ECONOMY AND ECOLOGY 31.05.2024 | Kristjan Bragason & Tom Deleu & Livia Spera

# From impunity to accountability

## Labour exploitation thrives in the shadows of subcontracting chains. EU reforms must bring transparency and justice to workers in high-risk industries

The widespread sense of impunity among irresponsible labour intermediaries and unscrupulous employers engaging in abusive subcontracting practices is alarming. They secure important contracts or win major investments with the cheapest offer, too frequently relying on the exploitation of workers — many of whom are mobile and migrant, including posted workers. The chances of being caught are minor, and even if they are, the resulting sanctions are low and insufficient to deter such behaviour. Moreover, most of the time, it seems impossible to enforce sanctions and penalties in a cross-border context.

Thus, between an unscrupulous company and the final product or service often lies a sea of exploited workers enduring extreme conditions, poor or no health and safety standards, low wages and various forms of labour crime, including gangmaster practices, human trafficking and bonded labour.

This issue is particularly prevalent in intensive and fraud-sensitive industries such as construction, food, agriculture, hospitality and transport. These sectors are heavily reliant on the work of some of the most vulnerable: mobile and migrant workers, who often fall victim to discrimination and labour exploitation within exploitative business models such as abusive subcontracting practices and unregulated labour intermediation. To combat this, EFBWW, EFFAT and ETF teamed up to issue a clear call for action to the new European Commission and Parliament and to national governments.

## From abusive subcontracting practices to a lack of enforcement

The specific problems are clearly identified and are already well known. They include abusive subcontracting practices used to disguise employment relationships, circumvent tax and social security payments,

escape employers' liability and hide from controls by labour inspection and other enforcement agencies, whose action is hindered by a lack of adequate funding and political support. Subcontracting in the trucking industry, for example, undermines fair labour practices and accountability, making direct hiring of drivers a better path. This would ensure improved working conditions and greater transparency in the supply chain. Subcontracting, on the other hand, often complicates accountability and undermines drivers' rights, as seen in the Grafenhausen case, where a complex chain of subcontractors made it difficult to hold any single entity responsible.

Moreover, dubious business models allow unscrupulous companies to exploit a heterogenous common market. They use long subcontracting chains to circumvent joint and several liability rules and regulations. These subcontractors often operate as letterbox companies and vanish without paying the workers their due wages after months of labour.

*In the Italian agriculture sector, less than 0.5 per cent of farms have been subject to any form of labour inspection in 2023.*

Unregulated labour intermediaries often act as a link with the employer, a subcontractor company or other intermediaries and charge workers significant and unjust fees. This is especially true for third-country national workers, who are very often completely dependent on intermediaries to gain access to the EU labour market, housing and transport. Some of these intermediaries even operate as gangmasters, profiting from exploiting workers' daily efforts.

Lastly, there is also a lack of effective enforcement, both in terms of inspections and sanctions. For example, in the emblematic 2021 Flamanville case, French engineering group Bouygues was fined a mere €29 950 for concealed work using temporary employment agencies, demonstrating the profitability of exploiting vulnerable posted workers in the construction industry. In the Italian agriculture sector, less than 0.5 per cent of farms have actually been subject to any form of labour inspection in 2023. It seems quite obvious that workers' rights violations have greater chances of remaining unpunished with such a low level of controls.

## Change is possible

While these problems are there for all to see – when passing by a building site, staying in a hotel, driving and passing by trucks on the road and when passing agricultural fields – their solutions are also already quite

clear.

First of all, it is necessary to limit subcontracting. There is no economic need for the long and complex chains of subcontracting observed today in our sectors. If it is the same job at the same workplace, it must come with the same rights and labour standards. Simultaneously, it is clear that the longer the subcontracting chain, the less transparent and the more difficult it is to control and enforce existing legislation and to reach collective agreements. There is a need to introduce a limit in the number of tiers, in the percentage of workers employed in the subcontracting chain, as well as to ensure the transparency of the identity of the main contractor and the various subcontractors involved in the chain.

*We need new EU binding rules to set minimum standards on labour inspections and complaint mechanisms.*

Secondly, we need to ensure equal treatment throughout subcontracting chains through the establishment of a general EU system of joint and several (full chain) liability covering both cross-border and domestic situations. This will allow workers and their representatives to seek redress for grievances (e.g. non-payment of wages, compensation for accidents at work) and to better guarantee the correct amount of social security contributions.

Moreover, the EU needs to regulate the role of all labour intermediaries and address the loopholes of the Temporary Agency Work (TAW) Directive to prevent exploitation and ensure compliance with labour standards.

Fourth, the EU must ban the use and abuse of agencies and other labour intermediaries in posting. In line with the 2014 Enforcement Directive, only companies that pursue a real construction business in their home Member State ('substantial activity') should be allowed to post workers to another country. This clearly doesn't apply to intermediary labour only suppliers at the moment and, thus, would help to prohibit this exploitative business model.

Lastly, the EU also has to ensure effective enforcement through increased inspections and imposing dissuasive sanctions, as well as by expanding the mandate and capacity for action of the European Labour Authority (ELA) to this end. The reality today is that fraudulent companies are not concerned about detection; even when caught, sanctioning these companies and removing them from the market proves almost impossible. We need new EU binding rules to set minimum standards on labour inspections and complaint mechanisms.

## New Commission, new Parliament, new Directive

How can we achieve all this? It's imperative that the new Commission and the new European Parliament demonstrate political will by proposing a new Directive on labour intermediaries and fair working conditions across subcontracting chains. This Directive should establish new rights and obligations and ensure a targeted revision of the Temporary Agency Work Directive and the EU rules on the posting of workers. The new Directive should serve as more than just a regulatory instrument, but also as a path to fairer labour mobility and migration that emphasises the rights of every worker, no matter their employment or migration status. Additionally, agencies must be banned in the context of posting.

This would give a true new impetus to the Internal Market, which, in its 30 years, has meant less social protection, downward pressure on salaries, more precarious jobs and worsening working conditions for workers in our industries. It is time to act and to place workers at the top of both the new Commission and Parliament's agendas. We need a social agenda based on social justice and social dialogue. We need real answers to workers' needs. Democracy depends on it.

---




**Kristjan Bragason**
Brussels

Kristjan Bragason is the General Secretary of European Federation of Food, Agriculture and Tourism workers, which organises more than 2.6 million workers in 120 trade unions across 35 European countries. EFFAT defends the interests of nearly 10 million agriculture workers in Europe by promoting a sustainable and social Common Agriculture Policy that delivers fair pay and decent employment conditions in rural areas.



**Tom Deleu**
Brussels

Tom Deleu is the Secretary General of the European Federation of Building and Woodworkers (EFBWW).



**Livia Spera**
Brussels

Livia Spera is the General Secretary of the European Transport Workers' Federation (ETF).

-