

Exploring fraudulent forms of contracting work in Europe

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Three step research

Background
Unfair competition
Violation workers'
dignity & rights

2017

3) Sectoral
approches
Characteristics
and actions

2016

2) Consequences
on WC and
business
competition

2015

1) Mapping
Main fraudulent
practices
Levers
responses

Objective: Creating
a common
understanding
Visibility

Definition/ fraud

specific employment or contractual arrangement

&

factual circumstances do not correspond to the legal formal requirements

Existence of Formal contract	Respect of 'formal requisites'	
	YES	NO
YES	Lawful	Fraudulent
NO –or void	Undeclared	Illicit

Limit: legalistic approach

Fraudulent practices

Drivers

Flexibilisation
Avoiding taxes
Labour rights
and obligations

Contractual form used and abused	Key features of the standard Employment relation that are avoided or disguised		
	Subordinate	Permanent	Direct
<i>Self-employment and freelance work</i>	Y	Y	
<i>Fixed-term employment</i>		Y	
<i>Posting of workers</i>	Y		Y
<i>Temporary agency work</i>		Y	Y
<i>Apprenticeships and traineeships</i>	Y	Y	
<i>Contractual relationship between companies</i>			Y
<i>On-call, casual and seasonal work</i>		Y	

Fraudulent contracting of work in Europe

Mapping

- 7 predominant fraudulent contracting of work

features

- Domestic fraud prevails but also abuses of cross borders sub contracting and TAW

Enablers

- unclear definition/ fragmentation of monitoring/ lack of cooperation business + workers

Policy

- Complexity/ underused and underdeveloped role of social dialogue/ Displacement risk

Uneven and not agreed
assessment by
social partners

WC & Business competition

Enabling
factors

- **Fraud** : rarely the result of an employee's choice;
- Institutional conditions and sector specific dynamics

working and
employment
conditions

- Difficult distinguishing consequences for working conditions between precarious work and fraud;
- Negative **effects not strictly or exclusively linked to one particular fraud**

inequality

- **Expansion** of some fraud practices towards **new groups of workers**
- Workers in a more vulnerable position, notably migrants, but also young workers or adult workers

business
competition

- **Negative effects on business competition** only highlighted in particular cases

Concerns

- Limitations of labour inspectorates

Exploration

- Clarification of legal framework

Issues

- unwished effects of some policies of fraud
- Few collective bargaining/ social dialogue initiatives

Social partners

- Several TU initiatives: reporting websites, campaigns, guidance's

Sectoral approaches

	Posting of workers	(Cross-border) artificial arrangements of firms	Self-employment	Other non-standard contracts
Road Haulage	Non-declared posting (e.g. in case of cabotage)	Letter box companies established abroad, false habitual place of work	Bogus self-employment	
Construction	False posting (self-employment), non-declared posting	Subcontracting to bogus firms/ letter box companies	(Cross-border) Bogus self-employment	
Industrial Cleaning		Subcontracting to bogus firms	Bogus self-employment	unlawful use of non-standard employment contracts; intentional non-fulfillment of client's contract

Sectoral characteristics

	RD Haulage	Construction	Industrial Cleaning
<i>Key characteristics</i>	Strong international competition	Abuse of POW	Abuse of NS contracts Illicit practices
<i>Sub contracting</i>	Multilevel + Cross border intermediary	LBC Posting of SE	As a consequence of outsourcing & competitive tendering
<i>Digital</i>	On line freight exchanges Integrators development		New technical devices for organising work Multiservices companies
<i>Issues</i>	Scattered nature of nationally based inspection bodies	Difficult to reclassified Impacts on workers H&S + Wages	Weak workers positions

Industrial Cleaning : Important sector

Growing through outsourcing

- Market
 - Market penetration increasing: 43% (89) to 65% (14)
 - More global and integrateCrisis
- Crisis /recession proof
 - But increase pressure on costs
- Business structure
 - Polarisation
 - **91% SMEs** < 50/ market share dominated but very **few MNC /large** companies (1,4% companies > 500)
- Labour intensive sector
 - 75% of sector's workforce: **women; low levels of qualification; 70% work part time**; high incidence of **migrant workers**

Labour costs are key

Lowest bid tend to win

1) abusing Flexible Employment relations

ZHC	FI	Legal but systematic
Work -try -out contracts	FI	Abusing WH Probation period
PT Minimally employed workers	AT	18h max/week Transfer payment to unemployment insurance 'Social fraud'
PT	FI	Control allottement of WH

2) Illicit practices (beyond fraud)

Circumvention Pay processes	AT	Pay piece work rates (ex window cleaners) Not in sector collective agreement
Circumvention WT regulation	ES	PT & extending WH Authorised through agreement with the employer Extra hours mostly undeclared
Misclassification of workers	ES	'cleaner' instead of 'specialist cleaner'

3)Disguising subordination/autonomy

BSE	AT	On line placement agency in Vienna Lower end of the subcontracting chain placing SE in DE = de facto employer
Multiservices company	ES	Not TAW No wage , H&S regulation 34% in cleaning Misuse of contract for specific jobs and services

Responses

EU	EU Directive	Public procurement (D 2014/24/EU) costs + quality = MEAT 2016 application
	EU-Social partners	(UNI Europa-EFCI) guide „Selecting Best Value“ → promoting responsible contractor policy for the cleaning sector Joint position on EU UDW platform
National level	AT	Law anti wage and social dumping (2011/2017) Social fraud in construction and elsewhere Subcontracting to bogus companies more difficult TU campaign for
	FI	‘Contractor’s obligation and liability’ Act 2006 Only one level/from construction to all sectors
	ES	Reducing volatility of jobs: job guarantee in case of change of contracted company stipulated in CA
Self-organised /civil society initiatives:	ES FI	Las Kellys (ESP) representing interests of maids in hotel and tourism sector; Operation Steady Job (FI): campaigning for the abolition of Zero-hour-contracts

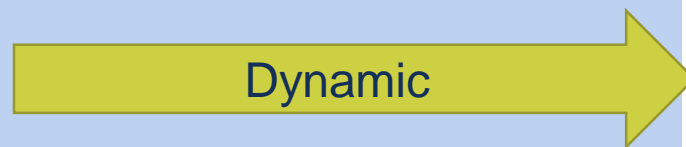
Policy pointers

1) Holistic responses: *Regulation + Enforcement*

- Risk of 'displacement' of fraudulent practices
- Fragmented monitoring

2) Involving all actors

- SP underused / SD underexploited
- National and foreign
- Various fields : labour /taxes /social security /migration /customs



3) Supporting Workers

- Representation
- Voice + negotiation

4) EU initiatives

- Regulation
 - Public procurement
 - Subcontracting chains
- Transnational Cooperation



<https://www.eurofound.europa.eu/topic/fraudulent-work>



Many thanks

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Outputs



2016

2017



WORKING PAPER



Fraudulent Contracting of Work:
Construction Sector

Fraudulent Contracting of Work:
Industrial Cleaning Sector

Fraudulent Contracting of Work:
Road Haulage Sector

2018