EU Multi-level Sectoral Social Dialogue: an impossible articulation?

The example of the electricity sector

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Theme 1: European Social Dialogue: is the role of European social partners changing? Are we moving to a new social dimension?

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Abstract:
The literature on European industrial relations shows a growing interest for understanding processes and dynamics at the EU sectoral social dialogue level, in line with the promotion of the European Commission and the development of Sectoral Social Dialogue Committees’ (SSDC) activity. However, the sector and the representativeness of sectoral social partners are usually taken for granted in that corpus, apart from very few exceptions. This paper intends to prove the centrality and implications of both concepts for relevant dimensions of employment relations, such as involvement of social partners, collective bargaining coverage or implementation of joint texts, and thus multi-level “vertical” articulation. Lying on empirical data from the SSDC Electricity and its Eurofound representativeness study, the paper critically tackles two structural limits of multi-level sectoral social dialogue, while offering some preliminary alternatives towards a more substantial transnational collective bargaining.

1. Introduction:
The literature of European social dialogue shows a growing interest for understanding processes and dynamics at the sectoral social dialogue, in line with its increasing development of Sectoral Social Dialogue Committees (SSDCs) (Pochet, 2011) and the interest of the European Commission in boosting that sectoral supranational level (EC, 1998; 2010). Historically, the sector has proved to be an effective arena for the management of employment relations and regulation of work conditions in many EU Member States, improving work conditions and protecting from social dumping thanks to legal extension mechanisms (Dufresne, 2001). It remains today a “cornerstone” or dominant bargaining level in most West European countries (Marginson, 2005). This could justify the sector being generally considered a relevant unit of analysis for employment relations. A normative assumption often underlies though, according to which the sector would also be the most appropriate unit to promote employment relations, as an alternative to overtake “methodological nationalism” (Bechter et al, 2011 and 2012). From this focus, the virtues of sectoral social dialogue could be

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extrapolated to the EU employment relations regardless societal realities, institutional design and power relations at the EU level. Still, the sectoral level remains the least developed layer of EU employment relations, considered the “weak link” (Marginson, 2005). An apparent contradiction also stands out between an emerging EU sectoral social dialogue level and a general shift towards decentralization3 of collective bargaining that can be observed at national level.

We are thus confronted with the very meaning of sector as political arena or space of negotiation and the issue of representativeness (which social partners are actually represented, involved, and acknowledged in institutional settings) at the different sectoral arenas at stake, namely the national and EU supranational levels. How is the sector defined and demarcated? Who is represented and negotiate at that domain? What is this arena used for by social partners, and who makes better use of it? Both concepts are at the foundation of any sectoral collective bargaining structure, thus basic to any explanation on the vertical articulation or “coordination” between levels of employment relations (Léonard and Perin, 2011a).

However, EU employment relations studies’ have principally focused on the supranational level, and more recently on the impact of EU social dialogue outcomes at the lower levels (Weber, 2011), but paying little attention to the previous definition of such basic concepts from a bottom-up perspective, apart from very few exceptions (Léonard and Perin, 2011a, with Pochet, 2011b). This paper intends to fill this gap. I argue that different meanings of sector and representativeness at different levels of sectoral social dialogue may entail incongruent structural vertical interrelations between SSDCs at the EU level and homologue sectoral social partners and instances at a national level, and have strong implications in shaping and orienting dynamics at the EU level of sectoral social dialogue. Drawing on the example of SSDC Electricity and the empirical data of its representativeness reports (Eurofound, 2012 and 2014), I will look at those structural “vertical” incongruences from a multi-level and critical perspective, and will present how they can explain actors’ insufficient and unequal involvement, the absence of clear mandates, the diluted nature of outputs reached and the blockage in their local implementation; the mere possibility of collecting and producing reliable data at the EU level on relevant dimensions for the study of employment relations is also called into question. I will finally suggest some preliminary alternatives towards a more integrative and substantial collective dialogue within the EU context and further research tracks.

2. Development context of EU Sectoral Social Dialogue

The opinion is shared that a sectoral dimension of employment relations is emerging at the EU level within institutionalized EU SSDCs. Although with different degrees and forms of activity, they have not stopped growing in number and activity (Léonard, Perin and Pochet, 2011b, p.256; Degryse and Pochet, 2011). The EC decided on their

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3 We mean by decentralization of collective bargaining a process or trend to restructure collective bargaining rules, moving from cross-industry or sectoral multi-employer collective bargaining to company level collective bargaining.
establishment to replace formerly existing joint committees and informal structures of social dialogue (EC, 1998), bringing together, at their request, sectoral labour and management representatives at a EU level within bodies that shall be consulted by European institutions and develop bilateral negotiations.

The mounting activity within SSDCs would arise from the combined result of (i) The pressure of sector-specific EU legislation, EU economic, monetary and market integration and exposure to globalization, international competition and liberalization (Pulignano and Arrowsmith, 2013), that would motivate social partners to organize at the EU level along sectoral interests to tackle common problems at the appropriate level (Even, 2008, p.249); (ii) the trade unions’ unilateral cross-border initiatives to coordinate their strategy in national sectoral collective bargaining (Dufresne, 2001); (iii) the promotion of the EC by means of the institutionalization of EU sectoral social dialogue within SSDCs, as abovementioned (EC, 1998). Yet, SSDCs’ activity and outcomes remain underdeveloped, not only if compared to other dimensions of EU employment relations, but mainly to the relevance of the sector as dominant multi-employer bargaining level in some national contexts. The underdevelopment of a sectoral dimension in EU social dialogue mainly refers to qualitative aspects, as it is characterized by a “threefold softness”, affecting (i) the issues treated by joint texts and agendas, from which substantial work conditions such as pay or working time are excluded; (ii) the nature of joint texts, mostly not legally binding and left in different degrees to voluntary commitment (iii) the lack of effective implementation and follow-up at a national level.

The literature often put forward some main reasons that would explain this underdevelopment. Firstly, a strong state protagonist and an appropriate clarifying legal framework is lacking at the EU level (Ales et al, 2006, p.34). With the pretext of boosting social partners’ autonomy and go beyond the “shadow of the law” logic, the EC plays little role as a counterpart for tripartite social dialogue, and its absence actually promotes an unequal balance of power in favor of the employers’ side (Dufresne, 2012:108). Secondly, social partners –especially employers- have little incentive to get involved in negotiations as a result, and no clear mandates are therefore granted to European federations on both sides (Marginson, 2005, p.519). Thirdly, limited human and financial resources are devoted to the EU level, partly because of a lack of political will, but also because of the permanent investment and specialization required to support a multi-level structure alive, which is a handicap for smaller national organizations with weak capacity (Léonard, Perin and Pochet, 2011b, p.265) and mostly affects the labour side. Finally, the EU enlargement to Eastern and Central European countries with employment relations systems that in general do not lie in sectoral multi-employer structures for negotiation but more in company level structures, would further hinder the development of the sectoral element of EU employment relations (Marginson, 2005). However, those reasons do not sufficiently explain the lack of involvement and commitment of social partners, mandates and implementation. I suggest that a preliminary explanation is to be found at the level of structural
incongruences arising from the demarcation of the sector as collective bargaining arena, and the social partners’ representativeness.

3. The ambiguities of the “sector”: different meanings at different levels of social dialogue

The sector is an ambiguous concept, corresponding to no substantial definition (legal or economical), so it has never been easy to define (Rodríguez Fernández, 2000, p.266). In that sense, it is not a neutral concept, but its meaning, demarcation and function is subject to (social) conflict and discussion. Sectors have been historically, socially and politically constructed along with social conflict, and correspond therefore to “strategic imbroglios” that cannot be analysed following a logical simple classification (Saglio, 1991, p.31).

At the national level, the sector appears therefore as a political arena and social institution (Jobert, 2005, p.81), in the sense of a socially-constructed unity or space for negotiation established by social partners that mutually acknowledge each other’s representativeness within the domain of an agreed sector demarcation. The sector legal definition, which is usually awarded with a specific position in the structure of collective bargaining as multi-employer bargaining, results of a previous negotiation process where social partners pursued a definition that better suited their own organizational practices, internal structure and aggregation of interests (Saglio, 1991, p.31). The trade unions movement’s strategy was essential to appoint the sector as an arena for collective bargaining, as it structured itself following first professional or job profiles (the métier), then according to the “branch”, industry or sectors (Jobert, 2005, p.80). In fact, trade unions found a given scope pertinent for regulation and bargaining when it displayed some common professional interests to represent, according to similar position within the production system. Thus, economical or business activity has not been the sole criterion used for sector demarcation. Sectoral boundaries may also lie on other existing relations between employers, provided that common interests at a given level legitimated the aggregation of labour interests (Jobert, 2005, p.80). That explains the lines and levels of conflict and sectoral negotiation arenas, and also the diversity encountered between different societal contexts, which also affects the economical features of the sectors, in line with the very diverse industrial history and economical structures in the relevant countries (specialization, liberalization, country or sector size, type of companies).

Conversely, at the EU level, sectoral definitions do not directly arise from social conflict, but from institutional top-down designs. The EC has not officially indicated exact criteria for the demarcation of sectors, though (Keller, 2011, p.229). But the “sector”, as scope for the establishment of SSDCs, is in practice defined by Eurofound

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4 We could even say it seems frequently an inappropriate criterion, taking into account the context of firm fragmentation and organization of productive systems across global value chains or production networks, the break in the correlation between business activity and technology or technique, and the raise of new “horizontal sectors” with new ITs, which drives to a dilution of the economical specificity of the sector (Rodriguez Fernández, p. 270-271).
representativeness studies following the demarcations of the statistical classification of economic activities (NACE). Those are meant to truly reflect the economic reality and establish reliable and comparable data on market activities throughout the European Union\(^5\). This choice is justified on the ground that only an economical definition of sector (actually the NACE one) allows a cross-national comparison in view of evaluating the “sufficient representativeness of the social partners for a particular sector” (Eurofound, 2014). In this sense, the sector is presented as a neutral, technical concept with a functional definition, arising from a “top-down” pragmatic solution found by the EC. It should be noted that this demarcation of sector based on efficiency reasons is not neutral, but implies a decision that has implications. Not only it is artificial and rigid, but (i) it is shaped up in accordance with data unilaterally displayed by companies when declaring their business activity to national corporate registry or official statistics. It can be expected that the sectoral definitions at the EU level become functional for the aggregation of business interests and representation in a more coherent way; (ii) it follows the outlines of the political agenda of European institutions’ industry related policies. This would suggest the agenda of such level of social dialogue and the use made of it by social partners could be more easily influenced by EU political agenda.

As a conclusion concerning the sector definition, there is a trend to use “sectoral social dialogue” and “multi-employer collective bargaining” as indistinctive terms, regardless the level of employment relations analysed. However, a relevant contrast stands out between the meaning granted to the “sector” in the language of EU employment relations, and the national level(s), which shall be clearly distinguished, as they precisely entail some incongruences affecting the vertical interrelation between those employment relations’ layers.

4. The problematic concept of sectoral social partners *representativeness* at the EU level

The concept of *representativeness* is also an ambiguous one, which lacks of a substantial definition. In the context of employment relations and European national traditions, the *representativeness* of social partners has been defined as the claim of an aptitude, thus a legitimation, to represent the collective interests of a group of workers or employers within a given scope (Béroud et al., 2012, p.6)\(^6\). A problematic relationship seems unavoidable between the representing organization and the represented, and that can be measured or qualified according to different perspectives.

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\(^5\) This classification was introduced by a Council Regulation (EEC) nº 3037/90, and has been amended by Regulation (EC) nº 1893/2006 of the European Parliament and the Council on the 20\(^{th}\) December 2006, in order to create common statistical standards that permitted the production of harmonized data on market activities. The NACE was introduced for being used in all statistics according to economic and market activities, thus its pertinence as an instrument for harmonization of data in other aspects, namely employment relations, is at the very least debatable.

\(^6\) This definition is based on the assumption that social conflict and collective interests do exist (labour and management) and that those can legitimately be represented on the grounds of historical, sociological or political criteria (Béroud, 2012, p.6).
In formal terms, the representativeness refers to the legal quality granted to a professional organization, according to certain criteria previously fixed by labour law (i.e. quantitative criteria on membership or results in workplace elections), and entailing special rights (i.e. consultation, normative power through collective bargaining and sometimes, the extension in its effects, financial resources) (Béroud et al, 2012, p.6).

At the EU level of employment relations, though, representativeness of social partners is ruled and defined by other criteria. The Treaty on the Functioning of the European Union (TFEU) sets the obligation for the EC to consult labour and management and promote their dialogue (Articles 154 and 155), but does not state which criteria shall appoint an organization as a sufficiently representative and entitled to those rights. Thus the EC settled such representativeness criteria in the EC’s Decision that established SSDCs (EC, 1998)7 in relation to EU sectoral social partners. According to the criteria of the EC, EU sectoral social partners have to fulfill three criteria to pass the representativity check:

i. “relate to specific sectors or categories and be organized at European level”;

ii. “consist of members which are themselves an integral and recognized part of Members’ States’ social partners structures and have the capacity to negotiate agreements, and which are representative of several Member States”;

iii. “have adequate structures to ensure their effective participation in the work of the Committees”.

These criteria serve to identify EU social partners at the SSDCs, but do not refer to the representativeness of their national affiliated members, as this point is redirected to Member State’s own definitions of representativeness on the grounds of respect for the subsidiarity principle, national diversity of practices and the autonomy of national social partners (Welz, 2008, p.181). There has been no attempt by the EC to establish clear transnational unified and harmonized criteria of representativeness at the EU level, that would allow verifying whether a European organization “is to be considered a trustworthy spokesperson for the group of people whose interests it claims to represent”, namely “truly representative” able to provide a real mandate (Even, 2008, p.201-202, Reale, 2003, p.12). But the EC did not want to renounce to certain criterion of representativeness either (Bercusson, 2009, p.543). Thus, the chosen criteria have been strongly criticized for resulting in a confusing middle path and, in practice, in a purely formal and ambiguous definition (Bercusson, 2009; Welz, 2008; Even, 2008). Firstly, the EC does not measure the “sufficient representativity” on the basis of previously settled social criteria, such as actual numbers of members or other quantitative data linked to social reality arising from national employment relations’ systems. According to the EC criteria and to the Court of First Instance’s case law8, representativity is rather

7 A Communication in 1993 (EC, 1993) settled the guideline and was applicable to social partners both at cross-sectoral and sectoral level although with no binding effects.

8 Case T-135/96, Union Européenne de l’Artisanat et des Petites et Moyennes Entreprises (UEAPME) v. Council of the European Union [1998] IRLR 602. In that decision, the Court of First Instance shaped the
based on the claim of the given organization to represent interests in relation to the content or scope of the agreement concluded. Such a concept of representativeness necessarily poses problems, as based in a tautology and involving too vague criteria that do not clarify how an institutional control can operate on the representativity of the parties (Bercusson, 1999, p.158; Reale, 2003, p.13). Therefore, no social, but only geographical and formal structural criteria are verified by the EC, at least for consultation purpose (a close list of representative organizations was established by the EC first Communication in 1993), and institutional control only applies when European social partners will to implement agreements through a Council decision (Even, 2008, p.216). Secondly, the EC does not impel European organizations to exclusively consist in members directly participating in national social dialogue structures, which has implications in mandates, as I will examine later. Thirdly, the EC does not clearly set out the meaning of “capacity” to negotiate “agreements”, and allows the representation of only “several” Member states, thus European sectoral social partners may conclude agreements without involving relevant national partners. This may entail problems at the implementation level. Finally, concerning “sector-relatedness”, trade unions and employer organizations are considered “sector-related” provided that their domain of interest and/or scope of collective bargaining is linked to the NACE code of the relevant sector in any of the following four ways: (i) “congruence”: the domains of the given organization and of the NACE code are perfectly coincident; (ii) “sectionalism”: the domain of the organization is smaller in scope than the NACE demarcation; (iii) “overlap”: the domain of the organization covers the whole sector exceeding its demarcation (iv) “sectional overlap”: the organizational domain exceeds from the sector’s one, but covers it only in part. If the organization in question does not match any of the mentioned patterns, then it should not qualify as “sector-related” according the EC’s representativeness criteria. Following the mentioned categories, organizations can be classified according to a progressive graduation from a closer and more congruent relationship between organizational internal structure and NACE sector demarcation (“congruence” and “sectionalism”), to a more diffused and incongruent correspondence (“overlap”, “sectional overlap”, finally, “no relationship”). We will examine in next sections how this link established between representativeness and NACE sector demarcations may influence the outcomes within SSDCs, and the incongruences and disconnection between national and EU levels of sectoral employment relations.

5. The Electricity SSDC – an example of incongruences in multi-level representation

concept of « sufficient cumulative representativity » as referring to the representativity of all the signatories, taken together, in relation to the content of the agreement.

9 These are the patterns usually mobilized by the Eurofound representativeness studies for analytical purposes.

10 Although these EC’s criteria only refer to European organizations, representativeness studies also display the list of potential national relevant sector-related associations (i.e. Eurofound, 2014), regardless if they are involved or not in European sectoral social dialogue, as it is assumed that they may be sector-related although not affiliated to European federations thus not participating in the European level of sectoral social dialogue.
Let us take the electricity sector as an example of the mentioned limitations and incongruences. A sectoral social dialogue is being developed at the EU level within the SSDC Electricity, a second-generation Committee\textsuperscript{11} formally established in 2000, although an informal structure of dialogue already existed since 1996. Eurelectric on the employers’ side and IndustriAll (formerly EMCEF) and EPSU on the trade unions’ side are brought together around the table.

The sector of electricity at the EU level is outlined along with the NACE (Rev.2) code 35.1, namely electric power generation or production; transmission; distribution; and retail activities (Eurofound, 2014). Rather than a pragmatic solution, this demarcation offers some confusion from an economical and institutional perspective. Firstly, the sector includes very different market segments, with diverse weight and size depending on the country, technologies, production systems, types of organization or job profiles involved, sometimes not specifically pertaining to electricity (Eurofound, 2012, p.8 and 9). Secondly, most business activities actually fall under the scope of other sectoral collective bargaining arenas at a national level, as a result of the great restructuring in the electricity industry through split-outs and outsourcing (i.e. services activities as maintenance or customer care, engineering, construction, transport, steel) (Eurofound 2012, p. 27 and 44). With the development of capital intensive new renewable energy sources (RES) within the electricity sector, employment is particularly growing in those activities external to electricity generation (Eurofound, 2012, p.46). Finally, some countries count with genuine electricity sector-specific bipartite or tripartite forums for consultation of social partners and their negotiation, while other countries do not. Actually, national sectoral social dialogue is only seldom structured following electricity business demarcations that are congruent to NACE (Eurofound, 2014, p.21 and Eurofound, 2012, p.28)\textsuperscript{12}.

These observations call into question the representativeness of EU sectoral social partners and the concept of “sector-relatedness” of national affiliates according to the NACE demarcation of the electricity sector. IndustriAll and EPSU count with 77 national sector-related trade unions affiliated\textsuperscript{13}, while Eurelectric has 33 national sector-related members (Eurofound, 2014). Sectoral representation is thus very centralized at the SSDC Electricity, although less fragmented for employers than for trade unions. But IndustriAll and EPSU also organize workers from others sectors (manufacture, steel, mining, energy sectors, and other public sector industries). Thus, both organizations fit into the “sectional overlap” pattern, as their domain of action and representation is not perfectly congruent with the NACE demarcation for electricity. In the employers’ side,\textsuperscript{11} Following the EC typology.\textsuperscript{12} As mere examples, in Belgium a legal forum exists for the negotiation of collective bargaining in the sector of electricity, namely the established Joint Committee 326.Conversely, in Spain, the feature of electricity sector in terms of employment relations is the fragmentation, decentralization and gaps in collective bargaining at a sectoral level, often negotiated in the Metal industry table (Monereo, 2005, p.6)\textsuperscript{13} 26 are affiliated to IndustriAll, 29 to EPSU, and 22 to both European Trade Union federations. This double representation channel to at least one third of the national sector-related associations indirectly involved in EU sectoral social dialogue may entail obstacles to transparency; and influence unbalance in favor of some organizations.
Eurelectric’s domain of representation is closer to the sectoral NACE outlines, matching therefore the “overlap” pattern only for geographical reasons, as some of its members belong to non-EU countries.

Eurofound representativeness studies provide with valuable information on national organizations that can be considered “sector-related” from workers’ or employers’ side, either because they are affiliated to EU sectoral social partners, or because they are involved in sector-related national collective bargaining structures\(^\text{14}\). But those studies do not clearly distinguish those “sector-related” organizations effectively involved or excluded from EU sectoral social dialogue, which is the main goal of our paper. We may thus address three questions to the empirical data of the sectoral representativeness study of the Electricity (Eurofound, 2014)\(^\text{15}\), in order to test the nature of existing relationships (congruence or incongruence) between the national and European levels of representation in the sector of Electricity.

First of all, in what extent is the domain of sector-related associations affiliated to European social partners congruent or not with the outlines of the NACE code for the electricity sector? We may expect that the more congruent they are, the more functional the EU sectoral arena proves to be for collective representation of interests and grant of mandates at that level, as narrower will be the connection between levels of representation. In Figure 1 we can see this distribution according to the data collected in the Eurofound representativeness study for the Electricity sector.

*Figure 1: Distribution of national sector-related affiliated associations and their domain coverage pattern in relation to NACE codes for electricity*

\(^{14}\) For the purpose of this paper, we include in “sector-related” collective bargaining structures both single-employer and multi-employer bargaining involving workers or companies responding to the NACE demarcations of the sector.

\(^{15}\) In the case of the representativeness study on the Electricity sector, those questions are not raised. The Eurofound representativeness study proceeds to the classification of all national “sector-related” associations under the four mentioned patterns, without filtering which are affiliated or not to European “sector-related” federations. So in my view the conclusions of the study do not allow to observe the vertical link between national and European level of representation.
On the workers’ side, among the 77 organizations, five are regarded as congruent with the NACE definition of sector in terms of their domain (6.49%), four match the sectionalism pattern (5.19%), and 34 the overlap and sectional-overlap patterns, respectively (44.16% each). The “sector-relatedness” as defined by the EC according to NACE definitions seems thus rather dysfunctional to a congruent representation of national sector-related trade unions at a European level. Trade unions seem rather compelled to agglutinate their interests’ representation in an artificial way at the EU level, following business areas which do not correspond to their internal structure at a national level. On the employers’ side of affiliates to Eurelectric, 11 out of 33 match congruently with the NACE sectoral definition (33.33%), three with the sectionalist pattern (9.09%), eight with the overlapping category (24.24%), and seven with the sectional-overlap (21.21%). Data are not available for 4 of them (12.12%), according to the representativeness study (Eurofound, 2014).

These data confirm that the NACE sector is rarely congruent with the domain of national organizations affiliated to EU sectoral social partners in this particular sector (Léonard and Perin, 2011a, p.162). They also suggest that a more congruent vertical articulation exists for employers than for trade unions throughout different levels of sectoral representation, although the relationship patterns are still deviating in a high degree.

Secondly, we can address the following question: how many national sector-related associations affiliated to a EU social partner are involved in collective bargaining structures in their own countries, according to the study of Eurofound? The affiliation to European federations does not necessarily require the involvement in national employment relations (Eurofound, 2014, p.41), and that could reveal a discordance between the capacity of negotiation and implementation at different levels (Figure 2).

Figure 2: Trade unions’ and employers’ sector-related national associations taking part in EU sectoral social dialogue, and their involvement in sector-related national collective bargaining structures, in percentages compared
On the workers’ side, among the mentioned 77 organisations, only 3 do not participate in any sector-related national collective bargaining structures (3.9%), while 74 do (96.1%). Sector-related organisations affiliated to IndustriAll and EPSU are largely involved in national collective bargaining related to electricity, especially compared to the involvement of employers. On the employers’ side, only 14 are involved in collective bargaining structures in their own country, 19 are not (57.58%).

Regardless the formal criteria of sectoral representativeness settled by the EC, the empirical data reveal that national sector-related members of Eurelectric taking part in SSDC Electricity are in a significant share not involved in any sector-related bargaining structure at a national level. Thus, they represent particular business interests in line with their position in the products market, and can be named “trade associations” or “industrial lobbies” rather than employer associations (Dufresne and Pochet, 2007, p.259; Arcq, Dufresne and Pochet, 2003, p.309). The EU enlargement is often seen as the decisive reason. However, only six of the 19 sector-related national employers’ associations qualified as “trade associations” are issued from Eastern and Central European countries in the electricity sector (31.57%)\(^{16}\), so trade associations coming from those countries are in fact underrepresented in SSDC Electricity\(^{17}\). A more convincing explanation points at the emergence of new electricity operators specialized in RES that are progressively willing to establish alternative employment associations at a national level, but have so far mostly established trade associations for lobbying at a European level (Eurofound, 2012, p.34). A second hypothesis is that the outline of the sector demarcation following the NACE code is functional for the aggregation of business interests around “trade associations” on the employers’ side. From the merger of Figure 1 (employers’ associations) and Figure 2, Figure 2.bis makes the relationship

\(^{16}\) It could be seven in total coming from those countries, but for NEK EAD (Bulgaria), data are not available relating SNR collective bargaining involvement (Eurofound, 2014, p.71).

\(^{17}\) Eastern and Central European countries actually represent 11 of the current 28 EU Member States, thus 39.29%. The countries usually classified under that “mixed” category, corresponding to Central and Eastern European countries in the traditional typology of industrial relations regimes are the Check Republic, Slovakia, Slovenia, Estonia, Hungary, Leetonia, Lithuania, Poland, Bulgaria, Romania, and as from January 2014, Croatia.
between involvement in national employment relations systems and domain coverage patterns of national sector-related members of Eurelectric stand out.

**Figure 2.bis. Sector-related national associations affiliated to Eurelectric, by domain coverage pattern and involvement in national sector-related bargaining structures**

![Bar chart showing domain coverage pattern and involvement in national sector-related bargaining structures](image)

Source: Own elaboration based on data extracted from Eurofound (2014)

We observe that the “congruent” group includes only 5 associations involved in national collective bargaining and 6 not involved ones, while the “sectionalism” group counts with an only association involved, while 2 are not involved (33.33% and 66.67%). The “overlap” and “sectional-overlap” groups include respectively 4 and 3 associations (namely 50% and 42.86%) involved in national collective bargaining structures, against both 4 not involved (50% and 57.14%). Finally, the whole of associations where no data are available on the domain coverage pattern do not take part in national collective bargaining structures (100%).

Eurelectric members whose domain matches more congruently with the NACE definition of Electricity sector (fitting with “congruence” or “sectionalism”) are more frequently not taking part in national sector-related bargaining structures than taking part. Conversely, those national sector-related members of Eurelectric who are less congruent with the NACE definition of sector (fitting with “overlap” or “sectional-overlap”) are more frequently involved in national structures of collective bargaining.

Finally, a third last question can be addressed: in what extent are national sector-related associations that participate in national sector-related collective bargaining actually affiliated to sectoral European associations, thus involved in EU sectoral social dialogue? The Eurofound study detected 112 national sector-related trade unions and 49 national sector-related associations, although not all of them are involved in national bargaining, nor in EU sectoral social dialogue. This has implications for the implementation of EU agreements at a national level, but also on the degree of democratic legitimacy in EU structures of representation (Figure 3).
Figure 3: Sector-related associations involved in sector-related national collective bargaining structures and their affiliation to sector-related European federation

Source: Own elaboration based on data extracted from Eurofound (2014)

On the workers’ side, only 107 sector-related national trade unions actively intervene in sector-related collective bargaining in their own country. Among them, 33 are not represented at the European sectoral social dialogue level, as not affiliated to IndustriAll or EPSU (30.84%). On the employers’ side, from a total 49 sector-related national associations, at least 28 actively intervene in national sector-related collective bargaining structures. Among those, 14 are not affiliated to Eurelectric, therefore not involved in EU sectoral social dialogue (50%).

Therefore, not every national “sector-related” organization involved in national collective bargaining structures is affiliated to one of the EU sectoral social partners, but a large majority does, and is also involved in SSCD Electricity, especially on the workers’ side.

As a general conclusion on the issue of representativeness at the SSDC Electricity, the criteria and “sector-relatedness” adopted by the EC do not seem adequate for granting a congruent representation of interests at the EU sectoral level of social dialogue, but rather distort EU multi-level sectoral representation and prevent a fluent vertical relationship between EU and national levels of representation. The adoption of NACE codes for the definition of sectoral outlines settles an advantage in terms of vertical congruence for the employers’ side, as it fits better with the internal structure of “trade associations”. It can be expected that the SSDC Electricity serves easily as an instrument for the promotion of business lobbying interests on the employers’ side, while rising obstacles for democratic legitimacy and representativeness on the workers’ side.

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18 No data are available for two associations, and 19 do not intervene in national CB, according to the data of the representativeness study (Eurofound, 2014).

19 We consider only the quantitative data from the Eurofound study in this paper, but do not take into account the issue of quality of national collective bargaining and representativeness of national sectoral social partners.
5. Consequences for the meaning and use of “social dialogue” at different levels

5.1. Problematic data collection and analysis for measuring basic dimensions of employment relations

The deficient articulation and lack of continuity between national and EU levels of sectoral representation leads to methodological deadlocks that prevent a coherent analysis of multi-level employment relations. Sectoral social dialogue at the EU level cannot be analyzed according to some of the key dimensions traditionally used to categorize sectoral national industrial relations systems and evaluate their effectiveness or quality. When we look at key indicators such as trade union or employers’ density of social partners involved in SSDCs, or collective bargaining coverage of SSDCs’ joint texts (number of employees affected at the local level by such agreed texts), data are broadly lacking in the EIRO studies. As a matter of fact, “collective bargaining coverage” completely changes its meaning due to the multiplicity of sources that arise from SSDC and often lack from regulation goal (Keller and Weber, 2011, p.238). When available in official figures of Eurofound representativeness studies, they are provided by national social partners themselves and their validity is questionable, since they usually do not take into account divergences between EU and national sectoral scopes of representation, and thus are considerably overestimated and impossible to disaggregate for the purpose of sectoral analysis (Keller and Weber, 2011, p.237). Moreover, some other key qualitative dimensions for the measurement of industrial relations’ quality (Visser, 2009), such as data on strikes, the role of the State and legal framework, the representativeness at the workplace or dominant collective bargaining structures, do not easily find a reflection at the level of SSDCs.

Searching for multi-level coherent explanations, similar patterns or comparisons between sectoral employment relations processes at the EU level within SSDCs and at a national level seem doomed to failure. Thus, it could be asked how follow-up procedures and evaluation of representation and implementation of SSDCs joint texts at a local level could effectively be carried on, on the basis of which indicators and data. Indeed, as a result of those incongruent institutional designs, EU sectoral employment relations remain a challenge for quantitative research.

5.2. The nature of SSDCs outcomes: a “surrogate” collective dialogue

It has been generally pointed out that the move from tripartite to bipartite and “autonomous” relations between social partners at the EU level without the “threat” of the EC has led to a scenario that favors the conclusion of non-binding joint texts principally addressed to European or national public institutions, and in which the employers’ side can exert more easily a veto power, while European institutions have not provided social partners with sufficient and clear normative power. In Bercusson’s words, “autonomous dialogue produces ineffective soft law” (Bercusson, 2009, p.558).

The outcomes of SSDCs have been classified into six broad categories of texts, according to their degree of softness: agreements (those transformed into Directives or...
implemented by social partners through Members’ states traditional practices or procedures); recommendations (codes of conduct, guidelines, follow-up procedures for implementation, etc.); declarations; joint opinions (addressed to European institutions), tools and rules of procedure. Among the joint texts, Pochet and Degryse have distinguished two main types in tension within SSDCs depending on their function: on the one hand, joint opinions, that address European or national institutions influencing their policy-making; on the other, agreements and recommendations, arising from initiatives that truly aim reciprocal commitments between social partners. They group declarations, tools and rules of procedure in a residual third category corresponding to none of the former (Degryse and Pochet, 2011, p.150-152). Despite the slight increase of reciprocal commitment texts, they warn that the outputs “continue to reflect a dialogue focused primarily on lobbying”, as more than half of the texts are in the period 1990-2009 are joint opinions, namely addressed to institutions rather than to social partners (Degryse and Pochet, 2011, p.149; Pochet, 2009, p.22).

Not surprisingly, the SSDC Electricity confirms this trend, as joint-lobbying texts drastically dominate the scenario of outputs in comparison to reciprocal commitment texts (Figure 4). From the establishment of the SSDC Electricity, neither have “agreements” been reached, nor have “hard” topics such as pay or working time been treated (Figure 5).

Figure 4: Outputs issued in the SSDC Electricity for the period 1996-2013

![Figure 4: Outputs issued in the SSDC Electricity for the period 1996-2013]

Source: Own elaboration based on data extracted from the EC joint texts data base on SSDC Electricity, Stand 25 June 2014

Figure 5: Joint texts by main topic and type, issued in the SSDC Electricity for the period 1996-2013

![Figure 5: Joint texts by main topic and type, issued in the SSDC Electricity for the period 1996-2013]

20 We include also the frameworks of action and policy orientations under this category, as they are addressed to national partners.
Following former observations on sector and representativeness across levels, the nature of these outcomes could point at an influence of trade associations represented on the employers’ side within SSDCs social partners, or a possible “exploitation” of SSDCs by employers for the deployment of business interests and their lobbying agenda. However, joint opinions are supported by trade unions, so SSDCs appear as “a common lobbying platform oriented towards European policies” (Dufresne and Pochet, 2006). Sectoral “social dialogue” and “bargaining” processes must thus be distinguished between national levels and the EU level of SSDCs. In the sense of collective bargaining theory, “collective bargaining” referred to a political and normative process of confrontation between social partners that were granted with normative power for entering into dialogue and reaching substantive agreements to rule and fix work conditions (Rodríguez Fernández, 2000, pp. 50, 52-53), while social dialogue within SSDCs means a mere exchange of information (Léonard and Perin, 2011a, p.163) and does not seem to fulfill neither a ruling nor a coordination function.

5.3. **Deficient commitment of social partners, in terms of mandates, participation, implementation and follow-up procedures**

The mentioned deficiencies and ambiguities related to the representativeness concept and the choice of the “sector’s” perimeter at the EU level have revealed two structural obstacles to a fluent interplay between EU and local sectoral levels of representation and social dialogue.

This deficient articulation between levels could explain why national social partners are reluctant to grant clear mandates to their European federations on both sides. Indeed, given the negotiating conditions within SSDCs, we may question why national trade unions should follow a strategy of further involvement and participation at a EU sectoral level, especially in issues concerning the national agenda and where they may keep some power to act through their own national systems of employment relations (Léonard and Perin, 2011a, p.164). The choice between one or another level for the
promotion of social dialogue is not a neutral or indifferent issue, since power relations between bargaining parties may be different in different levels (Rodríguez Fernández, 2000, p.66-67). This factor largely explains the underdevelopment of the sectoral dimension of EU social dialogue. An alignment in positions and interests has been observed between employers and trade unions involved in SSDC Electricity (Weber, 2010, p.500), but reasons should be further explored to determinate if this is as result of an adaptation process, a proactive strategy of trade unions given the institutional context, or a successful co-optation strategy followed by trade associations on the employers’ side, that would pull the SSDC’s work into the joint-lobbying direction.

On the other hand, those structural reasons widely explain the lack of commitment of sector-related bargaining national associations towards SSDCs outputs and the failure of local implementation and follow-up phases that is often reported. Outcomes are issued by a distant structure of joint decision, where local social partners do not often have a clear representation or exert a direct control. The institutional design of SSDCs complicates the granting of democratic legitimacy, information sharing and transparency, as well as the tracing of accountability lines across different representation levels (Weber, 2010, p.497; Reale, 2003).

As tentative solutions to the mentioned problems linked with representativeness and accountability, it has been suggested that the EC put forward a clearer definition of representativeness criteria of social partners (Welz, 2008, p.195). Should a more coherent vertical articulation of levels truly be an objective for EC and social partners, it would then be advisable to prevent the participation of trade associations to EU sectoral social dialogue. Finally, as suggested by Welz and Reale, European social partners themselves could be impelled to develop clearer internal rules allowing transparency and internal accountability towards their national affiliates. They could this way clarify the scope and limits of their mandate, help in the implementation of follow-up procedures, assess national grass-roots organizations in multi-level bargaining, as well as reinforce their relationship with them at a local level.

6. Conclusion

This paper intends to show how two institutional designs at a EU level may promote some “dysfunctional” dynamics in the SSDCs. The institutional context does structure actors’ behavior (Weber, 2010, p.494). We are thus compelled to use some concepts with extreme caution in the study of multi-level employment relations, in order to avoid confusions and the reach of simplistic conclusions. The peculiar meaning of “representativeness” of social partners and the defined boundaries of the sectors at EU level of employment relations do not fit with their national meanings, but lead to an overrepresentation of the consultation function of SSDCs over the function of bilateral negotiation (Dufresne, 2006). In turn, “social dialogue” at EU level cannot be considered as equivalent to “collective bargaining” in the sense of national traditions (Glasner, 2012, p.81). Actually, the SSDC becomes a functional arena to “partner-lobbying” (Dufresne, 2006), strengthened by the lack of a normative framework that
would set clear normative relations between outcomes of EU sectoral social dialogue (Ales et al., 2006), at least some criteria for extension binding character. Therefore, if EU sectoral social dialogue is currently less developed than other spheres of EU employment relations, and has led to weaker negotiation results, that does not seem to be sector specific but on the contrary, quite generalizable, and not simply due to the deficient functioning of SSDCs *per se*, but due to previous structural limitations and incongruences in the vertical link of actors representation and sectoral scope. Those limits could partly prevent SSDC of becoming a promising arena for European substantial social dialogue. Given the context, it seems that the question of the implementation of outcomes of sectoral social dialogue should be subordinated to the previous question of legitimacy and representativeness, thus to the “bottom-up” vertical interlinking between the EU and national sectoral levels of employment relations. In other words, the challenge of outcomes’ implementation has often being stressed; while an important underlying explanation seems to be structural, pointing at the representation of social partners and the sectors’ definition incongruences.

Moreover, as expressed by Arrowsmith et al (2003), a noticeable shift is generally being operated in various national employment relations’ system from a former dominant sectoral level, or multi-employer level of collective bargaining, to a company level. It seems we could more broadly speak of a progressive decline of the sector as a dominant layer for substantially regulating work conditions. In that sense, we suggest to go beyond the argument that EU enlargement to new Member States in Eastern and Central Europe with no tradition of strong sectoral frameworks should be the main “threat” to sectoral bargaining at the EU level (Marginson, 2005, p.513). Indeed, Western European welfare states have gone through deep changes since the 90s, encompassing the neoliberal globalization and under the pressure of spread MNCs and mobile transnational capital, as well as liberalization (often also privatization) policies and deregulation processes at a national level. The position of multi-employer bargaining as a dominant level of negotiation in European member states has been strongly weaken as a result, particularly in coordinated economics and other countries where such multi-employer bargaining was traditionally relevant in terms of aggregation of interests, coverage and extended effects; the trend especially affects recently developed service sectors, such as telecommunications, in the context of a parallel move towards service-based economies. A second worth noting trend is the generally spread firm fragmentation through diverse business and legal mechanisms, such as outsourcing or subcontracting. The split of work organizations into global value chains or production networks lead to the fragmentation of legal representation of the work force and employment relations’ institutions. Within this context, the blurring of sectoral boundaries makes sectoral collective bargaining frequently too rigid or unsuited to channel collective action and manage new challenges in employment and work conditions at a local level, where several workers’ representations falling into the scope of different sectoral CBAs may be involved in the production system of a sole main company, and thus willing to aggregate their interests. Conversely, the emergence of a territorialized or plant-level social dialogue could prove more appropriate for offering
responses to the fragmentation of working communities (Boulin, 2005; Jamar, Lafuente and Martinez, 2014). Thirdly, the neoliberal management of the crisis has amplified the already ongoing process of decentralization of collective bargaining structures in many member states (Köhler and González Begega, 2007, p.140), by means of specific labour reforms. This has been the case in Spain, France, Portugal, Italy, Greece or the Slovak Republic (Schömann, 2012, p.13; Nadal S., 2005, p.59). The changes introduced have reduced the capacity for national trade unions to negotiate at a national sectoral level, and thus, indirectly hindered the representation capacities at a EU sectoral level for national trade unions in some Member States. In this context, questioning the very meaning and development possibilities of European sectoral social dialogue in the short term wouldn’t seem inappropriate.

In fact, wouldn’t other arenas of employment relations actually prove more suited for the development of a substantial and effective collective bargaining, adapting to the changing nature of employment relations? Following the development of MNCs and global production networks at a supranational level on the one hand, and the increasing fragmentation of the firm through outsourcing and subcontracting at a local and plant-level on the other, further research should lead us to a better understanding of new dynamics of employment relations at both levels of collective bargaining: MNC company level and territorial level (Jobert, 2005b). Following Dufresne, we could even speak of a “sui generis centralization of negotiations” in the sense that centralization is no longer located at sector level “but rather at the level of the transnational group” (Dufresne, 2012, p.118) and the territorial or plant-level, which also involves company networks and subcontractors.

Finally, this paper has demonstrated the relevance of institutional designs and definitions at the EU level in shaping dynamics of integration and the Europeanization of employment relations. It has also emphasized the impact that structural provisions may have on the very possibility of development for EU sectoral employment relations, and its direction in terms of promotion of democratic legitimacy of social partners, transparency and vertical “bottom-up” involvement. The findings presented in this paper suggest that apparently neutral or technical decisions adopted at the EU institutional level can actually have strong implications and thus depend on a political choice. So far, the structural incongruences above mentioned result in unequal opportunities for social partners in the EU level structures of consultation and social dialogue.

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