



# The effects of the enforcement legislation in the Finnish occupational safety and health inspectorate

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## ABSTRACT

The goals of this quantitative and qualitative study were to explore the four following questions: (1) what kinds of views do OSH inspectors have on the application and function of the Enforcement Act, (2) how do the OSH inspectors define the effectiveness of OSH enforcement, (3) how effective are the enforcement practices, and (4) how can the effectiveness of OSH enforcement be improved. In Finland the Ministry of Social Affairs and Health oversees the activities of the OSH divisions, which operate in the Regional State Administrative Agencies. A total of 229 inspectors responded to the questionnaire; the response rate was 71%. With respect to the evaluations of the present situation of OSH enforcement, three factors were identified. Factor 1 was designated as “Need of Guidance and Instructions Given by the Ministry”, Factor 2 as “Functions of Present Enforcement Practices”, Factor 3 as “Contradictions in Quality and Quantity Criteria of Inspections”. Five factors were found in the evaluation of the improvements of the effectiveness of OSH enforcement. Factor 1 was designated as “How Advice, Quality, Quantity and Skills identified in inspections could be made more effective”, Factor 2 as “Improving Effectiveness by Inspections on Operations of Safety Management Systems based on Performance Agreement”, Factor 3 as “Improving Effectiveness by Harmonizing of Activities of the OSH Inspectors and OSH Inspectorates”, Factor 4 as “Effectiveness at a Distance carried out Inspections and Follow-up” and Factor 5 as “Effectiveness of Follow-up Enforcement”.

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## 1. Introduction

### 1.1. Enforcement practices

This study examines the functioning of the Act on OSH enforcement and cooperation on OSH at workplaces, subsequently referred to as the Enforcement Act, and its effects on the authority enforcement of OSH. It is necessary to gather up-to-date research data on the effects of the new legislation, i.e. how the OSH legislation has changed the routines of enforcement activities, how new practices and applications have been introduced, and what kinds of new guidance and focus of activities of OSH inspectors are necessary. In this way, it will be possible to evaluate the general functioning of new legislation, and to identify central development targets with regard to implementation of OSH legislation. The effects of legislation can be studied by using top-down evaluation or bottom-up evaluation. Top-down evaluation refers to the legislator's and decision-maker's view about the achievement of the objectives of legislation. A bottom-up evaluation refers to studying

how the various target parties have reacted to judicial regulation, in other words what the goals of the legislation are and how will the legislation being working. Boin et al. (2011) stated that while long-standing concerns about rule-making, compliance and enforcement remain important, the ‘rise of the regulatory state’ has added new issues to the agenda of regulatory studies.

The EU Council has called on the Commission to continue to monitor and support the implementation of legislation in all Member States (EU Council, 2007, p. 3). The EU Council (2007, p. 3) has decreed that the Member States must support compliance with Community legislation and promote the development of national strategies. Furthermore, the coherence of the relevant policies such as public health and employment policy including policies related to OSH has to be strengthened. The Council has stated that Community policy on OSH must be based on an overall approach to well-being at work with a goal of achieving an ongoing, sustainable and consistent reduction in the number of accidents at work and occupational illnesses.

European Parliament (2008, p. 15) has stated that it is of the utmost importance to ensure better application of the existing legal instruments on OHS. Therefore, it has recommended that the Commission and the Member States must use all available means in

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order to achieve this goal and measures to be considered should include: (1) minimum requirements for the quality of preventive services and work inspection, (2) tougher sanctions, and (3) a better assessment of legislative implementation. European Parliament (2008, p. 16) has stated that OSH inspections should be an essential part of implementing health and safety legislation. Therefore, it has stated that the Commission must (1) initiate evaluation research on the efficiency and impact of inspection activities proposed, thereby encouraging the use of inspectorates as facilitators for creating an efficient and effective OSH culture throughout the workforce; and (2) introduce ways of evaluating national inspection systems.

The Enforcement Act is translated into the objects of enforcement (workplaces) through the activities of OSH authorities. Therefore, if one wishes to study the impact of this Act, it is necessary to take into account how the implementation of the Act has influenced the promotion of OSH at the workplaces being inspected. This kind of an approach must take into account the chain of effects leading to evaluating the effectiveness of OSH enforcement. The evaluation of effectiveness can be divided into studying the effects at two levels: the workplace and society as a whole. In general, the effectiveness of OSH enforcement at workplace level is considered to be reflected in positive changes in working conditions and OSH management procedures at workplaces achieved by enforcement. The effectiveness at the level of society must be evaluated in relation to wider societal goals: the efforts to extend work careers and to decrease the occurrence of occupational accidents and diseases.

The challenges faced by the OSH inspectors are how best to promote regulatory compliance, rather than continuous improvement. Inspectors are endowed with the potential to assist duty holders to 'learn how to comply' and to 'self-regulate' and to develop systematic approaches to OSH even although other regulatory methods are required to ensure that they are sustained, evaluated and improved (Johnstone, 2003, p. 20). Regulators can therefore increase the effectiveness of self-regulation by supporting the efforts being made by a company's internal compliance agents (Hopkins, 2005, p. 11). OSH inspectorates need to encourage duty holders to learn how to self-regulate and manage OHS systematically, e.g. requiring firms to self-audit and self-inspect, and by adopting inspection methods, which have a greater focus on the management of OSH (Johnstone, 2003, p. 20).

The effectiveness of the OSH enforcement requires that the regulators know what is entailed in effective compliance programs and systematic OHS management approaches. In addition, the OSH enforcement must have a comprehensive understanding of the contexts within which the organizations have to operate, and how the organization should best respond to the various enforcement measures. Hopkins (2005, p. 7) stated that in order to impose a prohibition order, then, the OSH inspectors must make a judgment that the level of risk is unacceptable, this judgment must be based on the inspector's expertise; it cannot simply be inferred from any regulatory requirement. This means that a judgment about whether there is immediate danger, whether or not there is compliance with some regulation in fact; it is also a judgment about risk.

Van Gestel and Vranken (2009, pp. 199–200) concluded that it would be important to conduct an ex post evaluation about how different articles of legislation have affected the situation on the ground. Clearly it is important to follow up the impact and to determine any unintended effects of some piece legislation (Popelier and Verlinden, 2009, p. 18). In most cases, causality cannot be proven in a strict sense. However, this does not diminish the importance or even the necessity of the present evaluations. Furthermore, ex post evaluations of previous legislation often provide important input which can be useful in drafting of new laws and

regulations, in order to be able to evaluate the actual effects and unintentional side-effects (Popelier and Verlinden, 2009, p. 18).

### 1.2. Finnish national strategies on OSH

The goal of the strategy of the Ministry of Social Affairs and Health (Finnish strategy, 2011, p. 3) is to achieve a socially sustainable society in which individuals are treated equally, everyone has the opportunity to participate, and everyone's health and functional capacity is supported. Since monitoring may be considered a form of direction, its predictive role must be enhanced (Finnish strategy, 2011, p. 16). There are three strategic choices concerned with OSH: (1) A firm foundation for welfare; (2) Access to welfare for all; and (3) A healthy and safe living environment. In the Finnish strategy (2011, pp. 6–7) the shift of the focus is moving from treating the sick to actively promoting wellbeing with the overall aim being to lengthen working careers by an average of 3 years by 2020. The attractiveness of working life must be increased by improving working conditions and wellbeing at work. The improvement in working conditions must be achieved through joint efforts by management and personnel. The risk of permanent working incapacity must be reduced by promoting health and work ability, by improving working conditions and by enhancing OHC (Finnish strategy, 2011, p. 8). Furthermore, particular attention must be paid to those occupations that carry the greatest health risks. For example, the incidence of musculoskeletal diseases and mental health problems must be reduced and unambiguous indicators should be used for monitoring attainment of strategic goals and for performance management (Finnish strategy, 2011, p. 21).

The Finnish OSH strategy (2011) is based on the new strategy for social and health policy of the Ministry (Finnish strategy, 2011). New visions of the work environment and well-being at work are defined in the new OSH policies, i.e.: health, safety and well-being are important common values, which need to be implemented in practice in every workplace and for every employee. OSH policies (Finnish OSH strategy, 2011) include the following six measures, means and instruments: (1) Leadership is the cornerstone of well-being at work; (2) The occupational health care service will be an efficient partner; (3) Knowledge, willingness and competence through cooperation; (4) Effectiveness by communication; and (5) Good legislation will form the basis for guaranteeing the minimum level of working conditions; and (6) A competent OSH administration management ensures the enforcement of legislation.

The Finnish OSH strategy (2011) has set three goals to be achieved by the year 2020: (1) the number of occupational diseases will decrease by 10%, (2) a reduction in the frequency of workplace accidents by 25% and (3) work related harmful strain will be reduced such that both perceived physical strain and mental strain are lessened by 20%. In Finland, several actions will be needed in order to reach these important goals. First of all, the Finnish workplaces have to meet the minimum requirements of legislation (Finnish Legislation, 2006). By carrying out inspections, the Finnish OSH administration monitors that these statutory requirements are being met in workplaces. Furthermore, the importance of leadership and cooperation can never be sufficiently emphasized (Finnish OSH strategy, 2011).

### 1.3. The collective climate of the OSH inspectorate

In the present study, the definition of climate is used (see details in Section 3) based on Litwin and Stringer's (1968) understanding of the concept as a 'set of measurable properties of the work environment that are perceived by those working in the environment'. The first focus of this study is to provide a brief review of

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