



EUROPEAN
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**EFBWW
EFFAT
ETF**

Demand urgent EU
actions to limit
subcontracting, regulate
labour intermediaries,
and strengthen
effective enforcement.

SUBCONTRACTING CHAINS
AND INTERMEDIARIES!

**STOP
EXPLOITATION**

Stop Exploitation!

EFBWW, EFFAT and ETF demand urgent EU actions to limit subcontracting, regulate labour intermediaries, and strengthen effective enforcement

EFBWW, EFFAT and **ETF** represent workers in labour intensive and fraud sensitive industries, such as construction, food, agriculture, hospitality and transport. These sectors are heavily reliant on the work of mobile and migrant workers who often fall victim to discrimination and labour exploitation in exploitative business models which heavily rely on **abusive subcontracting practices** and **unregulated labour intermediation**¹.

EFBWW, EFFAT and **ETF** support the Internal Market as one of the cornerstones of the EU, but the reality is that for many workers in our industries, “30 years of Internal Market” have meant less social protection, downward pressure on salaries, more precarious jobs and worsening working conditions. This has made our industries less attractive and therefore increasingly confronted with major labour shortages. The free movement of workers enshrined in the EU treaties should be a cornerstone of the EU integration process. However, for many mobile workers employed in our sectors the principle of equal treatment that goes with it unfortunately only exists on paper. At the same time, a growing number of third country nationals is employed in our industries in recent years. Often they find themselves in even more precarious situations, completely dependent on intermediaries. This new phenomenon has led to a rise of labour crime, including gangmaster practices, human trafficking and bonded labour.

EFBWW, EFFAT and **ETF** believe that a fair and sustainable internal market is based on fair competition, quality and stable jobs, skills and qualifications, fair wages, high health and safety standards and strong collective bargaining agreements. Direct employment should be the standard. Where workers are not directly employed, full equal treatment

–with equal pay for equal work at the same workplace at its core– must be a non-negotiable principle.

Limiting subcontracting, regulating the role of labour intermediaries and bolstering the frequency and effectiveness of labour inspections is essential to achieve real equal treatment at the workplace, tackle labour abuses and increase the attractiveness of our sectors. This should be a top priority for the next EU legislative term.

This EFBWW, EFFAT and ETF policy brief is a clear call for action addressed to the EU Institutions and national governments. It complements previous trade union demands² and outlines the main elements of our joint proposal for EU action.



¹ELA Strategic Analysis (2023), [Construction sector: Issues in information provision, enforcement of labour mobility law, social security coordination regulations, and cooperation between Member States \(europa.eu\)](#)

²See EFBWW campaign’s website “[Who is the boss – Stop exploitation in subcontracting chains!](#)” as well as EFFAT proposal for an [EU Directive on labour intermediaries and fair working conditions across subcontracting chains](#)”

MAIN DEMANDS

LIMIT SUBCONTRACTING

- ✓ Prohibit Core Activity Subcontracting, i.e. banning subcontracting for companies' primary functions.
- ✓ Limit the number of subcontracting tiers by setting a cap of one or two sub-levels maximum, and prohibit further subcontracting when it involves only labour.

ENSURE EQUAL TREATMENT ACROSS SUBCONTRACTING CHAINS

- ✓ Establish a comprehensive system of joint and several (full chain) liability, ensuring all entities (client, contractors and subcontractors) are accountable. This should cover a range of issues including remuneration, social security contributions, taxes, health and safety, and collective bargaining rights.
- ✓ Strengthen measures to address unfair practices across all subcontracting tiers in order to mitigate social dumping

REGULATE LABOUR INTERMEDIARIES AND ADDRESS THE LOOPHOLES OF THE TAW DIRECTIVE

- ✓ Standardise the role and responsibilities of recruiting and placement agencies, and other intermediaries across the EU.
- ✓ No Recruitment Fees for Workers
- ✓ Close existing loopholes in the Temporary Agency Work Directive 2008/104

BAN AGENCIES AND INTERMEDIATION IN POSTING

- ✓ Eliminate the use of intermediaries in posting to prevent exploitation and maintain direct employer-employee relationships.

BETTER ENFORCEMENT

- ✓ Ensure sanctions are effectively enforced, even in cross-border scenarios.
- ✓ Implement the ILO recommendation of at least one labour inspector per 10,000 workers, tailoring inspection frequency to sector-specific needs.

What are the issues?

Abusive Subcontracting practices

Subcontracting emerged as a normal practice, for companies looking to perform specialised works or for certain projects that require different kinds of highly specialised abilities, skills, and knowledge. Yet, evidence shows that subcontracting is increasingly used to perform companies' core activities, which are carried out at the clients' facilities by workers employed by contractors or by subcontracting firms. An alarming trend observed by our affiliates is an increasing number of companies which use the term 'specialised work' for "normal", labour-intensive occupations. They outsource these core activities to curb labour costs and open the doors for fraudulent companies who use domestic and cross-border subcontracting to make a profit with severe wage competition, exploitation, and social dumping. These companies use subcontracting chains to disguise employment relationships, circumvent tax and social security payments, escape joint and several liability, and hide from controls by labour inspection and other enforcement agencies.

Through abusive subcontracting, employers can circumvent applicable labour standards and sectoral collective agreements, imposing poor working conditions and engendering social dumping. Many workers employed across subcontracting chains do the same tasks in the same workplace as directly employed workers, under the client's authority. Yet workers in subcontracting chains work longer hours, receive lower wages and suffer more insecurity. The longer and more complex the subcontracting chain, the less transparent and the more difficult to control and enforce existing legislation and collective agreements. Long chains are used by criminal companies to circumvent joint and several liability rules. These subcontractors often act as letterbox companies and vanish without paying the workers their wage due after months of working. Similarly, the use and abuse of bogus self-employment relationships are often hidden within subcontracting chains, allowing employers to escape certain

responsibilities to their workers, with little oversight or guarantee that wages and conditions are being respected for workers in this position.

Unregulated labour intermediation

Exploitation in sectors such as agriculture, construction, domestic work, food processing, hospitality, and transport often results from informal and non-transparent recruitment processes conducted by labour intermediaries, whose activity across Europe is largely underregulated or unregulated. Labour intermediaries acting as agencies or individuals are often based in home countries or directly in destination countries. They often ensure the link with the employer, or with a subcontractor company or other intermediaries and charge workers significant and unjust fees. This is especially true for third country national workers that very often are completely dependent on intermediaries to get access to the EU labour market. Some of these intermediaries even operate as gangmasters, profiting from exploiting workers' daily efforts.

When it comes to posting, intermediaries mainly act as labour-only suppliers (e.g. recruitment, placement, temporary work agencies) which, within cross-border subcontracting situations, make a profit from undercutting wages, the underpayment of social security and tax dumping. In many cases these intermediaries do not comply with the criteria of genuine posting that have been set forward in the 2014 Enforcement Directive. Because of existing loopholes in European and national law, such practices take place in a legal grey area and are difficult to address.

Lack of effective enforcement (inspections and sanctions)

Beyond the shortcomings of the EU legal framework in regulating subcontracting and labour intermediaries, the lack of effective labour inspections and sanctions across the EU leads to insufficient compliance with and enforcement of existing rights. Workers are always the ones who pay the highest price. Criminal, and



EFBWW

Ali Saglam - Republic of Türkiye

Construction worker

The most important reason for our difficulties as workers is the lack of contracts adapted to our activities. We are declared as working in cleaning activities, but we work in construction, or we are declared part-time (4 hours/day) or asked to be (falsely) independent. We want the authorities to take action against this. What I want is to have equal pay for equal work.

fraudulent companies thrive due to a lack of controls by labour inspection and other enforcement agencies which – in most EU Member States – suffer a severe lack of resources and do not have sufficient personnel, and up-to-date cross-border digital instruments. Companies exploit EU and national legal loopholes and administrative shortcomings simply because these gaps exist, because it is easy for them and because the risk of detection is low.

The European Labour Authority (ELA) is still in the process of becoming fully functional and must prove its effectiveness in the fight against cross-border social dumping and fraud.

Within its mandate ELA must prioritise actions in the field of cross-border enforcement, including regular and effective inspections.

What are the solutions?

The newly revamped progress on workers' rights promoted by the EU over the last few years run the risk to be ineffective without real equal treatment at the workplace. We must reaffirm the principle that if a worker is performing the same activity, then it is the same job, so it must come with the same rights, pay and conditions. It is the workplace that counts, not where he or she is from! This is why it is essential to close existing loopholes in rules on subcontracting, labour mobility and social policy. Recurrent abusive business practices must be tackled through new binding rules and better enforcement of the existing ones.

With this in mind, EFBWW, EFFAT and ETF believe the EU must act to:

- 1) Limit subcontracting in terms of scope and number of tiers/levels
- 2) Ensure equal treatment throughout subcontracting chains
- 3) Regulate the role of all labour intermediaries and address the loopholes of the Temporary Agency Work (TAW) Directive
- 4) Ban the use and abuse of agencies and other labour intermediaries in posting
- 5) Ensure effective enforcement with more inspections and dissuasive sanctions, as well as expanding the efficiency and mandate of the § European Labour Authority (ELA) to this end.

These five aims can be addressed with a **new Directive that establishes new rights and obligations while providing a targeted revision of the Temporary Agency Work Directive and the EU rules on posting**

of workers. Such a Directive shall not prejudice social partners' autonomy, nor shall it jeopardise the right to negotiate and conclude collective agreements. Member States can introduce and maintain more favourable provisions. Rights acquired under existing national legal frameworks continue to apply unless more favourable provisions are introduced by the Directive. The implementation of such a Directive cannot be used to diminish existing rights for workers nor the level of protection afforded to workers in the areas covered by the Directive. The Directive should pursue the objectives below.

1. Limit subcontracting

To secure workers' rights across subcontracting chains, the EFBWW, EFFAT and ETF call for stronger EU rules on subcontracting. Direct labour should always be the norm and abusive practices must be tackled. With this in mind, the Directive should:

Tackle abusive subcontracting practices

- Prohibit subcontracting for companies' core activities
- Establish a limit of one or two sub-levels maximum and a prohibition of further subcontracting as soon as labour-only subcontracting applies.
- Establish a limit to the percentage of workers employed in the subcontracting chain, both horizontally and vertically – direct employment through the client and/or the main contractor must be the norm.
- Ensure enhanced transparency on the identity of the main contractor and the various subcontractors involved in the chain. Workers must be better informed about the nature of their employment relationship, and inspectorates must be equipped with better tools to understand these relationships. Workers and their trade unions must be able to effectively defend and enforce their rights
- Establish dissuasive and effective sanctions when violations of these principles occur.

2. Ensure equal treatment throughout subcontracting chains

Abusive subcontracting practices are a major obstacle to real equal treatment at the workplace. Besides limiting subcontracting and promoting direct employment, it is key to strengthen the liability of



ETF

Third-country nationals on strike in 2023

Grafenhausen case

Subcontracting in the trucking industry harms fair labour practices and accountability, making direct hiring of drivers a better path.

This ensures improved working conditions and supply chain transparency. Subcontracting complicates accountability and undermines drivers' rights, as seen in the Grafenhausen case, where a complex chain made it difficult to hold any entity responsible.

clients and main contractors, enhance transparency and protect individual and collective labour rights.

EU action is therefore needed to:

Establish a general system of joint and several (full chain) liability

- Replace the current fragmented approach to subcontracting chain liability with a general EU system of joint and several (full chain) liability covering both cross-border and domestic situations. The system should apply in full respect of existing stricter national liability regimes. This will allow workers and their representatives to seek redress for grievances (e.g. non-payment of wages, compensation for accidents at work) and better guarantee the correct amount of social security contributions. Likewise, this should simplify national authorities' ability to determine the correct level of social security contributions and tax liability.
- Ensure that the system, as a minimum, covers sanctions, back payments and compensation in case of non-respect of the applicable legislation and/or collective agreements. Subcontracting full chain liability should factor in a range of different subject matters including remuneration, (circumvention and evasion of) social security contributions and other social obligations, taxes, health and safety, and (violation of) the rights to organise and bargain collectively.
- In case of violation of employment contracts sanctions and compensation apply retroactively as from the day of infringement. This protection should cover self-employed. Tackle social dumping across the subcontracting chain reinforcing the principle of equal pay for equal work in the same workplace. This means full equal treatment between direct labour and subcontracted workers.
- Ensure that the same conditions and, where applicable, the same sectoral collective agreement apply to all workers performing the same job at the same workplace, including those employed throughout the subcontracting chain. This includes tackling subcontracting arrangements used to circumvent applicable collective agreements or to opt for less favourable ones. The applicable collective agreement should be the most favourable one

for workers and related to the activity performed by the workers.

- Guarantee that, in cases where accommodation is provided, it be organised independently from the employment contract to avoid unnecessary further dependence on the employer. Accommodation should respect quality standards and the related costs should not reduce the remuneration paid to workers employed across the subcontracting chain to a level below that of the minimum wage.
- Information, consultation and participation rights of workers and trade union representatives should be extended to workers employed throughout the subcontracting chain. Working and employment conditions of workers employed throughout the subcontracting chain should be a subject of information and consultation for workers' representative bodies in the client company, including at EWC level.
- Joint and several liability schemes must be complemented by the performance of robust due diligence, recognising that workers employed through subcontracting chains form part of the value chain. Hence, the proposed directive must complement the 2024 Directive on Corporate Sustainability Due Diligence, entailing the consultation of trade unions and workers' representation when subcontractors are engaged. Likewise, per the directive on due diligence (Article 22 (5)), the performance of due diligence shall in no way prejudice the setting up of joint and several liability schemes.

3. Regulate the role of all labour intermediaries and address the loopholes of the TAW Directive

A significant number of mobile and migrant workers employed in our sectors are often recruited informally by underregulated placement agencies, other labour intermediaries or individuals.

Many of these intermediaries take advantage of workers' precarious conditions for profit. EFFAT, EFBWW and ETF consider it crucial to define quality standards at EU level in accordance with best practices existing at national level. EFBWW, EFFAT and ETF demand this new Directive embeds new obligations to:

Regulate the role of recruiting and placement agencies, and other intermediaries at EU level:



EFFAT

El Abass Ehmouti - Morocco

Farm worker in the agriculture sector in Spain

“It is inexplicable: Most of the employers carry out their production without any direct workforce. Intermediaries usually recruit the workers. Most of them pay a commission to ensure that they will be called to work. This contractual instability is killing any long-term plan for my life.”

- Create an EU register of labour intermediaries where all recruiting, placement agencies, and other intermediaries are registered.
- Introduce a community licence for private labour intermediaries.
- Ensure no recruitment fees be paid by workers. Recruiting costs, as well as travel expenses, should never be borne by workers.
- Ensure data protection and privacy of workers recruited through labour intermediaries as well as providing an accessible way for workers to know how their data is used and allow trade unions and authorities appropriate access.
- Better enforce the requirement of intermediaries to treat all workers involved in a recruiting process without discrimination based on nationality, sexual identity and orientation, religion, political opinion and trade union affiliation, or any other form of discrimination covered by international human rights instruments, as well as national laws and practices.
- Allow Member States to impose the recruiting of workers in specific sectors to be carried out only by public employment services.
- Increase the fight against letterbox companies, treating them as a criminal intrusion to the economy.
- Establish dissuasive, proportionate, and effective sanctions for infringing the provisions of the Directive.

Require labour intermediaries to provide information to workers

- Labour intermediaries must provide reliable information to workers about their labour rights in the country of destination/workplace before departure or before engaging in a job.
- Information shall at least include the employer's identity, the user undertaking identity (if different), the period of employment, the remuneration and other aspects of working conditions such as rights and obligations in the event of termination of work, complaint mechanisms, and access to legal recourse. Trade union and counselling services' contact details must also be provided. The provision of information should at least respect the minimum standards set by the Directive on transparent and predictable

working conditions.

- Ensure that the information is provided in the workers' own language or a language they understand and in a clear and transparent manner, regardless of the duration of their contract.
- Support sectoral trade union initiatives, both on national and European level, to set up alert and complaint mechanisms, including multilingual helplines or online portals to advise and assist workers who might have questions or need clarification and assistance.

Address the loopholes and abuses of the Temporary Agency Work Directive 2008/104

- Ensure that career advancements and corresponding wage increases of temporary agency workers are not circumvented.
- Temporary agency workers should always enjoy equal treatment on a par with workers employed by the end-user undertaking. Existing derogations to this principle should be removed.
- Guarantee that in cases where accommodation is provided, that it be organised independently from the employment contract and remuneration in order to avoid any associated further dependency on the employer. Accommodation should respect quality standards and the related costs should not reduce the remuneration owed to temporary agency workers to a level below that of the rate of remuneration determined by law or collective bargaining agreements in the relevant sector.
- Regulate essential factors such as the maximum share of agency workers, the maximum duration of the assignment in one user undertaking and the number of successive assignments to the same workplace.

4. Ban the use of agencies and other labour intermediaries in posting

- Recruitment, placement, temporary work agencies and other intermediaries should not be allowed to provide workers in posting situations. Labour supply shortages must be filled by direct jobs with the same rights, pay and conditions.
- Restricting the availability of posting to direct employees provides a clear line of responsibility and protection of rights.



- Ensure that companies genuinely operate in their home Member State before companies can post workers to prevent ‘letterbox’ companies, as per Article 4 of Directive 2014/67/EU on the enforcement of the posting of workers³. These criteria must be made mandatory, with effective enforcement of these elements.
- Develop on the ruling of Team Power Europe⁴, codifying into legislation that ‘substantial activity’ must be sufficiently demonstrated by businesses intending to provide posted workers, and recognition that such rules do not only apply to temporary work agencies.

5. Ensure effective enforcement with more inspections and dissuasive sanctions

When companies circumvent the rules, exploit the opportunities that the single market offers, engage in illegal practices and violate applicable working conditions, the result is social dumping, labour crime and unfair competition. To combat such situations effectively and ensure adherence to applicable labour standards and collective agreements, especially in subcontracting and labour intermediaries, robust inspections and resourceful, independent enforcement authorities are crucial.

However, labour enforcement authorities across the EU are understaffed and are low on resources, leading to infrequent and ineffective inspections and controls. Complaint mechanisms, vital for targeted inspections and holding employers accountable, are underutilised and remain largely inaccessible, particularly for mobile and migrant workers. The widespread adoption of social ID cards, would facilitate such inspections and allow workers to understand their relationship with the contractor and clients.

The remit of ELA must be strengthened in the future. ELA must be able to ensure that dissuasive sanctions are imposed across borders. 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. This situation has led to widespread impunity towards social dumping, labour

crime and exploitation of workers. ELA must intensify cross-border cooperation and inspections. ELA should increase support for national enforcement bodies and sectoral social partners, particularly in complex fraud cases, and ensure that sanctions are effectively imposed across borders.

We need new EU binding rules to:

Set minimum standards on labour inspections and complaint mechanisms

- Prioritise workers’ welfare in all aspects of regulating working conditions, ensuring that the dignity, safety, and rights of workers are at the forefront of inspection and enforcement efforts.
- Regulate the powers and obligations of national bodies/authorities responsible for auditing working and employment conditions also in accordance with ILO Convention 81.
- Guarantee that the autonomy and role of social partners be respected, particularly when they play a role in inspections and enforcement.
- Allow labour inspectors to enter workplaces without notice, to conduct examinations and interviews with workers and employers and to have (digital) access to documentation.
- Adopt the ILO benchmark of a minimum of one labour inspector per 10,000 workers, supplemented with a minimum number of inspections to be carried out based on the specificities of each sector.
- Cover both national and cross-border situations, strengthening further the role of the European Labour Authority.

³<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0067>

⁴<https://curia.europa.eu/juris/liste.jsf?num=C-784/19>

CONCLUSIONS

Equal treatment at the workplace in our sectors is undermined by an exploitative business model that relies on abusive subcontracting practices and unscrupulous and fraudulent intermediaries. The lack of effective enforcement (inspections and sanctions) allows this system to thrive and expand at the detriment of workers.

To overcome such critical scenario there is an urgent need for the EU to act with a new Directive that limits subcontracting and regulates the role of labour intermediaries banning also intermediation in posting. This Directive shall establish new rights while revising the Temporary Agency Workers

Directive and the EU rules on posting of workers.

Our vision, as detailed in this policy paper, is for a Directive that serves as more than just a regulatory instrument; it is a path to fairer labour mobility and migration. This directive emphasises the rights of every worker, no matter their employment or migration status. It should explicitly address recurrent abusive business practices and the structural issues that increasingly define the way work is performed in important sectors of the economy.

It would therefore represent an essential step in the achievement of real equal treatment at the workplace as well as in the creation of a fairer society.





EFBWW | www.efbww.eu

The European Federation of Building and Woodworkers (EFBWW) is the European Workers' Industry Federation for the building sector, woodworking, forestry and allied industries and trades. The EFBWW has 77 affiliated unions in 36 countries and represents a total of 1.5 million members. The EFBWW is a member organisation of the European Trade Union Confederation (ETUC).

X: @EFBWW_ **Facebook:** @EFBWW **Instagram:** @efbww **LinkedIn:** @EFBWW

ETF | www.etf-europe.org

The European Transport Workers' Federation (ETF) is a pan-European trade union organisation which embraces transport trade unions from the European Union, the European Economic Area and Central and Eastern European countries. The ETF was created in 1999, but we have our roots in pan-European transport trade union organisations that stretch back over 60 years. Today, the ETF represents more than 5 million transport workers from more than 200 transport unions and 38 European countries. These workers are found in all parts of the transport industry, on land, sea, and in the air. We are a recognised EU-level social partner in 7 sectoral social dialogue committees, including inland waterways. We are also a proud member of the ETUC and the ITF family.

X: @ETF_Europe **Facebook:** @ETF.Europe **LinkedIn:** @european-transport-workers'-federation

EFFAT | www.effat.org

EFFAT is the European Federation of Food, Agriculture, and Tourism Trade Unions, also representing domestic workers. As a European Trade Union Federation representing 116 national trade unions from 37 European countries, EFFAT defends the interests of more than 25 million workers towards the European Institutions, European employers' associations, and transnational companies. EFFAT is a member of the ETUC and the European regional organisation of the IUF.

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