

Chapter 8

Uncovering the pitfalls of EU social dialogue from a multi-level perspective. The example of the electricity sector.

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1. Introduction

The European Commission (EC) established institutionalized Sectoral Social Dialogue Committees (SSDCs) to replace and unify formerly existing joint committees and informal structures (EC 1998). SSDCs bring together sectoral labour and management for the purpose of consultation on social affairs in the EU legislative process and bilateral sectoral negotiations at EU level. Since their creation, the activity of SSDCs has grown continuously (Léonard *et al.* 2011: 256; Degryse and Pochet 2011). Pressure from sector-specific EU legislation and from EU integration, international competition and liberalization encouraged social partners to organize sectoral interests at EU level on the one hand, and trade unions to transnationally coordinate sectoral collective bargaining strategies on the other (Arrowsmith and Pulignano 2013; Dufresne 2001; Even 2008: 249).

However, according to empirical evidence, EU sectoral industrial relations remain considerably underdeveloped compared to other dimensions of EU industrial relations or to the (declining) sectoral level in national contexts. SSDC outcomes are usually 'soft' in nature, topics are excluded (e.g. pay or working time) and enforceability and effective implementation are not secured (Weber 2010), all limiting SSDCs regulatory potential.

Firstly, social partners lack incentives to bargain in a binding manner on 'hard' topics at EU sectoral level. According to Ales *et al.* (2006) this is due to the lack of a strong legal framework or state protagonist at EU level, especially since the EC has abandoned the 'shadow of the law' strategy for the sake of social partners' autonomy. As European trade union federa-

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tions (ETUFs) are not backed by effective transnational labour protest (Turner 1996), European employers have no incentive to grant mandates for binding negotiations (Dufresne 2012: 108; Marginson 2005: 519). As a result, SSDC activities are mostly reduced to consultation and partner-lobbying through *joint opinions* addressed to public institutions (Dufresne *et al.* 2006; Degryse and Pochet 2011: 149-152; Degryse 2015: 39-46). Secondly, the social partners only devote meagre resources to the EU level, revealing their lack of political will to promote effective negotiations and the struggle of weaker national organizations to maintain very costly multi-level structures (Léonard *et al.* 2011: 265). Thirdly, EU enlargement has hindered the development of EU sectoral industrial relations, as Central and Eastern European systems rely on company-level structures (Marginson 2005).

Ultimately, SSDCs deliver in quantitative terms but the qualitative significance of their work is minor. How can we reconcile these two observations? The arguments stated above explain some SSDC shortcomings but do not dwell on underlying institutional and power relation considerations. Keune and Marginson (2013) accurately stress the prevalence of power relations in the European multi-level framework of industrial relations, but they do not evaluate how social partners are differently affected.

A political-science perspective may bring new insight to the debate on SSDCs, uncovering certain structural factors influencing the articulation of social dialogue across levels, and the asymmetric implications for social partners' room for manoeuvre and strategic capacities. Drawing on class and collective action theory (Offe and Wiesenthal 1980; Offe 1988: 111-131; Traxler 1993) and the institutional theory of EU asymmetric integration (Scharpf 2000a and 2000b), I conduct a multi-level analysis of the institutional design of SSDCs, focusing on the vertical articulation between SSDCs and national sectoral industrial relations institutions. I argue that major structural constraints shape the scenario in which EU sectoral social partners can act, and that these explain the weak functioning and outcomes of SSDCs, providing labour and management with unequal opportunities to organize and achieve their supranational collective interests. This chapter attempts to overcome a recurring limitation in EU industrial relations literature, which views EU social partners as actors with balanced positions in industrial relations institutions (Bechter *et al.* 2012; Léonard and Perin 2011).

I base my argument on an empirical analysis of the SSDC Electricity as a case study, paradigmatic of the contradiction revealed in the literature between increasingly active SSDCs and their drift towards softer joint texts. I used secondary data analysis on sectoral domains, social partner representativeness and membership, drawing on the Eurofound representativeness report (Eurofound 2014). SSDC joint texts between 1996 and 2015 were also analyzed (EC 2015), and rounded off with a text analysis of EU sectoral organizations' statutes to identify mandating rules. Finally, I conducted a thematic analysis based on three in-depth interviews with representatives involved in the SSDC Electricity, where they were asked about organizational structures, strategies, mandates, follow-up procedures, articulation between levels, the functioning of the SSDC and their expectations.

The chapter is structured as follows: first, I present the theoretical underpinnings framing the context for labour's and management's collective action at EU level, revisiting the structuring concepts of SSDC architecture from a multi-level perspective (*sector, representativeness and capacity to negotiate*); secondly, I present the empirical analysis of the SSDC Electricity and discuss the findings. I go on to address some policy challenges for researchers and stakeholders, and conclude with final reflections on future perspectives for multi-level collective bargaining in Europe.

2. The structural conditions underlying EU sectoral social dialogue: the theoretical background

2.1 Asymmetrical class relations and European integration

Class and collective action theories argue that a pre-associational structural power asymmetry underlies labour and management relations in capitalist societies, with business having more political and organizing options than labour (Offe and Wiesenthal 1980; Offe 1988: 111-131; Traxler 1993, 2006). The quantifiable nature of capital gives business a strategic advantage: it can easily define and adapt collective interests in line with efficiency, costs and returns and policy agendas. Conversely, labour is incommensurable by nature, and workers need to organize and define collective interests through explicit political processes and resources (i.e. ideology, collective identity) to compensate for their more limited power resources (Offe 1988: 116-117; Traxler 1993: 675). They are

confronted with democratic and legitimacy dilemmas and driven to aggregate interests in a more general way, without this necessarily improving their strategic capacity (Traxler 1993).

Additionally, the EU political system further disadvantages labour. Contradicting neo-functional convergence theory², critical scholars have assessed the structural asymmetries embedded in EU political integration and its modes of governance, especially since the global move towards neoliberalism in the 1980s. Following Scharpf's institutional theory (2000a, 2000b, 2006), the market-integration process was efficiently accomplished through 'negative integration' and top-down hierarchical governance of supranational institutions (i.e. the European Commission, Central Bank and Court of Justice). National protective regulatory capacities were by this means gradually hollowed out, being considered obstacles to free competition and the liberalization of the unified market. They were, however, not replaced at EU level by market-correcting 'positive integration', as the policy areas concerned (labour market institutions, collective bargaining over wages) were either excluded from supranational competences (Crouch 2014: 14; Streeck 2014: 102-110; Marginson 2015: 108) or made dependent on intergovernmental or joint-decision modes of governance, requiring high consensus between Member States or legislative EU institutions (Scharpf 2006).

Liberalization tackled specific market sectors through specialized EU-level sectoral policy-making (Crespy 2012). Such public policy 'sectorization' fragmented European governance to the disadvantage of actors representing more general interests on market regulation, such as trade unions (Crespy 2012: 158-176). Conversely, a sectorized and non-politicized EU institutional set-up strengthened the position of business in terms of resources, channels of influence and collective organization, while putting trade unions at risk of being 'co-opted by the European Commission's agenda in a symbolic 'euro-corporatism' that legitimizes rather than influences EU policies and legislation' through sectoral partner-lobbying (Larsson 2015: 103).

The crisis amplified this imbalance: in the name of recovery and flexibility, EU economic governance regulations and EC country recommendations directly targeted national labour market coordination

2. See Haas, E.B. (1958) *The Uniting of Europe: Political, Social and Economic Forces 1950-57*, Stanford University Press, Stanford.

arrangements in many countries despite the Treaties' impediment (Marginson 2015; Erne 2015). EU industrial relations are thus embedded in a structurally imbalanced EU multi-level institutional context, where labour's capacities to organize and promote interests are increasingly challenged from different angles.

2.2 A critical examination of the founding concepts of EU sectoral social dialogue

In line with national-level industrial relations' bodies, SSDCs are structured by concepts of *sector*, *representativeness* and *capacity to negotiate* (mandate), which define the scope and legitimate social partners involved in SSDCs (EC 1998). However, these notions are ambiguous: at national level, they refer to social and political constructs, whereas in the design of EU social dialogue they are adopted as 'frozen' categories. Due to EU top-down definitions, their meanings differ across levels, engendering articulation problems and a more convenient institutional setting for business than for unions, as the findings suggest.

2.2.1 'Sectoral' boundaries: ambiguity across levels

From a national perspective, sectors have always been difficult to define (Rodríguez Fernández 2000: 266). They have been historically, socially and politically constructed along with social conflict, resulting in 'strategic imbroglions' (Saglio 1991: 31). A particular domain obtains the legal position of 'sector' in collective bargaining structures after negotiations and agreement between social partners (Jobert 2005: 81), who pursue definitions that better suit their own organizational structures and aggregation of professional interests (Saglio 1991: 31). The employer's business activity might not be the most adequate criterion for labour to demarcate sectoral boundaries, as other kind of relations between workers or employers may prevail, such as job profiles (Jobert 2005: 80), especially in a context of company fragmentation, global value chains and new 'horizontal' sectors (IT, agency work).

Conversely, at EU level, the process starts with a top-down definition of sectors (García-Muñoz Alhambra 2014: 210). The EC has not formally indicated sectoral demarcation criteria (Keller and Weber 2011: 229). In practice, SSDCs are established according to the Statistical Classification of Economic Activities in the European Community (NACE, from its French title). This classification supposedly reflects economic reality and

produces cross-nationally comparable data on market activities in Europe³. When NACE codes are transferred to the EU industrial relations' domain, they imply technical, functional and undisputed top-down 'sectoral' definitions, shaping SSDCs in accordance with companies' unilaterally declared activities and the EU's sectorized policy-making agenda. This drags trade unions into frameworks not necessarily corresponding to national organizations and traditions, making it difficult for them to build and defend strong positions at EU sectoral level. NACE demarcations better accommodate the way business organizes collectively. Thus, the SSDC institutional environment discourages the regulatory function through bilateral negotiations requiring stronger and unified union positions. Conversely, it propitiates the consultation function vis-à-vis public authorities (Dufresne *et al.* 2006), in which employers can further influence the political agenda thanks to their veto power, their 'natural' leading role and their expertise in sector business.

Leónard and Perin (2011) emphasise that differences in sectoral demarcations across levels hinder the congruent articulation of multi-level sectoral social dialogue. The progressive decline of national multi-employer sectoral collective bargaining (Marginson 2015) predicts further disconnection between EU sectoral social dialogue structures and societal realities – an unpromising future for labour's voice within SSDCs.

2.2.2 'Representativeness': a problematic multi-level articulation

Representativeness has an ambiguous definition, commonly referring to how accurately a sample shares the characteristics of a broader population. However, in the context of collective interest representation, this meaning is mediated by a political process to construct a coherent and unified voice effectively serving the function of collective interest representation. Thus, *representativeness* refers in this sense to a quality of political legitimation to represent a group's collective interests in a given domain (Hyman 1997: 310). As a legal category, *representativeness* acknowledges specific rights (i.e. consultation, extended normative power and resources accorded to an organization that fulfils certain criteria previously set by national labour law (Bérourd *et al.* 2012: 6).

3. The NACE, introduced by Council Regulation (EEC) No. 3037/90 amended by Regulation (EC) No. 1893/2006, aims to create common statistical standards and produce harmonized data useful in statistics on economic and market activities.

At EU level, the EC defines certain representativeness criteria for European sectoral social partners to participate in SSDCs (i.e. 'relate to specific sectors or categories and be organized at the European level', 'consist in organizations which are themselves an integral and recognized part of national social partner structures', and 'have capacity to negotiate agreements') (EC 1998, Article 1). The criteria do not refer to affiliate members, whose representativeness depends solely on national legislation, in accordance with subsidiarity, national practices and social partners' autonomy. The EC's criteria remain too vague for any institutional control of EU social partners' bottom-up legitimacy and have thus been subject to much criticism (Even 2008: 201-202; Reale 2003: 12-13; Bercusson 1999).

First, the 'sufficient' representativeness of EU sectoral social partners relies on (i) formal criteria or (ii) the claim of organizations to represent interests in a given scope. There is no harmonized quantifiable criterion based on social circumstances (workplace elections or affiliation) to check 'true' representativeness (Welz 2008: 181; Bercusson 2009, 1999: 158; Reale 2003: 13). Secondly, despite the second criterion, the EC does not in practice compel EU sectoral organizations to consist of members involved in national collective bargaining structures (Eurofound 2014: 41), although this directly affects their goals, mandates and approach to social dialogue, and ultimately SSDC outcomes. Thirdly, the criterion of 'sector-relatedness' implies that sectors are 'specific', without clarifying how to measure 'specificity'.

Eurofound pragmatically defines 'sector-relatedness' as an objectively verifiable category: (national) trade unions and business associations are considered 'sector-related'⁴ whenever their domain of interest and/or scope of collective bargaining (in functional, personal and/or geographical terms) is linked to the scope of a given NACE code in the EU, either by: (i) 'congruence' (the organization and NACE code's domains are a perfect match); (ii) 'sectionalism' (the organization's domain is smaller than the NACE code's scope); (iii) 'overlap' (the organization's domain covers and exceeds the sector's demarcations); or (iv) 'sectional overlap' (the organization's domain exceeds the sector's, without covering it completely). If

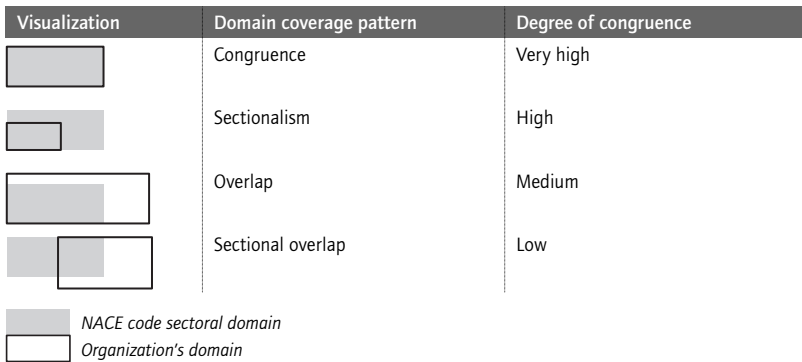
4. Although EC representativeness criteria refer to EU social partners, Eurofound examines the 'sector-relatedness' of national associations affiliated to EU social partners or participating in 'sector-related' national collective bargaining structures – i.e. both single- and multi-employer bargaining structures, as used by Eurofound representativeness studies (Eurofound 2014).

the organization’s domain does not match the NACE code at all, it is not considered ‘sector-related’. The criterion can thus be fulfilled in any of four ways, each one meaning a different pattern of adaptation of the organization to the SSDC institutional scope. But these differentiated ‘paths towards sector-relatedness’ have implications, which are in many cases overlooked.

As shown in Figure 1, ‘sector-related’ organizations can be classified as having ‘low’, ‘medium’, ‘high’ and ‘very high’ degrees of congruence between their domain of representation and the NACE code’s domain. ‘Very high’ or ‘high’ degrees of congruence mean a tight correspondence between organization and sector domains (‘congruence’ and ‘sectionalism’); ‘medium’ or ‘low’ degrees mean the two scopes are less matching (‘overlap’ or ‘sectional overlap’).

Under the first two patterns, an organization is structurally more suited to represent collective interests in the SSDC, and will find it easier to intervene in that arena and coordinate action across levels of representation. Previous studies on SSDC dynamics reveal that ‘congruence’ is seldom found (Léonard *et al.* 2011), resulting in implementation problems (Keller and Weber 2011). To my knowledge, the specific degree of congruence between labour and employer organizations has not been compared or evaluated from a class-theory perspective. It is precisely this aspect which I examine in my case study.

Figure 1 Different forms of ‘sector-relatedness’: domain patterns and the degree of congruence between organizations and NACE codes



Source: Own adaptation from Eurofound (2014).

2.2.3 Mandates: different power implications

At national level, public law usually validates social partners' mandates, acknowledging their legal legitimacy according to social criteria, mutual recognition or other historical, social or political grounds.

At EU level, given the lack of EU legitimacy criteria, Eurofound defines EU sectoral social partners' *capacity to negotiate* as a legal capacity to commit themselves and their national affiliates when negotiating binding EU-level agreements. EU sectoral social partners are required to prove they have a sufficient legal mandate from their national members to negotiate EU agreements. Eurofound usually turns a blind eye since controlling a social partner's legal legitimisation is highly sensitive politically. Nevertheless, empirical evidence suggests that EU sectoral business associations lack clear and sufficient mandates more often than do trade unions (Dufresne *et al.* 2006). According to class and collective action theory, this apparent weakness is strategically advantageous for employers since 'the bargaining party less interested in an agreement and less capable of binding its members obtains the stronger bargaining position' (Traxler 2006: 114).

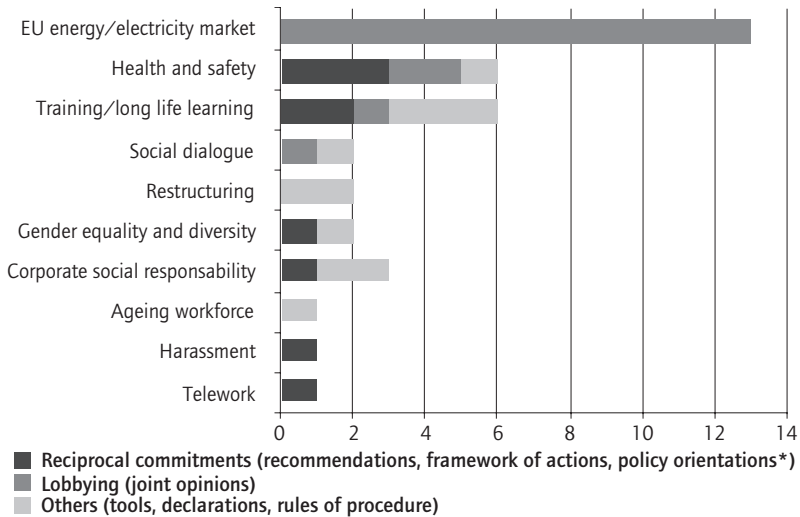
My review of the fundamental concepts of an SSDC's architecture confirms certain theories on SSDC dynamics (Léonard *et al.* 2011; Keller and Weber 2011): different meanings across levels hinder consistent vertical articulation and implementation in multi-level sectoral social dialogue structures. If we crosscheck these findings with a class-theory perspective (Offe 1988; Traxler 1993) taking into account the social partners' asymmetrical positions in EU integration and policy-making processes (Crespy 2012; Crouch 2014), we can conclude that such multi-level incongruences can amplify structural imbalances between employers and unions. In the following section, I examine how these imbalances are reflected in the SSDC Electricity, affecting its function and outcomes.

3. The SSDC Electricity: multi-level incongruences with unequal implications for the actors involved

In this section, I present the findings of my analysis of the SSDC Electricity, evaluating the appearance and impact of the above-mentioned structural imbalances. I refer to the introduction for an overview of the sources, data collection and methods of analysis used. The sources for Figures 3-6 are own adaptations of data from the Eurofound representativeness study (Eurofound 2014).

The SSDC Electricity was established in 2000 (informal social dialogue existed since 1996) bringing together three organizations: Eurelectric for the employers and IndustriAll and EPSU⁵ for the trade unions. The SSDC Electricity is one of the most active second-generation committees: by 2015 it had delivered 37 joint texts since its creation. However, an analysis of the evolution of the joint texts by topic and type confirms a consolidated trend towards joint lobbying texts⁶.

Figure 2 SSDC Electricity's joint texts for the period 1996-2015, by type and topic



*Frameworks of action and policy orientations are included under the reciprocal commitments category as they address social partners.

Source: The EC's SSDC joint-texts database (EC 2015). Accessed: 23/2/2016.

5. IndustriAll refers to the ETUF created in 2012 through the merger of the European Metalworkers' Federation (EMF), the European Mine, Chemical and Energy Workers' Federation (EMCEF) and the European Trade Union Federation for Textiles, Clothing, Leather and Footwear (ETUF-TCL). EPSU refers to the European Public Services trade union federation.
6. I follow the typology proposed by Degryse and Pochet (2011), who sorted joint texts into three categories, by purpose and addressees: *Agreements* (binding) or *recommendations* (less binding) represent reciprocal commitments by the social partners, joint opinions aim at lobbying public institutions, while a residual category consists of other types of process-oriented or declarative texts (i.e. declarations, tools or rules of procedure). According to their analysis of SSDCs' evolution between 1990 and 2009, more than half of the texts issued were joint opinions, a trend that has since increased (Degryse 2015)

Despite SSDC Electricity's great activity, it has neither signed any binding 'agreements' nor negotiated any 'hard' topics such as pay or working time (Degryse 2015).

To explain this contradiction between the SSDC's high level of activity and its weak regulatory results, I analyze its design through its main structuring concepts *sector*, *representativeness* and *capacity to negotiate*. I explore the extent to which articulation between levels is incongruent, affecting unions and employers differently in terms of organization and strategical capacities, and how the findings may explain the SSDC's dynamics and its weak outcomes.

3.1 The sectoral boundary mismatch

The SSDC Electricity's scope is defined by NACE code 35.1 (Rev.2), a code covering electric power generation, transmission, distribution and retail activities, i.e. a 'mixed bag' of market segments, technologies, production systems, job profiles, company weight and size depending on the country. Due to the industry's restructuring since the 1990s, most electricity-related activities and employment correspond to the scope of other national sectoral collective bargaining arenas (e.g. steel, construction). Moreover, genuine electricity sector-specific social dialogue does not exist in all countries. As a result, national sectoral social dialogue is often not structured according to NACE electricity business demarcations (Eurofound 2014), constituting a weakness for multi-level articulation.

3.2 Incongruent sectoral social partners' representativeness

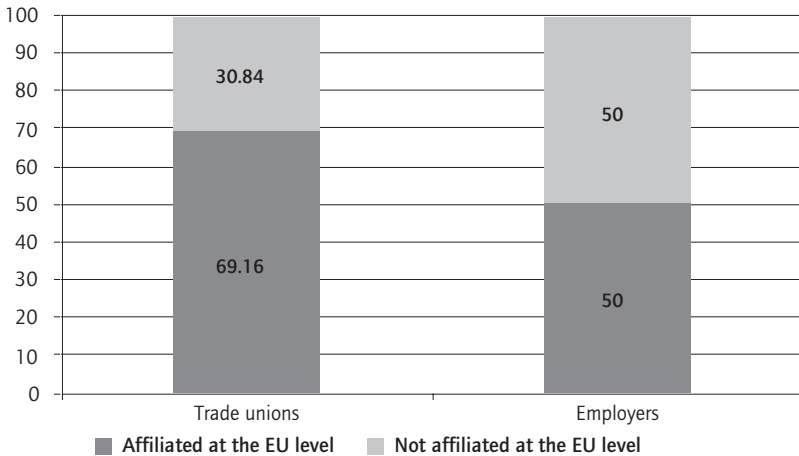
IndustriAll and EPSU have 77 affiliates, while Eurelectric has 33 (Eurofound 2014). As a result of mergers, IndustriAll and EPSU also organize workers from sectors other than electricity (i.e. manufacturing, steel, mining, energy, other public sector industries), fitting into the 'sectional overlap' pattern in relation to the electricity NACE code. Conversely, Eurelectric's domain of representation better matches NACE sectoral outlines, fitting into the 'overlap' pattern due to a geographical mismatch, as some members belong to non-EU countries.

To check EU sectoral social partners' *representativeness* according to the EC's representativeness criteria, I first examined from a bottom-up

perspective how many national organizations⁷ are affiliated to the EU sectoral social partners; then, using a top-down perspective, I looked at these affiliates, checking their degree of involvement in national collective bargaining structures, their domain patterns in relation to the NACE code demarcating the SSDC’s domain, and finally their degree of involvement in national collective bargaining by domain pattern. I drew on secondary data gathered by Eurofound’s representativeness study on Electricity (2014).

The first finding shows that the majority of national ‘sector-related’ organizations involved in national collective bargaining structures are affiliated to the SSDC’s EU social partners, meaning that the SSDC can be seen as ‘sufficiently’ representative according to the second EC criterion. However, the affiliation rate is higher for trade unions (69.16%) than for employers (50%).

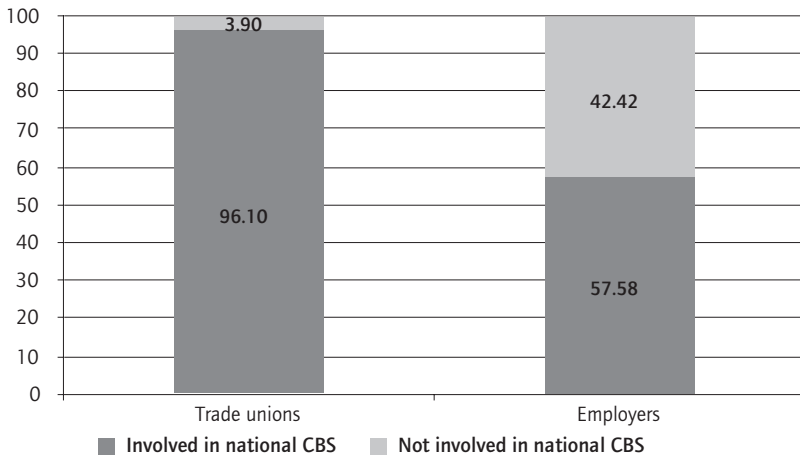
Figure 3 Affiliation rate of ‘sector-related’ organizations (involved in national collective bargaining structures) to EU sectoral social partners in Electricity



7. I considered here national organizations identified by Eurofound as ‘sector-related’ and involved in national collective bargaining. Eurofound detected 107 trade unions and 28 employer associations fulfilling both conditions. I then checked whether they were affiliated or not to the EU sectoral social partners and calculated affiliation rates. Qualitative aspects of national-level representation were thus not taken into account.

The second finding reveals that affiliates are unequally involved in national collective bargaining structures. The rate is 96.10% for unions against 57.58% for Eurelectric members⁸, confirming that a significant proportion of the latter represent ‘industrial lobbies’ or ‘trade associations’ rather than employer interests (Dufresne *et al.* 2006: 259). Such a composition favours the expression of lobbying strategies and weakens any negotiation mandate on the part of Eurelectric.

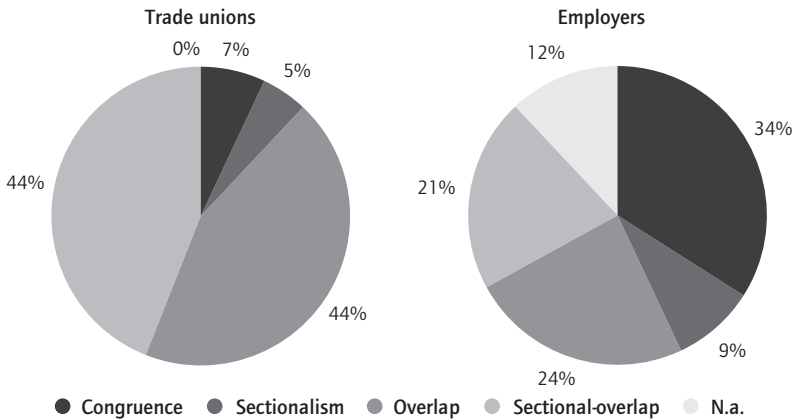
Figure 4 Percentage of EU sectoral social partners’ affiliates involved in national collective bargaining structures



The third finding refers to the degree of domain congruence between member organizations and SSDC scope. Not only are domain patterns rarely congruent between unions and employers, but in many cases they differ greatly. ETUFs seem to cluster interests in an artificial way, distant from their national structures (only 12% correspond to ‘congruence’ or ‘sectionalism’ patterns), while Eurelectric members benefit from a more congruent articulation across levels of representation (43% match the ‘congruence’ or ‘sectionalism’ patterns).

8. The ‘top-down’ findings (i.e. national involvement rates, distribution in domain coverage patterns, degree of involvement in national collective bargaining by domain pattern) were calculated on the basis of total member organizations affiliated to EU sectoral social partners (77 for trade unions and 33 for Eurelectric, according to Eurofound 2014 data).

Figure 5 Distribution of organizations in domain coverage patterns in relation to NACE code for electricity

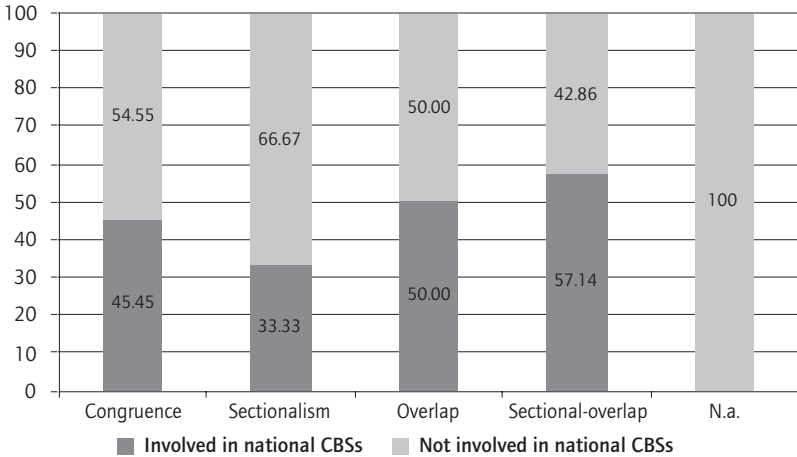


Finally, I verified whether non-involvement in national collective bargaining related to the domain congruence pattern for Eurelectric members⁹. The result was positive: organizations not involved in national structures (‘trade associations’) have a dominant presence in ‘most-congruent’ domain patterns categories, in contrast to organizations involved in national collective bargaining (‘employer associations’), which are overrepresented in lower congruence categories. This suggests that SSDC demarcation favours the representation of business interests in ‘trade associations’.

In conclusion, the findings show that the demarcation of SSDCs by NACE codes structurally benefits the representation of business in the EU sectoral arena: it favours the lobbying strategy of trade associations, while unions have greater difficulty organizing and representing collective interests in an effective and coordinated way.

9. I classified Eurelectric members by coverage patterns, and calculated within each pattern the percentage of members involved in national collective bargaining structures, according to Eurofound data.

Figure 6 Degree of involvement in national collective bargaining structures of Eurelectric members, by domain coverage pattern



3.3 Different capacities to negotiate

A look at the different *capacities to negotiate* of social partners at the SSDC level confirms the previous conclusion. Created in 1989 as a lobby association, Eurelectric’s goals as set forth in its statutes do not mention EU social dialogue. It thus has no general mandate to negotiate with unions at EU level. This handicap determines discussions in SSDC meetings: certain issues have to be excluded from the agenda or can only be addressed via non-binding texts (guidelines or frameworks of action). Conversely, sectoral negotiations on working conditions are among IndustriAll and EPSU’s constitutive goals. While their statutes include specific mandating procedures for that purpose, these cannot be used to their full potential in the SSDC Electricity due to Eurelectric’s blockade.

3.4 SSDC Electricity’s ‘surrogate’ outcomes: evidence of asymmetric strategic capacities?

In this section I link the profuse joint activity, albeit weak in terms of nature and topics, with the above-mentioned structural imbalances. These reflect in the SSDC’s ‘soft’ outcomes and explain the different capacities of labour and management to develop strategies at EU level.

Eurelectric's lack of a mandate to negotiate agreements, coupled with the influence of 'trade associations', is reflected in the SSDC's work (see Figure 2). Autonomous social dialogue is focused on joint opinions or frameworks of action with limited regulatory and follow-up possibilities, accommodating the business lobbying agenda and confirming theories that see SSDCs as 'common lobbying platform oriented towards European policies' (Dufresne *et al.* 2006) where employers' and trade unions' positions seem aligned (Weber 2010: 500).

As a matter of fact, the EC has promoted the consultation function of this particular SSDC since the 1990s to legitimize its energy policy. This was initially seen by both social partners as an opportunity to influence the EC, jointly opposing liberalization and defending a shared idea of public service. As the industry shifted to competition, understandings started to diverge, but remained focused on stressing a policy's 'social' dimension while still closely following the EC's sectoral policy agenda in their lobbying agenda. ETUFs show an ambivalent position here, more inclined to adaptation than to offensive action. For them, the function of the SSDC is to protect minimum social standards and promote the industry's good behaviour, and employers are to blame for not sufficiently mandating Eurelectric; paradoxically, ETUFs have decided not to put pressure on their counterpart ('The employers don't want it, and we have never taken the decision to force the employers to agree to something', EPSU General Secretary, interview, 29/1/2015), preferring instead to continue engaging in partner-lobbying activities or 'soft' framework of actions:

'It became of more use for us, but also for the employers, to stress the social dimension of energy policy (...) trying to see if we could have an influence on how the EC is thinking about policies. With some success' (...) 'we've tried to start to work in a new way, through (...) frameworks of action, in which you actually commit to do a number of things (...) if you don't do that, then the implementation is even worse. (...) There has been an improvement, but it doesn't happen a lot.' (Ibidem)

At first sight, the lobbying activities and frameworks of action seem sufficiently rewarding. However, the ETUFs acknowledge that liberalization has radically changed the situation that justified a strategy of aligned positions in the 1990s:

‘In the past, we had some shared interest. We were both very critical of the internal market, Eurelectric as well. So that is a shared interest towards the EC. (...) then some of these companies became MNCs, around 2000, so being in a European space must have felt also relatively natural to them.’ (Ibidem)

This paradox uncovers a rather unfruitful strategy and makes a number of national unions sceptical about the usefulness of SSDC activities, which national trade union representatives describe as ‘meagre’, ‘technocratic’ and ‘opaque’ (Interviews, 21/9/2015¹⁰). In an emerging EU arena, ETUFs are in search of self-legitimation as social partners vis-à-vis EU employers, the EC and national unions. This could explain their preference for signing joint texts (however reduced their political influence or regulatory potential might be) to an uncertain ‘exit’ strategy.

Contradictions within ETUFs also affect their strategic capacity. Their decision-making procedures prioritize consensus to show a united face vis-à-vis Eurelectric (interview with EPSU representative, op. cit.). Thus, positions most inclined to exert pressure on Eurelectric to negotiate are eventually neutralized. One explanation may be that the national unions dominating the ETUFs’ organization and policy are the most powerful national ones (i.e. German and Nordic) and are thus reluctant to accord the EU sectoral level greater collective bargaining powers (Jagodzinski 2012: 37). The ETUFs’ strategy in the SSDC may suffer from this ambivalent position, reflecting a co-determination logic inherited from the German and Nordic models and a public-sector partnership tradition. Inertia, contradicting interests and internal power relations could thus explain the drift towards a strategy of (rather ineffective) influence, instead of a strategy prioritizing mobilization and bottom-up revitalization.

Here again, the structural asymmetries of class, collective organization and EU integration theories seem a powerful obstacle to ETUFs’ capacity to build a strong unified position at SSDC level. Though surmountable, it would require a major and timeconsuming effort to reconcile differing national, ideological and strategic traditions through coordination, negotiation and *politization* (Erne 2015).

10. Excerpts from informal discussions with representatives from the French trade union CFR-CGC des Industries Électriques et Gazières, and Spanish trade unions Comisiones Obreras (CCOO) and Unión General de Trabajadores (UGT) on the occasion of an SSDC Electricity plenary meeting.

4. Challenges and policy implications

The findings highlight how structural reasons stemming from class position, EU integration and sectorized policy-making, together with the top-down architecture of SSDCs, shape power relations and affect social partners' capacities to act and gain added value from EU multi-level sectoral social dialogue in different ways. These findings indicate three main challenges.

First, they stress the distinction between sectoral 'collective bargaining' and EU 'social dialogue'. In a national context, 'collective bargaining' refers to a political process where social partners are granted normative power to negotiate on conflicting issues and reach substantive agreements at any given level (Rodríguez Fernández 2000: 50-53), while EU 'social dialogue' refers to an exchange of information without a coordination function (Léonard and Perin 2011: 163). This hinders a coherent analysis of EU sectoral multi-level industrial relations based on comparable patterns or key dimensions (e.g. organizational density, collective bargaining coverage), challenging quantitative research and the methodology of Eurofound representativeness studies. Some key qualitative dimensions are simply not present at the SSDC level (i.e. strikes, the role of the State, the legal framework, workplace representativeness or dominant collective bargaining structures) (Visser 2009). EIRO studies often face the problem of missing data. When collected, their validity is questionable on account of great divergences in sectoral scopes of representation not usually made explicit by the researchers and policymakers involved (Keller and Weber 2011: 237). The methodological deadlocks of Eurofound representativeness studies reveal the latter's political role of legitimizing an existing *status quo* rather than openly assessing the representativeness mismatches and asymmetries between social partners.

Second, from a theoretical perspective, the findings question the regulative potential of EU multi-level sectoral social dialogue. Given the structural incongruences highlighted, local commitment to joint texts is unlikely, and EU social partners and institutions find it difficult to assess their implementation (Weber 2010: 497). In the SSDC Electricity, bilateral autonomous dialogue consists of 'soft' texts with limited regulative effects and partner-lobbying, thus confirming previous studies on SSDC functions (Dufresne *et al.* 2006).

Thirdly, from an EU policy perspective, a more detailed and strict legal framework, providing social partners with EU representativeness criteria and normative power, could encourage substantial negotiations and a greater politization of this EU arena. Its content would surely be controversial and subject to political negotiation, but a coordinated multi-level system of industrial relations seems more likely to develop under such conditions.

Finally, the findings suggest that current SSDCs may reinforce labour's structural disadvantages, raising strategic implications for national unions and ETUFs. National unions may find reasons not to commit to SSDC outcomes, especially while maintaining power in their national systems and agendas (Léonard and Perin 2011: 164). However, this is gradually changing: the crisis has consolidated both the EU economic governance and liberalized market, while at the same time driving labour market deregulation and the decentralization of collective bargaining at national level, thereby accelerating the decline of national multi-employer collective bargaining (Marginson 2015). While unions are losing their capacities and power resources at national level, this is even more the case at EU sectoral level where their resources are distant and limited. The current context suggests that arenas other than the sector may gain further importance, for example at transnational company level, where new opportunities to organize and develop substantial multi-level collective bargaining could emerge (Dufresne 2012: 118).

ETUFs face major strategic challenges. Hyman provokingly implies that they limit themselves to 'collective begging' instead of offensively mobilizing 'around an alternative vision of social Europe' (Hyman 2010: 21). According to my findings, the dynamics observed in the Electricity SSDC do not seem advantageous for European labour in terms of political influence or concrete improvement of working conditions, but could lead ETUFs to lose rank-and-file support and legitimacy. The results of the study suggest that labour needs to rethink its strategy and engage in greater *politization* (Erne 2015).

5. Conclusions

This chapter identifies the relevant structural context explaining how SSDCs influence power relations, dynamics and outcomes, ultimately hindering their development as social dialogue forums also encompassing

collective bargaining. These reasons are inherent to the way SSDCs are structured, including their relationships with different levels of industrial relations (sectoral and national [local] levels) in the EU architecture, as well as the institutional context in which they are embedded.

The SSDC Electricity case study specifically shows that its weak development as a collective bargaining institution is due to a) the lack of a strong negotiating position and strategy on the part of the two ETUFs and b) the employer organization's control over the scope of negotiations (due to its lacking mandate). It has been shown how these asymmetric capacities result from the absence of clear and direct representativeness criteria, the non-application of certain existing representativeness criteria on the employers' side (i.e. involvement in national collective bargaining structures) and established top-down sectoral definitions. After analysing the level of incongruence across representation levels (i.e. mainly affecting trade union organization and employers' capacity to negotiate) and linking this to the nature of SSDC outcomes (i.e. joint opinions for consultation purposes), the SSDC's architecture and functioning seem to better accommodate business interests than labour ones at EU level.

Although these conclusions are limited to the case study of the SSDC Electricity¹¹, and certain sector-specific factors may have steered the social partners towards partner-lobbying in this case (e.g. the priority given to the EC's energy policy agenda, the public sector partnership tradition), the findings suggest major challenges for research, policymakers and trade unions (national and European). The incongruences across levels make it difficult to collect and produce reliable data for studying EU sectoral industrial relations. The study presented here generates doubts about SSDCs' regulatory potential, calling on policymakers to define a clearer and binding legal framework for collective bargaining institutions at EU level. National unions may be tempted to redirect their efforts towards more promising arenas for negotiating with employers. Nevertheless, the need for a genuine and coordinated European system of industrial relations remains, though the pre-conditions for such a European system are unlikely to be met without addressing the structural obstacles set forth in this chapter.

11. See, in this same volume, the chapter by Mona Aranea ('Multi-level employment relations in the transnational corporation: evidence from Allianz SE'), whose findings suggest a more successful experience in the SSDC of the insurance sector.

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