For an EU Directive on subcontracting and labour intermediation

Resolution adopted at the Executive Committee meeting of 1-2 October 2025

The ETUC is calling for an EU Directive to urgently tackle abuses in subcontracting and labour intermediation.

This resolution outlines the call from the European trade union movement for a EU Directive to regulate labour intermediaries and introduce an EU-wide legal framework to limit subcontracting and ensure joint and several liability throughout the subcontracting chain. This legislative initiative is essential to tackle abuses in subcontracting and labour intermediation.

Over the last years trade unions at sectoral and national level have mobilised to bring abusive subcontracting practices and unregulated labour intermediation onto the political agenda. At European sectoral level, the mobilisation by EFBWW, EFFAT and ETF has been of high importance. In full support of this mobilisation and building upon its previous positions, the ETUC is calling for an EU Directive to urgently tackle abuses in subcontracting and labour intermediation.

The increasing use of long and complex subcontracting chains and fraudulent labour intermediation are key drivers of labour exploitation, undermining workers' rights, decent work, collective bargaining, and fair competition in the internal market. These practices enable companies to blur responsibility for compliance with workers' and trade union rights, employment standards and collective agreements, occupational health and safety rules. This is especially the case in fraud-sensitive sectors such as construction, transport, agriculture, food processing, cleaning, fishing and seafaring, catering and hospitality. However, this is also becoming an increasing trend in other sectors, most notably in manufacturing, with the textile and shipbuilding sectors most affected.

In recent years, many deaths and injuries because of unsafe or hazardous working conditions and cases of labour exploitation have exposed the human and social cost of these practices. They should have prevented. Often these situations are also connected with labour crime, including gangmaster practices, human trafficking and forced labour. It is all too clear that criminal activity and organisations have in many cases infiltrated our labour markets and migrant workers need better and stronger protection at both national and European level.

Existing EU rules on posting, temporary agency work, labour mobility, migration, OSH and public procurement do not effectively tackle the emergence of business models whereby companies engage in chains of intermediaries and subcontractors to reduce costs and evade responsibility. This lack of dedicated EU legislation raises important challenges that must be addressed. Local and national labour markets have their distinct traits that often leads to different challenges that needs to be solved through laws and collective agreements as well. It's important that EU legislation fully respect the possibility for national and local authorities and social partners to maintain or introduce more stringent protective measures.

When workers get trapped in complex chains, liability becomes unclear and enforcement nearly impossible. Fraudulent practices such as letterbox companies, fake

postings, bogus agency work, false self-employment and gangmaster schemes are often connected with abusive subcontracting and labour intermediation, depriving workers of their rights while allowing the main contractor to escape accountability. Workers face unsafe conditions, wage theft, neglected social contributions, and union busting. Exploitation spreads across borders: workers are often recruited in one country, subcontracted through a second, and exploited in a third. The lack of effective enforcement (inspections and sanctions) allows this system to thrive and expand to the detriment of workers and responsible employers.

The absence of a general EU legal framework on subcontracting and labour intermediation for both cross-border and domestic situations leaves local, mobile and migrant workers exposed to social dumping, artificial arrangements, and opaque business accountability. A comprehensive and ambitious Directive is needed to promote direct employment relations, secure equal treatment with full respect for workers' rights and employment standards, effective enforcement, transparency and accountability across borders and sectors. Furthermore, as subcontracting structures differ from one sector to another, any legislative framework must address these sectoral specificities while ensuring robust protections against exploitation - regardless of the type of commercial or legal contracts between the various business entities.

ETUC demands

The ETUC is calling for a Directive on subcontracting and labour intermediation to address the following key issues through minimum standards, while fully safeguarding national liability schemes, national labour market models, and the autonomy of the social partners:

- **Legal basis**. It is essential that such a Directive be grounded in the social policy chapter of the Treaties: its legal basis shall be Article 153 TFEU.
- **Full chain liability**. The main contractor / client and its subcontractors must be jointly and severally liable for labour and social rights violations throughout the whole contracting chains regardless of the type of commercial or legal contract governing the relationship. Risks should not be shifted onto workers, having to pursue claims chain-link by chain-link. Liability must be comprehensive, covering at least wages, taxes, social security contributions, violation of OSH standards, working time and compliance with labour laws and collective agreements. Safe complaint mechanisms, access to justice, effective remedies and dissuasive sanctions should help workers and enforcers hold businesses to account.
- **Maximum chain length and direct employment for core business activities**. Subcontracting must be effectively regulated, whereas the direct employment relationship should remain the norm. Chains must be limited to one or, in the case of exceptional and justified cases a maximum of two sub-levels, whereas financial and labour-only subcontracting should be prohibited altogether. Subcontracting of core business activities must be prohibited, and only direct employment should be permitted for such activities. Subcontracting may not concern the predominant execution of works and services. The Directive must ensure the engagement of qualified subcontractors and introduce stringent controls against criminal infiltration and exploitation, and guarantee compliance with training requirements and safety standards.
- **Regulated intermediation**. To prevent fraudulent intermediaries, abusive conditions, gangmaster practices and to improve transparency and controls, labour intermediaries must be regulated, registered in the EU and subject to clear quality standards and obligations, including applicable labour law and collective agreements. Intermediaries should not impose any fee on workers for recruitment, travel, accommodation or training. In construction, labour intermediation and agency postings should be prohibited.

- **Equal treatment**. Subcontracting companies be subject to the same rules as the main contractor / client, including compliance with applicable collective agreements, health and safety standards, social security and tax obligations, professional qualifications, and legal compliance. All workers performing the same work in the same workplace must enjoy equal pay, conditions, and protection, irrespective of their contractual form of employment and immigration status. Respect for collective agreements must be ensured throughout the subcontracting chain and circumvention through agreements by yellow unions or less favourable agreements must be prevented.
- **Trade union access**. Subcontracting is no excuse to avoid social dialogue and collective bargaining. Trade unions and workers' representatives must have access to the workplace(s), relevant information, the rights and means to effectively defend the interest of all workers in the subcontracting chain.
- **Decent Accommodation.** In cases where accommodation is provided by employers or intermediaries it must be arranged independently from the employment contract to avoid any associated further dependency with the employer. Equally Member States shall ensure that the termination of the employment contract does not automatically entail the termination of the accommodation's contract. Likewise, non-EEA work permit holders should not automatically have their work permit revoked in the event of their employment contract being terminated. Housing must be decent and meet host-country standards, with costs being limited, fair and transparent. In line with the Posting of Workers Directive, travel, board and lodging must be borne by the employer and reimbursed according to national law or collective agreements, preventing dependency through abusive housing arrangements.
- **Clear definitions.** A substantive definition of "employer" should be included, especially in a context of growing use of digital surveillance technologies and algorithmic management. The ETUC reiterates its demands for a Directive on AI at the workplace.
- **Transparency and traceability**. Main contractors should keep registers of all subcontractors, intermediaries and workers, accessible to labour inspectorates, trade unions and works councils as means to help identifying the real employer and enforce workers' rights. The use of social ID and labour cards should be implemented in high-risk sectors to improve transparency and controls. Moreover, an EU framework should be established for interoperable social ID cards in fraud-sensitive sectors, connected to digital company registers and the future European Social Security Number. These tools must ensure real-time oversight of subcontracting chains and worker entitlements.
- **Monitoring and effective enforcement**. The Directive should increase the frequency and effectiveness of labour inspections. National labour inspectorates and the European Labour Authority must be strengthened with substantial additional human, material and financial resources to investigate cross-border cases, impose sanctions, and collect unpaid wages and social contributions, respecting national trade union roles and prerogatives. Cooperation between national authorities should be reinforced, with interoperable databases increased inspection capacities and targets. Likewise, contractors should carry out due diligence of their subcontractors and intermediaries, while not being exempt from joint and several liability. Abusive and non-compliant companies should be listed in a dedicated European register, including to be used in public procurement. The Directive should explicitly provide for enhanced cooperation mechanisms with non-EU countries closely linked to the internal market, including in monitoring mechanisms and through involvement of social partners. This includes information exchange, mutual recognition of inspections and

sanctions, and coordinated enforcement actions in cross-border subcontracting chains.

- **Public contracts for social progress.** The ETUC reiterates its demands for a revision of the public procurement directives that promote collective bargaining and quality jobs. The revision of the EU Public Procurement Directives should ensure that public money goes to companies that respect workers' and trade union rights, that negotiate with trade unions and whose workers are covered by collective agreements throughout the entire subcontracting chain. Economic operators awarded public contracts should provide quality jobs and direct employment. The revision of the public procurement rules should promote the limitation and regulation of subcontracting (including by ensuring equal treatment, introducing joint and several liability and a limit to the length of the chain to one or, in the case of exceptional and justified cases, a maximum of two sub-levels). To ensure transparency, all companies participating in public procurement, as well as their subcontractors, should be obliged to indicate the name of the 'beneficial owner'.
- **Establishing coherent policy frameworks**. Sectoral policies and rules should aim at deterring business models that push towards abusive subcontracting practices

In annex can be found the **specific proposals of EFBWW, EFFAT, and ETF for a Directive**, which take into account the sectoral realities.

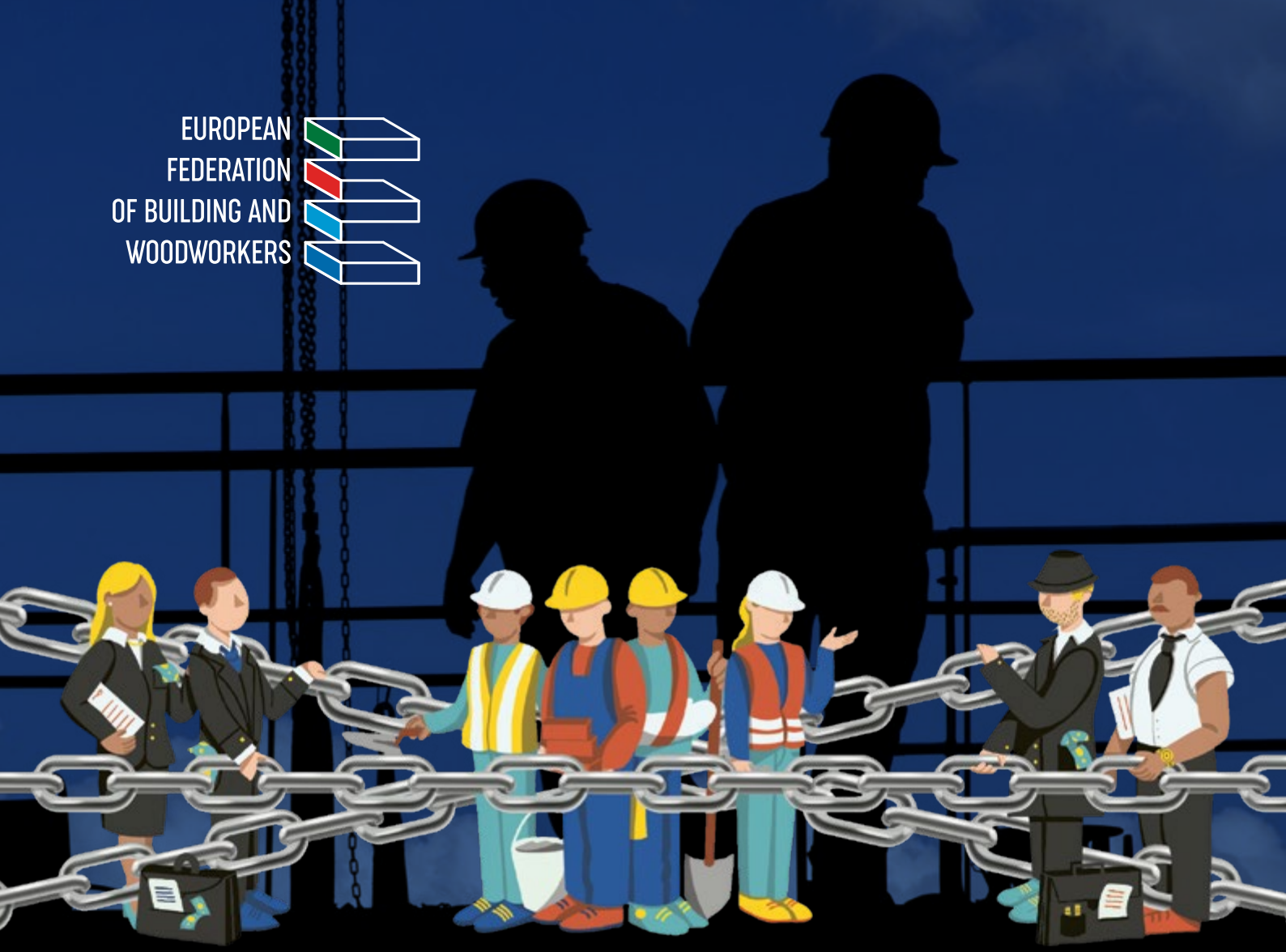
Our actions

The ETUC will continue and reinforce its mobilisation to call for a Directive on subcontracting and labour intermediation to be included in the Quality Jobs Roadmap / Act, by organising events, communication actions and advocacy initiatives (including in view of the European Parliament report).

The ETUC calls on its members to support the mobilisation and actions to make the case for a European Directive – including by highlighting examples and national or sectoral cases.

The ETUC will support trade union initiatives and campaigns to limit and regulate subcontracting and labour intermediation at sectoral and national levels – upon request of our affiliates.

EUROPEAN FEDERATION OF BUILDING AND WOODWORKERS



EFBWW

ROADMAP FOR QUALITY JOBS IN CONSTRUCTION: LIMIT SUBCONTRACTING AND PROMOTE DIRECT JOBS

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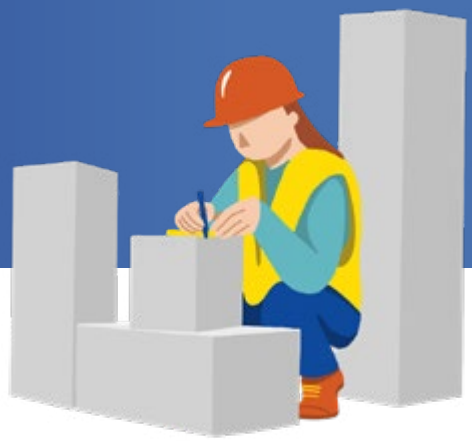


The EFBWW launched its subcontracting campaign in 2020 to address the widespread use of abusive subcontracting practices in the construction sector. In its first phase, the campaign focused on raising awareness among policymakers at both EU and national levels. A key milestone was the first successful EU demonstration in Brussels in June 2024, bringing attention to the urgent need for action.

With the European elections in 2024, the campaign entered its second phase under the banner '**Vote for #LimitSubcontracting'**, directly challenging political groups to take a position on subcontracting.

This phase saw continued mobilisation, including another demonstration in Strasbourg in September 2024, organised together with EFFAT and ETF. EFBWW also brought subcontracted migrant workers' testimonies to the European Parliament.

This led to the organisation of a hearing with Executive Vice President Mînzatu on abusive subcontracting in the European Parliament at the plenary of December 2024. As a result, limiting abusive subcontracting is now recognised as a central issue in the fight for quality jobs.

The European Parliament is now working on an own-initiative report on abusive subcontracting and labour intermediaries, while Commissioner Mînzatu has signalled her intention to include the topic in the Quality Jobs Roadmap and a new Labour Mobility Package. Subcontracting is now a core topic in the multi-annual work programme for social dialogue in construction with FIEC.

The campaign is now moving into its third phase: pushing for precise and concrete legislation. EFBWW is calling for an ambitious EU Subcontracting Package that would introduce binding legislation to effectively limit subcontracting, ban temporary work agencies and other intermediaries in posting with effective and dissuasive penalties. These measures are essential for creating a sustainable internal market based on quality jobs and fair competition. In turn, this would make the construction sector more attractive to workers, helping to address labour shortages.

The European Commission has announced its intention to focus on simplification. EFBWW wants to explicitly underline that limiting subcontracting and promoting direct jobs would significantly simplify construction site management, benefiting businesses, enforcement authorities and workers alike. Today, many workers on construction sites do not even know **WHO'S THE BOSS**.

Digital enforcement tools must also play a role in this. EFBWW supports sectoral social ID cards, an individual social security number for mobile workers and interconnected EU-wide business registers. The construction sector has been advocating for these measures for over a decade, and they must now be implemented as part of an effective enforcement strategy.

This updated policy document outlines EFBWW's proposals for coordinated, legislative action across 10 priority areas. The time to act is now.

Bruno Bothua
President

Tom Deleu
General Secretary

A CALL FOR ACTION

The EFBWW calls for an ambitious Subcontracting Package with binding legislation to limit subcontracting, ban temporary work agencies and other intermediaries in posting and enforce dissuasive penalties. It must cover Public Procurement and OSH. Urgent action is needed in these 10 priority areas to protect workers and ensure the sustainability of the European construction industry

1. Limits on Subcontracting

EFBWW calls for:

- Binding legislation that restricts subcontracting chains to a maximum of one or, where technically necessary, two sub-levels.
- Direct employment to be the standard, with only specialised tasks permitted at lower levels.
- Binding legislation to ensure fair competition and enforceable labour standards across all projects.

2. No Public Money for Exploitation

EFBWW calls for:

- Public procurement rules to prioritise fair labour practices over cost-cutting.
- The abolition of the lowest price criterion
- Public contracts to be awarded only to companies that comply with collective agreements and social standards.
- Strong monitoring and enforcement to eliminate social dumping and fraud.

3. Ban Agencies and other Intermediaries in Posting

EFBWW calls for:

- A ban on labour-only agencies and intermediaries in posting.
- Only genuine construction companies engaged in substantial activities to be allowed to post workers.
- An ambitious action plan to combat letterbox companies and fraudulent postings.

4. Full Joint and Several Liability across the Whole Subcontracting Chain

EFBWW calls for:

- Main contractors to be fully liable for compliance with labour laws and collective agreements across subcontracting chains.
- A safeguard ensuring workers receive their entitlements, even if subcontractors fail to comply or shut down.

5. Effective Enforcement

EFBWW calls for:

- A binding EU framework for social ID cards in construction based on the EFBWW-FIEC SIDE-CIC project
- The implementation of EU-wide and interconnected digital company registers and stronger inspections.
- A strengthened European Labour Authority to oversee subcontracting practices.
- Harmonised sanctions across Member States.
- The combination of modern digital tools with targeted inspections and cross-border cooperation to improve enforcement.

6. Mandatory Due Diligence

EFBWW calls for:

- Main contractors to conduct rigorous due diligence in subcontracting chains.
- The active involvement of trade unions and EWC members in the due diligence process
- Independent audits, mandatory reporting and oversight
- Due diligence to complement, not undermine, joint and several liability.

7. Empower Trade Union Representatives and European Works Councils

EFBWW calls for:

- Trade union representatives and EWCs to have access to information on subcontracting policies.
- The right for trade union representatives to conduct site audits.
- Strengthened information and consultation rights through an ambitious revision of the EWC Directive.

8. Social Protection for All Workers

EFBWW calls for:

- All workers, regardless of their employment contract, to be covered by social protection.
- Unique European Social Security Number (ESSN) for mobile workers allowing real-time information on social security coverage and rights
- The conclusion of the revision on the coordination of social security systems to include mandatory prior notification in construction without exception.

9. Guaranteed Occupational Safety and Health Standards

EFBWW calls for:

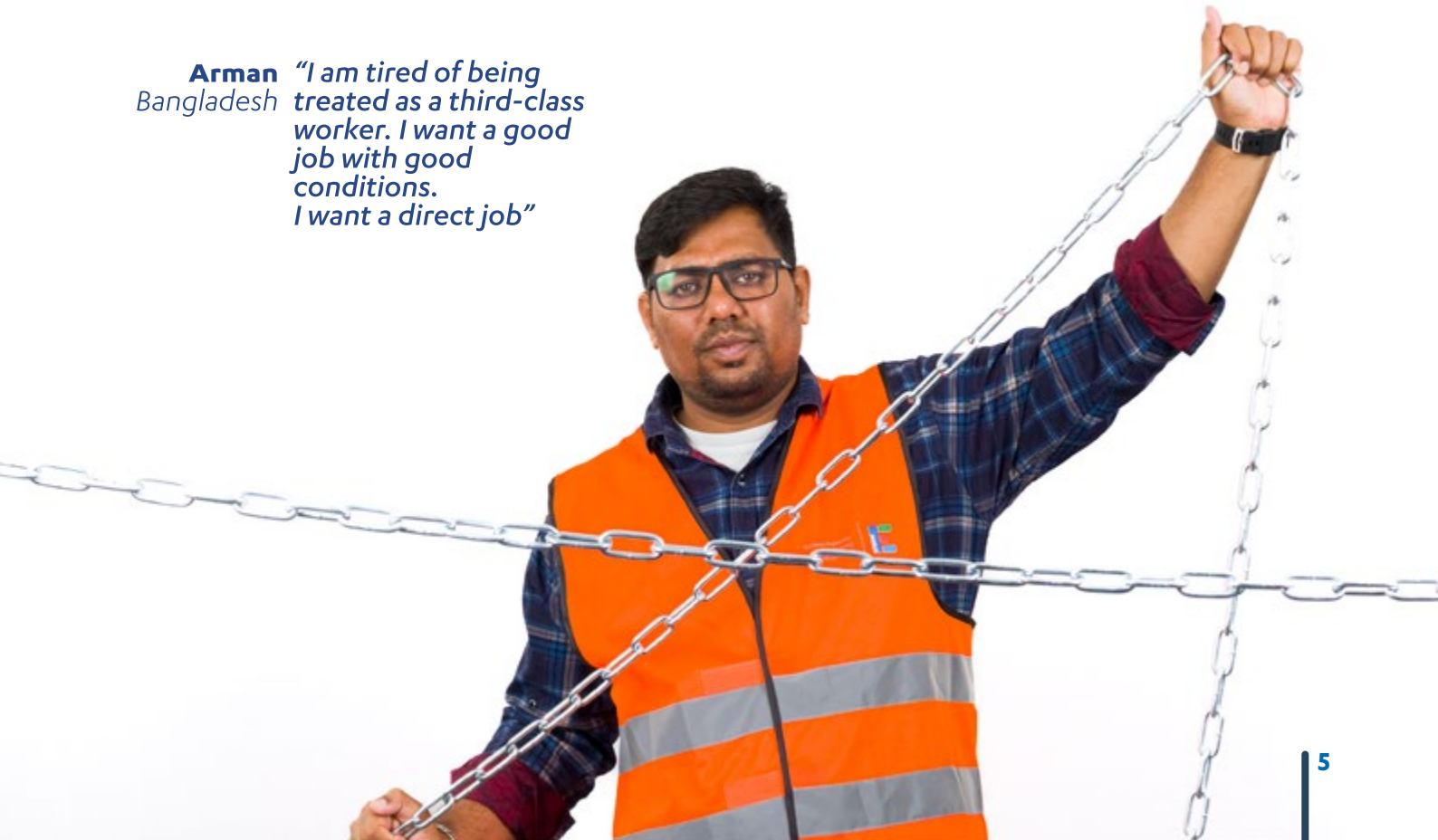
- Binding EU rules to ensure that all subcontractors comply with the highest occupational health and safety standards in the host country.
- Uniform OSH training and mandatory protective equipment.
- Rigorous enforcement to protect workers and promote safety in the construction sector.

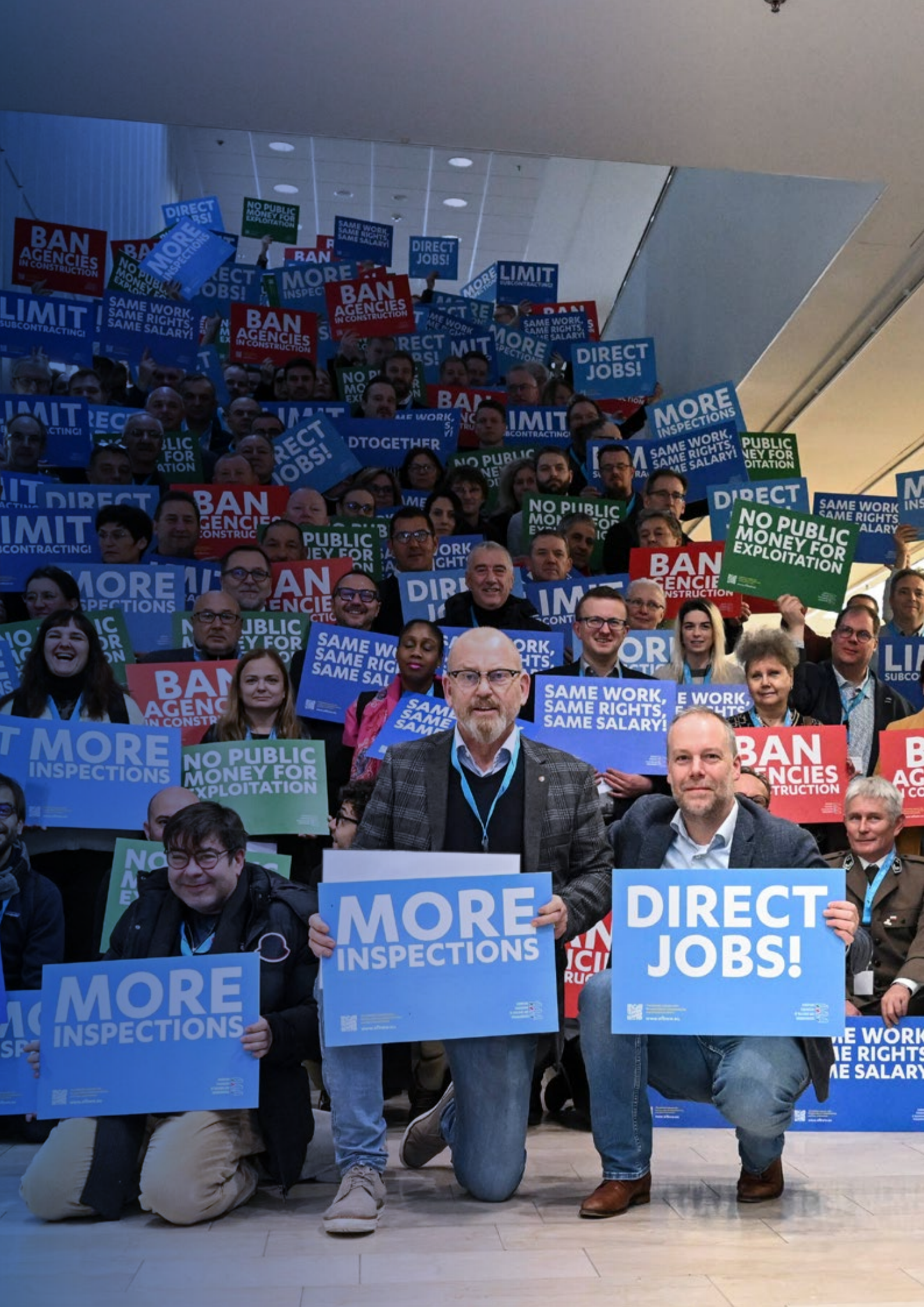
10. Same Work, Same Rights, Same Salary

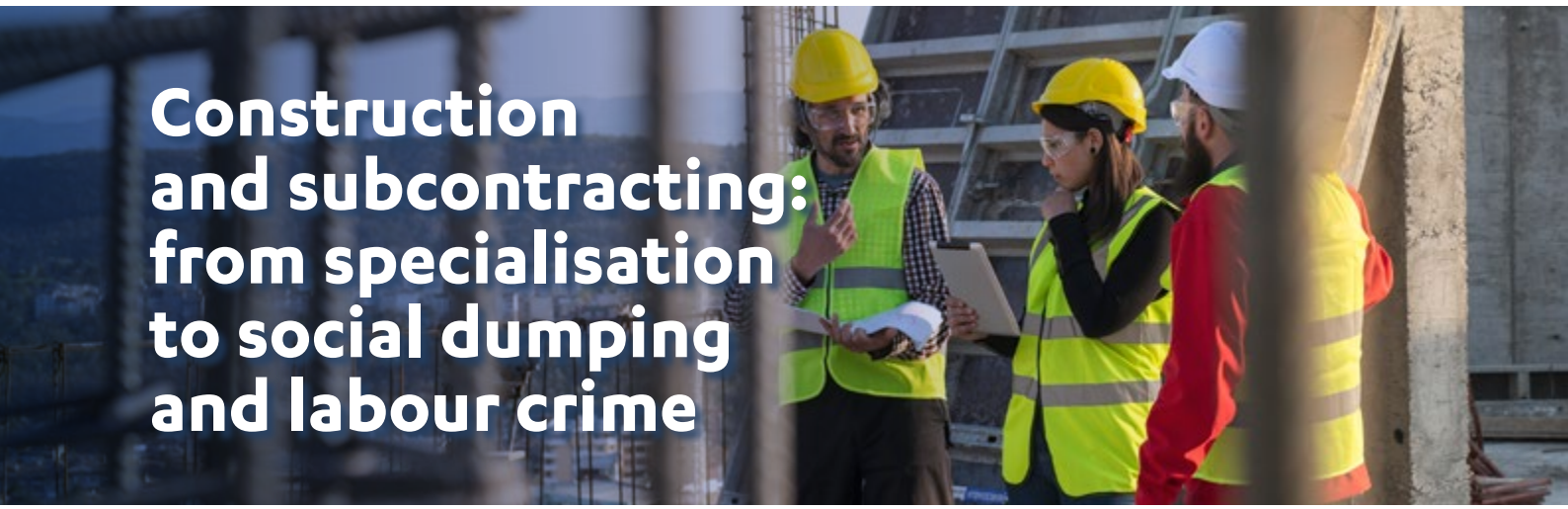
EFBWW calls for:

- Equal treatment for all workers in public and private contracts.
- Subcontractors to apply the same conditions and collective agreements as main contractors.

Arman
Bangladesh
"I am tired of being treated as a third-class worker. I want a good job with good conditions. I want a direct job"




MORE INSPECTIONS
DIRECT JOBS!
BAN AGENCIES IN CONSTRUCTION
NO PUBLIC MONEY FOR EXPLOITATION
SAME WORK, SAME RIGHTS, SAME SALARY!
LIMIT SUBCONTRACTING!



Construction and subcontracting: from specialisation to social dumping and labour crime

The construction sector is one of the largest economic drivers in the European Union (EU), accounting for 9% of EU GDP (€1.39 trillion) and providing jobs to 18 million workers across approximately 3 million enterprises.[1] Labour costs represent about 50% of the industry's turnover, making them a critical factor in competition between companies.

The construction sector is highly fragmented, with a very mobile workforce, heavy reliance on posted workers and dominated by SMEs. This fragmentation creates numerous challenges, including a heightened risk of fraud, social dumping and labour crime.

In addition, the sector suffers from considerable labour shortages in all EU countries due to a general lack of attractiveness. Fragmentation and labour shortages are significant barriers for the sector towards a green and digital transition.

While subcontracting is a standard practice for engaging specialised companies, it has now become a business model where the concept 'specialised work' is misused, applying it to outsource routine, labour-intensive tasks. This shift in subcontracting has led to growing concerns from policy makers. Recent reports, including the European Labour Authority's 2023 report on construction,[2] Enrico Letta's *'Much More Than a Market'* report[3] and the La Hulpe Declaration,[4] highlight the urgent need for stronger governance and the elimination of abusive practices that undermine fair competition and social justice in the sector.

1 European Commission, Construction – Internal Market, Industry, Entrepreneurship and SMEs, available at: https://single-market-economy.ec.europa.eu/sectors/construction_en

2 European Labour Authority. (2023). Construction sector: Issues in information provision, enforcement of labour mobility law, social security coordination regulations and cooperation between Member States. Luxembourg: Publications Office of the European Union. Accessible at: https://www.ela.europa.eu/en/news-event/newsroom/report-digitally-accessible-and-understandable-information-promoting-cross

3 Letta, E. (2024), Much More Than a Market: Speed, Security, Solidarity. Accessible at: https://single-market-economy.ec.europa.eu/news/enrico-lettas-report-future-single-market-2024-04-10_en

4 La Hulpe Declaration on the Future of the European Pillar of Social Rights (2024). Accessible at: https://belgian-presidency.consilium.europa.eu/en/events/european-pillar-of-social-rights-the-la-hulpe-declaration-on-the-future-of-social-europe/

The ELA report on the construction sector[5] and the Commission 2024 report on the revised Posting of Workers Directive[6] determine that complex subcontracting chains are often used to cut labour costs, opening the door for fraudulent companies that exploit cross-border subcontracting to engage in wage competition, social dumping, undeclared work and worker exploitation. These companies often use complex subcontracting arrangements to obscure employment relationships, evade tax and social security obligations, escape liability and avoid scrutiny from labour inspections. Subcontracted firms can vanish without paying workers after months of labour. Many of these companies are labour-only suppliers or letterbox firms with no genuine business operations. Both reports recognise limiting subcontracting chains and banning agencies as a good practice.

Additionally, Enrico Letta states that unregulated subcontracting is a detrimental business model, noting that *"it is imperative to regulate subcontracting practices to prevent exploitation and abuse. Unchecked subcontracting chains can lead to the erosion of labour standards, social dumping and the undermining of fair competition. In addition, they can lead to violation of the applicable health and safety obligations"*.

The landmark Team Power Europe judgment, on the other hand, illustrates the urgent need to disqualify companies from posting workers if they do not meet the substantial activity requirement in their country of establishment.[7] This case highlights the loopholes exploited by some temporary work agencies (TWAs), enabling fraudulent practices that circumvent labour and social protections. To address this, the EFBWW calls for stricter enforcement of the substantial activity criterion to ensure only companies genuinely engaged in construction are permitted to post workers abroad.

The construction sector today suffers from exploitation, fraud and labour abuses, particularly in cross-border contexts.

Social dumping develops in some cases into labour crime, increasingly intertwined with organised crime. Subcontracting has been a key enabler of these practices, allowing companies to evade liability and weaken worker protection. As subcontracting chains grow longer, more complex and more international, the sector has been classified as fraud-sensitive. This allows social dumping into organised crime, severely damaging the EU's social market economy and violating principles of the European Pillar of Social Rights. Such exploitative practices not only undermine the European Union's competitiveness but also stand in stark contrast to the ambitions outlined in the Von Der Leyen Commission's Quality Jobs Roadmap[8] and its commitment to combat criminal infiltration of the real economy.

The construction sector must be built on fair competition, foster innovation and productivity, ensure high-quality skills and qualifications, guarantee working conditions, strengthen collective bargaining and uphold stringent health and safety standards. Direct employment should be the standard practice. When workers are not directly employed, full equal treatment — with equal pay for equal work at the same workplace — must be a non-negotiable principle.

5 European Labour Authority. (2023). Construction sector: Issues in information provision, enforcement of labour mobility law, social security coordination regulations and cooperation between Member States. Luxembourg: Publications Office of the European Union. Accessible at: https://www.ela.europa.eu/en/news-event/newsroom/report-digitally-accessible-and-understandable-information-promoting-cross

6 European Commission, "Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application and implementation of Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services," COM(2024) 320 final, April 30, 2024

7 CJEU Judgment in Case C-784/19, Team Power Europe GmbH v. Direktor na Glavnata direktsia "Inspektsia po truda" - Sofia, ECLI:EU:C:2021:427

8 Cited as a priority in the 2024-2029 guidelines of the Von der Leyen Commission, accessible at: https://commission.europa.eu/about/commission-2024-2029_en

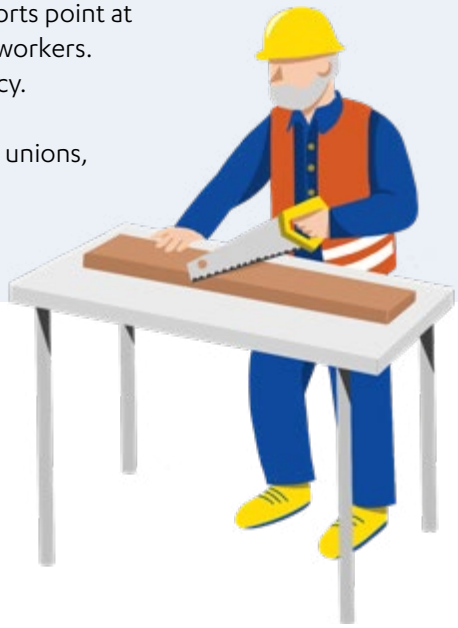
The EFBWW calls for ambitious legislative action to limit subcontracting chains, ban temporary work agencies in posting and enforce full chain liability. Effective enforcement, including stronger inspections, social ID cards and digital company registers, is essential to prevent fraud and ensure accountability across borders. The EFBWW also advocates for binding public procurement rules that reward fair labour practices and prevent abusive subcontracting. These measures are essential to ensuring fair competition and a sustainable future for Europe's construction workforce.

The construction industry relies heavily on subcontracting, with some projects involving nearly all activities performed by subcontractors.[9] For example, the Dutch multinational Royal BAM operates with a substantial network of subcontractors, encompassing a wide range of companies, from well-established firms to smaller operators. VINCI Construction, a global player with over 1,300 subsidiaries, manages projects across more than 100 countries, often engaging dozens of subcontractors per project.

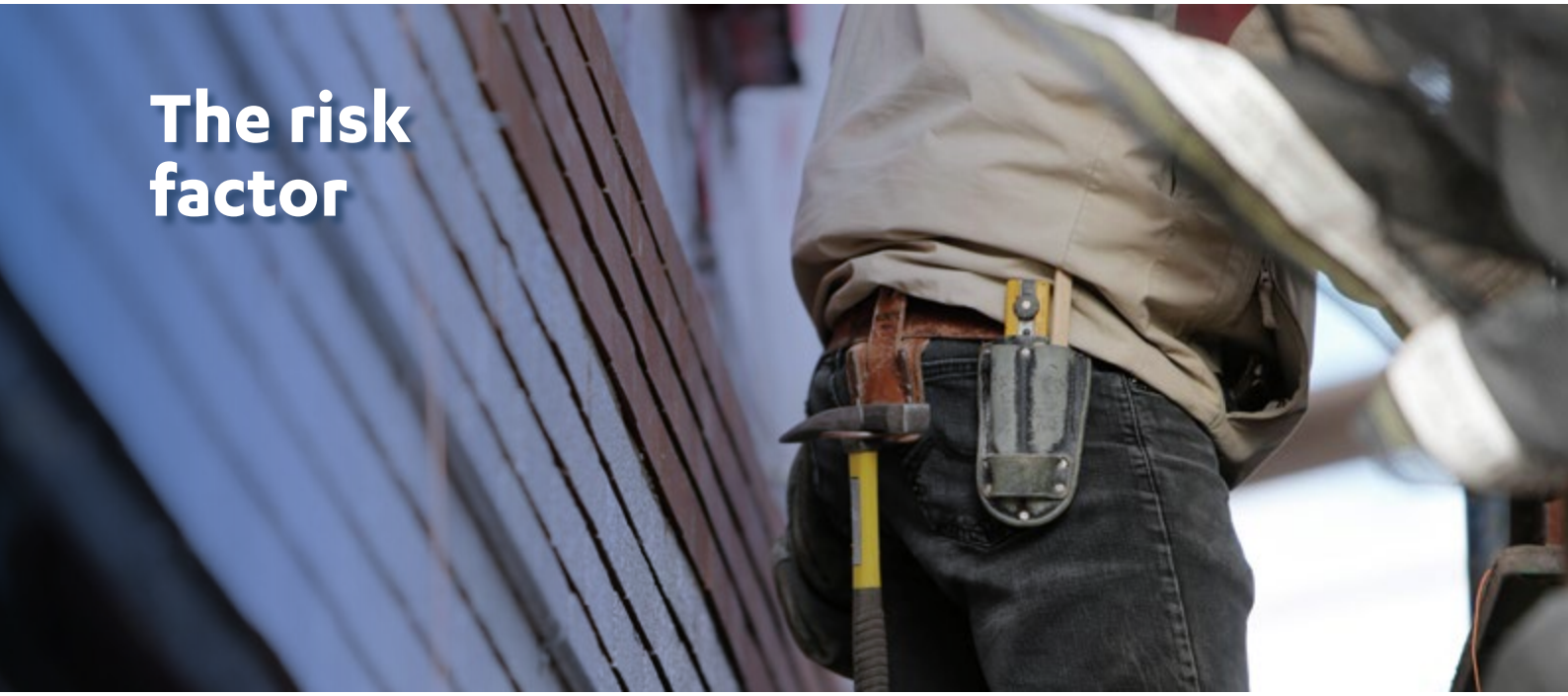
ANTWERP CASE

On 18 June 2021, a school building under construction collapsed in the Belgian city of Antwerp, resulting in the tragic deaths of five construction workers and injuries to 20 others, some of them severe. The main contractor was a Belgian company, but all the workers affected were non-Belgian posted workers, including three Portuguese nationals, one Romanian and one Russian. The project involved multiple layers of subcontracting, reportedly with up to 282 contractors active on site. As the main contractor could not confirm who was at the worksite at the time of the accident, and on whose behalf, it took several days before the rescue team could identify all victims. Technical, construction errors were identified as the causes of the collapse. Who is legally responsible for this is still under investigation. This is even more regrettable as there were repeated alerts from individual workers about recurring safety and security problems, but these alerts were not taken seriously.

Almost 4 years later the criminal investigation is still ongoing. Preliminary reports point at widespread abuse of bogus self-employment, undeclared or under-declared workers. Some of the involved subcontractors have in the meantime filed for bankruptcy. The injured workers and the families of the deceased are still waiting for any financial compensation. Immediately after the accident, the Belgian trade unions, CG FGTB and ACV BIE, have appointed a legal team to assist the workers and prepare a case before the court.



9 EFBWW, *Monitoring and enforcement of labour and social considerations in supply chains in the construction industry - Strengthening workers' capacities in European Works Councils,* 2021, available at: https://www.efbww.eu/publications/press-releases/monitoring-and-enforcement-of-labour-and-social-considerations-i/1409-a



The risk factor

While main contractors are often large multinational companies, approximately 99.9% of construction companies in the EU are SMEs (i.e. with fewer than 250 employees), with the majority being micro-enterprises employing fewer than 10 workers. This structural composition means that around 97% of the construction workforce is employed by SMEs. However, cost-saving pressures and tight deadlines imposed by clients and main contractors often lead subcontractors to circumvent regulations. These violations include underpayment, disregard for health and safety rules, non-compliance with overtime laws and breaches of workers' rights.

Long subcontracting chains increase complexity and reduce transparency, making it challenging to enforce existing legislation and collective agreements. These chains can also be exploited by criminal companies to evade joint and several liability. Construction's inherently project-based nature, with temporary and decentralized worksites of varying sizes and durations, adds further challenges for regulatory oversight.

Cross-border labour mobility significantly impacts the construction sector, accounting for more than 30% of all posted workers within the EU.[10] Most of these workers move from low-wage to high-wage countries, exposing them to vulnerabilities such as undeclared work, inadequate pay and poor working conditions. Migrant workers from non-EU countries face heightened risks, including social security fraud and violations of fundamental workers' rights.

Bogus self-employment is a widespread issue.[11] Workers are often misclassified as self-employed or as micro-companies, disguising their actual dependency on employers. This practice undermines labour standards and allows employers to evade responsibilities, including social contributions.

10 De Wispelaere, F. et al (2023). Posting of Workers – *Prior Declarations 2022.* Luxembourg: Publications Office of the European Union, p. 29. Available at: https://op.europa.eu/en/publication-detail/-/publication/384d8554-4e1c-11ef-acbc-01aa75ed71a1/language-en

11 European Labour Authority. (2023). Construction sector: *Issues in information provision, enforcement of labour mobility law, social security coordination regulations and cooperation between Member States.* Luxembourg: Publications Office of the European Union, p. 26

Intermediary labour suppliers: Exploitation as a business model

Cross-border subcontracting chains increasingly rely on intermediary labour-only suppliers, such as recruitment, placement and temporary work agencies to exploit legal loopholes and profit from wage, social security and tax dumping. While these practices may not always be illegal under European and national laws, they are undoubtedly unethical. One notable example involves Slovenia, which introduced a system allowing firms posting workers abroad to benefit from a lower rate of social security contributions, commonly referred to as a 'posting bonus.' Under this scheme, contributions were calculated based on a lower wage than what workers actually received, leading to significant shortfalls in social security payments and unfair competition.

Following strong advocacy and pressure from trade unions, Slovenia retracted this practice in January 2024. The government now applies standard social security rates for posted workers, effectively eliminating the incentive for wage and social security dumping.

Lack of controls, lack of cross-border digital enforcement tools

Shady, criminal and fraudulent companies continue to thrive due to weak oversight by labour inspection bodies, which in many EU Member States lack sufficient resources, manpower and up-to-date cross-border digital tools. These gaps in enforcement enable companies to exploit legal loopholes and administrative gaps at both EU and national levels, with a low risk of detection and penalties.

The ELA, established in 2019, is now fully operational and undergoing its first review. While the ELA has made progress, its ability to effectively tackle cross-border social dumping and fraud remains under scrutiny. The European Parliament has called for a stronger mandate, including the ability for ELA to independently investigate and address breaches of EU law in cross-border cases.[12] Additionally, the EFBWW and FIEC have jointly recommended that the ELA prioritise cross-border enforcement, improve data collection, establish a construction-specific unit within the Authority, enhance access to information, optimise the EURES network under ELA and ensure that sectoral social partners are represented in ELA's working groups and governing bodies.[13] Such changes would significantly enhance its role in combating abusive practices across the internal market.

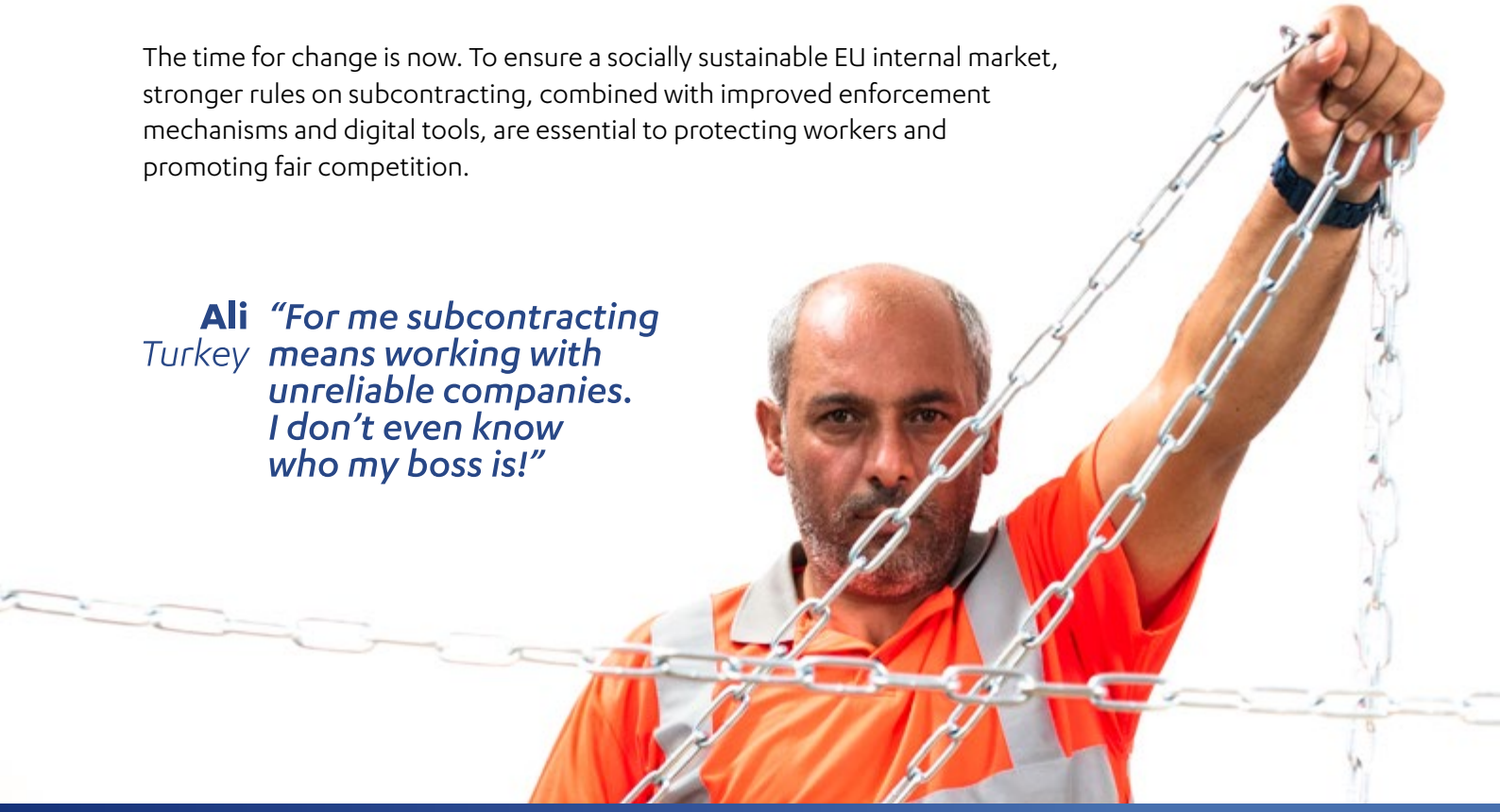
12 European Parliament resolution of 18 January 2024 on the revision of the European Labour Authority mandate (2023/2866(RSP))

13 EFBWW and FIEC joint recommendations on the role of the European Labour Authority, 28 March 2024, available here: https://www.efbww.eu/stream/441e875e-9833-4baf-85d8-bd50827f1ff8

Digital oversight tools remain a critical challenge. Despite earlier commitments, the European Social Security Number (ESSN) has been shelved by the European Commission. Instead, the European Social Security Pass (ESSPASS) has been proposed and a pilot project is ongoing. ESSPASS aims to create a digital tool for real-time cross-border verification of social security coverage and entitlements.[14] However, it remains uncertain whether this initiative will lead to a binding enforcement mechanism for all Member States or if further legislative action will be required.[15] The EFBWW and FIEC have jointly urged the European Commission to ensure that ESSPASS is developed into a fully operational enforcement tool and that its implementation is aligned with sectoral needs.[16] The European Parliament has also called for a robust, digital enforcement system that guarantees fair mobility and strengthens worker protections.[17]

However, the EFBWW warns that digitalisation, if approached incorrectly, can weaken rather than strengthen enforcement. The European Commission's e-Declaration initiative, which seeks to create a single digital notification system for posted workers, has been presented as a tool to reduce administrative burdens for businesses. The EFBWW warns that this focus on simplification risks undermining enforcement by limiting Member States' ability to develop monitoring mechanisms adapted to their own needs. Digital tools must not be used to weaken national enforcement strategies but should instead strengthen authorities' capacity to detect fraud and ensure compliance with labour and social security regulations. The EFBWW insists that any digital enforcement tool, including e-Declaration, must serve enhancing compliance and enforcement, rather than reducing oversight in the name of simplification.

The time for change is now. To ensure a socially sustainable EU internal market, stronger rules on subcontracting, combined with improved enforcement mechanisms and digital tools, are essential to protecting workers and promoting fair competition.



Ali *Turkey* ***"For me subcontracting means working with unreliable companies. I don't even know who my boss is!"***

14 European Parliament resolution of 25 November 2021 on the introduction of a European social security pass for improving the digital enforcement of social security rights and fair mobility (2021/2620(RSP)

15 EFBWW press release urging the European Commission to accelerate the digitalisation of social security, 8 September 2023, available here: https://www.efbww.eu/news/efbww-urges-the-european-commission-to-accelerate-the-digitalisa/3681-a

16 Joint statement by EFBWW and FIEC calling for digital enforcement, 24 June 2024, available here: https://www.efbww.eu/news/eu-construction-social-partners-call-for-digital-enforcement/2657-a

17 European Parliament resolution on the need for a coordinated digital enforcement framework in EU labour mobility, 12 October 2023

1. Limits on Subcontracting

Subcontracting is a standard practice for engaging specialised companies to perform specific technical tasks in construction projects. However, artificially long and non-transparent subcontracting chains have become part of an exploitative business model, exacerbating social dumping and undermining fair competition in the construction sector. Binding European standards are essential to address these issues effectively, ensuring that subcontracting is used responsibly and transparently in both public and private contracts.

The EFBWW demands a binding legislative proposal that should include at least the following limitations on subcontracting:

- **Restrict subcontracting levels**: Subcontracting should be limited to a maximum of one or two sub-levels. This ensures sufficient flexibility for main contractors while preventing excessive wage competition and safeguarding fair labour practices;
- **Direct Jobs should be the norm**: The majority of workers must be employed directly by the main contractor, with only a limited percentage of workers permitted to operate within the subcontracting chain, whether horizontally or vertically;
- **Tasks restricted** at lower levels: Only specific tasks requiring specialised expertise should be permitted at lower tiers of the subcontracting chain, reducing the potential for abuse and ensuring accountability;
- **No escape from liability**: The performance of mandatory due diligence obligations cannot absolve main contractors of their responsibilities or liability towards subcontracted workers (see demand 4 on joint and several liability).

Complex and lengthy subcontracting chains often obscure employment relationships, facilitating wage dumping, tax evasion and social fraud. These practices exploit workers, many of whom are migrant or posted workers vulnerable to abuse. To combat these systemic issues, the EFBWW urges Member States to adopt binding rules that apply uniformly across all construction projects, irrespective of whether they are publicly or privately funded.

Limiting subcontracting chains also addresses **broader problems in the construction sector, including labour crime, undeclared work and** the **proliferation of fraudulent letterbox companies**. By enforcing clear and enforceable limitations, the EU can ensure greater transparency, accountability and fairness, fostering a socially sustainable construction industry.

Restricting the length of subcontracting chains is a recognised good practice, as highlighted in the European Commission's 2024 report on the implementation and monitoring of the revised Posting of Workers Directive (EU 2018/957), which identifies limiting subcontracting levels as an effective measure to promote compliance and reduce exploitation.

THE SOCIAL CHARTER FOR THE PARIS OLYMPIC GAMES AND BEYOND

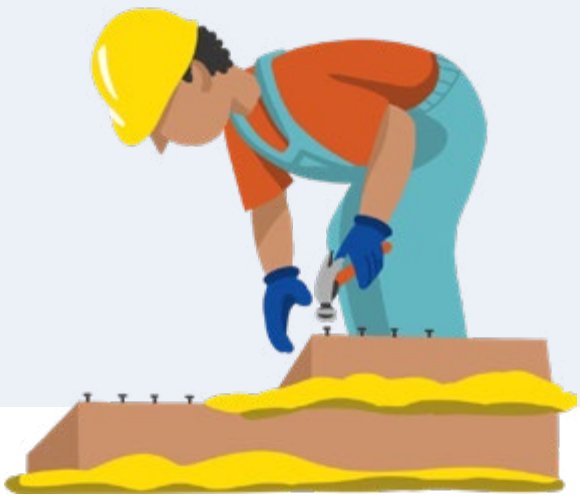
Signed in 2018, the Social Charter for the Paris Olympic Games was an agreement between the Organising Committee, trade unions (CGT, CFDT, FO), and employers to ensure fair working conditions on construction sites. The objective was "No deaths to build the Olympics."

To achieve this, unions monitored subcontracting, conducted workplace inspections, and ensured access to training and secure employment. Union representatives were given full site access, allowing for regular oversight. These measures were supported by SOLIDEO, the public body overseeing Olympic infrastructure, which introduced stricter subcontracting rules as part of its social responsibility commitments.

Across 70 Olympic construction sites, 181 accidents were recorded, including 30 serious cases, but no worker fatalities were reported. This stands in contrast to the Grand Paris Express project, where five worker deaths were recorded.

However, the Paris 2024 construction sites were understandably under immense public and political scrutiny. Unlike other large infrastructure projects, the global spotlight meant that compliance with the highest safety standards was not optional.
The French Ministry for Work (DRIEETS) created a specific unit for Large Construction Projects to check all sites on a daily basis. More than 1,300 controls have been carried out on construction sites related to the Paris Olympic Games, a record.
The lessons from this experience go beyond trade union involvement: when there is sustained public attention, there is pressure to uphold stricter oversight.

(Source : https://www.ouvrages-olympiques.fr/4-fois-moins-daccidents-que-chantier-classique)



2. No Public Money for Exploitation

Public procurement accounts for a significant share of the construction sector's market, representing 20–38% of the industry in various Member States. Yet, exploitation and social dumping persist. Cost-cutting incentives, driven by the lowest-price criterion, frequently result in poor-quality outcomes, breaches of workers' rights and unfair competition. To achieve socially responsible public procurement, stronger rules are necessary to eliminate exploitation and drive fair practices.

The EFBWW calls for abolishing the 'lowest price' criterion. Awarding contracts based on the lowest bid often leads to abnormally low tenders that disregard social and labour standards. Instead, public authorities must adopt the principle of the 'most economically advantageous tender', ensuring a 'best price-quality ratio' and compliance with collective agreements.

We call for legally sound mandatory social criteria which are independent of the 'subject matter principle' and the provision that **social clauses cannot be considered discriminatory** measures in public contracts.

Prequalification of companies must also be established. These systems would ensure that only companies meeting technical, financial and social integrity standards can bid on contracts. Such mechanisms should be designed with the input of social partners to guarantee fair and effective implementation.

Clear **exclusion criteria** are also essential to prevent companies engaging in social fraud or non-compliance with collective agreements from participating in tenders. The 'self-cleaning' mechanism must be abolished as it allows companies to submit self-declarations of compliance and shown itself to be ineffective and prone to abuse. To facilitate exclusion from tender procedures, Member State authorities should be able to publicly **blacklist** companies who have been convicted of noncompliance with social and environmental standards.

Labour inspections and other enforcement bodies are best placed to monitor and control the application of social standards, supported by digital company registers and social ID cards (see **point 5a**). ELA must also take a central role in coordinating cross-border enforcement and assisting national authorities with monitoring subcontracting chains (see **point 5c**).

ITINERA – NORWAY CASE: A GOOD PRACTICE IN PUBLIC PROCUREMENT

In July 2024, the Norwegian Public Roads Administration (NPRA) set a strong precedent by excluding the Italian construction company Itinera S.p.A. from bidding on a major tunnel project in northern Norway. The reason? Labour rights violations by one of its subcontractors in Denmark.

Danish trade unions provided evidence that Tekno Fire, a subcontractor of Itinera, had forced workers to return part of their wages. Since compliance with collective agreements was a mandatory qualification criterion in the tender, the NPRA excluded Itinera from the bidding process. Itinera contested the decision, but on 1 October 2024, the Oslo District Court ruled in favour of the NPRA, confirming that excluding companies based on past labour violations is both lawful and justified.

The ruling referenced the 2020 European Court of Justice decision in Tim SpA v Consip, which confirmed that public authorities can exclude bidders whose subcontractors have breached labour, social or environmental obligations (per the provisions of the 2014 Public Procurement Directive).

The Norwegian approach demonstrates that we can stop public money being given to companies engaged in exploitation. The upcoming revision of the EU Public Procurement Directives should follow this best practice by strengthening mandatory social criteria and ensuring that companies with a record of social fraud are excluded from public contracts.

3. Ban Agencies and Other Intermediaries in Posting

Non-genuine posting of workers remains a significant issue within subcontracting chains in the construction sector, often leading to exploitation, wage theft and the circumvention of labour laws. The EFBWW demands the mandatory enforcement of Article 4 of the 2014 Enforcement Directive, which defines the criteria for genuine posting and aims to prevent abuse. This article is essential for ensuring that posted workers are not used as tools for undercutting wages and weakening labour standards across the EU.

The vulnerabilities of third-country nationals (TCNs) are particularly concerned in this context. These workers are often employed through intermediary agencies or non-genuine companies, exposing them to heightened risks of exploitation and wage theft. **Addressing these practices is critical to protecting TCNs**.

To address these challenges, the EFBWW calls for:

- **Tightening** the **'substantial activity requirement':** Only companies genuinely engaged in substantial construction activities in their 'home' Member State should be allowed to post workers abroad. This requirement must leave no room for exploitation. Legal criteria must include the working time of employees, the actual services provided and the place where turnover is generated. This would prevent letterbox companies and other fraudulent entities from exploiting posting loopholes. Member States that fail to enforce these rules – or facilitate the posting of workers by 'non-genuine' companies – must face infringement procedures alongside dissuasive sanctions.
- **Banning intermediary** labour-only suppliers**:** Recruitment and temporary work agencies must no longer be permitted to post workers. These intermediaries often contribute to a race to the bottom in terms of wages and working conditions, particularly for TCNs. Labour shortages should instead be addressed through direct employment at the place of work, with full social security coverage and adherence to collectively bargained wages and working conditions.
- **Guaranteeing access** to justice**:** Posted and migrant workers, including undeclared workers and bogus self-employed, must have access to mechanisms for recovering unpaid wages and entitlements swiftly and effectively. Companies that exploit workers must face severe financial penalties and exclusion from public contracts to disincentivise these practices.
- **Mandatory OSH training:** Minimum occupational safety and health (OSH) training must be mandatory for all workers in subcontracting chains. A transparent training accreditation system should be implemented, alongside rigorous monitoring, control and enforcement to protect workers' safety on work sites.

To develop the most effective legislative response, the EFBWW calls for a thorough legal and economic analysis of temporary work agencies in the construction sector. This analysis should provide a strong foundation for designing the most appropriate regulatory measures.

TEAM POWER EUROPE CASE

The Team Power Europe case (C-784/19) addressed how temporary work agencies can post workers while remaining under their home country's social security system. The Court of Justice of the EU ruled in June 2021 that a temporary work agency must conduct substantial activities in its home country beyond recruitment and administration. Simply acting as a channel for posting workers abroad is insufficient.

This case reinforces concerns about the role of intermediaries in subcontracting chains. Many agencies operate solely to post workers, without meaningful domestic operations. This creates opaque employment structures where responsibility is blurred, wages and social security contributions are minimised, and workers are left vulnerable.

EFBWW has long called for a ban on agencies and other intermediaries in posting. This judgment strengthens the argument that posting should be linked to real employment relationships in the sending country. It highlights the urgent need for tighter regulations, ensuring that subcontracting and labour mobility do not become tools for exploitation.

4. Full Joint and Several Liability Across the Whole Subcontracting Chain

Joint and several liability is essential for ensuring accountability in the construction sector, requiring clients and main contractors to take responsibility for the actions of their subcontractors. The EFBWW calls for **joint and several liability to apply uniformly across the EU**, including in cross-border situations.

Under joint and several liability, main contractors must be accountable for the actions of their direct subcontractors and subsequent tiers. This provides assurance to workers that they will receive their wages, benefits and entitlements, even if a subcontractor fails to meet its obligations or ceases operations.

The EFBWW demands the following:

- **EU legislation must ensure that joint and several liability applies across all levels of subcontracting** in both national and cross-border contexts. This should include mandatory liability for unpaid wages, social security contributions and other entitlements.
- Main contractors that fail to comply with their liability obligations should face **substantial financial penalties to dissuade non-compliance**.
- **Workers must have reliable mechanisms to seek redress** and recover unpaid wages or benefits, including straightforward access to legal channels.

While due diligence requirements (covered in **Point 6**) are valuable for identifying and managing risks in subcontracting chains, they cannot replace joint and several liability. **Main contractors must remain fully responsible for compliance with labour laws and collective agreements** throughout the subcontracting process. **The EFBWW urges the EU and Member States to establish binding rules that ensure the effective application of joint and several liability**.

FLAMANVILLE CASE

The Flamanville 3 nuclear reactor project in France has become a cautionary tale on excessive subcontracting. Construction began in 2007 and was initially planned for completion in five years, the project has been plagued by delays and instances of irregularities. A major factor in these problems was the heavy reliance on subcontracting chains and temporary employment agencies, which created poor oversight and, effectively, worker exploitation. In the project 460 Polish and Romanian employees were involved. They were hired via the Irish based temporary works agency Atlanco and posted to France. Between 2009 and 2011, several Polish workers were injured. Contrary to what they expected and what is foreseen in the context of posting, these workers were not covered by social protection in their home country. When they were sent back to their country, they discovered they had to pay the costs in advance and ask for reimbursement in Cyprus. These workers had a contract with Atlanco via a fictitious office in Cyprus. In this case Atlanco was also condemned. At the time EFBWW and the French affiliates had already exposed the creative and complex fraud schemes of Atlanco and the responsibility of the main contractor for what is going on in their subcontracting chain. Since then Atlanco has disappeared from the radar, but it used to operate under many different names (Atlanco, Atlanco Construction Limited, Atlanco Limited, Atlanco Rimec, Atlanco Rimec Group, RIMEC, Rimec Contracting SRL, etc.). And over the years, it had added up cases in court throughout the European Union.

In January 2021, French construction giant Bouygues was eventually convicted of “concealed work” and fined for illegally using posted workers under precarious terms. The fine? Only 30,000 euros. The French social security institutions calculated that 12 million euros should have been paid in social contributions.

The case highlights how fragmented subcontracting chains allow companies to escape responsibility. Workers are left vulnerable, safety and quality standards suffer and major projects face huge delays and cost overruns. This proves the urgent need for full joint and several liability across subcontracting chains, ensuring that main contractors bear responsibility for labour abuses at all levels.

This demonstrates the need to ban agencies and other intermediaries in posting and establish full-chain liability. The Flamanville case shows that when responsibility is diluted through subcontracting chains, worker protection and project integrity collapse. Direct employment, strict subcontracting limits and joint and several liability are the solution.

5. Effective Enforcement

Addressing exploitation and ensuring fair practices in subcontracting chains require effective enforcement measures that combine modern digital tools, robust labour inspections, a stronger ELA and effective sanctions.

5a. Social ID Cards and Other Digital Enforcement Tools

Digital tools are essential for improving transparency and addressing fraud in cross-border subcontracting chains. The EFBWW, together with FIEC, advocates for effective European digital enforcement tools applicable to all companies and workers in Europe. These tools would reduce social dumping and enhance compliance with labour laws.

The EFBWW's joint project with FIEC, 'Social ID Cards in the Construction Sector' (SIDE-CIC), offers a foundation for **developing an EU framework for social ID card schemes**. Successful national practices, such as Finland's Valtti-card, Belgium's Construbadge and Norway's Jobbkort, demonstrate the potential of these systems in reducing abuse in subcontracting chains.

The EFBWW is closely monitoring the development of the European Social Security Pass (ESSPASS), which aims to digitalise entitlement documents like the European Health Insurance Card and enable real-time verification across borders. ESSPASS could be a tool not only to strengthen social security rights and worker mobility, but to better tackle abusive subcontracting practices. Additionally, the EFBWW calls for **the introduction of a 'European Social Security Number'** for all workers to further support better coordination of social security across the EU. Finally, digital company registers must be established with minimum EU standards to enhance cross-border enforcement. These registers should include essential details, such as company founders and worker identities, to improve oversight and prevent fraud in subcontracting chains.

5b. Labour Inspections and Complaint Mechanisms

Digital enforcement tools must go hand-in-hand with effective labour inspections to ensure compliance. The EFBWW advocates for new EU rules, setting minimum standards for labour inspections, in line with ILO Convention No. 81. These rules should guarantee sufficient resources, staffing and inspection frequency, addressing both national and cross-border enforcement needs. Labour inspectors must have the authority to access workplaces without prior notice, examine conditions and interview workers and employers. They should also have digital access to employment and social security records for effective enforcement. Enhanced cross-border data exchange between enforcement authorities in areas such as working conditions, occupational safety and taxation will be essential for improving oversight. Additionally, workers, trade unions and third parties must have the ability to file complaints through effective mechanisms, addressing the current barriers for mobile and migrant workers. These measures will strengthen enforcement and protect vulnerable workers in the construction sector.

5c. Strengthened European Labour Authority (ELA)

EFBWW has advocated for many years the need for an EU Agency that would assist national enforcement authorities with complex cross-border cases of fraud and to increase the effectiveness of enforcement across borders. The EFBWW has welcomed the creation of ELA in 2019. After an initial start-up phase, the time has now come to strengthen ELA's enforcement mandate. In line with the strong coordination competences of Europol, the EFBWW calls for an ELA that can operate as a social Europol with strong and clear enforcement competences. The EFBWW highlights in particular the essential role that ELA should play in addressing abusive subcontracting practices in the construction sector. In its 2023 report on construction, ELA identified subcontracting as a significant source of exploitation and evasion of labour laws. The ELA-coordinated campaign on construction and the Week of Action in March 2024 reinforced these concerns, revealing systemic non-compliance in subcontracting chains, including the use of letterbox companies, bogus posting and undeclared third-country nationals. During the Week of Action, 654 workers were interviewed, 191 companies were inspected, and authorities uncovered multiple violations related to working conditions, employment status and social security fraud. To effectively address these challenges, the EFBWW calls for a stronger ELA with an expanded mandate and increased capacity to enforce labour rights across the EU. ELA must play a more proactive role in monitoring and coordinating enforcement efforts across borders, ensuring that subcontracting does not serve as a vehicle for exploitation.

The EFBWW calls for ELA to:

- Collaborate with EUROFOUND and national statistical authorities for an **Enhanced Data Aggregation** to refine data quality and consistency across member states.
  This collaboration should prioritize data collection on national inspections and their outcomes in key sectors and should contribute to **develop a statistical observatory** within ELA to track trends in social dumping and labour crimes. Such comprehensive data aggregation is paramount for effective decision-making.
- **Conduct targeted inspections** focused on subcontracting chains in construction.
  These inspections should address illegal practices, including the use of letterbox companies, labour-only intermediaries and fraudulent subcontractors. ELA should also coordinate more and better joint and concerted inspections with national authorities;
- **Enhance cross-border enforcement coordination** related to subcontracting**,** supporting national authorities in enforcing labour laws and collective agreements;
- **Improve transparency** by advocating for registers of subcontractors and requiring the main contractors to disclose their subcontracting arrangements;
- **Support national enforcement bodies** and sectoral social partners by providing technical assistance, data-sharing and training to strengthen oversight of subcontracting practices;
- **Establish a construction-specific unit within ELA**, in close collaboration with the sectoral social partners, to monitor subcontracting practices and other vehicles for social dumping.
  ELA should then issue recommendations on enforcement strategies tailored to the construction sector.
- **Work with national enforcement authorities to impose fines** on companies violating labour laws and making sure that such sanctions are effectively enforced across Member States, preventing firms from escaping liability by relocating operations.

The EFBWW fully supports expanding ELA's role to improve data collection, strengthen enforcement against abusive subcontracting. A stronger ELA, equipped with more resources, legal authority and enforcement capacity, is essential to making these demands possible. EFBWW and FIEC have released joint recommendations on strengthening the role of ELA in March 2024, which reflect these demands.

5d. Effective and Dissuasive Sanctions across Borders

The EFBWW calls for effective and dissuasive sanctions across Member States to ensure that breaches of labour laws, social standards and occupational safety are met with dissuasive penalties. These sanctions should include financial fines, exclusion from public contracts and blacklisting for repeat offenders. Cross-border enforcement must be strengthened, with mechanisms to ensure penalties imposed in one Member State are recognised and enforced EU-wide. By integrating digital tools, stronger inspections and enhanced coordination by ELA, sanctions can become a powerful tool to uphold workers' rights and ensure accountability.

SOLESI CASE: A LONG FIGHT FOR JUSTICE

In 2013, the Italian company Solesi was hired to expand Dong Energy's oil terminal in Fredericia, Denmark, as part of a €270 billion project. Danish trade union 3F found that 130 Italian and Romanian workers were being underpaid, breaking the collective agreement rules. Solesi, part of the IREM group, refused to pay the wages owed, starting a long legal fight.

The Danish Labour Court said in 2017 that Solesi must pay €2 million to the workers, but the company appealed the decision in Denmark and then in Italy. Italian courts at first refused to accept the Danish ruling, saying it did not follow their national laws. Only in 2024, after more than ten years, did workers finally receive the money owed to them.

The Solesi case is not an isolated incident. It is part of a broader pattern of worker exploitation and evasion by the parent company, IREM Group, which has been at the centre of multiple labour rights violations across Europe. Time and again, IREM and its subsidiaries, including Solesi, have used subcontracting chains and legal loopholes to underpay workers, avoid responsibility, and delay justice through lengthy legal battles.

In 2005, the Italian construction company IREM was operating in Sweden and was accused of exploiting two hundred Thai workers. The horrific situation only came to an end after the Swedish trade union Byggnads intervened, and after strikes and demonstrations took place.

In 2009, IREM was involved in the Lindsey Oil Refinery dispute in the United Kingdom, where it hired Italian and Portuguese workers under conditions that provoked mass protests from local contractors. The strikes, which spread across the country, highlighted how IREM's reliance on foreign labour at lower wages was used to bypass local employment agreements. This was a clear example of wage dumping facilitated by subcontracting.

Yet again, IREM was at the centre of controversy in Belgium more recently. In 2022, its role as a contractor in the Borealis Kallo project resulted in one of the biggest labour fraud scandals in Belgian history. Subcontractors working under IREM were accused of severe wage theft and even human trafficking, leading Borealis to terminate IREM's contracts. Despite the exposure of these abuses, IREM has continued securing contracts across Europe, with little accountability.

This pattern of exploitation and acting with impunity shows how companies like IREM exploit weak subcontracting regulations to operate without consequences. The Solesi case in Denmark demonstrates how even when companies are convicted, they can drag out legal proceedings for over a decade, using the lack of effective cross-border enforcement and legal disputes to delay or escape penalties.

Timeline

2013

- Solesi is contracted to expand Dong Energy's (now Ørsted) oil terminal in Fredericia, Denmark, for a project worth 2 billion DKK (€270 million).
- Danish trade union 3F discovers extensive underpayment of 130 construction workers on the site.
- After failed attempts at dialogue with Solesi, 3F initiates a case in the Danish labour court.

2014

- 3F initiates a case regarding wage fraud at the Dong construction site.
- Solesi is fined 400,000 DKK (€53,615) for underpaying 8 employees, following threats and intimidation of 3F members in court.
- Solesi refuses to pay, prompting 3F to escalate the case to the bailiff's courts (Fogedretten).

2015

- The bailiff's courts order Solesi to pay the fine or recover the amount via the main contractor.
- Solesi continues to refuse payment.

2017

- 3F returns to the Danish Labour Court, seeking 14 million DKK (€2 million) for 130 employees underpaid in violation of the collective bargaining agreement.
- The court rules in favour of 3F, ordering Solesi to pay the amount.
- Solesi attempts to overturn the judgment through the EU, but the Danish Labour Court rejects the appeal.

2018

- Solesi challenges the Danish judgment in the Civil Court of Syracuse (Italy), arguing it conflicts with Italian legal principles, EU rules and the European Convention on Human Rights.
- The Syracuse court rules that the Danish judgment cannot be enforced in Italy, citing "ordre public."

2021

- The Court of Appeal in Catania, Sicily, overturns the Syracuse decision, ruling that Solesi must comply with the Danish Labour Court's judgment.
- Solesi appeals to the Italian Constitutional Court.

2021
2023

- The Italian Constitutional Court upholds the ruling in favour of 3F, enabling enforcement of the Danish Labour Court's judgment in Italy.

2024

- In May, the bailiff's courts announce that frozen funds can be used to fulfil the judgment, and 3F receives the funds shortly thereafter.
- The interest on the penalty amount is to be settled between the parties.

6. Mandatory Due Diligence

With the Directive on Corporate Sustainability Due Diligence (CSDDD) now signed into law, the EFBWW highlights the urgent need for its effective transposition and implementation. The new rules, as outlined in Article 1 of Directive 2024/1760, strengthen tools for workers and unions to safeguard rights on construction sites. To achieve these goals, due diligence must go beyond being a procedural obligation and ensure meaningful protections for workers across subcontracting chains.

Subcontracting must always be considered as a risk factor when carrying out due diligence.

Due diligence obligations are essential for identifying and mitigating risks such as wage theft, bogus self-employment, unsafe working conditions and breaches of labour laws. However, these obligations must not replace joint and several liability, which is addressed separately in **Point 4**.

The EFBWW calls on the EU and Member States to adopt binding due diligence legislation that genuinely protects workers' rights and enhances accountability in the construction sector.

- **Main contractors must thoroughly evaluate their subcontractors** before entering into contract. This must include an evaluation of subcontractors' track record of compliance with labour laws, collective agreements and OSH standards. Assessments should address risks at every level of the value chain, ensuring that due diligence is not limited to direct subcontractors.
- **Independent, external audits should be required** to verify compliance with due diligence. Labour inspections and enforcement authorities must be empowered to review and challenge audit findings.
- **EWCs can help identify risks**, monitor compliance and advocate for improvements, ensuring that workers' perspectives are integrated into corporate practices (read more in **Point 7**).

Non-compliance must lead to significant penalties, blacklisting and other deterrent measures. Furthermore, victims of breaches must have access to legal remedies to recover unpaid wages and other entitlements, per Article 14 of CSDDD.

The EFBWW strongly opposes efforts to weaken due diligence requirements in the name of 'simplification'. The European Commission's Omnibus Package and its broader simplification agenda raise concerns that due diligence obligations could be diluted, turning them into a box-ticking exercise rather than an effective enforcement tool.

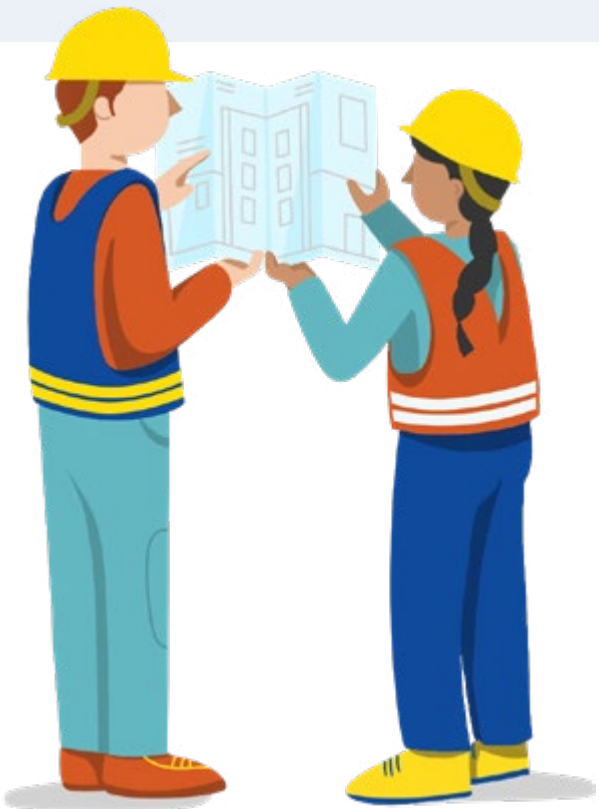
The EFBWW warns that simplification should not mean lowering standards but must instead ensure stronger and more enforceable worker protections. Subcontracting must always be recognised as a high-risk factor when carrying out due diligence and companies must be held accountable for labour violations in their subcontracting chains.

MÖSSINGEN FIBRE OPTIC CASE

25 Serbian workers were laying fibre optic cables on behalf of Deutsche Glasfaser in autumn 2023 in Mössingen, Baden-Württemberg. The workers received different parts of their wages, but large parts are still outstanding.
The total amount of unpaid wages is over 90,000 Euros gross.

In this case, we are dealing with a long chain of subcontractors with many links, in which the main contractor cannot be clearly identified. Two large groups of construction workers were sent to Germany via Slovenian and Croatian companies to carry out a contract for a German company. This German company was itself only a subcontractor. The consultant from Faire Mobilität Stuttgart issued payment requests for all 25 construction workers to five subcontractors as well as to the client. However, there was no response.

The Croatian subcontractor had neither A1 certificates nor employment contracts or payrolls for its employees. Representatives of Deutsche Glasfaser referred to another company and then stopped responding to messages. Almost a year after completion of the work, the construction workers had not received their wages.



7. Empower Trade Union Representatives and European Works Councils

The EFBWW calls for stronger roles for trade union and worker representatives at all levels of a company to monitor and enforce workers' rights within supply and subcontracting chains. **Representatives must have full access to all relevant information regarding subcontracting**, outsourcing and purchasing policies as well as be granted the right to conduct site visits and audits.

To achieve this, the EFBWW calls for enhanced workers' rights to information, consultation and participation.

A key demand is for the European Commission to deliver an ambitious revision of the EWC Directive 2009/38/EC, aligned with the European Parliament's report in 2023. Subcontracting, outsourcing and purchasing must be fully integrated into the information and consultation processes of European Works Councils (EWCs).

The EFBWW also emphasises the need for EWCs to:

- build networks with trade unions, experts and members of national and local works councils.
- receive appropriate training to strengthen scrutiny of companies' subcontracting policies.
- identify and address risk factors in the company's operations.

A revised EWC Directive must ensure that EWCs have access to effective legal remedies when companies fail to respect their consultation rights. Strengthened participation mechanisms will ensure that workers' voices are heard and their rights are protected across all tiers of subcontracting and supply chains.

EFBWW'S TOOLKIT TO EMPOWER EWC REPRESENTATIVES

EFBWW's toolkit for EWC representatives provides a structured strategy to tackle social, labour and environmental risks in subcontracting chains. It equips EWCs with the legal frameworks, investigative tools and escalation strategies needed to hold companies accountable for their supply chains.

The toolkit outlines a progressive action plan for EWC Representatives to follow:

1. **Participatory Actions**: EWCs should begin by pushing for transparency and accountability in subcontracting. This includes negotiating due diligence policies, global and local agreements, and strengthening consultation mechanisms to influence corporate decisions, strengthen mediation mechanisms and influence legislative processes

2. **Mediation Based on a State Non-Judicial System:** Next, EWCs can engage external actors such as OECD National Contact Points, labour inspectorates, ILO trade union-company dialogue and public ombudsmen to mediate disputes and demand corrective actions.

3. **Offensive Actions:** If companies still fail to act, EWCs should then escalate pressure through media campaigns and collective actions, including strikes, to expose abuses in subcontracting chains and force accountability.

4. **Legal Action:** As a last resort, EWCs can pursue legal action, taking companies to court to enforce compliance with due diligence and subcontracting rules.

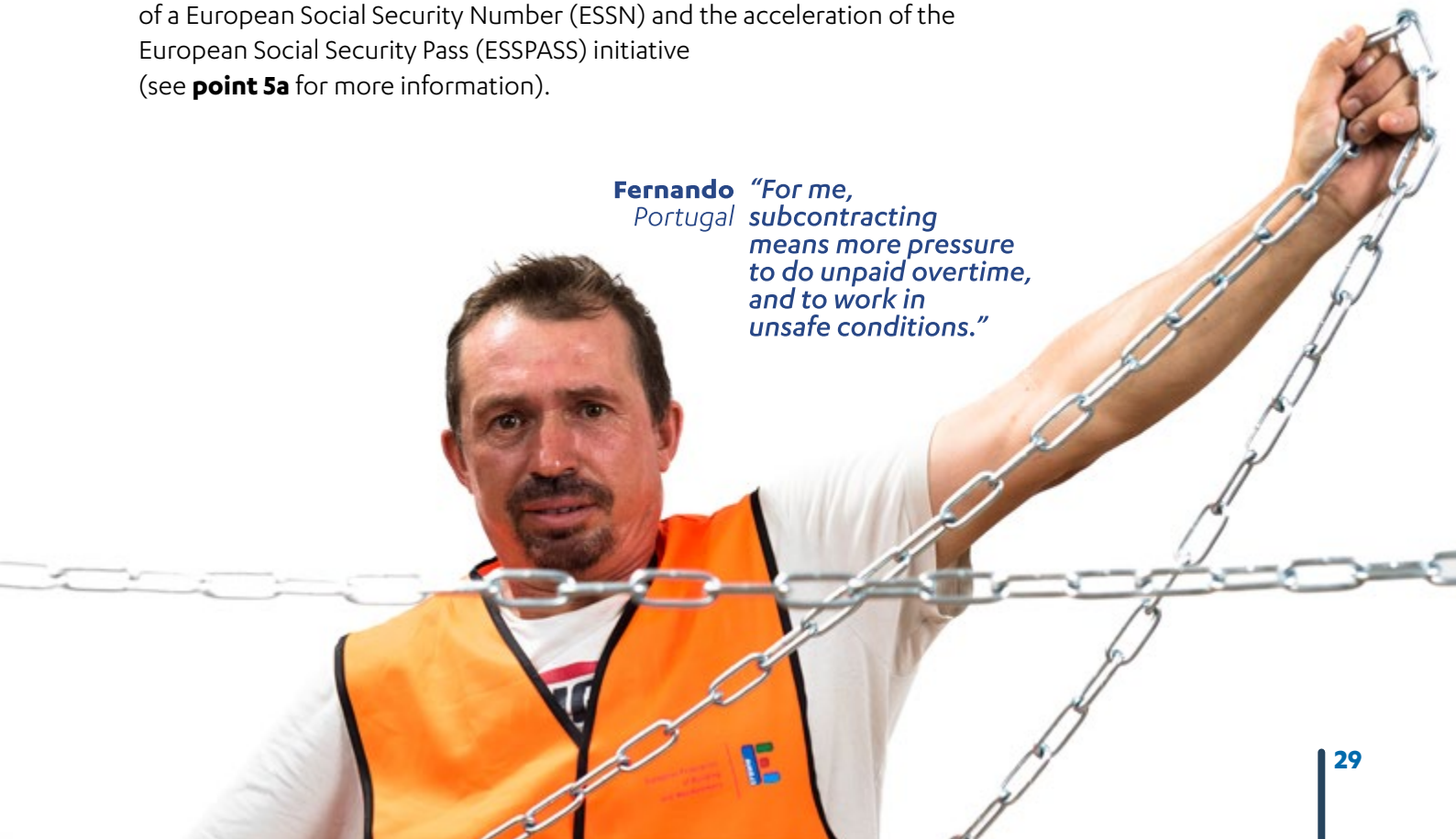
The toolkit makes clear that subcontracting chains create risks when left unchecked. It highlights that limiting subcontracting to tier 1 is essential for companies to maintain control over working conditions. The decentralisation of purchasing decisions in many multinationals, such as Vinci, makes supplier databases and risk-mapping essential tools for enforcement.

8. Social Protection for All Workers

Ensuring social protection for all workers is essential to combat exploitation and uphold fair treatment, particularly in the construction sector. The revision of Regulations 883/2004 and 987/2009 on the coordination of social security systems is a long-overdue opportunity to improve protections for workers in cross-border employment. These regulations are crucial for the construction sector, where mobility is high and workers are particularly vulnerable to exploitation and fraud. The EFBWW calls for the swift conclusion to the negotiations to finalise this revision. A priority demand is the removal of any exemptions to **mandatory prior notification for posted workers in construction**. This measure is essential to preventing fraud and ensuring accurate declarations of wages, working hours and social security contributions.

Too many workers find themselves underinsured or entirely uninsured, leaving them vulnerable and unsupported in the event of work-related accidents. In 2022, the European Union recorded 3,286 fatal accidents at work, with the construction sector accounting for nearly a quarter of these fatalities. This alarming statistic underscores the urgent need for proper social protection mechanisms to ensure that workers receive adequate support and compensation following work-related incidents.

To address these challenges, the EFBWW advocates for the implementation of a European Social Security Number (ESSN) and the acceleration of the European Social Security Pass (ESSPASS) initiative (see **point 5a** for more information).



Fernando *Portugal* *"For me, subcontracting means more pressure to do unpaid overtime, and to work in unsafe conditions."*

SLOVENIA'S STATE-AIDED EXPLOITATION: THE 'POSTING BONUS'

For years, Slovenia's state-aided business model for posting workers exploited loopholes in EU social security rules, allowing companies to underpay social contributions for thousands of TCNs. EFBWW and Austrian trade union GBH exposed this in 2019, filing a complaint with the Commission's DG Competition over Slovenia's unfair advantage in posting.

Slovenia, one of the biggest exporters of foreign workers in the EU proportionally, used a system where posted workers' (often from Serbia and Bosnia and Herzegovina) social security contributions were based on Slovenian wages, even when working in higher-wage countries like Austria and Germany. This artificially lowered labour costs, undermined social protection for workers and created a €128 million gap in unpaid contributions every year.[a]

This practice was abolished in 2024, but it highlights a much larger problem. Similar loopholes in social security coordination rules continue to exist across Member States, allowing companies to abuse the system and leave posted workers with reduced social benefits and weaker protections.

EFBWW insists that all workers must be fully covered by social security contributions in their country of work, and that Member States must prevent companies from using posting as a tool for social dumping.[b] Scrutiny of other national schemes is now essential to prevent the continued exploitation of workers through gaps in EU law.

[a] Mojca Vah Jevšnik, Sanja Cukut Krilić & Kristina Toplak (2021), *Posting.Stat: Posted Workers from Slovenia – Facts and Figures,* HIVA Research Institute for Work and Society. Available at: https://hiva.kuleuven.be/en/news/docs/ZKD9978_POSTING_STAT_Slovenia_Posted_workers_from_slovenia_facts_and_figures

[b] EFBWW, *'EFBWW and GBH regret the delays in the process against Slovenian state aid business model'*, 23 June 2022. Available at: https://www.efbww.eu/news/efbww-and-gbh-regret-the-delays-in-the-process-against-slovenian/3362-a

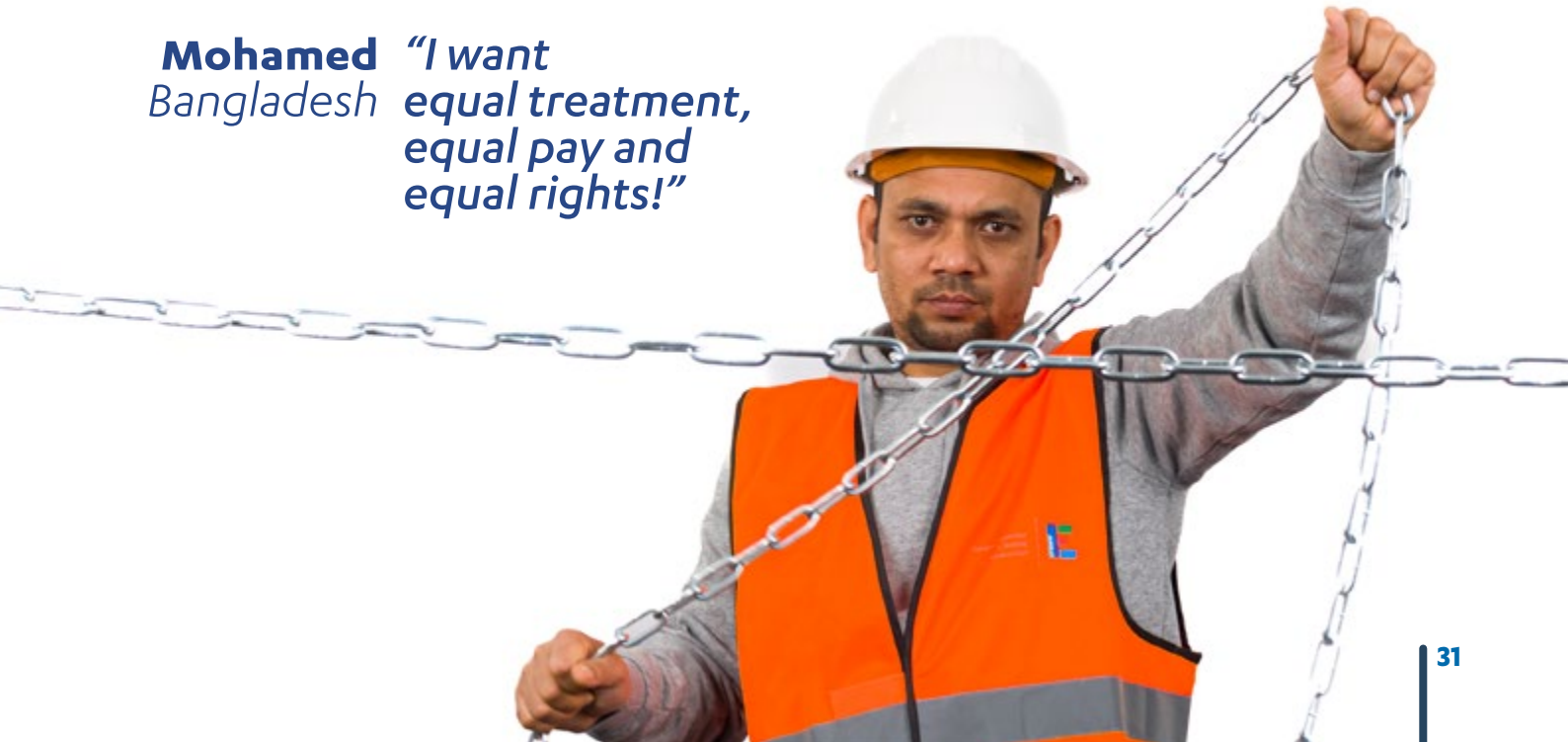
9. Guaranteed Occupational Safety and Health Standards

The EFBWW demands stronger guarantees for OSH standards across all tiers of subcontracting chains. In the construction sector, complex and multi-layered subcontracting often leads to inconsistent OSH practices, placing workers at greater risk of accidents, injuries and health problems. The lack of uniform health and safety standards across subcontractors undermines worker protections and creates hazardous working conditions, particularly for migrant and cross-border workers.

We call for the introduction of binding EU rules that mandate minimum OSH standards for all subcontractors, regardless of their position in the chain. This directive must require that all subcontractors, including those operating across borders, comply with the highest OSH standards applicable in the host country and can demonstrate that all workers have received the same level of OSH training and personal protective equipment. It should also ensure that general contractors are held accountable for enforcing these standards throughout the subcontracting chain, ensuring that no worker is exposed to unsafe conditions.

Moreover, mandatory OSH training and certification for all workers should be introduced, combined with regular inspections. These standards must be supported by monitoring, enforcement and penalties for non-compliance. Ensuring that every worker has access to safe working conditions is critical to preventing accidents, promoting worker well-being and fostering a sustainable and socially responsible construction sector.

Mohamed
Bangladesh
"I want equal treatment, equal pay and equal rights!"

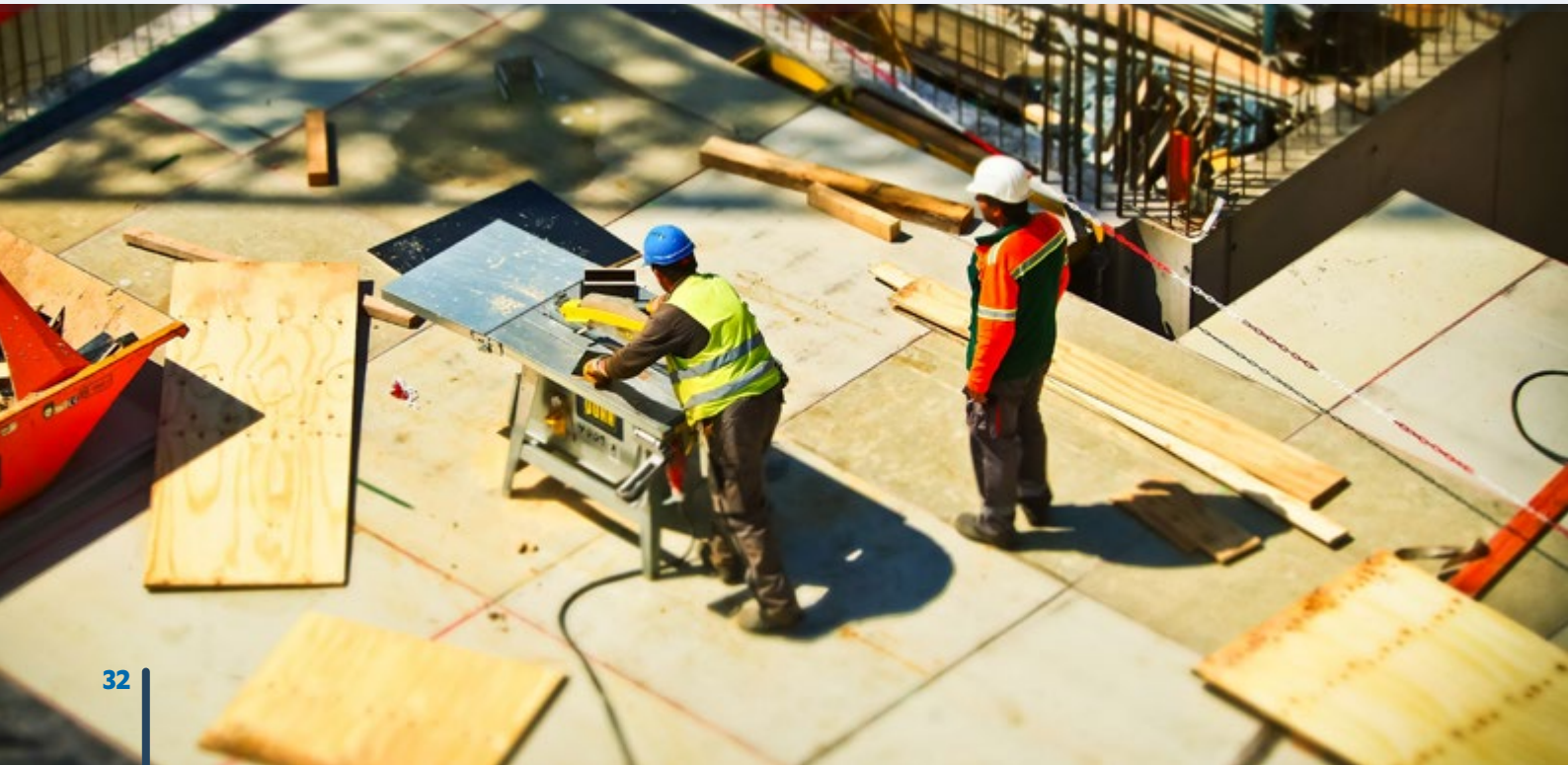


ENOUGH IS ENOUGH: ZERO ACCIDENTS IN CONSTRUCTION NOW!

Between October 2023 and February 2024, more than 30 construction workers lost their lives on worksites across Europe.
Many were cross-border or migrant workers, frequently trapped in irresponsible subcontracting chains, bogus self-employment and poorly enforced safety standards. Despite existing OSH regulations, fatal construction accidents are increasing across Europe, with many cases going unreported.

- Italy, February 2024 – Five workers killed in a Florence building collapse, four of whom were migrant workers.
- Netherlands, February 2024 – Two workers killed in a crane accident.
- France, January 2024 – Two workers killed in a wall collapse; official data shows one construction fatality per day in France.
- Spain, December 2023 – Nine workers killed in one month, double the previous month's toll.
- Sweden, December 2023 – Five workers killed in a major accident, followed by another fatality days later.
- Germany, October 2023 – Four workers killed in a scaffold collapse inside an elevator shaft.

These tragedies expose the systemic failures in protecting construction workers. Migrant and posted workers remain particularly vulnerable due to a lack of proper OSH training, language barriers and weak enforcement of subcontracting regulations.



10. Same Work, Same Rights, Same Salary

European and national legislation must guarantee equal treatment in all public and private procurement, so that the subcontractor applies to its workers the same working conditions and social security rights as the main contractor applies, including the same collective agreements. Equal treatment for all workers in the subcontracting chain, including all cross-border and migrant workers, is a matter of fundamental social rights and human dignity.

ENSURING EQUAL TREATMENT FOR THIRD-COUNTRY NATIONALS IN CONSTRUCTION

EFBWW and FIEC carried out a joint project on TCNs in the European construction labour market through the Future of the European Labour Market in Construction (FELM) project. The findings highlight serious concerns about exploitation and unequal treatment of TCNs, particularly in subcontracting chains.

One example from Romania in 2019 exposed the conditions of 200 Vietnamese construction workers. They were required to work up to 60 hours per week, well beyond the Romanian legal limit of 48 hours – including overtime. Their contracts stated that if they failed to complete all hours, their wages would be deducted. Despite these excessive hours, they were paid as little as $650 per month during winter, rising to $750 in spring, far below industry standards. The contracts also contained an illegal clause banning them from participating in strikes.

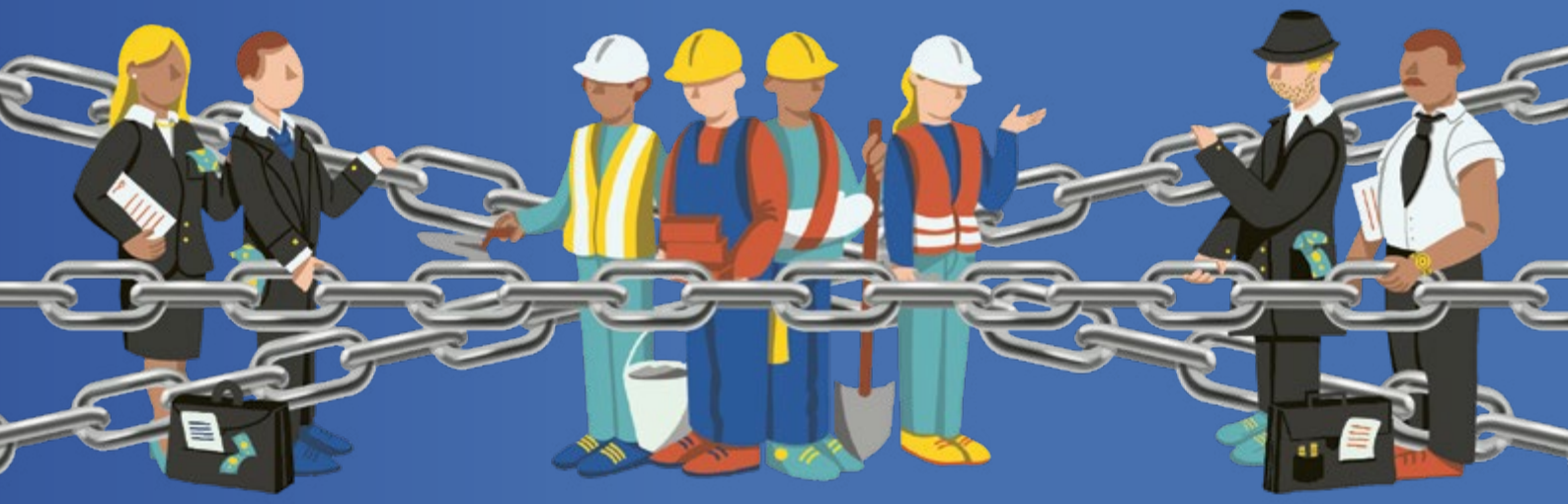
Beyond low pay and long hours, the workers were housed in overcrowded containers, with twelve people sharing a space the size of a studio flat. Two hundred workers were forced to share six toilets and nine showers. Meals were provided but were reportedly the same every day and of poor quality. Even transport to the construction site was controlled by the employer, with workers packed tightly into vehicles.
Safety equipment was inadequate, putting workers at even greater risk.

When these conditions were exposed in the media, rather than addressing the issues, the employer retaliated by installing surveillance cameras to monitor workers and identify those who had spoken out.

This case demonstrates the urgent need to ensure equal treatment of all workers, regardless of nationality. EFBWW and FIEC argue that stronger enforcement of labour laws and better oversight of subcontracting chains are essential to stop these abuses and ensure fair conditions for all construction workers.

WHO'S THE BOSS?

EUROPEAN
FEDERATION
OF BUILDING AND
WOODWORKERS



STOP EXPLOITATION IN SUBCONTRACTING CHAINS!

EUROPEAN
FEDERATION
OF BUILDING AND
WOODWORKERS

The EFBWW urgently calls for new rules on subcontracting and their enforcement

www.efbww.eu

EFFAT MODEL DIRECTIVE

Proposal for a Directive laying down specific rules for fair working conditions with respect to subcontracting chains and labour market intermediaries

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 153(2), point (b), in conjunction with Article 153(1), point (b), thereof,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Pursuant to Article 3 of the Treaty on European Union (TEU), the aims of the Union are, inter alia, to promote the well-being of its peoples and to work for the sustainable development of Europe based on a highly competitive social market economy, aiming to ensure full employment and social progress, a high level of protection and improvement of the quality of the environment, while promoting social justice and equality between women and men. Pursuant to Article 9 of the Treaty on the Functioning of the European Union (TFEU), the Union is to take into account, inter alia, requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, and the fight against social exclusion.

(2) Pursuant to Article 8 of the TFEU, the Union, in all its activities, shall aim to eliminate inequalities, and to promote equality, between men and women.

(3) Article 151 TFEU provides that the Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter (ESC), have as their objectives, inter alia, the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection and dialogue between management and labour.

(4) Article 5 of the Charter of Fundamental Rights of the European Union (the 'Charter') prohibits forced labour and trafficking in human beings. Article 15 of the Charter provides that nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union. Article 20 provides for equality before the law. Article 27 of the Charter provides for the right of workers to information and consultation. Article 31 of the Charter provides for the right of every worker to working conditions which respect his or her health, safety and dignity.

(5) The European Pillar of Social Rights (the 'EPSR'), proclaimed at Gothenburg on 17 November 2017, establishes a set of principles to serve as a guide towards ensuring fair working conditions. Principle No 5 of the Pillar recalls the principle of fair and equal treatment regarding working conditions, access to social protection and training. Employment relationships that lead to precarious working conditions shall be prevented, including by prohibiting abuse of atypical contracts. Principle No 6 of the Pillar reaffirms workers' right to fair wages that provide for a decent standard of living. Principle No 8 of the Pillar provides that the social partners are to be consulted on the design and implementation of economic, employment and social policies according to national practices and that they are to be encouraged to negotiate and conclude collective agreements in matters relevant to them, while respecting their autonomy and the right to collective action.

(6) Abusive subcontracting practices and unregulated labour intermediation are increasingly used to reduce costs, escape employer liability, and circumvent applicable labour standards. The lack of effective labour inspections across the EU leads to insufficient compliance with, and enforcement of, existing rights.

(7) To secure workers' rights across subcontracting chains the EU should set clear provisions to tackle abusive practices, strengthen liability and transparency, and ensure more robust individual and collective labour rights. Subcontracting should be driven by the need for specialised expertise or technical skills that are not available within a company, or to delegate non-essential tasks outside the main scope of its business. However, there is growing evidence that subcontracting is increasingly used to carry out core business operations. Examples include housekeeping or reception services in hotels, as well as deboning, cutting or slaughtering in slaughterhouses or subcontracting in construction and transport. The result is that these core activities are often performed on-site at the client's premises by workers of contractors or subcontracting firms that experience lower standards and more precarity.

(8) After consulting with management and labour at EU level in accordance with Article 154(2) of the TFEU on the course of action to be adopted at EU level with regard to fair working conditions in subcontracting chains, the role of labour market intermediaries, and the frequency and effectiveness of labour inspections, the Commission considered that EU action was advisable.

(9) 'Subcontracting' should be given a broad understanding so as to encompass any contractual arrangement whereby one undertaking entrusts to another the manufacture of goods, the supply of services or the performance of a given activity, to be provided by relying on the subcontractor's own business organisation. Therefore, the subcontractor must bear such risks and responsibilities as well as exercise the employer's powers of control and direction over its workforce.

(10) Having evaluated the effectiveness and efficiency of the current Union social legislation, certain loopholes in the existing provisions and deficiencies in their enforcement have been identified, such as those concerning equal treatment for work of the same value at the same workplace.

(11) The reduction of employer's responsibilities is a key factor in an undertaking's decision to have recourse to subcontracting arrangements. The separation of strategic decision-making from risks and responsibilities can facilitate the abuse or circumvention of applicable labour standards. Workers across subcontracting chains often perform the same tasks in the same workplace as directly employed workers. However, subcontracted workers tend to work longer hours, at a lower remuneration and under more precarious contracts. Working conditions at the bottom of long subcontracting chains are particularly exploitative, where the financial stability of economic operators is usually more fragile.

(12) Member States should take appropriate steps to secure equal treatment for equal work and to promote direct employment, limiting subcontracting by prohibiting it for companies core activities.

(13) Member States should define core business functions for each economic sector following an individual or joint request by the sectoral social partners, as agreed between the social partners or by agreement with the sectoral social partners.

(14) It is urgent to 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.

(15) In cases where accommodation is provided by a subcontractor or an intermediary, it should be organised independently from the employment contract to avoid any associated further dependency on the employer. Equally, Member States shall ensure that the termination of one contract does not automatically entail the termination of the other contract. Accommodation should respect quality standards and the related costs should remain limited.

(16) Gangmaster practices and illegal labour intermediation are a major source of exploitation particularly in fraud sensitive sectors of the EU economy and need to be tackled.

(17) Labour market intermediaries should be defined as a natural or legal person which provides services for matching offers of and applications for employment, without the labour market intermediary becoming a party to the employment relationships which may arise therefrom. These services include any activities relating to job seeking aimed to facilitate, inform, or regulate how workers are matched to employers, how work is accomplished, and how conflicts are resolved. The ILO Convention 181 on Private Employment Agencies should be considered a reference.

(18) The creation of a community licence together with national registers for labour intermediaries helps in establishing fairer recruiting processes and tackle discrimination. Member States should 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.

(19) In order to act as labour market intermediary in the EU, labour market intermediary's directors should have not been convicted of a criminal offence relating in particular to exploitative working conditions, gangmaster practices and other forms of illegal labour intermediation or human trafficking. Moreover they should genuinely perform substantial activities, other than purely internal management and/ or administrative activities, in the Member State of establishment.

(20) Evidence shows that 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 certain sectors of the economy. Complaint mechanisms are an important tool to ensure targeted inspections and hold employers accountable, but they remain under-used and inaccessible, particularly by mobile and migrant workers.

PROPOSES THE ADOPTION OF THIS DIRECTIVE

Chapter I.

GENERAL PROVISIONS

Article 1

SUBJECT MATTER

With a view to achieve equal treatment at the workplace and tackle social dumping and labour abuses the purpose of this Directive is to:

a. Improve working conditions in subcontracting chains across the European Union and promote direct employment relationships;

b. Regulate the role of labour market intermediaries;

c. Strengthen the frequency and bolster the effectiveness of labour inspections and control systems in the field of social and employment legislation and applicable labour standards.

This Directive shall be without prejudice to the full respect for the autonomy of the social partners, as well as their right to negotiate and bargain collectively.

Article 2

DEFINITIONS

For the purposes of this Directive, the following definitions apply:

a. '**subcontractor**' means any natural or legal person in the subcontracting chain including the main contractor and any sub-contractor, with exception to the client;

b. '**subcontracting**' means the arrangement under which a natural or legal person, called 'the client', entrusts to another natural or legal person, called 'the subcontractor', the manufacture of goods, the supply of services or the performance of a given activity, to be provided to the client or performed on his behalf by relying on the subcontractor's own business organisation and workforce; for the purpose of this directive subcontracting covers also the relation between the client and the contractor;

c. '**subcontracting chain**' means a sequence of contractual arrangements in which a client engages one or more subcontractors. A subcontracting chain includes all tiers of subcontractors from the first tier subcontractor engaged by the client down to any lower tier subcontractors engaged by other subcontractors;

d. '**core business function**' means the activity of an undertaking that is central to its business operations and/or form part of its main production process or of the services it provides;

e. '**support business function**' means an ancillary or peripheral task or function that supports core business functions;

~~f.~~ '**labour market intermediary**' means a natural or legal person that provides services for matching offers of and applications for employment, without the labour market intermediary becoming a party to the employment relationships which may arise therefrom; these services include any activities relating to job seeking aimed to facilitate, inform, or regulate how workers are matched to employers, how work is accomplished, and how conflicts are resolved.

g. '**Labour inspectors and controlling bodies**' means a natural or legal person, authorities and bodies responsible for compliance and enforcement of workers' rights resulting from social and employment legislation and collective agreements.

Article 3

SCOPE

This Directive applies to undertakings with operations in the internal market.

Chapter II.

SUBCONTRACTING CHAINS

Article 4

PROHIBITION OF SUBCONTRACTING FOR CORE BUSINESS FUNCTIONS

1. The subcontracting of undertakings' core business functions shall be prohibited.

2. Member States shall define the core business functions by sector following an individual or joint request by the sectoral social partners, as agreed between the social partners or by agreement with the sectoral social partners. The definition of core business functions per sector shall be reviewed at least every five years.

3. Core business functions shall be exclusively performed by workers in a direct employment relationship with the undertaking's owner.

4. Member States shall ensure that third parties or self-employed workers do not perform tasks directly related to a core business function.

Article 5

SUBCONTRACTING OF SUPPORT BUSINESS FUNCTIONS AND LIMITATION OF THE SUBCONTRACTING CHAIN

1. This Directive shall not preclude the subcontracting of support business functions if:

   (a) the subcontracting is justified by the need for specialised skills or equipment, and;

   (b) the subcontracting is not directly related to the performance of a core business function.

2. The performance of work by self-employed workers or any third parties shall be considered as subcontracting for the purpose of this Directive.

3. Member States shall ensure that, in the case of support business functions, the subcontracting chain should not be longer than two tiers.

4. Member States shall ensure that, for each and every subcontractor of a same client, the following information is publicly available and provided to workers' representatives:

   (a) the full name, place of registration and legal representatives of the subcontractor, and;

   (b) the nature of the business function performed by the subcontractor.

5. The information provided under paragraph 4 shall be updated with any changes that may occur during the period of subcontracting, such as a change in the identity of the subcontractor or a modification in the nature of the subcontracted business function.

Article 6

JOINT AND SEVERAL LIABILITY IN THE SUBCONTRACTING CHAIN

Where the employer is a subcontractor, Member States shall ensure that the client and any subcontractor are jointly and severally liable to pay, at least:

a. any sanction arising from a violation of the obligations imposed under this Directive, and;

b. any back payments and compensation due to workers in application of national and EU law and/or applicable collective agreements including in case of unpaid wages, circumvention and evasion of social security contributions and taxes, violation of health and safety standards, violation of the rights to organise and bargain collectively.

Article 7

EQUAL TREATMENT FOR EQUAL WORK IN THE SAME WORKPLACE

1. The working and employment conditions of workers employed along the subcontracting chain shall be, at the minimum, those that would apply if these workers had been recruited directly by the client to perform the same or similar tasks.

2. This Article is without prejudice to national and Union provisions and/or collective bargaining agreements reclassifying bogus self-employment into dependent employment relationships.

3. Without prejudice to Directive 2018/957, the applicable working and employment conditions of workers employed along the subcontracting chain are those laid down by law and/ or by collective agreement in the sector of reference and/or place where the work is carried out.

Article 8

INFORMATION AND CONSULTATION RIGHTS

1. Member States shall ensure that subcontractors inform their workers of the essential aspects of the employment relationship guaranteed by the client to its direct workers;

2. Member States shall ensure that subcontractors and labour market intermediaries inform workers of the essential aspects of the employment relationship that will apply to them at the workplace.

3. The information shall be provided in the worker's own language or a language they understand.

4. For the purposes of this Article, essential aspects of the employment relationship as well as timing and means of information shall at least be those laid down by Directive 2019/1152.

5. Without prejudice to applicable rights to information and consultation, Member States shall ensure that clients inform and consult workers' representatives in due course before finalising a decision to have recourse to subcontracting, on the circumstances justifying recourse to subcontracting, the intended duration of the subcontracting arrangements, the working conditions of workers employed across the subcontracting chain, the kind of activities and volume of the operations concerned and the number of workers involved.

6. Workers' representatives shall be entitled to hold at least one information and consultation session directly with the intended subcontractor(s).

Chapter III.

LABOUR MARKET INTERMEDIARIES

Article 9

COMMUNITY LICENCE

1. Labour market intermediaries providing services to one or several undertakings operating in the internal market shall have an effective and stable establishment in a Member State.

2. Labour market intermediaries shall be in possession of a valid Community licence. The Community licence shall be issued by the competent authorities of the Member State of establishment for a renewable period of up to 5 years and in accordance with at least the conditions laid down in Article 10.

Article 10

MINIMUM REQUIREMENTS FOR ENGAGEMENT IN THE OCCUPATION OF LABOUR MARKET INTERMEDIARY

1. Member States shall issue community licenses to labour market intermediaries established and/or operating on their territories only when at least the following cumulative conditions are fulfilled:

   (a) the labour market intermediary has not been convicted for serious and/ or repeated infringements of:
      i. applicable labour standards resulting from national and EU laws or collective agreements;
      ii. social security contributions;
      iii. tax law.

   (b) the labour market intermediary or one or several of its directors have not been convicted of a criminal offence relating in particular to:
      i. exploitative working conditions;
      ii. gangmaster practices and other forms of illegal labour intermediation;
      iii. human trafficking within the meaning of Directive 2011/36;

   (c) the labour market intermediary genuinely performs substantial activities, other than purely internal management and/or administrative activities, in the Member State of establishment.

2. In order to determine whether a labour market intermediary genuinely performs substantial activities other than purely internal management and/or administrative activities within the meaning of subparagraph 1 (c), Member States shall make an overall assessment of all factual elements characterising those activities. Such elements shall include in particular:

   (a) the place where the labour market intermediary uses office space, pays taxes and social security contributions;

   (b) the place where workers are recruited and the Member State in which they perform their tasks;

   (c) the number of contracts performed and/or the size of the turnover realised in the Member State of establishment.

Article 11

NATIONAL ELECTRONIC REGISTERS

1. For the purposes of the implementation of this Directive, each Member State shall keep a national electronic register of labour market intermediaries in possession of a valid Community licence. The data contained in that register shall be processed under the supervision of a public authority designated for that purpose.

2. National electronic registers shall contain at least the following data:

   (a) the name, the legal form of the labour market intermediary and the sector of activity;

   (b) the address of its establishment, or in case the address of a natural person carrying out the activity of labour market intermediary;

   (c) as appropriate, the names of its directors and the name of a legal representative;

   (d) the number of people employed in the undertaking;

   (e) the date of delivery and the date of expiration of the Community licence;

   (f) the risk rating of the labour market intermediary pursuant to Article 18;

   (g) the data referred to in points (a) to (f) shall be publicly accessible, in accordance with the relevant provisions on personal data protection.

3. Member States shall take all necessary measures to ensure that all data contained in the national electronic register are kept up-to-date, are accurate, accessible for other Member States and shared with the European Commission.

Chapter IV

FAIR RECRUITING, DECENT ACCOMODATION AND DATA PROTECTION

Article 12

FAIR RECRUITEMENT

1. Member States shall ensure that employers, including subcontractors, labour market intermediaries or any other natural or legal person shall not impose fees nor costs on workers during the recruitment process or during the performance of the work activity. Prohibited fees, costs or wage deductions shall include but are not limited to:

   (a) recruitment fees for job placement services;

   (b) payment for application processing, interviews, or any other stage of the recruitment process including travel;

   (c) fees for training programs as a condition for job placement;

   (d) travel costs;

   (e) costs or deductions for uniforms or working tools;

   (f) or any other fees, such as transport, service provision, etc.

2. Member States shall ensure that employers, including subcontractors, labour market intermediaries or any other natural or legal person treat workers involved in a recruiting process without discrimination based on nationality, sexual identity, religion, political opinion, or any other form of discrimination covered by international human rights instruments, as well as EU and national laws, collective agreements and practices.

Article 13

DECENT ACCOMODATION

1. Where, in accordance with national law and practice, an employer, including a subcontractor, a labour market intermediary or any other person provides accommodation to workers away from their regular place of residence, Member States shall ensure that the conditions of accommodation respect the quality standards in force in the Member State in whose territory the workers perform their tasks and that the costs remain limited, and respect the principles of non-discrimination and proportionality.

2. The contractual arrangements governing worker accommodation shall be kept legally distinct from the employment contract so that the termination of one contract does not automatically entail the termination of the other contract.

Article 14

DATA PROTECTION RIGHTS

1. Member States shall ensure that employers, including subcontractors, labour market intermediaries or any other natural or legal person:

   (a) inform workers when data relating to them is recorded or is planned to be forwarded to third parties. The information provided shall specify the identity of the authority responsible for processing the data, the type of data processed and the reasons for such action;

   (b) all workers have a right of access to data relating to them held by the authority responsible for processing those data. That right shall be exercisable at no cost, without constraint and at reasonable intervals;

   (c) all workers whose data are incomplete or inaccurate have the right to have those data rectified, erased or blocked;

   (d) all workers have the right to oppose, on legitimate grounds, the processing of data relating to them. Where there is justified opposition, the processing may no longer involve those data;

   (e) undertakings comply, where applicable, with the relevant provisions on the protection of personal data.

2. This Directive shall be without prejudice to Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

Article 15

PLACEMENT BY PUBLIC EMPLOYMENT SERVICES

1. Member States may determine, following the consultation with sectoral social partners, that the placement of certain categories of workers shall only be carried out by public employment services.

2. Member States may consider that placement and recruitment services constitute a service of general economic interest justifying a restriction of competition in accordance with Article 106 of the Treaty on the Functioning of the European Union.

Chapter V.

EFFECTIVE LABOUR INSPECTIONS

Article 16

FREQUENCY OF LABOUR INSPECTIONS

1. Member States shall take the necessary measures to ensure adequate funding and resources for effective labour inspections and controls on working conditions.

2. Member States shall ensure that at least 8 % of employers in each economic sector are inspected or controlled every year on aspects concerning working and employment conditions.

3. This article shall not create any prejudice to those Member States where inspections are carried out by social partners or with the involvement of social partners.

Article 17

QUALITY OF LABOUR INSPECTIONS

1. Member States shall ensure that labour inspectors and controlling bodies provided with proper credentials are empowered:

   (a) to enter freely and without previous notice any workplace liable to inspection;

   (b) to enter any premises which they may have reasonable cause to believe require inspection;

   (c) to carry out any examination, test or enquiry which they consider necessary in order to ensure that the applicable labour standards are being strictly observed, and in particular:

      i. to interrogate, alone or in the presence of witnesses, the employer or the workers on any matters concerning the application of the legal provisions and applicable labour standards;

      ii. to require the production of any books, registers or other documents relating to conditions of work, in order to see that they are in conformity with the legal provisions, and to copy such documents or make extracts from them;

      iii. to communicate with other authorities and bodies and to cross check also using digital tools relevant data with other public administrations, including social security contributions, production levels, or land extension in order to identify potential workers' rights violations where to concentrate controls efforts.

   (d) to access national registers of other Member States where an inspection raises cross-border concerns, informing the European Labour Authority.

Article 18

RISK RATING SYSTEM

1. Member States shall introduce a risk rating system for employers, including subcontractors, labour market intermediaries or any other natural or legal person, based on the number, gravity and frequency of occurrence of infringements to collective agreements, labour law, health and safety standards, social security rules and tax law.

2. Employers and intermediaries with a high risk rating shall be inspected more closely and more often.

3. Member States shall communicate annually to the European Commission and to the European social partners at cross-sectoral and sectoral level the information contained in their national risk rating system.

Chapter VI.

FINAL PROVISIONS

Article 19

PENALTIES

Member States shall ensure that any infringement of the obligations laid down by this Directive are punishable by effective, proportionate and dissuasive sanctions.

Sanctions shall at least include:

a. financial penalties that are proportionate to the nature, gravity and duration of the undertaking's infringement and which shall increase in amount according to the number of affected workers and the undertaking annual turnover;

b. orders excluding the undertaking from an entitlement to some or all public benefits, aids or subsidies, public procurement procedures, EU funds managed by the relevant Member States, for a period of up to three years;

c. orders excluding the undertaking from participating in a public contract as defined in Directive 2014/24/EU of the European Parliament and of the Council.

Article 20

DEFENCE OF RIGHTS

1. Member States shall ensure that judicial and/or administrative procedures for the enforcement of obligations under this Directive are available to all workers, including third country nationals workers, who consider themselves wronged by failure to apply the principle of equal treatment to them.

2. Member States shall ensure that trade unions and other legal entities, which have a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.

3. The central management shall bear the judicial costs incurred in carrying out the judicial and/or administrative procedures, the costs of legal representation and subsidiary costs.

4. Member States shall establish necessary measures to protect workers from retaliation or any other adverse consequences resulting from a complaint lodged with the aim of enforcing compliance with the rights provided for in this Directive. The measures shall include the creation of accessible and effective complaint mechanisms.

5. Labour inspectors and controlling bodies shall not report the identity and data of workers identified during controls to migration enforcement authorities.

Article 21

AUTONOMY OF SOCIAL PARTNERS

This Directive is without prejudice to the full respect for the autonomy of the social partners, as well as their right to negotiate and conclude collective agreements.

Article 22

NON-REGRESSION CLAUSE AND MORE FAVOURABLE PROVISIONS

1. This Directive shall not constitute valid grounds for reducing the general level of protection already provided to workers within Member States, in particular with respect to subcontracting, labour intermediation and controls on working conditions.

2. This Directive shall not affect Member States' prerogative to apply or to introduce laws, regulations or administrative provisions which are more favourable to workers , in particular in relation to subcontracting and licencing, registration or certification requirements.

3. This Directive is without prejudice to any rights conferred on workers by other legal acts of the Union.

Article 23

REPORTS

Every three years, the European Commission shall submit a report to the European Parliament and the Council on the practical implementation of the provisions of this Directive, indicating the viewpoints of the social partners at national and European level.

Sorry we subcontracted you

Silvia Borelli, Antonio Loffredo,
Claire Marzo and Manfred Walser

Report 2025.02

EUROPEAN TRANSPORT WORKERS' FEDERATION

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Silvia Borelli, Antonio Loffredo,
Claire Marzo and Manfred Walser

Report 2025.02
european trade union institute

Silvia Borelli is Professor of Labour Law at the University of Ferrara (Italy). She has been involved in many research projects at national and European level. Her curriculum and the full list of publications are available here: https://docente.unife.it/silvia.borelli/curriculum

Antonio Loffredo is Professor of Labour Law. He is the author of several essays and books and speaker in seminars and conferences, at national and international level, in the field of Labour Law and Trade Union Law.

Claire Marzo is Associate Professor (MCF HDR) at University Paris East (UPEC, MIL). She is specialised in European and comparative social and labour law. She has coordinated a project on digital platforms workers (https://cepassoc.hypotheses.org/) and now focuses on Artificial intelligence and work at university (https://iag4upec.hypotheses.org/).

Manfred Walser is Professor of Labour Law and Private Business Law at the University of Applied Sciences Mainz, Germany. His research focuses on German and European labour law and social security law.

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Contents

Abstract

The logistics sector has become increasingly important to the European economy over the past years due to the spread of the e-commerce, which has brought about consumer-driven supply chains and integrated transport into retail. The four country case studies in this volume – covering France, Germany, Italy and Spain – converge in indicating that, despite this growth, **working conditions in logistics have been deteriorating** and consequently the staff turnover is massive. These two tendencies are only apparently contradictory. Indeed, the booming of logistics goes hand in hand with stiff price competition, boosted by the need to deliver goods to end consumers in the shortest possible time at the lowest cost.

This Report demonstrates that in logistics **subcontracting is a prevalent business model** that leads to lower pay and poorer working conditions for the purpose of cutting costs and boosting profits. Moreover, because of their strong market position, the companies belonging to the big logistics and e-commerce group maintain a certain control over smaller companies, temporary work agencies or individuals (especially drivers who they treat as 'self-employed'), to which they contract out. Therefore, subcontracting has become a strategy for separating power and profits from risks and responsibilities.

Facing the **unsustainability of the current logistics business model**, the Authors claim for a European regulation aimed at reducing the benefits that companies gain through subcontracting in terms of lower responsibility and labour cost reductions. In particular, they advocate that **subcontracting has to be limited**: both what can be contracted out and the length of the subcontracting chain need to be restricted. As a general rule, subcontracting needs to be justified by reasons other than pure profit because, according to national Constitutions and the European Charter of Fundamental Rights, pure profit cannot prevail over workers' rights.

Introduction
Sorry we subcontracted you[1]

Silvia Borelli

1. The logistics sector in Europe: an overview

The logistics sector has become increasingly important to the European economy over the past 15 years.[2] Its importance has increased with the spread of the digital economy, and particularly the e-commerce business model, which has brought about consumer-driven supply chains and integrated transport into retail. The key role of this sector became particularly clear during the Covid-19 pandemic, when logistics employees came to be referred to as key workers, essential to the flow of vital medical equipment and other supplies. The obstruction of the Suez Canal in 2021 and, to a larger extent, the war in Ukraine have also demonstrated the importance of logistics to ensuring that essential goods and services are accessible throughout the world.[3] In fact, in the globalised economy logistics 'represents the backbone of highly complex and globally extended supply chains, which require the efficient, cost-effective and reliable flow of goods and information'.[4]

Logistics is also a key sector in the smooth functioning of the European single market. According to most recent data, in 2024 logistics in Europe was worth 1.16 trillion euros (€).[5] Germany, France, Italy and Spain represent the four biggest markets in Europe (the EU), with markets worth €286 billion in Germany, €263 billion in Spain, €169 billion in France and €145 billion in Italy.[6]

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1. The title of this report refers to Ken Loach's 2019 film 'Sorry We Missed You', which describes the struggles of Ricky Turner and his family in the gig economy. Ricky is hired to run a franchise as a self-employed delivery driver. The film provides a realistic picture of the challenges faced by workers in last-mile logistics and was a powerful source of inspiration for this report.
2. According to *Statista*, the logistics market in Europe grew constantly from 2007 to 2021, the only exception being 2020 when the market shrank because of the Covid-19 pandemic (https://www.statista.com/statistics/639984/logistics-market-segment-volume-europe/#:~:text=Europe%3A%20logistics%20market%20volume%20 2007-2021&text=This%20statistic%20illustrates%20the%20volume,1.15%20trillion%20 euros%20in%202020).
3. According to the Treccani Encyclopaedia, 'Logistics' means any activity aimed at ensuring the functioning of a system, so that the necessary resources are available in the required quantity, at the required place and time.
4. Ecorys, Fraunhofer, TCI, Prognos and AUEB-RC/TRANSLOG, Fact-finding studies in support of the development of an EU strategy for freight transport logistics Lot 1: Analysis of the EU logistics sector, Report for the European Commission, 2015, p. 23.
5. https://www.mordorintelligence.com/industry-reports/european-freight-logistics-market/market-size
6. These data refer to road freight transport in 2023: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Road_freight_transport_statistics

E-commerce is driving growth and transforming freight and logistics in Europe. Consequently, e-commerce companies now feature among the main logistics players.[7] Amazon is the leading online marketplace in Europe, generating revenues close to €50 billion in 2022.[8] Its transport division now operates widely in all European Union (EU) Member States.

Logistics is also experiencing **concentration into large groups** and a **verticalisation of supply chains**. On one hand, the main players in the sector structure themselves as groups, with several companies operating in logistics divisions controlled by a holding company that determines the strategy for the group as a whole. This makes it possible to develop an integrated transport system, in other words, a coordinated network that combines various modes of freight transport.

On the other hand, these powerful groups engage in widespread subcontracting to other companies. Instead of employing warehouse and delivery workers directly, logistics and e-commerce corporations outsource core operations to smaller companies and to temporary work agencies or individuals, especially drivers, who they treat as 'self-employed'. Because of their strong market position, the client, that is, the company belonging to the big logistics group that is contracting out, maintains a certain control over the main contractor and subcontractors. Because the logistics sector is labour-intensive and highly competitive, subcontracting is usually aimed at reducing labour costs. In fact, in many cases subcontractors pay lower wages, impose worse collective agreements (if any), demand longer work shifts, and so on. The case studies in this volume will demonstrate this clearly. As a result of subcontracting, logistics workers thus become more exposed to vulnerabilities such as poor working conditions, low pay and exploitation. Because of the poor working conditions, labour turnover in the sector is high and this makes it increasingly hard for trade unions to reach, let alone represent workers in logistics. Besides, because of the so-called 'corporate veil',[9] clients are not liable for violations of workers' rights and other infringements committed by the main contractor and subcontractors. Consequently, subcontracting has become a strategy for separating power and profits from risks and responsibilities. What's more, subcontracting has become a key part of the logistics sector's dominant business model as it is a way of lowering costs and externalising risks. It is worth mentioning that, in order to benefit from the same low-cost and risk-free strategy, contractors often engage in further subcontracting, creating complex networks of subcontracts.

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7. The top five companies in the European freight and logistics market are A.P. Moller - Maersk, DB Schenker, DHL Group, DSV A/S (De Sammensluttede Vognmænd af Air and Sea) and Kuehne + Nagel. https://www.mordorintelligence.com/industry-reports/european-freight-logistics-market). A list of the top European e-commerce logistics companies is available here: https://ecommercenews.eu/ecommerce-logistics-companies-europe/

8. Amazon is also the number one e-commerce company in all the main logistics markets in Europe. https://gominga.com/insights/top-marketplaces-in-europe.

9. The 'corporate veil' refers to the fact that a company is legally responsible only for its own actions and does not have any responsibility for the actions of other companies involved in its supply or subcontracting chain.

2. The scope of the research

Subcontracting as a business model can be applied to the transportation and processing of goods at several stages of the logistics process: (i) transportation via trucks to the warehouse or fulfilment centre (the so-called 'first mile'); (ii) from the warehouse to the delivery or distribution centre (the 'middle mile'); and (iii) from the delivery or distribution centre to the customer (the 'last mile'). Last-mile delivery consists of three elements: the distribution centre (warehouses), the delivery vehicle and the receiving point (consumers' residences or collection points).[10] Because of the sharp increase in e-commerce, this study, commissioned by the European Transport Federation (ETF) and the European Trade Union Institute (ETUI), focuses mainly on warehouses and last-mile delivery and aims at an understanding of the extent to which subcontracting is used, its effects on the workforce and its consequences for trade union activities.

It should be underlined that warehouse and last-mile delivery workers are often managed by algorithm and are under constant surveillance. In fact, the use of new technologies and digitalisation are key tools in the reduction of service costs and delivery times in a highly competitive sector, driven by consumer demand for just-in-time goods. The widespread use of these algorithmic management systems can increase the pace of work and consequently can have negative impacts on workers' health and safety. Algorithmic management systems also make it easier to control the main contractor and subcontractors, as well as their workers, which further boosts contracting out. Through algorithmic management systems, clients can increase their leverage over the contractors and subcontractors, while risks and responsibilities remain with the latter.

Despite the rapid development of e-commerce logistics in Europe, transport policy is lagging behind. The upshot is an increasingly unregulated sector and poor, even indecent employment and working conditions. Public authorities have failed to plan adequately and lack the capacity to oversee the sector and manage its expansion. This is also a consequence of the neoliberal policies pursued in the EU single market and the accompanying pressures to deregulate the sector.

Furthermore, legislation on subcontracting is still missing in the EU, although many studies clearly demonstrate that 'subcontracting is often used to reduce costs and increase profits, leading to lower pay levels and poorer working conditions'.[11] A regulation on subcontracting has also been demanded by several European

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10. Huria A., Facilitating Trade and Logistics for E-Commerce: Building Blocks, Challenges and Ways Forward, Washington, World Bank, 2019, pp. 65 ff.

11. Ecorys, HIVA-KU Leuven, Spark Legal and Policy Consulting, and wmp consult (2023) Study supporting the Monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU – The situation of temporary cross-border mobile workers and workers in subcontracting chains, Directorate-General for Employment, Social Affairs and Inclusion, 2024, p. 6.

trade unions,[12] as well as by many members of the European Parliament.[13] The present research is intended to provide additional evidence on the impact of subcontracting on working conditions in a specific sector, namely, warehousing and last-mile delivery. Despite its rapid development, it is still underexplored.

The present study concerns the four biggest logistics markets in the European Union: France, Germany, Italy and Spain. For each country, the legal aspects of subcontracting in warehousing and last-mile delivery, as well as the working conditions and the trade union activities in these sectors are examined. The analysis deals with the different forms of legal and illegal labour exploitation to which subcontracting has given rise, and several initiatives organised by the main national trade unions to address these adverse practices.

3. Methodology and structure of the research

This study aims at understanding subcontracting in logistics and its impact on working conditions and trade union activities in four European countries (France, Germany, Italy and Spain) from a legal/political and labour/industrial perspective. The four country case studies have been developed through desk research and 11 interviews with trade unionists, labour inspectors, lawyers and other experts. The legal analysis is grounded on existing databases on regulation and case law. Relevant literature has also been taken into consideration. Quantitative and qualitative data on logistics have been collected and examined based on secondary data sources. In several cases, however, no data and figures were available on subcontracting in last-mile delivery and warehouses. As a result, it has sometimes been difficult to gauge precisely the amount of work and services contracted out, the number of subcontracting companies, their turnover, the number of workers employed by contractors and subcontractors, and their contracts of employment.[14]

Notwithstanding these data limitations, the effects of subcontracting on working conditions and trade union activities have been described by numerous decisions of the national courts, as well as by reports of labour inspectors and studies produced by trade unions.

The country case studies have been structured as follows.

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12. ETUC, *Securing Workers' Rights in Subcontracting chains*, 2019; EFBWW, ETF, EFFAT, *Subcontracting chains and intermediaries! Stop Exploitation*, 2024, https://www.efbww.eu/news/efbww-effat-etf-launch-joint-campaign-to-limit-subcontracting-an/4097-a

13. Borelli S., *Subcontracting: Exploitation by design. Tackling the business model for social dumping*, study for The Left in the European Parliament, 2022; J. Danielsson, M. Angel, G. Bischoff, E. Heinäluoma, M. Maij, E. Regner, K. Van Brempt, M. Vind, *Breaking the chains: subcontracting in the EU*, Social Europe, 2024.

14. The lack of data on subcontracting is one of the main outcomes of the study produced at the behest of the European Commission (Ecorys, HIVA-KU Leuven, Spark Legal and Policy Consulting, and wmp consult (2023) *Study supporting the Monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU – The situation of temporary cross-border mobile workers and workers in subcontracting chains*, Directorate-General for Employment, Social Affairs and Inclusion, 2024.

Analysis of the context: this section concerns market structure and employment in logistics. It presents the main quantitative data related to the dimension of the logistics market and its trends, the number and turnover of logistics companies, and the structure of the logistics groups operating in the relevant country. This section also examines which forms of subcontracting are present in last-mile delivery and how subcontracting is used in the warehouse segment of logistics. Finally, data are presented on employment in the sector and on precarious work contracts exploited by logistics companies. The country case studies also investigate the presence of third-country nationals in last-mile delivery and warehouses.

Reconstruction of problematic cases in the sector: through a literature and media review, consultation of case law databases and interviews with logistics experts, the main problems faced by workers and unions in the sector are pointed out. There is a focus on the use of algorithmic management systems in logistics, in order not only to prove whether and how it increases labour exploitation, but also to clarify whether and how it strengthens the client's control over their contractors and subcontractors. The reconstruction of the problematic cases aims at achieving a better understanding of the consequences of subcontracting when this business model seeks to lower labour costs and increase profits. It also seeks to present the main forms of legal and illegal labour exploitation that trade unions and public authorities face.

Legal analysis of the subcontracting chain and working conditions in logistics: this section presents the regulation of subcontracting and the working conditions of logistics employees. First, the legal analysis covers the limitations (if any) on contracting out and the length of subcontracting chains, also taking into consideration public contract law where Member States are obliged to take 'appropriate measures to ensure that [...] economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions' (Article 18 of Directive 2024/24).

The legal analysis then considers regulation of the employment relationships of workers engaged by the main contractor and subcontractors. As subcontracting is a strategy aimed at externalising risks and responsibilities, the chapters on respective countries also examine legal tools for reconnecting the employer's liability to the person(s) that benefit from the workers' performance (namely, the client and the contractor), such as the substantive definition of the employer and joint and several liability. The section also presents the working conditions of subcontracted workers in order to demonstrate whether and to what extent they differ from those applied to workers directly hired by the client.

The legal analysis also covers other aspects that exacerbate workers' vulnerability, such as the regulation of precarious contracts of employment and self-employment, migration law and the boundary it can create between third-country nationals and their employers, as well as the job instability generated by short-term subcontracts.

Finally, the regulation of algorithmic management is examined to verify whether some algorithmic management systems are forbidden; whether they can be freely exploited; or whether their use should be negotiated with trade unions and/or worker representatives with regard to what data can be collected through them, and so on.

The role of trade unions: this section analyses the role of trade unions and workers' representatives in monitoring and regulating subcontracting in the countries covered in this study. First, the country case studies take into consideration whether and to what extent worker participation at company level can control and limit subcontracting: *are the worker representatives informed and consulted on work and services that the company intends to contract out? Do they have a list of the company's subcontractors? Are they informed about the number and working conditions of the subcontracted workers?*

Moreover, this section deals with collective bargaining practices directed at controlling subcontracting and limiting its negative impact on workers, as well as negotiations that foster re-internalisation of subcontracted workers.

Finally, this section presents, where available, incidences of strikes and other trade union actions organised to denounce and contest the severe forms of labour exploitation entailed by subcontracting.

Access to justice and enforcement legislation: this section concerns controls and inspections carried out by national authorities on logistics subcontracting chains and on the main infractions that have been detected. Evidence is provided on the fact that subcontracting makes the exercise of control very complicated and time-consuming. The study also aims at verifying whether controls are past-oriented and whether they are able to prevent subcontracting from being extended indefinitely, due to companies' volatility, as many scholars have criticised.[15]

Another aspect examined in this section is access to justice. Here, too, the case studies explore an aspect emphasised by previous research: the fact that workers struggle to access justice and often give up claiming their rights either because the process is too costly and/or takes a long time, or they risk losing their job or even being deported in the case of third-country nationals.[16] Finally, remedies and sanctions are presented in the case of violations of workers' rights, and evaluated with regard to whether they are proportionate, effective and dissuasive according to the Court of Justice of the EU (CJEU) case law.

Taking into consideration the outcomes of the country case studies, the study's overall conclusions point to general challenges in the logistics sector and problems caused or exacerbated by subcontracting in particular. The conclusions of the report propose a set of recommendations aimed at limiting the negative effects of subcontracting on working conditions, strengthening the presence and role of

15. ETUC, Securing Workers' Rights in Subcontracting chains, 2019.
16. See n 15 above.

trade unions and worker representatives along the entire subcontracting chain, and fighting the widespread forms of legal and illegal labour exploitation in the warehousing and last-mile delivery sectors.

Subcontracting in logistics in France: an environment conducive to workers' rights violations

Claire Marzo

1. Analysis of the context

1.1 Market structure

Logistics in general and parcel services in particular are booming in France thanks to its geographical position. It has four major international gateways (Le Havre, Dunkerque, Marseille and Roissy-Charles de Gaulle), as well as three major strategic logistics routes (Mediterranean Rhône-Saône, Seine and Nord).

Freight transport and logistics activities employ approximately two million people in France. For the year 2021, the French Employment Centre (*Pôle emploi*) identified 2.13 million jobs in transport and logistics including 1.4 million employees.[1] Nearly 700,000 employees work in companies in the transport of goods by road, and the organisation of transport and logistics. Before the Covid-19 pandemic, net job creation in these sectors amounted to almost 70,000 jobs, representing an increase of 11% in the number of employees before the global health crisis. The French Mobility Observatory for the sector expects significant growth in the future, particularly for logistics firms, including workforce growth, in some cases by more than 20% between 2025 and 2030.[2]

The volume of shipments has more than doubled in the past ten years. With total sales of €200 billion, the transport and logistics sector accounted for 10% of national GDP in 2021, according to the French Ministry for Ecological Transition.[3] Companies in the sector anticipate a marked increase in the volume of goods to be handled by 2030.

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1. https://www.francetravail.org/accueil/actualites/infographies/le-transport-et-la-logistique-un-secteur-en-pleine-mutation.html?type=article (10/6/24).
2. Ministère du travail, OPCO (Opérateur de compétences des métiers de la mobilité), Logistique À L'horizon 2030, Étude Prospective des Emplois, des Compétences et des Qualifications, Editions 2022, https://www.opcomobilites.fr/fileadmin/user_upload/Espace_Observatoires/Etudes_et_publications/WEB_Livret-prospective-Logistique.pdf (10/6/24).
3. Ministère du travail, transport et logistique: les évolutions d'un secteur clé, https://www.francetravail.org/accueil/actualites/2024/transport-et-logistique-les-evolutions-d'un-secteur-cle.html?type=article (10/6/24). See also, Ministère de la Transition écologique et de la Cohésion des territoires, La logistique en France, https://www.ecologie.gouv.fr/logistique-en-france (10/6/24).

In 2021, the French logistics sector comprised 150,000 companies.[4] It was dominated by the major international parcel service providers Geopost (DPD Chronopost, owned mainly by La Poste) and Geodis (owned mainly by SNCF, the French state-owned railway company). These providers are followed by companies such as Gefco, STEF, XPO Logistice Europe, Kuehne+Nagel and Fedex Express France (including TNT), which share a good portion of the market, together with a multitude of smaller transporters.[5] Amazon has now also been added to this with its own delivery network, which established in 2016.[6] The picture remains one of a fragmented industry with many small and micro-companies.

In France, logistics is defined as warehousing. More precisely, it is the reception, control, storage, indexing and traceability of goods. For instance, in the food sector, goods will be delivered from factories, stored and delivered to bases (which will deliver to supermarkets). It includes several specialities within the logistics sector:[7] the most common ones are 'general cargo' and mail, sorting and distribution. These involve transporting various types of goods on pallets or in cardboard boxes, but one should also be aware of special types of transportation, including refrigerated transport, transport of dangerous goods, food tanks or powdered product tanks or combined road-rail transport.

Transport can be carried out in various ways, both with the firm's own vehicles and public transport, including (local) delivery services.[8] There are three levels of delivery: the first is international (to major urban centres), the second to shops and the last to consumers' homes. The third level is also known as 'last-mile delivery'. It is sometimes considered that this last echelon is not part of the logistics sector and that it is a sector in its own right.

1.2 Employment in the logistics sector

Overall, there were 700,000 employees in transport and logistics in 2021 in France. But this number is difficult to assess for three reasons. First, this figure does not take into account self-employed workers and last-mile workers. Second, the workers are divided between two sectors with blurred boundaries: logistics and transport. It is difficult to know which workers from the transport sector actually belong to the logistics sector. Finally, a third of the staff employed by logistics

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4. https://www.ecologie.gouv.fr/logistique-en-france (10/6/24).
5. See Ellisphère, L'officiel des transporteurs/entreprises, in Magazine L'officiel des transporteurs, Spécial classement, 17 décembre 2021, p. 12.
6. Amazon was the first e-commerce site in 2019, with a 22.2% market share, ahead of Cdiscount (8.1%) and Veepee (3.4%) with profits of 8.28 billion euros in 2020 and 26.1 million customers in France in 2019. It sold 40% of the online market for multimedia equipment in 2019, as well as 63–70% of the online market for connectors, telephone accessories and home furnishings; see Alexandre Piquard, Mathilde Costil, Floriane Picard, Delphine Papin et Eric Dedier, En cartes et infographies: comment Amazon étend son implantation en France, 26 March 2021, https://www.lemonde.fr/economie/article/2021/03/25/infographie-amazon-etend-son-implantation-en-france_6074432_3234.html (10/6/24).
7. Magazine L'officiel des transporteurs, Spécial classement, 17 décembre 2021.
8. Delivery companies such as Amazon sometimes rely on French public mail services for delivery, such as La Poste.

companies are temporary workers.[9] Their recruitment provides flexibility for companies, adapting to their needs (which vary for instance with the weather: more people use home delivery when it rains).

The logistics industry in France is made up of several types of companies. Around ten multinationals command a vast share of the market, together with some groups with several subsidiaries, three-quarters of which carry out logistics, transport and courier activities. They have a completely different *modus operandi* from small and medium-sized enterprises (SMEs). While there are no self-employed entrepreneurs in the logistics sector (assuming that last-mile delivery is not included in it), last-mile delivery is an opportunity to call on a large number of small and medium-sized businesses, some of which are dependent on a single client and may have employees. Digital platforms and self-employed entrepreneurs (with the special status of 'microentrepreneurs' in French) can also be found in the last-mile delivery sector.

A French trade unionist whom we interviewed noted an upsurge in the number of small, non-permanent businesses, which opens the door to subcontracting. It may be in a company's interest not to remain in existence for more than three years, at which point the French social contribution institute the *Union de recouvrement des cotisations de Sécurité sociale et d'allocations familiales* (URSSAF) would start to carry out checks.

Our respondent also underlines the number of atypical employment relationships. Because of the low barriers to entry (including linguistic skills or qualifications for logistics specialists: often only a driving licence is required for transporters), there is massive workforce turnover. Workers may be on permanent or temporary contracts, self-employed (for example with *Stuart*, a subsidiary of *La Poste*) or undocumented. The sector is also characterised by a high proportion of immigrants. This sector also has a high susceptibility to illegal employment, as well as tax and social security fraud.[10] This turnover can lead to errors and failings in terms of workers' health and safety.

There have been three types of development, each leading to increased use of subcontracting. They are described in the following sub-sections.

1.2.1 Digital trends: e-commerce and new technologies

E-commerce, in which purchases are made online and often paid for via online accounts, and new technologies are transforming the sector. While these trends may lead to reducing the environmental impact, improve customer satisfaction and reduce drudgery, it must be borne in mind that its main aim is efficiency and profitability, through greater traceability and increased productivity. In this respect, we are witnessing two phenomena: the division of tasks and outsourcing (the creation of subcontractors). New technologies make it possible to operate

9. Olivier Champetier, La CGT Transports, 4 May 2022, Journée d'étude sur la logistique, Compte-rendu, p. 13.
10. See example below.

on the basis of a supply chain, that is, the management of the logistics chain. It begins with the idea for a product and continues through product development, supply, production and distribution to the end consumer.[11] In addition to digitalisation, robotisation and mechanisation (which, however, is not suitable for all warehouses) have appeared and sometimes replace workers: drones for inventories, cobots (collaborative robots) such as trolleys that follow workers, exoskeletons, connected glasses and automatic stacker cranes that can replace forklift operators.[12]

1.2.2 Managerial trends since 2000

Nowadays, temporary workers are not only called in to deal with peaks in activity or to replace absent employees; they are part of a new systemic organisation. Subcontracting has become a business model. The sector has been reorganised by the employers. This has led one trade unionist we interviewed to declare that 'a new model based on instability has been introduced'.[13] The objectives of profitability and efficiency (also mentioned in the prevision section) are preventing the search for a model of permanent employment using fixed-term or open-ended contracts. There has also been a shift from a system of last-mile subsidiaries to digital platforms (for example, XPO, which had a last-mile distribution subsidiary, XPO Distribution).

1.2.3 Developing trends

Finally, new trends are also emerging from a geographical point of view. First, logistics bases are being moved away from town centres to rural areas, typically around 40 km from town centres (for example, Fedex), as a result of which (i) employees have to go there to work, and (ii) a system of delivery drivers and relay points has to be set up to take the goods to the retailer or consumer. Second, because of environmental preoccupations and a virtuous global approach to promoting cycling and cargo bikes with trailers, low-emission zones (where polluting vehicles are banned) have been created. They have led to changes in last-mile delivery. This requires storage facilities in city centres (dark shops), partnerships with public bodies to make premises available, such as bus depots or post offices, and the increased use of subcontracting and self-employment. Subcontracting occurs at all levels in the logistics sector, in both large groups and smaller companies, each of which have their own policies. For instance, a multinational company such as Amazon does not have its own delivery company, but it has service providers that it controls tightly. Amazon decides how much it pays them or whether it continues or terminates their contract (see Section 2.1.2). At Fedex, 98% of the work is subcontracted, and employees/drivers who retire are not replaced. Subcontractors take over from employees for parcel sorting, dock staff and so on. This trend led

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11. Marcel Bayeul, Enjeux de la supply chain: conséquence des nouvelles technologies in La CGT Transports, 4 May 2022, Journée d'étude sur la logistique, Compte-rendu, p. 8.

12. Gwenaele Bayard, Mécanisation et robotisation : reconnaissance des qualifications et formations, in La CGT Transports, 4 May 2022, Journée d'étude sur la logistique, Compte-rendu, p. 10.

13. Marie-Laure Morin, La sous-traitance, Semaine sociale Lamy, 2003 (Supplément au n° 1140), pp. 64–67.

the trade unionist we interviewed to declare: 'Subcontracting is killing us.' Small companies may also resort to subcontracting.

2. Problematic cases in the sector

2.1 Working conditions and workers' rights violations

We have chosen in this section two significant examples to illustrate the poor working conditions and violations of workers' rights in the transport and logistics sector. They show that employment conditions in the sector are worse than in the economy as a whole. First, wages are significantly lower. Cases of unlawful behaviour are also reported in relation to remuneration. Second, working conditions are worse than in other areas of the economy mainly because the physical burden on employees is considerable and health and safety issues arise. Third, the situation of migrant workers is particularly precarious. Finally, the number of workers covered by collective agreements in the sector is declining.

2.1.1 The *La Poste* case – a 'duty of vigilance'

The decision handed down by the Paris Court of First Instance in the *La Poste* case on 5 December 2023 was expected and highlights the problems of identifying and implementing the duties of parent companies. This is the first decision on the merits under Law 2017-399 of 27 March 2017 on the 'duty of vigilance' (French *devoir de vigilance*, which can be compared to due diligence) of parent companies and contracting companies. The judgment against La Poste provides important clarifications on the exercise of reasonable vigilance as framed by Article L. 225-102-4 of the French Commercial Code, as well as on the working conditions of the logistics workers of La Poste subcontractors.

In this case, several formal notices had been sent by the trade union federation SUD PTT to La Poste SA, between 9 July 2020 and 17 May 2021, concerning two successive duty of vigilance plans. La Poste had replied to each of these formal notices but, because the company had not responded to its complaints, SUD PTT summoned La Poste on 22 December 2021 on the basis of Article L. 225-102-4 of the French Commercial Code. This article allows any person with an interest in the case to ask the court to order the company to comply with its legal obligations to exercise its duty of vigilance, after a formal notice has been served and a period of three months has elapsed.[14]

In its claim, SUD PTT formulated two requests: on one hand, a general request aimed at remedying the inadequacy of risk mapping, supplier and subcontractor assessments, the alert mechanism and the monitoring system; on the other hand, more specific requests concerning the adoption of certain vigilance measures

14. https://www.dalloz-actualite.fr/flash/devoir-de-vigilance-mise-l-honneur-des-parties-prenantes-dans-premiere-decision-de-condamnatio (12/1/24).

related to psychosocial risks and against harassment, as well as against illegal subcontracting and concealed work. SUD PTT denounced human rights violations linked to working conditions, and in particular undocumented migrant workers at a subcontractor of a La Poste subsidiary.

The Court noted the mismatch between the questions that La Poste proposed to include in the self-assessment questionnaires associated with the implementation of the duty of vigilance and those appearing in the mapping of the vigilance plan. On an optimistic reading, this shows a possible evolution in the implementation of the duty of care in order to achieve better support for subcontractors and better protection for their workers. A more pessimistic reading is that the court case highlights the difficulties faced by workers in subcontracting companies.

A study of the mapping's shortcomings highlights a large number of problems in subcontracting companies in the logistics sector. First, the judgment mentions the use of illegal labour. According to the SUD PPT union, 'the absence of any assessment of this phenomenon [that is, the use of illegal labour in subcontracting] in companies with fewer than ten employees is particularly damaging in view of the major risks that exist for this type of company in the transport sector'. The judgment recalls strike action led by undocumented workers at DPD and Chronopost depots. It also refers to the *Bagaga* case, which attracted media attention: this case was named after an undeclared worker from a Coliposte subcontractor who died as a result of an accident at work in December 2012.[15] Second, the judgment mentions serious risks to the health and safety of staff working for subcontracting companies as a result of the intensive use of subcontractors who are not aware of the relevant safety rules. Those risks also include psychosocial risks related to the stress of not knowing the applicable rules and to moral and sexual harassment. It is common sense to adapt the requirements associated with the duty of vigilance plan to the size of the subcontracting company. It may, however, lead to less stringent controls at the very place where illegalities might be more numerous. Practice has shown an increase in the number of small, non-permanent companies subject to fewer controls. This decision is useful in many respects because it provides a recent and relevant picture of the difficulties faced by workers in subcontracting companies in the logistics sector.[16]

This *La Poste* judgment corroborates other studies showing similar difficulties. In concrete terms, temporary workers are susceptible to accidents because of the pace of activities, as well as lack of training. Self-employed workers will be deprived of a 13th month of pay (over a year) and lunch vouchers and may receive payments on an irregular basis.[17] For example, a report on Amazon notes that 'the number of accidents at work followed by a rest period has more than doubled in 2022, with

15. Sébastien Pommier, Seydou Bagaga, Actualité. L'Express, 30/11/2017, https://www.lexpress.fr/economie/seydou-bagaga-l-affaire-qui-a-revele-le-scandale-des-sous-traitants-a-la-poste_1964882.html (12/1/24).

16. La Poste notes in relation to the judgment that 'a specific evaluation action [is planned] with regard to the category constituted by the "transport, delivery and logistics" sector, considered to be the core business of the Services-Couriers-Colis branch and which the mapping identifies as a priority among 15 other categories'.

17. Alessandro Delfanti, The Warehouse: Workers and Robots at Amazon, 2021, Pluto Press.

1,132 incidents compared with 482 the previous year. The study covers the eight warehouses and the head office.'[18] These risks are increased for undocumented migrant workers who are more vulnerable because of language issues and lower awareness of company and legal requirements.[19]

Although working conditions will be very different from one company to another, from one sector to another, and the issues will also vary (safety, pay, rest periods and so on), on the whole, the evidence suggests that we are witnessing the casualisation of work, leading to poor working conditions and increased psychosocial risks.

The abovementioned Court decision in *La Poste* also highlights the limits of the judiciary when it comes to enforcing compliance. The judge stated that:

> the law establishes … judicial control over the inclusion in the plan of concrete, appropriate and effective measures consistent with risk mapping. In the event of a breach of this obligation, it gives the court the power to order the company to draw up, as part of the self-regulation process, safeguarding measures that the company must define in association with the stakeholders, as well as additional, more concrete and effective actions linked, where appropriate, to an identified risk. However, this provision should not lead the judge to take the place of the company and its stakeholders in requiring them to introduce precise and detailed measures.

For instance, according to a press clipping produced by the plaintiff, certain 'undocumented' workers were able to continue working on the site after the termination of the contract of a first subcontracting company that employed them. The court insisted that it should not be the actor to determine whether it is better to terminate the subcontract as soon as the first breach is observed or more effective to provide for a system of penalties with formal notice. The court noted that this 'is a strategic discussion that goes well beyond the role of the judge. On the contrary, it relates to a process of analysis of the risk factors which must be carried out in association between the company and the stakeholders in order to reasonably devise an effective measure to avoid or limit the risk.' As many scholars have noted in their comments on the law on the duty of vigilance, we are witnessing some progress, but still far from a proper enforcement of hard law obligations.[20]

2.1.2 The Amazon case – fast despatch logistics

In summer 2023, the *Ouest France* newspaper ran the headline 'Nantes. Fast Despatch Logistics, a British Amazon subcontractor, is closing down. The British

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18. Amazon France: un rapport dévoile une forte augmentation des accidents du travail dans l'entreprise, https://www.france24.com/fr/%C3%A9co-tech/20231014-amazon-france-un-rapport-d%C3%A9voile-une-forte-augmentation-des-accidents-du-travail-dans-l-entreprise (12/12/24).

19. For more on this subject see the *La Poste* case.

20. For instance, Claire Bright and Lise Smit, The new European Directive on Corporate Sustainability Due Diligence, 23 February 2022, Updated: 1 March 2022, https://www.biicl.org/documents/11164_ec_directive_briefing_bright_and_smit_1_march_update.pdf (14/1/24); Claire Marzo, Vers un devoir de vigilance pour les plateformes numériques, Droit Social, September 2021.

subcontractor has just informed its employees that it is "ceasing all activity" immediately.' The French trade union *Confédération générale du travail (CGT)* lamented that, because of this closure '1,700 employees lost their job in France'.[21] This single case, which did not reach the courts, does not demonstrate a trend, but illustrates the problem of instability among subcontracting companies.

A CGT union member explained that 'Amazon does not have its own delivery company. It has the right of life or death over its service providers, deciding how much it pays them or whether to continue or terminate their contract.'[22] Amazon buys on credit, resells what it can and what it does not sell, it resells or destroys. Its business requires distribution (before and after: to the warehouses and then to the consumer). This distribution is outsourced entirely by a multitude of small self-employed entrepreneurs, or small companies with around five employees to whom Amazon provides the equipment, training and delivery organisation.

As a major company operating in France, Amazon is required by law to ensure that its subcontractors comply with certain laws. More specifically, in July 2023, the Labour Inspectorate required Amazon to demand proof that Fast Despatch, the British company, had paid its social security contributions. According to media covering the issue, 'Amazon gave its subcontractor formal notice to provide the documents. To no avail. As a result, the Fast Despatch Logistics delivery drivers had been out of work for three weeks. Amazon no longer entrusted them with anything.'[23] In the absence of this proof, Amazon stopped using this subcontractor and a month later, the court decided to liquidate it.

This is an interesting example, because we are dealing with a legitimate decision on the part of Amazon not to use a subcontractor that has not complied with a provision of subcontracting law. But Amazon's monopoly allows it to juggle competing subcontractors, some of whom are in financial difficulties. There is a major imbalance between a new version of the employer/employee relationship, accentuated by the use of subcontractors. Amazon's dominant supply chain management practices have resulted in a paradigm shift in global logistics and supply chain management that previously defined the big-box retail era. Jake Alimahomed-Wilson, professor of sociology, describes these structural changes as the 'Amazonification of logistics'.[24]

In the same vein, Amazon has been fined 4 million euros by the French courts. Summoned by the French Ministry of the Economy in 2017, the American online retail giant was also ordered to remove unfair terms towards its suppliers within

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21. https://www.ouest-france.fr/pays-de-la-loire/nantes-44000/nantes-fast-despatch-logistics-un-sous-traitant-d-amazon-met-la-clef-sous-la-porte-151c025a-188e-11ed-b714-e1bab9af3e0e (10/1/24).
22. Declaration of a CGT federation member, Interview no. 1.
23. Ouest France, *op. cit.* note 30.
24. Jake Alimahomed-Wilson, The Amazonification of Logistics: E-Commerce, Labor, and Exploitation in the Last Mile in Jake Alimahomed-Wilson, Ellen Reese, The Cost of Free Shipping, Amazon in the Global Economy, Pluto Press (2020).

six months.[25] Olivier De Schutter, UN Special Rapporteur on extreme poverty and human rights, adds that 'multi-billion dollar companies should be setting the standard for working conditions and wages, not violating the human rights of their workers by failing to pay them a decent wage'.[26] Besides the instability of companies, specific problems are caused by algorithmic management, which is tackled in the next sub-section.

2.2 Problems caused or exacerbated by algorithmic management:

Algorithmic management can exacerbate existing employment risks, particularly with regard to occupational health and safety. Workers often use mobile devices, such as scanners, tablets and smartphones with integrated tracking systems, which are often installed in vehicles. They can also use so-called 'wearables', which are worn on the body to measure productivity, duration and interruption of scans. These mobile devices allow real-time and continuous monitoring of employee productivity, as well as gamification and competition between workers. They increase performance, but at the expense of physical and mental stress (for example, it incentivises dangerous driving). It must be monitored in light of the General Data Protection Regulation (GDPR), a European regulation transposed in the whole European Union and particularly France. More specifically, Article 5.1.c GDPR (data minimisation), Article 6 (lawfulness of processing), Articles 12 and 13 (information to individuals and transparency) and Article 32 (data security) are applicable.

A concrete example may illustrate the case. *Amazon France Logistique* manages the Amazon group's large warehouses in France, where it receives and stores items, then prepares parcels for delivery to customers. As part of their work, each warehouse employee is equipped with a scanner, which they use to document in real time the performance of certain tasks assigned to them (storing or removing an item from the shelves, putting it away or packing it, and so on). Each scan carried out by employees gives rise to the recording of data, which is stored and used to calculate a series of indicators providing information on the quality, productivity and periods of inactivity of each employee individually. The stock and order management process is broken down into several tasks (receiving items, storing inventory, preparing and dispatching orders) and also relies on the management of each employee in order to help them, if necessary, to carry out these tasks (coaching) or to reassign them to other tasks if necessary.

Amazon France Logistique was condemned on 27 December 2023 'for having set up an excessively intrusive system for monitoring employee activity and

25. https://www.francetvinfo.fr/internet/amazon/amazon-condamne-a-une-amende-de-4-millions-par-la-justice-francaise_3602639.html (14/1/24).

26. O. De Schutter, Amazon, DoorDash and Walmart are trapping workers in poverty: UN poverty expert, 31 October 2023, https://www.ohchr.org/en/press-releases/2023/10/amazon-doordash-and-walmart-are-trapping-workers-poverty-un-poverty-expert (8/11/23).

performance', through the scanners used by warehouse employees to process parcels.[27] The French National Commission for IT and Freedoms (*Commission Nationale de l'Informatique et des Libertés* (CNIL)) found *Amazon France Logistique* to be in breach of several aspects of the European General Data Protection Regulation (GDPR), which we shall briefly discuss.

First, the CNIL found a failure to comply with the data minimisation principle (Article 5.1.c of the GDPR) on the grounds of proportionality. This means that providing assistance to employees or reassigning them in real time does not require access to the smallest details of the employee's quality and productivity indicators. The Commission noted that these data have been collected using scanners over the preceding months. It pointed out that supervisors could already rely on the data reported in real time to identify any difficulties an employee may be experiencing, and who may require coaching, or to identify employees to be reassigned in the event of peak activity. It therefore believed that, in addition to real-time data, a selection of aggregated data, on a weekly basis for example, would have been sufficient.

Second, the CNIL found a failure to ensure lawful processing (Article 6 of the GDPR) on the basis of three indicators processed by the company which were illegal: (a) the 'Stow Machine Gun' indicator, which signals an error when an employee scans an item too quickly (in less than 1.25 seconds after scanning a previous item); (b) the 'idle time' indicator, which signals periods of scanner downtime of ten minutes or more; and (c) the 'latency under ten minutes' indicator, which signals periods of scanner downtime of between one and ten minutes. The Commission noted that the processing of these three indicators was not legitimate: it led to excessive computer surveillance of the employee with regard to the objective pursued by the company. Firstly, the processing of the Stow Machine Gun indicator makes it possible to constantly monitor any tidying up carried out by an employee to the second. The machine might think that the employee tidies up too quickly or suspects that they did not tidy up properly. Secondly, the use of the 'idle time' and 'latency time less than ten minutes' indicators makes it possible to constantly monitor any time an employee's scanner is interrupted on a direct task, even for a very short time (less than ten minutes or as little as ten minutes). This makes it possible to detect any pause taken by the worker. Thus, as implemented, the processing was deemed excessively intrusive. The Commission did not call into question the need for precise monitoring of employees' actions and situation in order to ensure the quality of service and safety in its warehouses, but it noted that the company already had access to numerous indicators in real time, both individual and aggregated, in order to achieve its objective of quality and safety in its warehouses.

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27. CNIL's report (SAN-2023-021, 27.12.2023): https://www.cnil.fr/fr/surveillance-des-salaries-la-cnil-sanctionne-amazon-france-logistique-dune-amende-de-32-millions (29/1/24). Note also that Amazon France Logistique was fined 32 million euros by CNIL because it watched and monitored its employees; see https://www.lemonde.fr/pixels/article/2024/01/23/amazon-france-logistique-condamne-a-32-millions-d-euros-d-amende-par-la-cnil-pour-surveillance-des-salaries_6212447_4408996.html (29/1/24). 'Amazon fined for "excessive" surveillance of workers', https://www.bbc.co.uk/news/business-68067022 (29/1/24).

Third, CNIL found shortcomings related to work planning and employee appraisal where the company used employee activity and performance data and indicators collected using scanners to plan work in its warehouses, assess employees each week and train them. Again, the Commission relied on the data minimisation principle to consider that statistics per employee, aggregated over the week for example, are sufficient to assess and identify a need for training or to monitor an employee's progress. Again, scrutiny of the worker's activity was found to be disproportionate.

Fourth, CNIL found a failure to comply with the obligation to provide information and transparency (Articles 12 and 13 of the GDPR) because, until April 2020, temporary employees working for the company were not properly informed, as the company did not ensure that the privacy policy had been given to them before their personal data was collected using scanners. There were also breaches related to video surveillance processing as external visitors were not properly informed of the video surveillance systems. Information required by Article 13 of the GDPR was not provided either on the notice boards or in other media or documents.

Fifth, a breach of the security obligation (Article 32 of the GDPR) was shown as the Commission noted that access to the video surveillance software was not sufficiently secure, since the access password was not strong enough and the access account was shared between several users. This accumulation of security defects made it more difficult to trace access to video images and to identify each person who had used the software.

While algorithmic management has the potential to speed up and optimise delivery times – which also helps to reduce CO_2 emissions – this case shows the difficulties of implementing algorithmic management, which can exacerbate existing employment risks. This is true for employees, as this case illustrates, but also for subcontractors. Sometimes, contracting companies gain access to the employee data of the subcontractors' workers in similar algorithmic ways. Work is often not managed by the employee's contractual employer, but by the companies selling the goods themselves. The subcontractors are told what to carry, when and where or what routes to take in real time, using digital solutions such as route planning software.

3. Legal analysis of subcontracting chains and working conditions in logistics

3.1 Regulation of subcontracting

In France, subcontracting is governed by Law no. 75-1334 of 31 December 1975. It is defined as 'the operation by which a contractor subcontracts, under his/her responsibility, to another person called a subcontractor, the performance of all or

part of a works contract or part of a public contract concluded with the principal'.[28] Subcontracting thus allows economic operators to entrust one or more third-party companies with the performance of part of a contract they have signed and which they are unable or unwilling to perform themselves.[29] We have witnessed an increase in the number of companies faced with a principal who is not necessarily the boss. Algorithmic management allows greater control even by a principal who is not the employer. Within a company, whether it is a multinational or an SME, French labour law applies. But it is fragmented: a distinction must be made between several types of statuses/contracts: (a) employees; (b) temporary workers; and (c) self-employed workers.

Employees are governed by the existing labour laws of the French Labour Code. The logistics sector is also regulated by the Transport Code. Employees have more extensive labour rights and greater social protection than independent workers. Employees can sign a collective agreement, and agreements have been signed in the logistics and transport sectors. *Convention Collective Nationale des Transports Routiers et Activités Auxiliaires du Transport*, the collective convention of the national route transportation and auxiliary transport activities, of 21 December 1950[30] (CCNTR, IDCC 0016) applies to the transport sector, but also to some of the logistics sector, which was added in 2005, and to certain bicycle delivery drivers.[31]

Temporary workers are often precarious workers on very low pay.[32] Holiday pay and end-of-assignment allowances boost their wages, but these are not permanent. Such workers have no career prospects because their contracts are often short.[33] Since 2004–2005, the logistics collective agreement has provided for an hourly rate that applies to employees with less than six months' seniority, and therefore also to temporary workers, which explains why four out of six warehouse employees are on temporary contracts.[34]

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28. Article 1, law of 1975, https://www.insee.fr/fr/metadonnees/definition/c1670 (13/1/24).

29. https://www.economie.gouv.fr/files/files/directions_services/daj/marches_publics/conseil_acheteurs/fiches-techniques/execution-marches/sous-traitance-2019.pdf (13/1/24).

30. Convention collective nationale des transports routiers et activités auxiliaires du transport du 21 décembre 1950 – Textes Salaires – Accord du 23 octobre 2020 relatif à la revalorisation des rémunérations conventionnelles, https://www.legifrance.gouv.fr/conv_coll/id/KALITEXT000043251237/. Ou https://code.travail.gouv.fr/convention-collective/16-transports-routiers-et-activites-auxiliaires-du-transport See the last agreement on minimum wages: Accord du 23 octobre 2020 relatif à la revalorisation des rémunérations conventionnelles, https://www.legifrance.gouv.fr/conv_coll/id/KALITEXT000043251237/.

31. For the last kilometre, there is no collective agreement, but a Fédération professionnelle de la cyclologistique (Professional Federation of Cycle-Logistics) was created. https://weelz.ouest-france.fr/transport-cyclologistique-federation-professionnelle-velo-cargo-france-2022/

32. See Title V of the Labour Code entitled: Contrat de travail temporaire, autres contrats de mise à disposition et portage salarial (Articles L1251-1 - L1255-18).

33. Quels sont les droits collectifs et individuels du salarié intérimaire?, https://code.travail.gouv.fr/fiche-ministere-travail/le-contrat-de-travail-temporaire?q=int%C3%A9rim#Qu-est-ce-que-le-CDI-interimaire

34. Khalid Ezzarhouni, Enjeux, défis et perspectives pour les métiers de la logistique, La CGT Transports, 4 May 2022, Journée d'étude sur la logistique, p. 21.

Self-employed workers, in other words entrepreneurs, often without employees (in France there is a specific simplified status of '*autoentrepreneur*') have a different status from employees. They must be distinguished from other statuses. They constitute a company in their own right. They have comparatively fewer developed employment rights and less favourable social protection than employees.[35] It is important to note that collective agreements do not apply to self-employed workers or the so-called 'liberal professions'. These workers are not covered by the provisions of collective agreements and cannot therefore benefit from them.

Additionally, we also need to briefly mention the *Groupement d'Employeurs Logistique (GEL)* which has existed since 2016 and is based on the initiative of economic actors to meet their skills needs.[36] Jobs are created by grouping together member companies, which mobilise the workforce by making GEL employees available, sharing their working time between these structures. The concept is simple: instead of being taken on under a conventional temporary employment contract, the employee signs a permanent contract with *GEL Intérim*. They are then seconded on assignments within GEL's client companies. The employee alternates between periods of assignment and periods of intermission, with guaranteed minimum monthly pay. It is an alternative to temporary work, with the advantages of a permanent contract: job security, stability, training, paid leave, professional support and so on. According to one trade union representative we interviewed, this is an association set up by HR managers to counter the higher cost of temporary work. Normally, a company has to let a temporary worker go after 18 months, but it cannot replace them; otherwise, a permanent salaried position would have to be created. The GEL provides flexibility, with mobile employees hired by an association managed by the user companies, who have to travel within a 50 km radius.[37]

Overall, it should be borne in mind that a new hybrid 'status' is emerging for logistics workers in France (not a legal reality, but rather a sociological one): neither permanent nor precarious, but a fixed-term or open-ended contract in a user company, which is destined to disappear as soon as the multinational no longer calls on it.

3.2 Liability among client, contractor and subcontractors

In France, as Professors Houwerzijl and Peters explain, the first legal provisions regarding liability in subcontracting processes – introduced in the mid-1970s – sought to protect subcontractors rather than their workers if the principal

35. For a comparison with platform work, see Isabelle Daugareilh, C. Degryse, P. Pochet, The Platform Economy and Social Law: Key Issues in Comparative Perspective, Social Science Research, 20 June 2019, ETUI WP2019.10, https://www.etui.org/sites/default/files/WP-2019.10-EN-v3-WEB.pdf (12/1/24).

36. Article L1253-1 and f. of the Labour Code.

37. Groupement d'employeurs logistiques (GEL) also called 'CDI interim', https://leblogdesgroupementsdemployeurs.blogspot.com/2016/06/les-groupements-demployeurs-logistiques.html. See https://travail-emploi.gouv.fr/emploi-et-insertion/tpe-pme/groupement-employeurs

contractor became insolvent.[38] In 1990, a system of joint liability between a principal contractor and its subcontractor was introduced for the payment of wages and social security contributions. This legislation must be seen in the context of efforts to combat bogus subcontracting (‘*marchandage*’ in French) and the abuse of workers’ rights. This legislation seeks to stabilise employment and adapt precarious forms of work. In 1979, specific liability rules for temporary agency workers were introduced to enhance the protection of these workers. Subsequently, in 1992, liability provisions regarding illegal or undeclared work were introduced in response to the inadequacy of previous provisions for combating undeclared work in the context of subcontracting chains. The rules provide an additional guarantee for the payment of wages, social security contributions and taxes in the case of a fraudulent or disappearing contractor. It should also be mentioned that the French legislation on the cross-border posting of workers, based on EU Directive 96/71/EC12 concerning the posting of workers within the framework of the provision of services, was amended in 2005 for the benefit of SMEs.[39] Finally, general liability has been completed by a duty of vigilance since 2017, which we briefly discuss in the next two sections.

3.2.1 Joint and several liability

In France, there is traditional contractual liability. This means that the liability is restricted to the direct contracting party and therefore to one level of subcontracting. As a result, no chain liability arises. For instance, the principal contractor is liable only for its direct contractor, and that contractor in turn only for its direct subcontractor. This kind of liability can be found regarding (bogus) subcontracting and liability regarding illegal or undeclared work.[40]

On top of contractual liability, there is ‘joint and several’ liability. This means that, when a subcontractor does not fulfil its obligations regarding payments, for example, to the Inland Revenue (*Centre des Impôts* in French), the contractor, together with the subcontractor, can be held liable by the Inland Revenue for the entire debt of the subcontractor. The user company is jointly liable if the temporary work agency defaults and its insurance proves insufficient to pay the wages and social security contributions. The liability of the user company is proportional to the duration of the temporary employment contract. Regarding undeclared or illegal work, under certain conditions, a joint liability of the client together with the contractors arises regarding the direct subcontracting relationship.[41] The client and/or principal contractor are also subject to a number of obligations in respect of the subcontractor’s workers. All contractors that employ workers for

38. Mijke Houwerzijl and Saskia Peters, Liability in subcontracting processes in the European construction sector, https://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/eurofoundstudylialibity_/eurofoundstudylialibity_en.pdf (11/6/24). They explain it in the context of the construction sector, but it is true for logistics as well.

39. Ibid.

40. In France, liability regarding (bogus) subcontracting is limited to contracts for services worth more than €3,000.

41. Articles L8232-1 à L8232-3 of the French Labour Code (in Part Eight: Enforcement of employment legislation (Articles L8112-1 to L8331-1), Book II: Combating illegal employment (Articles L8211-1 to L8291-3), Title III: Bogus subcontracting (Articles L8231-1 to L8234-3), Chapter II: Obligations and financial solidarity of the principal).

the execution of a contract for services in France must provide, on the date of the contract and then every six months, a written declaration, certifying that their workers receive a pay slip ('*bulletin de paie*') – including normal conditions of work, the payment of compulsory contributions to social security authorities and compulsory declarations to the Inland Revenue.[42] Article L8222-1 of the Labour Code provides that when the principal uses a subcontractor, it has a duty of vigilance to check that the subcontractor has completed certain formalities, for instance regarding concealed work (understood as hidden work, which can be informal and/or illegal). Article L8222-1 of the French Labour Code specifies that the documents that must be checked are those listed in Article D8222-5 of the Labour Code.[43] We saw an example of this above (Section 2.1.2). This is a first type of due diligence. But it was further extended by a 2017 law on the duty of vigilance, which we discuss in the next section.

3.2.2 Duty of vigilance

In France, subcontracting is regulated by means of a duty of vigilance. Act no. 2017-399 of 27 March 2017, codified in Articles L.225-102-4 and 5 of the French Commercial Code, provides that 'any company which employs, at the close of two consecutive financial years, at least five thousand employees within it and in its direct or indirect subsidiaries whose registered office is fixed on French territory, or at least ten thousand employees within it and in its direct or indirect subsidiaries whose registered office is on French territory or abroad, shall draw up and effectively implement a vigilance plan'[44] related to its activity and that of all the subsidiaries or companies it controls. This law has limited scope, with the aim of focusing on large multinational companies that have their headquarters in France and only those with a certain legal form.

The French law of 2017 is more precise in that it focuses on the establishment 'in an effective manner' of a vigilance plan that will be applicable in France or abroad.

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42. When concluding a contract with a subcontractor worth at least €5,000 and every six months until the end of the contract's performance, the principal or project owner must check that the co-contractor is complying with the formalities referred to in Articles L. 8221-3 and L. 8221-5 (articles related to concealed work by concealing activity and concealed work by concealing salaried employment). Accordingly, the principal or project owner must ensure that its co-contractor is registered in the Trade Register or the Trades Register, where such registration is compulsory; has made the compulsory declarations to the social security bodies and the tax authorities; and has carried out the necessary formalities when employing staff. See Articles L. 8222-1 and R. 8222-1 of the French Labour Code.

43. In a ruling dated 11 February 2016, No. 15-10.168, the 2nd Civil Chamber held that only the documents listed in this article could satisfy fulfilment of the duty of vigilance incumbent on the principal. Accordingly, the latter cannot satisfy having fulfilled its obligation by arguing that it consulted documents other than those listed in Article D8222-5 of the Labour Code.

44. Article L225-102-4, §1-2 of the French Commercial Code.

A list and a procedure are introduced, accordingly.[45] The purpose of the plan is to be determined in association with the company's stakeholders, where appropriate as part of multi-stakeholder initiatives within industries or at local level. It goes beyond mere risk mapping to identify, analyse and prioritise risks. It establishes procedures for regular assessment of the situation of subsidiaries, subcontractors or suppliers with whom an established commercial relationship exists, with regard to risk mapping. It also indicates appropriate actions to mitigate risks or prevent serious harm. However, the suggested mechanism for alerts and for collecting reports related to risks, established in consultation with the trade unions at the company in question, is implemented only by the company itself and there is no compulsion for the company to react further to resolve matters. Similarly the system for monitoring the measures implemented and for evaluating their effectiveness, which is provided for by the law, might not lead to improvements in workers' rights.

This list of measures gives substance to the duty of vigilance. However, the draft law has been much debated and impoverished by its passage through the chambers, which has led to criticisms of its effectiveness compared with its Anglo-Saxon counterparts.[46] It does, however, impose an obligation on the principal to monitor its subcontractors. This obligation has been applied by the judge in the La Poste case presented above (Section 2.1.1).

The general impression is that this duty offers better protection to workers and subcontractors, but this impression can be misleading. There are two main issues. First, as the case we studied above showed (Section 2.1.1), the company can be subject to procedural obligations (drafting a plan) and is able to hide behind the difficulties of implementation and monitoring in order to neglect substantial protection of workers. It does not create a liability, like a law, and the duty of vigilance might even be a way for a company to evade such liabilities. Second, as shown in Section 2.1.2 of this report, if a company is about to be prosecuted for not ensuring that some of its subcontractors have the relevant rights, it can terminate the contract with the SME instead of ensuring that the workers are efficiently protected (see 3.3). In other words, the proliferation of rules does not lead to improved protection but, on the contrary, to avoidance of corporate liability through recourse to vigilance, which is not sufficiently stringent.

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45. Art. 1254. – A breach of the obligations defined in article 1253 obliges the person who breached them to compensate for the damage which could have been avoided by the performance of those obligations. 'The action shall be brought before the court by any person having an interest in bringing the action.' The court may order the publication, dissemination or posting of its decision or an extract therefrom, in the manner it specifies. The costs shall be borne by the convicted person. 'The court may order that its decision be enforced subject to a fine.'

46. On due diligence, see Claire Marzo, Vers un devoir de vigilance pour les plateformes numériques, Droit Social, September 2021, p. 708.

3.3 Working conditions of subcontracted workers

As mentioned in Section 3.1, a distinction must be made between the different forms of employment, which are subject to various legal statuses or regimes. The status of a worker will determine their rights and obligations. In the case of subcontracting, responsibility for occupational health and safety lies with the subcontractors as the legal employers, whereas the principal takes the relevant decisions on how the provision of services takes place.

Furthermore, the sector's two collective agreements, mentioned in Section 3.1, specify employees' rights. But it must be kept in mind that even if rights have been recognised and protected (particularly for employees), those rights are often ignored, either because their status allows such omissions or it simply provides for more limited protection. Often subcontractors do not fall within the scope of application and/or do not check that the rules are being properly enforced, as seen with the duty of vigilance.

It must be added that small delivery firms are unstable: small subcontractors tend to disappear from the scene after about three years. The fact is that it may be in a company's interest not to remain in existence for more than three years, because at that point inspectors, for example, from the *Union de recouvrement des cotisations de Sécurité sociale et d'allocations familiales* (URSSAF), will start to carry out checks. Companies regularly evade their responsibilities by closing down and reappearing under different names and identities, ostensibly as new companies but employing the staff of the 'old' company.

4. The role of trade unions

Overall, trade unions play a significant role in negotiating collective agreements in the French transport and logistics sector, but the logistics sector is changing and the statuses of its workers are changing as well. This makes it more difficult for trade unions to reach out to workers, leading to a growing lack of collective bargaining coverage.

4.1 Worker participation at company level

Trade union representation varies greatly depending on the size and type of company. A distinction must be made between large companies and multinationals, on one hand, and SMEs and last-mile workers on the other.

With regard to employees in certain large companies and multinationals, trade union representation is typically high. This is not surprising as French law imposes information and consultation requirements on companies with more than 50 employees. At XPO Logistics, for instance, the transport trade unions present in the company are CGT, CFDT, FO, CFE-CGC (managers) and CFTC. For example, the CGT took a case to the industrial tribunal in order to challenge the dismissal of a senior operations employee of SA AMAZON FRANCE LOGISTIQUE

and to have an open-ended employment contract recognised.[47] Even though this was unsuccessful, we can admire the union's tenacity in pursuing the case.

However, there can also be a proliferation of representative associations (eight to ten) at Amazon. According to a trade unionist we interviewed, 'this proliferation wastes votes and leads to a decline in representativeness, which limits the weight of the major representative organisations such as the CGT in the balance of power. This multiplication leads to real disorganisation because the very small unions do not have the power to organise national action, or to approach ministries or the labour inspectorate.'[48]

As far as SMEs are concerned, it is difficult for trade unions to get a foothold because of the lack of stability in these companies. It is very difficult to reach workers and get them to unionise.

Last but not least, last-mile delivery workers are normally not represented because traditionally unions have represented only employees, but things are changing. For instance, the trade union CFDT has started to represent non-employees in the area of platform work.[49] The weakness of the trade unions among last-mile delivery workers remains obvious.

4.2 Collective bargaining

Collective bargaining has resulted in two collective agreements in the two sectors that we are interested in, transport and logistics.[50] This creates flexibility for companies but a lack of certainty for employees. Having two different agreements means that workers in similar situations may receive different wages and different agreed rights (thirteenth month wage, bonuses and so on). For instance, Amazon negotiated a change in the applicable agreement: previously it was bound by the national collective agreement on the wholesale trade (in French *Convention collective nationale de commerces de gros*[51]), but henceforth it would be subject to the national collective agreement for road transport and ancillary transport activities (in French *the Convention Collective Nationale des Transports Routiers et Activités Auxiliaires du Transport*). The CGT weighed up the pros and cons of

47. 14 March 2023 Cour d'appel de Grenoble RG n° 21/03519 Ch. Sociale, Section A, https://www.courdecassation.fr/decision/64116ffff6c989fb0243531e?search_api_fulltext=arr%C3%AAt+logistique+travail+amazon&op=Rechercher+sur+judilibre&date_du=&date_au=&judilibre_juridiction=all&previousdecisionpage=0&previousdecisionindex=4&nextdecisionpage=0&nextdecisionindex=6

48. Declaration of a CGT federation member, Interview no. 1.

49. See Article l. 7341-1 of the Code du Travail and Ordonnance n°2021-484.

50. See above Section 3.1.

51. National collective agreement for wholesale trade (Convention collective nationale de commerces de gros) of 23 June 1970. Extended by decree of 15 June 1972, published in the Official Journal of the French Republic (JONC) on 29 August 1972. Updated by agreement of 27 September 1984, extended by decree of 4 February 1985, published in the Official Journal of the French Republic (JORF) on 16 February 1985.

the two texts.[52] The fragmentation of collective agreements led to uncertainty and made bargaining more difficult because the participants are more divided.

4.3 Trade union actions

The social partner organisations play multiple roles, for example, acting as advisers, representatives and providers of legal advice to individual members, as well as being parties to collective agreements, or providing assistance with monitoring and compliance tasks alongside local or regional authorities. Trade unions remain active where they can. They organise strikes (see the Amazon case *supra*); they try to remain close to the workers and to unionise; they help workers in trials; and they negotiate at sectoral and national level in order to promote workers' rights. Some would contend that unions are apprehensive about the future, as they are witnessing workforce changes, pauperisation and the emergence of an illegal workforce that does not interact with them.

5. Access to justice and enforcement legislation

5.1 Controls and inspections

Labour inspectors ('Inspection du travail') and social security inspectors (*Union de recouvrement des cotisations de Sécurité sociale et d'allocations familiales*, URSSAF) face three practical difficulties. First, the highly mobile form of work in the sector involves a lot of change, which is hard for inspectors to keep up with. Second, complex subcontractor chains exist in the sector and are difficult to recognise and to follow in the long term, particularly when companies tend to appear and disappear quickly (high turnover), which can obscure the responsibilities of each actor. Third, bogus self-employment is becoming more and more important in France. Judges and the legislator disagree regarding whether workers – particularly platform workers – should be treated as employees or independent workers.[53]

Regarding the enforcement and application of liability arrangements, one trade unionist view is that there are problems with regard to language, non-transparent or inaccessible legislative information, and difficulties in proving abuses. There can be an extra issue regarding foreign workers and/or foreign principals, leading to problems in cross-border judicial proceedings.

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52. Declaration of a CGT federation member, Interview no. 1.

53. See, for instance, I. Daugareilh, C. Degryse, P. Pochet, The Platform Economy and Social Law: Key Issues in Comparative Perspective, WP 19.10, ETUI, 20 June 2019.

5.2 Access to justice, remedies and sanctions in case of workers' rights violations

Access to justice and the ability to mobilise are directly linked to union representation. Here again, a distinction needs to be made between employees of large companies, small companies, temporary workers and self-employed workers.

For employees, it is easier to access the courts. There are many examples of judgments handed down on issues of compliance with working hours or dismissal procedures, including for the serious misconduct[54] of a supply chain manager in an Amazon warehouse.[55] Other examples include dismissal following sick leave of an Amazon logistics operations agent,[56] even of dismissal without real and serious cause[57] or double employment.[58] In other examples, they highlight the role of the principal, as in a case in which Amazon 'blacklisted' an employee of a subcontracting company.[59] In the case of the non-payment of wages during the term of the contract, workers are entitled to take legal action against their employer and, depending on the liability regime, jointly against their corresponding contractor. The procedure for facilitating payment involves addressing a formal request to the company before starting a lawsuit.

For the other types of workers, it should be noted that there are difficulties of access to justice, which can be explained simply by the cost of a trial (even though it is lower in France than in other countries) and its duration. The high proportion of workers on fixed-term contracts is also detrimental to effective legal enforcement, as the hope of a continuation of the employment relationship often inhibits the exercise of rights.

Trade unions offer their members legal aid and/or assistance. The unions are sometimes entitled to start legal proceedings on behalf of their members on the basis of their own capacity as parties to the collective agreement. This is allowed, unless workers explicitly oppose the trade union's initiative. But as indicated previously, temporary workers and independent workers might not join trade unions in the first place.

The offence of bogus subcontracting ('*marchandage*') is punishable by two years' imprisonment and a fine of up to €30,000.[60] A client or principal contractor who has used the services of a person for the purpose of trafficking is punishable by one year's imprisonment and a fine of up to €12,000. Recourse to illegal or undeclared work is punishable by three years' imprisonment and a fine of €45,000.[61] Further,

54. 6 April 2023, Cour d'appel de Pau RG n° 21/01832 Chambre sociale. 29 March 2023 Cour d'appel de Versailles RG n° 21/03164 19e chambre.
55. 25 May 2023, Cour d'appel de Paris RG n° 21/00730 Pôle 6 - Chambre 10.
56. 21 March 2023, Cour d'appel de Grenoble RG n° 20/04176 Ch. Sociale -Section A.
57. 20 April 2023, Cour d'appel de Versailles RG n° 19/02146 11e chambre.
58. 22 November 2023, Cour d'appel de Paris RG n° 21/05412 Pôle 6 - Chambre 6.
59. 5 December 2023, Cour d'appel de Lyon RG n° 22/05833 chambre sociale C.
60. Articles L.8243-1, L. 8241-1 and L.1234-1 of the French Labour Code.
61. Articles L. 8221-1, L. 8221-3, L. 8221-5 of the French Labour Code.

if a temporary work agency acts in this way, without making the necessary declarations required by law (having recourse to illegal or undeclared work) and/or without providing a formal guarantee for the payment of wages and social security contributions, then the courts may order the temporary closure of the agency for a period of up to two months.[62]

6. Conclusions

In conclusion, this case study shows that subcontracting in logistics in France is an environment conducive to the violation of workers' rights. An analysis of the French labour market shows that subcontracting in logistics is divided between two sectors, logistics and transport, which creates an ambiguity regarding the applicable laws and collective agreements. Characteristic of the sector is the number of atypical employment relationships. E-commerce, new technologies and digital trends are transforming the working conditions and jobs of subcontractors who are more and more being monitored, observed and controlled by companies. This goes hand in hand with managerial trends that favour stronger controls and more temporary contracts and subcontracting. Problematic cases in the sector concern mainly working conditions, workers rights' violations in the field of due diligence and general data protection. Judges have sanctioned companies such as La Poste or Amazon for such violations. A legal analysis of subcontracting chains and working conditions in logistics shows that France stands out, with a law on the duty of vigilance (2007) and a law on subcontracting (1975). One might have expected that this multiplicity of legal tools would have led to strong protection, but the duty of vigilance law does not create many justiciable obligations for companies to improve workers' situations, as the *La Poste* case shows. Finally the role of trade unions is necessary but hindered by the division between two sectoral collective agreements mentioned above, the temporariness of the work contracts, contract types (for example, self-employed or not) particularly prevalent in this sector and by the increase of undocumented and vulnerable workers who are not aware of the trade unions.[63]

Annex **Interview details**

No.	Institutional affiliation	Position	Date	Code
1	Confédération Général du Travail (CGT)	Secrétaire fédéral à la CGT Transports et délégué syndical chez GXO Logistics	26.9.2023	CGT01

62. Article L. 8272-2 of the French Labour Code. For more details, see also https://travail-emploi.gouv.fr/droit-du-travail/lutte-contre-le-travail-illegal-10802/article/les-sanctions-relatives-au-travail-illegal-et-aux-infractions-connexes

63. See also Directorate General for Internal Policies, Policy Department for Citizens' Rights and Constitutional Affairs, Liability in Subcontracting Chains: National Rules and the Need for a European Framework, Study, https://www.europarl.europa.eu/RegData/etudes/STUD/2017/596798/IPOL_STU(2017)596798_EN.pdf (11/6/24).

The logistics sector in Germany
Lack of transparency because of subcontracting

Manfred Walser

1. Analysis of the context

1.1 Market structure

In common with the rest of Europe, logistics in general and parcel services in particular are booming in Germany. The volume of shipments has more than doubled in the past decade. To date, the record high was recorded in 2021, amounting to 4.51 billion shipments per year (because of the Covid-19 pandemic). Perhaps even more telling is the fact that, one year later (that is, after lockdowns had ended), there were still 4.15 billion shipments. But this slight downward trend was halted as early as 2023, in which the volume of mailings totalled 4.175 billion items, an increase of 0.6% compared with the previous year. Furthermore, the German Parcel and Express Logistics Association (*Bundesverband Paket und Expresslogistik* – BPEX), which organises several of internationally active parcel service providers,[1] expects significant growth in the future. For 2028, it expects 4.7 billion shipments for the industry as a whole.[2]

Total turnover in the parcel sector also reached a record high of €26.9 billion in 2021 (+ 14.3% compared with the previous year).[3] In 2022, it was still €26 billion and in 2023 €26.5 billion.[4] According to the German Federal Statistical Office, turnover more than doubled between 2000 and 2018.[5]

The German market is dominated by the major international parcel service providers, namely Deutsche Post/DHL, Hermes, UPS, DPD and GLS, and to a lesser extent FedEx. Altogether these big players account for around 80% of the industry's total turnover.[6] Amazon now also has its own delivery network,

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1. DPD, GLS, GO!, Hermes, Night Star Express, nox, UPS, see https://bpex-ev.de/ueber-uns/mitglieder.html (4.5.2025).
2. Bundesverband Paket & Expresslogistik, KEP-Studie 2021, 2021; Bundesverband Paket & Expresslogistik, KEP Studie 2022, 2022, p. 13 et seq.; Bundesverband Paket & Expresslogistik, KEP-Studie 2023, 2023, p. 7 et seq.; Bundesverband Paket & Expresslogistik, KEP-Studie 2024, 2024, p. 11, 13; Bremische Bürgerschaft, Drs. 20/1768, p. 1.
3. Bundesverband Paket & Expresslogistik, KEP Studie 2022, 2022, p. 17.
4. Bundesverband Paket & Expresslogistik, KEP-Studie 2023, 2023, p. 7; Bundesverband Paket & Expresslogistik, KEP-Studie 2024, 2024, p. 16.
5. BT Drs. 19/14417, p. 2.
6. *Schmierl, et al.*, Digitale Logistik, October 2022, p. 9.

established in 2015.[7] In 2020, between 5% and 15% of parcels in Germany were delivered by Amazon.[8] The small and low-turnover parcel service providers claim less than 2% of market share.[9]

In Germany, the parcel industry is referred to as 'courier, express and parcel services' (CEP). It belongs to the transport and storage sector and involves the 'collection, sorting, transport and delivery (national or international) of letter post, small packages and parcels by companies. Transport can be carried out in various ways and both with own vehicles and with public transport', including (also local) delivery services.[10] Courier shipments are usually delivered within one day, predominantly by direct delivery and regardless of weight. Individual delivery times are agreed for express shipments, whereby delivery is usually not made directly, but via distribution centres. In the case of parcel shipments, on the other hand, no specific delivery times are usually agreed and a high degree of standardisation, including weight limits of 25 kg or 32 kg, is common.[11] The parcel sector accounts for over 80% of the CEP sector's consignment volume.[12]

Looking at the absolute number of companies operating in the CEP sector, the German Federal Statistical Office reported a total of 15,629 companies in 2019. The proportion of companies with only one to nine workers at that time was as high as 79.6%. On average, these companies have only two employees.[13] It should be noted, however, that the figures do not differentiate between parcel and other postal services. A study by BPEX estimates the number of contractual partners or subcontractors in transport and delivery in 2018 at around 4,000 companies (albeit based on a slightly smaller total volume). It estimates that around 86% of companies have fewer than 20 workers, around half (42%) of which employ fewer than ten persons.[14] In other words, the picture is that of a fragmented industry with many small and micro-companies.[15] According to the Federal Association of Courier, Express and Postal Services (*Bundesverband der Kurier-Express-Post-Dienste* – BdKEP), which organises small and medium-sized CEP companies in particular – and therefore many that operate as subcontractors – there has been

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7. Bundesnetzagentur, Tätigkeitsbericht Post, BT Drs. 20/1622, 2021, p. 44; Amazon discontinued its 'Amazon-Flex' delivery service, which allowed solo self-employed workers to accept orders via an app, in June 2022 following an agreement with the German pension insurance scheme after the company was repeatedly confronted with the issue of bogus self-employment (ver.di Bundesverwaltung, Fachbereich Postdienste, Spedition und Logistik, Fair zugestellt statt ausgeliefert, Präsentation, 2023, p. 15).

8. Monopolkommission, 12. Sektorgutachten, BT Drs. 20/1622, 2021, p. 3.

9. Statistisches Bundesamt, press release no. N 078 of 25.11.2020; Bundesnetzagentur, Tätigkeitsbericht Post, BT Drs. 20/1622, 2021, p. 42.

10. Statistisches Bundesamt, Einordnung der Post-, Kurier- und Expressdienste in die Klassifikation der Wirtschafts-zweige, https://www.destatis.de/DE/Themen/Querschnitt/post-kurier-expressdienste/hinweis-wz.html?nn=374076 (4.5.2025).

11. For an overview, see Bundesverband Paket & Expresslogistik, KEP-Studie 2023, 2023, p. 9.

12. *Zanker*, Branchenanalyse Logistik, June 2018, p. 107.

13. Special evaluation by the Statistisches Bundesamt reported in ver.di, Positionspapier: Fair zugestellt statt ausge-liefert, 2023, p. 2.

14. Bundesverband Paket & Expresslogistik, KEP-Studie 2023, 2023, p. 44.

15. See *Kärcher/Walser*, Durchsetzung von Arbeitsrecht, 2025, pp. 66 et seq., https://www.hugo-sinzheimer-institut.de/faust-detail.htm?sync_id=HBS-009092 (4.5.2025)

a concentration of subcontractors in recent years, which is why an increase in the size of companies can be observed, especially in last-mile delivery.[16]

As the data situation with regard to the sector is difficult in various respects, four semi-structured interviews were conducted with representatives of the trade unions, the *Faire Mobilität* advisory network and employers' representatives. Explicit reference is made to these interviews in some passages of this chapter (see Annex 1).

1.2 Employment in the CEP sector

1.2.1 General findings

Of the almost 360,000 employees subject to social security contributions in the CEP sector (totalling around 460,000), around 270,000 work in micro-enterprises with fewer than ten employees.[17] Just over half of those employed in the CEP sector work as drivers or delivery staff, a further third work in warehouse logistics, distribution centres and hubs, while the rest are typically employed in organisation and information technology (IT).[18] The economic downturn following the end of the Covid-19 pandemic appears to have had a partial impact on employment in some companies. For example, the parcel service provider DPD is planning a major reduction in employment because of the slump: 1,210 full-time positions – or around one in seven jobs – are set to be cut across Germany by the end of 2025.[19]

A key characteristic of the parcels sector is the high proportion of personnel costs in the total cost of providing services. Based on all postal services combined, personnel expenses amounted to €14.4 billion in 2019 with total revenue of €47.7 billion, that is, significantly more than a quarter.[20] This is driven in particular by parcel delivery over the so-called 'last mile', which accounts for up to three-quarters of the costs of parcel services overall.[21] Price competition is therefore a key lever for companies here, which brings with it the risk of competition over working conditions. This may partially explain why, despite the boom in the sector, working conditions have barely improved in recent years, and have even deteriorated in real terms, especially regarding wages (see Section 2.1.1.).[22]

There is significant labour turnover in the CEP sector because of the prevailing working conditions and workload. Some trade union observers argue that this is the

16. Interview with *Andreas Schuman*, BdKEP on 26.10.2023 (KEP01).
17. BR-Drs. 117/23, p. 2 f.; BT-Drs. 20/9834, p. 14.
18. Bundesverband Paket & Expresslogistik, KEP-Studie 2023, 2023, p. 42.
19. *Bauer*, bewegen 1/2024, 4.
20. Statistisches Bundesamt, Dienstleistungen 2019, 2021, p. 7.
21. Cf. *Bienzeisler/Zanker*, Zustellarbeit 4.0 – Eine 360-Grad-Analyse, p. 26.
22. In detail *Kärcher/Walser*, Durchsetzung von Arbeitsrecht, 2025, pp. 66 et seq.; cf. as well BT Drs. 19/13390, p. 1.

companies' deliberate aim.[23] In a survey of managing directors in 2022, however, almost half mentioned labour recruitment as an increasing problem.[24] This can also lead to competition for workers. In 2018, Hermes, for example, reported that Deutsche Post/DHL and UPS were luring away last-mile drivers by offering better wages.[25] The fact that the high labour turnover has not yet had a negative impact on work processes in parcel delivery is mainly because the activity has been largely digitalised and standardised (see Section 2.2.). As a result, unskilled labour can quickly be sent out on deliveries on their own. Scanners and route planning programs can be operated in several languages and are self-explanatory, so that little or no training by other workers is necessary.[26]

Because of the low entry barriers, the parcel industry is characterised by a high proportion of immigrants, especially as recognition of foreign qualifications is handled rather restrictively in Germany. The industry association BPEX thus sees the largest potential workforce in migrant employees 'regardless of the region of origin and the cause of migration'.[27] The proportion of migrant employees is consequently very high, although the specific origin (EU Member States/third countries) varies between the *Bundesländer* (German federal states).[28] At least a third of subcontractor employees are recent immigrants.[29] They often come from third countries, such as Afghanistan, Arab states, Azerbaijan, Ghana, India, Iran, Iraq, Mali, Sri Lanka, Syria and Turkey. Meanwhile, the proportion of employees from central and eastern, but also southern Europe (Bulgaria, Czechia, Greece, Poland, Romania), which is also quite high, is decreasing somewhat.[30]

1.2.2 Third-party employment

The majority of the aforementioned parcel service providers outsource parcel delivery to subcontractors, although the picture is very mixed.[31] While Deutsche Post/DHL employs almost 100% of its own delivery staff, UPS and FedEx employ around 40% permanent staff, while the other workers who provide services for these companies are employed by subcontractors. DPD outsources parcel delivery almost entirely to subcontractors, while Hermes, GLS and Amazon even entirely outsource parcel delivery to subcontractors with a predominantly small-business

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23. Forschungs- und Beratungsstelle Arbeitswelt (FORBA), Precarious working conditions in the parcel services, 2012, p. 29; also argued in interviews Ver01 and Ver02.
24. Statista.com, Ist zunehmende Mitarbeiter:innenfluktuation für Sie ein Thema?, https://de.statista.com/statistik/daten/studie/1325493/umfrage/zunehmende-mitarbeiterfluktuation-nach-branchen/ (4.5.2025).
25. Macho, Wirtschaftswoche from 30 November 2018, https://www.wiwo.de/unternehmen/dienstleister/paketdienste-hermes-setzt-verstaerkt-auf-eigene-zusteller/23699374.html (4.5.2025).
26. On this see *Zanker*, Branchenanalyse Logistik, June 2018, 10 f., 57 f. with further explanations on the digital technologies used by parcel service providers, in particular digital process control and monitoring and their effects.
27. Bundesverband Paket & Expresslogistik, KEP-Studie 2023, 2023, p. 40.
28. Interview with '*Faire Mobilität*' (FM01).
29. Sell, Löhne und Arbeitsbedingungen, aktuelle Sozialpolitik 13.1.2023, https://aktuelle-sozialpolitik.de/2023/01/13/die-vergessenen-paketzusteller/ (4.5.2025).
30. ver.di Bundesverwaltung, Fachbereich Postdienste, Spedition und Logistik, Fair zugestellt statt ausgeliefert, Prä-sentation, 2023, p. 9.
31. See Bundesnetzagentur, Wesentliche Arbeitsbedingungen der Subunternehmer im lizensierten Briefbereich, p. 18.

character. Overall, almost every second parcel delivery driver is employed by subcontractors.[32] The depots are also often operated by subcontractors.[33]

Although, as already mentioned, Deutsche Post/DHL currently provides parcel delivery services largely using its own workers, it has also resorted to outsourcing. For example, the subsidiary DHL Express Germany also used to work exclusively with subcontractors.[34] In 2015, the establishment of regional companies for parcel delivery (so-called DHL Delivery GmbHs) led to a collective bargaining dispute between the second largest German trade union, ver.di, and Deutsche Post AG. After the 2019 collective bargaining round, the employees of these GmbHs were supposed to be reintegrated into Deutsche Post AG. 'Attractiveness as an employer' was expressly emphasised.[35] This agreement appears to be fragile, however. In an interview conducted in February 2023, Deutsche Post AG's Chief HR Officer suggested that, under certain circumstances, certain operating sites would no longer be operated by the company itself, but rather outsourced, if necessary.[36] This does not currently appear to be the case, however.

While subcontracting undoubtedly plays an important role in the parcel industry, the importance of solo self-employment is less clear. It is reported that its role has been diminishing in Germany in recent years; it is estimated that the share of solo self-employment persons now amounts to 2% of the people working in the industry.[37] One important reason for this is likely to be the strict jurisdiction of the German social courts in differentiating between bogus self-employment and solo self-employment in the CEP sector. This makes it considerably more difficult to make legal use of solo self-employed workers, entailing considerable risks under civil, social, tax and criminal law (see Section 3.3.). This is because the requirements of the large parcel service providers in their contracts with subcontractors are often very strict and detailed. For example, a journalistic research network has uncovered contract documents with subcontractors in relation to Amazon with such 'rigid specifications' that the subcontractors are left with very narrow profit margins.[38] This often leaves little room for manoeuvre for independent business decisions.[39] Nonetheless, in recent priority inspections the

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32. Own calculations based on company data at ver.di Bundesverwaltung, Fachbereich Postdienste, Spedition und Logistik, Fair zugestellt statt ausgeliefert, Präsentation, 2023, p. 6.

33. Cf. *Rügemer/Wigand*, Union-Busting in Deutschland, 2014, p. 40 f.

34. Cf. ver.di press release of 20.3.2013, https://www.verdi.de/presse/pressemitteilungen/++co++f25c940a-90ac-11e2-b7d2-52540059119e (4.5.2025).

35. Cf. ver.di press release of 23.3.2019, https://psl.verdi.de/tarif/++co++5afde8d0-5085-11e9-bb1e-001a4a160100 (4.5.2024).

36. Interview by *Kranz/Kiesling* with *Thomas Ogilvie*, Berliner Morgenpost, 18 February 2023, https://www.morgenpost.de/wirtschaft/article237653657/streiks-drohen-post-kunden-verdi.html (4.5.2025).

37. Own calculations based on company data at ver.di Bundesverwaltung, Fachbereich Postdienste, Spedition und Logistik, Fair zugestellt statt ausgeliefert, Präsentation, 2023, p. 6.

38. See, for example, the article by *Lenz*, Ausbeutung von Paketboten: Wie Amazon Kurierunternehmen unter Druck setzt, Correctiv from 57.2023, https://correctiv.org/aktuelles/ungerechte-arbeit/2023/07/05/ausbeutung-paketboten-amazon-kurierunternehmen-unter-druck/ (4.5.2025).

39. Cf. Forschungs- und Beratungsstelle Arbeitswelt (FORBA), Precarious working conditions in the parcel services, 2012, p. 28.

control authorities have identified solo self-employment as a problem that is still relevant to the industry.[40]

Data on the use of temporary workers in the CEP sector is sparse. Although the number of temporary agency workers in the 'warehousing, mail, delivery and goods handling' sector was relatively high in 2023, at around 223,449 out of a total of around 802,529 temporary workers,[41] they appear to fall almost entirely in the warehousing sector, which the Federal Employment Agency states at 220,456 workers. It can therefore be assumed that temporary agency work does not currently play a substantial role in last-mile delivery.[42] Rather, temporary agency workers are employed mainly in distribution centres.[43] It should be noted, however, that the cut-off date for the figures mentioned is 30 June 2023 and is therefore outside the seasonal peak in the CEP sector, which is particularly strong in November and December, when sales increase by just under a fifth.[44] The real number of temporary workers might therefore be higher than these figures suggest, even in last-mile delivery, in order to cope with order peaks during this period.[45]

2. Problematic cases in the courier, express and parcel services sector

2.1 Working conditions and workers' rights violations

2.1.1 General findings

Employment conditions in the CEP sector are worse than in the economy as a whole. First, wages are significantly lower. In April 2022, full-time skilled workers in the CEP sector received an average gross wage of €2,719 (excluding special payments) per month, which is a significant 20% less than skilled workers earn in Germany on average.[46] It should be noted that these average figures concern skilled workers and also include the remuneration of employees covered by collective agreements (for example, at Deutsche Post/DHL and UPS). This distorts the figures upwards in comparison with the remuneration of subcontractors' workers. A comparison of hourly wages from 2009 to 2020 shows a real loss in purchasing power of around 15% in the CEP sector.[47] The low remuneration is partly a result of the low level of collective bargaining coverage for employees of subcontractors (see Section 1.2.2.). Overall, the number of workers covered by collective agreements

40. See Spiegel Online, 19.4.2024, https://www.spiegel.de/wirtschaft/schwarzarbeit-zoll-wittert-organisierte-kriminalitaet-in-teilen-der-paketbranche-a-0e97f479-05db-4c72-98c7-6db598f78f04 (4.5.2025).
41. Bundesagentur für Arbeit, Leiharbeitnehmer und Verleihbetriebe, 2023, Table 1.2.1.
42. This is also the assessment of *Zanker*, Branchenanalyse Logistik, June 2018, p. 113.
43. As explained by experts in interviews Ver01, Ver02, KEP1, FM01.
44. Federal Statistical Office, press release no. N 078 of 25.11.2020, (21.3.2023).
45. Cf. in this regard *Zanker*, Branchenanalyse Logistik, June 2018, p. 120.
46. Federal Statistical Office, press release no. N059 of 9.11.2023.
47. Kärcher/Walser, Durchsetzung von Arbeitsrecht, 2025, p. 72.

has been declining in the entire CEP sector (see Section 4.1.).[48] As a result, half of all employment relationships in 2018 were below the low-wage threshold and 25,000 delivery staff were dependent on social benefits to top up their incomes in order to secure the subsistence minimum.[49]

In addition to the already low remuneration, cases of unlawful behaviour are also reported in relation to remuneration. These include systematic minimum wage violations through unjustified wage deductions. There are also reports of illegal contractual penalties for delayed loading times, even if these are not caused by the drivers,[50] of unjustified deductions for damage to delivery vehicles or parcel damage or loss,[51] often disregarding the principles of employee liability (which is limited in Germany).[52] Frequently, 'expenses'[53] and payment per parcel,[54] sometimes in breach of German remuneration law, also determine wages, which in turn often results in excessive working hours beyond what is permitted under working time legislation. The Working Life Research Centre (Vienna) also shows that some people are employed in the form of 'marginal employment', which is partly exempted from social security law (§8 of the German Social Security Code IV – SGB IV),[55] and that wages for additional employment are paid 'under the table' in order to save on social security contributions and taxes.[56]

In addition to remuneration, working conditions are also worse in other respects. For example, workers in postal and parcel services work nights and weekends more often than average. In 2022, 57% of employees in this sector worked weekends, compared with only 30% in the economy as a whole. Some 14% also worked between 11 pm and 6 am. In comparison, 10% of the labour force in the overall economy worked nights.[57]

The CEP sector in Germany is furthermore characterised by atypical employment relationships.[58] For example, around a third of employment relationships in the

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48. ver.di Bundesverwaltung, Fachbereich Postdienste, Spedition und Logistik, Fair zugestellt statt ausgeliefert, Prä-sentation, 2023, p. 6.
49. BT-Drs. 19/10289, 2019, p. 1.
50. Faire Mobilität, Fallsammlung Kurier-Express-Paketdienst-Branche, 2022, p. 2.
51. Faire Mobilität, Fallsammlung Kurier-Express-Paketdienst-Branche, 2022, p. 11 f.; *Langenberg*, Auf der letzten Meile publik 8/2022; *Wallraff*, ZEITmagazin 23/2012.
52. Cf. with further references BAG, 27.9.1994 - GS 1/89 (A) 8 – NJW 1995, 210.
53. Forschungs- und Beratungsstelle Arbeitswelt (FORBA), Precarious working conditions in the parcel services, 2012, p. 26; there are reports from the USA that Amazon uses algorithms to monitor subcontractors digitally and thus pays them individually and in line with their performance – this is referred to as 'algorithmic wage discrimi-nation': *Dubal*, On alghorithmic wage discrimination, pp. 2 ff., 30 ff.
54. *Montag/Angeloudis/Russew*, Im Netz der Subunternehmen, rbb24 28.11.2022, https://www.rbb24.de/studiofrankfurt/wirtschaft/2022/11/hoppegarten-paketboten-amazon-subunternehmen-arbeitsbedingungen-.html (24.2.2024).; *Wallraff*, ZEITmagazin 23/2012; Maier, Tagesspiegel 30.11.2022, https://background.tagesspiegel.de/verkehr-und-smart-mobility/briefing/aktivierung-einer-globalen-reservearmee (4.5.2025).
55. A specific form of employment that involves either an income of up to €556 or exists only for a short period of time ('*Minijob*'). This form of employment is subject to tax and social security contributions only to a limited extent.
56. Forschungs- und Beratungsstelle Arbeitswelt (FORBA), Precarious working conditions in the parcel services, 2012, 26, 28.
57. Statistisches Bundesamt, press release no. N059 of 9.11.2023.
58. Cf. BT-Drs. 20/299, p. 14.

core business are atypical: that is, part-time with 20 or fewer working hours per week, in 'marginal employment', or as fixed-term or temporary agency workers[59] – while the proportion of atypical workers in the economy as a whole is only one fifth.[60] The Federal Statistical Office estimates the share of atypical employees in the core labour force in postal, courier and express services at 29% for 2022.[61] The proportion of part-time employment appears to be particularly high in the hubs, distribution centres and delivery bases and is estimated to be around a third of the workforce. One of the reasons given for this is the varying workload throughout the day, which is particularly high in the mornings and evenings.[62] However, it is also known from other sectors with a high susceptibility to illegal employment, such as the construction sector, that a high proportion of part-time work in labour-intensive activities may be an indication of tax and social security fraud, as well as a means of circumventing minimum wage requirements.[63]

In addition, workers in the parcel industry bear a considerable physical burden. According to the industry association BPEX, the average weight of parcels is around 5 kg and 'only' around 5% of parcels weigh over 20 kg, which – according to the association – is 'the exception, not the rule'.[64] Nevertheless, this shows that at least every twentieth parcel is heavier than 20 kg, that is, one to two parcels per shift. In total, up to two tonnes of parcels arrive in a shift, which have to be carried from the delivery vehicle to the customer's front door, sometimes via stairwells. In addition, parcels are often not carried individually, but together with other parcels in order to meet the time limits.[65] These weights violate the German Social Accident Insurance's guidelines for lifting and carrying loads for an all-day shift.[66] Although the reform of the Postal Act passed by the Bundestag in June 2024[67] addresses working conditions only to a limited extent, it at least tackles the problem of heavy parcels. Since 1 January 2025, parcels weighing more than 20 kg should generally be delivered by two persons, although one person is sufficient if suitable technical aid is available. Whether this is sufficient is doubtful, however. On 17 December 2024, a stricter regulation was introduced to the *Bundestag*, according to which, on one hand, the limit would have been increased to 23 kg, but on the other hand parcels heavier than that would generally have had to be

59. Statistisches Bundesamt, definition available at https://www.destatis.de/DE/Themen/Arbeit/Arbeitsmarkt/Glossar/atypische-beschaeftigung.html (4.5.2025).
60. Niedersächsischer Landtag, LT Drs. 19/874, p. 2; BT-Drs. 20/299, p. 14.
61. Statistisches Bundesamt, press release no. N059 of 911.2023.
62. Bundesverband Paket & Expresslogistik, KEP-Studie 2023, 2023, p. 41.
63. On this, see for example *Walser*, FS 75 Jahre BUAK, 2021, pp. 223, 247 with further references.
64. Bundesverband Paket & Expresslogistik, Press release 7/2023, p. 1.
65. According to *Stefan Thyroke*, ver.di, in an interview with *Jüngst* on eurotransport.de, 17.2.2023, https://www.eurotransport.de/artikel/stefan-thyroke-von-verdi-verbot-von-werkvertraegen-11220302.html (4.5.2025); ver.di Bundesverwaltung, Fachbereich Postdienste, Spedition und Logistik, Fair zugestellt statt aus-geliefert, presentation, 2023, p. 14.
66. Deutsche Gesetzliche Unfallversicherung, BGI/GUV-I 504-46, July 2009; see also the summarising presentation at ver.di Bundesverwaltung, Fachbereich Postdienste, Spedition und Logistik, Positionspapier: Gesetz zur Siche-rung von Arbeitnehmer*innenrechten in der Paketbranche, p. 4.
67. BGBl. 2024 I Nr. 236.

transported by two deliverers.[68] However, the amendment was not passed in the last legislative period.

Furthermore, there are other violations of occupational health and safety regulations.[69] In many cases, deliveries are made without the required work clothing and, above all, without proper work shoes.[70] In addition, traffic offences,[71] such as parking in the wrong place or exceeding the speed limit, are not uncommon and are certainly more likely due to high work pressure.

This is also reflected in data on medically certified incapacity for work. For example, employees in the postal and delivery service professions occupational group were registered as unable to work for an average of more than 28 days in 2021.[72] In 2018, 59% of employees in the CEP sector felt physically exhausted and 34% felt emotionally exhausted. In 2018, around 62% of employees reported deadline and performance pressure, 11% more than in 2012. There are also reports that employees are encouraged to work even when they are ill. If employees fall ill, their parcels have to be delivered by colleagues. If this is not possible, they have to be split up over the following days, and in some cases, sick pay is also refused.[73]

The situation of migrant workers is particularly precarious.[74] Not only is it often difficult to effectively enforce their rights because of a lack of language or legal knowledge, many of them are more willing to work under poor working conditions or even tolerate unlawful behaviour on the part of their employer rather than be unemployed,[75] especially as in many cases their residence status – or even their accommodation – is dependent on an existing employment relationship.[76] Employers often present illegal behaviour towards these employees as compliant with the law.[77]

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68. BT-Drs. 20/14243.
69. Bremische Bürgerschaft, Drs. 20/1768, p. 1.
70. Cf. ver.di Bundesverwaltung, Fachbereich Postdienste, Spedition und Logistik, Fair zugestellt statt ausgeliefert, Präsentation, 2023, p. 14.
71. *Montag/Angeloudis/Russew*, Im Netz der Subunternehmen, rbb24 28.11.2022, https://www.rbb24.de/studiofrankfurt/wirtschaft/2022/11/hoppegarten-paketboten-amazon-subunternehmen-arbeitsbedingungen-.html (24.2.2024); Faire Mobilität, Fallsammlung Kurier-Express-Paketdienst-Branche, 2022, p. 12; *Langenberg*, Auf der letzten Meile, publik 8/2022.
72. See BARMER, Institut für Gesundheitssystemforschung (ed.), BARMER Gesundheitsreport 2022, 2022, p. 40, 138, 145; see also ver.di Bundesverwaltung, Fachbereich Postdienste, Spedition und Logistik, Fair zugestellt statt ausgeliefert, Präsentation, 2023, p. 13 with graphic based on own presentation based on the Barmer-Gesundheitsreport 2022, p. 34 ff.
73. Faire Mobilität, Case Study Courier-Express-Parcel Service Industry, 2022, p. 7; ver.di Bundesverwaltung, Fach-bereich Postdienste, Spedition und Logistik, Fair zugestellt statt ausgeliefert, Presentation, 2023, p. 10.
74. ver.di Bundesverwaltung, Fachbereich Postdienste, Spedition und Logistik, Fair zugestellt statt ausgeliefert, Prä-sentation, 2023, p. 11.
75. *Langenberg*, Auf der letzten Meile, publik 8/2022.
76. Faire Mobilität, Fallsammlung Kurier-Express-Paketdienst-Branche, 2022, p. 13; ver.di, Fachbereich Postdienste, Speditionen, Logistik, bewegen 5/2022, 4, 41.
77. See Faire Mobilität, Case Study Courier-Express-Parcel Service Industry, 2022, p. 3.

2.1.2 Consequences of third-party employment

Third-party employment as described in Section 1.2.2 has a partly direct and partly indirect impact on employment conditions in the CEP sector. Direct effects result primarily from the lack of collective bargaining coverage and the frequent absence of works councils and code-termination in companies. In addition to financial reasons, the desire to avoid collective bargaining and codetermination often appears to be a key reason for companies to outsource (see Section 4).[78] Resorting to temporary agency work is also a way of avoiding the application of their own collective agreements. In addition, there is the problem of algorithmic and indirect management described in Section 2.2.

Third-party employment can lead to non-transparent networks of companies and employment relations with unclear responsibilities and competences. This not only makes inspections by government agencies more challenging, but also makes it more difficult for the employees concerned to enforce their rights. In some cases, the employees of these subcontractors do not even know who their legal employer is. It happens regularly that (in particular, smaller) subcontractors disappear from the scene because of insolvency or for other reasons. *Faire Mobilität*, a counselling and advisory institution operated by the German Trade Union Confederation (DGB),[79] reports, for example, that subcontractors regularly evade their responsibilities by winding up their companies.[80] In some cases, they later appear under different names and identities and set up new companies in which they reemploy the staff of the 'old' company.[81]

However, it is not only the employees who are exposed to considerable pressure, but also the subcontractors themselves, who are often subject to strict requirements that leave them little room for manoeuvre, as documented in the case of Amazon, for example (see Section 1.2.2.). It is reported that high contractual penalties or the withdrawal of orders in some cases brought on the insolvency of subcontractors, which were then unable to pay their workers.[82]

2.2 Problems caused or exacerbated by algorithmic management

The parcel industry is increasingly relying on algorithmic management. In principle, this has the potential to speed up and optimise delivery times, which also helps to reduce CO_2 emissions. But, it can also exacerbate existing employment

78. For example *Rügemer/Wigand*, Union-Busting in Deutschland, 2014, p. 40.
79. See below for more details, 4.3.1.
80. Faire Mobilität, Fallsammlung Kurier-Express-Paketdienst-Branche, 2022, 6, 13 seq.
81. See ea for a corresponding report: *Montag/Angeloudis/Russew*, Im Netz der Subunternehmen, rbb24 28.11.2022, https://www.rbb24.de/studiofrankfurt/wirtschaft/2022/11/hoppegarten-paketboten-amazon-subunternehmen-arbeitsbedingungen-.html (24.2.2024).
82. Cf. *Wallraff*, ZEITmagazin 23/2012.

risks, particularly with regard to occupational health and safety.[83] Continuous monitoring of staff makes all movements of parcel delivery trackable for both customers and parcel service providers.[84] In conjunction with mobile devices, such as scanners, tablets and smartphones with integrated tracking systems,[85] which are often even installed in the vehicles, the routes travelled and locations of the parcel delivery staff, as well as their driving and rest times[86] are closely monitored. It is obvious that this has significantly increased performance and time pressure in addition to physical and mental stress.[87] This is because the performance data generated in this way is used to determine the continuation (or not) of their largely fixed-term employment contracts.[88] In the case of bicycle couriers, it was also observed that the definition of delivery areas in conjunction with the app's evaluation of delivery speeds encouraged dangerous driving.[89]

There are also reports of the use of 'wearables', which are worn on the body to measure productivity. For example, the duration and interruption of scans of package labels, as well as any errors could be recorded. This would enable a real-time comparison of employee productivity. Gamification is also used as a motivational tool, for example by translating work tasks into a game that is displayed on screens or by creating a competitive situation between different shifts.[90]

The work management made possible by digitalised planning and control systems, as well as data archiving and AI-based or algorithm-controlled process optimisation is also referred to as 'digital Taylorism'. This is a 'system of rigid division and control of work as a result of the use of digital technologies'.[91] Particularly in subcontractor systems in the CEP sector, work is often not managed by the employee's contractual employer, but by the parcel service companies themselves in the form of indirect management, as described above. The subcontractors are not only given the parcel volumes; in addition, exact routes are determined in real time using digital solutions, such as route planning software.[92] It is particularly problematic when the contracting companies gain access to the employee data

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83. Cf. for example Denkfabrik digitale Arbeitsgesellschaft, Arbeitspapier Algorithmisches Management im Fokus, March 2023, p. 3 et seq.
84. Cf. *Bienzeisler/Zanker*, Zustellarbeit 4.0 – Eine 360-Grad-Analyse, p. 8; also see *Bienzeisler/Zanker*, Zustellarbeit 4.0 – Eine 360-Grad-Analyse, p. 38 f.
85. For an in-depth analysis see *Zanker*, Branchenanalyse Logistik, June 2018, 10 f., 57 f.
86. Cf. *Schmierl, et al.*, Böckler Impuls 17/2022, 4, 4. Cf. Schmierl, et al., Böckler Impuls 17/2022, 4, 4.
87. Forschungs- und Beratungsstelle Arbeitswelt (FORBA), Precarious working conditions in the parcel services, 2012, p. 28 f.
88. *Butollo/Koepp*, WSI-Mitt. 2020, 174, 178; *Schmierl, et al.*, Digitale Logistik, Oktober 2022; ver.di Bundesverwal-tung, Fachbereich Postdienste, Spedition und Logistik, Fair zugestellt statt ausgeliefert, presentation, 2023, p. 10.
89. Cf. for example Denkfabrik digitale Arbeitsgesellschaft, Arbeitspapier Algorithmisches Management im Fokus, March 2023, p. 5.
90. *Waas*, Künstliche Intelligenz und Arbeitsrecht, 2023, p. 36 et seq. with further references.
91. Butollo, et al., AIS-Studien 2/2018, 143; see also *Schmierl/Schneider/Struck*, WSI-Mitteilungen 2021, 472, 477.
92. Ver.di, Überwachung, Intransparenz und jede Menge Überstunden für Amazons Paketzusteller*innen, 23.8.2022, https://wir-sind-verdi.de/2022/08/23/ueberwachung-intransparenz-und-jede-menge-ueberstunden-fuer-amazons-paketzustellerinnen/ (4.5.2025).

of the subcontractors' workers in this way. Amazon justifies this comprehensive access, which must be granted to Amazon by the subcontractor in its contracts and extends even to individual wage data, on the grounds that it wants to ensure that drivers are 'treated fairly and respectfully'.[93] However, this is hardly compatible with the principles of employee data protection and any necessity for passing on individual personal data is by no means obvious.

Case law on the handling of performance data collected by handheld scanners is not yet consistent across lower courts in Germany. With regard to workers in Amazon logistics centres, for example, the Administrative Court of Hanover has accepted that their performance data is provided, recorded and processed by their handheld scanners every minute. The court does not see this as 'permanent pressure'.[94] Among other things, it refers (generally) to the fact that there is now an employee market and – in casu – 80% of employees were employed by the employer on a permanent basis.[95] This reasoning is not convincing. A different decision was made in the federal state of Hesse in relation to the logistics sector. The state data protection officer there prohibited the use of a software tool to collect and store the location data of a logistics company's vehicles,[96] which was confirmed by the competent Administrative Court in Wiesbaden, which also expressly ruled that open monitoring in this regard was not proportionate.[97] The legal situation with regard to employee data protection is therefore not yet conclusively clarified.

3. Legal analysis of subcontracting chains and working conditions in logistics

3.1 Regulation of subcontracting

There is no specific regulation of subcontracting under civil law in Germany, as is the case in France, for instance. As a rule, subcontracting contracts are subsumed under certain general contract types of the German Civil Code (§631 BGB – '*Werkvertrag*', §611 BGB – '*Dienstver-trag*'). This also applies to work as a solo self-employed person, which – provided it is not a case of bogus self-employment – is generally possible. The hurdles to setting up and closing such an undertaking are low. As already mentioned, no licence is required in this area, only a notification to the competent authorities, which is not followed by in-depth checks (cf. §§5 and 36 of the Postal Act). However, according to the revised Postal Act, from 2025 all providers of postal services – which includes parcel services – will have to be listed in a register kept by the Federal Network Agency (§4 of the revised Postal Act). One of the prerequisites for registration is that the company is

93. See the abovementioned journalistic research on Amazon, see *Uhl/Resch*, Völklinger Amazon-Fahrer: großer Druck und Lohnprellerei, 5.7.2023, https://www.sr.de/sr/home/nachrichten/politik_wirtschaft/paketlieferdienste_paketboten_unter_druck_100.html (4.5.2025).
94. *Kärcher/Walser*, Durchsetzung von Arbeitsrecht, 2025, p. 81.
95. VG Hannover, 9.2.2023 – 10 A 6199/20, juris, marg. no. 104.
96. Cf. *Roßnagel*, 51. Datenschutzbericht, 2022, p. 55.
97. VG Wiesbaden, 17.1.2022 – 6 K 1164/21.WI, CR 2022, pp. 586, 588.

reliable, in particular with regard to compliance with the regulations on working conditions contained in legal or administrative provisions. However, an in-depth investigation is not planned in this context. Beyond that, only the general requirements of commercial law must be observed.

Consequently, German law does not yet provide for any restrictions on subcontracting. There is an exception for the meat industry, which is currently being discussed as a possible model for the parcels industry[98] (see Section 4.3.2.2), but which was not included in the latest revision of the Postal Code. §6a of the Act on the Safeguarding of Labour Rights in the Meat Industry (GSA Fleisch) stipulates that in some areas of the meat industry, business owners must use only workers directly employed by them for production or the provision of services. The use of subcontractors, solo self-employed persons and temporary agency workers is therefore prohibited. In the area of public procurement – which is not of particular interest here anyway – national procurement law restricts subcontracting only for critical tasks and work (§47 para. 5 of the Ordinance on the Public Procurement). According to a report by the Federal Ministry of Labour, the principle of direct employment in the meat industry has proven to be effective in practice.[99]

To date, the legislator has only limited the legal consequences of subcontracting and provided for the client's liability for social security contributions (see Section 3.2). In addition, subcontractors in the courier, express and parcel services sector are obliged under §28f SGB IV to retain remuneration documents and social security contributions in such a way that it is possible to link workers, remuneration and social security contributions to the respective subcontracting relationship. There is no corresponding obligation if the company has been 'prequalified' by a certified body or has been issued a clearance certificate by a social security institution. In practice, however, these special remuneration documents are often not retained and are only rarely checked by the supervisory authorities.[100]

The Supply Chain Due Diligence Act (*Lieferkettensorgfaltspflichtengesetz* – LkSG), which came into force on 1 January 2023, represents an attempt to create a general regulation of subcontracting. The LkSG currently applies to companies that employ 1,000 workers or more in Germany, in the calculation of which domestic employees in affiliated companies must also be taken into account in group structures. Therefore, the large parcel service providers are covered in any case. Specifically, companies must take measures both in their 'own business area' (§2 para. 6 LkSG) and in the 'supply chain' (§2 para. 5 LkSG) to prevent or minimise risks of human rights violations (§3 para. 1 LkSG). As the 'supply chain' refers to all steps in Germany and abroad that are necessary to provide a service up to delivery to the end customer,[101] subcontracting by parcel service providers to subcontractors over the last mile is certainly included. Materially, for example, compliance with the occupational health and safety regulations of the

98. See Section 4.3.2.2.
99. Bundesministerium für Arbeit und Soziales, Die Evaluation nach §8 des Gesetzes zur Sicherung von Arbeitneh-merrechten in der Fleischwirtschaft (GSA Fleisch), Berlin 2023.
100. Cf. the report of the Federal Government BT-Drs. 20/9834, p. 9 f.
101. In addition, *Grabosch/Schönfelder*, AuR 2021, 488, 492.

place of employment (§2 No. 5 LkSG), compliance with freedom of association (§2 No. 6 LkSG), payment of an appropriate wage (§2 No. 8 LkSG) and prohibition of unequal treatment in employment (§2 No. 7 LkSG) and, via the catch-all clause of §2 No. 12 LkSG, also the protection of life and safety are covered.[102] §2 No. 12 LkSG prohibits the particularly serious impairment of a protected legal position if its unlawfulness is obvious on a reasonable assessment of all the circumstances in question. Following the adoption of the EU Directive on Corporate Sustainability Due Diligence,[103] the German LkSG will also have to be adapted by 26 July 2026, for example, with regard to thresholds (for example, the Directive already covers companies with 1,000 workers or more, whereas the German law applies only to companies with 3,000 workers or more).

A core idea of the Act is so-called 'contractual cascading',[104] in accordance with which a company's obligations are passed on to the supplier or subcontractor on a contractual basis. In addition, the Act means that the company shall be obliged to adhere to the relevant standards and also to select its contractual partners carefully to ensure compliance with the human rights standards covered (§§4 et seq. LkSG), to carry out a risk analysis (§5 LkSG) and to maintain a risk management system (§4 LkSG) and, if necessary, to take remedial action if violations occur (§7 LkSG).

The German legislation, however, does not explicitly constitute a basis for claims under civil law (§3 para. 3 LkSG).[105] Its focus is not on the legal relationship between employers and workers, but rather imposes requirements on company management to observe due diligence in accordance with §3 para. 1 sent. 2 LkSG 'in an appropriate manner'. In matters covered by the LkSG, this may expand the options available for enforcing labour law requirements because, in addition to the civil law claims of the affected workers, the employer is obliged, for example, to take remedial measures in the event of violations of workers' rights (§§7 or 9 para. 3 LkSG). On the other hand, the Federal Office of Economics and Export Control (§§14 ff. LkSG) carries out monitoring, and also has the possibility of imposing fines (§24 LkSG).[106] The practical potential of the law lies in the fact that it provides codetermination actors and trade unions with more opportunities to influence working conditions in supply chains rather than any direct effects it might have on individual employment relationships.[107]

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102. Cf. *Grabosch*, AuR 2022, 244, 247; also *Nietsch/Wiedmann*, NJW 2022, 1, 4; likewise *Krause*, RdA 2022, 303, 310; *Klein*, ZIP 2023, 1053 f.

103. Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustain-ability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, OJ L, 2024/1760.

104. *Krause*, RdA 2022, 303, 310; Klein, ZIP 2023, 1053, 1054.

105. See also *Zimmer*, Das Lieferkettensorgfaltspflichtengesetz, 2023, p. 53.

106. Excerpt *Klein*, ZIP 2023, 1053, 1061 ff.; *Sagan/Schmidt*, NZA-RR 2022, 281, 288 ff.

107. See in detail *Kärcher/Walser*, Durchsetzung von Arbeitsrecht, 2025, pp. 160 et seq.; also in detail *Zimmer*, Das Lieferkettensorgfaltspflichtengesetz, 2023, esp. p. 65 et seq. and 84 et seq.

3.2 Liability among client, contractor and subcontractors

The debate on improving working conditions in the CEP sector is by no means new in Germany. The German legislator responded to this debate in 2019 with the Parcel Carrier Protection Act[108] and introduced subcontractor liability for social security contributions in accordance with §28e para. 3g and para. 3e SGB IV, following the example of the construction and meat industries. It applies to forwarding agencies, as well as to companies in the transport sector and associated logistics, who are active in CEP services and who contract other companies to transport parcels. The purpose of this provision is merely to ensure the correct payment of social security contributions, however, and therefore has only an indirect effect on workers' entitlements under labour law if the client ensures that their subcontractors comply with the required working conditions.[109] But even in such cases there have been reports of subcontractors that, after having their cooperation cancelled because of violations, have continued as before but under a different name.[110]

Nevertheless, the German government considers subcontractor liability to be positive overall: on one hand, many general contractors require their subcontractors to undergo a 'pre-qualification' process, which involves checking in advance whether the subcontractor complies with labour law regulations. In addition, such liability has a strong general deterrent effect. However, it is also conceded that the actual enforcement of contributions has not yet been taken up sufficiently seriously and is time-consuming.[111]

At civil law level, there is also guarantor liability, at least for minimum wage claims, on the basis of §13 of the Minimum Wage Act. This declares the provisions on guarantor liability according to §14 of the Posted Workers Act (*Arbeitnehmer-Entsendegesetz* – AEntG), which focuses primarily on posted workers, to be applicable accordingly. However, the claim expressly only covers the net claim of the minimum wage, that is, after deduction of taxes and social security contributions. §14 AEntG itself is not relevant for the CEP sector as it covers only claims arising from generally binding collective agreements, which do not exist in this sector. It plays a role in the construction industry in particular, in which the social security fund under a collective agreement can enforce its claims against guarantors in this way.[112]

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108. Federal Law Gazette I 2019, p. 1602.
109. See in detail *Kärcher/Walser*, Durchsetzung von Arbeitsrecht, 2025, pp. 156 et seq.
110. *Montag/Angeloudis/Russew*, Im Netz der Subunternehmen, rbb24 28.11.2022, https://www.rbb24.de/studiofrankfurt/wirtschaft/2022/11/hoppegarten-paketboten-amazon-subunternehmen-arbeitsbedingungen-.html (24.2.2024).
111. Cf. the corresponding report of 14.12.2023 in BT-Drs. 20/9834.
112. In detail Däubler, TVG-*Lakies/Walser*, § 5 TVG Anh. 2 - § 14 AEntG, marg. no. 2 with further references.

3.3 Working conditions of subcontracted workers and temporary agency work

Apart from the provisions mentioned in the previous section, there is no specific regulation of the working conditions of persons employed by subcontractors. This employment situation is characterised by the fact that the subcontractor has the full status of employer and must therefore also meet all employer obligations. The prerequisite is that there is an actual employment relationship with the subcontractor, in other words, that it actually exercises the right to issue instructions, for example. If this is the case, the subcontracting company may only have to deal with the liability issues described above, although these rarely arise in practice. Even any collective agreements that may exist at the contracting company are of no relevance to the employees of the subcontractor, as German collective bargaining law requires both that the employer be a member of the employers' association (unless it is itself a party to the collective agreement) and that the employee be a member of the trade union (§§3 para. 1 and 4 para. 1 Act on Collective Agreements – *Tarifvertragsgesetz*).

The situation differs somewhat in the case of temporary agency work. Whereas in the case of subcontracting, responsibility for occupational health and safety lies with the subcontractors, being the legal employers, the major parcel service providers take the relevant decisions on how the provision of services takes place. Those decisions therefore have a direct impact on workers' occupational health and safety.[113] In the case of temporary agency work, however, this aspect is mitigated, as both the temporary work agency and the user undertaking are responsible for occupational health and safety under §11 para. 6 of the Temporary Employment Act (*Arbeitnehmerüberlassungsgesetz* – AÜG).

While the use of temporary agency workers is also largely prohibited in the meat industry under §6a GSA Fleisch, there is no general restriction on temporary agency work in the CEP sector. Therefore, only the general rules on temporary agency work apply, which in Germany are set out largely in the Temporary Employment Act (*Arbeitnehmerüberlassungsgesetz* – AÜG). One of the requirements is that, according to §8 para. 1 sent. 1 AÜG, the temporary work agency must grant the temporary agency worker the essential working conditions, including remuneration, applicable to comparable workers in the user undertaking for the duration of the assignment, unless a collective agreement in force at the user undertaking provides for a deviation from this (§8 para. 2 AÜG). Such deviating collective agreements are in use almost everywhere in Germany, however, which in practice diminishes the significance of the principle of equal treatment. With regard to remuneration, a deviation is generally permitted only for the first nine months (§8 para. 4 AÜG). Currently, a specific minimum wage for temporary agency workers applies in accordance with §3a AÜG in conjunction with the

113. Cf. *Schmierl*, et al., Digitale Logistik, October 2022, p. 10 et seq. with further details on the digital technologies used by parcel service providers, in particular digital process control and monitoring and their effects; Faire Mobilität, Fallsammlung Kurier-Express-Paketdienst-Branche, 2022, p. 1; see as well *Deinert*, Kurzgutachten Fleischwirtschaft, p. 7 et seq.

respective regulation,[114] which amounts to €14.52 per hour from 1 March 2025 until 30 September 2025. It is considerably higher than the general minimum wage of €12.82 per hour. When the regulation expires, the general minimum wage will apply again in the interim phase until a new regulation comes into force. This has happened in the past and can take several months. Furthermore, according to §1 para. 1b sentence 3 AÜG, an assignment to a user undertaking may only be temporary. According to §1 para. 1b sentence 1 AÜG temporary means that it may not last longer than 18 consecutive months.[115]

Temporary agency workers at the user undertaking must also be considered in relation to codetermination in accordance with §14 AÜG.[116] They are subject to dual representation, namely by the works council in the temporary work agency and at the user undertaking, where they may even vote in works council elections if they have been assigned for three months or more (§7 of the Works Constitution Act – BetrVG), although they are not eligible for election themselves (§14 para. 2 AÜG). The works council in the user undertaking can object to the use of temporary agency workers in accordance with §99 para. 2 BetrVG. There is a significant difference when it comes to codetermination between third-party employment in the form of temporary agency work or in the form of subcontracting, as in the latter the works council has no right of codetermination. There is also a difference in terms of occupational health and safety, as both the temporary work agency and the user undertaking are responsible for occupational health and safety with regard to temporary agency workers in accordance with §11 para. 6 AÜG.

3.4 Regulation of algorithmic management

Apart from general labour and data protection regulations and case law on platform employment,[117] there is currently no specific legal framework for algorithmic management in Germany.

4. The role of trade unions

4.1 Worker participation at company level

In Germany, a relatively strict distinction is drawn between the representation of company interests by works councils and intercompany representation by trade unions. Works councils in particular play a decisive role in the effective enforcement of labour law in the company. However, there are very few works councils in the CEP sector, particularly among subcontractors. This applies both

114. Sechste Verordnung über eine Lohnuntergrenze in der Arbeitnehmerüberlassung (LohnUGAÜV 6), BGBl. 2024 I No. 333.
115. For an overview, see *Dworschak/Umnuß*, in: Umnuß Compliance-Checklisten, 5th ed. 2022, § 1 para. 98 et seq.
116. Cf. *Fütterer*, in: Ulber/Ulber, AÜG, § 14 AÜG para. 247.
117. See eg *Hiessl*, Soziales Recht 2024, 128 et seq.

to the individual level, as works councils have a say in hiring and dismissal, and social matters, for example when it comes to the organisation of work (including working hours) or the introduction of software and technical equipment, which is particularly relevant to the CEP industry. In addition, research shows that the existence of codetermination structures has a direct influence on working conditions, including occupational health and safety.[118]

The reasons for codetermination's lack of influence in the CEP sector vary. One reason is the low level of unionisation and collective bargaining coverage in companies (see Section 4.2). Even though the trade union representation of workers in Germany is formally separate from codetermination in the company through works councils elected by the entire workforce,[119] there is a demonstrable empirical correlation between trade union density and collective agreements in the company and the likelihood that works councils will also exist there.[120] There is also a correlation with size of company: the larger the company, the more likely it is to have works councils (and collective bargaining coverage),[121] whereas in very small companies, with fewer than five workers, the existence of works councils is legally excluded (§1 para. 1 BetrVG). Furthermore there are additional structural difficulties in the CEP sector: on one hand, the presence of a high proportion of immigrants makes the formation of works councils more difficult, for example, because of the precarious situation of such workers, a possible lack of language skills and legal knowledge, and possibly also different traditions of collective worker representation in their countries of origin. In addition, the high proportion of small companies and complex subcontractor structures make it structurally much more difficult for trade unions to organise workers and establish works councils.[122] The fact that this is a highly mobile form of employment – at least with regard to last-mile delivery – makes it all the more difficult for trade unions to establish collective bargaining structures or organise works council elections. This is easier in the distribution centres, where other works councils exist to a much greater extent. The high workforce turnover should also be mentioned, which also makes it considerably more difficult to set up representative structures.

In practice, the level of representation by works councils at Deutsche Post/DHL is comparable to the level of collective bargaining coverage, namely 70%. At Hermes and DPD, works councils are found primarily at the stationary distribution centres. They appear to be almost entirely organised by ver.di.[123] In addition to the use of outsourcing as part of a strategy to avoid collective bargaining and codetermination, there are even cases in which the employer has actively prevented or disrupted works council elections (possibly violating criminal law, §119 para. 1

118. For a brief summary and references to studies on the relationship between codetermination and good working conditions, see Hans-Böckler-Stiftung (ed.), Mitbestimmung - Das demokratische Gestaltungsprinzip der sozialen Marktwirtschaft, Studien zur Wirkung von betrieblicher und Unternehmensmitbestimmung.
119. For an overview *Walser*, FS 50 Jahre ArbVG, 2024.
120. *Ellguth/Kohaut*, WSI-Mitteilungen 2022, 328, 333.
121. Ibid.
122. See in detail *Kärcher/Walser*, Durchsetzung von Arbeitsrecht, 2025, pp. 87 et seq.; *Schmierl, et al.*, Digitale Logistik, October 2022, p. 97; Forschungs- und Beratungsstelle Arbeitswelt (FORBA), Precarious working conditions in the parcel services, 2012, p. 24.
123. So Schmierl/Schneider/Struck, WSI-Mitteilungen 2021, 472, 476.

No. 1 BetrVG).[124] With regard to UPS, it has been reported that candidates close to the employer have stood for election to the works council.[125]

4.2 Collective bargaining

As already mentioned, under German labour law the applicability of a collective agreement depends on the membership in a trade union or an employers' organisation. There are no precise figures on trade union density in the CEP sector. However, it is stated to be 'extremely low',[126] even compared with the already – in an international perspective – relatively low trade union density in the German economy as a whole, which stood at 17.4% in 2021.[127] The responsible DGB-trade union for the sector is the services trade union ver.di. Other trade unions outside the DGB do not play a significant role in the sector.

Ver.di has concluded regional collective agreements for logistics and/or freight forwarding and transport with the respective regional transport or logistics employers' associations for almost all *Bundesländer* (except for Mecklenburg-Western Pomerania and Saarland), which also cover parcel services. However, as neither the contracting companies nor – and especially not – subcontractors are members of these associations, these collective agreements apply only in a few companies. In principle, it would be possible under collective bargaining law to conclude a company collective agreement with each of these companies. Because of the large number of subcontractors, their small size and the mobile nature of the industry, however, such a strategy on the part of the trade union would not be promising. One reason may be that currently no employers' association is active in the parcels sector. The aforementioned German Parcel and Express Logistics Association (BPEX) and the *Bundesverband der Kurier-Express-Post-Dienste* (BdKEP) have to date acted only as business associations, remaining outside the system of collective agreements (apart from individual attempts by the BdKEP in the past). This makes it almost impossible to pursue an effective collective bargaining policy and take collective action with regard to small and micro companies, which would overstretch trade union capacities.[128]

A high density of works councils and a high level of unionisation can be observed in only a few companies, especially Deutsche Post/DHL, which has a unionisation rate of 70% (for examples of successful collective bargaining, see Section 2.1.2). For historical reasons, Deutsche Post/DHL has a separate company collective agreement. This can be explained by the long tradition of high trade union

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124. Ibid.
125. R*ügemer/Wigand*, Union-Busting in Deutschland, 2014, p. 40.
126. *Schmierl/Schneider/Struck*, WSI-Mitteilungen 2021, pp. 472, 474.
127. *Fulda*, IW-Kurzberichte 83/2022, 1.
128. Cf. ver.di Bundesverwaltung, Fachbereich Postdienste, Spedition und Logistik, Die ver.di Kampagne Kurier-, Express- und Paketdienste (KEP), April 2013, p. 34; ver.di, Positionspapier: Fair zugestellt statt ausgeliefert, 2023, p. 3; Bremische Bürgerschaft, Drs. 20/1768, p. 1; see also *Schlautmann*, Bundesweite Razzia – Jede dritte Zustellfirma verstößt gegen Arbeitsrecht, Handelsblatt online 17.2.2019, https://www.handelsblatt.com/unternehmen/handel-konsumgueter/paketbranche-bundesweite-razzia-jede-dritte-zustellfirma-verstoesst-gegen-arbeitsrecht/23992134.html (24.2.2024).

membership as a former state-owned company, previously with a high proportion of civil servants (at the time of privatisation the level of unionisation was even 75%).[129] As a result, only at Deutsche Post/DHL, which employs almost exclusively its own delivery staff in parcel delivery, and at UPS, which has around 40% permanent workers, are the majority of workers covered by works councils[130] and collective bargaining.[131] At DPD, GLS and Hermes, by contrast, there are at best a few works councils[132] (at DPD there are also general works councils).[133] Overall, the number of workers covered by collective agreements is declining throughout the CEP sector.[134]

This decline is having a negative impact on working conditions; the working conditions in companies working under a collective agreement are significantly better. In addition, the best working conditions for delivery staff are already in place at companies that employ mainly permanent employees.

There are also reports of outsourcing being deliberately used by companies as a means of forcing trade unions out of the workplace. This has been reported, for example, by ver.di, which successfully pushed through a collective agreement at Trans-o-Flex's logistics centre in Cologne in the 2021 collective bargaining round. At the time, the level of unionisation there was more than 90%. According to ver.di, the company subsequently deliberately attempted to undermine the union's strength through its recruitment policy, for example by using temporary contracts and temporary agency work and also by outsourcing work to subcontractors.[135] At Trans-o-Flex, the branches were converted into independent limited liability companies as early as 2007, undermining the existing works councils.[136]

4.3 Trade union action

Trade union activities related to collective bargaining policy and strikes have already been discussed in Sections 4.2 and 1.2.2. Otherwise, there have been no major strike movements in the parcel delivery sector in recent years. Exceptions include individual industrial actions for specific reasons. Another exception is

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129. *Schmierl/Schneider/Struck*, WSI-Mitteilungen 2021, 472, 476; ver.di Bundesverwaltung, Fachbereich Postdienste, Spedition und Logistik, Die ver.di Kampagne Kurier-, Express- und Paketdienste (KEP), April 2013, p. 34; *Maier*, Tagesspiegel 30.11.2022, https://background.tagesspiegel.de/verkehr-und-smart-mobility/briefing/aktivierung-einer-globalen-reservearmee (4.5.2025).

130. Forschungs- und Beratungsstelle Arbeitswelt (FORBA), Precarious working conditions in the parcel services, 2012, p. 30; with detailed information on the works council structure in the largest parcel service companies in Germany.

131. er.di Bundesverwaltung, Fachbereich Postdienste, Spedition und Logistik, Fair zugestellt statt ausgeliefert, Prä-sentation, 2023, p. 7.

132. Forschungs- und Beratungsstelle Arbeitswelt (FORBA), Precarious working conditions in the parcel services, 2012, p. 30.

133. *Schmierl/Schneider/Struck*, WSI-Mitteilungen 2021, pp. 472, 476.

134. ver.di Bundesverwaltung, Fachbereich Postdienste, Spedition und Logistik, Fair zugestellt statt ausgeliefert, Prä-sentation, 2023, p. 6.

135. See the report 'Union Busting at Trans-O-Flex in Cologne' on the ver.di website, https://psl.verdi.de/branche/++co++bdd9fdb2-cd3c-11ed-9489-001a4a160116 (4.5.2025).

136. *Rügemer/Wigand*, Union-Busting in Deutschland, 2014, p. 41.

Amazon, where there have been repeated strikes in recent years, particularly in the distribution centres. The most recent example was strike action by ver.di on 'Prime Day' in October 2023.[137] There are also a number of other notable trade union activities in this area, which will be discussed below.

4.3.1 *Faire Mobilität* advisory network

As already mentioned, *Faire Mobilität* is a counselling and advisory institution operated by DGB and cofinanced by the German state since 2011. It is aimed primarily at EU citizens and provides free multilingual and sector-specific advice – including legal advice – at various branches all over Germany to both workers posted to Germany from abroad, and those coming to Germany within the framework of freedom of movement. Membership of a trade union is not a prerequisite (§23a para. 2 AEntG).[138] Because of the legal anchoring in the Posting of Workers Act, the requisite expertise and the specific needs of those seeking advice, the law restricts counselling to EU citizens. The particularly precarious situation of third-country nationals, however, calls this restriction into question.[139] Nevertheless, by way of exception, third-country nationals can also receive counselling if there is a direct factual connection to a case being dealt with by *Faire Mobilität*. This applies in particular (but not only) if third-country nationals have been posted together with EU citizens by an employer based in the EU. *Faire Mobilität* focuses on the relevant high-risk sectors, including courier and parcel services, and publishes specific information for workers and documents the employment situation in the sector.[140]

4.3.2 Legal policy initiative: 'Fair treatment, not hung out to dry'

Back in March 2013, ver.di launched the *Fair zugestellt statt ausgeliefert* (*Fair treatment, not hung out to dry*[141]) campaign to achieve better working conditions for the CEP sector. Already more than a decade ago, the union identified the widespread practice of using subcontractors as a major problem.[142] The campaign is still running. The central political demands are currently as follows:[143]

- a ban on the use of third-party employees, including subcontractor chains for parcel service providers;
- a weight limit of 20 kg for parcel shipments in one-person handling and the labelling of heavy parcels;

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137. See, for example, ZDF, 24.11.2023, https://www.zdf.de/nachrichten/wirtschaft/unternehmen/amazon-streik-verdi-black-friday-100.html (4.5.2025).

138. On the legal structure see Däubler, TVG-*Walser*, § 5 TVG Anhang 2 - § 23a AEntG, marg. no. 1 ff.

139. For justification, see the legislative materials: BT-Drs. 19/20145, p. 19; for criticism: Däubler, TVG-*Walser*, § 5 TVG Anhang 2 - § 23a AEntG, marg. no. 3.

140. Available on the website: https://www.faire-mobilitaet.de/kurier-und-paketdienste (4.5.2025).

141. The original German contains an untranslatable pun; the translation given here provides the gist.

142. See the ver.di press release of 20.3.2013, https://www.verdi.de/presse/pressemitteilungen/++co++f25c940a-90ac-11e2-b7d2-52540059119e (24.2.2024).

143. Cf. the current (undated) campaign brochure, https://psl.verdi.de/++file++6475b4f91cb2b0e7a74cac5a/download/RZ_DPAG_FBE2303018_KEP_Broschu%CC%88re_2.A_ES_96dpi.pdf (4.5.2025).

- more effective controls by strengthening the customs authorities responsible for controls in Germany.

4.3.2.1 Improved occupational health and safety and compulsory registration – reform of the Postal Act

These political demands put forward by ver.di have found their way into the political debate. As stated above, a reform of the Postal Act (*Postgesetz* – PostG) was adopted by the *Bundestag* (German federal parliament) on 13 June 2024 and entered into force on 1 January 2025. Whereas the draft foresaw a digital licencing procedure,[144] the final act demands only an obligation to register with the Federal Network Agency. Furthermore, clients must annually review their subcontractors according to defined criteria. To date, parcel service providers have been required only to notify the commencement, change and termination of operations in accordance with §36 PostG. In addition, heavy parcels weighing over 10 kg or over 20 kg are to be labelled. Parcels weighing over 20 kg are to be delivered either by two people or with the support of technical aids in order to improve occupational safety.

4.3.2.2 Direct employment requirement – ban third-party employment

The current reformed Postal Act does not include a ban on third-party employment, which would restrict subcontracting and the use of temporary work in the sector, as demanded by ver.di. There has been political reluctance to take action here, probably because of the serious intervention in the industry structure that this would entail and the legal debate surrounding such a regulation. Some scholars dispute its compatibility with constitutional law – in particular with occupational freedom – as well as with EU legislation.[145] Others have argued that the serious violations of labour law and occupational health and safety requirements, the poor working conditions and, in particular, the lack of transparency created by third-party employment make it so difficult to enforce the applicable law effectively that a ban on third-party employment would be justified under both the German constitution and EU law.[146] The German *Bundesrat*, through which the federal states participate in legislation at federal level in Germany, called for such a direct hiring requirement as early as 12 May 2023[147] and reiterated this call on 2 February 2024.[148] Ver.di will continue to pursue the demand for a direct employment requirement even after the adoption of the new Postal Act.

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144. BT-Drs. 20/10283.
145. *Greiner*, Direktanstellungsgebot und Tariferstreckung in der KEP-Branche, 2024.
146. See in detail *Kärcher/Walser*, Durchsetzung von Arbeitsrecht, 2025, pp. 213 et seq.
147. BR-Drs. 117/23, p. 3.
148. BR-Drs. 677/23, p. 1 ff.

5. Access to justice and enforcement of legislation

Guarantor liability as a possible enforcement instrument has already been mentioned, under Section 3.2. In what follows, reference will therefore be made primarily to sector-specific challenges in legal enforcement.

5.1 Controls and inspections

In Germany, the statutory pension insurance and the customs authorities in the form of the *Finanzkontrolle Schwarzarbeit* (FKS) are primarily responsible for inspections. In addition, the *Berufsgenossenschaft Verkehrswirtschaft Post-Logistik und Telekommunikation* as the responsible statutory accident insurance and the health and safety authority responsible for the respective federal states are also responsible for occupational health and safety inspections. The statutory pension insurance body audits all employers at least once every four years with regard to the fulfilment of reporting and other obligations in connection with social security contributions, as laid down in the German Social Code (§28p SGB IV). The FKS's inspection mandate is broader and also includes, for example, compliance with the Minimum Wage Act, the Posted Workers Act, the Residence Act and also obligations to the social security authorities. It should be noted that the logistics sector is explicitly mentioned as being particularly affected by undeclared work and illegal employment by §2a of the Act to Combat Clandestine Employment (*Schwarzarbeitsgesetz* – SchwarzArbG). FKS also carries out regular focus inspections in this sector, most recently on 9 October 2023. No final evaluations are yet available for this inspection. In previous focus inspections in 2020 and 2021, FKS found in particular that complex subcontractor chains exist in the sector, that service companies have been set up that often exist only for a limited period of time, and bogus self-employment has also been identified as a problem, as have violations of the Minimum Wage Act or insufficient payment of social security contributions and forged identity documents.[149]

Thus, the use of third-party personnel, especially via subcontractors, considerably weakens the effectiveness of controls, as it can obscure responsibilities and it is often difficult to assign and assess employment relationships. In addition, in a highly mobile form of work such as parcel delivery, controls are particularly difficult from the outset.[150] Trade unions also repeatedly criticise the fact that the inspection authorities are inadequately staffed.[151]

The aforementioned reform of the Postal Act of 13 June 2024 also provides for more effective monitoring of subcontractors in the future. They will be obliged to keep information on working hours, among other things. Authorities would be able to compare this information with the data recorded when parcels are delivered and thus detect violations of the Working Hours Act.

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149. BT-Drs. 20/9834, p. 9; Ausschuss-Drs. 19(11)452 of 18.10.2019, p. 7.
150. In the same vein *Boemke, et al.*, NZA 2020, 1160, 1163.
151. See, for example, ver.di's statement on the draft bill for the Act on the Modernisation of Postal Law of 6 Decem-ber 2023, p. 2.

5.2 Access to justice, remedies and sanctions in case of workers' rights violations

To date, German labour law has relied predominantly on individual enforcement of rights. The fact that this is not very effective across the board and that workers often do not assert their claims has been analysed and documented many times. The general causes, such as a lack of knowledge of the law, dependency and barriers to access to justice, therefore do not need to be repeated here.[152] In the CEP sector, the high proportion of migrant workers poses additional challenges for rights enforcement (see Section 1.2.2). Furthermore, legal enforcement often fails in practice because of difficulties in providing evidence.[153] In some cases, the workers hired by subcontractors do not even know who their legal employer is, as they are denied written proof of working conditions and payroll accounting, contrary to legal requirements.[154] Workers often wrongly assume that they are employed directly by the contracting company.[155]

The high proportion of workers on fixed-term contracts is also detrimental to effective legal enforcement, as workers' hopes of a continuation of their employment relationship often inhibit the exercise of rights. The large number of micro-companies also has an impact, as the German Dismissal Protection Act applies only to companies with more than ten employees.

Various civil law sanctions, such as client liability, have already been discussed in various places. However, administrative and criminal sanctions are also conceivable. These include criminal offences and administrative offences in connection with withheld and insufficient wages (in particular §266a of the German Criminal Code (*Strafgesetzbuch* –StGB), wage usury pursuant to §291 (1) No. 3 StGB, exploitation of human labour pursuant to §233 StGB or an administrative offence pursuant to §18 Minimum Wage Act – *Mindestlohngesetz*). Inadequate occupational health and safety can also constitute an administrative offence (§25 of the Occupational Health and Safety Act, *Arbeitsschutzgesetz* – ArbSchG) or, in serious cases, even a criminal offence (§26 ArbSchG). The illegal employment of foreigners also constitutes at least an administrative offence (§404 para. 3 SGB III) and possibly even a criminal offence (§§10, 10a, 11 SchwarzArbG). Further administrative offences can be found, for example, in the SchwarzArbG or the AEntG, to name only a few.

152. For example *Kocher*, Verbandsklage im Arbeitsrecht, 2002, p. 17 ff.; *Davidov*, SR 2021, p. 111 ff.

153. See also BT Drs. 19/14417, 2019, p. 2; BT Drs. 19/14022, 2019, p. 2; Faire Mobilität, Case Study Courier-Express-Parcel Service Industry, 2022, p. 14.

154. Faire Mobilität, Case Study Courier-Express-Parcel Service Industry, 2022, pp. 6, 11, 13.

155. Cf. *Maier*, Tagesspiegel 30.11.2022, https://background.tagesspiegel.de/verkehr-und-smart-mobility/briefing/aktivierung-einer-globalen-reservearmee (4.5.2025).

6. Conclusions

The German courier, express and parcel services sector is clearly characterised by significantly more precarious employment conditions than the economy as a whole. In addition to breaches of wage requirements, working hours and other health and safety measures are often not complied with. A major factor here is the high work pressure and the heavy workload. At the same time, the protective mechanisms of collective labour law are not effective or insufficient in many areas of the sector. Apart from company collective agreements in individual large parcel companies, there are general industry collective agreements for the postal sector, but these cover only a few employment relationships in parcel delivery. Third-party employment plays an important role in the entire sector. While this is mainly because of the use of subcontractors in last-mile delivery, temporary agency work plays an important role in the distribution centres. Third-party employment makes it easy to disguise responsibilities and makes controls and the enforcement of labour and social security law requirements much more difficult.

Annex **Interview details**

No.	Institutional affiliation	Position	Date	Code
1	Ver.di (German trade union)	Departmental Coordinator for Postal Services, Freight Forwarding and Logistics, ver.di Federal Administration (German trade union)	24/03/2023 and 20/04/2023	Ver01
2	Faire Mobilität, Sector Coordinator Courier and Parcel Services & Consultant (Germany)	Consultant of Faire Mobilität, Sector Coordinator Courier and Parcel Services & Consultant (Germany)	14/04/2023	FM01
3	BdKEP (German business association)	Chairman, Bundesverband der Kurier-Express-Post-Dienste e.V. (Germany)	21/07/2023 and 21/09/2023	KEP01
4	Ver.di (German trade union)	Head of Section for Forwarders, Logistics, Courier, Express and Parcel Services, ver.di Federal Administration (German trade union)	12/10/2023	Ver02

The logistics sector in Italy: the normalisation of deviance

Silvia Borelli

1. Analysis of the context

1.1 Market structure

The logistics sector in Italy has grown constantly since 2009.[1] According to the National Statistical Institute (ISTAT),[2] in 2021 no fewer than 117,402 companies were present in transport and logistics, employing 1,149.692 workers. In 2023, the turnover of the logistics sector represented 8.2% of GDP (€135.4 billion), according to the main Italian business association (Confindustria).[3] The sector's growth has been boosted mainly by the increase of e-commerce, especially during the Covid-19 pandemic.[4] Consequently, in Italy, logistics has been restructured to respond to the needs of consumers who are able to buy products in online marketplaces, at any time.

Logistics has always been called upon to search for the most efficient solution, namely the one that allows goods to be delivered in the shortest possible time and at the lowest cost. Companies in the sector must therefore develop expedients to reduce the cost of the services they offer.

The development of e-commerce has created a new problem, so-called 'last-mile delivery'. This is the delivery of goods to end consumers, as quickly as possible, within metropolitan areas.[5] Last-mile logistics has to fulfil numerous orders scattered throughout a city. Consumers would like to track their goods in real time and be informed in advance on the delivery time.[6]

The development of e-commerce and last-mile logistics has led to the entry of new players, such as Amazon, able to control its entire supply chain through

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1. While in 2009 the turnover of Italian logistic companies was €71.2 billion, in 2023 it was €112 billion, https://www.euromerci.it/i-nostri-esperti/logistica-boom-del-mercato-italiano-che-nel-2030-varra-140-miliardi-di-dollari-24.html. For this Report, the author conducted three semi-structured interviews with key respondents in the sector.
2. http://dati.istat.it/Index.aspx?DataSetCode=DICA_ASIAUE1P
3. Confindustria, *Industria, Trasporti, Logistica e Infrastrutture: Insieme per la competitività del paese*, 2024, p. 36.
4. Interview with a labour inspector (interview LI01). The rise of e-commerce is a global trend: World Economic Forum, *The Future of the Last-Mile Ecosystem*, 2020, p. 5.
5. Alemanni C., *La signora delle merci*, LUISS, 2023, p. 136.
6. Dossier Logistica. Efficienza per l'ultimo miglio, 2022, https://www.logisticanews.it/efficienza-per-lultimo-miglio-il-dossier-di-logistica/

technology. The use of devices equipped with so-called 'AI' systems makes it possible to constantly monitor the activities of workers who, as a result, are subjected to an increasingly stressful work pace.[7]

Another trend in the logistics sector in Italy is the **'verticalisation' of the supply chain**.[8] Large corporations are acquiring control of various companies operating in ports, airports, rail and road transport. In this way, these big players manage their logistics supply chain on a global scale. A prominent example of this trend is the MSC Group,[9] a global leader in the transport and logistics sector with 1,127 affiliate companies. The group encompasses a cargo division, MSC Mediterranean Shipping Company, and other prominent companies, such as *Rimorchiatori Mediterranei* and MEDLOG, as well as a passenger division led by MSC Cruises and complemented by Mediterranean passenger ferries with Grandi Navi Veloci and SNAV. The group operates also in rail transport, controlling Italo s.p.a. and other companies in the sector. The group is thus tending toward integrated management of different carriers in sea, rail and air transport. It is also expanding into the control of logistics activities.

Both the development of last-mile logistics and the 'verticalisation' of the supply chain go hand in hand with the rise of subcontracting. In fact, both e-commerce actors and big logistics corporations have greatly increased their leverage over subcontractors. Consequently, they can broadly determine the ways in which the latter perform their services and the fees paid. Amazon and other big players exploit their technologies to control 'the entire logistics process from supply chain down to the last mile',[10] constantly checking how their subcontractors are carrying out their activities. In the meantime, big logistic groups usually outsource part of their production to subsidiaries that are totally or partially controlled by holdings.

Often, subcontracting is not driven by the need to acquire a specialised service but is rather the way in which logistics companies structure their business model to save on labour costs (interview TU01). As we will explain, the Italian legislator has favoured this process by facilitating contracting out and eliminating the obligation of equal treatment of workers.

Sometimes, major companies have exercised such tight control of subcontractors that the courts have deemed the arrangement to be illegal and have declared that the principal companies were the real employers of workers formally hired by subcontractors. In some cases, the labour exploitation was so severe that judges found that the crime of operating as a 'gangmaster' had been committed

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7. Alemanni (*La signora delle merci*, LUISS, 2023, p. 171) reports that 'in the most advanced logistics systems, the human element plays a purely cybernetic role [...]. It is a mechanism that must perform certain actions, complementary to the machine, at the times and in the ways that the configuration of the system provides.'

8. Federazione italiana lavoratori dei trasporti (FILT-CGIL), Federazione italiana trasporti (FIT-CISL), Unione italiana dei lavoratori dei trasporti (Uiltrasporti-UIL), Piattaforma per il Rinnovo del CCNL Logistica Trasporto Merci e Spedizione, 2023, p. 1.

9. Spirito P., Multinazionale del trasporto e della logistica, il caso di MSC, https://www.genteeterritorio.it/multinazionale-del-trasporto-e-della-logistica-il-caso-di-msc/

10. Interview with Jun Fan, Head of JD Express, JD Logistics in World Economic Forum, The Future of the Last-Mile Ecosystem, 2020, p. 7.

(*caporalato*; see Article 603 bis of the Italian Penal Code[11]; see Box 5). In some instances, these investigations led to **re-internalisation processes** (see the example of the DHL supply chain in Italy, explained in Box 1).

Box 1 **DHL supply chain Italy**

In June 2021, DHL was investigated by the Milan Prosecutor's Office. The company was suspected of exploiting the workers supplied by a consortium of cooperatives. Workers were hired by these cooperatives under several kinds of precarious contract and were transferred from one cooperative to another to evade controls. During the proceedings, DHL decided to directly hire 1,500 workers previously engaged by subcontractors. Following this recruitment (which effectively constituted re-internalisation), the criminal investigation was closed (Prosecutor's Office of Milan, decree 9 November 2022).[12]

It should be noted that, among the top ten logistics companies in 2023,[13] no fewer than four (DHL, BRT, FedEX Express Italy and Amazon Italia Transport) have been prosecuted for the crime of operating as a gangmaster in Italy. As stated by the prosecutor who has run most of the investigations, 'gangmaster' has become the business model of the main logistics companies and is so widespread that they no longer regard it as a crime. In this connection, the prosecutor went as far as to talk about a 'normalisation of deviance'[14] (see Section 2.1).

1.2 Employment in the sector

Last-mile logistics is a male-dominated sector. In fact, according to the data available, men account for more than 80% of the workforce.[15] This can be explained by long shifts, night work and frequent changes of working time that make it difficult to reconcile work and family life (in Italy, women are still predominantly responsible for family or domestic work).[16] The paradox is that

11. Article 603 bis of the Italian Criminal Code criminalises the recruitment of 'workers on behalf of third parties under exploitative conditions, taking advantage of the workers' state of need' as well as to 'employ, hire or engage workers – including by the means of the intermediation activity referred to above – exploiting them and taking advantage of their state of need'.

12. https://www.ilfattoquotidiano.it/2022/11/24/dhl-dopo-linchiesta-quasi-1500-lavoratori-assunti-la-procura-di-milano-chiede-larchiviazione/6884439/ Re-internalisation also took place at TNT-Fedex: https://mattinopadova.gelocal.it/padova/cronaca/2021/04/03/news/tnt-fedex-internalizza-160-lavoratori-1.40109333, and at Esselunga: https://www.ilfattoquotidiano.it/2024/02/16/esselunga-internalizza-2mila-lavoratori-della-logistica-dopo-linchiesta-sui-contratti-dappalto-fittizi-per-la-fornitura-di-manodopera/7449004/

13. Il Giornale della Logistica, I primi 1000. 22° edizione, https://www.ilgiornaledellalogistica.it/la-classifica/classifica-primi-1-000-fornitori-servizi-logistici-italia-edizione-2023/

14. Tribunal of Milan, decree n. 6/2023; Tribunal of Milan, decree n. 5/2023.

15. Randstad Research, *Trasformazioni del settore e delle professioni nella logistica*, 2023, p. 19.

16. One of our respondents emphasised that many women engaged in the sector resign following the birth of a child (Interview LL01). The phenomenon has been detected in many sectors: Save the Children, *Le Equilibriste. La maternità in Italia nel 2024*, https://www.savethechildren.it/cosa-facciamo/pubblicazioni/le-equilibriste-la-maternita-italia-nel-2024. See also Filt, FitFILT, FIT, Uiltrasporti, *Piattaforma per il Rinnovo del CCNL Logistica Trasporto Merci e Spedizione*, 2023, p. 7.

some companies in the sector (such as Amazon[17]) have been awarded 'equality certification' (*certificazione di parità*), in other words, recognised as promoting equality between male and female workers. As a 'reward' they have obtained a reduction of social contributions and increased public funding.[18]

The vast majority of workers in last-mile logistics are **migrants**.[19] In fact, logistics is an unattractive sector for Italian citizens because of the low wages, fast work pace and long shifts (interview TU01).[20] Migrants accept jobs in the sector because of their vulnerable or precarious status. In Italy, the procedure for obtaining a work permit is very cumbersome. Moreover, migrants can retain their work permit only if they have a job. Consequently, they tend to accept any kind of job and, once they have it, they tolerate exploitation so they do not lose it.

We should also underline that the digitalisation of the logistics sector requires numerous new professions and skills, raising the issue of adequate training of the existing workforce. This fosters polarisation among the high-skilled managers and engineers, on one side, and the low-skilled and low-paid craft activities, on the other side.[21] This polarisation is further boosted by subcontracting: in fact, the low-skilled jobs, such as last-mile delivery, are very often outsourced to companies that usually apply worse collective agreements, pay lower wages and offer more precarious contracts than the big logistics companies. This polarisation has clearly emerged from the many investigations on gangmaster crimes (see Section 2.1).

Due to the discredit caused by these investigations, several companies decided to negotiate with trade unions (see, for example, the Amazon case described in Box 4) and a protocol to promote legality in subcontracting was signed by the Prefecture in Milan (see Section 3.1). However, in Italy, data on the number of workers employed by subcontractors are not available for either logistics or other sectors.

Finally, it should be pointed out that, over the past decade, wages in the sector have not increased,[22] whereas the number of temporary contracts and seasonal jobs has grown, both to further cut labour costs and to cope with the frequent peaks of activity.[23]

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17. https://www.aboutamazon.it/notizie/diversita-equita-e-inclusione/amazon-ha-ottenuto-la-certificazione-della-parita-di-genere-per-tutte-le-sue-linee-di-business-in-italia

18. The 'equality standard' (*certificazione di parità*) is based on indicators developed by UNI (the main Italian private association developing and disseminating standards) and is issued by private auditors, paid by the company. Thus, this quality standard entails a severe risk of conflict of interest and risks boosting a process of privatisation of law (Salmoni F., *Le norme tecniche*, Giuffré, 2001).

19. Randstad Research, *Trasformazioni del settore e delle professioni nella logistica*, 2023, p. 20.

20. See also Allamprese A. and Bonardi O., Studio sulle condizioni di lavoro nella logistica: tempo e salute, in *Diritto della sicurezza sul lavoro*, 2020, 2, p. 43.

21. Randstad Research, *Trasformazioni del settore e delle professioni nella logistica*, 2023, p. 80.

22. Randstad Research, *Trasformazioni del settore e delle professioni nella logistica*, 2023, p. 32. Wage stagnation is a widespread problem in Italy (see the essay published in *Rivista giuridica del lavoro* 2023, vol. 4).

23. Randstad Research, *Trasformazioni del settore e delle professioni nella logistica*, 2023, p. 55.

2. Problematic cases in the logistics sector

2.1 Working conditions and workers' rights violations

As pointed out by the Committee on Strikes in Public Services[24] and the Committee on Undeclared and Under-declared Work,[25] the main problem in logistics, as well as in other labour-intensive sectors, is subcontracting. The two Committees have underlined that, in these sectors, subcontracting aims mainly to reduce labour costs and creates 'serious social problems'.[26] In fact, subcontracting entails both **legal and illegal forms of labour exploitation**,[27] separating power and profit from risks and responsibilities, worsening job stability, lowering working conditions, fragmenting the workforce and consequently hindering trade union activities, making inspections much more difficult.

In Italy, the negative effects entailed by subcontracting are exacerbated by the fact that collective agreements do not have *erga omnes* effects; in other words, they apply only to companies affiliated to the employer associations that signed them. Therefore, the main national collective agreement on logistics and transport[28] – that is, the collective agreement signed by the most representative trade unions and business associations – does not apply to all companies operating in the sector. Besides, for each sector there exist several collective agreements, sometimes signed to cut labour costs (this is a form of social dumping, dubbed '**contractual dumping**').[29] In practice, unscrupulous business associations look for more docile trade unions, whose members and activities are often unknown, to sign a national collective agreement that establishes lower wages, longer working

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24. The Committee on Strikes in Public Services is an independent public authority, comprising experts nominated by the President of the Italian Parliamentary Chamber and the President of the Italian Senate, to ensure the fair balancing of the right to strike with the enjoyment of the other constitutional rights.

25. The Committee on undeclared and under-declared work was created by the Ministry of Labour to draft a National Plan against undeclared and under-declared work. The Committee gathered representatives of the Italian public administrations and other experts.

26. Commissione di garanzia sullo sciopero nei servizi pubblici essenziali, *Appalti e conflitto collettivo: tendenze e prospettive*, 2020, p. 2; Tavolo tecnico sul lavoro sommerso, *Piano nazionale per la lotta al lavoro sommerso 2023-2025*. See also Allamprese A. and Bonardi O., *Introduzione, in Rivista giuridica del lavoro* 2020, 3, p. 364; Bellavista A. and Razzolini O., *Il dossier della Commissione di garanzia sullo sciopero in materia di appalti nei servizi pubblici essenziali. Una panoramica ricca di spunti nuovi e di prospettive stimolanti, in Lavori, diritti, Europa* 2021, p. 1; Bologna S. and Curi S., *Relazioni industriali e servizi di logistica: uno studio preliminare, in Giornale di diritto del lavoro e relazioni industriali* 2019, p. 155; Dorigatti L. and Mori A., *Condizioni di lavoro e relazioni industriali nelle catene del valore della logistica, in Rivista giuridica del lavoro* 2020, 3, p. 389.

27. Commissione di garanzia sullo sciopero nei servizi pubblici essenziali, *Appalti e conflitto collettivo: tendenze e prospettive*, 2020, p. 15.

28. *CCNL Logistica Trasporto Merci e Spedizione*, signed by FILT-CGIL, FIT-CISL and Uiltrasporti.

29. See *Relazione del Gruppo di lavoro sugli interventi e le misure di contrasto alla povertà lavorativa in Italia*, 2022, p. 22. Companies have to declare to the Ministry of Labour and to the National Institute for Social Protection (INPS) which collective agreement they are applying for calculating the social contribution (Article 16 quarter of Law Decree n. 76/2020).

time, longer shifts and shorter leaves than the collective agreement signed by the most representative trade unions and business associations. These cheaper collective agreements can then be applied by all companies that do not belong to the business associations that have signed the main national collective agreement.

Contractual dumping is also caused by the overlapping scopes of collective agreements. For example, the national collective agreement on multi-services signed by the most representative trade unions regulates porters and other professions present in logistics. Because this agreement establishes lower wages than those established by the main national collective agreement on logistics and transport, it allows companies to cut labour costs.

Many subcontractors are cooperatives.[30] As explained in Section 3.3, in Italy these companies benefit from special regulations (for example, on tax, social contributions and labour law). Moreover, cooperatives have their own collective bargaining system and collective agreements signed with them usually entail lower labour costs than those signed with industry. Cooperatives can come together in consortia and this further boosts subcontracting because consortia usually play the role of main contractor and then contract out to the affiliated cooperatives.

Some such cooperatives are '**bogus cooperatives**', in the sense that they do not have a mutual purpose and their worker-members do not participate in the management of the company, as required by the law on cooperatives. These bogus cooperatives are created for the sole purpose of exploiting the advantageous regulations on cooperatives. In 2017, the legislator modified the law on cooperatives to strengthen the measures against bogus cooperatives (Article 1 § 936 of Law n. 205/2017).[31] Simultaneously, the National Labour Inspectorate launched a campaign to monitor cooperatives in logistics.[32]

Other forms of legal exploitation are generated by several **precarious contracts of employment** allowed by Italian legislation. Fixed-term contracts, on-call contracts and temporary agency workers are widespread in logistics. The use of these precarious contracts further increases job instability entailed by subcontracting.[33] In fact, workers employed by subcontractors typically hope to be internalised by the client and engaged with an open-ended contract. For this reason, they tend to accept several forms of exploitation.

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30. See Bellavista A., *Cooperative e sfruttamento del lavoro nella logistica, in Rivista giuridica del lavoro*, 2020, 3, p. 452 ff.

31. Since 2017, cooperatives have been obliged to have a board comprising at least three members whose mandate can last for maximum of three years (they can be re-elected once) (Article 2542 of the Italian Civil Code). Cooperatives that refuse controls or do not respect their mutual purpose are cancelled by the National Register and may no longer operate. Labour inspectors can nominate a commissioner charged with carrying out certain tasks to remedy the violations discovered.

32. Ispettorato nazionale del lavoro (INL), circular n. 8777/2017.

33. According to the Committee created by the Ministry of Labour to investigate poverty, precarious jobs are the main cause of poor work in Italy (*Relazione del Gruppo di lavoro sugli interventi e le misure di contrasto alla povertà lavorativa in Italia*, 2022, p. 22).

In the past, many logistics companies based in Italy engaged self-employed drivers (called '*padroncini*').[34] These drivers own their own van and are paid according to the number of deliveries; however, they very often work for a single company. The courts have almost always denied these drivers the status of employee of the companies for which they habitually work because they benefit from a certain autonomy, owning their van and being allowed to refuse any deliveries requested.[35] Recently, the use of these *padroncini* in last-mile delivery has been replaced by subcontracting.[36] In fact, logistics companies currently find it more convenient to subcontract last-mile delivery to other companies (sometimes 'labour reservoir companies'; see below) than to engage self-employed drivers directly.

In some cases, practices to reduce labour costs through subcontracting degenerate into **illegal forms of labour exploitation**, as proven by the data on inspections in the sector. The number of companies in which irregularities have been detected has been growing constantly since 2021.[37] In fact, logistics is one of the sectors in which the percentage of irregularities is the highest (in 2022, 69.55% of the companies inspected in the sector presented irregularities; this rose to 73.24% in 2023). According to the annual reports of the National Labour Inspectorate, the most widespread violation in the sector is **illicit labour supply**. This violation occurs when labour inspectors notice that the company at the top of the supply chain is directing and controlling workers employed by subcontractors. As a result, it is declared the actual employer of the workers (see Section 3.2).

In many cases of illicit labour supply, the inspectors also detect tax and social security evasion.[38] In fact, subcontractors are sometimes so-called 'labour reservoir companies' (*società serbatoio*), that is, companies that supply low-cost workers, do not pay social contributions and are used to enable the company leading the supply chain to pay VAT through false invoices. Sometimes, the subcontracting chains are extended by the presence of '**filter companies**' that do not perform any activities and are used solely to make these chains more opaque. Often these companies have a very short duration: after a few years they disappear and their capital is transferred abroad (often to a secrecy jurisdiction or 'tax haven').[39] Benefiting from the corporate veil, their managers are usually not responsible for violations committed and they can freely create a new company. Workers

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34. See Riccobono A., *Logistica e diritti dei lavoratori nelle catene del valore: prospettiva qualificatoria e recenti novità legislative*, in *Variazioni su temi di diritto del lavoro* 2024, 2, p. 453.

35. See Court of Cassation n. 28568/2022.

36. Dossier Logistica. *Efficienza per l'ultimo miglio*, 2022, https://www.logisticanews.it/efficienza-per-lultimo-miglio-il-dossier-di-logistica/ Some *padroncini* were hired by BRT s.p.a., a company prosecuted by the Tribunal of Milan for operating as gangmasters. In his Decree (n. 6/2023), the prosecutor considers these drivers as BRT's employees.

37. See the *Annual reports on controls concerning labor law and social security* here available: https://www.ispettorato.gov.it/attivita-studi-e-statistiche/monitoraggio-e-report/rapporti-annuali-sullattivita-di-vigilanza-in-materia-di-lavoro-e-previdenziale/

38. See, recently, the FedEx case: https://ilmanifesto.it/societa-serbatoio-e-lavoratori-sfruttati-fedex-indagata

39. Decree n. 5/2023 on the Geodis case.

pass from the old to the new company, losing their seniority, and subcontracting becomes a never-ending story.[40]

In several cases, these 'labour reservoir companies' are set up by figureheads, in other words, persons who formally register a company but do not organise its activities. Sometimes, these figureheads are migrants who have previously worked for the leading company and are persuaded by it to create a 'labour reservoir company' to improve their working and living conditions.[41]

The combined use of 'labour reservoir companies', bogus cooperatives and illicit labour has led to **severe forms of labour exploitation** and has induced some Italian tribunals to investigate the crime of **gangmaster** (*caporalato*) (Article 603 bis of the Italian Penal Code; see Box 5). As already mentioned, four of the top ten companies in the sector in 2023 have been prosecuted for this crime (DHL, BRT, FedEX Express Italy and Amazon Italia Transport), as well as other big players (such as Esselunga, Mondoconvenienza, Ups, Gls, Uber, Lidl, Geodis, Securitalia, Gs belonging to the Carrefour group, Gxo).[42] In the Decrees adopted by the Tribunal of Milan, the prosecutor constantly repeated that unlawful practices were so deep-rooted that they could be considered part of a broader business model.[43] In fact, the conduct investigated does not appear to be the result of extemporaneous and isolated initiatives, but evidence of an illicit corporate policy.

In the words of the Tribunal of Milan:

> This gives rise to a process of organisational decoupling according to which, next to the formal structure of the organisation aimed at complying with institutional rules, another, 'informal' structure develops, aimed at following the rules of efficiency and results. In this way, the constant and systematic violation of rules generates the *normalisation of deviance*, in a context where irregularities and illicit practices are accepted and in some way promoted, as they are considered normal.[44]

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40. Borelli S., Frosecchi G., Guamán Hernández A., Loffredo A., Orlandini G., A. Riesco-Sanz, *Securing workers' rights in subcontracting chains*, Report for the ETUC, 2021, https://www.etuc.org/en/securing-workers-rights-subcontracting-chains.

41. See Decrees n. 5/2023 and n. 6/2023 of the Tribunal of Milan on the *Geodis and BRT cases*.

42. On Mondo Convenienza Holding s.p.a.: https://www.editorialedomani.it/fatti/mondo-convenienza-in-5-a-processo-per-caporalato-sotto-accusa-il-sistema-delle-cooperative-i2kxr3fd On Bartolini and Geodis: https://www.ilpost.it/2023/03/28/amministrazione-giudiziaria-brt-geodis-trasporto-merci/ On Esselunga: https://www.sistemapenale.it/it/scheda/merlo-alla-ricerca-della-via-italiana-ai-non-prosecution-agreement-il-caso-esselunga On Bologna freight terminal: https://www.ilpost.it/2021/10/22/sfruttamento-logistica-emilia-romagna/ See also Box 1 for the *DHL* case, 2 for the *Ceva Logistics* case, and 5 for the *Uber* case.

43. BRT is suspected of being supplied with 26,105 workers from 2.931 subcontractors: https://www.ilfattoquotidiano.it/2023/03/27/lamministrazione-giudiziaria-per-brt-e-geodis-il-tribunale-un-nuovo-potere-dei-processi-lavorativi-alternativo-allo-stato/7110534/

44. Tribunal of Milan, decree n. 6/2023 on the BRT case; Tribunal of Milan, decree n. 5/2023 on Geodis. The original text of the quoted paragraph of the decree is available here: https://milano.corriere.it/notizie/cronaca/23_marzo_27/brt-bartolini-in-amministrazione-giudiziaria-cento-milioni-di-risparmi-l-anno-ai-danni-dei-lavoratori-e-del-fisco-f8055998-ff27-49bb-8316-af61de6b8xlk.shtml

It is worth mentioning that, in these cases, companies become involved in criminal trials that sometimes end with severe punishment.[45] However, the workers involved usually prefer not to participate in these proceedings because they take much longer and are more complex than civil ones. Consequently, workers involved in gangmaster crimes often do not benefit from any remedy for unpaid overtime, unpaid wages, untaken annual leave and other violations they suffered. The case described in Box 2 is one of the few in which some workers were involved in a trial without, however, obtaining full compensation for the damages suffered.

Box 2 **Cooperatives as letterbox companies**

Ceva Logistics Italia s.r.l. was the subsidiary of a Dutch group that managed the Città del Libro in Stradella, the main book terminal in Italy. Ceva Logistics contracted out logistics services to Consorzio Premium Net that offered these services at a very competitive fee. Consorzio Premium Net then subcontracted logistics services to its cooperatives.

During the proceedings led by the Prosecutor's Office of Milan it emerged that these cooperatives were letterbox companies, all of them controlled by the President of Consorzio Premium Net. Workers were hired for some months by one cooperative and then transferred to others in order to reduce their seniority and to evade the legislation on fixed-term contracts. Some workers were formally recruited by a Romanian company that then fictitiously posted them to Italy. Moreover, workers were obliged to work overtime, during public holidays or on night shifts; wages were not paid in full; working time legislation, as well as health and safety law and the national collective agreement on transport and logistics signed by the most representative trade unions were constantly violated.[46] The Tribunal nominated a commissioner to verify labour exploitation present at all sites of the companies and to check whether their organisational model was able to prevent crime (Tribunal of Milan, Decree n. 59/20). In 2020, 159 workers entered the criminal trial claiming compensation.

The President of Consorzio Premium Net was acquitted of criminal charges and the Consorzio failed. In the meantime, Ceva Logistics Italia was sold. Workers were recruited by the new cooperatives operating in the Città del libro. Currently, worker representatives are present on the site and can organise the protests of workers still fighting against subcontracting and the bad working conditions it entails.[47]

It can also happen that a company is **infiltrated by the mafia**.[48] In these cases, companies acquire a competitive advantage from the ability of organised crime gangs to lower labour costs by threatening the workforce and also from relationships with persons close to the mafia.

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45. 121 million euros were seized from Amazon Italia Transport s.r.l. for fiscal fraud: https://finanza.lastampa.it/News/2024/07/23/amazon-italia-gdf-sequestra-121-milioni-di-euro-per-frode-fiscale/MTIxXzIwMjQtMDctMjNfVExC

46. Merlo A., *Il contrasto al "caporalato grigio" tra prevenzione e repressione*, 2019, https://archiviodpc.dirittopenaleuomo.org/d/6761-il-contrasto-al-caporalato-grigio-tra-prevenzione-e-repressione

47. Mastrandrea A., *L'ultimo miglio*, Manni, 2021, p. 53 ff.

48. Mastrandrea A., *L'ultimo miglio*, 2021, p. 117 ff.

2.2 Problems caused or exacerbated by algorithmic management

Another problem that has emerged in last-mile logistics is the increase in **work accidents** as a result of the intense work rhythm imposed by algorithmic management systems.[49] These systems are used to improve efficiency and reduce last-mile delivery costs. However, they also make it possible to strictly monitor work performance in its entirety. Consequently, workers are required to carry out certain activities in a certain time; if the working times dictated by the algorithm are not respected, workers risk being sanctioned. For this reason, rest time is often infringed. These algorithmic management systems also cause work-related stress and privacy violations. For example, in 2021 the labour inspectorate authorised Amazon to use only 'systems that record essential images and consist of cameras pointed at the areas that are most at risk of theft and damage'.[50] Moreover, the inspectorate prescribed that workers may be filmed only in incidental and occasional instances. Despite this order, at its Cividale site (Northeast Italy), Amazon has installed 46 external cameras and 437 internal cameras that enable the constant monitoring of workers. Through such monitoring, continuous pressure is put on employees, including the threat of retaliation (such as assigning them more exhausting tasks or not allowing them to take vacations).[51]

Since 2022, it has been very difficult to prevent such violations because the companies using these algorithmic management systems were not obliged to share with workers and trade unions information about their functioning or the data collected. Therefore, until recently, workers were not able to provide evidence of **working time violations** entailed by these algorithmic management systems.

It is worth mentioning that such violations are widespread also in logistics companies that do not use algorithmic management systems. Workers in the sector complain about the lack of rest time, long shifts, night work, the unpredictability of working time and the consequent fragmentation of time,[52] involuntary part-time working and envelope wages for overtime (interview LI01).[53] These working time violations increase the number of work accidents, as well as high workforce turnover, the presence of self-employed and other precarious workers and the risks generated by the simultaneous (and disruptive) presence of workers employed by different companies in the same workplace.

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49. In Italy, the logistics sector ranks second with regard to work accidents and occupational disease (Randstad Research, *Trasformazioni del settore e delle professioni nella logistica*, 2023, p. 20).

50. In Italy, the labour inspectorate must give prior consent to the installation of control systems if the latter have not been agreed with worker representatives (Article 4 of the Workers' Statute).

51. https://www.collettiva.it/copertine/lavoro/amazon-lavoratori-controllati-e-schedati-wugwfcgj

52. Allamprese A. and Bonardi O., *Studio sulle condizioni di lavoro nella logistica: tempo e salute, in Diritto della sicurezza sul lavoro*, 2020, 2, p. 47.

53. To solve these problems, the collective agreement signed by FILT, FIT and UilTrasporti in December 2024 introduced the right to disconnect. The agreement is available here: https://www.filtcgil.it/images/Contratti/Mobilit%C3%A0/Testo_accordo_del_6.12.2024.pdf

3. Legal analysis of subcontracting chains and working conditions in logistics

3.1 Regulation of subcontracting

Despite requests from a number of actors, including the Committee on Strikes in Public Services,[54] Italian legislation does not limit subcontracting in the private sector. By contrast, various constraints are imposed on public contracts by Legislative Decree no. 36/2023. According to Article 119 § 1 of this law, the main contractor cannot contract out work in its entirely, not to mention the bulk of work related to the main object of the contract and labour-intensive contracts. Besides that, the contracting administration can indicate in the tender work or services that, once subcontracted, cannot be further subcontracted, because of the specific characteristics of the public contract, the need to tighten control of workplaces, guarantee more intensive protection of working conditions and health and safety or prevent the risk of criminal infiltration (Article 119 § 17 of the Legislative Decree n. 36/2023).

Until 2022, Italian legislation on public contracts did not allow the main contractor to subcontract more than 30% of work or services. The legislation was modified in order to end the infringement procedure the European Commission had opened against Italy. Currently, the main contractor can subcontract work or services, subject to authorisation from the public administration that has contracted out, provided that: (i) the subcontractor is qualified to carry out the work or service to be performed; (ii) there are no reasons for exclusion against it; and (iii) the work or services intended to be subcontracted are indicated at the time of the offer (Article 119 § 4 of the Legislative Decree n. 36/2023).

Some limits to subcontracting are established by Article 42 of the main national collective agreements on logistics and transport, whose contents were strengthened in 2024 following several instances of gangmaster crimes in the sector. Under this Article, contracting out is permissible only to companies with adequate technical and professional skills, and which comply with health and safety regulations, have an organisational model able to prevent criminal activities, pay social contributions and taxes regularly, and apply the national collective agreements signed by FILT, FIT and UilTransporti. These companies are prohibited from further subcontracting. However, consortia can subcontract to their cooperatives' members, and companies can subcontract to other companies belonging to the same group. If a contractor does not meet the abovementioned requirements, does not apply the national collective agreement signed by FILT, FIT and UilTransporti, does not pay social contributions, does not correctly pay its workers or violates health and safety regulations, the client can terminate the contract.

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54. Commissione di garanzia sullo sciopero nei servizi pubblici essenziali, *Appalti e conflitto collettivo: tendenze e prospettive*, 2020, p. 15.

It should be noted that, because of the *inter partes* efficacy of the collective agreements, Article 42 binds only companies affiliated to the business associations that signed the main national collective agreements on logistics and transport. Consequently, any contractor or subcontractor that does not belong to these associations and does not apply this agreement voluntarily, can infringe Article 42 without any consequence.[55]

Following the many cases of labour exploitation identified in the Italian courts, the Prefecture of Milan, Region of Lombardia, several business associations and the main trade unions signed a Protocol to promote legality in logistics.[56] The Protocol is aimed at increasing supply chain transparency and holding the main companies operating in logistics accountable for workers' rights violations in their supply chains. For this purpose, the Protocol sets up a platform in which companies operating in the sector can register voluntarily. The registered companies shall provide information showing that they regularly pay their workers, social contributions and taxes, and respect health and safety regulations. These companies shall also provide the contracts they have signed. The companies registered on the platform receive a 'certificate' that allows them to benefit from incentives granted by the Region of Lombardia.

Another tool for promoting compliance with workers' rights is the 'Ethical Logistics' label granted to companies that respect the Metropolitan Charter for Ethical Logistics promoted by the Municipality of Bologna, the Emilia Romagna Region and other public authorities. This label is based on rules agreed by these authorities and social partners, such as: compliance with the main national collective agreement, health and safety law, working time regulations, the obligation to shorten their supply chains and the application of clauses aimed at ensuring employment continuity in case of a change of subcontractor.

Finally, it should be mentioned that special logistics zones (*zone logistiche semplificate* – ZLS) and economic areas (*zone economiche speciali* – ZES), which are aimed at attracting foreign investment (Article 37 of Law Decree n. 37/2022)[57] also exist in Italy. This is a prominent example of derogatory regimes applied to logistics in order to boost the competitiveness of the companies in the sector.[58] Companies in such ZLS and ZES benefit from several advantages, such as administrative simplifications, economic incentives and tax relief.

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55. Riccobono A., *Logistica e diritti dei lavoratori nelle catene del valore: prospettiva qualificatoria e recenti novità legislative, in Variazioni su temi di diritto del lavoro*, 2024, 2, p. 467.

56. https://www.interno.gov.it/it/notizie/protocollo-milano-legalita-negli-appalti-sulla-logistica

57. Confindustria, *Industria, Trasporti, Logistica e Infrastrutture: Insieme per la competitività del paese*, 2024, p. 51.

58. Alemanni C. (*La signora delle merci*, LUISS, 2023, p. 171) refers to 'places with "liquid" jurisdiction', in which the law is "frozen" in order to promote economic and logistics efficiency'.

3.2 Liability among clients, contractors and subcontractors

As mentioned in Section 2.1, one of the main problems generated by subcontracting is the **separation of power and profit from risks and responsibility**. The main instruments available in Italy to solve this problem are: (i) a substantive notion of employer; and (ii) joint and several liability.

The **substantive notion of employer** prevents any form of illicit labour supply. In fact, in Italy the person or firm that directs and controls workers must be their employer. If a different person signed the contract of employment, a judge will deem this illicit labour supply and declare that the real employer is the one that directs and controls the workers. In order for there to be a genuine contract or subcontract therefore it is necessary to verify that the contractor or the subcontractor provides a work or service 'through an effective and autonomous organisation of labour, exerting the power of management and control over its employees, using its own means and assuming the business risk'.[59] An illicit labour supply is found where the managerial and organisational power is entrusted to the client and the contractor (or subcontractor) simply provides workers.[60]

It should be mentioned that, if a contractor (or a subcontractor) uses an algorithmic management system provided by the client, it could be easier for workers to prove that the real employer is the latter. In fact, several Italian courts have recognised 'computerised direction of work' when work is governed by software that tells the worker what to do, where and when (see Box 3). In this case, the company that owns and manages the software and the technical devices provided to workers is the employer[61] while the contractor (or subcontractor) simply administers the employment relationship (for example, it hands over the payroll, pays wages and schedules annual leave).

Box 3 **The real employer in case of algorithmic management**

In 2019 the Tribunal of Padua ruled on a case concerning pickers[62] hired by a contractor, whose activities were fully controlled by software provided by the client (Aspiag Service s.r.l.). The pickers were employed in the warehouse of the client, were equipped with barcode readers and received instructions from a voice terminal via a headset and microphone connection. The activities of each picker were directed and monitored by Aspiag Service s.r.l. in real time, calculating for each hour and for each package the quantity and type of goods handled by the picker. The client could thus continuously collect information on pick-rate, duration of breaks, and workers' peak efficiency; it could assess workers' performance and consequently evaluate them.

According to the Tribunal, 'the overall governance of the company's activities and the direction of work can be considered to be a "computerised relationship" (*relazione informatizzata*) with the apparent client, leaving the contractor with a residual

59. Court of Cassation n. 12551/2020.
60. Court of Cassation n. 9231/2021, n. 32289/2022 and n. 12189/2023.
61. Tribunal of Padua n. 126/2023; Tribunal of Catania n. 4553/2021. The Decree of the Tribunal of Milan on the Amazon Italia Transport case talks about 'digital direction': through its technological devices, Amazon Italia Transport s.r.l. exercises managerial powers by organising and controlling the overall activity of goods delivery, including the last-mile delivery apparently contracted out to suppliers.
62. Pickers are workers employed in warehouses, whose main activity is to collect goods that are then handed over to the persons who pack them for delivery.

function of control and disciplinary intervention, usually requested by the client' (Tribunal of Padua n. 550/2019 confirmed by the Court of Appeal of Venice, decision of 30 March 2023). In other words, the workers were directed by Aspiag Service not through physical managers, but through an algorithmic management system provided to the contractor.

A major obstacle to the application of the substantive notion of employer is the fact that it is very easy to set up a company in Italy and consequently very difficult for labour inspectors and trade unions to monitor the subcontracting chain (see Sections 4 and 5).

Joint and several liability is established by Article 29 §1 of Legislative Decree n. 276/2003. According to this Article, the client is jointly liable with the contractor and each subcontractor, within two years of termination of the (sub)contract, to pay wages and social contributions due to workers engaged by the contractor or subcontractors, in relation to the period of execution of the (sub)contract.[63]

The Italian Constitutional Court considers Article 29 §1 of Legislative Decree n. 276/2003 as a general rule that has to apply in any case of 'decentralisation of production and dissociation between the person that has signed the employment contract and the person that benefits from the work performance' (decision n. 254/2017).[64] According to the Constitutional Court, in all these cases, the rule on joint and several liability is necessary to protect workers' rights. Besides that, this rule prevents the client from contracting out to unreliable companies.[65]

There is a special rule on joint and several liability for the transport contract. According to Article 83 bis §§ 4 bis – 4 *sexies* of Law n. 133/2008, the client is jointly liable for wages and social contributions that the carrier has to pay to its workers only if it does not correctly fulfil the obligation to verify the 'legality' of the carrier. Thus, in the case of a transport contract, the client can easily avoid joint and several liability by acquiring from the carrier a document issued by the National Social Security Institute (INPS) that proves the correct payment of social contributions and by checking, on a database, information on social contributions paid by the carrier.[66]

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63. To verify the correct payment of social contributions by their contractor and subcontractors, clients can use software created by INPS: https://www.inps.it/it/it/dettaglio-scheda.schede-servizio-strumento.schede-strumenti.monitoraggio-congruit%C3%A0-occupazionale-appalti.monitoraggio-congruit--occupazionale-appalti.html

64. The principle stated by the Constitutional Court has then been applied by the Court of Cassation (see eg Court of Cassation n. 26881/2024).

65. Court of Cassation n. 2169/2022.

66. Article 83 bis of Law n. 133/2008 has been widely criticised by scholars because any company can easily avoid joint liability. See Izzi D., *La promozione della regolarità negli appalti attraverso la responsabilità solidale per i crediti da lavoro: sperimentazioni concluse e in corso, in Argomenti di diritto del lavoro*, 2016, n. 4-5, I, p. 815.

In 2022, the legislator inserted a new Article in the Italian Civil Code to regulate logistics contracts (Article 1677 bis of the Civil Code).[67] This Article considers that logistics contracts are contracts to provide services, but applies to them the rules related to transport contracts 'insofar as they are compatible'. The wording of this Article initially gave rise to doubts on the application of Article 29 § 1 of Legislative Decree n. 276/2003 to logistics contracts. The majority of scholars,[68] as well as the Ministry of Labour,[69] confirmed the application of Article 29 § 1 to logistics contracts, stating that, on one hand, this is a general rule to protect workers involved in any form of contracting out (except in case of transport contracts, for which there is a special rule[70]). On the other hand, a logistics contract is a contract to provide services and thus the regulations on the latter apply. Besides, in order to reduce the scope of Article 83 bis of Law n. 133/2008, the courts have distinguished between a transport contract and a contract to provide transport services. The latter exists when a party is obliged to provide transport on a continuous basis, with a view to achieving an overall result and in exchange for a fee.[71] A contract to provide transport services is, obviously, a contract to provide services; therefore, the rules regulating the latter (including Article 29 § 1 of Legislative Decree n. 276/2003) apply.[72]

In 2024 the legislator broadened the scope of Article 29 § 1 to encompass cases of illicit labour supply (Article 29 of Law Decree n. 19/2024). As already mentioned, in this case, the client is considered the real employer of the worker formally engaged by the contractor (or subcontractor). According to the rule introduced in 2024, the latter remains jointly liable to pay wages and social contributions due for the period in which illicit labour supply has taken place.[73]

In public contracts, the rule on joint and several liability is strengthened (Article 119 § 7 of Legislative Decree n. 36/2023).[74] In these cases, the main contractor is jointly liable not only for the payment of wages and social contributions, but also for the fulfilment of all subcontractors' obligations in accordance with Legislative Decree n. 36/2023 (see Section 3.3). Furthermore, the main contractor is jointly liable with subcontractors to comply with health and safety law (Article 119 § 12).

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67. A logistics contract is a contract aimed at the provision of two or more logistics services related to the activities of receiving, processing, storage, custody, shipping, transferring and distributing goods, and the activities of transferring things from one place to another (Article 1677 bis of the Italian Civil Code).

68. Bonardi O., *Il contratto di logistica e la responsabilità solidale negli appalti dopo il nuovo art. 1677 bis c.c., in Lavoro Diritti Europa*, 2022, https://www.lavorodirittieuropa.it/dottrina/1181-il-contratto-di-logistica-e-la-responsabilita-solidale-negli-appalti-dopo-il-nuovo-art-1677-bis-c-c; Villa E., *La responsabilità solidale come tecnica di tutela del lavoratore*, 2017.

69. Ministry of Labour, Interpello n. 1/2022. See also Circular n. 17/2012 in which the Ministry clarified that Article 29 of Legislative Decree n. 276/2003 applies to contracts to provide transport services.

70. Court of Cassation no. 2169/2022 and no. 25551/2023.

71. Court of Cassation n. 23448/2023, n. 1444/2024.

72. Court of Cassation n. 6449/2020 and n. 24983/2022.

73. The same rule applies in case of temporary agency work when the agency has not been authorised by the Ministry of Labour to perform its activity (Article 29 of Law Decree n. 19/2024).

74. Article 29 of Legislative Decree n. 276/2003 applies to contractors and subcontractors in public contracts (Article 119 §§ 6 and 7 of Legislative Decree n. 36/2023).

Another way to ensure that social contributions and wages are paid as they should be in public contracts is through what is known as 'substitution' by the public administration that has contracted out. If the contractor fails to pay social contributions as required, the public administration can pay the contributions directly and reduce the contractor's remuneration accordingly. The same rule applies when the contractor does not correctly remunerate its workers (Article 11 § 6 of Legislative Decree n. 36/2023).[75]

3.3 Working conditions of subcontracted workers

Another problem observed in logistics is the **unequal treatment of workers engaged by contractor and subcontractors**. In Italy, the rule that imposed equal treatment between workers directly engaged by the client and workers engaged by contractor and subcontractors was repealed in 2003.[76]

In February 2024, five workers employed by subcontractors on a construction site in Florence died. During the investigation, it was discovered that some of these workers were not covered by the collective agreement for the construction industry but by the collective agreement for metalworkers, which provides for less stringent safety measures. After this serious work accident, the government intervened to prevent subcontracting aimed mainly at cutting labour costs. However, the government did not re-introduce an equal treatment clause but obliged contractors and subcontractors to ensure that their workers receive:

> overall economic and regulatory treatment not less than that provided for in the national and territorial collective agreement signed by the most representative trade unions and business associations at the national level, applied in the sector and for the area closely related to the activity covered by the contract and subcontract. (Article 29 § 1 bis of Legislative Decree no. 276/2003 supplemented by Article 29 of Law Decree no. 19/2024)

This rule is very similar to the one established in Article 11 of Legislative Decree no. 36/2023 for public contracts (see below). However, in the latter context, the rule is justified because of the role the state has to play when purchasing certain work or services from private companies. In the private sector, by contrast, the obligation to respect the collective agreement signed by the most representative trade unions and business associations could infringe Article 39 of the Italian Constitution, which establishes a special procedure to guarantee *erga omnes* effect to a collective agreement.[77] Because this procedure was never implemented,

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75. The public administration can also directly pay the subcontractors the amount due for the services performed and correspondently reduce the fee due to the contractor (Article 119 § 11).

76. Article 3 of Law n. 1369/1960 repealed by Legislative Decree n. 276/2003. The re-introduction of the equal treatment obligation has been requested by the Committee on undeclared and under-declared work (*Piano nazionale per la lotta al sommerso 2023-2025*, p. 27) and by the Committee on strikes in public services (*Commissione di garanzia sullo sciopero nei servizi pubblici essenziali, Appalti e conflitto collettivo: tendenze e prospettive*, 2020, p. 15).

77. Bellavista A., *Le catene di appalti e la tutela dei lavoratori, in Diritto del mercato del lavoro*, 2024, p. 85.

collective agreements in Italy do not produce *erga omnes* effect and have to be applied only by companies affiliated to the signatory business associations and by companies that decide to apply them voluntarily.

Another important legal tool to prevent unequal treatment is Article 36 of the Italian Constitution. According to this Article, 'workers have the right to a remuneration commensurate with the quantity and quality of their work and in any case such as to ensure them and their families a free and dignified existence'. Judges have consistently interpreted Article 36 of the Italian Constitution as binding. In order to verify the proportionality and sufficiency of remuneration, they have referred to that established by the national collective agreement signed by the most representative trade unions and business associations, for the relevant sector.[78] Consequently, wages established by this collective agreement de facto become applicable to all workers.[79]

Article 36 of the Italian Constitution has also been claimed to prevent logistics companies from applying a collective agreement for a different sector.[80] In fact, judges refer to the national collective agreement signed by the most representative trade unions and business associations for the *relevant sector*. Therefore, when logistics companies apply a different national collective agreement, workers can request that the judge order them to pay the wage established by the main national collective agreement on logistics and transport.

For cooperatives, the mechanism elaborated by Italian judges to enforce Article 36 of the Constitution is mentioned explicitly in Article 7 § 4 of Law Decree n. 248/2007. This Article states that, if there are several collective agreements for the same sector, cooperatives shall ensure for their worker-members 'overall economic treatment' not inferior to that established by the collective agreements signed by the most representative trade unions and business associations at national level in the sector. According to the courts, this rule is necessary to guarantee fair competition among companies and avoid social dumping, as well as to ensure decent working conditions.[81]

It should be noted that in Italy industry, cooperatives and crafts have different collective bargaining systems. Therefore, the main trade unions in the logistics sector sign three different national collective agreements. In 2021, their texts were

78. See Constitutional Court n. 51/2015.
79. See the article published in *Rivista giuridica del lavoro* 2023, vol. 4.
80. As already mentioned, some logistics companies apply the national collective agreement for multi-services signed by the Federazione Italiana Lavoratori Commercio, Alberghi, Mense e Servizi (FILCAMS-CGIL), Federazione Italiana Sindacati Addetti Servizi Commerciali, Affini e del Turismo (FISASCAT-CISL) and Uiltrasporti that also regulates some delivery activities.
81. Tribunal of Milan, decision 11 December 2023, that took the view that Article 7 had been violated by a cooperative that applied the national collective agreement on multi-services, instead of the national collective agreement on logistics and transport, to workers engaged in loading/unloading, transport and assembly of furniture.

collected in a single document[82]; however, working conditions (including wages) remain different for industry, cooperatives and crafts.

Moreover, cooperatives benefit from special legislation (Law n. 142/2001) that allows them to approve an internal regulation to derogate labour law and national collective agreements in case of crisis. As mentioned by the labour inspector we interviewed (Interview LI01), it is extremely difficult to monitor these internal regulations, as well as the minutes of the meetings of cooperative members, because they do not have to be submitted to any public authority.

Other means of ensuring equal treatment for workers employed in the subcontracting chain are regulated by Legislative Decree no. 36/2023 on public contracts. This law establishes that workers employed by the contractor must receive treatment no less favourable than that established by the national and territorial collective agreement signed by the most representative business associations and trade unions. In particular, the law requires compliance with the collective agreement in force for the sector and for the area in which the work is carried out, whose scope of application is closely connected with the activity covered by the contract carried out by the company (Article 11 of Legislative Decree no. 36/2023). Article 119 § 7 of Legislative Decree no. 36/2023 applies the same rule to subcontractors, if the subcontracted activities coincide with those of the public contract. Moreover, subcontractors shall guarantee to their workers treatment no less favourable than what would have been applied if they had been recruited directly by the contractor (Article 119 § 12; see also Article 11 § 5).[83]

The Legislative Decree on public contracts also requires that contractors and subcontractors obtain a regular DURC (*documento unico di regolarità contributiva*), which is a document proving the regular payment of social contributions (Article 119 § 7). This law also obliges subcontractors to have a so-called *DURC di congruità* (Article 119 § 14), which certifies, for each public contract, the minimum number of workers that must be employed by a company to perform it.[84]

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82. The text of the agreement is available here: https://www.filtcgil.it/images/Contratti/Mobilit%C3%A0/TU_CCNL_logistica_trasporto_spedizione_18_maggio_2021.pdf

83. Orlandini G., *Clausole sociali e contrasto al dumping contrattuale: le ambivalenti novità del nuovo codice dei contratti pubblici, in Diritti&Lavoro Flash*, 2023, 3, p. 15; Santoro I., '*A cavallo' tra i due codici: l'equo trattamento dei lavoratori nella nuova normativa sui contratti pubblici*, WP CSDLE "Massimo D'Antona".it n. 467/2023.

84. According to one respondent, the regulation on the DURC *di congruità* is sometimes circumvented because public administrations demand additional services or underestimate the working hours and the workers needed to perform a service (INT LL01).

3.4 Exacerbating workers' vulnerability

As already pointed out (Section 2.1), subcontracting increases **job instability**.[85] Currently in Italy, only Legislative Decree no. 36/2023 on public contracts tries to solve this problem. According to Article 57 of this law, tenders for public contracts must contain specific social clauses requiring measures to ensure the employment stability of the employees affected.[86]

The main national collective agreement on logistics and transport establishes that, in the event of changes of contractor or subcontractor, workers employed for at least six months by the previous (sub)contractor have to be re-employed by the new (sub)contractor, maintain their seniority, their wages and the rights they acquired (Article 42). However, the efficacy of this agreement is very limited. As already mentioned, it has to be applied only by companies affiliated to the business associations that signed it. Therefore, de facto, a number of companies do not respect Article 42 of the main collective agreement on logistics and transport, but cannot be punished because of it.

3.5 Regulation of algorithmic management

An important instrument for regulating **algorithmic management systems** is Legislative Decree n. 104/2022. This law requires companies to inform trade unions and workers on the functioning of these systems and on data collected. Some labour lawyers have made use of this legislation to open up the black-box algorithm and better understand how food delivery companies manage their workforces. These lawyers claimed a violation of the trade unions' right to information by algorithmic management systems, as introduced by Legislative Decree no. 104/2024, and succeeded in their action against this anti-union behaviour.[87]

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85. Strengthening job stability in case of a subcontractor's replacement has been recommended also by the Committee on strikes in public services (Commissione di garanzia sullo sciopero nei servizi pubblici essenziali, *Appalti e conflitto collettivo: tendenze e prospettive*, 2020, p. 15).

86. Boscati A., *Appalti pubblici e clausole sociali tra ordinamento interno e diritto dell'Unione europea*, in Bellavista A. and Marinelli M. (eds), *Studi in onore di Alessandro Garilli, Giappichelli*, 2023, vol. I, p. 133; Di Noia F., *Le clausole sociali nel "nuovo" Codice dei contratti pubblici: conferme ed evoluzioni nel modello di tutela, in Lavoro e previdenza oggi*, 2023, p. 611.

87. Tribunal of Palermo, no. 231/2024.

4. The role of trade unions

4.1 Worker participation at company level

In Italy, worker participation at company level is regulated mainly by collective agreements.[88] The presence of many national collective agreements jeopardises workers' rights to information and consultation. Furthermore, because a law on trade union representativeness is missing, there is uncertainty on who benefits from these rights.[89] The weakness of workers' participation makes it very difficult for trade unions and workers' representatives to monitor a company's subcontracting chain. Moreover, the law provides worker representatives with rights only in companies with more than 15 employees. Consequently, worker representatives are rarely present in smaller companies.

It should be added that the workers' right to information and consultation established by the main national collective agreement on logistics and transport does not require that companies communicate the names of subcontractors or the services subcontracted.[90]

This situation could be improved by the EU Corporate Sustainability Reporting Directive (CSRD), which requires companies to provide information 'about the undertaking's own operations and about its value chain, including its products and services, its business relationships and its supply chain' (Articles 19a § 3 and 29a § 3 of Directive 2013/34).[91] However, the Legislative Decree that implements this directive does not specify either which worker representatives must be informed and consulted, or when, how and at which level they have to be informed and consulted (see Legislative Decree no. 125/2024).[92] Therefore, it is very probable that in Italy the CSRD will not improve the transparency of companies' value chains and will not increase workers' participation in the due diligence process.

To improve health and safety coverage for all workers in the subcontracting chain, the national collective agreement signed by FILT, FIT and UilTrasporti in 2024 provides for the possibility to nominate a workers' representative for health and safety issues on site.[93] However, it should be noted that the client's obligation to assess risks arising from conflicting client, contractor and subcontractor's activities (so called interferential risks), applies only in cases in which the client

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88. The only general law on workers' participation is Law no. 25/2007 implementing Directive 2002/14.

89. See the article published in *Diritto delle relazioni industriali*, 2023, no. 4.

90. The law obliges the main contractor to submit the names of all subcontractors and the work or service subcontracted, but only for public contracts (Article 119 § 2 of Legislative Decree no. 36/2023).

91. In 2025, the Commission suggested limiting the scope of Directive (COM(2025)81). In addition, its entry into force has been postponed for some companies (Directive 2025/794).

92. See Borelli S. and Mucciarelli F.M., *La direttiva sulla rendicontazione di sostenibilità: fra trasparenza e partecipazione, in Rivista giuridica del lavoro*, 2024, I, p. 492.

93. The Protocol for Bologna Interporto signed in 2023 establishes coordination between workers' safety representatives on the site.

has access to all workplaces (Article 26 of the Legislative Decree n. 81/2008). The latter condition is missing for many logistics activities and in any case the obligation to assess interferential risks does not concern delivery as this activity is not performed in a specific workplace.[94]

4.2 Collective bargaining

In Italy, collective bargaining has been a prominent means of intervening in some very problematic cases of subcontracting (see Box 4). As already mentioned, several cases of serious labour exploitation have been investigated by Tribunals, which has led to a number of re-internalisation processes. These processes have gone hand in hand with the increasing presence of trade unions. In last-mile logistics, unionisation has been fostered also by the signing of Protocols and company collective agreements that have improved working conditions and promoted job stability.[95]

Box 4 **The re-internalisation process negotiated with Amazon**

Amazon commenced operations in Italy in 2010. Its warehouses are strategically positioned close to main highways, in areas with high unemployment and weak economic development.[96] The majority of personnel are temporary agency workers, under constant threat of dismissal.[97] Staff turnover is very high and workers complain that work shifts are long and irregular, work rhythm is intense, it is very difficult to reconcile work and family life, and work performance is constantly supervised through algorithmic management systems.[98] Amazon subcontracts some of its activities, such as last-mile delivery and building security.[99] To monitor subcontractor operations, Amazon provides them with devices to set up an algorithmic management system.

In 2018, labour inspectors verified that, in the period from July to December 2017, Amazon exceeded the monthly contractual limit of 444 temporary agency workers; in fact, it employed a further 1,308 temporary agency workers.[100]

During the pandemic, the main trade unions in the logistics sector signed a company agreement with Amazon to set up a Covid-19 company safety committee and to implement occupational health and safety measures prescribed by the National Protocol signed by the government and social partners.

To force the company to negotiate to improve the working conditions of temporary agency workers and subcontracted workers, on 22 March 2021 a general strike was

94. Allamprese A. and Bonardi O., *Salute e sicurezza del lavoro nella logistica, in Rivista giuridica del lavoro*, 2020, 3, p. 454.
95. Filt, Fit, Uiltrasporti, *Piattaforma per il Rinnovo del CCNL Logistica Trasporto Merci e Spedizione*, 2023.
96. https://storymaps.arcgis.com/stories/5c724cb9425741bbb14b6eeffe99a427
97. According to research on the Amazon warehouses in the province of Rovigo, in 2021 temporary agency workers made up 52.4 per cent of the workforce; furthermore, two-thirds of the staff had a part-time contract (IRES Veneto, *Amazon nel territorio di Rovigo…un anno dopo*, 2023, pp. 32 and 35). The research reports also that 79% of the temporary agency workers employed by Amazon left for other jobs (p. 42).
98. Mastrandrea A., *L'ultimo miglio*, 2021, p. 40.
99. According to the case study conducted in the Team Hub project, almost all drivers (approximately 14,000–15,000 in 2022) are subcontracted. In Amazon warehouses approximately 16,000 workers are directly employed, while temporary agency workers number around 12,000 and subcontracted workers around 1,500.
100. https://www.ilsole24ore.com/art/amazon-ora-deve-assumere-1300-interinali-l-ispettorato-lavoro-ha-sforato-quote-AE2Kbv2E

called involving these workers as well as direct employees.[101] In September 2021 Amazon Italia Logistics s.r.l., Amazon Italia Transport s.r.l., CGIL, CISL and UIL signed, in the presence of the Minister of Labour, two Protocols with a view to defining a shared industrial relations system.

In November 2021, trade unions again threatened to call a strike. This gave impetus to negotiations with Assoespressi, which in February 2022 signed a collective agreement with companies in its association that carry out last-mile deliveries for Amazon Italia. This agreement establishes that, in recruitment, priority must be given to workers dismissed by other companies involved in last-mile deliveries for Amazon Italia Transport s.r.l. and to temporary agency workers with seniority of at least six months. Moreover, in case of a change in subcontractor, all drivers employed by the former subcontractor for at least six months shall be transferred directly to the new subcontractor, maintaining their wages and acquired rights. Finally, the agreement forbids the use of mobile phones and devices equipped with GPS to monitor drivers' performance and to collect data for disciplinary purposes.

In October 2022 Amazon Italia Logistics s.r.l., Amazon Italia Transport s.r.l, CGIL, CISL and UIL signed an agreement to increase the wages of Amazon staff and temporary agency workers. In this agreement, the parties committed to negotiations 'on topics aimed at improving working conditions and providing employment continuity to temporary agency workers'.

In November 2023 Assoespressi, as well as other Amazon's subcontractors in Emilia Romagna signed an agreement with CGIL, CISL and UIL to commit to jointly monitor workloads and discuss 'the work organisation generated by Amazon's algorithm'. In practice, trade unions 'can submit reports to the company and employers' associations, which must provide data and means of resolving the problems encountered'.[102]

Finally, the trade unions obtained, starting from 1 October 2024, implementation of the main national collective agreement on logistics and transport for all Amazon workers (previously, they were covered by the national collective agreement for commerce that establishes lower wages and worse working conditions).[103]

Despite these negotiations, in July 2024 Amazon Italia Transport was prosecuted on the charge of operating as a gangmaster and fiscal fraud.[104] The proceedings concern mainly its constellation of subcontractors for last-mile delivery that, as the prosecutor showed, serve as so-called 'labour reservoirs', as their activities are fully organised and controlled by Amazon through its algorithmic management system.

The main trade unions in logistics intend to further promote collective bargaining both for the value chain and for sites such as freight terminals (*interporti*).[105] Their aim is to guarantee to all workers employed there treatment no less favourable

101. https://www.collettiva.it/copertine/lavoro/la-prima-volta-di-amazon-e-sciopero-vdc39xp9

102. Team Hub, *Final Report*, May 2024, p. 15.

103. See Massimo F., *Una lotta di corpi e anime: la gestione di Amazon e le strategie sindacali in Francia e Italia*, in Alimahomed-Wilson J. and Reese E., *Il costo della spedizione gratuita. Amazon nell'economia globale,* Altraeconomia, 2023, p. 145 ff.

104. https://www.editorialedomani.it/economia/amazon-sequestro-milano-inchiesta-caporalato-digitale-finti-fornitori-d5zp8dcj

105. Filt, Fit, Uiltrasporti, *Piattaforma per il Rinnovo del CCNL Logistica Trasporto Merci e Spedizione*, 2023, pp. 4 and 9. FILT-CGIL plans also to set up several national coordinating zones to organise the workers engaged in logistics (ports, airports, rail and road transport) (Filt-Cgil, *Settore Merci e Logistica*, document presented during the last Congress of the Confederation, 2023).

than that provided for in the main national collective agreement on logistics and transport.

Facing the verticalisation of the supply chain, the trade unions are also demanding the development of collective bargaining at group level (interview TU01). They claim that, in big groups (such as the MSC group; see Section 1.1), many decisions concerning the workforce and industrial planning are taken by the holding. Consequently, it would be of paramount importance to negotiate working conditions and industrial relations for all group's companies.

4.3 Trade union actions

In recent years, trade unions, especially grassroots unions, have been very active in the logistics sector. Their intervention has often followed major protests organised against serious forms of labour exploitation. In some cases, workers participating in these protests were accused of crimes, such as blocking goods, road blocking, unauthorised assembly or private violence.[106] The Piacenza Public Prosecutor's Office has even charged some trade unionists with criminal conspiracy because they received money from workers for a fund to support striking workers.[107]

It is also not clear when Law n. 146/1990 on strikes in public services applies.[108] The Law includes among public services the supply of essential goods. The main national collective agreement on logistics and transport provides a sample list of such goods, mentioning milk, medicines, water, live animals and energy. To ensure the adequate supply of these goods, any strike in their logistics chain must respect the requirements of Law n. 146/1990.

5. Access to justice and enforcement legislation

5.1 Monitoring and inspections

As already pointed out, workers' rights violations are very frequent in the logistics sector. To combat the abovementioned '**labour reservoir companies**', in 2021 a taskforce of logistics and transport inspectors was set up (Ministerial Decree n. 160/2021).[109] Because the Meloni government failed to renew the mandate of this taskforce, it was wound up in 2023.

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106. See Campanella P., *Logistica in lotta: primi sguardi, in Rivista giuridica del lavoro*, 2020, 3, p. 486 ff. Carta C., *Azione collettiva e circolazione stradale: contributo allo studio dei diritti sociali fondamentali in Europa, in Rivista giuridica del lavoro*, 2020, 3, p. 519 ff.

107. https://www.ilpost.it/2022/07/28/inchiesta-sindacati-piacenza-logistica/

108. See Campanella P., *Logistica in lotta: primi sguardi, in Rivista giuridica del lavoro*, 2020, 3, p. 483 ff.

109. Ispettorato nazionale del lavoro (INL), *Rapporto annuale delle attività di tutela e vigilanza in materia di lavoro e legislazione sociale*, 2022, p. 61.

In order to better plan investigations and to promote statistical analysis, the Committee on undeclared and underdeclared work suggested development of a single national database, collecting data from several public authorities.[110] Such a database could also strengthen law enforcement, because inspectors would have information at their disposal before carrying out on-site checks.[111] A good example of data sharing is given by the Metropolitan Charter for Ethical Logistics promoted by the Municipality of Bologna and the Emilia Romagna Region in 2022. This Charter creates a Committee for Ethical Logistics in which the Labour Inspectorate, the Health Authority and the Industrial Accidents Institute can exchange information. Within this Committee, companies undertake to share useful information for mapping their value chain.[112]

Recently, the legislator also introduced the possibility of carrying out documentary controls based on the consultation of databases (Article 30 § 10 of Law Decree no. 19/2024).[113] The same law also increases the number of labour inspectors (Article 31), trying to fulfil the target of a 20% increase in investigations planned for 2024.[114]

5.2 Access to justice

According to one of our respondents (interview LL01), access to justice is a major problem for logistics workers. In fact, in order not to lose their jobs,[115] the few workers that can afford a lawyer and wait for the (sometimes long delayed) conclusion of the process, claim their rights only when their employment contract is terminated. This problem could be solved if trade unions could take legal action to defend workers' rights, as laid down in EU antidiscrimination law and in other recent EU directives (such as Directive no. 2024/2831 on Platform Work).

Currently, trade unions in Italy can take action against anti-union behaviour (Article 28 of the Italian Workers' Statute) and in case of discrimination (but not in cases of gender discrimination). In June 2023, the Administrative Tribunal of Lazio (TAR) voided the Decree that excluded trade unions from the list of entities that can file a class action. This exclusion prevented trade unions from taking action to obtain compensation for an employer's violations (840 *bis* of the Italian Code of civil procedure), and to obtain an injunction to prevent the occurrence of further harm to workers and measures aimed at eliminating the effects of such violations (840 *sexiesdecies* of the Italian Code of Civil Procedure). In his decision, the judge pointed out that

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110. *Piano nazionale per la lotta al sommerso 2023-2025*, 18 ff. This database was initially mentioned by Article 19 of Law Decree no. 36/2022.

111. Data exchange between public authorities is requested also by Confindustria to promote fair competition (*Confindustria, Industria, Trasporti, Logistica e Infrastrutture: Insieme per la competitività del paese*, 2024, p. 51).

112. A similar obligation is imposed by the Protocol on Bologna Interporto signed in 2023.

113. Strengthening these controls was a recommendation of the Rapporto del Gruppo di lavoro sugli interventi e le misure di contrasto alla povertà lavorativa in Italia, 2022, p. 28.

114. *Piano nazionale per la lotta al sommerso 2023–2025*, p. 22.

115. In Italy, in case of unfair dismissal, a company is only obliged to pay compensation (reinstatement is compulsory only in case of null or discriminatory dismissal).

the defence of homogeneous individual rights of a given category of subjects (such as employees) are within the scope of the typical purposes of trade unions: it is therefore irrational to exclude them from the list of those entitled to take collective action. On the other hand, historically, trade unions were created to exercise collective initiatives in defence of the 'class' of workers.[116]

5.3 Remedies and sanctions

As already made clear, the introduction of the crime of operating as a gangmaster (see Box 5) has been of paramount importance in identifying and punishing the widespread and systematic violation of workers' rights by certain companies.

Box 5 **Illicit intermediation and labour exploitation**

Article 603 bis of the Italian Penal Code provides that:

> Unless the act constitutes a more serious crime, the crime of operating as a gangmaster is punishable with imprisonment of between one and six years and a fine of 500 to 1,000 euros for each worker recruited, applying to anyone who: (i) recruits workers with the aim of assigning them to work for third parties under exploitative conditions, taking advantage of the workers' state of need; (ii) uses, hires or employs workers, including through the intermediaries referred to in point (i), exploiting them and taking advantage of their state of need. [...]
>
> For the purposes of this article, the existence of one or more of the following conditions constitutes exploitation: (i) payment of wages constantly and excessively lower than the minimum established by national or territorial collective agreements signed by the most representative trade unions at national level, or anyway disproportionately low, relative to the quantity and quality of the work performed; (ii) recurrent violation of regulations related to working time, rest periods, weekly rest, compulsory leave and holiday regulations; (iii) violation of health and safety regulations; (iv) indecent working conditions, surveillance methods or housing conditions. [...]

A criminal trial is not aimed at protecting workers' rights but at defending public interests. Therefore, it is not surprising that workers do not participate in these proceedings. In some cases, trade unions have joined in the criminal prosecution, claiming damages.

Some logistics companies involved in these proceedings have decided to re-internalise the workers provided by subcontractors (see Section 2.1). However, in other cases (for example, Consorzio Premium Net[117]), the companies subject to preventive measures (measures to prevent them committing further crimes) went bankrupt, without compensating the damages caused to workers and trade unions. Besides, the measures applied by the criminal judges are aimed mainly at restoring the correct functioning of the company. In particular, companies are required to adopt an organisational model capable of preventing crime (according to Legislative Decree no. 231/2001). It should be underlined that preventing crime

116. Administrative Tribunal of Lazio, decision taken on 23 June 2023, https://binaries.cgil.it/pdf/2023/06/23/141454859-52f0c579-ab45-4d24-b856-5380a2499aad.pdf

117. https://www.supplychainitaly.it/2021/12/31/fallito-il-consorzio-premium-net-coinvolto-nei-casi-di-sfruttamento-alla-citta-del-libro/

does not mean that labour law and social security legislation are fully respected; it means only that the organisational model should be able to prevent serious forms of labour exploitation and other crimes punished by health and safety legislation (see Box 6).

Box 6 **Gangmaster crime involving Uber Eats riders**

In June 2020, the Tribunal of Milan nominated a commissioner to restructure the business model of Uber Eats, suspected of having exploited several riders hired through two cooperatives (Decree n. 9/2020). These cooperatives recruited migrants waiting for a regular work permit. Their vulnerability forced them to accept any working conditions to fulfil their 'dream' of remaining in Europe.[118] Riders were paid €3 per delivery and were sanctioned if they refused a delivery or cancelled a delivery previously accepted. Uber Eats provided the two cooperatives with its app through which it could control working time, work pace and other areas of worker behaviour. The proceedings also demonstrated that Uber Eats was perfectly aware of, and sometimes stepped up exploitative practices against riders.

In March 2021, the Tribunal of Milan ended the mandate of the commissioner (decree of 3 March 2021). According to the Tribunal, Uber Eats had adopted an organisational model able to prevent illicit work supply and to oblige the company to engage its workforce directly. However, this organisational model did not force Uber Eats to hire riders as employees. Uber Eats was obliged not to exploit its riders; not to recruit migrants without a regular work permit; not to discriminate against or harass its riders; to respect their privacy; and to act in accordance with health and safety law. Furthermore, the Tribunal positively evaluated the national collective agreement signed by Assodelivery (to which Uber Eats is affiliated) and Unione generale lavoro (UGL), which qualifies riders as self-employed and allows piecework wages.[119]

In order to be taken on as Uber Eats' employees, some riders sued the company before the Tribunal of Turin, which finally recognised their rights.[120]

For the abovementioned reasons, the crime of operating as a gangmaster – the intermediary recruitment of 'workers on behalf of third parties under exploitative conditions, taking advantage of the workers' state of need' – does not fully solve the workers' rights violations widespread in logistics, but merely forces companies to remain below the threshold of what constitutes criminality. Without a doubt, the introduction of Article 603 bis of the Criminal Code has been important to investigating and punishing widespread illegal practices in the sector. However, insisting on using the gangmaster model to solve workers' rights violations could promote so-called penal populism, namely a tendency to criminalise problems without dealing with their real causes.[121] The same tendency affects the legislation against mafia infiltration. In this case, too, the legislation severely punishes companies that have been infiltrated, without considering the causes of underlying the widespread presence of organised crime in the sector.

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118. Merlo A., *Sfruttamento dei riders: amministrazione giudiziaria ad Uber per contrastare il 'caporalato digitale'*, 2020, https://www.sistemapenale.it/it/scheda/uber-sfruttamento-rider-amministrazione-giudiziaria-caporalato-digitale

119. This agreement was strongly criticised by the Ministry of Labour because it prevented the new legislation to protect riders from applying (see note of the Ministry of Labour n. 9430/2020).

120. Tribunal of Turin, decision taken on 18 November 2021 and confirmed by the Court of Appeal of Turin on 18 November 2022.

121. https://www.questionegiustizia.it/rivista/articolo/il-populismo-penale-nell-eta-dei-populismi-politici_627.php

6. Conclusions

Subcontracting is widespread in last-mile logistics in Italy. Its presence has not been diminished by the two main trends that characterise the sector: the rise of e-commerce and the verticalisation of the supply chain. Both e-commerce corporations and large logistics groups have further increased their leverage over subcontractors, further exploiting the benefits, in terms of less accountability and reduced labour costs, that result from subcontracting.

The combined use of 'labour reservoir companies', bogus cooperatives and illicit labour supply in several logistics chains has often resulted in implementation of the gangmaster (*caporalato*) model. Among the top ten logistics companies in 2023, four (DHL, BRT, FedEX Express Italy and Amazon Italia Transport) have been prosecuted for this crime. As stated by the prosecutor who ran most of these investigations, the gangmaster model has become a standard business model of the main logistics companies and is so widespread that it is no longer perceived as a crime: in fact, we face a 'normalisation of deviance'.[122]

Trade unions have reacted to these investigations by promoting re-internalisation. Moreover, the main trade unions in the sector signed a national collective agreement for the entire logistics chain (including warehouses, last-mile logistics and road transport). They have also collected the national collective agreements for industry, cooperatives and crafts in a single text.

Despite these important trade union actions, contractual dumping is still very much present in logistics in Italy. The lack of representativeness criteria also makes worker representatives at company level very weak and consequently it is difficult for them to monitor a company's subcontracting chain. Labour inspections also struggle to counteract the negative effects of subcontracting because of the complexity of subcontracting chains and the small number of inspectors.

Annex **Interviews (in chronological order)**

No.	Institutional affiliation	Position	Date	Code
1	Federazione italiana lavoratori dei trasporti, Confederazione generale italiana del lavoro (FILT-CGIL)	Trade unionist	3.10.2024	TU01
2	Italian National Inspectorate	Labour inspector	8.2.2024	LI01
3	National Bar Council	Labour lawyer	7.2.2024	LL01

122. Tribunal of Milan, Decree n. 6/2023; Tribunal of Milan, Decree n. 5/2023.

The logistics sector in Spain Warehouses and delivery: two different industrial relations systems in the same sector

Antonio Loffredo

1. Analysis of the context

This case study investigates the main features and critical issues of the logistics sector in Spain, starting with an analysis of the legal and conventional regulatory sources of employment conditions. It then analyses data collected by the National Classification of Economic Activities (CNAE) with the code connected to logistics sector (code 5210) and other research carried out by public observatories. Finally, formal and informal discussions were held with key players in the sector, including formal interviews with a trade unionist and two labour inspectors (see Annex for the list of respondents).

Logistics is an essential part of the supply chain.[1] One problem encountered in a juridical approach to this issue is the lack of a legal definition of the logistics sector, as was also pointed out by the key players interviewed (interviews CO01, LI01and LI02). In fact, logistics is a generic term that refers to the whole process of planning and managing the supply chain, including the supply of raw materials to industry, internal management during production until the finished product and the distribution phase to warehouses and centres for delivery to the point of final consumption. So, at least in the Spanish legal system, logistics may be considered to be the set of techniques used to efficiently manage material and information flows in all phases of the industrial process and commercial distribution: supply, production, distribution and optimising the double function cost-quality.

According to the definition given in the Methodological Annex of the 2022 Annual Report of the Ministry of Transport's Observatory of Transport and Logistics in Spain (*Observatorio del Transporte y la Logística en España* – OTLE), the logistics sector provides a range of value added services. First, there are general logistics services, such as loading and unloading, handling and transhipment of goods, storage and distribution centres. Second, there are value added logistics services, such as groupage, quality control, packaging, packing, merchandise inspection, complementary tasks and complementary assembly. Finally, we have more general services, such as services for heavy vehicles, customs services, security, services to companies and catering.

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1. This research does not cover riders, with their particular working conditions and legal rules, even though they are an essential part of the logistics sector.

Descriptions of this kind come from scholarship or administrative sources, proper legal definitions are lacking, or are less precise, partly because of the objective difficulty in defining a sector that is characterised by considerable heterogeneity. This is why the legal definition found in the legislation, Art. 1 of Law 16/1987,[2] merely identifies the scope of application of the rules contained in the law applicable to the logistics sector in Spain.

Using the few references contained in this legislation, many collective agreements at national and (especially) provincial level try to offer a more accurate definition of the sector, as this is necessary for identifying the workers to whom the rules of collective bargaining apply. For example, the most relevant provincial agreements, such as that of the province of *Guadalajara*, where most of the logistics companies in Spain are based, define the sector using as reference the companies that 'have as their purpose a commercial activity dedicated to the planning, organisation, management and supervision of activities in the supply chain (procurement, transport, storage, distribution), using physical infrastructures, technology and information systems. It shall also apply to all warehousing-distribution companies and freight forwarding companies as defined in Articles 125 and 126 of Law 16/1987 on the organisation of land transport.'[3]

1.1 Market structure

The logistics sector is made up of two fundamental components: (i) transport and (ii) site management and handling. It is inextricably linked to the productive sectors and closely linked to business competitiveness. As in many other countries, logistics bases in Spain have been established in rural areas. The autonomous community (*comunidad autonoma*) of Castilla-La Mancha is one of these areas, and many of them are located there. At the same time, especially because of the development of e-commerce in the wake of the Covid-19 pandemic, the urban distribution of goods has increased. For this reason, some cities, such as Barcelona, have issued ordinances requiring that last-mile transport companies use green transport (such as electric vehicles and bikes), restricting the entry of vans to the city centre.

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2. Law 16/1987 applies to: (i) road transport, that is, transport carried out by motor vehicles that travel without a fixed track, on all types of public urban or interurban roads, and on private roads when the transport is public; (ii) rail transport, that is, transport carried out by means of vehicles that run on a fixed track that supports and guides them; and (iii) auxiliary and complementary transport activities, in other words, activities carried out by transport agencies, freight carriers, logistics operators, warehousing-distributors, multimodal goods transport and logistics centres.

3. This collective agreement establishes the rules governing the working conditions of logistics operators, that is, companies whose commercial activities involve the planning, organisation, management and supervision of supply chain activities (supply, transport, storage, distribution), using infrastructures, technology and information systems. It shall also apply to all warehouse distributors and 'freight carriers', as defined in Articles 125 and 126 of Law 16/1987, as well as the companies that according to this Law perform activities 'auxiliary and complementary to the transport of goods'.

To characterise the logistics and transport sector as precisely as possible, we refer to the categories defined by the CNAE codes,[4] which better align with the definitions given above. At the same time, it is important to note that estimates of gross value added (GVA) in the logistics sector does not include the internal logistics activities of companies. The available statistical information is thus limited and often, because of the heterogeneity of activities, only partially covers the logistics chain. On one hand, in Spain a significant part of logistics activities (estimated at around 40% of total logistics costs) are carried out internally by companies. It is therefore not possible to identify what range of logistics activities they are responsible for. On the other hand, regarding the part of logistics activities that is externalised (estimated at around 60% of total logistics costs), there are difficulties in characterising and analysing it, because logistics is not included as a specific sector in the main official statistical sources (such as the National Statistical Institute, *Instituto Nacional de Estadistica* – INE – in the Ministry of Public Works and Transport).

The size and business structure of the logistics sector is a key element in understanding its competitiveness. In 2015 the average company size in the transport and logistics sector in Spain was remarkably small compared with other countries, as 72% of companies had fewer than 19 employees. Since then, many things have changed; in the past decade the sector has experienced remarkable growth, as demonstrated by the fact that the logistics sector contributed 2.8% of GDP to the Spanish economy in 2020, only slightly lower than in 2018 or 2019, when the contribution was 2.9%. The year-on-year variation was the same between 2019 and 2020 as between 2020 and 2021, with a decrease of –0.1% in both cases.[5] Comparing the contributions of the logistics sector to GDP in different European economies in 2020, Italy stood out with 3.5%, followed by Germany with 3.2% and France with 2.1% (percentages were very similar to those recorded in 2019).

The market and business structure of the transport and storage sector in Spain shows, in general, lower levels of production and employment, although proportionally the national distribution of the sector is similar to the European average. The sub-sectors of 'land and pipeline transport' and 'storage and ancillary transport activities' continue to be the two main axes within the sector, accounting for more than 80% of its GVA in Spain. After road transport, a highly fragmented sub-sector made up of many small companies, the 'storage and ancillary transport activities' sub-sector has the largest number of companies. Comparing the main EU economies in 2020, the logistics sector's GVA fell in comparison with 2019 in France, Germany, Italy and Spain. In Spain, the decrease was –12.6 %, a sum of 32.399 billion euros (€) in 2020 compared with €37.074 billion in 2019. Germany experienced only a slight decrease of –1.0%, while France experienced the largest decrease of the four countries with –27.5%, followed by Italy, which experienced a decrease of –11.5%.

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4. The National Classification of Economic Activities makes it possible to classify and group production units according to the activity they carry out for statistical purposes.

5. OTLE Report 2023, p. 262.

With regard to the number of companies in the transport and logistics sector in Spain, in 2020, despite the impact of the pandemic, there was an increase of 6.8%, a rise that had already been under way since the previous year. This increase is due mainly to the sector's atomisation, with a high number of small companies, particularly in road transport and warehousing.[6]

1.2 Employment

Employment in the transport and storage sector has been booming over the past decade in Spain. Employment in this sector grew again in 2022, reaching higher levels than before the pandemic. More precisely, employment in the sector increased by 7.5% compared with 2021, reaching 1.1 million.[7] In terms of social security enrolment, the transport and storage sector recorded a new historical high, attaining 1,008,496 enrolments in 2022, a 5.1% increase compared with 2021. This growth was higher than that recorded by the Spanish economy overall, which was 3.9% more than the previous year. At the same time, thanks to the increase in employment in this sector above the national average, the sector's share in the economy as a whole increased to 5.4% in 2022. In the same year employment in the warehousing and related activities sub-sector increased by a larger magnitude, with a 9.3% increase compared with 2021, increasing its contribution within the sector to 23.4%. Alongside the growth of employment in the sector, the share of the special scheme for self-employed workers fell, in line with the reduction experienced in most sub-sectors. Comparatively speaking, however, the share of the special scheme for the self-employed in the transport and storage sector was higher than in the sector as a whole. The share of this scheme increased in the period from 2008 to 2013 (during the financial recession) and has declined slowly and steadily since then, with a slight upturn during the pandemic. The proportion of the self-employed in the Spanish economy decreased slightly from 17.1% in 2021 to 16.6% in 2022. In contrast, the reduction of this category in the transport and storage sector, which fell from 22.1% in 2021 to 20.8% in 2022, was caused by a decrease in the number of self-employed in the main sub-sectors.

In sum, there has been considerable employment growth in logistics over the past five years. Moreover, from a sectoral comparative perspective, employment in the logistics sector grew above the national average. As a result, in many parts of the country, logistics companies are facing problems finding employees. The main reasons for that seem to be, according to our three respondents, that companies are located mainly in sparsely populated areas (such as the province of *Guadalajara* in the *Comunidad Autonoma of Castilla-La Mancha*) and the jobs, even when decently paid, involve very intense work rhythms, which does not make them very desirable.

There is a reasonable balance between the various labour market components in the statistics on labour market composition in logistics in Spain. There are a

6. OTLE Report 2023, p. 182.
7. OTLE Report 2023, p. 143.

lot more young men than women, and there are more immigrant workers than Spanish ones. However, the differences across groups are not large enough to allow us to say that in this sector any group can claim it enjoys a majority.

The biggest problem facing employment in the logistics sector, according to observations gleaned from interviews with key players, is that there is considerable staff turnover in warehouses and transport, probably because of the onerous working conditions. This turnover is also due to the specific characteristics of the Spanish labour market, in which fixed-term contracts are the most widely used type of labour contract. It is well known that Spanish labour law has a number of anomalies, which differentiate it from other countries, especially because of the exceptional proportion of fixed-term contracts, which makes temporary contracts the predominant type of labour contract in the post-Franco period. In fact, flexibility in hiring in Spain has always been synonymous with temporary contracts. The predominance of this form of employment has been so marked in the development of labour relations in Spain that it accounts for almost all contracts outside the standard open-ended employment contract.

There have been other ways of weakening the labour legislation, in particular by exclusion from the scope of labour law. The most important dialectic, however, has set stable work against precarious work, either directly contracted or, since 1994, through the establishment of temporary work agencies. Even part-time employment contracts have been configured in practice not only as short-time contracts but also as temporary contracts. These years of using temporary contracts as an instrument to boost employment have had a profound impact on the Spanish labour market, which suffers from high levels of job insecurity as a consequence. On one hand, hiring has focused almost exclusively on temporary options; on the other hand, stable workers as a group have not remained immune to these measures, as businesses prefer to replace permanent workers with temporary ones. To this must be added other problems created by temporary employment, such as high workforce turnover, with a consequent increase in the rate of accidents at work, the lack of specialization and workers' lack of integration in the company. All this is compounded by the decline in the exercise of collective rights, and especially freedom of association, which makes them merely inaccessible to atypical workers. This in turn has resulted in an increase in company power over workers, which trade unions are scarcely able to compensate. Similarly, social protection systems suffer when workers' careers are subject to continuous interruptions that force them to resort periodically to unemployment benefits. And this leaves aside other inconveniences, no less significant, such as the effects of job instability on consumption or the breakdown of collective interest between permanent and temporary workers.

For this reason, the government's labour reform in 2021 is so important. *Real Decreto-Ley* 32/2021 of 28 December tries to recover the value of stability and combat low-wage contracts. The main feature of the reform is certainly the fight against precariousness and especially against the abuse of temporary contracts. The reform restores the role of the standard contract to permanent contracts (as also required by EU Directive 99/70) and repeals Spanish case law that had stated that fixed-term contracts could be concluded in any situation, even without

an objective reason justifying their fixed duration (*obra o servicio, eventual or interino*). Since the reform, companies have been allowed to hire through a fixed-term contract only if there are 'productive or substitutive' reasons, related to the temporary nature of the service to be performed.

In sum, generally speaking we can say that, before the labour reform of 2021, temporary employment contracts predominated; since then, more use has been made of permanent contracts, as confirmed by official employment figures. For example, in the first quarter of 2024, while overall employment increased by 3.4%, there was a 7.2% decrease in fixed-term hiring.[8] The use of so-called 'fixed-discontinuous' contracts ('*fijos-discontinuos*' contracts), a form of indefinite contract under which employees work only during certain periods, interspersed with periods of inactivity during which employees may obtain other employment or claim unemployment benefit, has also been growing.

2. Problematic cases in the logistics sector

Any analysis of working conditions in the logistics sector in Spain must take into account that its two structural parts, namely warehouse organisation and transport, are characterised by quite different working conditions. There are many reasons for this, but it is mainly because warehouses are much easier to monitor than vehicles. Basically, while warehouses constitute fairly large workplaces, which therefore fall within the scope of the rights guaranteed by the Workers' Statute (*Estatuto de los trabajadores*), which is the most important law in the Spanish Labour law, small businesses and self-employed workers are much more prevalent, who are able to avoid, sometimes legally, sometimes not, the implementation of those rules in the delivery sector.

Hence, warehousing and storage management features a fairly high degree of unionisation and works councils are present in many cases. Regular employment is the rule in medium-sized or large companies. In this branch of the sector, the main problem lies in work rhythms and the consequent high accident rate. On the other hand, in the delivery sub-sector, there are problems both with the proper recognition of the employment relationship and the actual enforcement of workers' rights.

2.1 Working conditions and workers' rights violations

The general rules of Spanish labour law, set out in the Workers' Statute and other relevant laws, apply indiscriminately to all workers, including those working in the logistics sector. The difference in regulatory sources is ensured mainly by sectoral collective agreements, which, as far as possible, lay down the general rules for the type of work performed in a given activity. The legal framework is not

8. According to the latest data published by the Spanish Ministry of Employment, https://www.mites.gob.es/ficheros/ministerio/estadisticas/documentos/RUD.pdf

considered by our respondents to be sufficient to guarantee effective protection of workers involved in both warehousing and deliveries but, at the same time, trade unions are unable to negotiate at national level on better enterprise organisation. This fundamental function of collective bargaining faces difficulties in this sector because of the low union membership among workers, especially in the delivery sub-sector, as well as large organisational and performance differences that exist between those working in warehousing versus those in the delivery sub-sector.

Delivery is the part of the sector at greatest risk of irregularities, in terms of both recruitment and the actual application of labour law guarantees. As already mentioned, many reasons underlie this difference between warehouses and delivery. One important aspect is surely that, in the delivery sub-sector, there is no workplace, which makes it more difficult for trade unions and labour inspectors to monitor compliance with regulations. For the labour inspectorate in particular it is much more complicated to carry out checks: in fact, unlike trucks, vans do not have tachographs and there is no proof of work rhythms and breaks, so that most checks are carried out by traffic police in a random and rarely targeted manner. What is more, the transport sector is much more complicated to monitor also because of the enormous number of vans (or other vehicles) involved in this activity moving through city streets, in many cases without any possible identification. Therefore, this part of the sector has a much lower trade union presence, compared with warehouses.

2.2 Health and safety in the workplace

Apart from the road transport sector, which has its own regulations that apply outside the cities, the normal working day established in the Workers' Statute applies to workers in the logistics sector. This item of legislation is negotiated between the government and the social partners with the aim of reducing working time and increasing free time for all workers in Spain. The regulation of working time is usually a matter for collective bargaining at national and provincial level. The logistics sector, however, is not a model to be followed. Indeed, trade unions are unable to negotiate at national level on working times and rhythms because of the low union density in this sector. Only in a few provincial collective agreements, which is still the most important bargaining level in Spain, as will be seen below, has a guarantee of 15 additional minutes per day, the so-called '*Tiempo de bocadillo*' (sandwich time), been achieved.[9] Thanks to this rule, the 15 minute break in the working day usually used for a quick meal shall be considered as effective work.

The most common consequences of the intense work rhythms imposed by the organisation of work in warehouses, including repetitive movements, are health problems (both workplace accidents and mental health-related problems). This also exacerbates workforce turnover. The accidents are not usually particularly

9. Article 19, let. B) of the Collective Agreement of the province of Guadalajara. 'Rest periods during the working day shall remain effective work in accordance with the terms established in the centres that have them, derived from prior agreements or more favourable or acquired conditions'.

serious and frequently involve musculoskeletal disorders, or traffic accidents in the transport sector. In the first case, the issue is becoming quite concerning because of the ageing of the working population, which is turning these musculoskeletal disorders into a problem for the national health care system. In the second case, it is very worrying to see how, over the past decade, there has been a considerable increase in work-related accidents and also a huge increase in traffic accidents, especially in some autonomous communities and provinces (such as *Castilla-La Mancha* and *Guadalajara*). This is presumably connected to increasing employment in the logistics sector, although there are no data or research to substantiate this. In any case, it is notable that for many years the highest accident rate in the whole country has been found in the province of *Guadalajara*, where there is the highest concentration of logistics companies. It is important to note that, at least from the perspective of Spanish labour law, work-related traffic accidents are considered to be like any other work accident, not just as accidents that occur while travelling to or from work.

2.3 Problems caused or exacerbated by algorithmic management

Many logistics companies use algorithms or so-called 'artificial intelligence' (AI) systems to make automated decisions that affect employees in such areas as hiring, performance evaluation, productivity control, promotions, dismissals and many other organisational issues. One of the main problems with the use of AI is their lack of transparency to employees or job candidates, who may continue to believe that such decisions are made by human beings. The proliferation of the use of so-called 'intelligent' technology and automated decision-making systems harbours the risk of infringements of people's fundamental rights to privacy, personal data protection, non-discrimination and occupational health and safety.

Nevertheless, at present such AI systems can be freely used in Spain, with just a few conditions for companies. These conditions include the requirement that companies inform the persons concerned that their data are being processed in an automated way and that certain elements of their employment relationship (hiring, working conditions and so on) are governed by an algorithm. In particular, Article 22 of the EU General Data Protection Regulation (GDPR) includes an obligation to inform employees who are subject to fully automated decision-making, including profiling, without human intervention. Transparency in the use of algorithms and automated decision-making is essential for the protection of personal data. Use of technology to make business decisions must be transparent and information must be provided on the methods used and the purposes of the technology.

Furthermore, Article 64.4.d) of the Workers' Statute includes a requirement to inform workers' legal representatives about the use of algorithms or AI systems affecting decision-making that may have an impact on working conditions, and access to and maintenance of employment, including profiling. Last but not least, a specific limitation on its use can be found in the so-called 'Rider Law' (Ley rider) (Ley 12/2021). This Act, through a reform of the Workers' Statute, introduced an important presumption of subordination in favour of delivery drivers. This

makes Spain one of the first countries in Europe chose to decisively address the problem of their legal status, introducing the right for workers' representatives to be informed about the company's algorithmic management, but only to the extent that they have the right to know how the algorithm decides on the distribution of time slots. In other words, workers have no generalised right to examine the computerised data held by the company, but only to know in advance the rules according to which the algorithm works and makes its choices.

3. Legal analysis of subcontracting chains and working conditions in logistics

3.1 Regulation of subcontracting

Developments in the logistics sector in recent years have resulted in a clear monopoly for very large companies, dominated almost entirely by the major international parcel service providers. This has had significant consequences for organisational models, which make extensive use of subcontracting. Subcontracting is used in both the management of warehouses and in transport, but while in the first case it can be occasional, in the second it is almost the rule. In fact, the trend concerns mainly large companies. Small and medium-sized companies tend not to subcontract, which hampers their competitiveness, and in many cases they operate as subcontractors to perform outsourced work.

The logistics sector is pervaded by extensive use of subcontracting to other companies or to self-employed workers. Nevertheless, it sometimes happens that the management of warehouses may be completely in the hands of the main company. Only the more complex activities (packaging, for example) or those that involve a greater risk of accidents, such as the moving of heavier packages, are often subcontracted, even within warehouses. In big companies (such as car manufacturers) the management of the entire warehouse can be outsourced to another company, while in other cases it usually remains under the control of the main company. Overall, the general organizational model in large companies is that the contracting company usually organizes the warehouse and subcontracts deliveries. E-commerce generally replicates the model of big companies.

In Spain, the legal rules on subcontracting are contained in Art. 42 of the Workers' Statute. The purpose of the regulation is to prevent fraud that may occur when employer uses another employer's workers without having to meet the relevant requirements. According to these rules, the main company will be jointly and severally liable for the social security obligations incurred by contractors and subcontractors during the term of the contract and for the following three years. In addition, the main company is jointly and severally liable for wage obligations during the year following the end of the assignment. However, Art. 42 does not provide for any particular limits on the length of the subcontracting chain.

Subcontracting is typically carried out by small companies, which are covered by the (usually provincial) collective agreement of the freight transport sector, or by

self-employed workers, who are usually subcontracted as carriers. The regulatory framework, for many years, failed to protect workers involved in contracting and subcontracting effectively because dumping (not only in terms of wages but also other working conditions) was taking place through the application of collective agreements that offered workers less than those applied by the main company.

3.2 Working conditions of subcontracted workers

The abovementioned reform of 2021 is considered to constitute significant progress in the fight against social dumping, which is the main problem facing subcontracted workers. In fact, Article 1.5 of *Real Decreto-Ley* 32/2021 requires that the collective agreement applied to contractors and subcontractors should be the one signed in the area of activity covered by the contract or subcontract, unless the contractor or subcontractor has its own agreement.

The aim of the reform was to strengthen the role of collective bargaining by affirming the priority of the sectoral collective agreement and, in the case of contracts and subcontracts, by choosing the collective agreement for the contractor's sector of activity. In the first few years after this regulation was adopted it seems that companies in the logistics sector made less use of procurement and subcontracting in general, probably because there is less need for subcontracting unless it is used for social dumping. An indirect consequence of this may be that 'multiservice' collective agreements and multiservice companies[10] are being used less and less, at least in logistics, and may indeed fizzle out at some point. In fact, multiservice companies were created and developed mainly in the service sector with the aim of enhancing competitiveness by cutting workers' wages in a number of ways, the most important of which was certainly the implementation of a sector-specific collective agreement, the 'multiservice' agreement, which tends to have fewer economic and regulatory protections for workers in this heterogeneous sector.

3.3 Tackling workers' vulnerability.

There is also a significant risk of fraud in logistics subcontracting. This is connected to the abuse of recruitment through temporary work agencies, that in some cases may not be entirely honest about their reasons for hiring on a temporary basis.

In Spain, temporary work agencies may be used only to meet an enterprise's temporary (non-structural) needs. However, companies in the logistics sector organise their warehouses in such a way that they frequently violate the protections of workers hired through such agencies. This is also because their long experience of temporary recruitment enables them to avoid making the mistakes typically made by 'normal' companies when stating the legal reasons for pursuing temporary recruitment. In addition, there is a legal loophole that allows companies to use

10. These are companies that provide several services (such as cleaning and transport) in many different sectors. 'Multiservice' collective agreements were applied by such companies for many years until the reform of 2021.

(and sometimes abuse) hiring through temporary work agencies: the legislation does not establish a numerical limit (in either absolute or proportionate terms) on temporary employment, either directly or through agencies. Efforts have been made with a number of collective agreements to set a maximum limit on the possibility of temporary hiring in the sector. The agreement applicable to companies in the province of *Guadalajara* contains a limit of a maximum 30% for the proportion of temporary workers in the workforce as a whole.[11]

4. The role of trade unions

4.1 The role of collective bargaining in the sector

Spanish collective agreements, if concluded in accordance with Title III of the Workers' Statute, which measures the real representativeness of trade unions in terms of electoral proportionality, is endowed with *erga omnes* efficacy and are legally normative. Because of this regulation collective bargaining coverage in Spain is very high, and few workers are excluded from the protective rules of collective bargaining.[12] Of course, this does not mean that the Spanish industrial relations system is without problems, nor that collective bargaining succeeds entirely in protecting Spanish workers in all sectors.

One of the most serious legal problems with Spanish collective bargaining is the overlap between collective agreements covering different geographical areas. It may happen that a lower level agreement affects a higher level agreement or vice versa. The general principle is that the provisions of one agreement should not affect another agreement with different scope. Article 84 of the Workers' Statute indeed provides that this should be the case until a collective agreement expires. Therefore, two or more collective agreements should never apply to the same set of contracts.

Furthermore, there is no problem of regulatory hierarchy between collective agreements in the Spanish legal system. All agreements have the same legal basis and, within the same scope of application, the principle of primacy applies to an agreement negotiated later over an earlier one. The rules on concurrence of agreements regulated in Article 84 promote the regulation of working conditions in branch agreements at the level of the autonomous community or at national level. However, this rule applies only if the issue of concurrence has not been regulated in the collective agreement itself. Article 84(2) deals with an exception to the general concurrence regime that is very important for understanding the structure of collective bargaining in Spain. Indeed, if a company agreement is

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11. In order to reduce temporary employment and, consequently, to promote employment stability, Article 11 of the collective agreement of the province of Guadalajara (2016) limits the percentage of temporary contracts that a company can sign annually.

12. The collective bargaining coverage rate is around 90 per cent, according to the latest statistics made available by the Ministry of Labour, see https://www.mites.gob.es/es/estadisticas/condiciones_trabajo_relac_laborales/CCT/welcome.htm

negotiated in accordance with the rules of the Workers' Statute it shall prevail over any other agreement reached, also at a higher territorial level. This implies that, in some cases, company collective agreements may derogate from the rules of sectoral agreements (whether national or provincial) even *in pejus*, with serious risks for the resilience of the entire Spanish collective bargaining system.

Company agreements are very rare in the logistics sector. Reaching agreement on issues that affect the organisation of work is difficult because each company operates in different ways. At the same time, historically numerous collective agreements are applicable in a sector in the Spanish industrial relations system. There is a framework agreement (*acuerdo marco*) in the transport sector and many provincial collective agreements that regulate work contracts. The latter are the most significant collective agreements in terms of content. This also applies in the logistics sector.

Nevertheless, collective agreements (both national and provincial) in the logistics sector mainly cover the regulation of maximum working hours and wages. Some positive examples can also be found in the most recent agreements signed in territories in which logistics companies are particularly numerous and unions are sufficiently powerful. For example, the revision of the provincial collective agreement in *Guadalajara* introduced regulations on teleworking and an important new feature that demonstrates concern for health and safety. Specifically, this revision introduced a requirement for employers to assess the risks related to musculoskeletal disorders, which, as already mentioned, are among the most frequent and significant occupational risks for workers in the logistics sector.

4.2 Workers' participation and trade union action

Spanish workers have the right to workplace representation, regardless of company size. Representative bodies differ depending on whether the company has more or fewer than 50 employees. This does not mean, however, that there really is a workers' representative in every company, because this depends on workers' initiative and union affiliation in the company. As we have seen, it is clear that in warehouses there is a strong likelihood that there will be a works council (*comité de empresa*), which is the typical form of union representation in companies with more than 50 employees. By contrast, trade union representation is much less common in delivery companies, both because of their size and because they are often composed of self-employed workers.

Spanish trade unions have sought different forms of protection in order to meet contemporary challenges in this sector. Historically, Spanish trade unions have looked upon the possibility of participating in management in some way with suspicion. However, the transformations of modern capitalism and company organisational changes, which are evident in the logistics sector, have forced trade unions to rethink their traditional positions. The traditional opposition between the conflictual and the participatory model of industrial relations has also become blurred in Spain for this reason.

In any case, Spanish trade unions still prefer to take actions based on conflict, which has traditionally guaranteed them the best results in negotiating collective agreements, as we have also seen in the case of the provincial collective agreement of *Guadalajara*. Indeed, the latest revision (2023) of the cited agreement was adopted after an important strike in the logistics sector. According to the unions this is the best collective agreement for this sector in Spain. The 2023 revision, as already mentioned, introduces a number of novel measures, such as the obligation to carry out risk evaluations with a gender perspective, time off for family care, the regulation of '*fijos-discontinuos*' permanent employment and a protocol to prevent exposure to extreme temperatures.

5. Access to justice and enforcement legislation

Formally, the issue of access to justice for workers in Spain does not seem problematic in itself and similarly for workers in the logistics sector, Furthermore, there are no major differences between Spanish or non-Spanish citizens. This is also shown by the multiple court cases that have led to important rulings, also in this sector. Most of them concern the issue of recognition of the employment relationship of delivery workers, most (in)famously and frequently in relation to so-called 'riders'. These rulings[13] are also the result of the very important work carried out by the most representative trade unions and by the labour inspectorate. Of course, substantial problems remain, which often make it complicated, not legally but practically, to access justice, particularly in workplaces with low trade union affiliation.

The problems with the enforcement of rights do not exist only for workers unable to access justice. In the logistics sector, there are also difficulties for labour inspectors. One of the biggest difficulties labour inspectors tend to encounter concerns the monitoring of time, breaks and the rhythm of work, not only in the transport, but also in warehouses. In fact, while companies collect all the relevant data (for example, on parcel delivery by drivers) and have an obligation to provide information to inspectors who ask for it, the latter are worried that the data they receive may be inaccurate or even false.

The most relevant judicial cases are related mainly to abuses of temporary employment and subcontracting. As already mentioned (see Section 1.2), subcontracting and fraud connected to temporary work agencies make monitoring very complex and time consuming. Nevertheless, inspections have managed to achieve good results in many cases. For instance, as we have seen, the labour inspectorate has, in many instances, obliged the user company to directly (and indefinitely) recruit workers (sometimes more than 100 of them) initially hired fraudulently through temporary work agencies. This is as an alternative to sanctioning the companies for fraud.

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13. See, among others, Audiencia Provincial Civil de Madrid, Sección Vigesimoctava, 23.1.2017, n. 15, in http://cdn.elindependiente.com/wp-content/uploads/2017/02/auto_uber.pdf

The topic of fraud in recruitment was the subject of an important ruling, not with regard to temporary work agencies, but rather procurement and subcontracting. This judgment of the Supreme Court in 2019 dealt with the illegal assignment of workers in a case involving the subcontracting or outsourcing of forklift drivers, who are part of the core activity of a logistics operator. The judgment unifies the doctrine of various previous rulings and defines clearly what illegal assignment of workers is, clearly describing the limits of subcontracting in the sector.[14] In particular, the judgment concludes that the existence of a real employer is not sufficient to exclude illegal interposition on the part of the contractor. In fact, it constitutes an unlawful transfer of workers when the contractor's contribution in a given contractual situation is limited to the supply of labour, without also providing the relevant personal and material resources.

6. Conclusions

The logistics sector exhibits some of the typical dynamics of the Spanish labour market. In particular, there is a dualism between subordinate and self-employed work, on one hand, and the opposition between stable and precarious work on the other. The current government has taken robust action against the abuse of fixed-term contracts in Spain with the 2021 labour market reform, mentioned in the report. The reform restores the role of the open-ended contract as the standard employment contract, as required by the EU directive on fixed-term contracts.[15] This has also had a positive impact on the structure of the labour market in the logistics sector.

One of the main problems that clearly emerges from this research is the scope of application. In fact, the logistics sector turns out to be a hybrid sector, made up of different parts, two of which, transport and warehousing, exhibit very different employment situations and economic and regulatory conditions. The delivery sub-sector is much less protected than the warehouse sub-sector, partly because of the lower union presence, arising from the greater difficulty of unionising workers who do not have a fixed workplace. For this sub-sector, more than for warehouses, it would be very useful to strengthen the link between the company in charge of warehousing and the company in charge of transport. This would mean, basically, that the main company would be jointly and severally liable with regard to wages, safety and duty of information. This would make subcontracting useful only when it is absolutely necessary. On the other hand, in the warehousing sub-sector, the most significant problem is that of work rhythms and workloads. It is necessary to improve occupational risk prevention plans with regard to the monitoring of working time and work rhythms. In fact, even when rules exist, employers fail to comply with the law on occupational risk prevention because of the stressful rhythms that they impose on the workforce, both in warehouses and in delivery.

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14. Sentencia del Tribunal Supremo, Sala de lo social, de 17 de diciembre de 2019, n. 267/2020.

15. Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

Annex **Interview details**

No.	Institutional affiliation	Position	Date	Code
1	Comisiones Obreras (CCOO)	CCOO workers' representative in the logistics sector	11/10/2023	CO01
2	Director territorial de la inspección de trabajo y seguridad social en Castilla-La Mancha	Labour inspector specialising in the logistics sector	23/2/2024	LI01
3	Directora de la Oficina nacional de la lucha contra el fraude	Labour inspector specialising in the logistics sector	23/2/2024	LI02

Conclusions

Silvia Borelli

This Report looks at subcontracting in last-mile logistics. It seeks to highlight the consequences of subcontracting for people's working conditions in this sector and for trade union rights. The four country case studies – covering France, Germany, Italy and Spain – converge in indicating that subcontracting can seriously harm working conditions and jeopardise trade union rights. One of the most vivid representations of the negative effects of subcontracting on the workers engaged in last-miles logistics is the 2019 film *Sorry We Missed You*, written by Paul Laverty and directed by Ken Loach. The title of this Report makes clear reference to it.

1. Overall trends in logistics

The four country case studies in this volume on subcontracting in last-mile logistics demonstrate two widespread trends in the sector: on one hand, **logistics has been growing rapidly** in the four countries under scrutiny, and it is a very profitable economic activity. On the other hand, **working conditions in logistics have been deteriorating** and consequently the staff turnover is massive. It is very difficult to recruit people, despite the increasing demand for workers in the sector. These two tendencies are only apparently contradictory. Indeed, the booming of logistics goes hand in hand with stiff price competition, boosted by the widespread **increase in e-commerce** and the consequent need to deliver goods to end consumers in the shortest possible time at the lowest cost.

The four case studies also demonstrate another tendency in logistics, namely the 'verticalisation' of supply chains. This tendency is caused by the increasing weight of big logistics players (including also the main e-commerce logistics companies), alongside the widespread use of subcontractors, which are mainly small companies. The vast majority of logistics companies in the countries under scrutiny are indeed small enterprises. A handful of large groups dominate the logistics sector[1] and usually outsource part of their activities to small companies whose contracting power is significantly lower. In this way, the big logistics groups can reduce the cost of their services[2]: they can decide how much to pay their contractors and subcontractors, and whether to replace them with other companies offering a cheaper service.

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1. See also TeamHub, *Background Report*, p. 13.
2. According to the Commission Staff Working Document on the application and implementation of Directive (EU) 2018/957 (SWD(2024)320), in sectors in which competition is based on labour costs, subcontracting has become 'the strategy to increase profits by lowering costs', p. 29.

The case studies in this Report demonstrate that in logistics **subcontracting is a prevalent business model** that leads to lower pay and poorer working conditions for the purpose of cutting costs and boosting profits. In fact, subcontracting further exacerbates the general problems present in the sector (see Section 2), generated by the need to maintain profitability in the very competitive and global logistics market. Subcontracting, as well as other forms of third-party employment (such as temporary agency work and self-employment), has further negative effects on working conditions and trade union activities. These negative effects include: (i) separating power and profit from risks and responsibilities; (ii) worsening job stability and working conditions; (iii) fragmenting the workforce and consequently hindering trade union activities; and (iv) making labour inspections much more difficult (see Section 3).[3] This is particularly true for last-mile delivery. In fact, while workers in warehouses are gathered together in one place and can be organised easily, staff engaged in delivery are rather 'invisible' and scattered in many places. Consequently, trade unions struggle to contact these workers in last-mile delivery and monitoring their working conditions is much more difficult. Besides, case studies confirm that subcontracting is used mainly in last-mile delivery, while temporary agency work is widespread among warehouse workers.[4]

Subcontracting is a strategy for cutting labour costs and shifting risks. It thus has a negative impact on working conditions and trade union activities. This has been widely demonstrated through reports published by national labour inspectors, as well as by our 11 interviews with trade unionists, lawyers and inspectors, and the national case law presented in the case studies. The French and Italian cases are emblematic. In both countries, the main logistics players (La Poste in France[5]; four of the top ten logistics companies in Italy[6]) have been involved in judicial proceedings. As the Italian prosecutor who investigated these cases put it, the unlawful practices caused by subcontracting were so deep-rooted that they can be considered part of a broader business model.

Despite clear evidence of the bad working conditions in logistics, however, important organisations such as the World Economic Forum (WEF), do not consider decent work to be a top priority for the future development of logistics. According to the WEF, 'reducing emissions and traffic congestion are bound to be top priorities for cities and municipalities, whereas interventions that decrease delivery costs and minimize disruptions in current business models are more appealing to logistics players'.[7] In the four countries considered, national legislators have recently intervened to strengthen monitoring of logistics companies (for example, in Germany) or to regulate the algorithmic management systems that are increasingly being used in the sector (for example, in Italy and Spain). However, such interventions have not managed to solve both the general

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3. Borelli S., *Subcontracting: Exploitation by design. Tackling the business model for social dumping*, study for The Left in the European Parliament, 2022.
4. Team Hub, Final Report, May 2024, p. 6.
5. See French case study, Section 2.1.1.
6. See Italian case study, Section 2.1.
7. World Economic Forum, *The Future of the Last-Mile Ecosystem*, 2020, p. 20.

problems of workers in logistics and the additional problems generated by subcontracting in the sector.

The European Commission has reacted only timidly, recognising that, in long subcontracting chains, 'the lack of transparency and accountability may make enforcement of the applicable rules very difficult due to problems in identifying the liable company. The direct responsibility and liability of the contractor may therefore be considerably reduced. This may also affect the recovery of unpaid wages.'[8] In the face of the frequently irregular practices, sometimes leading to labour exploitation and human trafficking,[9] the European Commission has recognised that 'limiting the number of levels in subcontracting chains and/or extending the subcontracting liability to the full chain could help Member States [...] and where applicable social partners, to increase transparency and liability in subcontracting chains, on a proportionate and non-discriminatory basis'.[10] However, the European Commission has not proposed amendments to Directives 1996/71 and 2014/67, which currently regulate posting of workers within transnational subcontracting chains, to tackle the negative effects of subcontracting on working conditions and trade union activities.

2. General problems in logistics

All four country case studies find that working conditions in logistics are usually worse than in other sectors. First, the number of **precarious jobs** in logistics is very high. Temporary agency workers are frequently recruited in France, Germany, Italy and Spain, mainly in warehouses. The evidence from the country studies suggests widespread use of fixed-term contracts, which entails high levels of job insecurity, an increase in work accidents, a lack of professional skills and weakening of collective rights, whose enforcement has become 'virtual' because workers hesitate to engage in any trade union action as a result of their precarious working conditions. The 2021 Spanish labour reform was aimed at combating the abuse of temporary employment contracts, limiting the reasons that justify them and promoting open-ended contracts. Through such contracts, employees can work for certain periods and, during periods of inactivity, may obtain other employment or receive unemployment benefits.[11]

Self-employed persons currently play a minor role in last-mile delivery in Germany, Italy and Spain, but they are widespread in France, where the government has strongly supported self-employment, even creating a special status (so-called

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8. Report From The Commission on the application and implementation of Directive (EU) 2018/957, COM(2024), p. 10.

9. Ecorys, HIVA-KU Leuven, Spark Legal and Policy Consulting, and wmp consult (2023) *Study supporting the Monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU – The situation of temporary cross-border mobile workers and workers in subcontracting chains*, Directorate-General for Employment, Social Affairs and Inclusion, 2024, p. 191.

10. *REPORT FROM THE COMMISSION on the application and implementation of Directive (EU) 2018/957*, COM(2024), p. 14.

11. See Spanish case study, Section 1.2.

microentrepreneur).[12] To reduce job instability created by widespread precarious contracts, the French legislator introduced the *Groupement d'Employeurs Logistique* (GEL). According to this legal arrangement, workers sign an open-ended contract with the GEL, which then seconds them to other companies belonging to it. Consequently, workers alternate periods of assignment with periods of inactivity and are guaranteed a minimum monthly pay.[13]

It is very difficult for trade unions to organise precarious workers. On one hand, as in the case of self-employed people in France, they are not within the mandate of traditional unions. On the other hand, precarious workers are very vulnerable because they suffer constantly from the threat of not having their contracts renewed and they hope, one day, to be recruited on an open-ended contract or to be directly hired by the user. Besides, precarious workers are more exposed to work accidents because they lack knowledge of the work environment and often are not adequately trained in health and safety measures.

Something else that exacerbates workers' vulnerability is migration law. As reported in all country case studies, many **third-country nationals** are employed in logistics. Their vulnerability is caused both by language barriers, lack of knowledge of their rights and possible different perceptions of trade unions in the country of origin. Moreover, the Germany and Italian case studies emphasise that migration law further increases migrants' vulnerability, linking their residence status to the employment contract.[14] Therefore, migrants are more likely to accept to work under poor working conditions and sometimes even tolerate unlawful behaviour on the part of their employer.[15]

Other problems pointed out in the four case studies include **violations of working time regulations and occupational health and safety laws**. The case studies report that workers in logistics are often forced to work overtime, have long shifts or night shifts, and unpredictable working time. Moreover, they often have to work over the weekend, work rhythm is intense and rest time is not respected. These working conditions generate work-related stress and therefore increase work accidents. Besides, the physical burden for workers in last-mile logistics is considerable. This issue has been addressed only by the German legislator, albeit with measures that seem insufficient.[16]

Problems related to working time and work rhythm are further increased by **algorithmic management systems**. These systems are set up to boost a company's efficiency and productivity. However, their use has developed into a 'digital Taylorism', in other words, 'a system of rigid division and control of work

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12. See French case study, Section 1.2.
13. See French case study, Section 3.1.
14. See German case study, Section 2.1.1. and Italian case study, Section 1.2.
15. The higher vulnerability of posted third-country nationals 'due to their potential dependency on their employer for the renewal of work and/or residence permits', has also been recognised by the European Commission. Report from the Commission on the application and implementation of Directive (EU) 2018/957, COM(2024), p. 11.
16. See German case study, Section 2.1.1.

as a result of the use of digital technologies'.[17] Data collected by companies, not only during working time, are exploited to organise their work more efficiently, in the sense of reducing the time required for each single activity and constantly controlling workers in order to deliver goods as quickly as possible. This is the goal of logistics: to find a way to transport a good from one place to another, in the shortest possible time, in the best possible way and at the lowest cost. The problem is that currently logistics must satisfy the desires of individual consumers who buy goods on a global scale, at any time of the day or night, and who want to have them delivered almost immediately.[18]

Some of the countries analysed are trying to react to problems generated by algorithmic management systems. A main example is the Spanish *Ley Rider* legislation, which has introduced the right of workers' representatives to be informed on the functioning of the algorithm used by the company to organise its workers[19]. Similarly, in Italy, from 2022 onwards, companies are obliged to provide workers and their representatives with information on the functioning of algorithmic management systems and on data collected through them. The French case study presents the recent decision of the National Commission on Freedom and IT (*Commission nationale de l'informatique et des libertés*, CNIL), which severely sanctioned Amazon France Logistics 'for having set up an excessively intrusive system for monitoring employee activity and performance' and repeatedly violating the EU General Data Protection Regulation (GDPR). Other recent European laws, such as the Directive on improving working conditions in platform work[20] and the Artificial Intelligence Act,[21] can certainly strengthen measures to limit the negative effects of algorithmic management on working conditions.

The case studies emphasise that, when the client provides subcontractors with digital devices and surveillance technologies, it has a strict control over workers hired by the latter. For this reason, in Italy, some courts have considered the client to be the real employer of these workers.[22]

Despite the many problems caused by algorithmic management, all the authors contributing to this volume agree on two things: first, technology is just a tool that can be exploited in positive or negative ways[23]; second, in logistics, a sector that is highly problematic, technology, as already mentioned, risks further increasing work rhythms and violations of occupational health and safety regulations.

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17. This expression is used in the German case study (Section 2.2).
18. As mentioned in the French case study, 'e-commerce is leading to the individualisation of orders, which in turn is leading to a reorganisation of work' (Section 1.2.1).
19. See Spanish case study, Section 2.3.
20. Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work.
21. Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence.
22. Italian case study, Section 3.2. See also French case study, Section 3.1.
23. For example, the chrono tachograph helps to control the working time of delivery personnel.

Other problems flagged in the country case studies concern **low wages and unlawful behaviour in relation to remuneration**. Because of trade unions' weakness in negotiating higher wages and the low collective bargaining coverage, wages have stagnated and many workers are dependent on social benefits to top up their income in order to secure minimum subsistence.[24] Besides, wage violations, such as unjustified wage deductions, payments per parcel and expenses charged on workers, are widespread.

It should be highlighted that, in the four countries considered, in case of wage violations, as well as in case of other worker rights violations, workers (especially migrants) struggle to defend their rights because they do not want to risk losing their job and not finding a new one. This is even truer for third-country nationals who 'are economically dependent on their employer and fear losing their income as well as their status in the country if they lose their jobs'.[25] Sometimes, workers (especially migrants) are not aware of their rights and are not familiar with the cumbersome procedures involved in enforcing them. Moreover, workers often cannot bear the high legal cost and cannot wait until legal processes run their course, which may be a long time.[26] In the four countries considered, judicial action by trade unions suffers from several limitations. Thus, in Italy, such legal action has been authorised only recently but its efficacy is still limited.[27] In France, trade unions can initiate legal proceedings on behalf of their members but many workers (especially the most vulnerable, such as migrants and workers with temporary contracts) are not unionised.[28]

Finally, the four country case studies underline that in logistics **collective agreement coverage** is very low. There are a number of reasons why collective agreement coverage has contracted. In France, the main problem is that last-mile delivery is not covered by the collective agreement on the logistics sector; besides, collective agreements do not apply to self-employed workers.[29] In Germany, the low coverage of collective agreements in logistics is caused by the widespread use of third-party employment. In fact, both temporary agency workers and self-employed people are not covered by this collective agreement, a problem that is further accentuated by subcontracting (see Section 3). Besides, currently there is no specific employers' association active in the parcels sector in Germany.[30]

In Italy, the main difficulty is the *inter partes* efficacy of collective agreements, in other words, the fact that these agreements apply only to companies affiliated to the business associations that signed them. Therefore, several collective agreements exist for the logistics sector, some of which are signed by unscrupulous

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24. See German case study, Section 2.1.1; French case study, Section 2.1.
25. Ecorys, HIVA-KU Leuven, Spark Legal and Policy Consulting, and wmp consult (2023) Study supporting the Monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU – The situation of temporary cross-border mobile workers and workers in subcontracting chains, Directorate-General for Employment, Social Affairs and Inclusion, 2024, p. 174.
26. Italian case study, Section 5.2.
27. See Italian case study, Section 5.2.
28. See French case study, Section 5.2.
29. See French case study, Section 3.1.
30. See German case study, Section 4.2.

business associations and trade unions in order to cut labour costs (so-called 'contractual dumping'). Consequently, companies can freely decide to apply the collective agreement that best suits them.[31] Finally, in Spain the main difficulty is the competition between collective agreements. In fact, the company collective agreement can prevail over any other agreement. Therefore, company collective agreements may derogate from sectoral collective agreements even for the worse. Besides, many collective agreements exist in the logistics sector because the main level of negotiation is the provincial one.[32]

3. Problems enhanced or created by subcontracting in logistics

The four case studies provide evidence of the negative effects of subcontracting on working conditions. One major problem is the **separation of power and profit**, which are in the hands of the client and, to a certain extent, the contractor, **from risks and responsibilities**, which are shifted to subcontractors. As already mentioned, clients usually have greater contracting power; consequently, they can determine the conditions under which contractors and subcontractors must provide their services. This is further aggravated by companies' need to control the entire logistics chain to increase its efficiency. Therefore, a set of corporate strategies 'allows the main company to organise a decentralisation of activities while maintaining a management and coordinating role, as well as economic conditioning, over all companies that are part of the supply chain'.[33]

To oversee production processes and evaluate work efficiency, the main logistics companies sometimes demand that their contractors and subcontractors use algorithmic management systems. This practice further centralises monitoring and control throughout the entire supply chain.[34] Control over subcontractors is sometimes so strict that the client is considered the real employer of the workers the subcontractors hire. Clients' use of algorithmic management systems is also relevant to the application of due diligence obligations. In fact, algorithmic management systems can increase a company's leverage over its suppliers and consequently it can strengthen company obligations 'regarding actual and potential human rights adverse impacts and environmental adverse impacts, with respect to their own operations, the operations of their subsidiaries, and the operations carried out by their business partners in the chains of activities of those companies' (Article 1 of the Directive 2024/1760 on Corporate Sustainability Due Diligence).[35]

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31. See Italian case study, Section 2.1.
32. See Spanish case study, Section 4.1.
33. Team Hub, *Background Report*, 2023, p. 16.
34. Rani U., Pesole A., González Vázquez I., *Algorithmic management practices in regular workplaces: case studies in logistics and healthcare*, Luxemburg, Publications Office of the European Union, 2024, p. 15.
35. See Potocka-Sionek N., How to regulate 'digital piecework'? Lessons from global supply chains, in *Lavoro e diritto* 2021, p. 645.

Another problem reported in the case studies is **company volatility**, in the sense that subcontractors often operate only for a short period and are then replaced by other companies, sometimes set up by the same persons. It should be underlined that EU law has obliged Member States to simplify business creation.[36] Consequently, in all the countries under consideration, companies can be set up easily. Moreover, in France company volatility is boosted by the fact that the Organisation for the Collection of Social Security and Family Benefit Contributions (URSSAF) carries out checks mainly on companies that have existed for more than three years.[37]

In order to reduce company volatility, Germany's 2024 Postal Act requires all providers of postal services to be listed in a register kept by the Federal Network Agency. Company reliability is a prerequisite for registration; however, only compliance with the general requirements of trade union law is demanded. Furthermore, no in-depth investigation is planned.[38]

It should also be noted that sometimes subcontractors are letterbox companies, that is, companies that 'do not perform any economic activity but are only set up to lower labour costs or create fiscal optimisation strategies'.[39] Often these letterbox companies vanish without paying workers' wages.[40] This problem is a major issue in Italy where many big logistics players have made use of such companies to such an extent that the prosecutor who investigated these cases referred to the 'normalisation of deviance'.[41]

The widespread use of subcontracting has caused a **lack of transparency in logistics subcontracting chains**. This, in turn, produces two other consequences: often workers do not know who their employer really is and inspections become very difficult. This lack of transparency is coupled with a shortage of data on subcontracting in logistics, which all case studies in this report have flagged. Moreover, when data are available, as in Germany, they are often inconsistent.[42]

Despite the many negative effects of subcontracting on working conditions and trade union activities, subcontracting in logistics is not limited by law (except, to a certain extent, in public procurement) in any of the countries we looked at.[43] German trade unions have repeatedly called for the extension to logistics of the law adopted in 2022 for the meat sector, which forbids subcontracting and

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36. For example, Directive 2019/1151 on the use of digital tools and processes in company law enables online formation, registration of branches and filing of documents for limited liability companies.
37. See French case study, Section 1.2 and 3.3.
38. See German case study, Section 3.1.
39. SWD(2024)320, p. 31.
40. EFBWW, ETF, EFFAT, *Stop exploitation!*, 2024, p. 5.
41. Italian case study, Section 2.1.
42. In Germany, the trade unions have tried to collect more data on logistics to support their request to ban subcontracting in the sector (German case study, Section 4.3).
43. Moreover, in Spain, there is no numerical limit (neither in absolute nor percentage terms) on fixed-term contracts and temporary agency work (Spanish case study, Section 3.4).

temporary agency work for core business activities. However, their requests were not satisfied by the 2024 Postal Act.[44]

Two important tools for reconnecting power and profit to risks and responsibilities are the **substantive notion of employer** and **joint and several liability**. The four country case studies report that national courts have intervened in several cases to declare that the client was the real employer of workers engaged in subcontracting, because it directed and controlled them while the (sub)contractor merely supplied workers.[45] As Italian courts have ruled, in order for there to be a genuine (sub)contract, it is necessary to verify that the (sub)contractor provides a work or a service 'through an effective and autonomous organisation of labour, exerting the power of management and control over its employees, using its own means and assuming the business risk'.[46]

Joint and several liability rules apply in Germany, Italy and Spain. In these three countries, these rules play a fundamentally preventive effect because they force companies to select their contractors and subcontractors properly, and also a deterrent effect because they make sure that those who benefit from activities performed by workers involved in the subcontracting chain but fail to comply with labour regulations are punished. Joint and several liability also serves as a guarantee because it better ensures the fulfilment of the employer's duties. In fact, workers can address the client and the contractor(s) when their employer does not fulfil their obligations. However, joint and several liability regimes vary widely in terms of scope (that is, the employer's duties to which they apply) and duration (how long they apply).[47] Besides, in none of the countries examined does joint and several liability concern health and safety obligations. This is considered a main shortcoming. In particular, the author of the German case study highlights that, in the case of temporary agency work, health and safety obligations bind both the agency and the user. This is also true for the other European countries because the user's liability with regard to health and safety at work is established by Article 8 of Directive 91/383.[48]

On the contrary, joint and several liability is very weak in France where the client can easily rule it out by respecting some **due diligence obligations**.[49] In that country, a client can prevent joint liability by demanding that its contractors and subcontractors provide documents proving that they are complying with labour legislation. If the latter do not fulfil this request, the client can terminate the contract and escape from any liability. This is a clear example of bad interference between due diligence obligations and joint liability regimes. In order to strengthen the

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44. See German case study, Section 4.3.
45. See German case study, Section 3.3; French case study, Section 3.1; Italian case study, Section 3.2; Spanish case study, Section 5.
46. Court of Cassation No. 12551/2020. See Italian case study, Section 3.2.
47. See Section 3.2 of the German case study; Section 3.2 of the Italian case study; Section 3.2 of the Spanish case study.
48. Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship.
49. See French case study, Section 2.1.2.

effectiveness of both these tools, their roles should be clearly differentiated: due diligence obligations are aimed at preventing environmental and human rights violations by imposing on companies the obligation to identify, prevent, mitigate and provide remediation for adverse impacts arising from their own operations, those of their subsidiaries and those of their business partners. In contrast, the joint and several liability regimes play not only a preventive effect (obliging the client to select its contractors and subcontractors properly), but also a guarantee effect because they better ensure respect for workers' rights. Therefore, the tools should mutually reinforce each other.

As reported in the French case study,[50] due diligence obligations can be used to increase transparency in a company's supply chain.[51] They also oblige the company to adopt measures to avoid (or limit) environmental and human rights violations in its supply chain. However, the effectiveness of these obligations depends on the degree of worker participation at all stages of the due diligence process: if a company can fulfil its due diligence obligations alone, there is a serious risk that this process will become merely a box-ticking exercise. In an ideal scenario in which the company complies effectively with national and European due diligence obligations, trade unions and worker representatives will both receive information on what is contracted out, to which companies and under what conditions (including working and employment conditions), and co-assess the risks present in the supply chain and co-determine the measures necessary to avoid or limit them.[52]

Due diligence obligations should avoid reinforcing the imbalance of power between the client and its contractors and subcontractors. As already mentioned, this happens in France, where companies can meet their due diligence obligations by terminating their contracts. Thus they can avoid any liability for worker rights violations in their supply chains. In this way, due diligence obligations do not achieve their objective, namely to better protect human rights by making the main company responsible with regard to the working conditions of subcontracted employees. On the contrary, in practice French legislation provides an easy way of evading liability.

Finally, it should be pointed out that technical standards, sometimes used to prove the reliability of a company (as in Italy[53]), should neither exhaust the due diligence obligations nor rule out joint and several liability. In fact, due diligence obligations are not limited to formal checks like those related to standards. Moreover, joint liability regimes pursue a guarantee effect that cannot be replaced by a formal check, such as the one characteristic of standards.

A further negative effect of subcontracting on working conditions is **job instability**. As already pointed out (Section 2), this is a problem in logistics because of the widespread use of precarious contracts. Subcontracting exacerbates

50. See Section 2.1.1.
51. On this point, see also the Corporate Sustainable Reporting Directive.
52. See German case study, Section 3.1.
53. See Italian case study, Section 3.1.

job instability because the client and the main contractor can easily withdraw from a commercial contract, depriving workers engaged in subcontracting of their job.[54] None of the case studies report on legislation aimed at reducing job instability in subcontracting (certain measures have been implemented for public contracts, but they are rarely found in logistics). The Italian case study presents some measures adopted in the main national collective agreement on logistics and transport, although their effectiveness is very weak because the agreement applies only to employers affiliated to the signatory business associations.[55]

A third negative effect of subcontracting on working conditions concerns the **unequal treatment of workers hired by subcontractors**. Again, none of the case studies identified equal treatment clauses applicable to subcontracting, that is, clauses that guarantee to subcontracted workers at least the working and employment conditions that would apply if they had been recruited directly by the client to do the same job.[56] In Italy and Spain a certain degree of equality among workers engaged in the subcontracting chain is assured through the obligation to respect the main collective agreement for the sector. In Italy, in 2024 the legislator obliged contractors and subcontractors to guarantee to their workers 'overall economic and regulatory treatment not less than that provided for in the national and territorial collective agreement signed by the most representative trade unions and business associations at the national level, applied in the sector and for the area closely related to the activity covered by the contract and subcontract' (Article 29 § 1 bis of Legislative Decree no. 276/2003, added by Article 29 of Law Decree No. 19/2024).[57]

In Spain, the 2021 labour reform required contractors and subcontractors to respect the collective agreement in the sector regarding the activity referred to in the contract or subcontract, unless the contractor or subcontractor has their own agreement. Consequently, this reform has ended the application of the collective agreement on multi-services and multi-service companies are less and less present in logistics.[58]

The fourth negative effect of subcontracting concerns **health and safety at work**, because work accidents are widespread in logistics (Section 2). Subcontracting further worsens this situation, producing additional risks, such as those deriving from the simultaneous presence of several companies in the workplace (risks of interference). Moreover, clients and contractors foster competition among subcontractors that consequently are forced to reduce labour costs. Sometimes

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54. As stated in the French case study, this creates, de facto, a 'hybrid status' for logistics workers, 'neither permanent nor precarious, but a fixed-term or open-ended contract in a user company, which is destined to disappear as soon as the multinational no longer calls on it' (Section 3.1).
55. See Section 3.4.
56. In Germany the principle of equal treatment established by Directive 2008/104 for temporary agency workers is also circumvented de facto. In fact, German law authorises a collective agreement in force at the user undertaking to provide for deviations from this principle; such derogating collective agreements are used almost everywhere in the country (see German case study, Section 3.3).
57. See Italian case study, Section 3.3.
58. See Spanish case study, Section 3.3.

subcontractors fail to provide safety equipment and do not properly fulfil their obligations under occupational health and safety legislation. Subcontracted workers could also be more exposed to health and safety risks because of their longer hours, work intensity and bad working conditions.[59] As already pointed out, none of the countries examined obliges the client (or the main contractor) to jointly fulfil health and safety obligations pertaining to subcontractors.

This problem can be solved partly through correct enforcement of the due diligence obligations. In fact, as reported for France and Germany, where due diligence obligations are already established in national law, major companies have to apply vigilance measures in relation to their suppliers.[60] According to a decision of the Paris Court of First Instance in the *La Poste* case, companies must set out safeguarding measures and take additional concrete actions to tackle any risks detected in their supply chains 'in association with stakeholders'.

A fifth negative effect of subcontracting on working conditions concerns **trade union activities**. The authors of the four case studies describe the low trade union density in logistics. This is especially true for workers engaged in last-mile delivery, who are difficult to organise because they are scattered in different places.[61] Consequently, subcontracting further fragments the working class, enhancing the negative effects on unionisation, already undermined by precarious contracts and the widespread resort to migrant labour (see Section 2). Besides, subcontracted workers do not benefit from collective rights pertaining to the client and the contractor and this further hinders their trade union activities.[62]

Subcontracting can also reduce collective agreement coverage. In Italy, the most representative trade unions have signed a national collective agreement for the entire sector (including transport, logistics and warehouses). However, subcontractors are free not to apply the main national collective agreement on logistics and transport and to apply a different (often cheaper) collective agreement or not to apply any agreement at all. It should be noted that, in Italy, trade unions have extensively bargained with the main logistics companies both to promote re-internalisation processes[63] and to improve the working conditions of their subcontracted workers.[64]

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59. Ecorys, HIVA-KU Leuven, Spark Legal and Policy Consulting, and wmp consult (2023) *Study supporting the Monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU – The situation of temporary cross-border mobile workers and workers in subcontracting chains*, Directorate-General for Employment, Social Affairs and Inclusion, 2024, p. 177.

60. See French case study, Section 3.2.2, and German case study, Section 3.1.

61. See Section 2.1 of the Spanish case study.

62. In Germany and Italy, temporary agency workers benefit from collective rights pertaining to both the agency and the user (see Section 3.3 of the German case study).

63. See also the re-internalisation processes promoted by German trade unions (Section 1.2.2 of the German case study).

64. See Section 4.2 of the Italian case study.

The working class fragmentation caused by subcontracting can also hamper the setting up of a works council.[65] In fact, subcontracting splits production among many small companies that often remain below the threshold required for establishing a works council. In this case, too, subcontracting worsens an already difficult situation. As reported in the German case study, the creation of works council is also hindered by the widespread resort to migrant labour and precarious workers in logistics, whose extreme vulnerability often prevents them from participating in trade union activities.[66]

The French and Italian case studies report the broad presence of grass-root trade unions in logistics. In France, this can cause problems among the representative unions because 'the very small unions do not have the power to organise national action'.[67] In Italy, by contrast, grassroots trade unions have been important in denouncing labour exploitation in the sector. However, these unions have often organised spectacular protests and some trade unionists have been charged with criminal acts.[68]

The four case studies in this report emphasise that subcontracting makes **monitoring much more difficult and time-consuming**.[69] In fact, labour inspectors struggle to detect companies in the subcontracting chain, to reconstruct the constellation of contracts that bind them, and to identify the real employer of each worker.[70] This is even more true for last-mile delivery because of difficulties in checking vans moving through cities without tachographs.[71] In addition, many studies point to a shortage of inspectors at national level.[72]

Finally, all country case studies highlight that subcontracting further increases the existing problems with regard to **access to justice**. In fact, workers constantly face difficulties in providing evidence because of the complexity of subcontracting chains. All too often, workers do not even know who their employer is.

4. Recommendations

The country case studies broadly demonstrate the **unsustainability of the current logistics business model**. Despite the many problems in the sector,

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65. According to the author of the German case study, 'the avoidance of collective bargaining and codetermination often appears to be a key reason for companies to outsource' (Section 2.1.2).
66. See Section 4.1 of the German case study.
67. See Section 4.1 of the French case study.
68. See Section 4.3 of the Italian case study.
69. See Section 5.2 of the French case study; Section 5 of the Spanish case study; Section 5.1 of the Italian case study; and Section 5.1 of the German case study.
70. "The lack of transparency and accountability in long subcontracting chains may make enforcement of the applicable rules very difficult due to problems in identifying the liable company" (Commission Staff Working Document accompanying the document REPORT on the application and implementation of Directive (EU) 2018/957, SWD(2024)320, p. 31).
71. Spanish case study, Section 2.1.
72. See, for example, https://www.etuc.org/en/pressrelease/huge-fall-labour-inspections-raises-covid-risk

created or increased by subcontracting, to date no European regulation has been introduced on either logistics or subcontracting. Some scholars have pointed out the 'problem of non-government of logistics', that is, the fact that politics does not, or is unwilling or unable to govern the problems generated by logistics. It is certainly true that e-commerce giants can operate beyond the scope of traditional political regulation, which is limited to local territories.[73] However, EU Member States, as well as the European Union as a whole, can still regulate the market, decide what goods can be sold in their territory, limit certain business models, and establish rules that must be respected when companies operate on their territory, if they have the political will.

It should also be highlighted that, currently, national and European law directly or indirectly facilitate labour exploitation, in terms of cutting costs and worsening working conditions. This promotes subcontracting (for example, it has become easier to set up a company) and increases workers' vulnerability (precarious contracts are permitted; work permits for migrants are linked to the employment contract). Therefore, recommendations aimed at tackling the negative effects of subcontracting on working conditions and trade union activities cannot be confined to enforcement measures for tackling workers' rights violations. Certainly, controls, remedies and sanctions are necessary and should be improved. However, it is also very important to reduce the benefits that companies gain through subcontracting in terms of lower responsibility and labour cost reductions.

Against such a background and based on the research conducted in a selected set of Member States, this study proposes the following policy recommendations with regard to subcontracting practices prevalent in logistics.

(i) Re-establish the link between power and profit and risks and responsibilities

A substantive definition of 'employer' should be clearly stated at EU level. The European Commission should clarify in a Communication that the principles laid down by the European Court of Justice (ECJ) in *AFMB*[74] have to be applied generally in order to implement and enforce European labour law. According to this judgment, a worker 'must be regarded as being employed, not by the undertaking with which he or she has formally concluded an employment contract, but by the […] undertaking that has actual authority over him or her, that does, in reality, bear the costs of paying his or her wages, and that has the actual power to dismiss him or her' (§ 75). Therefore, supplying labour only should be forbidden, except in cases expressly permitted by national or European law (such as temporary agency work).

It also should be pointed out that the widespread use of digital devices and surveillance technologies provided by the client enhances the latter's control over

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73. Messina P., E-commerce, logistica e territori. Riflessioni di sintesi e proposte, in Ires Veneto, Amazon nel territorio di Rovigo…un anno dopo, 2023, p. 56.

74. ECJ, 16 July 2020, C-610/18, *AFMB Ltd and Others v Raad van bestuur van de Sociale verzekeringsbank*.

its contractors and subcontractors, as well as over their workers. In these cases, it is therefore important to establish who the real employer is, that is, who directs and controls workers through the algorithmic management system.

Clarification of the substantive definition of employer is also necessary in order to better understand the role of labour market intermediaries, the definition of which was recently established by the Directive on Platform Workers.[75]

Joint and several liability regimes should be harmonised and strengthened. As demonstrated by the country case studies, the existing European rules on joint and several liability have been implemented differently by Member States. Furthermore, several countries (such as France) have limited their scope and/or have introduced the option of a due diligence defence.[76] Therefore, a new European regulation should be adopted that harmonises joint and several liability rules, extending their application to the full subcontracting chain and enlarging their scope beyond remuneration and social security contributions.[77]

(ii) Enhancing the transparency of the subcontracting chain

The transparency of the supply chain should be ensured by enforcing due diligence obligations established in the Corporate Sustainability Reporting Directive (CSRD)[78] and in the Corporate Sustainability Due Diligence Directive (CS3D).[79] The effectiveness of both directives depends on the degree of worker participation throughout the entire due diligence process. Consequently, the correct implementation of the collective rights introduced by the two directives should be strictly monitored. Besides, transnational cooperation among trade unions, as well as exchanges among worker representatives at different levels, should be strongly promoted.

It should be kept in mind that the scope of the two directives is limited, however. In particular, the CS3D applies only to 496 European logistics companies (there

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75. Borelli S., Labour Intermediaries and Labour Migration in the EU – A Framing Puzzle to Rule the Market (and Avoid the Market of Rules), FES Briefing, 2024.

76. Ecorys, HIVA-KU Leuven, Spark Legal and Policy Consulting, and wmp consult (2023) *Study supporting the Monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU – The situation of temporary cross-border mobile workers and workers in subcontracting chains*, Directorate-General for Employment, Social Affairs and Inclusion, 2024, p. 193.

77. EFBWW, ETF, and EFFAT demand full chain liability that covers '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', *Stop exploitation!*, 2024, p. 9.

78. Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.

79. Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859. In 2025, the European Commission suggested to amend both the CS3D and the CSRD in order to reduce companies' obligations.

are 1,308,366 logistics companies in Europe).[80] Therefore, the new European regulation on subcontracting should extend to all companies the duty to inform worker representatives and national competent authorities about work and services contracted out, providing a complete list of companies involved in contracts and subcontracts. The working and employment conditions of workers employed throughout the subcontracting chain should also be a topic of information and consultation for worker representatives in the client company, at all levels (including the European Work Council).[81]

(iii) Fostering job stability for workers

The regulation on subcontracting should oblige Member States to introduce social clauses in case of changes of (sub)contracts; that is, the new (sub)contractor should be forced to re-engage workers previously employed by the former (sub) contractor.

The use of temporary contracts should be limited, establishing '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'.[82]

(iv) Guaranteeing equal treatment of all workers

A clause imposing equal treatment between workers hired by subcontractors and workers hired by the client should be established. In other words, the working and employment conditions of subcontracted workers shall be, for the duration of the subcontract, at least those that would apply if they had been recruited directly by the client. This equal treatment clause would prevent any subcontracting aimed only at reducing labour costs.

Existing derogations from the principle of equal treatment in Directive 2008/104 on temporary agency work should be repealed.[83]

(v) Preventing work accidents in the entire subcontracting chain

The client and the main contractor should be obliged to set up risk assessment and risk management procedures aimed at preventing work accidents in the entire subcontracting chain. These procedures should be set up in accordance with trade unions and worker representatives. Moreover, the use of algorithmic management

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80. The number of EU27 companies present on Orbis with more than 1,000 workers and NACE codes 494 (Freight transport by road and removal services), 52 (Warehousing and storage), 53 (Postal and courier activities). Some 146 of these 496 are established in Germany, 59 in Italy, 43 in Spain and only 22 in France.
81. EFBWW, ETF, EFFAT, Stop exploitation!, 2024, p. 9.
82. EFBWW, ETF, EFFAT, Stop exploitation!, 2024, p. 11.
83. EFBWW, ETF, EFFAT, Stop exploitation!, 2024, p. 11.

systems should be negotiated with trade unions and systems aimed at intensifying work pace should be forbidden.

(vi) Supporting the development of trade union activities throughout the entire subcontracting chain

Trade unions should be able to mobilise workers along the entire subcontracting chain. Two sets of measures should be implemented to achieve this objective. First, worker participation in the client company should be strengthened to cover also the working and employment conditions of workers employed throughout the subcontracting chain (see Recommendation no. 2). Second, worker representatives at group level,[84] as well as on site, should be developed and supported, and cooperation among worker representatives and trade unions present in the subcontracting chain should be strengthened.

(vii) Boosting labour inspections and cooperation among national authorities, also at transnational level

Member States should perform additional labour inspections[85] and should promote data exchange, as well as other forms of collaboration among public authorities. In particular, the digitalisation of business registers can 'increase transparency and facilitate the identification of employers and subcontractors and the checking of their activities'. In fact, 'through digital company registers, regulatory oversight and audit would be significantly facilitated and would contribute to a much faster exchange of information', also across borders.[86] Another digital tool that facilitates inspections and increases subcontracting chain transparency is the social ID card.[87]

Moreover, the role of the European Labour Authority (ELA) should be strengthened in order to facilitate mutual learning and exchanges between national authorities, and to encourage coordination among national inspectors in transnational cases.[88]

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84. These are worker representatives who represent the workers of all companies belonging to the same group.

85. EFBWW, ETF, EFFAT demand to '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 base on the specificities of each sector', *Stop exploitation!*, 2024, p. 13.

86. Ecorys, HIVA-KU Leuven, Spark Legal and Policy Consulting, and wmp consult (2023) *Study supporting the Monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU – The situation of temporary cross-border mobile workers and workers in subcontracting chains*, Directorate-General for Employment, Social Affairs and Inclusion, 2024, p. 244.

87. EFBWW, ETF, EFFAT, *Stop exploitation!*, 2024, p. 13.

88. Ecorys, HIVA-KU Leuven, Spark Legal and Policy Consulting, and wmp consult (2023) *Study supporting the Monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU – The situation of temporary cross-border mobile workers and workers in subcontracting chains*, Directorate-General for Employment, Social Affairs and Inclusion, 2024, p. 143.

(viii) Facilitating access to justice

Member States must ensure that trade unions may engage in any necessary proceedings regarding alleged infringements of workers' rights. The costs and duration of trials should be contained. Countries must also support (also fund) trade union initiatives aimed at informing workers (especially third-country nationals) of their rights[89] and facilitating their access to justice.[90]

(ix) Limiting subcontracting

Facing the many negative effects of subcontracting on working conditions and trade union activities, the most important recommendation, which could help to achieve all the above listed objectives, is that **subcontracting has to be limited**. Both what can be contracted out and the length of the subcontracting chain need to be restricted. Therefore, a prohibition should be established on contracting out a company's core activities and the number of levels in subcontracting chains should be limited.[91] As a general rule, subcontracting needs to be justified by reasons other than pure profit because, according to national Constitutions and the European Charter of Fundamental Rights, pure profit cannot prevail over workers' rights.

And, sorry, this point cannot be missed.

89. Commission staff working document accompanying the document report on the application and implementation of Directive (EU) 2018/957, swd(2024)320, p. 32. According to this document, the possibility for trade unions to access workplaces at national level should also be enhanced.

90. Commission staff working document accompanying the document report on the application and implementation of Directive (EU) 2018/957, SWD(2024)320, p. 35.

91. 'The longer subcontracting chains become, the more opaque they are and the more difficult it becomes for workers to assert their rights. Capping the number of levels in the subcontracting chain can help prevent this, as this would make subcontracting chains less complex and therefore easier to identify the responsible entities' Ecorys, HIVA-KU Leuven, Spark Legal and Policy Consulting, and wmp consult (2023) *Study supporting the Monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU – The situation of temporary cross-border mobile workers and workers in subcontracting chains*, Directorate-General for Employment, Social Affairs and Inclusion, 2024, p. 243.

European
Trade Union Institute
Bd du Jardin Botanique, 20
1000 Brussels
Belgium
etui@etui.org
www.etui.org

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