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DG Employment, Social Affairs and Inclusion

Employment and Social Legislation, Social Dialogue
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Sectoral Social Dialogue Committee on Professional Football

Minutes of the Working Group Meeting "Implementation of the Autonomous Agreement"

1 September 2015

1. Adoption of the agenda

The meeting was chaired by Mr Grafström (UEFA). The agenda was adopted.

2. Adoption of the minutes of last meeting

The minutes of the working group meeting on 3 February 2015 were adopted without changes.

3. Clarification of scope of Minimum Requirements

Three points were identified by FIFPro, which they considered core steps of fully implementing the minimum requirements. To remove any uncertainty about possible differences in views FIFPro sought confirmation that all parties considered these requirements of the Autonomous Agreement:

- Need for mandatory standard contract

FIFPro reiterated the importance to have a mandatory standard contract as the minimum form of implementation. UEFA confirmed that a mandatory standard contract is strongly advised and this was also reflected in the discussions during the country visits. Mr. Dewaele stated that in the discussion with Hungary ECA had pushed for a mandatory standard contract. While the agreement doesn't specifically specify a mandatory standard contract, the social partners agree on the benefits of mandatory standard contracts and would continue promoting it as a preferred option for the implementation of the minimum requirements.

- Need for NDRC

FIFPro expressed that in their view the implementation of an NDRC was part of the Autonomous Agreement and thus they were surprised that recently the employers had stated the opposite in a written communication. Expanding on the benefits FIFPro explained that a well-functioning arbitration system is particularly important for sports and that a functioning NDRC substantially reduces the conflicts, thus leading to the question how to deal with situations in which the national labour law does not allow for arbitration on labour related issues outside courts. In spite of this situation in some

countries these problems have been resolved, by avoiding using the expression 'arbitration' in the set-up of the conflict resolution mechanism. In all countries the decisions of the FIFA-NDRC are respected, triggering the question with FIFPro whether such mechanisms should not be possible in all countries.

Without contesting the usefulness of well-functioning NDRCs, ECA pointed out that setting-up an NDRC is in their view not a formal part of the agreement and EPFL stressed that FIFA has given out a circular on NDRCs and should accordingly invest in doing this. It was, however confirmed from EPFL that well-functioning NDRCs are also in the interest of clubs and leagues.

FIFPro responded that not only had FIFA responsibility to enforce their circular, but the social partners also had a responsibility under the Autonomous Agreement.

- Need for employment contract

Discussed under point 4.

4. Legal questions on employment status of footballers

Linked to the question on whether there is a need for an employment contract or whether other contracts might also be acceptable, Mr De Beys explained, that players – irrespective of their contract – are to be considered as workers (or employees, the distinction workers/ employees is irrelevant under EU law) if we start from the EU general definition of this concept (i.e. any person who for a certain period of time performs services for and under the direction of another person in return for which he receives remuneration). This general definition is, for instance, used by the EU Court for determining people benefitting from the free movement of workers (45 TFEU).

Some Labour Law Directives (on working time and – so probably less relevant - on collective redundancies) indeed rely on this general EU definition and so, there is no doubt that they apply to players.

However, the majority of Labour Law Directives applies only to people considered as 'employees' in their MS. This is for instance the case of the Written Statement Directive (91/533/EEC) which gives employees the right to be notified in writing of the essential aspects of their employment relationship when it starts or shortly after¹.

For these Directives, MS might have some room of manoeuvre in selecting the categories of people benefitting from the protection legally established. Mr De Beys expressed its conviction that, nevertheless, one might find good arguments² in front of the EU Court in order to contest (alleged) abuses done by MS (for instance, a systematic utilisation of civil law contracts for people clearly corresponding to the EU general definition of workers).

He agreed however with ECA that so far there is no formal legislation which would mean that using civil law contracts infringes EU labour law.

¹ This Directive applies "to every paid employee having a contract or employment relationship defined by the law in force in a Member State and/or governed by the law in force in a Member State".

² See for instance findings of the Court in case C-385-05.

5. Update on priority countries

The working group went systematically through the situation in the 12 priority countries. To summarise the situation a traffic-light system was applied, green indicating that the process is on track, progressing and a realistic timeline for full implementation exists; Orange: there are still substantial problems; Red: really fundamental problems.

The summary focuses on the (remaining) open issues and not on achieved successes.

Bulgaria got a green light, however FIFPro indicated that there are problems in terms of a high proportion of black salaries and thus a further monitoring of the implementation of the MRSPC into practice was discussed.

Cyprus also got a green light.

Russia: orange (almost red). The non-neutral composition of the NDRC was again highlighted as well as the political level blockage of the process. FIFPro was asked to communicate the issues which had been reported to them so that these could be discussed with the partners at national level.

Serbia: orange. Diverging feedback: on the one side quite positive indications in terms of progress with standard contract, on the other side recent feedback to FIFPro indicated some problems. Awaiting upcoming meeting on 15/09, to see how process evolves.

Ukraine: green, however the working group agreed that the situation might look a bit better on paper than in reality and that notwithstanding the positive assessment further attention might be useful, similar to Bulgaria.

Czech Republic: orange, clear discrepancy between the assessments provided by the employer and the trade union representatives. Main problem being, that the substantial obstacles for a quick implementation of the agreement are not sufficiently clear. UEFA commits to approach the Czech representatives to provide a detailed legal analysis which describes the obstacles for implementation and to share it with the members of the working group.

Slovenia: orange; similar situation to the Czech Republic, except for the intention of the national trade union to take legal steps. For both countries it was acknowledged that the process is still ongoing.

Turkey: red. The working group decides to start closer monitoring of the situation in Turkey and to look into ways of intensifying efforts with the partners at national level.

The following countries have been visited twice by the task force:

Croatia: orange. Discussion on a standard contract is ongoing and solution on a NDRC seem in sight. Working group envisages seeing whether similar approach as for Czech Republic could be helpful. The trade union delegation remained concerned about the implementation of employment contracts.

Hungary: orange. The challenging element in this situation that the next steps seem rather obvious but the national actors hesitate. One of the countries for which the trade union side expresses particular frustration.

Poland: orange. Employer representative indicates that the situation is developing quite favourable (functioning dialogue between players and clubs; players opt voluntarily for civil law contract – also because the sports law provides a quicker i.e. more effective protection; number of arbitration cases is decreasing) while the trade union side is sceptical (key points of trade unions in the proposed standard contract not taken into account; no real equal representation of workers and employers in the NDRC; players in fact cannot freely choose between civil law and employment contracts and even if this can be problematic). It was generally acknowledged that the ongoing dialogue (Social dialogue panel meeting every two weeks) is a positive sign.

Romania: red. 17 clubs in the country are in insolvency, discussion between the social partners is highly emotional and agreed deadlines are not met. All members of the working group agree on the difficulties faced with. Certain approvals at Executive Committee level at the Romanian FA had been scheduled but in the end not taken place.

6. Update on other countries

For a detailed report, see the UEFA reports. Only in cases with substantial discussion this is recorded. For the rest the same system was applied as for the priority countries.

Armenia: green. The standard contract is an employment contract, mandatory under the FA regulations. It complies with all the MRSPC. The DRS, for its part, is fully in line with FIFA Standards.

Azerbaijan: orange – red. The ongoing revision to the national labor code which might affect players as well has caused the stand-by of the implementation process of the MRSPC and, therefore, a final version of the standard contract will be ready only by the end of the year.

Belarus: green. Standard contract now encompasses all MRSPCS. It is an employment contract and used as a recommendation under the Regulations of the FA. DRS requires further work in order to comply with the FIFA Directives.

Estonia: green (however: no players' union). Social dialogue established at national level with very well organised meetings. Clear timeline for the creation and implementation of a standard players' contract which should come into force on 1 December 2015. Ongoing revision of the Sports law by a working group which includes representatives of the FA. Creation of a players' union also ongoing.

Georgia: green. The minimum requirements for players' contracts have been approved by the ExCo and as a consequence, from 1 June 2015 only contracts that meet these requirements are registered with the Federation. The national stakeholder do not want to create a standard contract, though UEFA underlined the importance of having one. There is a doubt whether the NDRC rules are in line with the FIFA requirements, though FIFA has not provided any feedback to the Federation.

Israel: green. Mandatory employment standard contract requires some adjustments. Regular exchange of views have taken place to agree on a fully MRSPC-compliant standard contract by the end of the year.

Kazakhstan: orange. Despite a first meeting was organised at national level, the timeline agreed with the European stakeholders has been delayed due to important changes in the structure of the Federation (i.e. newly elected general secretary of the FFK, newly elected president of the professional league and new offices of the Federation).

Latvia: green. A working-group will convene in September and November in order to make the standard-contract MRSPC-compliant and mandatory through football regulations for the start of the 2016 season. (However: no players' union)

Lithuania: green. A working-group (comprising of the FA and clubs) has been established to review the standard contract, make it mandatory through football regulations and review the current DRS. Work ongoing.

Malta: orange. Overall a quite positive assessment, in terms of progress achieved, but considering that the chair of the NDRC is appointed by the federation and that players' status are unclear it was decided to not set the light on green.

FYROM: green. A standard contract in line with the MRSCP has been created and is in force since the beginning of the 2015/16 season. The scholarship agreements will cease to exist as of 15 June 2016. The Macedonian Olympic Committee has created a National Sport Arbitral Court.

Moldova: green. The standard contract is an employment contract, mandatory under the FA regulations. It complies with all MRSPC. DRS to be further discussed within working-group. (but no union recognised with FIFPro)

Montenegro: green. Mandatory standard contract generally in line with "MRSPC" and DRS in line with FIFA Standards. Further discussions ongoing to have standard contract governed by labour law.

Slovakia: green; so far no players' union in place but work on setting up a union is ongoing. A new version of the Regulations on the Status and Transfer of Player has been approved and came into force in June 2015. The minimum requirements for players' contract are included therein. A standard player contract is currently being drafted and will be used as of the winter transfer period. Revision of the Act on Sport which will allow the switch from civil contracts to employment contracts is currently ongoing.

For the remaining two countries, Albania and Bosnia dates for meeting have been agreed on 2/11 and 15/10 respectively.

7.& 8. Support by the European Commission and next steps

So far four autonomous agreements have been concluded by sectoral social partners. As these autonomous agreements have been concluded on the own initiative of the respective social partners, the Commission will not put in question the autonomy of the social partners when implementing them. However, the Commission aims to support the implementation in case social partners wish so and within the existing legal constraints (in social affairs including industrial relations EU level competences are limited).

Following this explanation of the context, Mr. Dion listed a number of potential forms of support: project support (e.g. the ongoing project to support implementation); financial support from the Member State level (e.g. ESF) to facilitate/ strengthen social dialogue or certain dimensions of it; mutual learning between social partners in different Member States (programme in development); more political or technical support such as participation in certain meetings e.g. to explain the European perspective and/or act as a facilitator. He put it at the discretion of the social partners to decide whether one of these forms or some further development would be suitable in the case at hand.

Taking up on that, social partners concluded to commission independent legal expert opinions on the legal obstacles for the implementation of employment contracts in the five priority countries, which are Member states and have not implemented mandatory employment contracts between clubs and players so far. The exact research question was to be developed in cooperation shortly and appropriate legal experts identified. It was further accepted to undertake the necessary steps to invite these countries' stakeholders to roundtable meetings in Brussels or another agreed venue for detailed analysis and discussion of the respective situations. The social partners and UEFA agreed that such meetings should take place before 20 October 2015 to benefit from the funding provided under the current EC funded project. It is expected that this discussion will touch on questions of EU labour law, therefore the participation of a Commission expert on labour law is considered important.

9. Any other business

Nothing.

10. Next meeting

The plenary meeting of the Committee is scheduled for 19/11/2015.

Preparation, in particular setting up of an agenda for the meeting, will need to start. Part of the preparation will also be to develop a work programme for 2016. The Commission indicated that, notwithstanding the importance to work on the implementation of the autonomous agreement, social partners might consider to broaden next year's work programme also to other subjects.

Mr. Grafström closed the meeting thanking all participants for the constructive and productive discussions during the working group meeting.

Participants 1/9/2015

<p>Employers (6 ♂, 1 ♀)</p> <p><u>ECA</u> Mr Martin Prochazka (CZ) Mr Diederik Dewaele (ECA) Mr Wouter Lambrecht (ECA)</p> <p><u>EPFL</u> Ms Ornella Desiree Bellia (EPFL) Mr Lars Christer Olsson (SE) Mr Georg Pangel (EPFL) Mr Marcin Stefanski (PL)</p>	<p>Workers (5 ♂, 0 ♀)</p> <p><u>FIFPro</u> Mr Jonas Bär-Hoffmann (FIFPro) Mr Mads Øland (DK) Mr Theo van Seggelen (FIFPro) Mr Joachim Walltin (NOR)) Mr Wil van Megen (FIFPro)</p>
<p>European Commission</p> <p>Ms Sigried Caspar (DG EMPL) Mr Julien De Beys (DG EMPL) (pt 3 &4) Mr David Pascal Dion (DG EMPL) (pt. 7)</p>	<p>UEFA</p> <p>Mr Mattias Grafström Mr Angelo Rigopoulos Mr. Julien Zylberstein</p>