
Sectoral social dialogue in professional football: social partners, outcomes and problems of implementation

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Introduction¹

In Europe, football is the uncontested number one sport, and its professionalised segment constitutes a ‘growth industry’. However, the industry has been experiencing serious financial problems in some countries despite considerable revenue growth (UEFA 2011).

Regulation of this highly commercialised industry, which saw a transformation from voluntary non-profit organisations to public limited companies, still takes place primarily at national level but the supranational level is expanding its influence (Gammelsaeter and Senaux 2011a). Since the 1990s, the European Union (EU) has had a gradually increasing impact on a variety of sectors and policy fields beyond the exclusively economic, including sports in general and professional football in particular (Niemann *et al.* 2011a for details). More recently, the Lisbon Treaty (2009), while explicitly recognising the specific nature of the sports sector and its autonomy, nevertheless enhanced the formal roles and competences of European authorities (Article 165), albeit without harmonising national rules. Furthermore, the White Paper on Sport (European Commission 2007) represented an important step in the sector-specific processes of Europeanisation (Strezhneva 2016). It set out the official view of the Commission and its strategic plans for the future governance of sports in the EU (Geeraert 2014). The Commission recommended that private associations, called social partners, participate in the future regulation of the sports sector, and encouraged once again the establishment of social dialogue structures. In its Communication on ‘Developing the European Dimension in Sport’ (European Commission 2011) the Commission emphasised the need for these structures to be compatible with European economic law.

In this paper we look at the emerging supranational modes of sports governance, with a particular focus on the recent transformation of professional football. Throughout the paper we argue from an employment relations perspective (neglected by other authors who have written on this topic) and analyse our specific case in the broader, somewhat comparative context of European employment relations, especially regarding working conditions. In this respect, we emphasise the widely overlooked problems of transposition and implementation in multi-level and multi-actor scenarios.

1. This paper is the thoroughly revised and updated version of ‘The regulation of professional football at the European Union level: towards supranational employment relations in the football industry?’, in: Barry M., Skinner J. and Engelberg T. (eds.) (2016) Research handbook of employment relations in sport, Cheltenham, Edward Elgar, 19–45. I would like to thank Philippe Pochet and two anonymous reviewers for their helpful comments and advice on the present version.

Diverging from already existing works, we do not provide another analysis from a purely legal perspective (for which see Branco Martins 2004, Colucci and Geeraert 2011) nor a detailed summary of the protracted history of social dialogue in this industry (see Branco Martins 2004, Gábriš 2010, Theodorou 2013). After some introductory remarks on the institutional and procedural characteristics of social dialogue (section 1) we begin with a description of the characteristics of the corporate actors or social partners on both sides (section 2). We then go on to analyse the first outcome of their activities, the ‘Autonomous Agreement’ on minimum standards regarding working conditions, and present a preliminary assessment of its impact (section 3). Next, we discuss in detail various issues and difficulties of transposition as well as implementation of this specific EU regulation at sectoral and club level; we also identify general and specific regional problems in eastern EU Member States as well as non-EU Member States (section 4). A reflection on the future prospects of social dialogue concludes the paper (section 5).

1. Some institutional and procedural characteristics

At EU level, one major instrument for establishing supranational forms of governance is social dialogue (SD), a focal element and core pillar of the ‘European Social Model’ (or the ‘social dimension of the internal market’ in Jacques Delors’ famous terms of the early 1990s). SD comprises an institutionalised set of procedural arrangements and is supposed to be utilised to establish supranational governance structures in a broad range of policy fields, especially social policy in an encompassing sense. In the multi-level policy arena, SD must respect the fundamental principle of subsidiarity (Article 5 TFEU) as well as the vast extent of national diversity that exists. In our view, SD constitutes a key feature of employment relations and particularly of the changing relationship between ‘both sides of industry’.² The principles of this EU-specific mode of regulation, considered an effective instrument for common solutions to bilateral problems, have also been tested in the sports sector.

Some remarks on its institutional characteristics are necessary to provide a fuller understanding of social dialogue:

- SD takes place at the cross-industry (or inter-professional) as well as the sectoral level. Throughout the 1990s, SD at cross-industry level was more prominent (Falkner 1998) whereas sectoral social dialogue (SSD) has dominated since the early 2000s. SSD is considered to be more ‘flexible’ and appropriate for the regulation of sector-specific issues. For the purposes of our analysis, SSD is of primary interest.
- As already mentioned, the corporate representatives of employees and employers at supranational level are called social partners. In the case of the football industry, individual clubs constitute employers and professional players are their employees.³ Both sides are directly or indirectly represented by their national organisations, employers’ associations and unions, whose unequivocal identification as national representatives and, therefore, actors at European level sometimes creates difficulties, a problem we return to later on. In legal terms, national employment law is applicable when both sides agree on contracts for individual players.

2. Since the early 1990s the European Commission has issued a number of Communications in order to clarify its understanding of various emerging issues. The changing official views are summarised in a series of articles by Eurofound (2013a).

3. They are, in strictly legal terms, not self-employed.

- SD can be of a tri- or bipartite nature, i.e. including or excluding European authorities, especially the Commission. SSD usually involves bilateral arrangements between the social partners, who have been granted broad opportunities of autonomous regulation. Their scope of action relates to all stages of the policy cycle from agenda-setting to policy formulation, implementation and monitoring of outcomes. Thus, SSD is not a top-down process but an initiative towards self-regulation. For our purposes, only the bipartite variant is of relevance.
- The Commission encourages the establishment and supports the activities of various forms of SD but is not necessarily and not always a corporate actor itself (Article 152 TFEU). Its Directorate-General Employment, Social Affairs and Inclusion (DG EMPL) provides organisational and financial support (including travel and hotel expenses, simultaneous translation, and technical equipment, among other things). In our case, two DGs, DG EMPL and DG Education and Culture (EAC), are involved. DG EMPL takes the lead in this area and is therefore of primary interest for our analysis.
- The outcomes of SSD activities can pertain to the relationship between the social partners themselves or to their relationships and cooperation with others, especially EU institutions. The intention behind the latter kind of relationship is to influence EU policymaking through lobbying activities. In the case of professional football, the outcome we look at exclusively concerns the internal relationship.
- All in all, there are more than 40 SSD committees (for a complete, updated list, see European Commission 2015, Annex 5.1; Degryse 2015). Their number has particularly increased since the Commission initiated a major restructuring of all formerly existing heterogeneous forms, which were considered to be overly institutionalised and ineffective, and streamlined procedures in the late 1990s (Commission Decision 98/500/EC). The ambitious, although not only, goal of this major institutional reform, which we look at again later on, was the voluntary conclusion of more outcomes of binding character. We deal exclusively with the more recent stage of development because SSD did not exist in professional football under the old abandoned regime.
- The first prerequisite for the establishment of SD is the assessment of the representativeness of European peak-level organisations that claim to represent their national member associations (European Commission 1993). Since the mid-1990s, their organisational structures are officially examined by the Commission (see Eurofound (2013b) for a summary of existing studies of representativeness). All applicants have to fulfil certain criteria in order to be formally accepted as social partners. Associations of management and labour should:

- be cross-industry or relate to specific sectors or categories and be organised at European level;
 - consist of organisations, which are themselves an integral and recognised part of Member State social partner structures and with the capacity to negotiate agreements, and which are representative of all Member States, as far as possible;
 - have adequate structures to ensure their effective participation in the consultation process' (European Commission 1998).
- In all arbitrary cases of smaller and/or competing associations, the Commission prefers a highly 'flexible' interpretation of its established criteria, pursuing strategies of inclusion instead of exclusion, and is willing to accept problematic applicants as official social partners. This obvious long-term preference for pluralist instead of exclusive representation means conflicts can be avoided at an early, preparatory stage of SSD development. At later stages, however, it creates problems and does not facilitate the implementation of outcomes. Nevertheless, from the associations' point of view, their official recognition as social partners by the Commission improves their legitimacy vis-à-vis their members, European institutions and the public. Furthermore, it enhances the effectiveness of SD. Recognised social partners have privileged access to European institutions and a superior official status in comparison with pure interest groups.
- The vertical dimension of SSD refers to transposition procedures from the European to the national level and therefore needs special attention. Article 155 TFEU defines two options: 'Agreements concluded at Union level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or ... at the joint request of the signatory parties, by a Council decision on a proposal from the Commission.' Throughout the 1990s, the latter option was utilised in a limited number of Directives that then had to be transposed by the Member States (parental leave, 1996, part-time work, 1997, and fixed-term work, 1999). Since the early 2000s, in times of more emphasis on the autonomy and bipartisanship of the social partners, it has been of less importance (for example, in such Directives concerning telework, 2002, work-related stress, 2004, harassment and violence at work, 2007, inclusive labour markets, 2010, and active ageing and intergenerational solidarity, 2016). At sectoral level, the Commission has always acted as a neutral agent and facilitator of outcomes and, in the vast majority of cases, has refrained from any active interference. In this study, the first option, which has no direct legal consequences, will be of exclusive relevance.
- All SD outcomes are categorised according to their legal status, i.e. their more or less binding character for the signatory parties. A typology officially proposed by the Commission distinguishes between various types of 'new generation texts':

- agreements implemented in accordance with Article 155 TFEU, either by Council decision or by the procedures and practices specific to management and labour in the Member States;
- process-oriented texts: frameworks of action, guidelines and codes of conduct, and policy orientations;
- joint opinions, declarations and tools;
- procedural texts laying down the rules for bipartite dialogue between the parties and the rules of procedure for the sectoral social dialogue committees;
- follow-up reports on the implementation and reporting of so-called ‘new generation’ texts (European Commission 2004).

In this paper, we focus on the first cluster of agreements implemented in accordance with Article 155 TFEU because the ‘hard’ outcome of this SSD belongs to this comparatively rare category. Two sub-forms are to be distinguished. In the 1990s, all agreements at cross-industry level were initiated by the Commission, negotiated by the social partners in ‘the shadow of the law’ and implemented by a Council decision and a subsequent Directive. Since the 2000s, autonomous agreements at sectoral level have been initiated, concluded and implemented by the social partners themselves. Because of the characteristics of the outcome of this particular SSD, our analysis is restricted to the latter group.

Last but not least, existing research on SSD (Pochet *et al.* 2009) indicates that there are various monitoring instruments and procedures for the later stages of the policy cycle, including: written surveys of members; annual or periodic reports; plenary meetings and oral or written reports; presentation of good practice; conferences and websites; and new texts and initiatives.

All these ‘soft’ follow-up procedures comprise fundamental weaknesses (Keller and Weber 2011). It remains to be seen if they will be of relevance in our case.

2. Corporate actors: the social partners in professional football

The SSD in professional football was officially inaugurated in mid-2008 and represented a first in the sports sector. However, this development fits naturally into the general, long-term trends of SSD establishment and institutionalisation in an increasing number of sectors.

2.1 The social partners

The ‘Study on the Representativeness of the Social Partner Organizations in the Professional Football Players Sector’ was completed in early 2006 (see UCL 2006 for details). This study could only make suggestions, and the social partners identified and officially recognised by the European Commission are (European Commission 2008, Colucci and Geeraert 2011):

- The International Federation of Professional Footballers (FIFPro)⁴, ‘the worldwide representative organisation for all professional football players’, is the federation of national associations. FIFPro Division Europe, one of its continental divisions, was founded only in 2007 and organises more than 28,000 players in 20 EU Member States.⁵ FIFPro is an independent professional union but has close ties with UNI Europa, the major European industry federation of national private service sector unions.
- The Association of European Professional Football Leagues (EPFL)⁶ represents high-level national leagues from 17 EU Member States with more than 600 clubs. All in all, the EPFL consists of 30 ‘Member Leagues and Associate Members’.⁷
- The European Club Association (ECA) is ‘the sole, independent body directly representing individual football clubs at European level’.⁸ It

4. <http://www.fifpro.org/>. FIFPro is one of the major player associations belonging to the World Players Association, ‘the leading voice of organized players in the government of world sport’ and a member of UNI Global Union. For details:

<http://www.uniglobalunion.org/de/sectors/world-players/about>

5. For a complete member list see <http://ec.europa.eu/social/main.jsp?catId=521&langId=en&agreementId=5241>, Annex 3.

6. <http://www.epfl-europeanleagues.com/index.htm>

7. <http://ec.europa.eu/social/main.jsp?catId=521&langId=en&agreementId=5241>, Annex 1.

8. For a complete list of ordinary and associate members see

<http://ec.europa.eu/social/main.jsp?catId=521&langId=en&agreementId=5241>, Annex 2.

replaces the G14 and the European Club Forum, both dissolved at the beginning of 2008.⁹ At present, the ECA has about 200 major clubs as ordinary or associated members or, to be more precise, in late 2017 it had 230 members from 54 national associations, a big increase from the original 16 founding members.

A particular omission must be mentioned. The Union of European Football Associations (UEFA) is the continental confederation and the European branch of the Fédération Internationale de Football Association (FIFA) (for details, see Olsson 2011).¹⁰ UEFA, the governing body of formerly self-regulated European football, constitutes an 'associate party in the Committee' despite not being an official social partner recognised by the Commission. As one author remarks, 'since this organisation does not consider itself as a representative of employers or industrial relations actor, it is not to be seen as a competitor of any of the sector-related European organisations' (Adam 2013). Nevertheless, all social partners agreed to the UEFA President chairing the SSD meetings, and UEFA participates in all stages of the policy cycle, from problem definition to decision-making processes to implementation procedures. The confederation is therefore a relevant actor within this new layer of interest representation and has a significant impact on all SSD outcomes. Furthermore, the ECA and UEFA have 'very close ties' (García 2011: 39).

The now-disbanded G14, a European Economic Interest Group founded in 2000, consisted of a strictly limited, self-recruited number of major clubs (Fligstein 2008). Its members insisted on their autonomy and aimed at more efficient interest representation towards their national leagues, the international federations UEFA and FIFA, and European institutions (Mittag 2007: 212-213). At one point, the G14 clubs even threatened using their economic power to establish an independent 'breakaway' supranational league, the European Super League (Szymanski and Kuypers 1999: 301-308), which was supposed to exclusively consist of big clubs. This threat of 'exit' (Hirschman 1970) does not exist any longer, and the foundation of a professional league at European level constitutes an unrealistic idea. In the end, the G14 transnational grouping disbanded (Pijetlovic 2011).¹¹ Nowadays, its former members receive considerable compensation payments from their national associations when players play on their national teams and therefore face additional risks of injury.

9. <http://www.ecaeurope.com/>. On activities: https://de.wikipedia.org/wiki/European_Club_Association

10. <http://www.uefa.org/>

11. The protracted power struggle between G14, UEFA and the Commission is analysed in detail by Grant 2006.

2.2 Characteristic features and peculiarities

Due to the particular characteristics of the sports sector, especially the limited overall number of clubs, the number of organisation members is small in comparison with that of other sectors; however, density ratios are high because of mandatory membership. The foundation dates of associations both on the employers' side (the EPFL in 2005 and the ECA in 2008) and the employees' side (FIFPro Division Europe in 2007) tie in closely with the football industry's project of launching an SSD of its own. These dates also indicate the emerging shift in the EU governance of football and the internal distribution of power between associations.

The existence of more than one social partner on one side (especially the employers') or sometimes even on both sides is not unusual for an SSD structure (European Commission 2015: 119). All in all, more employers' than union federations are engaged in SSD activities (European Commission 2010a, Annex 1). A certain degree of organisational fragmentation reflects the simultaneous existence of both common and divergent interests, if not even some inter-organisational rivalry and competition (for example, between small and big companies within an industry or between companies with different fields of specialisation).

The two employers' associations follow distinct principles of organising and, therefore, of strategic action. The EPFL, the federation of national associations, indirectly represents a greater number of smaller, less successful clubs. The ECA is the supranational association of the limited number of bigger clubs and exclusively represents their (primarily financial) interests (corresponding to their sporting performance and, accordingly, their budgets). The ECA organises only a minority, but the most powerful section, of professional clubs. Only two thirds are based within the EU, a specific composition of membership we will return to look at later on.

Overall, there is a decisive division running through the employers' side: the ECA represents the specific, comparatively homogeneous interests of a still relatively small group of highly successful clubs, whereas the EPFL represents the more general and heterogeneous interests of a larger group of smaller and less successful clubs. While ECA members can directly represent their own individual interests, EPFL members' concerns are mediated by their national associations. This division can lead to differing interests when it comes to active participation in implementation procedures, which we describe later on in more detail.

The empirical evidence of SSD research (Pochet *et al.* 2009, Keller and Weber 2011) indicates that organising is frequently more complicated on the employers' than on the employees' side. The main reason is that negotiations at EU level require that national associations mandate their European federation to act on their behalf, thus leading to a certain loss of (national) autonomy and (probably some financial) resources. Common interests remain limited at national and especially at supranational level. Furthermore, if

employers do organise at EU level, they usually prefer voluntary instead of any kind of binding outcomes, another issue we deal with later on.

Competition has a horizontal as well as a vertical dimension. It takes place not only at national but also at supranational level. The more recently expanded UEFA Champions League is the most important club competition at European level, while the UEFA Cup constitutes a secondary competition of less commercial importance, public interest and prestige. Both competitions have to be regulated by procedural rules established at supranational level.

However, individual clubs are not only opponents who compete for victories in national as well as European championships. They also share common interests, while keeping some sort of competitive balance in their processes of joint production in the industry. Consequently, forms of cooperation and competition have to be carefully balanced and problems inherent in both simultaneously solved by procedural regulation. Long-term league interests thus need to be pursued by some sort of collective instead of purely individual action; leagues have to produce not only individual but also collective goods (Olson 1965: 1982), or, to be more precise, club goods that are of interest to members only. Differences of interest regarding the distribution of available resources are manifest (for example, of the distinctly increasing revenues from the sale of media rights on domestic as well as foreign markets), and national patterns of their distribution differ considerably, as indicated by the example of individual (or club) versus collective (or league) marketing systems of TV broadcasting rights (Brand and Niemann 2006: 134-136).

The labour market of professional football is highly segmented and more internationalised, or even globalised, than the vast majority of other sectors. In 1995, the famous Bosman ruling by the European Court of Justice (ECJ) confirmed the right to freedom of movement, one of the fundamental principles of European integration, for professional football players, thus abolishing existing nationality quotas for club teams (Fligstein 2008, Garcíá 2011, Olsson 2011). With this massive legal intervention, the ECJ initiated a major transformation of the traditional, rather rigid, nation-specific transfer systems, enforcing their liberalisation and kicking off a greater cross-border mobility of players (on recent issues of mobility and transfers of players, see Dalziel *et al.* 2013, KEA and CDES 2013). This ruling also represents an early example of increasing supranational influence and its impact in terms of fundamental changes in national rules and standards.

3. The outcome: an assessment

To begin with, the Commission co-financed some preparatory projects, and various working group activities took place. Following this, the above-mentioned 'Study on Representativeness' was finished in early 2006. Next, a two-year test phase constituted the SSD's transition from informality to formality. Finally, the 'Sectoral Social Dialogue Committee on Professional Football' was officially launched in 2008. In close cooperation with the Commission, the social partners formulated their own rules of procedure, established a Steering Committee and agreed on their first work programme of 2008-2009.¹²

This SSD is one of the youngest among the more than 40 existing SSD and belongs to the group of 'third-generation committees' (Degryse and Pochet 2011: 147), meaning that its establishment was not, as already mentioned, the continuation of a formerly existing SSD. In comparison with other, not only major industrial but also service, sectors it is a latecomer, one of the reasons being the complexity and specificity of the sports sector. As noted by the Commission, 'Regarding labour relations, the sector's roots in non-profit organisations and volunteering have slowed the emergence of social dialogue in most Member States' (European Commission 2010b: 64).

3.1 The outcome

So far, the only, yet important, achievement has been the 'Autonomous agreement regarding the minimum requirements for standard player contracts in the professional football sector'.¹³ This agreement defines 'minimum requirements' to be introduced in all individual cases. Contracts must be in writing and signed by both sides. They should define the club's financial, as well as the player's, obligations. The club's financial obligations include:

- (a) 'salary (regular, monthly, weekly, performance based),
- (b) other financial benefits (bonuses, experience reward, international appearances),
- (c) other benefits (non-financial ones such as car, accommodation, etc),

12. Official documents are available via the home page of DG Employment, Social Affairs & Inclusion: go to <http://ec.europa.eu/social/main.jsp?catId=480>, and then select 'Professional football'.

13. Details about ongoing negotiations were not published. Some stylised facts are summarised by Geeraert (2014, 2015).

- (d) medical and health insurance for accident and illness (as mandatory by law) and payment of salary during incapacity (definition to be determined including its consequences with regard to salaries paid),
- (e) pension fund/social security costs (as mandatory by law or collective bargaining agreement),
- (f) reimbursement for expenses incurred by the player.’ (Article 6.2)

The player’s obligations include:

- (a) to play matches to the best of their ability when selected;
- (b) to participate in training and match preparation, under the direction of his superior (e. g. the head coach);
- (c) to maintain a healthy lifestyle and high standard of fitness,
- (d) not to participate in potentially dangerous activities not covered by the club’s insurance;
- (e) to act in accordance with club officials’ instructions, such as living in a suitable place and obeying club rules, including disciplinary regulations;
- (f) to behave in a sporting manner during matches and preparation, and to accept the decisions of officials;
- (g) to notify the club in the case of illness or accident and not to undergo treatment without notifying the club’s doctor, except in emergencies;
- (h) to undergo regular medical examinations or treatment as required by the club doctor;
- (i) to comply with the club’s anti-discrimination policy;
- (j) not to bring the club into disrepute and not to gamble. (Article 7)

Furthermore, the agreement also contains individual sections on anti-doping rules, action against racism, and disciplinary procedures.¹⁴ In cases of minors, the contract must be signed by the parent or guardian. Young players have the right to follow mandatory school education in accordance with national law. It should be mentioned that the agreement does not refer to women’s professional football (on this issue, see FIFPro 2017).

The agreement was signed in April 2012, not long after the official establishment of the SSD in 2008. In comparison with other SSD, this specific sequence of events is unusual, and can be explained by the fact that preparatory discussions took place not only during the preliminary informal stages but also in different working group projects. The conclusion of the agreement – or to be more precise, its binding character – indicates that both sides have not just been interested simply in an exchange of information, but rather that forms of mutual understanding, trust and cooperation have developed. The agreement

14. The Global Employment Report (FIFPro 2016) deals with working conditions in professional football on a world-wide scale and identifies a list of serious issues (among others, minimum wage workers, (dis)respect of players, short careers and even shorter contracts, career path interference, unregulated working conditions, and isolation from the team).

constitutes an ‘internal text’ directed at the social partners themselves, in contrast to ‘external texts’ directed at European institutions or Member States.

3.2 A general assessment

One caveat must be acknowledged. Considered in a general SSD context, it comes as no surprise that the agreement defines only ‘minimum requirements’ to be introduced in players’ contracts. These basic standards of working conditions are, in a broad sense, supposed to be improved on a purely voluntary and by no means mandatory basis. In general, because of the legal-institutional characteristics of SSD, agreements can only be concluded on topics of common interests, whereas all issues involving opposing interests are excluded because of their inevitably voluntary nature. Therefore, all potential topics are ‘soft’ and consensual, rather than ‘hard’ or non-consensual; wages in particular, a focal issue, are explicitly excluded (according to Article 153 TFEU).

Nowadays, the Commission is more sceptical about SSD results than it was in the 1990s: ‘Autonomous agreements are very well adapted to regulate and improve certain aspects of working conditions, but they cannot guarantee uniform outcomes, binding status and full coverage in all countries’ (European Commission 2009: 126–127). SSD outcomes always represents the ‘lowest common denominator’ between diverging interests, and define, as already indicated, only minimum standards. To be acceptable they must simultaneously provide some distinct ‘added value’ or factual improvements for both sides of industry (Geeraert 2015). This value does not have to be the same for all but must be positive for each participant.

Sport has not only economic but also social and cultural dimensions that have been officially recognised (Council of the European Union 2011) and are potential topics for SSD. SSD actually deals with a broad range of issues that extend far beyond employment issues in a strictly limited sense (Pochet *et al.* 2009). The agreement exclusively defines some minimum obligations of individual players and their clubs and thus selected aspects of the employment relationship, but does not deal with others. We come back to this issue later on.

There are at least three dimensions to the enormous differences in professional players’ salaries that we see today. First are the differences within individual teams between the vast majority of normal players and a limited number of excessively paid superstars, who are not only well-known celebrities but also have considerable individual market power. Second, major differences exist between the small number of top clubs¹⁵ and all the rest. Third, pay inequality exists between the first and second, and in some cases also third, national divisions.

15. There are only two teams dominating the Primera División in Spain, five or six teams in the Premier League in the UK, and two or three teams in the Bundesliga in Germany.

All these significant differences will not be reduced or even eliminated; they are not at all mentioned in the agreement. Some social partners' expectations of some kind of 'harmonisation' above the level of minimum employment standards and of the establishment of unified standards, or at least of some 'convergence' of national standards and 'raising' of working conditions in the European football industry (European Commission 2014a: 41) are nothing but wishful thinking. The emergence of a vertically integrated or at least converging European system of employment relations is highly unrealistic, not exclusively but certainly in the football industry. The agreement constitutes, as a prototypical negotiated compromise, no more than the point of departure to overcome existing forms of 'regulatory minimalism'.

The agreement does not erode national standards or lead to a 'race to the bottom', and it leaves already existing standards, for example in western European and Scandinavian countries, basically untouched. It definitely does not constitute an instrument of strict deregulation or liberalisation. Any development towards some kind of 'convergence' and a 'level playing field' for social partners is unrealistic, or will at least be a long-term process with uncertain outcomes.

An additional caveat concerns the fundamental but usually unremarked upon explicit distinction between SSD and collective bargaining. SSD is by no means to be confused with collective bargaining (de Boer *et al.* 2005, Keller 2005). It does not even constitute an early stage in the development of a European system of collective bargaining. The official declaration that the 'parties regard this Agreement as an outcome of collective bargaining at European level between the Social Partners' (Whereas of the Agreement, I) is hardly correct, or at least decidedly exaggerated, from an employment relations perspective.

By definition, collective bargaining includes the option of strikes and/or lock-outs. Industrial action as a means of solving distributional conflicts is, however, legally excluded from the potential range of SSD outcomes (Article 153 TFEU).¹⁶ According to empirical evidence, SSD is a broad concept and is only appropriate for purposes of mutual information and consultation as well as joint initiatives addressed to third parties; collective bargaining has a more precisely defined meaning, which includes the implementation as well as the later enforcement of outcomes. So far, this option exists exclusively at national level, and professional football is certainly no exception. At supranational level, unions have frequently argued that there should be a gradual development towards collective bargaining, but employers' associations have repeatedly refused this view. Therefore, various attempts to establish appropriate legal-institutional prerequisites for a transnational system of collective bargaining have failed (Ales *et al.* 2006) and they are unlikely to be set up in the future (Keller 2007).

16. Strikes have occurred in some highly professionalised national leagues, such as Italy or Spain, but not in others, such as Germany. Strikes at European level are not a likely scenario.

Finally, another important feature must be emphasised: the formal status of the agreement. We have already presented the official typology of outcomes with varying legal statuses, including the option of binding character. The database of joint texts provided by the Commission as well as independent empirical studies indicate that autonomous agreements are, in contrast to declarations, tools and joint opinions, very rare outcomes (Pochet *et al.* 2009: 20-21; European Commission 2012: 59). They in fact comprise ‘the smallest constituent part of the SSD production’ (Degryse 2015: 6) and only ‘account for 2% of texts adopted’ (Degryse 2015: 10).¹⁷ However, they deserve special attention because of their binding character for the signatory parties and, therefore, their consequences at lower levels. In any case, additional activities are required of member associations at national and company (or in our case, club) level for the agreement to be implemented.

17. In the 2008-2016 period a total of only ten framework agreements were concluded in nine different sectors (ETUI 2017: 52).

4. Long-term problems: transposition and implementation

Most SSD research has focused on the early stages of the policy cycle, such as agenda-setting and the formulation and conclusion of policies. However, we know from more recent research that the later stages (including implementation and restructuring/termination) are absolutely crucial as regards the final outcome (Falkner *et al.* 2005), and therefore cannot be ignored. In theoretical terms, the implementation should be clearly distinguished from the formulation and conclusion stages (Keller and Weber 2011). In substantive terms, the final outcome can be rather different from the initial official intent, or even completely distort it.

This is especially true for the EU system of multi-level governance. All SSD comprehend not only a horizontal but also a vertical dimension (Léonard *et al.* 2011). Their outcomes first have to bridge the sizeable gap between the European and the national levels and then the gap between the meso (or sectoral) and the micro (or company, in our case club) levels. Therefore, the processes and procedures of transposition and implementation should be clearly distinguished.

National legal-institutional characteristics as well as diverging interests and power relations of social partners at European and national level allow for considerable discretion in interpreting and applying norms established at EU level (Keune and Marginson 2013). Later on, there is the already mentioned, supplementary need to first develop and then utilize various monitoring instruments and follow-up procedures. They are of major importance for the overall sustainability as well as long-term effectiveness of the SSD outcomes and require not only the existence of common interests but also the input of additional resources, which are often scarce. All social partners face not only inter-organisational but also complex intra-organisational negotiations (Walton and McKersie 1991) as well as legal-institutional constraints at national level.

4.1 General problems

Autonomous agreements are signed at EU level and therefore constitute only framework regulations. As already mentioned, they first have to be transposed to the national level, or, as in our example, to the national associations and leagues.¹⁸ Later on, they have to be implemented at the level of individual clubs.

18. Political interference in national football arrangements differs significantly across EU

In the case of professional football, attempts at implementation do not follow the above-mentioned legally binding route. The voluntary or, at best, contractually binding route prevails: the social partners, and not the Commission or its Directorates General, are in charge of all procedures. The Commission even confirmed officially that the agreement will have to be implemented through the private activities of the signatory parties (European Commission 2013a: 18, 205). Both social partners 'have committed themselves to autonomously implementing the agreement by using the most appropriate legal instruments as determined by the relevant parties at the national level in the EU and in the remaining countries of the UEFA territory' (European Commission 2013a: 206).

The fundamental problem is that the European federations on both sides of industry are (more or less) based on voluntary and not mandatory membership.¹⁹ They need at least ad hoc or, if possible, general mandates to negotiate on behalf of their constituencies. However, they are not able to exert sufficient pressure on their national member organisations, first, to secure their commitment and close co-operation to formulate policies and negotiate outcomes (despite heterogeneous interests) and, later on, to guarantee their proper and complete support during the implementation stage (Léonard *et al.* 2011).

In other words, autonomous agreements indicate only broad framework regulations without being binding for the signatory parties in a strict sense, and without providing any sanctions for only partial or even complete non-compliance in individual cases. European federations need to have a strong influence over their national affiliates for there to be proper implementation, but this generally remains rather limited, not only but especially in the later stages of the policy cycle. Therefore, the agreement explicitly clarifies that specific national legislation applies to the contract.

Existing differences in legal-institutional characteristics at national level²⁰ lead to great heterogeneity in the processes as well as outcomes of implementation. Examples of autonomous agreements concluded in other sectors support the assumption that a variety of instruments will most likely be applied (Voss 2011). Furthermore, empirical research on other SSD indicates the existence of varying commitment levels of individual associations at national level. One side, usually the employees, is more interested in strict forms of implementation, whereas the other side prefers more flexibility (Keune and

Member States, and in the case of SSD, the vast majority of governments will not act as interlocutors.

19. The German Professional Football Players Association, Vereinigung der Vertragsfußballspieler e.V. (VDV), constitutes a major exception (<https://www.spielergewerkschaft.de/>). This occupational union is established at national level but is not a regular member of FIFPro at European level. Thus the interests of German professionals are not, or at least not directly, represented at EU level.

20. The organisational and legal governance structures of professional football in selected countries are described in detail in Gammelsaeter and Senaux 2011b and Niemann *et al.* 2011b.

Marginson 2013). Our case fits well into this pattern of ‘hard’ versus ‘soft’ forms: from the beginning, FIFPro preferred a binding agreement whereas the EPFL and the ECA at first refused any binding status of potential SSD outcomes (Parrish 2011).

Collective agreements on players’ contracts exist in some EU Member States, such as France, the Netherlands and the Scandinavian countries, but not in all (see UCL 2006 for details). Collective regulation takes place in less than half of all Member States, with individual regulation dominating in others (Colucci and Geeraert 2011). In employment relations terms, there are multi- as well as single collective agreements. As a consequence, specific institutional traits of national systems, such as the extent of centralisation and the coordination of bargaining, differ significantly, and this diversity has a major impact on the processes and results of implementation.

The agreement proposes (although without providing any details) that in cases where a ‘national collective bargaining agreement exists, the Agreement shall be implemented in the national collective bargaining agreement’ (Annex 8). For other cases, a ‘European professional football social dialogue taskforce’ is to be established, which will consist of experts and should coordinate implementation and enforcement procedures at national level according to a precise schedule. If single-employer agreements predominate, the frequent existence of standard or model employment contracts could serve as a point of departure and reference and ease possible difficulties of implementation. The fact that the number of clubs is limited could also facilitate or even solve emerging problems.

The official assessment from the Commission is, as usual, fairly optimistic: ‘The agreement is a significant achievement for the EU social dialogue in the professional football sector’ (European Commission 2013a: 206). Another point in the same document states: ‘The agreement, its implementation and monitoring is not only an expression of the autonomy of the social partners but also of the autonomy of sport as recognised in the Lisbon Treaty’ (European Commission 2013a: 206). These confident statements are, however, premature, made well before any final results of implementation processes have become apparent.²¹ Therefore, the officially proclaimed, rather positive effects of the agreement cannot be empirically confirmed.

Recent research on other SSD illustrates that factors such as the perceived relevance of the issue being addressed, what regulation already exists at national level, and the quality of the national social dialogue all have a major impact on the final outcomes (Weber 2013, Perin and Léonard 2016). As in comparable cases, it is therefore to be expected that the voluntary processes of implementation will be rather selective and lead to uneven results despite the joint efforts of the official social partners, as well as of UEFA.

21. The selected, completely different cases of Cyprus and Italy are analysed in Theodorou 2013.

Any measurable impact of the agreement in terms of initiating change and producing some 'added value' will vary to a considerable degree at national and especially at club level. The interests and activities of some members of national associations, particularly of the major members, are more influential in these processes than others (Perin and Léonard 2016). There will also be considerable regional discrepancies across Europe, especially in the eastern countries; non-EU Member States constitute an extraordinary case that we look at later on. In other words, the above-mentioned introduction of 'minimum standards' has had differing effects due to significant variation in national standards. There is no room for any 'one size fits all' solution.

Furthermore, the agreement is supposed to be applied in all leagues 'with full-time and/or part-time professional football players under contract' (Annex 6). According to the Commission, 'In 2005, it was estimated that there were more than 34,000 professional football players and more than 1,700 professional football clubs' (European Commission 2010b: 65). There exist, however, significant differences between different layers of professional football. In the second and (in a number of countries) third leagues (see Annex 6 for all national details), there is an unknown percentage of foreign players not only from central and eastern European but also Latin American and African countries.

The agreement refers to all full-time as well as part-time professional players under contract (Annex 6). Therefore, it also includes second and even third-division players, whose positions and bargaining power are much weaker than those of their first-division counterparts. Players in these grey zones of lower divisions are more in need of the provisions of the agreed-upon 'minimum requirements' than others (not only the superstars but also other players in upper divisions) because of the huge economic disparities between leagues.

Interestingly (and in fact surprisingly), these significant differences between national leagues are mentioned neither in the agreement nor in later-signed official documents, such as work programmes. Social partners themselves, and not EU institutions, determine the moving target of full implementation coverage according to their 'customs and practices' but pay hardly any attention to these differences. Because of the different structures of their membership mentioned above, this step of paying attention to these differences should constitute less of a problem for the ECA than for the EPFL. On the other hand, it will be of high priority for FIFPro.

Particularly on the employers' side, organisational structures as well as legal and actual competences of associations differ to a considerable degree not only across but also within countries (see Gammelsaeter and Senaux 2011b for details). The sizeable grey zone between professional leagues and between their players has so far hardly been dealt with. In other words, actual implementation of the agreement contains an implicit bias in favour of the national first divisions, and an obvious neglect of others. This is the case despite the fact that the minor leagues employ a higher number of players who face more difficulties than their first-division counterparts in negotiating

decent working conditions, not to mention having them implemented. The reason is that the overall revenues of the former (resulting primarily from ticketing, transfers, sponsoring, merchandising and media rights) are significantly lower. All in all, the minor leagues would have to cope with greater difficulties if serious attempts to implement the agreement were made.

4.2 Regional problems between EU Member States

The indicated, general diversity of employment relations and of SSD in particular has always existed but has significantly increased as a consequence of the ‘eastern enlargement’ when 10 new members joined the EU in 2004 (Keune and Marginson 2013). As one author remarks, ‘Whereas the culture of social dialogue is well rooted in most Western countries, trade unions and the system of collective bargaining can be looked at with suspicion in post-communist regimes’ (Léonard *et al.* 2011: 265). The necessary but still ‘missing link’ is sector-level bargaining and coordination mechanisms, which hardly exist (see Ghellab and Vaughan-Whitehead 2003 for details).

The differing impact of EU regulation in individual Member States is a frequently examined phenomenon in various policy fields that is caused, first of all, by significant divergence in already existing national standards. Furthermore, institutional prerequisites differ enormously: ‘Particular implementation problems apply in some of the new Member States, where the social partners have little experience of autonomous negotiations, and where social dialogue structures are underdeveloped and the coverage of dialogue is low’ (European Commission 2012: 67). Our case fits well into this general pattern, as shown by the present state of affairs. At least for the time being, the football sector justifies the raising of ‘major questions [...] about the uneven implementation of autonomous agreements’ (European Commission 2015: 135).

In a significant number of sectors, SSD outcomes have fewer far-reaching consequences in the western, old Member States than in the central and eastern, new ones. The Commission officially recognised that ‘Issues related to enlargement and the integration of new actors have remained high on the agenda of most committees, in particular in relation to capacity-building projects for new Member States and candidate countries carried out in some sectors ... although further efforts seem warranted to assess and enhance the effective impact in terms of participation of representatives from the new Member States and reinforcing social dialogue at local and company level in the New Member States’ (European Commission 2010b: 10).

In western European football leagues, especially in the economically most resourceful and therefore most successful ‘big five’ (France, Germany, Italy, Spain and the UK), but also in a few others (such as the Scandinavian countries; see Keller 2016), the basic or ‘minimum standards’ of the agreement were already accomplished during the long-term processes of professionalisation and extensive economisation of professional football. Therefore, the social partners themselves concluded that in a number of countries there was

no need for any action (Annex 8 of the agreement).²² The Commission also recognised this obvious discrepancy and made an official statement: ‘The agreement has been accompanied by a joint letter stipulating that in a certain number of countries the standard of contractual protection is already above the standards provided for in the autonomous agreement and, consequently, no further action is required’ (European Commission 2013a: 206).

In other words, all social partners agreed and the Commission officially confirmed that in 16 countries (Geeraert 2014: 313; 2015: 102), constituting the majority of EU Member States, the agreement had no impact at all on the existing national systems of employment relations and individual players’ working conditions. A better example of the differential impact of EU-level regulation is difficult to find, and not only in the SSD context.

Greater heterogeneity in national framework regulations, and sometimes even non-regulation, exists in central and eastern European countries (Siekman 2004). They ‘have embraced a liberal market model in the post-communist era and ... approached a more non-interventionist stance...’ (Gammelseter and Senaux 2011a: 279). In professional football there are divergent interests and specific obstacles that have to be dealt with. FiFPro has explicitly indicated frequent abuses of contracts in these leagues: ‘Among these are: incentives and bonuses only paid in the event of good performance, to be determined by the club; no contract guarantee during illness and/or injuries; a net salary of which only 10 percent is guaranteed; penalties from 10% to 100% of salary and bonuses unilaterally determined by the club management; the club can reduce the level of the incentive premiums and bonuses during the term of the contract, etc.’ (Colucci and Geeraert 2011: 64; cf also Geeraert 2015: 103).

The social partners foresaw the enormous practical difficulties of transposition due to missing national structures and insufficient mechanisms of vertical coordination between the supranational and national levels. Therefore, they put their efforts into urgently needed capacity building at national level. In late 2012, the Steering Committee established a ‘Working Group on the implementation of the Autonomous Agreement’ whose objective is ‘to make the minimum requirements a reality throughout the whole UEFA territory, whilst respecting the principle of subsidiarity’. The primary tasks of the group include raising the awareness of national member organisations, representatives of individual clubs and players’ unions as well as other potential stakeholders, such as governments, and contributing to capacity-building and mutual learning at national level. Later on, according to its 2014-15 work programme, the working group was supposed to play a crucial role in monitoring the progress of implementation results and applying follow-up procedures at national level.

22. The minutes of an SSD committee plenary meeting confirm this: ‘However, a side letter which was to be signed by all parties in addition to the agreement would confirm that in a number of countries no measures need to be taken since the minimum requirements were already fulfilled’ (European Commission 2013: 1).

The official appointment of a specific taskforce of advisors is a remarkable peculiarity of this SSD and represents an additional and completely novel strategy of support for implementation procedures to the heterogeneous set of measures familiar to other sectors (Perin and Léonard 2016 for details). Therefore, it needs to be discussed in some detail.²³

Instruments and measures to be employed by the taskforce include, among others, the organisation of so-called ‘kick-off meetings’, the development of country-by-country implementation strategies, visits to individual countries to inform and support national associations, the organisation of roundtables and seminars at national and regional level, the establishment and compilation of a database of documents on domestic legal frameworks, and joint questionnaires. However, all of these constitute ‘soft’ measures with the voluntary participation of, and without binding force for, the national social partners.

The social partners later successfully submitted a project funding application ‘on the implementation of the autonomous agreement’, to be financed by EU funds and managed by DG EMPL (European Commission 2014a: 24, 41).²⁴ At the end of the project period the Commission not only expected but insisted on the submission and publication of an evaluation report by the European social partners on the results and assessments of their implementation activities in EU Member States. The preliminary result is the ‘Final technical implementation report’ (European Commission 2016a). However, this report presents only some outcomes and summarises the current state of affairs rather pessimistically: ‘Due to the unsatisfying progress concerning a “full implementation” of the autonomous agreement in the vast majority of the target countries it was decided not to prepare a formal “implementation report” at this point of time... An implementation report will be prepared at a later time by the parties to the project and Autonomous Agreement, once sufficient progress/compliance can be confirmed in a larger number of countries’ (European Commission 2016a: 9).

More optimistic assessments could stress that, despite all existing difficulties and problems, some minimum standards have been introduced in several eastern European countries, which could be considered relatively impressive progress. However, the numbers remain small and even the usually fairly optimistic official appraisals point in the opposite direction. Furthermore, we should distinguish between transposition to the national level and implementation at individual club level. The impact of the official taskforce is more or less limited to the transposition phase, while the influence of national

23. The taskforce was active in EU as well as non-Member States, but its activities were more frequent and of greater importance in the latter group. We elaborate on this issue in more detail in the next section of this paper.

24. After the Commission approved this funding proposal these funds became, by definition, exclusively available to EU Member States as well as candidate countries but not to other countries. However, reimbursement of travel expenses and subsistence allowances is possible.

associations on their members remains, because of voluntary membership, incomplete, not to say strictly limited.

After the project expired, and EU funding came to an end, implementation was still in an incomplete and unsatisfactory state. All indicated deadlines had passed, so UEFA decided to grant a part of future payments under its more general long-term HatTrick assistance program, ‘which gives important sporting and infrastructure assistance to UEFA's member associations’.²⁵ Thus another new, previously unknown financial source and mechanism of SSD implementation was launched.

Of course, UEFA is not an officially recognised social partner but rather an ‘associate party’. It should be pointed out that UEFA decided voluntarily to get involved in the conclusion of the agreement despite the existence of other, exclusively self-determined options for supranational regulation.²⁶ UEFA obviously expected some ‘added value’ despite the anticipated implementation problems. Therefore, these two systems of regulation – total autonomy and self-regulation versus some ‘soft’ EU interference – are of a complementary and not necessarily competing or even opposing nature in the emerging system of European football governance.

4.3 Regional problems outside of the EU

Last but not least, there is another characteristic feature of this agreement that sets it apart from all other SSD: the social partners’ organisations on both sides have members not only in the EU but also ‘in the rest of the UEFA territory’ (including countries such as Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Moldova and Russia). The social partners publicly announced their ambitious intention to not only implement the agreement in all EU Member States but to also extend it to all other (53 altogether) UEFA member states (European Commission 2013a: 206).²⁷ The official reasons given for this include ensuring the reputation of professional football, raising standards for players and clubs, and securing legal stability. However, the underlying motives for the ambitious plan ‘to make the minimum requirements a reality throughout the whole UEFA territory’ are related to the membership domain and its geographical spread.²⁸

25. <https://www.uefa.com/insideuefa/football-development/hattrick/index.html>

26. UEFA can also make use of other instruments to pursue its interests, such as lobbying the EU (García 2007).

27. Since the 1990s the only other exceptions regarding the extension of SD outcomes have been members of the European Economic Area (especially Norway and Iceland) that are not EU members. Switzerland is not an EEA member but frequently also integrated.

28. National leagues from non-EU Member States are full members of UEFA and their clubs participate in the UEFA Champions League and the UEFA Cup, the international club competitions.

Therefore, the agreement is supposed to cover a much broader territory than all other SSD outcomes. Its impact in non-EU Member States could be even more encompassing, if appropriate implementation could be accomplished. In contrast to the circumstances in EU Member States, here UEFA is – and, in fact, for reasons of efficiency must be – a more engaged corporate actor. To be more precise, UEFA must act as a moderator in extending and completing implementation activities and, if necessary, threaten consequences in certain cases concerning procedures for national licensing systems or admission to international club competitions.

These unusual, rather ambitious plans for a more encompassing ‘Europeanisation’ of social dialogue in the football industry will undoubtedly lead to major problems. These additional difficulties, which we look at in detail in the following paragraphs, exist independently of the above-mentioned two basic options for implementation and are not limited to the ‘voluntary route’. Even if the agreement had been changed into a Directive it would not be legally binding outside of the EU.

There exists a certain moral obligation to cover all member leagues, and obviously some goodwill on both sides, although not an inordinate amount. In any case, proper implementation ‘throughout the whole UEFA territory’ requires a lot of scarcely available resources as well as more time than originally expected. It is even more difficult to apply the weak EU procedures which we analysed above in non-EU Member States where there are substantial differences in standards of national regulation and in organisational structures of social partners. Encompassing structures at sectoral level are fragmented or even missing on one or both sides and thus prevent engagement in SSD in general and active participation in implementation procedures in particular. Therefore, the establishment of formalised bilateral negotiations between players and clubs or leagues – as well as, in some countries, of trilateral negotiations also involving the federations – as new forms of football governance has proven to be necessary.

The ‘voluntary route’ of implementation taken exclusively by the social partners themselves does not constitute a sufficient mechanism but needs external assistance. Again, the above mentioned SSD taskforce is supposed to support and reinforce processes of implementation. Its members are to consult with national associations and social partners, important stakeholders who are in charge of all activities. According to its 2013-14 biannual work programme, the working group undertook a series of ‘visits to individual countries’, first in order to identify country-specific issues and, second, to support implementation processes and monitor their progress. All in all, the taskforce members visited 20 so-called ‘target countries’.

In early 2013, the social partners organised three ‘kick-off meetings’ whose primary purpose was to inform their national member organisations about the agreement and prospective implementation procedures (see FIFPro 2013 for details). Following this, they drew up a detailed table ‘on the identification of problems country by country’ and organised roundtables in target countries as

well as regional roundtables for national representatives ‘to facilitate the exchange of best practice and experience between national social partners and football authorities’.

The taskforce was divided into three groups for visits, and even ‘follow-up visits’, to the so-called first, second and third ‘priority countries’. These groups differed in speed of action and the actors’ ability or willingness regarding implementation and were, therefore, categorised within a so-called ‘traffic-light system’ as green (‘on track’), orange (‘still substantial problems’) and red (‘really fundamental problems’) countries. Overall progress, especially at this crucial stage of the agreement, was slow and unsteady, not exclusively but especially in twelve ‘priority countries’ (among others, Russia, Serbia, Turkey, Romania). The taskforce has more opportunities of influence at national than at club level.

The most frequently cited problems in different national leagues, especially those with weak player unions, concern ‘overdue payables’ or postponement of remuneration.²⁹ Other obstacles include the transfer of players (see SD Europe 2016 for details) as well as the question of their legal status. The nature of contracts turned out to be of major importance. In the majority of countries there exist standard employment contracts between clubs and players who are normal employees. In a minority of countries, however, (bogus) self-employment or other forms of civil law contracts prevail and need to be changed to standard labour contracts between clubs and players in order to fulfil the provisions of the agreement.³⁰

Finally, the setting up of dispute resolution and disciplinary or arbitration procedures with equal access and representation for clubs and players – so-called national dispute resolution chambers (NDRCs) – is necessary. The expert group ‘NDRC and club disciplinary procedures’ is supposed to support processes of introduction. The possibility to sanction non-compliance with the agreement leads to additional problems, such as difficulty in agreeing on how tough the sanctions should be.

This rather ambitious plan of broad implementation leads to serious legal problems of international private law because all kinds of EU regulation are, by definition, of binding legal character for EU Member States only. There are some necessary procedures that have to be in accordance with international contract law. They require, however, the existence of mandates on both sides in order to authorise supranational federations to negotiate on behalf of their national constituencies and to legitimise outcomes. Otherwise, any binding effects of the agreement could not be guaranteed, and potential sanctions in

29. Furthermore, FIFPro complains about the rules of the transfer system: after the end of transfer periods players are not allowed to change clubs in cases of ‘overdue payables’.

30. Self-employed workers are, by definition, not represented in SD that relate to employees exclusively. All social partners agree that mandatory standard contracts are ‘a preferred option’ for the implementation of the minimum requirements (European Commission 2016b).

cases of complete or partial non-compliance, such as temporary exclusion from international club competitions, would be invalid. In any case, binding consequences of implementation procedures would, by definition, be constrained to the present members of national associations. This necessary legal precondition creates additional problems because the existence of high density ratios despite voluntary membership cannot be taken for granted in all countries. Positions taken by national members cannot be overruled.

In all cases, implementation action is of a voluntary, at best contractually binding, nature but has no direct legal effects. 'Hard' autonomous or legal instruments of enforcement for cases of non-compliance due to lacking commitment do not exist. 'Soft' instruments of implementation as well as procedures of monitoring and follow-up are underdeveloped or even missing, although they would have an important meaning in ensuring the sustainability of implemented outcomes. Ultimate responsibility lies with national social partners and especially with individual clubs. The impact of national associations is, however, limited because they have no 'hard' sanctions at their disposal; only informal pressure is possible. Overall, there is a striking number of problems with the above-mentioned 'voluntary route' of implementation and its particular procedures in comparison with the route of implementation by a Council decision. Full coverage of the agreement is unlikely to be the final result.³¹

Interestingly, these legal as well as practical difficulties of implementing and, later on, monitoring the agreement in non-EU Member States are not mentioned in the official work programme that is supposed to guide all activities. Therefore, all implementation processes are left wide open to diverging interpretations and strategic manoeuvring by associations at national level. Even non-compliance could be an option for some national stakeholders, if not an opportunistic strategy. In such cases, there are no effective instruments for sanctioning this kind of infraction.

Finally, national legal-institutional characteristics lead to particular sequences of implementation. Procedures are supposed to be finished within an indicated period (of usually two to three years, or in this case not more than three years) after the agreement was signed. Delays usually happen in at least a few countries. In our case there are at least three, and probably even more, clusters of countries that can be distinguished with certainty. The group showing the fastest and least problematic procedures consists of associations in the old Member States, followed by a second group of organisations in the new ones. All other national associations, the 'rest of the UEFA territory', definitely need more time, as well as more resources and certain institutional prerequisites. The originally scheduled period of project implementation (2012-2015) even had to be prolonged and 'follow-up visits' of some target countries turned out

31. As can be expected, some official sources reveal a less ambitious viewpoint and regard the intensified exchange of information and experience between social partners as an already positive outcome (European Commission 2016a).

to be necessary.³² FIFPro complained officially about the slow speed of implementation and questioned the prolongation of the deadline.

As already mentioned, when compared to all other existing SSD structures, the unusual feature of the SSD in professional football is the conclusion of a binding agreement, a fairly rare event at any, and not only an early, stage of SSD development. Its overall impact should, however, not be overestimated. An official statement of the working group reads: 'The members of the Committee agree that there are some positive developments with the implementation of the Autonomous Agreement mainly in the non-priority countries. However, it is also acknowledged that in some other countries little or no progress can be registered' (European Commission 2016b: 3).

It can be concluded that the overall impact of the taskforce is limited and depends on voluntary forms of cooperation. For the time being, its lasting impact at the league and especially club level is still difficult to predict. The best guess is that the impact will differ between countries to a significant degree and will most likely be more meaningful in eastern EU Member States and in the 'rest of the UEFA territory' than in western and northern European states. From a comparative perspective, this widely varied impact of EU regulation is not particularly surprising but is somewhat paradoxical. Countries with better working conditions and/or employment relations do not need stronger institutions for implementation of the agreement whereas countries with poorer working conditions and/or weaker employment relations suffer from an inadequate institutional framework.³³

A further analysis of these protracted specific regional issues is, however, beyond the scope of this paper. We are not able to fully elaborate on the distinction between transposition (by national social partners) and implementation (by individual clubs) because these processes are still incomplete, and, in any case, implementation is not a linear top-down process.

32. In 2016 the social partners and UEFA 'had sent a questionnaire to their members concerning the implementation of the autonomous agreement' and decided 'to go for a 2nd round of country visits in selected countries' (European Commission 2016c).

33. The Agreement 'shall remain in force for four years' and the social partners 'have the obligation to negotiate a renewal ... in good faith' (Article 20). FIFPro is interested in renegotiating content as well as implementation procedures but no concrete steps have been taken.

5. Is there a future for the SSD in professional football?

5.1 Important but postponed topics

Recent research and official reports conclude that the ‘productivity’ and ‘effectiveness’ of SSD varies considerably (European Commission 2010b). The empirical evidence indicates that the first SSD outcome might constitute the triggering event for others but might also remain the only one for quite some time or lead to fluctuating outcomes. There is, despite original hopes and expectations (including spill-over theories), no automatic effect or guarantee of any kind of direct improvement (Prosser 2016). Some kind of evolutionary advancement from outcomes being purely voluntary towards having a more binding legal character cannot be taken for granted; the levels of activity shift back and forth in a quantitative as well as qualitative sense according to sector-specific developments (such as liberalisation or deregulation measures), presenting an overall ‘uneven record of achievement’ (Degryse 2015).

One possibility is that there will be no other outcome, or at least none of binding character in the style of this agreement, in the foreseeable future. More likely, however, is that there will be ‘softer’ outcomes, such as guidelines or joint recommendations. It could happen that this SSD will fit into the general pattern of ‘broadening without intensification’ (de Boer *et al.* 2005) already identified a few years ago. Whether it will ultimately contribute to establishing a new balance between traditional national and more recent EU regulation remains to be seen.

In all cases, SSD constitutes a long-term project and needs serious commitments from all social partners. The prospects of the SSD in professional football, especially its outcomes, are difficult to predict. For the time being, the SD committee in professional football is focusing on:

- ‘strengthening the social partners’ capacity to shape future developments regarding employment in the professional football sector and to articulate European levels of social dialogue
- implementing the autonomous agreement: career funds
- contractual stability/respect of contracts’ (European Commission 2014b).

There are various issues of common concern which are having an increasing impact at European level but their inclusion in the SSD agenda always requires the explicit approval of all social partners. Potential topics that have to be of bilateral interest are discussed in working groups of the committee,

‘Contractual Stability and Respect of Contracts’ and ‘Career Fund’. The establishment of ‘career funds’ could constitute a promising subject because of the inevitability of a second career for professional footballers. This step has to be initiated at a comparatively early age in comparison with other employees, among other things because the numbers of particular jobs in the sports industry are strictly limited and cannot be increased. The various issues concerning second careers could be a potential topic of discussion and provide some ‘added value’ because they are of common, although not necessarily equal, relevance for all social partners and in all of the ‘UEFA territory’. However, FIFPro is more interested in the establishment of ‘career funds’ than the employers’ associations, who do not strictly argue against it but doubt the usefulness of general standards defined at European level. Concerns include not only the feasibility but also the portability of such funds.

In late 2017 the social partners finally agreed on their next topic, ‘a joint resolution on intermediaries/agents’. The number of agents and their activities on behalf of numerous players has significantly increased since the 1990s in the ongoing processes of Europeanisation and national-level professionalisation. For a long time, their frequent yet disputed and sometimes even dubious activities remained rather unregulated despite the existence of a typical principal-agent problem (KEA *et al.* 2009). Only in 2015 did FIFA introduce new regulations on working with intermediaries. The social partners were dissatisfied with the attempts at implementation of the minimum requirements and agreed ‘that a more effective and sustainable regulatory framework is required to address the many challenges associated with the activities of intermediaries/agents’ (ECA *et al.* 2017: 2). One important peculiarity is that this group has no organisation of its own and does not constitute a social partner in the sense described above.

In the short run, this new project could avert the imminent danger of the SSD dying out. Nevertheless, it remains to be seen whether this SSD will reach a final stage of stability and maturity that would mean, according to the officially formulated benchmarks, ‘fewer documents overall but more binding agreements’ (European Commission 2013a: 230). As other SSD examples indicate, ‘soft’ outcomes with less or no binding obligations for the social partners, such as recommendations, joint opinions and declarations, are more likely to be concluded than binding agreements. The long-term development depends not only on the identification of additional common interests but also on the establishment of a sustainable balance of power.

Not only the still relatively young SSD but also other, more established forms of interest intermediation have been of relevance for solving sector-specific problems. There is a broad range of potential activities and relevant contributions, if not regulatory competence.³⁴ Some problems could be solved

34. A list of potential topics is provided by Gábriš 2010, and there is also the Commission’s compilation of ‘challenges and perspectives’ (European Commission 2010b: 64) as well as the list of the European Olympic Committee (2011). In a position paper, the ECA presents its own view on key issues, including ‘structured dialogue’ (ECA 2011). Present problems in sports have been mentioned in the White Paper on Sports (European Commission 2007) and also officially listed (European Commission 2011).

through the autonomous action of the social partners themselves; others need not only their lobbying activities but also the support of European institutions, especially the Commission. All listed issues require coordinated action by individual clubs, national leagues and European federations, although not exclusively in the framework of SSD:

- Some urgent but sensitive problems concerning the integrity of football at supranational level, such as effective doping prevention and sanctions for violation of rules, spectator violence and hooliganism, as well as emerging counter-activities such as ‘Football against racism in Europe’, are briefly mentioned but hardly tackled in the agreement.
- Other important issues include the intellectual property rights of athletes and the selling of media, especially television, rights.³⁵ Their impact on individual clubs’ budgets and collective mechanisms of (ideally more solidaristic) financial redistribution have hardly been dealt with. Related issues are the increasing revenues of some clubs but also the deteriorating ones of many others and, therefore, the growing imbalances within leagues that need to be minimised in order to re-establish some kind of financial stability as well as competition.
- An overarching policy of ‘financial fair play’ according to more recent UEFA concepts (UEFA 2012) exists but has not really been implemented. In this context it is important to realise that financial difficulties experienced by major football clubs have not been caused by the consequences of the Great Recession – among others, falling output and increasing unemployment, especially youth unemployment – but are the result of clubs’ long-term policies and their failure. In contrast to other sectors (European Commission 2012: 79-85; 2015: 135; ETUI 2017: 50), professional football, and its relatively young SSD, has managed well to withstand the consequences of the financial crisis.
- Another topic is the introduction and implementation of binding, sustainable systems of professional club licensing and strict financial discipline in order to support principles of ‘corporate governance’ and to avoid huge financial losses or, in the worst-case scenario, insolvency. These measures have to include procedures of reinforcement, such as financial penalties, exclusion from international competition or even relegation of individual clubs.
- The future maximal impact of private, sometimes even international, financial investors in the already highly commercialised ‘big business’ of professional football also needs to be regulated. These potential ‘stakeholders’ are getting more and more interested in clubs and want to be not only sponsors but, at least in some prominent cases, even

35. At national level this financial topic is regulated either on a collective, centralised base, as in Germany, or marketed by individual clubs, as in Spain. At supranational level central forms of marketisation dominate.

owners. At national level these plans sometimes require changes in the legal structure of clubs.

- Last but not least, different problems of a criminal nature, such as fraud, match fixing, and illegal gambling by individuals as well as betting activities by internationally organised syndicates, definitely exist in at least some, although not exclusively, eastern European leagues. These malfunctions resulting from ‘bad governance’ need to be fixed in order to save the integrity and credibility of sports in general and football in particular.

These present and future issues should be discussed in different, although not necessarily mutually exclusive, arenas of interest intermediation. The SSD constitutes an additional forum and policy instrument that provides ample opportunities for the bilateral regulation of specific problems but, as with other fora, without any guarantee of success. Furthermore, SSD, in a broad understanding of the term, frequently serves other purposes than the conclusion of autonomous agreements. Lobbying of not only national governments but also EU institutions with regulatory competence (first and foremost the Commission) constitutes a well-documented joint activity of social partners. It aims at the advancement of common interests by using various instruments and alternate channels of influence (de Boer *et al.* 2005 for sectoral details).

5.2 Outlook

A new balance between interests, aimed at developing principles of ‘good governance’ in policymaking, could be accomplished through the continuous evolution of a sophisticated system of co-regulation between private actors’ rule-setting and EU-specific regulation (Fligstein 2008). The SSD in professional football could provide a semi-legal framework for managing the shifting balance between former national autonomy and exclusive self-regulation by private associations versus the emerging and more frequent intervention of EU authorities (Parrish 2011).

The SSD in professional football has been the first to develop within the ongoing gradual ‘Europeanisation’ of the sports sector. Therefore, it could take the lead in these processes of substantial and procedural change because it is more advanced than its potential counterparts in other major sports. Therefore, football could benefit from its ‘first mover advantage’ and act as the driving force for others.

Within the sports sector there are at present two SSD, at different stages of development. The more homogeneous and advanced one is in professional football. The more heterogeneous ‘sport and active leisure industry including not-for-profit sport, professional sport and active leisure’ has been in its early, test phase since late 2012 (Pierre and Buisine 2013). Its establishment was officially supported by the Commission (European Commission 2011: 12; 2015:

118).³⁶ Frequent changes of personnel and the existence of several associations on the employers' side have delayed the official start. From a comparative perspective, it is not unusual that several SSD exist within the same sector. Such subdivision frequently facilitates the conclusion of outcomes because specific features of sub-sectors can be respected in a more adequate way.

Some associations of other national professional leagues, starting with basketball and ice hockey, announced their interest in establishing their own SSD which would cater to their specificities. The formulation of 'minimum requirements' for individual contracts could be of even more importance for other sports than for professional football. The Commission indicated in its *White Paper on Sports* that it would encourage and support further 'joint requests' by potential social partner organisations (European Commission 2007: 19).

The future overall SSD structure of the highly segmented sports sector (with its three major parts being not-for-profit-sport, professional sport, and active leisure) has not yet been finalised. One option would be to try to establish one SSD to cover all sections; the alternative would be a highly segmented structure, as, for example, is seen in the transport sector, which has separate sub-sectoral SD based on different carriers (Keller and Bansbach 2000, Keller 2005). The first option would have to be able to cope with the enormous heterogeneity of interests, and the second would encounter problems of coordination caused by the larger number of SSD. The choice of one of these options belongs to the social partners and not to the Commission. The Commission's view is that such SSD should not be too numerous because of the scarcity of resources needed for support; they should not be completely independent from each other but rather constitute parts of an overarching structure.

All things considered, further steps are to be expected to be taken towards an incremental development of the not yet existing 'European Model of Sport'. More recently the Commission issued its Communication on 'Developing the European Dimension in Sport' (European Commission 2011) that explicitly encourages the establishment of SSD and promotes its expansion in the sports sector even beyond its highly professional segments. The newly established economic governance structures seem not to have far-reaching consequences for the SSD in professional football.

Recent events in two other sectors could have a major impact on the future of SSD and bring it to a crossroads. In 2012 the social partners in the hairdressing sector finally concluded a framework agreement on the protection of

36. The social partners are the European Association of Sport Employers (EASE) and UNI Europa Sport (see Pierre and Buisine 2013 for details). The results of the study of representativeness that were published in mid-2013 are available at <http://www.eurofound.europa.eu/docs/eiro/tn1105058s/tn1105058s.pdf>. EASE presents its point of view at www.easesport.org/cat.php?id=1168

occupational health and safety.³⁷ They jointly requested the Commission to submit it to the Council and to make it legally binding (Article 155 TFEU). Because of opposition from some Member States and legal concerns of the Commission, a revised version was signed in 2016 and the joint request was renewed. In late 2015, meanwhile, the sectoral social partners of central government administrations concluded a general framework for informing and consulting civil servants and employees and requested their agreement on common minimum requirements to be made legally binding as a Directive.³⁸

In both cases the Commission has de facto blocked the official requests and, therefore, the implementation of the agreements, thus calling into question the autonomy of the social partners and their privileged role in European governance (Article 151 TFEU). This unprecedented action in the history of SSD is by now not only highly politicised, it could also have a major impact on the future of SSD and undermine the willingness of social partners to conclude agreements.

Last but not least, in 2015 the newly elected Commission officially proclaimed 'A new start for social dialogue' (European Commission 2016d). In empirical terms, the outcomes of this recent political initiative, especially regarding the actual implementation results, remain to be seen. In these times of newly established forms of macroeconomic governance, including the European Semester, this initiative is probably more important at cross-industry than at sectoral level. Nevertheless, it could, in President Juncker's words, be the 'relaunch of the last chance'.

37. For details see: http://www.uni-europa.org/wp-content/uploads/2016/06/EFA_OHS_HairdressingSector_signed_20160623.pdf

38. For details see: <http://ec.europa.eu/social/main.jsp?catId=521&langId=en&agreementId=5430> and/or https://www.epsu.org/sites/default/files/article/files/EU_agreement_info_and_consul_rights_central_govern_SIGNED_EN.pdf

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