Chapter 5 of the Finnish Criminal Code (Act No. 515/2003) includes provisions on attempt and complicity (see below, cited in Appendix 2). The complicity provisions substantially follow the model of the German Criminal Code. In the recodification of the Finnish criminal law in 1990–2003, the complicity provisions were mainly retained such as they had been in force since the enactment of the Criminal Code in 1889.

The Finnish provisions (CC 5:3–7) differentiate between principals and co-perpetrators on the one hand, and inciters (instigators) and accomplices (abettors) on the other. This differentiated model of participation is in line with the emphasis on the expressive or symbolic function of criminal law. This kind of punishment theory is strongly supported in Finnish and Scandinavian criminal policy. The authoritative disapproval expressed by criminal law should be differentiated according to the various roles of participants.

The indirect principal (commission of an offence through an agent) is also a type of perpetrator, thus a new clarifying provision (CC 5:4) was added to the Code in 2003 concerning the indirect principal. The penal scale for an abettor is mitigated. The system of ‘borrowed criminality’ (Akzessoritätsprinzip) is applied in the participation doctrine, i.e. in both types of participation, instigation and abetting, the liability is of an accessorial or derivative nature.
Sections 3–8 in Chapter 5 of the Criminal Code apply to two or more individuals acting in concert in the commission of the offence. The provisions in CC 5:3–6 define the different forms of participation as follows:

- **CC 5:3 on co-perpetration.** If two or more persons have committed an intentional offence together, each is punishable as an offender. The term ‘committed’ has been interpreted extensively in juridical practice. In the legal literature, it has been recommended to apply the German doctrine of ‘control over crime’ (Tatherrschaft) in drawing the line between co-perpetration and accomplice.\(^5\)

- **CC 5:4 on commission of an offence through an agent, i.e. indirect principal (mittelbare Täterschaft).** A person is sentenced as an indirect principal if he has committed an intentional offence by using, as an agent, another person who cannot be punished for the said offence due to the lack of criminal responsibility or intention or due to another reason connected with the conditions for criminal liability.

It should be noted that if the immediate actor fulfils the conditions of criminal responsibility and is thus punishable for the offence, the concept of indirect principal and CC 5:4 are not applicable, in contrast to many other legal orders (such as the German Criminal Code). This fact does not exclude that such a commission of an offence through an agent could trigger a perpetrator’s responsibility (by interpreting ‘commission’ extensively).

- **CC 5:5 on instigation.** A person who intentionally persuades another person to commit an intentional offence or to make a punishable attempt at such an act is punishable for incitement to the offence as if he were the offender.

- **CC 5:6 on aiding and abetting (accomplice).** A person who, before or during the commission of an offence, intentionally furthers the commission by another of an intentional act or of its punishable attempt, through advice, action or otherwise, shall be sentenced for abetting on the basis of the same legal provision as the offender. The sentence is determined in accordance with a mitigated (→ ¾) penal scale.

According to the legislative drafts and precedents of the Supreme Court (KKO 2009:87 and KKO 2015:10 concerning aiding and abetting fraud or dishonesty by a debtor, respectively), an active act or omission by the accomplice does not need to be a necessary precondition for the consequence; furthering the probability of the commission of the offence is enough. Neither is a special intent or specific direction required: the applicable lowest level of intention is defined in the general provision on intention (CC 3:6) by using a probability assessment.  

- Incitement to punishable aiding and abetting is punishable as aiding and abetting.

There are no legal provisions or legal practice as to whether the complicity provision should also be applied by analogy in the field of punitive administrative law. Because such provisions are missing, a unified system of participation should be applicable.

2.2. General information on omission liability

After the revision of the general part of the Criminal Code in 2003, a special provision on omission liability was included in Chapter 3 of the Code (CC 3:3):

Chapter 3, section 3 – The punishability of omission (515/2003)

(1) An omission is punishable if this is specifically provided in the statutory definition of an offence.

(2) An omission is punishable also if the offender has neglected to prevent the causing of a consequence that accords with the statutory definition, even though he or she had had a special legal duty to prevent the causing of the consequence.

Such a duty may be based on:

(a) an office, function or position,
(b) the relationship between the offender and the victim,
(c) the assumption of an assignment or a contract,
(d) the action of the offender in creating danger, or
(e) another reason comparable to these.

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Section 1 defines the punishability of ‘genuine’ omission and section 2 derivative omission (commission by omission: unechier Unterlassungsdelikt). The latter is significant here. The definition of the prerequisites for derivative omission liability is vague and therefore problematic from the point of view of the principle of lex certa. In the travaux préparatoires, the introduction of new legal definitions into the general part of the Criminal Code—not only regarding omission, but other prerequisites of liability—was regarded as an improvement in relation to the earlier state of affairs when no legal definition existed. It is also noteworthy that it must be a question of an omission of a special legal duty to prevent the causing of the consequence (concerning a so-called ‘result offence’).

The types of special legal duties have been defined in the provision (CC 3:3.2), though very generally—for example, by saying that such a duty may be based on a function or position (point a) or on another reason comparable to that specifically mentioned in the section (point e).

When assessing the causal link required between the omission and the commission of an offence (consequence), the formula of condition sine qua non is commonly used: the omission O of the legal duty in question is considered to be causal for result R if R would not have occurred but for O. The probability test of this assessment should qualify very near certainty.

The mens rea (imputability) requirement for omission liability is determined by the type of offence in question, and thus depends on the statutory definition of the offence in the special part of the criminal law. Chapter 3, section 5, subsection 2 of the Criminal Code prescribes that ‘unless otherwise provided, an act referred to in the Code is punishable only as an intentional act’. Intent and negligence are the basic forms of imputability (CC 3:5.1), although negligence is divided into ‘normal’ negligence and gross negligence (CC 3:7).

In the field of punitive administrative law, the same principles which are valid in criminal law and criminal procedural law should to a great extent be followed. The Constitutional Law Committee of Parliament has a key role in the legislative process to oversee that relevant human rights obligations and constitutional rights are taken into account in final drafting. In its practice, it is emphasised that the regulation on administrative sanctions should be proportionate, for
example. Issues which are related to proportionality include sanctioning of very minor misconducts and the scaling of sanctions based on the severity of the conduct. Although the principle of legality and legal certainty (lex certa) in criminal cases does not, as such, apply to administrative sanctions, the principle of nulla poena sine lege cannot be ignored generally in such regulations. This provides that a sanction’s provisions must define the punishable conduct and the sanction with sufficient definiteness. It must emerge from the provisions that breaking of the statutes may be sanctioned. In addition, sanctioned acts and negligent behaviours must be described by law in order to identify them. However, the requirement of mens rea (personal guilt, blameworthiness) is in punitive administrative law weaker and not followed without exception.

2.3. Duty to report an offence

There is no general provision about the duty to report an offence and the criminal consequences for the failure to do so. When the Rome Statute of the International Criminal Court was nationally implemented in Finland in 2008 (212/1998), a penal provision on failure to report the international offence (genocide, crimes against humanity and war crimes) of a subordinate was included in Chapter 11 of the Criminal Code (CC 11:13). There is also a penal provision on failure to report a serious offence (CC 15:10: 563/1998), but its prerequisite is that there is still time to prevent the offence (i.e. the offence is not yet completed).

2.4. General information on strict liability

Strict liability for criminal offences is not allowed in Finnish law. Intent and negligence are prerequisites for criminal liability (CC 3:5:1). The requirement of personal guilt or blameworthiness in criminal law is in recent legal literature drawn from the constitutional right of the inviolability of human dignity.

7 E.g. Constitutional Law Committee 58/2010.
8 E.g. Constitutional Law Committee 60/2010 and Constitutional Law Committee 74/2002.
9 E.g. D Frände, Yleinen rikosoikeus (n 11), 165.
The requirement of *mens rea* (personal guilt, blameworthiness) is in punitive administrative law weaker and not followed without exception (see above, Part 2.2). A recent legislative example concerns the penalty fee in taxation (see above, Part 1.2). The Constitutional Law Committee of Parliament accepted in its statement that such a tax increase can be imposed irrespective of the negligence of the taxpayer under the condition that the threshold for waiving the penalty fee is not too high and the discretion of the tax authority is bound by law.  

2.5. *Special rules on liability*

See the part on administrative liability in section 1.2. Normally, a criminal sanction and an administrative sanction are not established for parallel use. However, fraudulent tax evasion has traditionally been an exception. Accordingly, minor violations of fraudulent tax evasion have been sanctioned (including when it is a question of a criminal offence) by the tax authority; a penalty fee (called a tax or customs increase) is imposed on the taxpayer (either a legal or natural person) by this administrative public authority. As mentioned above, the provisions on tax fraud (CC 29:1–3) also cover tax frauds which are related to taxes collected on behalf of European communities.

In 2013, a separate legal act (781/2013)—a prohibition of double jeopardy—was introduced for tax fraud cases (i.e. a prohibition against the cumulative use of criminal punishment and an administrative penal fee). So, as a rule, neither may charges be brought nor court judgment passed if a punitive tax or customs increase has already been imposed on the same person in the same case (CC 29:11).

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10 Constitutional Law Committee 39/2017.
3. Concept and scope of the criminal law responsibilities of heads of business

3.1. Liability of heads of business (general information)

As mentioned above (Part 1.2), new clarifying provisions were also enacted on the individual criminal responsibility of directors in a corporate body into Chapters 47 and 48 on labour and environmental offences of the Criminal Code in 1995, in connection with the partial reform of the whole Code CC 47:7; 48:7). Their content is as follows:

**Chapter 47, section 7 – Allocation of liability (578/1995)**
Where this Chapter provides for punishment of the conduct of an employer or representative thereof, the person into whose sphere of responsibility the act or omission belongs shall be sentenced. In the allocation of liability due consideration shall be given to the position of said person, the nature and extent of his or her duties and competence and also otherwise his or her participation in the origin and continuation of the situation that is contrary to law.

**Chapter 48, section 7 – Allocation of liability (578/1995)**
Where this Chapter provides for punishment of conduct, the person into whose sphere of responsibility the act or omission belongs shall be sentenced. In the allocation of liability due consideration shall be given to the position of said person, the nature and extent of his or her duties and competence and also otherwise his or her participation in the origin and continuation of the situation that is contrary to law.

A more general provision on the allocation of individual liability was included in the reformed chapter on attempt and complicity in 2003 (CC 5:8: ‘Acting on behalf of a legal person’, cited in Appendix 2).
The guidance given in those provisions is rather vague: ‘[T]he allocation of liability due consideration shall be given to the position of that person, the nature and extent of his duties and competence and also otherwise his participation in the arising and continuation of the situation that is contrary to law’. The provision in CC 5:8 is, however, clear when prescribing that the person who exercises actual decision-making power in the legal person (faktischer Geschäftsführer) is to be considered equal to the member of a statutory body or management of a corporation.

It is noteworthy that these special provisions on the allocation of liability should be interpreted in coherence with the general provision on derivative omission (CC 3:3.2; see above, Part 2.2).

3.2. Personal scope of the liability

The provision of Chapter 5, section 8 of the Criminal Code defines subjective scope in the following way: ‘A member of a statutory body or management of a corporation, foundation or other legal person, a person who exercises actual decision-making power in the legal person or a person who otherwise acts on its behalf in an employment relationship in the private or public sector or on the basis of a commission [may be sentenced for an offence committed in the operations of a legal person...]’.

This provision, along with the provisions of CC 47:7 and CC 48:7, leaves the subjective scope open. According to the doctrine and case law, it is important to take into consideration—except in the case of the general provision on derivative omission (CC 3:3.2)—the acts and other regulations concerning the corporation, foundation or other legal person in question: how the duties of various statutory bodies or management are prescribed. For example, as to limited liability companies, the following provisions in the Act of 624/2006 defining the duties of the board of directors and managing director are important:

The Board of Directors shall see to the administration of the company and the appropriate organisation of its operations (general competence). The Board of Directors shall be responsible for the appropriate arrangement of the control of the company accounts and finances (Chapter 6, section 2, subsection 1).
The Managing Director shall see to the executive management of the company in accordance with the instructions and orders given by the Board of Directors (general competence). The Managing Director shall see to it that the accounts of the company are in compliance with the law and that its financial affairs have been arranged in a reliable manner. The Managing Director shall supply the Board of Directors and the Members of the Board of Directors with the information necessary for the performance of the duties of the Board of Directors (Chapter 6, section 17, subsection 1).

As to the liability of corporate owners, there is no case law available. With reference to the provision of CC 5:8, it may be said that liability is possible when he or she exercises actual decision-making power in the legal person.

When taking into account the general provision on derivative omission (CC 3:3.2), in which an omission of a special legal duty based on, for example, an office, function and position is required, it can be concluded that the normal employee must have a certain independence. For instance, an account clerk has not been regarded as being in such a position and able to act on behalf of the legal person, but he or she may be an accessory to an accounting offence.

3.3. Duties to control and supervise

It is typical that such a liability of heads of business is based on specific duties to control and supervise activities of the subordinates (for example, with regard to labour safety and environmental regulations). After the introduction of a provision on subordinate omission (CC 3:3.2; see above, Part 2.2), there is a strengthened legal basis for such duties.

3.4. Violation of supervisory duties and the commission of an offence

3.4.1. Causal link

In principle, there should be such a causal relationship as described in connection with the provision of CC 3:3.2 (see
above, Part 2.2), at least when it is a question of a resultant offence.

3.4.2. Mens rea

The prerequisite of mens rea should also be assessed as described in connection with the provision of CC 3:3.2 (see above, Part 2.2). This often means difficulties in proving intent, when the statutory definition of the offence in question requires intent as the form of imputability. The lowest level of intent is to be drawn by using a probability theory. There are court decisions in which the formula ‘must have known…’ is used, but it is often explained to indicate a certain way to draw conclusions from the evidence presented by the prosecutor without referring to the wider scope of intent.

3.5. Delegation of control and supervisory duties: scope and limits

The practice of allocation of individual criminal responsibility has been very much in line with the guiding principles of Corpus Juris 2000, as formulated in the follow-up study. See Article 12 of the study.

11 See Chapter 3, section 6 (515/2003) of the Criminal Code: ‘A perpetrator has intentionally caused the consequence described in the statutory definition if the causing of the consequence was the perpetrator’s purpose or he or she had considered the consequence as a certain or quite probable result of his or her actions.’
13 Article 12. – Criminal liability of the head of business or persons with powers of decision and control within the business: public officers.
1. If one of the offences under Articles 1 to 8 is committed for the benefit of a business by someone acting under the authority of another person who is the head of the business, or who controls it or exercises the power to make decisions within it, that other person is also criminally liable if he knowingly allowed the offence to be committed.
2. The same applies to any public officer who knowingly allows an offence under Articles 1 to 8 to be committed by a person under him.
3. If one of the offences under Articles 1 to 8 is committed by someone acting under the authority of another person who is the head of a business, or who controls it or exercises the power to make decisions within it, that other person
For instance, in a recent precedent of the Supreme Court (KKO 2016:58), members of the board of directors of a potato flakes factory (limited company) were convicted of impairment of the environment through gross negligence (CC 48:1) when the effluent from the factory’s potato sludge contaminated the environment. These directors had omitted their supervisory duties as members of the company’s board and were therefore liable for their omission to prevent the contamination (in line with the provisions of CC 3:3.2 and CC 48:7). A factual division of labour between the managing director (having the main responsibility for the factory’s operational activities) and board members did not exclude the supervisory duty nor the board members’ liability for the consequence.

In another precedent of the Supreme Court (KKO 2007:62), the chairman of the board of directors of a housing company was sentenced for negligent homicide when he omitted the duty to take care that snow and ice were removed properly from the roof of a house of the company, with the result that the snow and ice fell onto a pedestrian and caused his death. The Supreme Court argued that because the responsibility to remove the snow and ice from the roof was not clearly delegated to a service company, the housing company was responsible and the liability was allocated to the chairman of its board of directors.

3.6. Fulfilment of supervisory duties and disciplinary powers

When the offence in question has been committed (the result of the offence is completed), there is no ground for exclusion of a person’s responsibility in that actual case. Participation in the continuation of the situation that is contrary to law is one of the factors to be taken into account when assessing to whose sphere

is also criminally liable if he failed to exercise necessary supervision, and his failure facilitated the commission of the offence.

4. In determining whether a person is liable under (1) and (3) above, the fact that he delegated his powers shall only be a defence where the delegation was partial, precise, specific, and necessary for the running of the business, and the delegates were really in a position to fulfil the functions allotted to them. Notwithstanding such a delegation, a person may incur liability under this article on the basis that he took insufficient care in the selection, supervision or control of his staff, or in the general organisation of the business, or in any other matter with which the head of business is properly concerned.
of responsibility the act or omission belongs (see the wording of CC 47:7 and 48:7).

Similarly, where corporate criminal liability is concerned, the continuation of the situation that is contrary to law can be taken into consideration when assessing whether the care and diligence necessary for the prevention of the offence have been observed in the operations of the corporation (so-called ‘corporation guilt’: CC 9:2.1). See below.

3.7. Liability and collective decisions

In principle, the liability of heads of business is assessed individually. An example of collective decision-making bodies is the board of directors of companies or other legal persons, such as the precedent of the Supreme Court (KKO 2016:58) where members of the board of directors of a potato flakes factory (limited company) were convicted of impairment of the environment through gross negligence (see above Part 3.5). A factual division of labour between the managing director (having the main responsibility for the factory’s operational activities) and board members did not exclude the supervisory duty nor the board members’ liability for the consequence.

3.8. Relationship with corporate liability

3.8.1. Triggering persons

As mentioned above (Part 1.2), a corporation may be sentenced to a corporate fine for certain enumerated, mostly economic, offences (Chapter 9 of the Criminal Code, as amended 743/1995; cited in Appendix 1). The corporate fine—which is the only criminal sanction available—is at least 850 euros and at most 850,000 euros.

The Finnish doctrine behind corporate criminal liability is not clear.14 The acts or omissions of the individual offender are under certain conditions attributed to the legal person, not as acts of the legal person but as acts of the individual for the company

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14 See also M Tolvanen, in Fudan Law Journal (n. 8) Chapter 2.
A crucial precondition is that a person who is part of its statutory organ or other management or who exercises actual decision-making authority therein has been an accomplice in an offence or allowed the commission of the offence, or alternatively that the care and diligence necessary for the prevention of the offence has not been observed in the operations of the corporation (CC 9:2). The description of those whose position may implicate liability is in the first-mentioned precondition similar to the beginning of the definition in Chapter 5, section 8 (‘Acting on behalf of a legal person’), but as a whole the wording in CC 9:2 is more restricted. According to a precedent of the Supreme Court (KKO 2008:3), in a case of negligent impairment of the environment (CC 48:4), only such representatives of the limited company who had so much independent and considerable decision-making power that it would qualify as compliance of an identification principle can be regarded as implicating the liability for the corporation.

The last-mentioned precondition in CC 9:2 refers to the blameworthy organisational conduct (fault) of the corporation. In case of the last-mentioned alternative, it is possible to impose a corporate fine based on anonymous culpa. For instance, in the Supreme Court case KKO 2008:3, this last-mentioned precondition of organisational fault was proved but not the precondition (‘identification’) which is first mentioned in CC 9:2.

3.8.2. Concurrence and accumulation of liabilities

Corporate criminal liability does not replace individual criminal responsibility because they are parallel forms of liability. Normally, both the individual manager and the company are prosecuted when the formal conditions are met. An exception is a situation where the company was so small that the corporate fine was in fact directed to its managing director, who was in the same proceedings sentenced to imprisonment for intentional impairment of the environment (CC 48:1): it was decided to dismiss the corporate fine (precedent of the Supreme Court, KKO 2002:39).

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3.9. Compliance programmes

There is no Finnish case law or legal literature on these issues to date. To my mind, it is obvious that the adoption of compliance programmes and the appointment of compliance officers may have significance in assessing: a) the acceptability of the behaviour of heads of business, in particular whether there was a breach of duty of diligence (actus reus of negligence); and b) whether organisational fault existed as a prerequisite for corporate criminal liability (see above, Part 3.8).

4. Defences

4.1. Effective powers of supervision and control and liability

This kind of defence is possible primarily in relation to lower-level managerial employees. However, in a quite recent precedent of the Supreme Court (KKO 2013:56) concerning a work safety offence (CC 47:1), it was decided that the technical director and production manager of a limited company were not responsible for the elimination of the deficiencies of a squeezer, because they did not have enough factual influence over the resources for repairing the squeezer. The shifter was regarded as responsible for the supervision of the machines and their use and was also sentenced for negligent bodily injury (CC 21:10) when an employee was injured using the deficient squeezer. The managing director and members of the board of directors were not prosecuted.

4.2. Delegation of supervisory powers

As to the delegation of control and supervision powers, see my answer and references to the precedents of the Supreme Court KKO 2016:58 and KKO 2007:62 (above, Part 3.5). Decision KKO 2016:58 reiterates that a factual division of labour between the managing director (having the main responsibility for the factory’s operational activities) and board members did not
exclude the supervisory duty nor the board members’ liability for the consequences.

4.3. Compliance programmes

As to the significance of the implementation of compliance programmes, see my answer above (Part 3.9).

4.4. Third party advice, external auditing and liability of heads of business

The subjects of liability have been defined in the penal provisions on accounting offences (CC 30:9, 9a and 10; 61/2003). There is also a penal provision on auditing offences (CC 30:10a; 474/2007). The basic statutory definition of an accounting offence is as follows:

Chapter 30, section 9 – Accounting offence (61/2003)

If a person with a legal duty to keep accounts, his or her representative, a person exercising actual decision-making authority in a corporation with a legal duty to keep books, or the person entrusted with the keeping of accounts,

(1) in violation of statutory accounting requirements neglects the recording of business transactions or the balancing of the accounts,

(2) enters false or misleading data into the accounts, or

(3) destroys, conceals or damages account documentation and in this way impedes the obtaining of a true and sufficient picture of the financial result of the business of the said person or of his or her financial standing, he or she shall be sentenced for an accounting offence to a fine or to imprisonment for at most two years.

The liability of an external auditor should, to my mind, be assessed in an analogous way to the delegation of liability (see above, Part 3.5 and Part 4.2).
5. Liability of heads of business and sanctions

5.1. Criminal and punitive sanctions

This section offers some general remarks on sanction systems, firstly about criminal sanctions, which are applicable to all kinds of sentenced persons, not only to the heads of business.\(^{16}\)

The mechanism through which the general preventive effect of the punishment is deemed to be reached is not deterrence in the first place but socio-ethical disapproval, which affects the sense of morals and justice—general prevention instead of general deterrence, without calling for a severe penal system. The legitimacy of the whole criminal justice system is an important aim; therefore, such principles of justice as equality and proportionality are central. The emphasis on the non-utilitarian goals of the criminal justice system—fairness and humanness—must be connected with the decrease in the repressive features (punitiveness) of the system—for example, through the introduction of alternatives to imprisonment. The significance of individual prevention or incapacitation is regarded as very limited.

The first changes in the system of criminal sanctions prepared since the 1970s pertained to alternatives to custodial sentences. Accordingly, legislation enacted in 1996 incorporated community service as a regular part of the system of sanctions. Legislation enacted in 2005 incorporated conciliation—including both criminal and civil cases—as a regular part of social welfare and the restorative justice system. Electronic monitoring was introduced as a new type of criminal sanction in 2011; it shall be imposed under certain material prerequisites as an alternative to a custodial sentence of imprisonment for at most six months.

The general punishments in force are the following: fine, conditional imprisonment, community service, electronic

monitoring and unconditional imprisonment (Chapter 6 of Criminal Code; 515/2003 with amendments up to 564/2015).

5.2. Other sanctions and measures

A special criminal sanction for those who have in their business activity as an entrepreneur or a manager of an enterprise committed economic crime or otherwise crucially omitted their legal duties was introduced in 1985 (1059/1985), namely the prohibition of engagement in business. Although it is not a necessary precondition that the suspected person has fulfilled all definitional elements of an economic crime, this sanction can be characterised as a criminal sanction because the investigation and prosecution follow the rules of a criminal process.

As to punitive administrative sanctions, they have been increasingly introduced, especially in the attempt to eliminate criminal penalties for minor and/or negligent offences (decriminalisation). It has also been presented that the flexibility of administrative decision-making to some extent explains their introduction. In addition, administrative sanctions are used in EU law, particularly in order to safeguard the financial interests of the Union, and this development is reflected in national legislation.

Administrative sanctions are closely related to the specific legislative objectives of a particular sector of administration and its regulatory objectives enforced by specialised administrative authorities. The legislative differences in sanctioning are largely due to the sectoral nature of administrative sanctions. Administrative sanctions are closely linked to enforcement and supervision procedures, and the methods of a specific public authority. The sectoral nature of the administrative sanctions and the priority of specific regulations (lex specialis) emphasises the fact that administrative sanctions are part of the sectoral sanction scheme.\(^\text{17}\)

There are no punitive administrative sanctions established especially for heads of business. See also my answer above, Part 1.2.

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\(^{17}\) Rangaistusluonteisia hallinnollisia seuraamuksia koskevan säätielyn kehittäminen [Developing the Regulation of Punitive Administrative Sanctions] (Oikousministeriön työryhmän muistioluonnos 8.11.2017), 12–13 [Draft Memorandum of the Ministry of Justice Working Group].
5.3. Sentencing criteria

There are general sentencing provisions in Chapter 6 (515/2003) of the Criminal Code, including grounds for increasing and reducing the punishment, grounds for mitigating the punishment and the penal latitude, and grounds for the choice of the type of punishment. The general principle governing the assessment of punishment of an individual offender reads as follows: ‘[T]he sentence shall be determined so that it is in just proportion to the harmfulness and dangerousness of the offence, the motives for the act and the other culpability of the offender manifest in the offence’ (CC 6:4). The basis for calculating the corporate fine is formulated in the following way: the amount of the corporate fine shall be determined in accordance with the nature and extent of the omission or the participation of the management and the financial standing of the corporation (CC 9:6:1).

There are no specific sentencing criteria to determine the punishment for the individual head of business; nor are general criteria/guidelines followed in administrative punitive law, because of the sectoral nature of administrative sanctions.

5.4. Confiscation

Forfeiture, especially forfeiture of the proceeds of crime, is a commonly imposed criminal sanction with respect to economic and corporate crime. The forfeiture shall be ordered on the perpetrator, a participant or a person on whose behalf or to whose benefit the offence has been committed, where these have benefited from the offence. A prerequisite for a forfeiture order is that the relevant act is criminalised by law, and so the forfeitures are imposed in criminal proceedings. In Finnish doctrine, forfeiture is classified as a security measure instead of a punishment. Therefore, Article 6, Paragraphs 2–3 (fair trial) of the European Convention on Human Rights are not regarded as directly applicable to the forfeiture proceedings.

Chapter 10 of the Penal Code includes the general provisions on forfeiture; they were revised in the Act of 875/2001 as a part of the total reform of the Code. In the Act of 356/2016, these
provisions were reshaped in order to implement Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the EU. The provisions were preserved as general and so their application is not restricted to the crimes listed in Article 3 of the Directive 2014/42/EU.

5.5. Enforcement practice

Punitive administrative sanctions (typically punitive fees) have been introduced in various sectors of business and financial activity, and implementation of the EU’s legislative instruments has increased the use of administrative criminal law in combatting economic and financial offences. In practice, the most important administrative fee of a penal nature is the punitive tax increase, which is set concurrently with the assessment of taxes in cases of tax deceit. Another early example of the adoption of a noticeable punitive fee concerns competition law: since 1992, when a new Act on competition restrictions was enacted, the competition restriction offence has been decriminalised and replaced with the provisions on a competition restriction fee. A similar type of punitive administrative fee was adopted by the legislative Acts in 2016 for the protection against market abuse, as prescribed by Regulation (EU) 596/2014.18

The level of monetary administrative sanctions introduced when implementing the EU’s legislative instruments is much higher than the actual level of monetary criminal sanctions; for example, the maximum corporate fine is only 850,000 euros.

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18 See Securities Markets Act (258/2013), as amended by the Act of 519/2016. See also the amendment of Chapter 31 (Security markets offences) of the Penal Code by the Act of 521/2016.
6. Relationship with punitive administrative law

6.1. Parallel criminal and administrative proceedings against the head of business

6.1.1. Trans-procedural use of evidence against the head of business

As mentioned above (Part 1.2), a criminal sanction and a punitive administrative sanction are not normally established for parallel use. However, fraudulent tax evasion has traditionally been an exception and the most recent example covers security markets offences.

In 2013, a separate legal Act (781/2013), a prohibition of double jeopardy, was introduced for tax fraud cases (i.e. a prohibition of the cumulative use of criminal punishment and a punitive administrative fee). So, as a rule, charges may not be brought for, nor court judgment passed, if a punitive tax or customs increase has already been imposed on the same person in the same case (CC 29:11). This special Act was introduced to take into account the case law of the European Court of Human Rights on the application of the principle of ne bis in idem. It also indicates the direction of legislative reforms in other fields of economic and financial activity.

In Finnish procedural law, the traditionally recognised basic elements of a due process or fair trial are the right to access to court, an independent and impartial tribunal, the presumption of innocence and guarantees of procedural rights. It is noteworthy that these procedural principles and rules are applicable to all kinds of offences (including corporate and corporate-related crime), except that summary (simplified) penal proceedings and fixed fine penal proceedings for minor offences have some specific features which make the proceedings more expeditious and cost-effective.

A fundamental principle that reflects the presumption of innocence is favor defensionis (in favour of the defence). This ‘meta’ principle implies specifying principles, most importantly the principle of nemo tenetur se ipsum accusare, or privilege
against self-incrimination (an individual may not be compelled to testify against him/herself and the right to silence), and the principle of *in dubio pro reo* (in case of unclear guilt, the accusation shall be dismissed). The burden of proof is on the prosecutor's side. A judgment of guilty may be made only on the condition that there is no reasonable doubt regarding the guilt of the defendant.

In addition to the accusatorial principle, other leading principles governing the main hearing in the proceedings are the requirements of orality and immediacy. Therefore, all pleadings shall, as a rule, be oral and the opposing party has the right to cross-examine all evidence presented against him/her. The acceptability of other than oral evidence in the open court is very restricted.\textsuperscript{19}

A general provision on evidence stipulates the following:

\textsuperscript{19}A party has the right to present the evidence that he or she wants to the court investigating the case and comment on each piece of evidence presented in court, unless provided otherwise in law. (2) The court, having considered the evidence presented and the other circumstances that have been shown in the proceedings, determines what has been proven and what has not been proven in the case. The court shall consider the probative value of the evidence and the other circumstances thoroughly and objectively on the basis of free consideration of the evidence, unless provided otherwise in law.\textsuperscript{20}

6.1.2. Admissibility and use of foreign evidence against the head of business

The general provisions on criminal procedure and evidence are also applicable when assessing the use of such evidence which has been gathered in the administrative proceedings or in foreign proceedings.


6.1.3. Administrative investigations and right to silence of the head of business

The application of the privilege against self-incrimination is clear in criminal proceedings. According to the Code of Judicial Procedure (4/1734 with amendments, Chapter 17, section 25, subsection 2), the court may not, in criminal proceedings, use evidence which was obtained from a person in proceedings other than a criminal investigation or in criminal proceedings, through the threat of coercive measures or otherwise against his or her will, if he or she at the time was a suspect in an offence or a defendant, or a criminal investigation or court proceedings were underway in respect of an offence for which he or she was charged. If, however, a person in other than criminal proceedings or comparable proceedings has, in connection with fulfilling his or her statutory obligation, given a false statement or submitted a false or untruthful document or a false or forged object, this may be used as evidence in a criminal case concerning conduct in violation of his or her obligation. According to travaux préparatoires, therefore, privilege against self-incrimination is respected in criminal procedure, even though certain other law stipulates an obligation to provide authorities with information that otherwise could incriminate the one giving the required information.\(^2\)

As to the privilege against self-incrimination in the context of administrative investigations or, more generally, in administrative procedures, its content and scope are uncertain and determined on the case law of the European Court of Human Rights.

6.2. Multiple and parallel criminal and administrative proceedings against the legal person and the head of business

6.2.1. Trans-procedural use of evidence

The answer to the question of whether parallel criminal and administrative proceedings are allowed is, in both legal doctrine

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and practice, affirmative. The principle of *ne bis in idem* is not regarded as applicable, because the subjects (defendants) are different (legal person and individual head of business).

There is normally a concentration (and, in that sense, a coordination) of the criminal proceedings against the legal person and the individual head of business.

6.2.2. Admissibility and use of foreign evidence

As to this question, see *mutatis mutandis* above, Part 6.1.2.

6.2.3. Right to silence of the head of business in proceedings against the legal person

As to the question of whether heads of business have the right to silence in the context of administrative proceedings, see *mutatis mutandis* on the privilege against self-incrimination (above, Part 6.1.3). To the extent that privilege against self-incrimination is applicable in administrative investigations, it is also applicable to those representatives of the legal person who have such an independent and considerable decision-making power that it would qualify compliance with the identification principle and therefore could be regarded as implicated in the liability for the corporation (cf. above, a reference to the argument of the Supreme Court decision KKO 2008:3; Part 3.8.1).

6.3. Relationship between liability of the legal person and liability of the head of business

A plea of guilty has a modest role in Finnish procedural law. New legislation on consensual proceedings was enacted in 2014 (670/2014) as part of the revision of the Criminal Procedure Act. The new legislation maintains the legality principle in prosecution as a main rule, but the exceptions—grounds for waiving prosecution—have become more extensive. One of the grounds for waiving prosecution is that criminal proceedings and punishment are deemed unreasonable or inappropriate in view of a settlement reached by the suspect in the offence and the injured
party; the other is the action of the suspect in the offence to prevent or remove the effects of the offence (Chapter 1, section 8).

An innovation concerns the introduction of plea bargaining, which is intended to be applied particularly in complicated cases of economic and corporate crime. The prosecutor may therefore, on his or her own motion or on the initiative of the injured party, undertake measures for the submission and hearing of a proposal for judgment in confession proceedings. The prosecutor must at his discretion take into consideration the nature of the case and the claims to be presented: the expenses apparently resulting from, and the time required for, a hearing in confession proceedings on the one hand, and the normal procedure on the other. Preconditions for a confession proceeding are that the suspect in the offence in question admits having committed the suspected offence and consents to confession proceedings and that the injured party has no claims in the case or consents to confession proceedings. The prosecutor must commit to requesting punishment in accordance with a scale mitigated by one third. The proposal for judgment will be handled and confirmed by the court (Chapter 1, sections 10–11, and Chapter 5b of Criminal Procedure Act). It should be noted that the mitigation of the punishment concerns a plea of one’s own guilt only, not testifying about the guilt of accomplices.

The explained provisions on plea bargaining do not recognise a situation where the guilty plea from a legal person would shield the head of business from criminal liability or otherwise diminish it.

In case this situation of double jeopardy occurs—which should be avoided in line with the practice of the European Court of Human Rights and in line with the separate legal Act (781/2013) on the prohibition of the cumulative use of criminal punishment and an administrative penal fee)—in fraudulent tax evasion cases, the following sentencing provision is applicable. Chapter 6, section 7, subsection 1 (515/2003) of the Criminal Code prescribes that another consequence (sanction) of the offence or of the sentence shall be taken as a ground mitigating the punishment. See also the precedent of Supreme Court KKO 1981 II 14.
ANNEXES

ANNEX 1

Chapter 9 of the Criminal Code – Corporate criminal liability (743/1995)

Section 1 – Scope of application (61/2003)
(1) A corporation, foundation or other legal entity (in the following, ‘corporation’) in the operations of which an offence has been committed shall on the request of the public prosecutor be sentenced to a corporate fine if such a sanction has been provided in this Code for the offence (441/2011).
(2) The provisions in this Chapter do not apply to offences committed in the exercise of public authority.

Section 2 – Prerequisites for liability (61/2003)
(1) A corporation may be sentenced to a corporate fine if a person who is part of its statutory organ or other management or who exercises actual decision-making authority therein has been an accomplice in an offence or allowed the commission of the offence or if the care and diligence necessary for the prevention of the offence have not been observed in the operations of the corporation.
(2) A corporate fine may be imposed even if the offender cannot be identified or otherwise is not punished. However, no corporate fine shall be imposed for a complainant offence which is not reported by the injured party so as to have charges brought, unless there is a very important public interest in the bringing of charges.

Section 3 – Connection between offender and corporation (743/1995)
(1) The offence is deemed to have been committed in the operations of a corporation if the perpetrator has acted on the
behalf or for the benefit of the corporation and belongs to its management or is in a service or employment relationship with it or has acted on assignment by a representative of the corporation.

(2) The corporation does not have the right to compensation from the offender for a corporate fine that it has paid, unless such liability is based on statutes on corporations and foundations.

Section 4 – Waiving of punishment (61/2003)

(1) A court may waive imposition of a corporate fine on a corporation if:

(a) the omission referred to in section 2(1) by the corporation is slight, or the participation in the offence by the management or by the person who exercises actual decision-making authority in the corporation is slight, or

(b) the offence committed in the operations of the corporation is slight.

(2) The court may waive imposition of a corporate fine also when the punishment is deemed unreasonable, taking into consideration:

(a) the consequences of the offence to the corporation,

(b) the measures taken by the corporation to prevent new offences, to prevent or remedy the effects of the offence or to further the investigation of the omission or offence, or

(c) where a member of the management of the corporation is sentenced to a punishment, and the corporation is small, the sentenced person owns a large share of the corporation or his or her personal liability for the liabilities of the corporation are significant.

Section 5 – Corporate fine (971/2001)

A corporate fine is imposed as a lump sum. The corporate fine is at least 850 euros and at most 850,000 euros.

Section 6 – Basis for calculation of the corporate fine (743/1995)

(1) The amount of the corporate fine shall be determined in accordance with the nature and extent of the omission or the participation of the management, as referred to in section 2, and the financial standing of the corporation.

(2) When evaluating the significance of the omission and the participation of the management, consideration shall be taken of
the nature and seriousness of the offence, the status of the perpetrator as a member of the organs of the corporation, whether the violation of the duties of the corporation manifests heedlessness of the law or the orders of the authorities, as well as the grounds for sentencing provided elsewhere in the law.

(3) When evaluating the financial standing of the corporation, consideration shall be taken of the size and solvency of the corporation, as well as the earnings and the other essential indicators of the financial standing of the corporation.

Section 7 – Waiving of the bringing of charges (61/2003)

(1) The public prosecutor may waive the bringing of charges against a corporation, if (441/2011):

(1) the corporate omission or participation of the management or of the person exercising actual decision-making power in the corporation, as referred to in section 2, subsection 1, has been of minor significance in the offence, or

(2) only minor damage or danger has been caused by the offence committed in the operations of the corporation and the corporation has voluntarily taken the necessary measures to prevent new offences.

(2) The bringing of charges may be waived also if the offender, in the case referred to in section 4, subsection 2(3), has already been sentenced to a punishment and it is to be anticipated that the corporation for this reason is not to be sentenced to a corporate fine.

(3) Service of a decision not to bring charges against a corporation or to withdraw charges against a corporation shall be given to the corporation by post or through application as appropriate of what is provided in Chapter 11 of the Code of Judicial Procedure. The provisions of Chapter 1, section 6(a), subsection 2 and section 11, subsections 1 and 3 of the Criminal Procedure Act on the waiving of charges apply correspondingly to the decision (673/2014).

(4) The provisions of Chapter 1, section 12 of the Criminal Procedure Act on the revocation of charges apply to the revocation of charges on the basis of subsection 1. However, service of the revocation shall be given only to the corporation.
Section 8 – Joint corporate fine (743/1995)

(1) If a corporation is to be sentenced for two or more offences at one time, a joint corporate fine shall be imposed in accordance with the provisions of sections 5 and 6.

(2) No joint punishment shall be imposed for two offences, one of which was committed after a corporate fine was imposed for the other. If charges are brought against a corporation which has been sentenced to a corporate fine by a final decision, for an offence committed before the said sentence was passed, a joint corporate fine shall also not be imposed, but the prior corporate fine shall be duly taken into account when sentencing to the new punishment.

[Section 9 has been repealed: 297/2003]

Section 10 – Enforcement of a corporate fine (673/2002)

(1) A corporate fine is enforced in the manner provided in the Enforcement of Fines Act (672/2002).

(2) A conversion sentence may not be imposed in place of a corporate fine.
ANNEX 2


Section 1 – Attempt (515/2003)
(1) An attempt of an offence is punishable only if the attempt has been denoted as punishable in a provision on an intentional offence.

(2) An act has reached the stage of an attempt at an offence when the perpetrator has begun the commission of an offence and brought about the danger that the offence will be completed. An attempt at an offence is involved also when such a danger is not caused, but the fact that the danger is not brought about is due only to coincidental reasons.

(3) In sentencing for an attempt at an offence, the provisions of Chapter 6, section 8, subsection 1(2), subsection 2 and subsection 4 apply, unless, pursuant to the criminal provision applicable to the case, the attempt is comparable to a completed act.

Section 2 – Withdrawal from an attempt and elimination of the effects of an offence by the perpetrator (515/2003)

(1) An attempt is not punishable if the perpetrator, of his or her own free will, has withdrawn from the completion of the offence, or otherwise prevented the consequence referred to in the statutory definition of the offence.

(2) If the offence involves several accomplices, the perpetrator, the instigator or the abettor is exempted from liability on the basis of withdrawal from an offence and elimination of the effects of an offence by the perpetrator only if he or she has succeeded in also getting the other participants to desist or withdraw from completion of the offence or otherwise been able to prevent the consequence referred to in the statutory
definition of the offence or in another manner has eliminated the
effects of his or her own actions on the completion of the offence.

(3) In addition to what is provided in subsections 1 and 2, an
attempt is not punishable if the offence is not completed or the
consequence referred to in the statutory definition of the offence
is not caused for a reason that is independent of the perpetrator,
instigator or abettor, but he or she has voluntarily and seriously
attempted to prevent the completion of the offence or the causing
of the consequence.

(4) If an attempt, pursuant to subsections 1 through 3, is not
punishable but at the same time comprises another, completed,
offence, such an offence is punishable.

Section 3 – Complicity in an offence (515/2003)
If two or more persons have committed an intentional
offence together, each is punishable as a perpetrator.

Section 4 – Commission of an offence through an agent
(515/2003)
A person is sentenced as a perpetrator if he or she has
committed an intentional offence by using, as an agent, another
person who cannot be punished for said offence due to the lack
of criminal responsibility or intention or due to another reason
connected with the prerequisites for criminal liability.

Section 5 – Instigation (515/2003)
A person who intentionally persuades another person to
commit an intentional offence or to make a punishable attempt at
such an act is punishable for incitement to the offence as if he or
she were the perpetrator.

Section 6 – Abetting (515/2003)
(1) A person who, before or during the commission of an
offence, intentionally furthers the commission by another of an
intentional act or of its punishable attempt, through advice,
action or otherwise, shall be sentenced for abetting on the basis
of the same legal provision as the perpetrator. The provisions of
Chapter 6, section 8, subsection 1(3), subsection 2 and subsection
4 apply nonetheless to the sentence.

(2) Incitement to punishable aiding and abetting is
punishable as aiding and abetting.
Section 7 – Special circumstances related to the person (515/2003)

(1) Where a special circumstance vindicates, mitigates or aggravates an act, it applies only to the perpetrator, inciter or abettor to whom the circumstance pertains.

(2) An inciter or abettor is not exempted from penal liability by the fact that he or she is not affected by a special circumstance related to the person and said circumstance is a basis for the punishability of the act by the perpetrator.

Section 8 – Acting on behalf of a legal person (515/2003)

(1) A member of a statutory body or management of a corporation, foundation or other legal person, a person who exercises actual decision-making power in the legal person or a person who otherwise acts on its behalf in an employment relationship in the private or public sector or on the basis of a commission may be sentenced for an offence committed in the operations of a legal person, even if he or she does not fulfil the special conditions stipulated for a perpetrator in the statutory definition of the offence, but the legal person fulfils said conditions.

(2) If the offence has been committed in organised activity that is part of an entrepreneur’s business or in other organised activity that is comparable to the activity of a legal person, the provisions in subsection 1 on an offence committed in the operations of a legal person correspondingly apply.

(3) The provisions of this section do not apply if different provisions elsewhere apply to the matter.