

# What's the point of European Sectoral Social Dialogue? Effectiveness and polycontextuality in the hospital and metal sectors

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## ABSTRACT

Drawing on pragmatism and systems theory, this article analyses how participants in the European Sectoral Social Dialogue in the metal and hospital committees understand its effectiveness. We find that the participants have a broad understanding of effectiveness compared with the European Commission and existing research. Participants do not dismiss the importance of direct effects on working conditions in member states but downplay it in comparison with indirect effects from, and effectiveness in, European Sectoral Social Dialogue. That is, horizontal learning, knowledge sharing and pragmatic bottom-up work to reach consensus are emphasised as more prominent than top-down regulatory effectiveness.

## 1 INTRODUCTION

Since the establishment of European Sectoral Social Dialogue (ESSD) in 1998, its effectiveness has received both political and scholarly attention. The European Commission (EC) has expressed expectations that employer organisations and trade unions negotiate European-wide sectoral agreements, thereby contributing to EU integration and the cross-industry European Social Dialogue (ESD). The EC has tried to develop a strongly outcome-oriented social dialogue, emphasising that 'Effective social dialogue is the cornerstone of the European social model. It is a prerequisite for the functioning of Europe's social market economy and crucial to promote both competitiveness and fairness' (EC, 2015; cf. EC, 1998; 2010a; 2010b; 2016).

The number of sectoral committees has more than doubled from 20 in 1999 to 43 today, covering most sectors and 80 per cent of the European workforce (Eurofound, 2019). These committees have produced over 900 documents co-signed by employers and unions—in addition to the 100 outcomes from the cross-industry

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ESD.<sup>1</sup> However, scholarly research has expressed scepticism regarding the actual impact from ESSD at national and European levels, because of the non-binding nature of most outcomes (De Boer *et al.*, 2005; Degryse, 2015; Keller, 2003; 2008; Léonard, 2008; Léonard *et al.*, 2012; Perin and Léonard, 2011; Pochet, 2005).

This raises several questions. If the ESSD does not deliver according to expectations, why does it endure? Are the expectations from the EC and in scholarly research unreasonably high? Or has the ESSD other ways of being effective? In short, what is the point of ESSD if it does not deliver in regulating working conditions in EU Member States (MS)? Starting from existing analyses, we delve deeper into the conceptualisations and expectations on effectiveness in ESSD. In particular, we want to compare external expectations on ESSD coming from the EC and from academic research with the practical experiences of the ESSD participants.

Most assessments of ESSD have focused primarily on the downward implementation of outcomes and less on the functioning of ESSD committees as an upward lobby channel and arena for horizontal learning (Voss *et al.*, 2018). Few attempts have been made to understand the national social partners' engagement and strategies (Léonard, 2008). Only recently have some studies focused on partners' interactions, goals and nuanced interests (Perin, 2014; Weber, 2013). The present article contributes to such bottom-up and horizontal approaches by studying the experiences and expectations of national social partners taking part in ESSD.

Our aim is to understand the ESSD participants' perceptions of effectiveness in relation to the EC and external observers' expectations and assessments. We will also discuss the extent to which these perceptions resonate with varying national industrial relations traditions and comment briefly upon sectoral differences. The analysis focuses on national social partners from five countries [Germany (DE), Italy (IT), Poland (PL), Sweden (SE) and the UK] participating in ESSD committees in the hospital and metal sectors.

Theoretically, the study is positioned at the intersection of pragmatism and systems theory. This was inspired from previous studies using such theories in the analysis of cross-industry ESD (Hartzén, 2017; Seeliger, 2019; Welz, 2008). We explore the potential of these theories in analysing ESSD, while adopting slightly different categories compared with previous research. More specifically, we apply the systems theory-related idea of *polycontextuality* to capture how effectiveness is observed and evaluated from different perspectives (Luhmann, 2018; cf. Jansen, 2017).

The next section begins with the theoretical and methodological approach. Thereafter, we reconstruct the accounts of effectiveness from the EC and scholarly research, followed by a thematic analysis of the respondents' experiences and conceptualisations of ESSD effectiveness. The article concludes on the found polycontextuality and paradoxes in how effectiveness is observed. A discussion of how these resonate with national traditions of industrial relations is also included.

## 2 THEORY: OBSERVING EFFECTIVENESS

European Sectoral Social Dialogue is often approached from expectations that its outcomes should affect working conditions and industrial relations in the EU MS (EC, 2010a; 2010b; 2016; cf. Tricart, 2019). Thus, the number of binding agreements

<sup>1</sup>European Commission Social Dialogue Texts Database accessed 1 July 2019.

412 Bengt Larsson, Manuela Galetto, Sabrina Weber, Barbara Bechter and Tom Prosser produced is used regularly as a proxy for effectiveness (Smismans, 2008, cf. Degryse, 2015; Keller and Weber, 2011; Pochet, 2005). From this perspective, scepticism regarding the effectiveness is warranted because the majority of ESSD outcomes are lobbying statements, procedural documents and soft instruments such as declarations, tools and recommendations.

However, effectiveness may be approached from less measurable criteria, such as shaping better economic and social conditions; improving competitiveness, fairness and crisis resilience; or strengthening social partners' operational capacity, generating trust and building consensus (Van Rie *et al.*, 2015: 211). Accordingly, we need to open up the concept of effectiveness to give space for different actors' experiences, conceptualisations and valuations; that is, we approach effectiveness as a 'sensitising' concept (Blumer, 1954). Rather than evaluating effectiveness with an operational definition, a wide definition is used to guide the empirical study: effectiveness refers to whether something produces an effect, such as a material product, an event or situation, or a change in conditions or relations. In addition, the concept implies an articulation of outcome with intention, which in the context of social dialogue is highlighted in definitions of effectiveness as 'to achieve set objectives' (Welz, 2008: 123). This means that effectiveness has an inherent evaluation aspect to it: intended or wanted outcomes are marked as effective, whereas unintended, unwanted or absent effects are placed on the ineffective side of the distinction (Luhmann, 2018; cf. Dewey, 1939).

Thus, effectiveness in ESSD is theoretically approached from the intersection of pragmatism and systems theory. These approaches are rarely used in previous research on ESSD, although applications in the analysis of cross-industry ESD indicate their potential (Hartzén, 2017; Seeliger, 2019; Welz, 2008). Seeliger (2019: 82ff.) has noted that ESD participants are confronted with challenges and problems and communicate these to develop joint problem formulations and decisions through pragmatic adjustments. From a systems theory perspective, ESD may thus be said to 'regulate not only through performance, but also by influencing centres of reflection, i.e. in our case the European social partners and institutions' (Welz, 2008: 34). From these points of departure, we conceptualise ESSD committees as self-regulatory, meaning constructing and learning processes that spill over into (i.e. 'irritate') other policy processes in the EU or in the MS. Thus, the ESSD committees are viewed as organisations in the systems theoretical sense, as operatively closed systems for decision making, structurally coupled to their internal and external environment, that is, to the individual participants and other organisations (Luhmann, 2018). The EC may accordingly 'irritate' (stimulate or spill over into) the self-observations and internal operations (decision making) in ESSD but do not determine their outcome.

Compared with actor-centred or neo-functionalist approaches, pragmatism and systems theory emphasise that neither individual actors' or organisations' *intentions* nor the *effects* of their operations are directly accessible. Instead, intentions and effects are found through action, decision making and self-observation/other observation (Joas, 1996: 148–167). This approach seems appropriate to analyse conceptualisations of what is and what is not effective in the ESSD, because it highlights that observers must draw distinctions between what is and what is not intended and what is and is not a cause/effect, in order to be able to observe and communicate means-ends and cause-and-effect relations. Thus, the means-ends schema 'fulfils a selective function for perceiving and evaluating the consequences of action', self-reflectively (Joas, 1996: 152). Similarly, cause-effect is 'understood as a schema

of an observer', who selects and attributes effects to causes from an 'infinite horizon of possible causes and effects' (Luhmann, 2018: 140f.).

While these conceptualisations might seem overly abstract, relevant ESSD actors are well aware of such problems. The measurement problem is acknowledged in the *Guidance for Assessing Social Impacts within the Commission Impact System*, because 'in the social area it is crucial not only to take into account the intended effects but also to identify and analyse effects which might occur unintentionally' (EC, 2009: 3). With regard to intentions, participants in ESSD often state that a crucial driver of dialogue is selecting the topics for the work programme before deciding what end (i.e. what outcome and effect) to jointly aim for.

Thus, when dealing with experiences and conceptualisations of effectiveness in ESSD, we are observing actors observing their own and others' operations with the help of distinctions indicating intentions and effects, retrospectively evaluating what is effective. This brings the distinctions used by the observers into focus. However, the evaluative distinctions used by the EC do not always coincide with those used by social partners at the national and European levels. The basic concepts used in ESSD committee operations are grounded in different practical challenges and meaning contexts, and their cognitive and normative content varies across countries, sectors and organisations (cf. Barbier, 2013). This illustrates the problem of *polycontextuality* (Luhmann, 2018: 36, 54); that is, the distinctions used to observe and evaluate effectiveness are multiple and heterogeneous. The bivalent logics that actors or organisations use to distinguish, select and mark an outcome as intended or not, wanted or unwanted, effective or ineffective, differ. This creates misunderstandings, tensions and paradoxes and can even mean that 'each side rejects the position of others without understanding the logic from which this opposition results' (Jansen, 2017: 58). A major background of this multifaceted nature of observation and understanding is the variation in industrial relations traditions, challenges and interests, from which the social partners from different countries and sectors depart (Barbier, 2013; Caprile *et al.*, 2018; Hyman, 2001).

### 3 METHODOLOGY AND MATERIALS

The study is based on material collected during 2016–2017. EC policy texts and previous research were examined to reconstruct the external observations of effectiveness. We contacted all trade unions and employer organisations in DE, IT, PL, SE and the UK belonging to the ESSD committees in hospital and metal and conducted

*Table 1: Interviews with representatives for social partners*

	DE	IT	PL	SE	UK
<b>Hospital (18)</b>					
Trade union (13)	2	2	3	3	3
Employer organisation (5)	1	2	—	1	1
<b>Metal (12)</b>					
Trade union (8)	2	2	2	1	1
Employer organisation (4)	1	1	—	1	1

Employers' organisations in PL were approached but did not agree to participate.

30 semi-structured interviews (Table 1). Field notes from four full days of observations were used: one plenary meeting and one working group meeting in each ESSD committee. In addition, material from the metal and hospital ESSD secretariats and from the Social Dialogue Texts Database was collected. All data were analysed to reconstruct the multiple meanings of effectiveness from the points of view of the EC and existing research, and the ESSD participants themselves. For research ethical reasons, we mainly summarise the information from the interviews, with short quotes used only as illustrations. As several interviewees have requested, we committed to safeguard the confidentiality of their views. Therefore, we refer only to the interview number and country and only for quotes longer than five words.

The five countries were selected to include representatives from key regimes of national industrial relations in Europe (Caprile *et al.*, 2018) and the sectors to represent different types of sectoral industrial relations (Bechter *et al.*, 2012). Metalworking is representative of private manufacturing industries, whereas hospitals are predominantly public. Both sectors are of national importance and have well-established national industrial relations structures—factors that are seen as prerequisites for a well-functioning ESSD (EC, 1998; Meardi and Marginson, 2014). The sectors were suitable for comparison because both belong to the third generation of ESSD and have produced a similar number of outcomes (Table 2), placing them in an average position among all 43 ESSD committees in terms of productivity (Degryse, 2015).

The hospital ESSD was launched in 2006, after six years of informal dialogue. With coordination from their European umbrella organisations EPSU (European Public Service Unions) and HOSPEEM (European Hospital and Healthcare Employers' Association), the partners have concluded 15 texts, including a framework agreement (FA) in 2009 on the prevention of sharp injuries, which was later turned into the so-called Needle-Stick Directive (2010/32/EU). This FA was produced under the

*Table 2: ESSD outcomes in hospitals and metal (July 2019)*

	Hospitals	Metal
<b>Binding framework agreements</b>		
Agreement—council decision (directive)	1	
Autonomous agreement		
<b>Process-oriented texts with follow-up procedures</b>		
Framework of action	1	
Follow-up report	3	
Guidelines and codes of conduct	2	
Policy orientations		
<b>Soft outcomes without follow-up procedures</b>		
Joint opinions	4	5
Declarations	3	5
Tools	1	2
<b>Procedural texts</b>		
Rules of procedure <sup>1</sup>		1
<b>Total</b>	15	13

Source: EC Social Dialogue Texts Database.

<sup>1</sup> Rules of procedure for the hospital committee exist but were not included in the database.

'shadow of the law' (Bercusson, 1992), that is, after the EC stated its intentions to draw up a directive, incentivising the social partners to take action. Other outcomes range from joint projects and codes of conduct, such as that on the recruitment of the healthcare workforce in 2012, to joint declarations such as that on continuous professional development and lifelong learning in 2016. Overall, the central topics have mainly focused on staff recruitment, skills and health and safety issues.

The metal ESSD was established in 2010 after having been an informal working group since 2006. The partners have produced 13 joint texts, with coordination from their European umbrella organisations IndustriAll (previously EMF) and CEEMET (European Tech & Industry Employers). None of these outcomes are binding. However; some of the actors were involved in negotiating the 2006 multisectoral FA on workers' health protection through the good handling and use of crystalline silica and had thus experienced negotiations of binding outcomes (Degryse, 2015). The central topics of the metal ESSD committee are training, competitiveness and employment, digitalisation and industrial policy, and the partners have worked on several joint projects, such as plant visits, meetings on skills challenges and a website.

#### 4 EXTERNAL OBSERVATIONS OF EUROPEAN SECTORAL SOCIAL DIALOGUE EFFECTIVENESS

In 1998, the EC reorganised existing informal sectoral dialogue into formally recognised ESSD committees (Dufresne *et al.*, 2006; Keller and Weber, 2011). The rationale was a 'need' for social partners to 'participate actively in discussion on the improvement of living and working conditions in their sector', and sector committees were 'the most appropriate means of ensuring such participation' (EC, 1998). Expectations of the ESSD have since been high and can be traced back to various EC documents. The EC claims that the ESSD 'plays a crucial role in promoting competitiveness and fairness and enhancing economic prosperity and social well-being' and that the social partners 'play a key role in developing EU social policy and defining European social standards ... helps boost economic growth, create jobs and ensure workplace fairness' (EC, 2016: 3, 6). These goals have been regarded as somewhat contradictory and shifting in balance over time (cf. Tricart, 2019). Because our focus is on the conceptualisation of effectiveness, we will not delve deeper into this here.

Although EC documents revolve around intentions and effects, 'effectiveness' has never been explicitly defined. However, our document analysis shows a primary focus on downward implementation: there should be 'effective implementation of its outcomes at national, local and company level' (EC, 2010b: 9). Furthermore:

[ESSD]-success derives from a high level of shared ambition amongst social partners and their joint commitment to effectively represent their member organisations at European level, respond effectively to consultations on EU policy initiatives, identify relevant topics of common interest, engage in meaningful discussions, actions and/or negotiations on these topics, and actively follow up and implement the outcomes. (EC, 2010b: 6)

Such 'downward' focus implies that binding agreements, particularly those transformed into directives, are the flagships of ESSD effectiveness (EC, 2010a; 2010b; 2016; Tricart, 2019). The reason is that 'the capacity of European sectoral social dialogue to improve working conditions throughout Europe depends on outcomes being implemented in the workplace' (EC, 2010a: 17). Thus, binding agreements are ranked

at the top of all outcomes, followed by follow-up procedures (actions, guidelines and codes of conduct), whereas soft instruments (joint opinions and tools) and procedural texts (such as rules of procedure) are usually placed at the bottom (Degryse, 2015; EC, 2010a; 2010b; Keller and Weber, 2011; Pochet, 2005).

The EC occasionally acknowledges the ‘horizontal’ dimension, when discussing ESSD as arenas for ‘trust-building, information sharing, discussion, consultation, negotiation and joint actions’ (EC, 2010a: 5; Van Rie *et al.*, 2015). ‘Upwards’ effectiveness is also referred to briefly, in that ‘joint opinions and common contributions to consultation have also proved to be powerful instruments for influencing European policies or defending a sector’s interest’ (EC, 2010a: 9). In addition, Weber (2013) found that some ESSD participants actually rank tools higher than other outputs because of their practical usability, while Tricart (2019) showed how the EC itself does not always support the production of hard regulation in practice.

#### 4.1 Previous research on outcomes and obstacles

Despite these reservations, there is a tendency in research evaluations of ESSD to—at least implicitly—depart from a conception of ‘effectiveness’ as binding regulation affecting national working conditions. As discussed by Seeliger (2019: 32ff.), research in this field often balances Euro-optimistic perspectives emphasising the potential of supranational dialogue and pessimistic or sceptic approaches showing the obstacles and limited impact of ESSD at the national and European levels (Bechter *et al.*, 2017). Underlying both, however, is the recurring expectation that European-level social dialogue could/should deliver more in terms of national regulatory and harmonising effects.

Early assessments of ESSD provided grounds for pessimism. Commitment from the EC and the partners was initially expected to be only half-hearted, given that central issues like wages were formally excluded from the discussion, and envisaged difficulties in the implementation of outcomes (e.g. Keller, 2003). Consequently, the ESSD structures were regarded as weak compared with national-level ones—which is indicative of the reference point for evaluation. Scholars warned against being impressed by the increased number of ESSD committees and outcomes, because these tended to include both less well-functioning committees and texts of a mainly symbolic or lobbying nature (De Boer *et al.*, 2005; Keller, 2008).

It has been shown repeatedly that only a low percentage of the outcomes were binding, whereas most are joint opinions, declarations or tools without follow-ups (Degryse, 2015; Pochet, 2005). In addition, the decreasing number of outcomes produced yearly indicated that ESSD was ‘not, in any general sense, becoming more active’ (Degryse, 2015: 44). Even if the soft outcomes could have a potential for governance (Weber, 2013), their actual ‘regulatory capacity’ was deemed ‘weak’ (Léonard, 2008: 405; Léonard *et al.*, 2011).

This ‘lasting stalemate’ (Keller, 2008: 219) was said to be due to the heterogeneity of sectors, industrial relations in the MS and interests between unions and employers—the former wanting more European regulation and the latter favouring more decentralisation and soft tools. Social partners had diverging conceptualisation of what ‘dialogue’ should be (Léonard, 2008) and what the term ‘social partner’ implied (Weber, 2013). Perin and Léonard (2011) claimed that the effectiveness of ESSD depended on the ‘vertical relationship’ between the European federations and their national affiliates: the upward representativeness, interest coordination and

mandating, and the involvement, commitment and downward implementation. Among the other obstacles identified were that some countries lacked adequate sectoral structures for implementation and that ESSD work tended to be decoupled from the core business of collective bargaining of national partners. Because soft instruments often aimed at the local company level, their coverage in implementation was uneven and more difficult to monitor (Keune and Marginson, 2013).

The gap between the high expectations and potential and the low impact of ESSD outcomes (apart from a few flagship FAs) raises questions regarding the point of ESSD and its endurance. Why do actors continue to engage? Do the resources and efforts invested pay off? Do participants share the assessments and expectations of these external observers? To understand this, we will now turn to ESSD participants' self-observations of effectiveness.

## 5 PARTICIPANTS' SELF-OBSERVATIONS OF EFFECTIVENESS

When asked about the expectations and outcomes of ESSD, the national representatives had a wide-ranging and nuanced view of what is effective and what is not. In our analysis we identified three conceptualisations of effectiveness. The first relates to perceived *direct effects from* ESSD, corresponding to actual impact in the MS. The second concerns *indirect effects from* ESSD, which includes the benefits of participation ranging from learning and improving conditions in other countries to safeguarding from unwanted developments. The third is *effectiveness in* ESSD and has to do with the internal organisation and operations of the ESSD committees.

### 5.1 DIRECT EFFECTS 'AT HOME' FROM EUROPEAN SECTORAL SOCIAL DIALOGUE

Unsurprisingly, many respondents acknowledged that ESSD should 'make a difference', or 'trigger a change', in order to be *effective*. The partners should jointly 'improve something' or 'solve problems'. Some agreed with the external assessments that FAs turned into directives are the most effective outcomes. This was particularly frequent in the hospital sector, and primarily among unions, referring to the Needle-Stick Directive as 'the flagship' or the 'jewel in the crown' of their ESSD. Similarly, union representatives in the metal sector referred to cross-industry FAs (such as the one on working time) and the multisectoral Silica agreement as successful achievements. Respondents from the UK and PL said that such hard outcomes had indeed made a difference in working conditions, albeit 'not to the same extent that the 2003 Working Time Directive had for Polish workers' (#14, PL).

All softer ESSD outcomes were generally considered to have marginal effects at home—as exemplified by a Polish union representative who stated: 'besides these [directives], there was nothing that had an influence on our national hospital sector' (#14, PL). Some even downplayed the effectiveness of hard regulation. Swedish and Italian representatives expressed reservations regarding the significance of the Needle-Stick Directive. Both countries had well-established routines in healthcare, for which the directive did not bring any radical change. Thus, in substantial terms, ESSD outcomes were generally not seen as breaking new ground, changing much or even being of much concrete use in the MS. In this sense, the actors' self-observations confirmed previous research findings.

Views were more polarised when discussing the expectations on ESSD. According to trade union representatives from IT, the UK and PL, the limited effectiveness

418 Bengt Larsson, Manuela Galetto, Sabrina Weber, Barbara Bechter and Tom Prosser was due to the lack of ‘bite’ in form and content of ESSD outcomes, caused by reluctance from employers and the EC to support regulation through FAs. Consequently, these representatives saw a need for ESSD to engage more with hard outcomes and ‘core topics’, such as wages and employment, in order for effectiveness to improve. For Polish and Italian unions, this relates to the weakening of collective bargaining following the 2008 crisis and an expectation that membership in the EU and its social dialogues could fill such a gap. Unions from DE mentioned the need for the EC to encourage harder outcomes too but simultaneously emphasised the lobbying function of ESSD towards the EC. For Swedish representatives, most outcomes had marginal importance, because they mainly cover issues ‘which the Swedish labour market parties worked on already before they came up in the European agenda’ (#22 SE). A similarly sceptical approach came from some UK unions in the metal sector because they saw limited scope to implement ESSD outcomes nationally, given their voluntary and more lightly regulated employment relations system.

Thus, the expectations of most ESSD participants regarding direct effectiveness were relatively modest. Many representatives from the North and West (DE, the UK and SE) thought that good practices, guidelines and joint statements were probably the most that could be expected—as illustrated by a Swedish trade unionist: ‘We actually do not have very high expectations of what’s coming out of it. We think it’s very good that you have social dialogue between the partners at European level at all’ (#23 SE). Union representatives from PL, IT and DE clearly hoped for more, but it is uncertain how much they actually expected in terms of direct effects from ESSD.

## 5.2 Indirect effects from European Sectoral Social Dialogue

If *direct* effectiveness was perceived as limited, important conceptualisations of *indirect* effectiveness emerged in our analysis. These reside primarily in learning and increasing understanding between partners and countries. Furthermore, soft regulation was seen as useful at the national level, as reference points for ‘good practices’ and ‘accepted European standards’. They could help improve conditions in the MS in the long run; as one UK unionist stated: ‘there is a quiet kind of low-level impact as well’, in ‘learning from one another’ (#27, UK). Such effects were said to be contingent, however, because the applicability of tools is ‘tied to the nation states’ and their different systems.

Preparation and participation in meetings, projects and conferences that did not lead to formal outcomes were recognised as contributing to indirect effectiveness. As exemplified by Swedish metal sector representatives, these effects may be specific. In their case, social partners successfully lobbied the government to introduce short-term work based on examples from other countries. However, these indirect benefits can also be general, as illustrated by a Polish representative: ‘We want to be aware of the solutions that are being proposed in Europe [...] This is extremely relevant to us’ (#17, PL).

Such knowledge sharing was also evident during our participation in ESSD meetings. In the metal sector, a regular item on the agenda is the ‘roundtable of national developments’, which in some cases is jointly presented by employers and unions. Another example was the reporting of a joint field visit at an industrial plant to increase knowledge about the consequences of digitalisation (field note, 14 December 2017).

At the hospital ESSD committee meeting, representatives from the European employers' association, HOSPEEM, offered a national trade union representative information about their European semester country recommendations, which they had difficulty obtaining (field note, 2 December 2016).

Another aspect of indirect effectiveness is that experiences from ESSD affect social partner relations at the national level. ESSD was seen as a useful arena in which to discuss common matters and some found 'inspiration to bring home'. An Italian representative of employers in the hospital sector mentioned that, 'in ESSD meetings, from two apparently irreconcilable positions you then end up finding a solution. [...] this is something that I then take home with me' (#10, IT). An employer representative from a new MS expressed a similar view, saying that they were initially against unions but that after attending and observing others at the ESSD committee meetings in Brussels started to consider them as partners (field note, 2 December 2016). Another example is that Swedish representatives thought that ESSD improved national partner relations through joint preparations: 'we [unions and employers] cooperate better together at home because we have to do it abroad [...] I think it spills over' (#20 SE).

German, Swedish and the UK representatives stated that although some outcomes were of little significance at home, they could bring improvements in other MS and thereby indirectly protect their countries from downward competitive pressures. A less solidaristic view of such indirect effectiveness emphasised the importance for some participants of preventing EU interference on national matters. This is a conceptualisation of effectiveness in which the preferred outcome is *no* change. The UK, Swedish and German employer representatives in particular showed concern about 'subsidiarity' and 'national partner autonomy'. Their view was that 'You shouldn't have rules for stuff that can be solved better on the national level' (#22 SE), and even though '[It's] very difficult to prove that, [...] I do think that some of [our] interventions have been quite effective' (#28, UK). Swedish trade unions discussed how the protection of their national system was a top priority: 'Now and then we need to be there just to defend stuff, like "we won't let this go"' (#21 SE), by such means as blocking regulations on minimum wages, education of assistant nurses, ratios or elderly workforce in the hospital sector.

Finally, the respondents emphasised proactive lobbying towards the EC as an aspect of ESSD effectiveness. This was highlighted during a metal sector ESSDC meeting in which an employers' representative from CEEMET suggested that their ESSD should be more 'political'. This did not mean being 'ideological' or 'social' but 'more influential and strategic towards the EC in industrial policies' (field note, 14 December 2017). This opinion exemplifies the ongoing debate on the aims of the ESSD and the fact that lobbying may become more prominent in the future.

### 5.3 Effectiveness in European Sectoral Social Dialogue

A third conceptualisation of effectiveness emerging from the interviews concerned effectiveness *in* the ESSD, focusing on the engagement and representativeness of participants, the internal organisation of the ESSD committees, and the selection of topics to work on and outcomes to aim for.

The respondents associated such effectiveness with continuous, regular participation by representatives who are engaged and competent in the topics and have a mandate to make decisions. From this point of departure, representatives in both sectors

questioned the actual effectiveness of their ESSD. Participation from many countries was irregular; the individuals who were sent would change and would not always have a clear mandate: 'You have lots of people who work on something, say on a topic of the ESSD, but then disappear' (#7, IT). In some cases, the absence was compensated through aggregated representation: an Italian metal union representative thought it was sufficient to take part in the IndustriAll committee discussions, while a Swedish unionist stated that they were also speaking for the other Nordic countries in their ESSD.

In addition, not all relevant organisations at the national level were represented. In the hospital ESSD, some private and regional public organisations on the employer side were not present; in metal, both trade unions and employers' representatives in several countries were self-critical about their side's ability to represent the whole sector. Some also saw problems in the variation in how engagement was understood: 'For some, it's important that "When I attended the meeting in Brussels, I *said* something!" That's engagement for someone, [whereas] for others engagement is to bring the question home and [discuss] "Can we *do* anything?"' (#21 SE).

Another aspect of effectiveness in ESSD concerns the preparation for the meetings. The secretariats of European unions and employers' organisations collect and distribute information before meetings. Such operations were seen as key, along with information being 'accessible' but not 'excessive' in order for effective preparation and participation to emerge. Preparedness from national partners was said to increase effectiveness, as it did when the EC takes active interest. Effectiveness at the meeting also increased when agenda and the tasks of working groups were clear. References were made to ineffective situations in which a lack of clear aims compromised preparations for decisions and the process had to be restarted.

Even more important for effectiveness *in* ESSD was the selection of topics for the work programmes, because this affects engagement and implementation. A recurrent observation was that only topics that are chosen consensually lead to productive meetings and outcomes. However, as most employers and many Nordic unions 'steer clear of detailed regulation', tensions arise with those aiming to achieve binding outcomes on core topics. As a representative in metal stated: 'Real collective bargaining about working hours or salary levels, that's not on the map; and to engage in symbolic collective bargaining is destructive' (#24 SE). Consequently, reaching agreements on the work programme is a political process, in that powerful and central actors or alliances may block or promote topics.

In line with the pragmatic understanding of intentions, many respondents considered the decision of which outcomes to aim for as secondary to the selection of topics. Even though the work programmes contain both topics and aimed for outcomes, the latter can be set only after deciding topics through consensus. Thus, a contradiction emerges between effectiveness *in* and *from* ESSD. Some respondents claimed that everything driving the discussion forward contributes to effectiveness in ESSD, even if it does not 'lead to something written'. This implies that opting for binding agreements is not necessarily effective, because employers and Nordic unions would seldom be willing to cooperate unless pressured by the EC. Whereas some unions and employers expressed frustration over the EC's 'bureaucratic' outcome counting as a measure of effectiveness, most trade unions from the UK, DE and IT wanted more engagement and encouragement from the EC in aiming for binding outcomes.

## 6 DISCUSSION AND CONCLUSIONS

This study aimed to juxtapose the experiences of effectiveness of the participants in the hospital and metal ESSD against the expectations expressed by the EC and in academic research. In doing so, we applied the theoretical approaches of pragmatism and systems theory, to explore their potential to bring new light to old issues. Thereby, the article contributes to the *bottom-up* and *horizontal* approaches to ESSD, while placing them in relation to the external and *top-down* expectations and evaluations of ESSD effectiveness. Consequently, it also sheds light on the participants' views on what the point of ESSD is and why it endures, despite its inability to deliver according to normative expectations.

The empirical analyses indicate a marked difference between the external observations from the EC and scholars and the self-observations of participants in ESSD committees. The latter do not focus primarily on *direct effects* in terms of outcomes to be implemented in the MS but instead emphasise the *indirect effectiveness from ESSD*. This consists of mutual learning, knowledge and practice sharing, and inspiration, trust building and even blocking unwanted regulation or negative effects at home. The participants in ESSD also emphasise *effectiveness in ESSD*; namely, its internal organisation and processes to decide on topics and aims.

When analysing these conceptualisations with the systems theoretical concept of *polycontextuality*—emphasising the importance of observing the multitude of distinctions that the actors apply to evaluate effectiveness—it is possible to unpick three main perspectives or 'vectors' from which effectiveness is observed in EESD (cf. Jansen, 2017; Luhmann, 2018). After presenting these vectors, we discuss the extent to which understandings of effectiveness resonate with national industrial relations traditions and what the main differences in such understandings are between the hospital and metal sectors. At the end, we will highlight some main implications from this pragmatist and systems theory-based analysis of ESSD.

The first main vector in the observations of effectiveness corresponds to the predominant view of the EC and scholarly research, centred on top-down implementation of binding results that directly affect industrial relations and working conditions in the MS. This is mirrored in the conceptualisation of effectiveness as *direct effects from ESSD*, as illustrated by recognition of FAs as the 'flagships' of ESSD and from union representatives from IT, PL and DE arguing for more binding regulation in core areas for the ESSD. However, this vector stands in *paradoxical* relation to the observations of *effectiveness in ESSD*. In order to achieve direct effects in the MS, the ESSD needs to operate effectively, but this requires ESSD to be based on consensus, and there is seldom consensus in aiming for binding regulation. Instead, to increase effectiveness and engagement, the topics and outcomes are chosen *not* to create a direct impact in the MS.

By contrast, the second main vector traces effectiveness as bottom-up influence from national interests to the European level. This is an evaluative perspective that is only occasionally referred to by the EC and research but is substantial for the national social partners. This is captured by the conceptualisation of *indirect effects from EESD*. It is explicated in the ambitions of employer organisations and Nordic unions to block unwanted effects from ESSD and in the metal ESSD discussion about becoming more strategic towards the EC. This vector also implies a paradoxical relation with *effectiveness in ESSD*, because social partners are faced with different national challenges and industrial relations contexts (cf. Barbier, 2013; Caprile *et al.*, 2018).

What is most important for some (e.g. regulation of core issues for Polish and Italian trade unions) is blocked by others to safeguard national autonomy in bargaining (employer organisations and unions from the Nordic countries).

The third vector is horizontal and evaluates effectiveness in terms of mutual learning, understanding, respect and trust building. This perspective is strongly linked to the observation of *indirect effects from ESSD* and is *pragmatically* oriented towards finding the aims of ESSD through joint, creative work (cf. Joas, 1996). The articulation of intention with outcome is not entirely clear in this vector, as it focuses on effects that are beneficial without being explicitly aimed for. In other words, social partners find mutual learning and knowledge sharing as *effective* outcomes of ESSD. The emphasis of this vector in the self-observations of actors connects to what Welz (2008: 34) described as ESD ‘influencing centres of reflection, i.e. in our case the European social partners and institutions’. From this point of view, it is not paradoxical that the ESSD work often proceeds by selecting the topics before deciding on outcomes to aim for.

There is a closeness between these vectors and the three ‘functions’ of ESSD, namely, ‘regulation’, ‘lobbying’ and ‘learning’ (Weber, 2013). However, as vectors, they are simplified abstractions of a multitude of slightly differently angled observational distinctions, flexibly and pragmatically adapted by the individual and organisational observers of the operations of EESD committees. This means that we cannot expect the observations to be stable over time or internally consistent. Even so, there are some general tendencies that indicate that these conceptualisations from ESSD participants resonate with established empirical and ‘ideal typical’ classifications of national industrial relations traditions (Caprile *et al.*, 2018; Furåker and Larsson, 2020; Hyman, 2001). The five national industrial relations systems may be considered as articulating different tripartite relations. SE represents a tradition in which the partners regulate a good deal of working conditions through autonomous collective bargaining. The UK embodies a more liberal and voluntarist model. Thus, for different reasons, European-level regulation and coordination may not be what the partners from these countries expect or value from social dialogue at European level. The more conflictual and state-centred Italian industrial relations model, and the weak, fragmented and liberalised Polish system resonate with quite different expectations and engagement in European-level social dialogue. While their representation may be expected to be lower, trade unions are more affirmative to binding regulation. The German social partner tradition indicates a middling position, as there is strong state regulatory framework for autonomous social partner bargaining.

In line with previous research (e.g. Perin, 2014; Perin and Léonard, 2011), our analysis showed that different expectations and evaluations regarding ESSD resonated with such national perspectives. Whereas scepticism from Swedish participants was due to a fear of interference of ESSD on social partners’ autonomous national bargaining model, the Italian and Polish dissatisfaction was due to ESSD’s perceived lack of bite, relating to national traditions of stronger third-party guidance. German participants seemed to have struck a balance between these two approaches, whereas some UK representatives find their national arena more ‘immune’ to potential ‘irritations’ coming from outcomes (with the exception of directives, up until Brexit), given the generally weak implementation by their home voluntary system.

The analyses also confirm research showing that employer organisations are less keen to negotiate FAs and hard regulation than trade unions (Keller and Weber, 2011). There were no notable differences in this between the sectors, despite

metal ESSD having only soft outcomes, whereas the hospital ESSD had produced both hard law and guidelines with follow-up procedures. None of the employer representatives hinted that hard outcomes would indicate effectiveness *per se*. On the contrary, employers' willingness to negotiate remained within the general stance of protecting against unwanted regulation (cf. Bercusson, 1992). A notable sector-specific difference was a more explicit critique in the metal sector, and mainly from employer organisations, towards measuring effectiveness by counting outcomes. That was said to be a bureaucratic interest of the EC to 'tick boxes' and pressing the ESSD committees to prove they were doing something worthy of financial support from the EC.

Regarding *indirect effectiveness*, both employers and unions acknowledged that knowledge, learning, understanding and respect were important products. However, the work programmes of the metal and healthcare ESSD committees revealed notable differences in their respective capacity to select topics and outcomes to aim for. The patient-centred nature of healthcare made it easier to agree on common interests, such as the health and safety of workers and patients, training and sharing of best practices. In metal, there seems to have been more controversies around what topics to work on. Digitalisation was recognised as central, but there were varying expectations and degrees of engagement between employers and trade unions, while Polish representatives considered digitalisation less important. In addition, there was more focus on producing outcomes to 'bring home' in the hospital ESSD but more discussion about sharing information about challenges and strengthening the upward lobbying function in the metal ESSD. This is related to differences in sector-specific industrial relations. On the employer side, the hospital ESSD is dominated by public organisations that share interests and values relating to high-quality care with the unions. To some extent, competitiveness is a similarly common interest in the metal sector, which chiefly makes lobbying the EC the most relevant strategy.

The analysis points at the *polycontexturality* and *paradoxicality* that are at play when evaluating something whose intentions and outcomes are observed from varying points of departure and with distinctions that do not converge (Dewey, 1939; Luhmann, 2018). The theoretical approach applied in the present article allows us to observe that it is not only the national and European unions and employer organisations and the EC that are 'organisations' in a systems theoretical sense but also the ESSD committees themselves, because they are constructed as autonomous bipartite committees. They are composed of members and produce decisions, which means they are operationally closed from their environment while being open to information. Their structural coupling to other organisations and to individual participants' perceptions and actions is quite loose (Hartzén, 2017; Luhmann, 2018; Welz, 2008), so they may be thought of as *autopoietic*—as operatively closed when reproducing themselves through their own decisions. They operate by thematising irritation from the environment—such as EC policy initiatives or national-level challenges as communicated by individual representatives—and produce decisions on outcomes, whether these are internal work programmes, FAs or soft tools. Thus, they may or may not produce 'irritation' for similarly decoupled communication processes in national legislative bodies, collective bargaining, local workplaces or EU institutions.

Our approach highlights the point that ESSD committees are not 'trivial machines' that may be expected to produce outputs according to expectations from the outside (Luhmann, 2018: 49ff.). Their outcomes are not determined by predefined intentions, from either the EC or the MS, at least not without direct pressure from the EC

424 Bengt Larsson, Manuela Galetto, Sabrina Weber, Barbara Bechter and Tom Prosser through the ‘shadow of the law’ effect (Bercusson, 1992). Instead, in line with *pragmatism*, it seems that the ESSD committees as they function today find their own ‘intentions’ through their operative processes (Joas, 1996; Seeliger, 2019). They thematise external challenges into topics to discuss and then work out creatively what outputs to aim for. They must solve their own problems operationally and may thereby only indirectly help, inspire and *irritate* problem-solving in their (national or European) environment. The expectations and evaluations in national, EC and scholarly observations are not irrelevant for their operations, because they produce irritation for the ESSD committees to thematise. However, it should also be acknowledged that such external observations might not be fully adequate from the participants’ or ESSD committees’ points of view. *If* this is seen as a shortcoming or problem in the current functioning of the EESD committees, the main solution would be to couple the EESDs tighter into the EC governance system, by (re)introducing a tripartite element or using the power of the ‘shadow of the law’.

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