

EFFAT proposal for an
EU Directive
on labour intermediaries and
fair working conditions across
subcontracting chains



Policy brief – May 2023

Regulating subcontracting and labour intermediaries is an urgent priority for the EU

EFFAT sectors significantly depend on the work of mobile and migrant workers. Despite their essential role in our societies, migrant and mobile workers often fall victim to discrimination, labour exploitation and racism owing to their migratory status or ethnic background. The vast majority of EU Member State nationals employed in our sectors reach their countries of destination by making use of the free movement of workers, while a minority are posted. The vast majority of third country nationals have residence status to work in the EU. Among those that are undocumented, many have travelled under partial authorisation (e.g., tourist visa) that then expires or does not grant permission to work. Some have applied for international protection, but had their applications refused.

The take up of an exploitative job by migrant, seasonal and other mobile workers is often a consequence of an informal and non-transparent recruiting process conducted by **labour intermediaries**, whose activity across Europe is largely unregulated. Labour intermediaries acting as agencies or individuals are often based in home countries or directly in destination countries. They ensure the link with the employer while charging workers relevant fees. Sometimes they even act as gangmasters, exploiting them for profit.

Another way many mobile and migrant workers access the labour market in our sectors is through a **subcontracting** firm. Subcontracting should be motivated by the search for specialism and know-how not available in-house or the need to outsource specific tasks that are not part of the company's core activities. Yet, evidence shows that subcontracting in our sectors 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. These workers do the same tasks in the same workplace as direct labour workers, under the client's authority. However, workers in the subcontracting chain work longer hours, get lower wages and suffer more insecurity. In the meat sector, subcontractors in some countries operate as bogus workers' cooperatives which are outsourced sections of the business cycle.

Subcontracting is increasingly used as a business strategy to cut costs and avoid employer liability. Through subcontracting, employers can circumvent applicable labour standards and collective labour agreements, imposing poor working conditions and engendering social dumping within the same workplace, as well as at a sectoral and cross-border level.

Abusive subcontracting and unregulated labour intermediaries often work in cahoots, contributing to the creation of an exploitative business model that is increasingly dominating certain sectors. In addition to the shortcomings of the EU legal framework in regulating subcontracting and labour intermediation, the lack of **effective labour inspections** across the EU leads to insufficient compliance with and enforcement of existing rights. Workers are always the ones who pay the highest price.

This EFFAT policy brief is a clear call for action addressed to the EU Institutions and national governments. It complements EFFAT demands on labour mobility and migration¹ and outlines the main elements of an EFFAT proposal for an EU Directive to regulate the role of labour intermediaries and ensure fair working conditions across subcontracting chains.

¹See EFFAT [Demands for action](#) Towards inclusion and equal treatment for all mobile and migrant workers, 1 June 2021



The main aims of an EU Directive on labour intermediaries and fair working conditions across subcontracting chains

This EFFAT proposal for an EU Directive on labour intermediaries and fair working conditions across subcontracting chains has three key aims:

- Ensuring equal treatment across subcontracting chains
- Regulating the role of placement agencies and other labour intermediaries as well as addressing the main shortcomings of the Temporary Agency Work Directive
- Increasing frequency and bolstering effectiveness of labour inspections

The Directive shall not prejudice the respect for the full autonomy of social partners, nor shall it jeopardise their right to negotiate and conclude collective agreements.

The Directive should lay down minimum requirements. 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 this Directive cannot be used to diminish existing rights for workers, nor can it constitute valid grounds for reducing the general level of protection afforded to workers in the areas covered by the Directive.

1. Ensuring equal treatment across subcontracting chains

To secure workers' rights across subcontracting chains EFFAT calls for stronger EU rules on subcontracting to tackle abusive practices, strengthen liability and transparency, and ensure more robust individual and collective labour rights. With this in mind, the Directive should:

Tackle abusive subcontracting practices

- Prohibit subcontracting for companies' core activities.
- Establish a limit of three subcontracting levels and a prohibition of further subcontracting as soon as labour-only subcontracting applies.
- Ensure enhanced transparency on the identity of the main contractor and the various subcontractors involved in the chain.
- Establish dissuasive, proportionate and effective sanctions for any violation of the obligations arising from the Directive.

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.



- Ensure that the system covers at least 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 matter 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.

Tackle social and collective bargaining dumping across the subcontracting chain

- Ensure the principle of equal pay for equal work in the same workplace applies. This means full equal treatment between direct labour and workers employed across subcontracting chains.
- Ensure 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, that it be organised independently from the employment contract to avoid any associated further dependency 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 in the client company should be extended also 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.



2. *Regulating the role of placement agencies and other labour intermediaries as well as addressing the main shortcomings of the Temporary Agency Work directive*

A vast proportion of mobile and migrant workers employed in our sectors are usually recruited in an informal way by unscrupulous individuals or by placement agencies and other labour intermediaries whose activities are largely unregulated across Europe. Many of these intermediaries take advantage of workers' precarious conditions for profit. EFFAT considers it crucial to define quality standards at EU level in accordance with best practices existing at national level. ILO Convention 181 on Private Employment Agencies can be used as reference. Moreover, evidence in our sectors shows that there is a need to address the long-term shortcomings of the Temporary Agency Work Directive. The Directive should:

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

- Create an EU register of labour intermediaries where all recruiting, placement agencies and other intermediaries are registered.
- Ensure no recruiting fees be paid by workers. Recruiting costs, as well as travel expenses, should not be borne by workers.
- Ensure data protection and privacy of workers recruited through labour intermediaries.
- Require intermediaries to treat all workers involved in a recruiting process without discrimination based on nationality, sexual identity and orientation, religion, political opinion, or any other form of discrimination covered by international human rights instruments, as well as national laws and practices.
- Allow Member States to decide whether the recruiting of workers in specific sectors is only carried out by public employment services.
- Tackle the letterbox companies' phenomenon.
- Establish dissuasive, proportionate, and effective sanctions for employers and labour intermediaries not respecting 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.



- 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. The provision of information should at least respect the minimum standards set by the Directive on transparent and predictable working conditions.

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 reconsidered.
- Guarantee that in cases where accommodation is provided, that it be organised independently from the employment contract 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 paid to temporary agency workers to a level below that of the minimum wage.
- Allow for 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 to be always set through collective bargaining with trade unions.



3. Strengthening frequency and effectiveness of labour inspections

When companies do not play according to the rules, abuse the possibilities that the single market offers, engage in illegal practices and violate applicable working conditions, the result is social dumping and unfair competition. To combat such situations and ensure the enforcement of applicable labour standards, including in subcontracting and labour intermediation, we need effective inspections and well-equipped autonomous enforcement authorities. However, labour enforcement authorities across the EU are understaffed and are low on resources. This means that controls occur less frequently and are not effective, particularly in the EFFAT sectors made up of small and micro enterprises. Complaint mechanisms are an important tool to ensure targeted inspections and hold employers accountable, but they remain under-used and poorly accessible, particularly by mobile and migrant workers.

~~This is why this Directive should:~~

Set minimum standards on labour inspections and complaint mechanisms

- 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, particularly when they play a controlling or enforcing role be respected.
- Allow labour inspectors to enter workplaces without notice, to conduct examinations and interviews with workers and employers and to have access to documentation.
- Establish the ILO reference of at least one labour inspector per 10,000 workers as minimum threshold.
- Cover both national and cross-border situations, strengthening further the role of the European Labour Authority.
- Require Member States to use digital data and cross-checking between enforcement authorities operating in different areas (social security authorities, CAP paying agencies, tax authorities) to identify potential labour abuses and support workplace inspections.
- Ensure Member States invest in training for enforcement authorities, including on European legislation and cross-border situations.
- Ensure that all workers – regardless of their employment or residence status – can effectively file complaints to labour inspectorates, labour tribunals or other bodies in an effective and practical way without excessive costs and without fearing retaliation or risk of deportation. Ensure improvement of Directive 2009/52/EC.
- Prohibit the reporting of undocumented workers to immigration services through labour inspections.



Conclusions

Migrant and mobile workers are the backbone of a thriving European Agriculture, a flourishing food processing industry, a vital tourism and the domestic work sector. Despite their essential role in our society, many of them are subject to evident discrimination in the labour market and even labour exploitation.

To overcome such critical scenario there is an urgent need to adopt a more inclusive and forward-looking vision on labour mobility and migration.² This requires political will from the EU Institutions and Member States and the strong involvement of trade unions.

This EFFAT proposal for an *EU Directive on labour intermediaries and fair working conditions across subcontracting chains* would represent a key step towards building such a progressive vision. It would close some of the main shortcomings of the EU legal framework on social policy and labour mobility. It would reaffirm the principle that a worker is a worker, independently from his/her migration status. It would tackle 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 equal treatment of mobile and migrant workers as well as in the creation of a fairer society.

² See EFFAT [Demands for action](#) Towards inclusion and equal treatment for all mobile and migrant workers, 1 June 2021





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