

General Applicability of Sectoral Collective Agreements in Finland

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Historical Background

- already the Collective Agreements Act (CAA) 1924 included the *ipso jure* application of collective agreements (CBA) to non-organised workers in an organised undertaking;
- the Employment Contracts Act (ECA) 1970 established the *erga omnes* effect of the **national sectoral CBAs** *ipso jure* if the CBA was to be considered as “general” in the sector;
- disputes belonged to general courts; in the Supreme Court’s case-law a criterion that “about 50%” of the sector’s workforce was in service of the organised employers;
- nearby all relevant blue collar agreements had in case-law the *erga omnes* effect; at salaried employee agreements the practice was more variable; at academic experts private sector agreements did not emerge before ca. 2000.

Declaration Procedure 2001

- linked to the ECAs revision in 2001 a declaration procedure was established: the Act on Confirmation of the General Applicability of Collective Agreements (law 56/2001);
- an impartial state commission decides upon the *erga omnes* effect;
- any CBA must be delivered to the ministry responsible for labour inspection, added by the amounts of employers and workers within the scope of a nation-wide CBA;
- the state commission decides the *erga omnes* effect without any request by the social parties;
- possibility to appeal for those having legal interest before the tripartite Labour Court (sole national instance), sitting in these cases in a composition of three impartial members plus one from management and labour, respectively;

Criteria for the *Erga Omnes* Effect

- ECA: General applicability of collective agreements
- “The employer shall observe at least the provisions of a **national collective agreement considered representative in the sector** in question (generally applicable collective agreement) on the terms and working conditions of the employment relationship that concern the **work the employee performs or nearest comparable work.**”
- as is common in the Finnish tradition, the ECA’s preparatory works elaborate further what is to be considered “representative” in the sector;

Representativeness

- Preparatory works of the ECA 2001:
- as earlier: if, according to statistics, about a half of workforce is in service of organised employers the *erga omnes* effect becomes confirmed;
- in addition: whereas the purpose of the ECA 2001 was not to question the traditionally accepted *erga omnes* effect of a given agreement and so as to taking into account the stability sought by the binding minimum working conditions, the following criteria must be used whenever needed:
 - the established nature of the CBA practice in the sector;
 - the overall organisation rate at both sides;
 - the purpose of the *erga omnes* effect in safeguarding minimum working conditions;

Representativeness cntd.

- preparatory works also spell out that temporary changes in the coverage of an agreement do not lead to annulling the *erga omnes* (e.g. when a big employer resigns from the employer organisation);
- on the other hand, new agreements are *mutatis mutandis* subject to the above criteria;
- a real novelty under the ECA 2001 was recourse to the workers' unionisation rate as a criterion;
- in practice the decisions of the state commission and the Labour Court are sometimes based on a combination of the criteria: as an example the Lorry Drivers' and Building Sector's Agreements were considered as representative based on the long agreement practice **and** the workers' relatively high unionisation rate;

Representativeness cntd.

- in calculating whether about a half of the workforce works for organised employers, only domestic workers and employers have been taken into account;
- in construction sector there is appr. a 20% share of workers posted mainly from Estonia; some “cowboy company” might therefore challenge in future the *erga omnes* effect of the building sector agreement; in such a case a reasonable expectation is that the state commission and the Labour Court would rely heavily on the stability of the agreement practice, as well as on the purpose of guaranteeing minimum conditions for any workers in non-organised companies;
- the interpretation effect of the Posted Workers Directive 96/71 would support the same: combining workers’ rights and fair competition;

Erga Omnes in Practice

- 159 sectoral agreements out of 201 declared *erga omnes*; 94/SAK, 50/STTK, 8/AKAVA, some joints ones SAK/STTK; a couple of agreements by independent national trade unions;
- total workforce in private sectors is some 1.7M; some 85% covered by a collective agreement; without the *erga omnes* system only some 60% would be covered;
- the determination of the sector triggers disputes at certain cases; some agreements are overlapping or even rivals; the state commission has to make a choice of which agreement is to be declared *erga omnes*;
- in some 40 cases, predominantly at emerging sectors covering salaried employees in various services the *erga omnes* declaration has been rejected either by the commission or the Labour Court;
- only one old *erga omnes* agreement has lost this status;

Contents of the Agreements

- minimum wages in collective agreements, not in law;
- the agreements concluded by unions in the SAK (blue collar confederation) and STTK (confederation of salaried employees and technicians) always contain provisions on pay levels, sometimes also in performance-related work;
- the agreements within AKAVA (academic confederation) contain only salary increases; salaries are individual;
- the minimum wages within the SAK start from ca. 7.80€/h (some agreements), in the industry usually from ca. 9€/h onwards; for a skilled worker in construction 15.22€/h; within the STTK the salaries start from 1.700€/m;
- holiday bonuses (ca. 6%) are always based on the agreements; no 13th month in law or agreements;