RESEARCH REPORT

Eurofound

# Exploring the fraudulent contracting of work in the European Union

Member of the Network of EU Agencies

# Exploring the fraudulent contracting of work in the European Union

Eurofound

European Foundation for the Improvement of Living and Working Conditions

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# Country codes

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| | | | | | |
|---|---|---|---|---|---|
| **AT** | Austria | **FI** | Finland | **NL** | Netherlands |
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| **CY** | Cyprus | **HU** | Hungary | **RO** | Romania |
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| **DE** | Germany | **IT** | Italy | **SI** | Slovenia |
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| **EE** | Estonia | **LT** | Lithuania | **UK** | United Kingdom |
| **EL** | Greece | **LV** | Latvia | | |
| **ES** | Spain | **MT** | Malta | | |

## Other

| | |
|---|---|
| **NO** | Norway |

# Glossary of terms used

**Fraudulent contracting of work**: refers to the use of a formal legal employment or contractual 'label' in situations not meeting the necessary requirements – that is, without respecting at least one of the formal criteria used to 'qualify' that contract. Fraudulent arrangements are meant to appear as legitimate forms of contracting, since they utilise legal employment/contractual relationships, but, at closer inspection, the apparent contract disguises a distinct employment relationship and/or a different employer. For this reason, the fraudulent contracting of work constitutes an abuse of existing legal employment or contractual relationships. If taken to court, the employment or contractual relationship would be (re)qualified as the correct one or the actual employer would be identified.

**Illicit contracting of work**: the circumstances of the actual employment or contractual relationship do not adhere to the requirements of any formal contract. As a consequence, the employment relationship does not exist and the situation cannot be redressed in any way, as in the case of child labour, for instance, which is totally forbidden. Being illicit, such a relationship is often not covered by a formal contract. Even if a formal contract disguises the illicit employment or contractual relationship, it is legally 'void' without any effects.

**Lawful contracting of work**: the circumstances of the actual employment or contractual relationship fully respect the formal requirements of the specific contract (labour or commercial) signed or declared by the relevant parties. Therefore, the parties are appropriately using that form of contract and correctly naming or qualifying their employment/contractual relationship.

**Undeclared contracting of work**: any paid activities that are lawful as regards their nature but are not declared to the public authorities, taking into account differences in the regulatory systems in Member States. In other terms, undeclared work refers to employment or contractual relationships that would be fully legal if they were declared.

# Executive summary

## Introduction

The fraudulent contracting of work is an important issue in many European countries. This report looks at these practices across the EU and shows how the issue is tackled in the 28 EU Member States (EU28) and Norway. Applying juridical criteria, the study defines the fraudulent use of an employment or contractual relationship on the basis of two co-existing conditions, whereby:

- a specific employment or contractual arrangement is used to hire workers or to subcontract certain work activities;
- the factual circumstances of the specific employment or contractual relationship do not correspond to the legal, formal requirements for that specific form of contracting work, either directly through an employment relationship or indirectly through a subcontracting relationship.

It is difficult to distinguish in practice between the four main forms of contracting work: 'lawful', 'undeclared', 'fraudulent' and 'illicit'. In many instances, such arrangements are intended to give the impression they are legitimate forms of contracting since they use legal employment or contractual relationships. However, on closer inspection, the apparent contract disguises a different employment relationship or a different employer from the contractual one. This complexity helps to explain why, in some countries (Bulgaria, Croatia, Latvia and Malta), undeclared work rather than fraudulent use of contracting work is reported as the main issue, with violations in employment contracts tending to be mostly associated with irregular jobs.

Given that the fraudulent contracting of work is particularly complex, this study focuses on a few specific contractual relationships and investigates whether there are indications that they have been abused, to what extent, and in what way. The report is based on information provided in national reports from Eurofound's network of European correspondents across the EU28 and Norway.

## Policy context

EU and national-level policymakers are seeking to address violations of basic protections provided in employment law and collective bargaining stemming from the fraudulent use of employment or commercial contracts. Trade unions have been particularly vocal in highlighting the negative impact of this type of fraud on workers' protection and working conditions. Employers, meanwhile, have underlined the disruptive impact of such practices on fair market competition. Moreover, European-level institutions have recently taken several important steps – for example, the 2014 Enforcement Directive on the posting of workers and the ongoing discussion on undeclared work.

## Key findings

Analysis of the national reports points to three forms of contracting work that appear to be most affected by fraudulent usage: self-employment, fixed-term work and the posting of workers. In 23 out of 29 countries covered by this study (79%), national correspondents reported that the fraudulent use of self-employment was 'significant'. In over half of the countries (16 out of 29 countries or 55%), the fraudulent use of fixed-term employment was cited, while abuse in the posting of workers was alleged in 15 countries (52%). In less than half of the countries, fraudulent use of the other forms of contracting work was reported: temporary agency work (12 countries or 41%), apprenticeships and traineeships (11 countries or 38%), contractual relationships between companies or within company groups (10 countries or 34%), and other forms of temporary work such as on-call, casual and seasonal work (7 countries or 24%).

As expected, fraudulent use involves all sectors and occupations, although such practices are reportedly more common in a number of sectors and certain fraudulent practices seem to be more specific to particular sectors. These sectors include: construction, where the fraudulent use of self-employment, posting of workers and contractual relations between companies have been highlighted; the media, arts and entertainment sectors, where bogus self-employment seems to be particularly evident; and tourism and catering, where the fraudulent use of traineeships and seasonal work has been reported.

Contrary to widely held perceptions, the fraudulent contracting of work does not seem to involve cross-border employment relationships. The prevalence of domestic fraud underlines how the misuse of employment relationships is a nationally driven issue, which is understandable given that labour, tax and social regulations are essentially defined at national level.

The misuse of the employment relationship leads to a number of consequences, generally resulting in reduced levels of protection for the workers involved. Fraudulent practices in contracting work tend to give the worker more limited economic benefits and poorer working conditions than are guaranteed by the standard employment relationship that should have been applied.

Similar to the actions taken to address undeclared work, the initiatives devised to tackle the fraudulent contracting of work can be grouped according to whether they improve detection or support compliance. Most of the actions are taken by governments and public bodies and focus mainly on improving rules: these include measures aimed at eliminating ambiguities and loopholes in the legislation and strengthening detection – often through carrying out targeted inspection campaigns. The social partners mainly emphasise an increased commitment to compliance, in particular by organising information and awareness-raising initiatives.

# Policy pointers

## Enhancing detection

Given the nature of the phenomenon, the only initiatives having an immediate impact and producing measurable results are those aimed at detection – specifically, targeted inspection campaigns carried out by public authorities. These initiatives require significant resources in terms of people, time and effort, but they also have a clear pay-off.

## Better regulations

Clarification of the legislative and regulatory framework by eliminating loopholes and ambiguities helps to ensure that employment relationships are drawn up according to legal guidelines.

However, the potential drawbacks should be kept in mind and addressed: first, the application of stricter rules could impede the legitimate contracting of work; second, fraudulent use may shift to other, less regulated forms of contracting work if the legislative intervention is successful.

## Mixed approaches

The risk that efforts to improve regulations just move the problem to other contractual areas can be addressed by taking a comprehensive approach and applying softer forms of intervention. The comprehensive approach requires a clear analysis of the phenomenon, while 'softer' forms of intervention focus more on the cultural dimensions and on building a shared commitment to ensure correct and fair employment conditions. The social partners are particularly involved in this type of intervention.

## Joint initiatives

Joint trade union–employer initiatives, often at sectoral level, typically provide information and assistance to companies and workers and contribute to monitoring the situation. However, the potential of collective bargaining to respond to the challenges of the fraudulent contracting of work still seems to be underexploited at national level.

## European initiatives

As the study focuses on the fraudulent contracting of work in each country, the role of the EU has not been explored in depth. Nevertheless, European regulations and actions, both in the legislative and the industrial relations domains, clearly provide a framework for national initiatives.

EU actors could contribute in terms of awareness-raising campaigns and joint actions at sectoral level, with a potential role for the sectoral social dialogue committees. In terms of public actors, the support of cross-border cooperation can be crucial in detecting and sanctioning fraudulent practices involving a transnational dimension, as underlined by the EU Enforcement Directive on the posting of workers.

# Introduction

The fraudulent contracting of work is an important issue in many European countries today. At both EU and national level, a number of actors have turned their attention to the violations of basic protections provided by employment law and collective bargaining stemming from the fraudulent use of certain employment or commercial contracts. These include bogus self-employment, abuse of the posting of workers and sham subcontracting arrangements. In all these cases, an ostensible contract masks an underlying 'hidden' contract, which corresponds to the actual circumstances of the employment or contractual relationship. Trade unions have been particularly vocal in highlighting the negative impact of this type of fraud on workers' protection and working conditions. Employers have also underlined the disruptive impact of such practices on fair market competition. Moreover, European- level institutions have directed their attention on these phenomena and concerns. Several significant steps have been taken in the field – for example, the 2014 Enforcement Directive on the posting of workers and the ongoing discussion on undeclared work.[1]

However, it should be highlighted that defining the fraudulent use of contracting work is particularly complex, not to mention detecting and sanctioning them, as this report will show. For this reason, this comparative study puts the spotlight on a few specific contractual relations and investigates whether there are indications that they have been abused or misused in the 28 EU Member States (EU28) and Norway, and to what extent and how this has been done. The report is based on information provided by Eurofound's network of European correspondents across all 28 EU Member States and Norway.

The complexity of the task is underlined by the variety of views regarding the nature and extent of the fraudulent contracting of work. Indeed, the presence of fraud is, almost by definition, highly contested, since different observers can have different views on which contractual relationship is appropriate in specific circumstances. Legislative regulations can be open to various interpretations, and there may be flexibility in operation in terms of extending or constraining the capacity of the parties to the agreement to specify autonomously the nature of their contractual relationship.

In practice, any single instance of potential fraud in using specific forms of contracting work needs to be detected and recognised through a procedure which compares the actual employment (or commercial) relationship with the conditions of the declared contract. This can be done only in individual cases and before a specific authority, usually a labour court. Consequently, no systematic official data on such fraudulent use are generally available. Moreover, reliable data (such as those gathered through labour court judgements) – if available – would only provide an indication of the actual phenomenon. Moreover, the nature of the indication is dependent on a number of contextual factors, such as the priority given to the fraudulent practices by labour inspectorates, the resources available to carry out monitoring activities, the clarity of the regulatory framework and the capacity to identify and tackle fraud. Finally, these data only relate to claims that have gone all the way, resulting in a court decision.

Against this background, this study should be regarded as an exploratory exercise, since the picture emerging from the study is determined by the attention and mobilisation of domestic actors around this issue and the specific forms of fraudulent contracting of work. It should also be highlighted that the reports of a significant presence of individual forms of fraudulent contracting are based on different sources depending on the country in question – such as experts, social partners, reports by labour inspectorates and academic studies. Therefore, comparisons across countries should be treated with extreme caution. The country-level reports do, however, point to the topicality of the issue in the domestic debate and indicate the amount of attention devoted to the topic of the use of specific forms of contracting work and self-employment.

Despite the limitations, this study aims to give a systematic overview of how fraud in the contracting of work, as a national phenomenon, is perceived and tackled in the EU28 and Norway. This knowledge represents a valuable first step towards addressing fraud in contracting work across Europe.

1 Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System, *OJ L 159, 28.05.2014, p. 11–31*.

# 1 Methodology and definitions

This report is part of a Eurofound project initiated in 2015 that aimed to map the features, extent and impact of the fraudulent contracting of work and self-employment in the EU. The project addressed two key questions:

- Which types of fraudulent contracting of work (or services) can be identified in the EU, including in the context of the cross-border mobility of workers?
- What measures are being developed by the national authorities, including labour inspectorates and other competent agencies, and the social partners to identify, prevent and combat the fraudulent contracting of work?

The practice of the fraudulent contacting of work and of self-employment poses risks to workers' employment conditions, fair competition between companies and the fiscal sustainability of social protection systems.

Given the variety of types of fraudulent contracting of work, in the first instance it is important to clarify the different situations that are considered to be unlawful in each national setting. Therefore, the main objective of this report is to map the differences and commonalities across EU countries and Norway in terms of the following:

- the presence and diffusion of the fraudulent contracting of work and self-employment;
- the responses put forward by both the social partners and the political authorities.

Another key dimension of the problems linked to the fraudulent contracting of work – the impact on working conditions – is currently under investigation in a parallel Eurofound study and is only briefly touched upon here.

In taking into consideration the variety of national situations, this study adopts a bottom-up approach to collecting basic information on the specific features of the fraudulent contracting of work in each country. It highlights national or sectoral peculiarities and identifies commonalities across the countries studied.

The study is based on 29 national reports, covering the EU28 and Norway. The correspondents were requested to provide information on the different uses of fraudulent work in their country and to explain which are the most significant and why. In addition, the respondents were asked to outline the responses devised to address the issue.

## Defining the topic of the study

The research set out to frame the study on the basis of a common definition in order to reduce as far as possible any ambiguity and subjectivity in identifying the phenomenon under investigation. The discussion around the fraudulent contracting of work often includes reference to 'fairness', 'ethical considerations' and employment and working conditions that are considered to be 'morally wrong'. These elements are an important part of the general discussion on changes to the labour market and to employment relationships, as they clearly indicate the relevance and sensitivity of the issue. However, there is room for potential subjectivity in these appreciations, which may influence the analysis and be a matter of contention and criticism.

Therefore, to keep the argument as close as possible to juridical criteria, this study adopts a technical definition of the fraudulent contracting of work. This definition focuses, on the one hand, on qualifying the employment or contractual relationship and, on the other hand, on identifying the employer. This exercise is highly complex. Indeed, these two elements may be difficult to identify and disputable. Moreover, national juridical and judicial frameworks provide quite distinct mechanisms to resolve possible disputes.

First, in the field of labour law, the denomination of the contractual relationship is strictly regulated. Indeed, labour law rigorously delimits the parties' autonomy in qualifying the nature of the contract, given the difference in the bargaining power of the two parties to the employment contract. Therefore, the circumstances or 'reality' of the employment or commercial relationship actually implemented by the parties prevail over the 'formal qualification' of the relationship – that is, the type of contract they have chosen. According to the EU Member States' legal systems, 'fraudulent contracting of work' could be defined as 'those employment/self-employment/commercial contracts which simulate the declared contract, but effectively disguise a different relationship, which (legally) corresponds to a distinct type of contract'. The disguised contract is lawful too, but regulated by different rules. Very often, these rules are less advantageous or more expensive for employers, notably in terms of organisational constraints, wages, pension contributions, taxes, mandatory insurance cover against accidents at work, and so forth.

It is interesting to note that, when the fraudulent contracting of work is detected and sanctioned, labour courts do not declare the fraudulent employment contract to be 'null and void'. Often, the parties are sanctioned while the employment relationship is

converted into the 'disguised' contract, sometimes even retroactively since the start of the fraudulent employment or commercial relationship. Given the imbalance of bargaining power between the employer and the worker, sanctions and fines are often applied only to the employer. In the case of conversion of the employment contract, rulings recognise the contractual relationship established in practice by the parties and enforce the proper contractual qualification. It is important to underline that, in legal terms, rulings on this matter are considered to have a 'declaratory' efficacy, taking into consideration the existence of the actual employment relationship despite the fraudulent cover. Conversely, in the case of undeclared work, they are generally considered to have a 'constitutive' nature.

Since the detection of the fraudulent contracting of work requires careful analysis of actual employment relationships, these forms are particularly difficult to identify and combat. Moreover, this process needs time, while a comparison of the actual circumstances with those potentially derived from legal regulations must be performed. This also leaves room for interpretation. Only a thorough and careful analysis of how the relationship is conducted can reveal its fraudulent character and the real nature of the employment relationship, as well as whether it corresponds to a mandatory type of employment contract. This process requires, at least, labour court rulings to order the legal qualification of each individual employment relationship recognised as 'fraudulent'.

## Definition used in the report

The definition adopted in this report traces the boundaries of the fraudulent contracting of work according to certain juridical criteria. Again, it should be noted that such boundaries are not that easy to distinguish when applied in practice to cases 'on the ground'.

The definition used in this study defines the fraudulent use of an employment or contractual relationship on the basis of two co-existing conditions, whereby:

- a specific employment or contractual arrangement is used to hire workers or to subcontract certain work activities;
- the factual circumstances of the specific employment or contractual relationship do not correspond to the legal or formal requirements for that specific form of contracting work, either directly through an employment relationship or indirectly through a subcontracting relationship.

The research identified four types of contracting work: 'lawful', 'undeclared', 'fraudulent' and 'illicit' (Table 1).

**Table 1: Types of contracting work**

| | | Respect for requirements* | |
|---|---|---|---|
| | | Yes | No |
| Formal contract exists | Yes | Lawful | Fraudulent |
| | No (or void) | Undeclared | Illicit |

**Refers to respect for the 'formal requirements qualifying the specific formal employment or contractual relationship used in each case.*

The 'formal requirements' of an employment or contractual relationship refer to the conditions which, according to legislation or usage and conventions, characterise the specific formal employment or contractual relationship to be used in the determined circumstances.

Out of the four types of the contracting of work identified above, one is by definition 'lawful', while the other three ('illicit', 'undeclared' and 'fraudulent') are not.

In lawful contracting of work, the circumstances of the actual employment or contractual relationship fully respect the formal requirements of the specific contract (labour or commercial) signed or declared by the relevant parties. Therefore, the parties are using that form of contract appropriately and correctly naming or qualifying their employment/contractual relationship.

As mentioned above, it is clear that undeclared, fraudulent and illicit forms are all unlawful situations, which could and should be sanctioned either by administrative or judicial means. Nevertheless, there are differences among the three categories based on the nature of their respective 'unlawfulness' and the possibility to re-establish legality. According to the above classification, the **illicit contracting of work** does not respect the requirements of any formal contract. As a consequence, the employment relation does not exist and the situation cannot be redressed in any way, as in the case of child labour, for instance, which is totally forbidden. Being illicit, such a relationship is often not covered by a formal contract. Even if a formal contract disguises the illicit employment or contractual relationship, it is legally 'void' without any effects.

The **undeclared contracting of work** is defined as any paid activities that are lawful as regards their nature but are not declared to public authorities, taking into account differences in the regulatory systems in Member States. In other terms, undeclared work refers to employment or contractual relationships that would be fully legal if they were declared. For example, a waiter working without a contract is an instance of undeclared work. However, if this waiter is below the minimum age required for working, this is an example of illicit work, since the minimum age is a necessary requisite for establishing any employment relationship, without exceptions.

Finally, the **fraudulent contracting of work** refers to the use of a formal legal employment or contractual label in situations not meeting the necessary requirements – that is, without respecting at least one of the formal criteria used to qualify that contract.

For instance, self-employment generally implies the use of one's own resources and equipment, independence in organising one's own work and working time, as well as an obligation to deliver a certain result. If these conditions are not present, there may be a misqualification of the employment or contractual relationship. Similarly, in the case of the posting of workers, when the posting company has no real business autonomy, establishing itself only to post workers abroad, it may be identified as a sham set-up. Other possible types of fraud include the use of fixed-term contracts beyond the limits stipulated by law – that is, using improper temporary contracts where the use of permanent contracts would be mandatory; or misusing traineeships and apprenticeships – that is, using them under conditions other than those stipulated by law, for example, due to lack of any specific training content.

As mentioned above, the fraudulent practice may concern either the qualification of an employment contract or the nature of a contractual relationship between companies. In the case of individual workers as contractors, it is more convenient to consider the fraud as relating to the employment relationship (although self-employed workers may be legally defined as firms). Regarding fraudulent contractual arrangements between companies, involving usually the provision of services by the subcontractor's employees, the key issues are identifying the actual employer and the proper employment contract.

For the purposes of this study, it should be noted that fraudulent contractual arrangements between companies are relevant only if they have an impact on employment and working conditions and only in terms of this impact. For instance, the issues of tax evasion or elusion are not considered in this study.

## Summary

Fraudulent arrangements are intended to appear as legitimate forms of contracting, since they utilise legal employment/contractual relationships, whereas, on closer inspection, the ostensible contract disguises a distinct employment relationship and/or a different employer.

By definition but also in practice, the fraudulent contracting of work may mask illicit employment or contractual relationships. In such cases, the contract is void. More frequently, the fraudulent arrangement does not adhere to the requirements of the declared employment or contractual relationship but rather to those of another one, or it may conceal the actual employer. For instance, using the contractual framework for the posting of workers to hire resident foreign workers is fraudulent. Similarly, self-employment may be fraudulent when it is used to mask a subordinate employment relationship, whereby the formally self-employed workers have to strictly follow the directions of an employer and have no autonomy as regards the time, place and ways they carry out their duties.

For this reason, it can be said that the fraudulent contracting of work constitutes an abuse of existing legal employment or contractual relationships. If taken to court, the employment or contractual relationship would be (re)qualified as the correct one (for instance, the judge would declare the existence of a subordinate employment relationship) or the actual employer would be identified.

Since the abuse equates to a false classification of the employment relationship, it raises the issue of the contrast between the contractual qualification agreed by the parties and the actual conditions of employment – or the issue of 'the primacy of the parties' autonomy versus the 'primacy of facts'. In each legislative framework, such an issue can be treated differently and in general civil law legal systems tend to rely more heavily on the 'primacy of facts' whereas common law legal systems often ensure more leeway for parties' autonomy in qualifying the employment relationship. However, across Europe, including in common law countries such as the UK, there are often guidelines or criteria to qualify employment relations, such as subordinate employment as opposed to self-employment (see the discussion in the 2015 ILO report on non-standard forms of employment (ILO, 2015)). This means that, irrespective of legal traditions, if a dispute is brought before the labour courts, they have to compare the factual circumstances with the formal qualifications of the employment or contractual relationship, and the former takes priority over the latter.

# 2 Fraudulent contracting of work across Europe

As mentioned above, by definition, fraudulent use can only be certified by labour court rulings, which identify and sanction specific forms of fraud on a piecemeal basis. This means that there is no real possibility to have complete data on this phenomenon. From a cross-country perspective, it also means that no systematic, reliable and comparable data are available. Although this is certainly an important limitation, it is also an inherent feature of all analysis of fraudulent behaviours. By examining the various forms of fraudulent contracting work and giving information on those considered to be the most significant in each country, this study provides an explorative and unique picture of the overall situation, shedding some light on the main features of such phenomena.

The 29 national correspondents (one in each of the 28 EU Member States and in Norway) were asked to identify the fraudulent use of work in their country. The correspondents had to report on the most significant types of fraud that are discussed and recognised in their country.

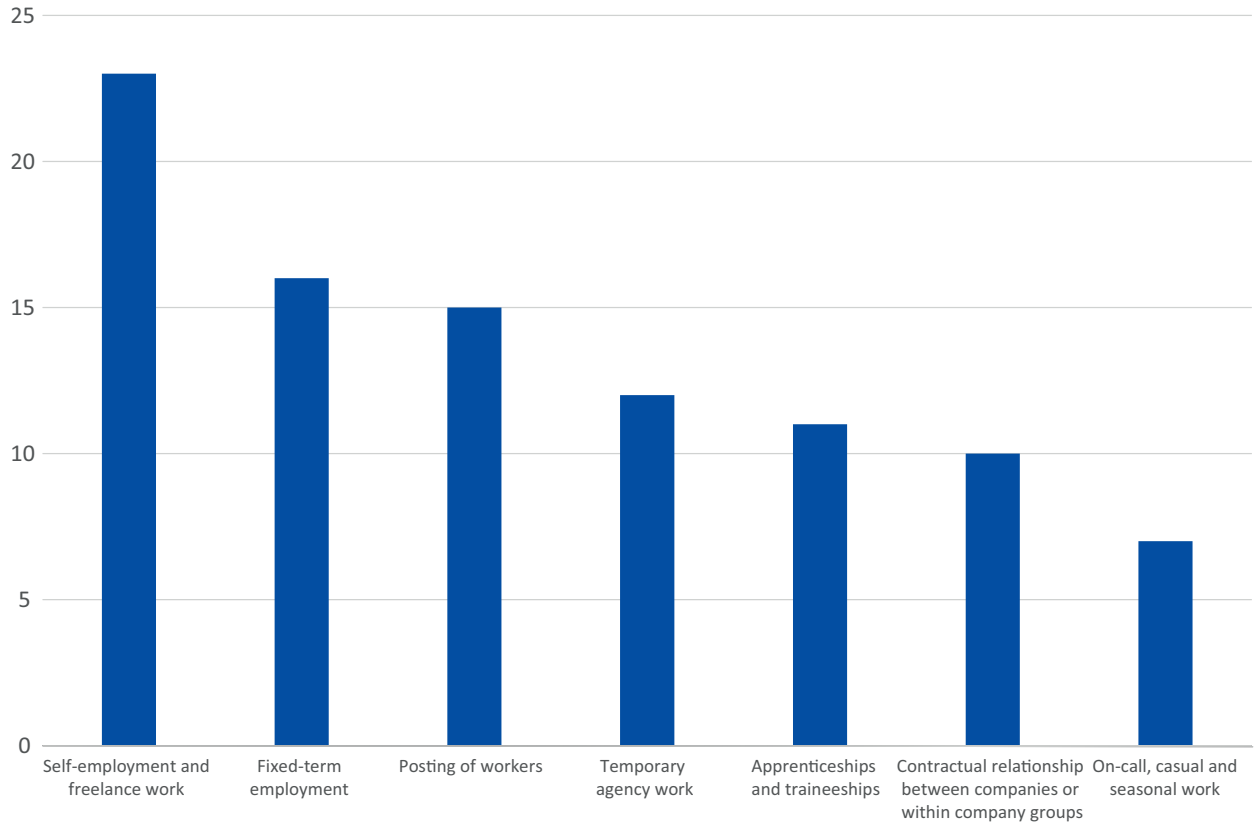
A critical issue is clearly how to identify the most significant types of fraud, given that fraudulent uses are disguised and need to be identified and recognised in order to be properly qualified. Moreover, data on fraudulent cases, if available, only refer to those instances which have been detected and sanctioned and therefore the assessment of the overall spread of the fraudulent contracting of work would require an estimate to be made of the share of this phenomenon which remains unobserved. In order to address these problems, the national correspondents were instructed to deliver an 'evidence-based' picture and analysis by using reliable official figures and studies and not to rely on media attention/anecdotal evidence. For this purpose, they had to take into consideration: a) labour inspectorates' reports, administrative databases on sanctions, case law databases; b) ad-hoc surveys and studies. If no specific data were available, national correspondents could employ as a 'proxy' of the diffusion of fraudulent use of contracting work the attention they receive in the public debate, in social partners' initiatives – for example, action to fight bogus self-employment by trade unions or campaigns by employers to fight unfair competition practices in certain sectors which undercut labour costs through the fraudulent contracting of work – and in public authorities' actions (including, for instance, specific initiatives of national and/or local governments as well as special prevention or clampdown campaigns initiated by labour inspectorates).

On this basis, the national correspondents had to select the seven employment and contractual arrangements which could be regarded as being particularly misused in contracting work in their country, as follows: fixed-term employment, temporary agency work, on-call, casual and seasonal work, apprenticeships and traineeships, posting of workers, self-employment and freelance work, and the contractual relationship between companies or within company groups. Moreover, the correspondents had the possibility to indicate other contractual arrangements which could be regarded as being significantly affected by fraudulent use in their country. Details about the various contractual arrangements and the sources available and used in each country to identify fraudulent use are included in the national reports.

Analysis of the national reports, which were prepared in accordance with the abovementioned guidelines, points to three forms of contracting work that seem to be most affected by fraudulent use: self-employment and freelance work, fixed-term work and the posting of workers. For 23 out of 29 countries (79%) covered in this study, national correspondents reported fraudulent use concerning self-employment and freelance work as being 'significant' (Figure 1). In over half of the countries, fraudulent use was reportedly significant in relation to fixed-term employment (16 countries out of the 29 or 55%) and the posting of workers (15 countries or 52%). The other forms of fraudulent contracting work that were reportedly significant in less than half of the countries were temporary agency work (12 countries or 41%), apprenticeships and traineeships (11 countries or 38%), contractual relationships between companies or within company groups (10 countries or 34%) and other forms of temporary work such as on-call, casual and seasonal work (7 countries or 24%).

In addition, some countries pointed to other specific forms of contracting work that were considerably affected by fraudulent use. These country-specific contractual relationships may be associated with some of the abovementioned standard forms of contracting work. Examples include self-employment ('civil law' contracts in Poland, 'agreements at work' in the Czech Republic), temporary work ('job insertion contracts' in Portugal, 'simplified employment' in Hungary) or subcontracting ('cooperatives' in the education sector in Hungary). In three countries, part-time work involved significant use of fraudulent practices, in particular disguising full-time work. However, this situation is more likely to be described as a working time violation than as fraudulent use of the contractual form.

**Figure 1: Forms of contracting work reported to be significantly affected by fraudulent use, EU28 and Norway, number of countries**




**Source:** *Eurofound's network of European correspondents, 2016*

Finally, it is important to mention that in four countries (Bulgaria, Croatia, Latvia and Malta), undeclared work was reported as the main issue. In these cases, violations of employment contracts tended to be mainly associated with irregular jobs.

Although the data do not allow strict comparability across countries, information about the number of contractual forms regarded to be significantly affected by fraudulent use may be used as a general indication of the scope of the phenomenon at national level. According to the national reports, fraudulent use involves at least four contractual forms in half of the countries covered by this study (Table 2). For Italy and Portugal, all contractual forms appear to involve a significant level of fraudulent use. Conversely, in five of the countries, fraudulent use appears to involve essentially one contractual form: self-employment in Croatia and Lithuania, posting of workers in Denmark, and fixed-term employment in Ireland and Latvia. Malta is a case apart as, according to the correspondents consulted for the national report, no fraudulent use of the various forms of contracting work appear to be significant. The lack of substantial data may contribute to such a picture, as well as the relevance of undeclared work in the debate about labour law violations.

**Table 2: Forms of contracting work reported to be significantly affected by fraudulent use, EU28 and Norway, by country**

| | Self-employment and freelance work | Fixed-term work | Posting of workers | Temporary agency work | Apprenticeships and traineeships | Subcontracting | On-call, casual and seasonal work | Total per country |
|---|---|---|---|---|---|---|---|---|
| IT | Y | Y | Y | Y | Y | Y | Y | 7 |
| PT | Y | Y | Y | Y | Y | Y | Y | 7 |
| HU | Y | Y | Y | Y | | Y | Y | 6 |
| NL | Y | | Y | Y | Y | Y | Y | 6 |
| FR | Y | Y | Y | Y | Y | | | 5 |
| RO | Y | | Y | Y | Y | | Y | 5 |
| SI | Y | Y | Y | | Y | Y | | 5 |
| AT | Y | | Y | | Y | Y | | 4 |
| CZ | Y | Y | Y | Y | | | | 4 |
| DE | Y | | Y | Y | | Y | | 4 |
| EL | Y | Y | | | Y | Y | | 4 |
| LU | Y | Y | Y | Y | | | | 4 |
| NO | | Y | Y | | Y | Y | | 4 |
| SE | Y | Y | Y | | | Y | | 4 |
| BE | Y | | Y | | | | Y | 3 |
| PL | Y | Y | | Y | | | | 3 |
| BG | | | | Y | | | Y | 2 |
| CY | Y | | | | Y | | | 2 |
| EE | Y | Y | | | | | | 2 |
| ES | Y | Y | | | | | | 2 |
| FI | Y | Y | | | | | | 2 |
| SK | Y | | | Y | | | | 2 |
| UK | Y | | | | Y | | | 2 |
| DK | | | Y | | | | | 1 |
| HR | Y | | | | | | | 1 |
| IE | | Y | | | | | | 1 |
| LT | Y | | | | | | | 1 |
| LV | | Y | | | | | | 1 |
| MT | | | | | | | | 0 |
| Total | 23 | 16 | 15 | 11 | 11 | 10 | 7 | |

**Source:** *Eurofound's network of European correspondents, 2016*

As expected, fraudulent use involves all sectors and occupations. However, two observations can be made here. First, in a number of sectors, fraudulent use is reportedly more common. Second, some specificity appears regarding the most prevalent types of fraudulent use according to the sectors (Table 3). These sectors include construction, where fraudulent use of self-employment, posting and contractual relations between companies have been highlighted in particular; the media, arts and entertainment sectors, where bogus self-employment seems to be greatly present; and tourism and catering, where the fraudulent use of traineeships and seasonal work is reported.

Contrary to the most recent widely-held perceptions, the fraudulent contracting of work does not seem to involve predominantly cross-border employment relationships. While this outcome can be linked to the approach taken by this study (the phenomenon is analysed from the national perspective), it is still important to note the prevalence of domestic fraud. This underscores the fact that misuse of employment relationships is a nationally driven issue, given that

### Table 3: Sectoral diffusion of the fraudulent contracting of work according to the national reports

| Contractual form prevalently abused. | According to the sectors typically affected |
|---|---|
| Self-employment and freelance work (fraudulent use involves both low-skilled and high-skilled workers) | Construction, transport, media and arts and entertainment |
| Fixed-term employment | No specific sectors mentioned |
| Posting of workers | Construction and temporary agency work |
| Temporary agency work | No specific sectors mentioned |
| Apprenticeships and traineeships | In some countries, tourism was mentioned |
| Contractual relationship between companies or within company groups | Construction |
| On-call, casual and seasonal work | Agriculture, tourism, restaurants |

**Source:** *Eurofound's network of European correspondents, 2016*

labour, tax and social regulations are essentially defined nationally. Indeed, even cross-border fraudulent use seeks to avoid the application of national regulations, while it may also circumvent transnational rules, as in the case of the posting of workers.

Nevertheless, the cross-border component is still detectable in various aspects. First, cross-border relations by definition play a key role in the posting of workers. Moreover, they are mentioned in the case of self-employment, since trade licences may be easier to obtain than work permits for foreign workers. Fraudulent use involving foreign providers is also mentioned in the case of temporary work agencies, although this should be referred again to posting. In addition, extensive subcontracting chains, which involve foreign companies and could include subsidiaries or entities controlled by the contractor, may be used to misrepresent the nature of employment contracts. Secondly, the fraudulent contracting of work in certain cases seems to significantly involve migrant workers, such as those involved in seasonal work in agriculture and tourism.

## Cross-border dimension of the fraudulent contracting of work

A number of national reports point to fraudulent use which involves cross-border employment and contractual relations between companies. Posting of workers is cited by 15 national reports as being a form of contracting work significantly affected by fraudulent use. This includes both posting through subcontracting and temporary agency work. The effects of fraudulent use typically involve failure to apply the proper wage rates and other working conditions as provided by EU and national regulations and by universally applicable collective agreements, resulting in lower worker protection and unfair competition.

Among the various national cases, the use of subcontracting is reported to be one main source of the abuse of posting, for instance, in Belgium, Denmark, Slovenia, and Sweden. In Austria, abuse is reported to take place mainly through the provision of temporary agency work from neighbouring Member States, which leads to wage dumping through not applying collectively agreed wage rates. Similarly, cross-border temporary agency work appears to be significantly affected by fraudulent use in the Czech Republic. In France, Luxembourg, Netherlands, Norway, and Portugal significant abuse involves posting through both subcontracting and temporary agency work. Long subcontracting chains, which include foreign suppliers and possibly 'letterbox companies' or disguised subsidiaries of user firms, are also mentioned among the situations of the fraudulent contracting of work.

In all of these cases, the cross-border dimension is a key element of the contracting of work forms abused. It is also particularly relevant, as the capacity to both detect and effectively sanction fraudulent use is reduced: international cooperation between administrations and labour inspectorates is therefore crucial in order to combat such abuse and fraudulent use.

# 3 Typical fraudulent contracting of work

It is clear that each contractual form can be characterised by typical fraudulent use. For instance, fraudulent self-employment and freelance work can be used to mask subordinate employment, while fraudulent fixed-term employment can be used instead of a permanent contract. In the latter case, the vacancy may in fact be permanent or the rules may be violated in relation to the contract duration, the repetition of temporary contracts, the breaks between consecutive fixed-term contracts or other specific legal requirements. Apprentices may sometimes be used instead of regular workers and may not receive the specific professional training to which they are entitled.

More generally, fraudulent use disguises one of the basic elements of the 'standard employment contract'. In this respect, following the European Court of Justice, it should be stated that 'the essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which [he or she] receives remuneration' (CJEU 66/85, Lawrie-Blum, 3.7.1986). This definition points to two basic characteristics of the employment contract: the **subordination** of the employee to the employer and the existence of a **direct contractual relationship** between the employer and employee. As a third distinctive element can be added the **permanent nature** of the employment relationship, in accordance with the Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, which stipulates that 'contracts of an indefinite duration are, and will continue to be, the general form of employment relationship between employers and workers'. In sum, it can be said that the fraudulent contracting of work replaces the standard permanent, subordinate and direct employment relationship between the employer and the employee with fictitious contractual forms, which disguise one, two or all of these three basic elements. In terms of the specific impact of fraudulent use, the following features have been highlighted: the abuse of non-standard temporary employment contracts conceals permanent employment relationships; bogus self-employment circumvents subordination; fraudulent temporary agency work and the fraudulent subcontracting of services (including through posting) may disguise the direct relationship between the employer and the employee by interposing a third party, who acts as the formal employer.

## Disguising subordinate employment

In all EU Member States and Norway, the distinction between employment and self-employment continues to be based on the basic character of 'subordination'. In general terms, it is true to say that subordinate employees work under the direction of the employer for remuneration, usually established based on the time an employee spends performing his or her activities and – in most countries – paid on a weekly or monthly basis. However, the legal definition of 'subordination' varies quite substantially across countries. A lot of the countries do not include a specific definition of subordination in their labour law; others have rather general definitions, whereby 'subordination' corresponds to a sort of general clause that judicial

**Table 4: Key features of the standard employment relationship that are avoided through the fraudulent contracting of work**

| Contractual form | Subordinate | Permanent | Direct |
|---|---|---|---|
| Self-employment and freelance work | Y | Y | |
| Fixed-term employment | | Y | |
| Posting of workers | Y | | Y |
| Temporary agency work | | Y | Y |
| Apprenticeships and traineeships | Y | Y | |
| Contractual relationship between companies or within company groups | | | Y |
| On-call, casual and seasonal work | | Y | |

**Source:** *Eurofound's network of European correspondents, 2016*

interpretations define in practice and adapt to changes in society and production systems.

European law plays a limited role in harmonising the notion of subordination. The Court of Justice of the European Union (CJEU) has formulated a definition of worker[2] only with a view to identifying the scope of application of the free movement of persons (Article 45 of the Treaty on the Functioning of the European Union – TFEU).[3] It also used this definition for the purpose of applying secondary EU regulation concerning labour law, equality in employment, social security and health and safety.

However, in the case of Directives in the area of EU labour law, the corresponding Court case-law only relates to a small number of Directives (working time, collective redundancies). Other existing EU labour law Directives define their scope of application by reference to national definitions of employment relationships. Member States have therefore a margin of discretion when designing the concept of worker. As a consequence, there is no homogeneity in the actual scope of application of the EU Directives across the EU. Certain precarious workers may notably be excluded from the protection provided by these EU measures.

In its case law, the CJEU nonetheless established that, when implementing a directive, a Member State is allowed to exclude a category of persons from the protection granted to workers under EU law only if the employment relationship of those persons is of a substantially different nature from that between employers and employees falling, according to national law, under the category of workers .[4] This seeks to prevent Member States, when implementing EU directives, from instrumentally adopting special definitions of an employee in order to reduce their field of application (Perulli, 2011).

Indeed, subordination is an imprecise concept and difficult to manage from a legal perspective. Moreover, it is problematic, since this concept no longer seems to be able to single out those vulnerable workers who, due to their position in the labour market, need strong contractual protection guaranteed by law. Several developments in work and work organisation have led to greater complexity and growing difficulties in clearly identifying elements of the employment relationship, enabling subordination criteria to be applied in a non-controversial way. First of all, employers' roles have changed: new flat organisational structures, new technologies and new professional roles have made the direct oversight of employees' activities less necessary for employers than in the past. Moreover, even subordinate employees are required to perform work differently: they are now more often required to provide creative and innovative contributions to the undertaking rather than merely carry out the employer's orders. This is particularly evident in the media and communications sector (for instance, journalists, designers, webmasters and marketing experts), where workers are in an intermediate position between subordination and independence.

These developments have broadened the space between genuine subordinate employment and self-employment, now populated by semi-dependent or economically dependent workers who are difficult to characterise as employees or self-employed persons according to the traditional definitions of these two legal categories.

The uncertainty and technical difficulty that people face when qualifying an employment relationship in terms of 'subordinate employment' or 'self-employment' means that employers tend largely to use the latter.

As the national reports highlight, qualifying a relationship as self-employment implies the non-application of employment protection legislation, working time, health and safety at work, paid leave and holidays, the minimum wage and pension and insurance contributions, which are reserved for subordinate employees. Therefore, the bogus use of self-employment appears to be significant in competitive markets with narrow profit margins, such as the construction, cleaning, tourism and catering sectors.

It is almost two decades since the European Commission warned Member States against avoiding a dichotomy between subordinate employment and self-employment when granting contractual and social protection, since this distinction was no longer that clear and did not correspond to the actual labour market situation of individual workers (see Supiot, 1999; Perulli, 2011; Eurofound, 2002; European Commission, 2006; European Economic and Social Committee, 2011 and 2013).

However, Member States do not seem to have made much progress in this regard, and the gap in protection levels may still provide incentives for fraudulent use of self-employment.

2 According to CJEU case law, the employment relationship is characterised on the following basis: 'for a certain period a person performs services for and under the direction of another person in return for which he receives remuneration' (CJEU C–3/90, Bernini, 26.02.1992).

3 CJEU C–75/63, *Unger*, 19.3.1964; C–53/81, *Levin*, 23.03.1982; C–66/85, *Lawrie-Blum*, 3.07.1986; C–107/94, *Asscher c. Staatssecretaris van Financiën*, 27.06.1996; C–337/97, *Meeusen*, 8.06.1999; C–138/02, *Collins*, 23.03.2004.

4 CJEU C-334/92, *Wagner Miret*, 16.12.1993; CJEU C-32/02, *Commission v. Italy*, 16.10.2003; CJEU C-255/04, *Commission v. France*, 15.06.2006.

Some national reports describe the emergence of a further fraudulent way to disguise an employment relationship. Since domestic legislation in certain countries allows for the establishment of 'single-person' firms or 'single-partner' limited liability companies, employment contracts can be replaced by commercial contracts through different formal contractual relationships, according to national law. Examples include 'subcontracting' (Austria, Italy, Luxembourg, Slovenia), 'contracts of mandate' (Poland) or 'contracts for specific tasks' (Poland, Slovakia). Only commercial law governs these types of contracts. In this context, the two parties to the contract are considered to be equal; therefore, the protective regulations devised for subordinated employees do not apply.

Some reports (for instance, the French, Austrian and Cypriot reports) highlight the way apprenticeships and internships can disguise subordinate employment contracts. In these cases, employers directly use apprentices and interns as regular workers; they do not provide the required training and take advantage of the lower labour costs and job protection applicable to these employment relations. Indeed, at European level, the specific features of apprenticeships in this regard have been clearly established. In fact, the principle of equal treatment with other employees who are employed in the same undertaking does not apply to apprentices and interns, because all Member States apply Article 2(2) of Directive 99/70/EC, which unconditionally allow them to choose not to extend such a principle to:

a) initial vocational training relationships and apprenticeship schemes;
b) employment contracts and relationships which have been concluded within the framework of a specific public or publicly supported training, integration and vocational retraining programme.[5]

## Disguising permanent contracts

National reports indicate that abuse of fixed-term contracts and temporary agency work contracts is quite common across Member States. These contracts are used fraudulently to meet companies' permanent needs, even though national laws authorise their use exclusively for a limited duration and for temporary or exceptional reasons. The misuse of these types of contracts seeks to circumvent fair dismissal regulations and to avoid their economic and organisational costs. According to the national reports, fraudulent use is mainly due to loopholes in national provisions concerning the prohibition or limitation of reiterations of fixed-term contracts between the same company and the same employee.

The prevention of such abuse is the main objective of Directive 1999/70/EC of 28 June 1999 on fixed-term work. In order to prevent abuses arising from the use of successive fixed-term employment contracts, the directive states that Member States must provide one or more of the following measures: a) objective reasons justifying the renewal of such contracts or relationships, b) the maximum total duration of successive fixed-term employment contracts or relationships, c) the number of renewals of such contracts or relationships. Nevertheless, the directive largely leaves it to the discretion of Member States in defining these 'objective reasons', 'the maximum total duration' and 'the number of renewals'. As the Court of Justice of the European Union has observed on a number of occasions, Directive 1999/70 leaves it to the Member States to determine the circumstances under which fixed-term employment contracts or relationships are to be regarded as contracts or relationships of indefinite duration.

Above all, the directive leaves it up to the Member States to determine under what conditions fixed-term employment contracts: a) have to be regarded as 'successive'; or b) have to be deemed contracts of indefinite duration. Some national laws adopted definitions of 'objective reasons' or 'successive' fixed-term contracts that appear to introduce some leeway in the prohibition of indefinite reiterations. For example, the 2016 Italian law (Legislative Decree 81/2015) states that a new contract cannot be deemed 'successive' if, according to the subsequent contracts, the worker has to perform different tasks and activities, even for the same employer. Similarly, according to Polish law, a short break period (one month) between two consecutive contracts formally avoids having to qualify such contracts as 'successive', even if reiterations intervene repeatedly on a regular basis.

Nevertheless, the CJEU decisions shape the context in which Member States intervene. While national courts are competent to assess if measures limiting successive fixed-term contracts are abused in individual situations, the CJEU provides for specific guidance for this assessment. It is in particular continuous case law that 'EU law precludes national legislation which allows the renewal of fixed-term contracts to cover permanent needs, when those needs are, in fact, permanent'.[6] Furthermore, the CJEU has repeatedly stated that 'national authorities must provide for adequate measures that are sufficiently effective and dissuasive

5 See CJEU C–157/11, *Sibilio*, 15.03.2012, pp. 42, 52 and 53

6 See, for instance, CJEU C-16/15, 14.09.2016.

to prevent and penalise established abuses'.[7] Finally, the Court has a strict interpretation of the non-discrimination principle enshrined in the Fixed-Term Directive. Along this line, the Court recently underlined that fixed-term workers are entitled to contract termination compensation in the same way as permanent workers.[8]

Regarding temporary agency work, the abovementioned rules do not apply. In fact, the CJEU has clarified that rules set by Directive 99/70/EC to prevent abuse stemming from the repeated use of fixed-term contracts apply neither to the employment relationship between a worker and a temporary work agency nor to the relationship between that temporary worker and the user undertaking.[9] Both these relationships fall outside the scope of Directive 99/70/EC as these exemptions are explicitly referred to in the fourth paragraph of the preamble to the Framework Agreement on fixed-term contracts, while clause 3(1) limits its field of application to employment relationships concluded directly with the employer.

At EU level, temporary agency work is exclusively regulated by Directive 2008/104/EC of 19 November 2008. This directive sets out the rules applicable to workers having an employment contract with a temporary work agency and assigned to a user undertaking 'to work temporarily under their supervision and direction' (Article 3). Directive 2008/104/EC does not define the temporary characteristics of the worker's assignment to a user undertaking and leaves the regulation of this element to the national law.

The directive also limits the discretion of Member States by providing that 'prohibitions or restrictions on the use of temporary agency work' can be justified only 'on grounds of general interest' (Article 4). Within this framework, national laws establish the scope of temporary agency work only in general terms; as a consequence, it is difficult to determine whether the law has been violated or not.[10] Few Member States specify in their national law of implementation the requirement of 'temporariness' of workers' assignment to the user undertaking. Moreover, few stipulate a 'maximum total duration' or indicate the 'reasons justifying the renewals' of the assignment to the same user undertaking. Even the Member States including these types of provisions sometimes do not provide for an effective sanctioning system. Polish legislation illustrates this situation. Polish law (Act on employment of temporary [agency] workers of 9 July 2003) states the reasons for the authorised use of temporary agency workers on the basis of: a) seasonal, periodic or ad hoc tasks, or b) tasks whose timely performance by the workers of the user employer would not be possible. However, Polish law does not provide for any sanctions if a temporary work agency sends a temporary worker to perform work not meeting these requirements; moreover, it is debatable if sanctions can apply to the client/user employer.

## Disguising direct employment by posting

A number of national reports from mainly northern and western European Member States (Austria, Belgium, the Czech Republic, Denmark, France, Germany, Hungary, Italy, Luxembourg, the Netherlands, Norway, Portugal, Romania, Slovenia and Sweden) point to the significant abuse of the posting of workers: the abuses are mostly the fact of companies or temporary work agencies formally established in one Member State, notably in enlargement countries, and sending posted workers to other Member States, usually in Nordic and western countries. A few reports also refer to abuse concerning national workers posted abroad (for instance, the Romanian and Slovenian reports).

The posting of workers has been regulated at European level (Eurofound, 2010). Directive 96/71/EC addresses the posting of workers from one EU Member State to another, defining the cases of posting and the labour rules applicable to posted workers. The directive requires that undertakings provide temporary services in a Member State (the host state) other than the Member State where they were established (the home state) to apply to posted workers a 'hard core' of clearly defined protective rules in force in the host Member State (14th recital). The host state's rules to be applied relate to the following:

a) maximum work periods and minimum rest periods;
b) minimum paid annual holidays;
c) minimum rates of pay, including overtime rates (this does not apply to supplementary occupational retirement pension schemes);

7 See, for instance, CJEU 14.09.2016 in joined cases C-184/15 and C-197/15. See also: Aimo (2016) and Zappalà (2006).

8 See CJEU C-596/14, 14.09.2016.

9 See CJEU C–290/12, Della Rocca v. Poste Italiane SpA, 11.04.2013 pp. 36 and 39. See also: Countouris and Horton (2009), Mimmo (2013), Robin-Olivier (2013), Schömann and Guedes (2012), Ferrara, (2013).

10 See Schömann and Guedes (2012), Ferrara (2013).

d) conditions of hiring out workers, in particular the supply of workers by temporary employment undertakings;

e) health, safety and hygiene at work;

f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;

g) equality of treatment between men and women and other provisions on non-discrimination (Article 3.1).

Host Member States may expand this list only 'in the case of public policy provisions'. The directive allows Member States – the above limitation notwithstanding – to extend to posted workers the application of the terms and conditions of employment set out in national collective agreements, only if they are declared 'universally applicable' (Article 3.10).

In practice, it is often difficult to identify genuine posted workers. First, distinguishing between genuine posted workers and foreign workers (who are permanent or resident workers in the host Member State) is not an easy task. In fact, it is hard to assess the criteria of posting devised by the directive. Indeed, it is difficult to determine whether a worker 'carries out his [her] work in the territory of a Member State other than the State in which he [she] normally works' for 'a limited period'; or if 'the posted worker returns to – or is expected to resume working – in the Member State from which he or she is posted, after completion of the work or the provision of services for which he or she was posted' (Article 4.3d), as indicated respectively by the Posting of Workers Directive 96/71/EC and the Enforcement Directive 2014/67/EU.[11]

In more practical terms, posted workers should hold a document (PD A1 form) stating that they are socially insured in another Member State and are working for a definite period in the host Member State. Therefore, one concrete challenge for detecting abuse lies with the inspection authorities in verifying whether supposedly posted workers have such a form in the first place, and secondly whether the information stated in such forms is true. Moreover, since the PD A1 form does not include information on the service to be performed in the host country, inspection authorities must also verify whether the posting takes place within the framework of the temporary provision of services.

The applicable legal regimes are substantially different in the case of posted workers and of foreign resident workers, for whom all national rules must clearly apply.

Posted workers can legitimately enter the host state's territory and work there because of the freedom to provide (temporary) services enjoyed by the worker's company. In fact, if a foreign company wishes to set up a permanent branch in any Member State, it can do so thanks to the freedom of establishment. In such instances, the company would have to apply the complete set of regulations of the 'establishment' Member State to all of its employees. However, Directive 96/71 defines neither the 'temporary' provision of services nor the maximum period for which a worker can be considered to be a posted worker. According to the CJEU jurisprudence, a service can be considered 'temporarily provided' when it is 'determined and known in advance' that the service is going to be provided in another (host) state 'for a limited span of time', regardless of the duration of time.

Most of the national reports (Austria, Belgium, Czech Republic, Denmark, France, Germany, Hungary, Italy, Luxembourg, Netherlands, Norway, Portugal, Romania, Slovenia and Sweden) indicate similar fraudulent use of the posting of workers. Typically, in such instances, a company that is permanently established in a Member State and carries out its activities there subcontracts some of its activities to another company (often completely owned by the former). Although the latter company is formally established in another Member State, it is completely inactive there – a so-called 'letter box company'. The two companies pretend to post employees hired by the subcontractor to provide temporary services in favour of the contractor. The employees are formally hired by the subcontractor and registered as habitually working in the Member State where the subcontractor is legally established and where the law or collective agreements provide for lower minimum wages and social contributions – or other less protective or less expensive employment conditions than those stipulated in the Member State where the contractor is established. In reality, these employees have never worked before for the subcontractor in its Member State of origin; they have been hired expressly and solely to work in the other Member State where the contractor carries out its activity. Therefore, the two companies try to create an ostensible contractual framework to justify – in formal compliance with Directive 96/71/EC – the application of the more convenient labour regulations of the Member State where the subcontractor is established in lieu of those of the host Member State. The rules of the latter state should in fact be wholly applied if these employees were properly registered as working in the host Member State for the user company.

11 See Barnard (2009), Cremers (2016), Davies (1997), Davies (2002), Richard (2016), Sjödin (2013), Verschueren (2015) and Zimmer (2011).

Another typical form of fraud involves the posting of employees to carry out a 'permanent activity' instead of a 'temporary service'. Only the latter justifies the application of the terms of employment of the Member State where the subcontractor is established, in accordance with Directive 96/71/EC. The jurisprudence of the CJEU indicates that a service can be defined as 'temporary' only if, from the outset, it is certain that the service will come to an end, even if it is not known when this will happen, as in the case of procurement contracts.

Analysis of the national reports underlines the importance of cross-border cooperation and enforcement, on which the Enforcement Directive 2014/67/EU is focused. This directive was due for transposition into national legislation by June 2016.[12] Some initiatives to reinforce administrative cooperation between Member States (as in the case of Germany) underline the key role of cross-border information exchanges and enforcement, with a view to fighting fraudulent use of the posting of workers.

12 On the transposition of Directive 2014/67/EU, see Eurofound (2016).

# 4 Main causes and consequences

## Enabling factors

Fraudulent contracting of work usually offers a number of advantages to the parties involved. For instance, the employer can unfairly increase the company's competitive edge by reducing labour costs (wages and social contributions), health and safety obligations as well as taxes, and by increasing work and organisational flexibility. Sometimes, workers may share or perceive they share such benefits through lower taxes and higher take-home pay. These so-called 'benefits' are often regarded as the causes of fraudulent contracting of work. However, this study adopts another perspective. Although such benefits may explain the 'motives' behind the use of fraudulent contracting of work, they more appropriately pertain to the 'effects' of fraudulent use, since they describe the impact on employment and working conditions.

From this viewpoint, in order to understand and explain the emergence of fraudulent use, it is important to investigate the conditions that facilitate the diffusion of the fraudulent contracting of work in the first place – irrespective of the benefits obtained by the parties involved. Following this approach, there are a number of circumstances that may influence the possibility of fraudulent use of labour contracts or subcontracting.

1. The legal framework may leave scope for abuse because of ambiguities, incorrect specifications, loopholes, contradictions in existing rules, and frequent legislative revisions and amendments. In practice, this means that the boundaries between the lawful and fraudulent use of a specific employment or contractual relationship may be blurred and open to dispute. This would make enforcement more difficult from a legal and technical viewpoint.
2. There may be a low capacity to detect abuse and violations and to enforce legal regulations due to a lack of tools or resources. This may be linked, for example, to:
   - the low number of labour inspectors, and resources available to labour inspectorates, relative to the number or size of workplaces;
   - the inadequate capacity of enforcement bodies – such as lack of IT tools, knowledge and methods, and coordination between different bodies or regions;
   - the lack of trade union representation;
   - the complexity and length of administrative and jurisdictional procedures to detect and sanction the fraudulent contracting of work.
3. Complex and varied employment relations may be growing, for example, in relation to:
   - the diffusion of non-standard employment relationships, such as self-employment, freelance work and temporary agency work – especially in specific sectors such as construction, road haulage, tourism, trade, agriculture, media and entertainment, which can make the detection of fraudulent contracting of work more difficult and controversial;
   - the presence of trilateral employment relationships – as in the case of temporary agency work, the posting of workers or through the use of subsidiaries and controlled companies, which can again make detection of violations more difficult;
   - the presence of cross-border contractual or employment relationships, which can make controls more difficult, especially taking into account insufficient cross-border administrative cooperation and enforcement tools.

Table 5 (overleaf) summarises the main enabling factors of the fraudulent contracting of work, as documented in the national reports. Besides some regulatory issues – notably the difficulties in defining uncontroversial criteria to distinguish between subordinate employment and self-employment – two other elements stand out: the problems of detecting fraud and administering the sanctions; and the difficulties in obtaining workers' cooperation due to their particularly weak position. In fact, in many cases, workers involved in the fraudulent contracting of work prefer not to get involved in disputes concerning the qualification of their employment relationship due to fears of retaliation and of losing their job.

## Effects of the fraudulent contracting of work

The misqualification of the employment relationship leads to a number of consequences involving:

- the legal status and the economic and working conditions of the workers involved;
- the presence and nature of specific employer's obligations in the contractual relationship;
- the nature of the income earned, whereby different rules may apply regarding social contributions and fiscal issues.

### Table 5: Main factors enabling fraudulent use of contracting work according to the national reports

| Contractual form | Main factors enabling fraudulent use |
|---|---|
| **Self-employment and freelance work** | • Difficulties in distinguishing self-employment from subordinate employment<br>• Fragmentation of monitoring and inspection powers (labour, fiscal, health and safety)<br>• Costs and difficulties in detecting fraudulent use<br>• Difficulties in obtaining workers' cooperation to detect fraudulent use |
| **Fixed-term employment** | • Unclear definition of requirements for fixed-term employment |
| **Posting of workers** | • Difficulties of administrative cross-border cooperation to obtain information and enforce sanctions |
| **Temporary agency work** | • Costs and difficulties in detecting fraudulent use |
| **Apprenticeships and traineeships** | • Lack of clear rules, especially on traineeships and internships<br>• Costs and difficulties in detecting fraudulent use<br>• Difficulties in obtaining workers' cooperation to detect fraudulent use |
| **Contractual relationship between companies or within company groups** | • Costs and difficulties in detecting fraudulent use |
| **On-call, casual and seasonal work** | • Costs and difficulties in detecting fraudulent use<br>• Difficulties in obtaining workers' cooperation to detect fraudulent use |

**Source:** *Eurofound's network of European correspondents, 2016*

Such misrepresentation typically leads to significant consequences for the protection of the workers involved. In particular, the fraudulent contracting of work tends to give lower economic and working conditions than those provided under the standard employment relationship. For instance, 'fake' self-employed workers typically receive lower take-home earnings, work longer and unsocial hours compared with employees, and are not covered by some welfare benefits. Moreover, they remain essentially under the employer's directions and supervision, and do not have the autonomy to organise themselves in the same way as genuine self-employed workers. A general consequence of the fraudulent contracting of work is that it involves a series of shorter or longer contracts, with more or less numerous unemployment spells. This is critical in contribution-defined pension systems, since it will affect the pension amount. The discontinuous nature of employment in these cases may also impact on welfare entitlements, especially in relation to unemployment benefits.

Table 6 below provides a summary of the consequences for workers and employers of fraudulent use of employment relationships.

### Table 6: Consequences of fraudulent use for workers and employers according to national reports

| Contractual form | Consequences |
|---|---|
| **Self-employment and freelance work** | • No application of collective agreements, including collectively agreed minimum wage rates<br>• No application of legal minimum wage<br>• Higher working time flexibility, with no supplements for overtime work<br>• No or lower social contributions to be paid by the contractor (employer); social contributions to be paid by workers, as applicable<br>• Different health and safety rules, with the costs of protective equipment and safety certifications to be borne by workers<br>• No job security; liabilities for termination of contract same as for civil law<br>• Business income tax instead of personal income tax to be paid on earnings<br>• Business earnings calculated net of costs |

| Contractual form | Consequences |
|---|---|
| **Fixed-term employment** | ◦ Temporary duration of employment<br>◦ Some wage elements may not be applied – for instance, seniority payments |
| **Posting of workers** | ◦ Only some 'core' rights in force in the host country are applied to posted workers, as set out in local legislation or generally binding collective agreement<br>◦ Other elements of the employment relationship, including social contributions, are set out in accordance with the regulations in force in the sending country |
| **Temporary agency work** | ◦ Temporary duration of employment<br>◦ Despite the European principle of 'equal treatment' and national regulations, wages may be different from those applied in the user company for the same tasks and jobs |
| **Apprenticeships and traineeships** | ◦ Traineeships may have considerably lower compensations, which may only be defined as lump-sum reimbursements, with different or no payment for social contributions<br>◦ Temporary duration of work |
| **Contractual relationship between companies or within company groups** | ◦ Wages may be different from those paid by the 'customer company' for the same tasks and jobs |
| **On-call, casual and seasonal work** | ◦ Temporary duration of work<br>◦ Some wage elements may not be applied |

**Source:** *Eurofound's network of European correspondents, 2016*

# 5 Responses and actions to combat the fraudulent contracting of work

Alongside the sanctions envisaged for fraudulent use of the various forms of employment and contractual relationships, the national reports identify a number of actions promoted by governments and social partners, sometimes jointly, with a view to reducing the scope of fraudulent use.

Such initiatives include:

- legislative interventions to clarify the regulatory framework and enhance inspection powers, as well as sometimes measures to strengthen sanctions;
- administrative actions to reinforce monitoring and detection capabilities;
- information and awareness-raising campaigns targeted at both employers and workers to promote cooperation in avoiding and tackling the fraudulent contracting of work.

The abovementioned initiatives can be classified along the lines used in previous research carried out by Eurofound on tackling undeclared work (Eurofound, 2013). Although, as already underlined, the fraudulent contracting of work covers a separate set of phenomena, it is true that fraudulent use and undeclared work both highlight the need for better enforcement. Therefore, measures devised to address the two distinct situations may show some similarity.

However, one significant aspect of fraudulent use not applying to undeclared work should be highlighted here. Fraudulent use, as already mentioned, may exploit loopholes or ambiguities in legislation; therefore, to address this issue, one specific measure would be to overcome such regulatory uncertainty. This kind of measure is not usually relevant to undeclared work, whose irregularity is represented by the simple fact of not being declared.

Applying the classification used by Eurofound for measures tackling undeclared work, responses to fraudulent use could be organised around two main objectives:

- improving deterrence by strengthening detection and increasing penalties;
- enabling compliance by introducing preventative or curative measures and by fostering commitment.

The first set of measures affects the likelihood of detection (the risk of being identified and sanctioned for fraudulent use) by increasing such a probability as well as the severity of sanctions, thereby discouraging fraudulent use. The second set of measures increases rewards for compliance, both in material (economic) and immaterial (commitment and reputation) terms.

The abovementioned measures, focusing on a clearer definition of the regulatory framework, therefore meet two objectives: first, they improve the capacity of inspection and judicial bodies to identify fraud, thereby improving deterrence; second, they clarify the position of economic actors and their awareness about the correct contractual qualification, thereby supporting compliance.

## Deterrence measures

'Baseline' deterrence measures are those establishing sanctions for fraudulent use of the various forms of employment or contractual relations covered by this study. Indeed, various sanctions have been devised at national level to address the fraudulent use of employment and contractual relationships. Nevertheless, their efficiency is not obvious. Some national reports, for instance the UK and Belgian reports, are critical of the insufficiency of deterrence measures and the ineffectiveness of legal sanctions against fraudulent forms of work contracts.

### Sanctions

Several types of sanctions are used by the Member States, ranging from requalification of the fraudulent form of contracting work into the proper contractual relations to criminal sanctions, with a range of civil and economic sanctions in between.

However, it should be noted that no uniform sanctions have been established at European level, even for matters on which the EU has regulative competence. Therefore, directives concerning social matters – for instance, employment relations such as fixed-term work and temporary agency work – do not provide for specific sanctions against violations. However, the CJEU has clarified that Member States have to provide for national measures to remedy violations of rights conferred by EU law, even in the absence of any specific 'remedy provisions' in the directive concerned. [13]

13 CJEU C–158/80, *Rewe*, 7.7.1981; C–222/84 *Johnston*, 15.5.1986.

In a significant number of Member States (Czech Republic, Finland, France, Germany, Hungary, Ireland, Luxembourg, Portugal, Slovenia, Sweden), the main sanction applicable to fraudulent use is requalification of the employment relation. Accordingly, when the fraudulent contracting of work is detected, labour courts do not declare the fraudulent employment contract null and void, but instead convert it into the 'disguised' one, retroactively since the start of the fraudulent employment relationship. In this case, the ruling is considered to have a 'declaratory' efficacy and not a 'constitutive' one. This is because it properly qualifies a contractual relationship which the parties have already established in practice. Moreover, all the rights (especially minimum wage and pension contributions) associated with the real contractual relationship (the declared one) apply to the employee and are to be borne by the employer, exactly as if the relationship had been correctly qualified since the outset and its proper rules had been applied.

Often, Member States deem the requalification of the employment relationship as a sanction, but they limit it to tackling specific types of fraudulent contracting work, mainly: fraudulent fixed-term contracts (Czech Republic, Finland, France, Hungary, Ireland, Luxembourg, Netherlands, Slovenia, Sweden); bogus self-employment (Czech Republic, Finland, France, Germany, Ireland, Luxembourg, Portugal, Sweden, UK); fictitious temporary agency work (Czech Republic, France, Hungary, Luxembourg); false apprenticeships and internships (France, UK); and fraudulent commercial contracts (Czech Republic, Netherlands). Moreover, in some cases, the requalification of the employment relationship is limited to certain effects or circumstances. Under Romanian law, the requalification of false posting of workers and self-employment as employees is relevant only for fiscal matters. Italian and Greek laws exclude the possibility to requalify the employment relationship when the employer is a public administration, in this case only providing for economic compensation. In Norway, requalification of the employment relationship is provided for as an alternative to economic compensation and the choice between the two is left up to the worker experiencing fraud.

Some reports (Ireland, Poland, UK) underline the difficulty workers face in obtaining the requalification, since only judges and not labour inspectorates or equivalent control bodies can requalify the contractual relationship between employer and employee; therefore, it is necessary for the latter to sue the former. Moreover, the length and costs of trials, as well as the fear of being labelled a 'difficult worker', often discourage workers from taking action. Therefore, there are very few trials on these issues, even if the phenomenon of fraud is deemed extensive (Ireland, Poland, UK). Sweden specifically addresses this problem by allowing trade unions to directly sue the employer on behalf of the worker. In Bulgaria, the law empowers the supervisory bodies of the labour inspectorate to sanction the use of 'occasional work' to disguise a permanent employment relationship.

Sometimes, problems in requalifying the employment relationship may be linked to legal aspects, which may require legislative corrections, as in the case of Poland. The Polish Supreme Court rejected the possibility to transform temporary agency work relationships into direct employment relationships between the user-employer and the temporary worker, in a case where the allowed periods of temporary work had been exceeded. However, the Supreme Court also highlighted the risk of abuse of temporary agency workers and required the government to amend the Act on the employment of temporary workers, introducing a judicial remedy. In Poland, the Labour Court may transform a fixed-term contract into an open-ended contract only if the fixed-term contract is concluded for an extremely long period of time (more than 20 years), and if the employee is proactive in this respect and files a declaratory judgement action seeking to establish the existence of an open-ended contract. Scholars and social partners have underlined the ineffectiveness of this regulation in counteracting abuse of fixed-term employment; therefore, the Polish government has decided to approve a new regulation (Article 25(1) of the Labour Code), entered into force in February 2016. This regulation stipulates that the duration of a fixed-term contract as well as the total period of employment under fixed-term contracts, concluded between the same parties, may not exceed 33 months, and the total number of such contracts may not exceed three.

When requalification of the employment relationship is envisaged, Member States (Bulgaria, Czech Republic, Finland, France, Hungary, Ireland, Luxembourg, Portugal, Slovenia, Sweden) often apply administrative sanctions and fines mainly only to the employer, given the asymmetrical contractual power of the two parties to the employment contract. Under some legal systems (for instance in the Netherlands), the administrative sanction may involve the 'temporary suspension' or 'definitive closure' of the employer's activity, notably in the case of unlawful or unauthorised temporary work agencies. Administrative sanctions may be applied directly by the labour inspectorates or other competent public administration bodies when they detect a fraudulent work contract, without the request or approval of the workers directly involved. In fact, fines to be paid in favour of public administration bodies do not bring any direct advantage to workers and, as a result, there is no need to involve them. Workers may even try to avoid sanctions being applied to their employer out of fear of losing their job rather than seeing it as a way to obtain a new lawful contract.

A handful of Member States (such as Austria, Luxembourg and Slovenia for false posting of workers,

or Bulgaria, Ireland, Poland and Romania for false temporary agency work) impose only economic fines on the employer, without the requalification of the contractual relationship. However, since the Enforcement Directive (2014/67/EU) has been transposed into some national laws after the data were collected for this study, there is the possibility that Member States may have introduced other sanctions in the transposition laws, including the transformation of inconsistent posting relationships into direct employment relationships in the host country between the worker and the end user of the service.

Another legal device widely used in some Member States (such as Austria, Germany and Italy) is to impose a joint liability on both the formal employer and user undertaking for fraudulent employment contracts with regard to the payment of wages and social insurance contributions, to be applied in the case of fraudulent agency work, posting of workers and subcontracting. In 2016, Austria extended the liability of the contractor to cover wage-dependent levies, in addition to the already existing obligation to cover social contributions.

In the case of false posting of workers, almost all Member States only provide for economic sanctions to be paid by the 'formal employer' or by both the employer and the customer or user undertaking (as in the case of Austria).

According to the national reports, a limited number of Member States (such as Greece, the Netherlands and Norway) use criminal sanctions to penalise the most serious misuse of contracting work.

### Difficulties in applying deterrence

As illustrated above, Member States have devised a number of sanctions aimed at deterring fraudulent use of contracting work. However, detecting violations and effectively implementing sanctions remain difficult, weakening the actual deterrence power of the sanctioning system.

Indeed, poor deterrence seems to be related to the difficulties facing labour inspectorates and judges in detecting such practices, to the obstacles preventing workers from taking an action against their employer (time, cost, lack of appropriate information on workers' rights), and to the widely uncertain results of taking this kind of action before administrative or judicial authorities. In particular, the UK report indicates how fees introduced to bring a case before labour courts have resulted in a huge decrease in claims, representing a serious financial barrier to claimants seeking to assert their employment rights against employers.

Therefore, the cost of proceedings and the low probability of being detected or sanctioned increase the attractiveness of fraudulent use, which can bring significant economic and organisational advantages to employers in particular.

## Compliance measures

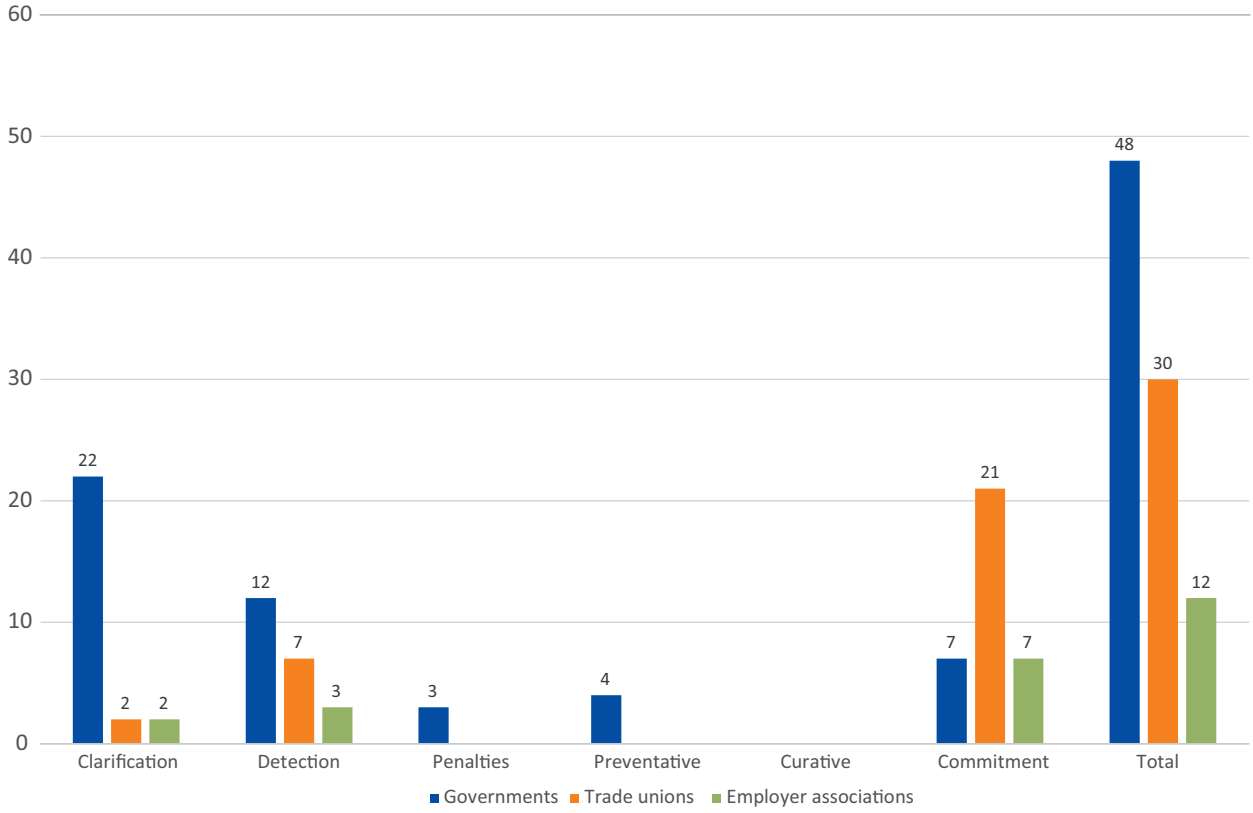
Among the compliance measures, the reports identified a variety of initiatives, including campaigns and partnership agreements, introduced to fight the fraudulent contracting of work.

It is uncommon for Member States to adopt 'positive sanctions' – incentives, preventative or curative measures aimed at hindering the use of fraudulent contracting of work by companies. In the Italian labour market reform approved in 2015 (Decree No. 81/2015), the legislator introduced an amnesty regarding possible fines and compensations for paying lower salaries and contributions if the employer transformed an existing self-employed contract (including those suspected as being bogus self-employment) into an open-ended subordinate employment contract by the end of 2015.

Some Member States, such as the Netherlands, have provided for voluntary preventive certification of the lawfulness of contracts, issued by the labour inspectorates or by bilateral commissions of social partners. For instance, Luxembourg introduced a 'social badge' to be worn by all workers on building sites, making it easier for inspectors to check that their contracts are lawful and regularly registered. This badge, issued by the labour inspectorate at the company's request, is delivered after examining the lawfulness of the contract applied to the workers, especially if they are posted from foreign countries. Nevertheless, a presumption of regularity of contractual relationships provided by a preventive certification is not necessarily effective in avoiding fraud. Indeed, this kind of preventive control carried out by the labour inspectorate requires analysis of the formal aspects of the contract; therefore, if the actual relationship does not correspond to the letter of the contract, this can only be detected afterwards.

One of the most common measures adopted by Member States is revising the rules for the application of contractual relationships that seem to be most affected by fraudulent use. In this way, especially by introducing stricter requirements, Member States aim to clarify the permitted usage and promote the correct use of various forms of contracting work. The risk of this intervention strategy is that it ends up limiting genuine and lawful contracts as well, with a possible negative impact on the rate of employment and on organisational flexibility.

**Figure 2: Reported types of initiatives taken by governments, trade unions and employer associations to combat the fraudulent contracting of work**




**Source:** *Eurofound's network of European correspondents, 2016*

## Variety of stakeholder responses and actions

The national correspondents were asked to outline the actions taken by governments and the social partners to tackle the issue of the fraudulent contracting of work. Analysis of the questionnaires shows a clear prevalence of actions taken by governments and public bodies (see Figure 2 and Table 6 for a summary of the various actions). This is actually to be expected, since the fight against fraud essentially involves the regulatory, monitoring and sanctioning dimensions, in which public actors play a pivotal role.

Indeed, there appears to be a clear distinction between measures taken by governments and those adopted by the social partners. While government initiatives focus mainly on improving regulation, strengthening detection and increasing sanctions, the social partners mainly operate to increase commitment to compliance, notably by organising information campaigns.

Legislative initiatives by governments aimed at better clarification of the rules are the most common type of initiative for addressing the fraudulent contracting of work. The second most common type of intervention is enhancing the detection capabilities of public authorities, focusing mainly on improving data collection (such as registers for posted workers), better inter-administration coordination at national level (usually between labour inspectorates, tax authorities, welfare bodies, customs services and the police), and cross-border cooperation with the inspection authorities of other Member States. Increasing penalties for fraud is far less common; as already mentioned, this is probably linked to the fact that the main problems of deterrence relate to enabling detection and imposing sanctions, rather than changing the sanctions already in place.

Trade unions are particularly vocal in highlighting the significant presence of fraud in employment relationships, calling for regulatory reform. In some cases, they also engage in initiatives aimed at improving detection capabilities. Indeed, improved detection has been called for, for instance through developing reporting systems by workers involved in alleged fraudulent contracting of work. In Austria, for example, the white-collar Union of Salaried Employees, Journalists and Graphical Workers (GPA-djp) created specific websites for this purpose. In Spain, the Trade Union Confederation of Workers' Commissions (CC.OO) in Extremadura, in cooperation with the Spanish labour inspectorate, established an 'online mailbox' for

workers to report fraudulent situations. Such measures can also involve direct reporting by trade unionists, based on information collected in their day-to-day activities or through specific visits to workplaces, as seen in the case of fraudulent on-call work and posting in the Netherlands.

Employer associations, although they condemn the fraudulent contracting ofwork and support the initiatives aimed at combating them, seem to be less active, especially when unilateral actions are taken into consideration. Indeed, employer associations seem keen to be involved in joint actions, particularly at the sectoral and local levels, as well as in government-driven initiatives. They actively contribute to and participate in tripartite initiatives or consultation rounds sometimes focusing on fraudulent use of contracting of work, among other topics.

The involvement of the social partners is a feature across all types of industrial relations systems, including countries with a well-established social dialogue tradition as well as countries that are usually less active in this field. Significant examples include the following:

- the new rules on fixed-term contracts and temporary agency work introduced in 2012 in Finland after consultation with the social partners;
- the employment reform agreed in the Netherlands in 2013 between the government and the social partners;
- the 2008 Tripartite Agreement for a New System of Regulation of Industrial Relations, Employment Policies and Social Protection concluded in Portugal (and transposed into law in 2009), which includes a number of measures seeking to improve regulation, enhance inspection activities and increase sanctions to combat the fraudulent contracting of work;
- the numerous partnership agreements signed by the social partners and public authorities to combat the fraudulent contracting of work at sectoral and regional levels in France.

While the regulatory dimension is certainly dominated by governmental authorities and legislative initiatives, it is worth mentioning two examples of clarifying measures jointly undertaken by the social partners.

The first example relates to rules on subcontracting introduced in the 2008–2010 collective agreement in the construction sector in Cyprus – although the agreement has now expired and the issue remains controversial between trade unions and employers. The second example concerns the cooperation agreement between the Czech Metalworkers' Federation (OS KOVO) and the Association of Personnel Services Providers (APPS) in the Czech Republic. This agreement was signed to ensure 'dignified working conditions' and was aimed at 'combating illegal forms of employment'. It was followed by a company-level agreement in May 2014 at the Škoda Auto plant in Mladá Boleslav between the trade union branch and a number of temporary work agencies. The sectoral dimension of these initiatives should be noted.

## Specific nature of measures combating the fraudulent use of work

Despite a few similarities, it is interesting to note how the situation regarding fraudulent practices is quite distinct compared with that concerning the fight against undeclared work. In the latter case, alongside measures aimed at enhancing detection and increasing penalties, the majority of initiatives have a preventative and curative nature. The measures seek to provide material incentives and to help people to enter the regular economy, whereas efforts to increase commitment to compliance play a smaller role.

The very nature of the fraudulent contracting of work precludes the use of incentives to support compliance. In fact, the few examples reported in this area either refer to increased taxes and social contributions for certain types of atypical employment contracts (Italy, Romania and Slovenia), to the introduction of simplified rules for certain types of employment contracts (Hungary) or to the introduction of a new type of employment contract (Slovenia).

It should be highlighted that increasing tax rates and social contributions for specific types of employment contracts is not a straightforward measure. Countries such as Italy, Romania and Slovenia use this measure to reduce the economic incentives offered by certain contracts, as this may be part of the reason behind fraudulent use. However, this measure cannot be strictly regarded as one that tackles the fraudulent use of employment since it affects all contracts, both compliant and fraudulent ones.

## Table 7: Initiatives to combat the fraudulent contracting of work, by stakeholder type

| | Government and public bodies | | Trade unions | | Employer associations | |
|---|---|---|---|---|---|---|
| **AT** | Law against social and wage dumping was enacted in 2011 and updated in 2015.<br>Law against social fraud (to be implemented in 2016) seeks to constrain the use of subcontracting chains as a means to fraudulently reduce labour costs to the detriment of workers' economic and working conditions. | Clarification | Trade unions organise awareness-raising campaigns and support legislative initiatives to fight fraudulent forms of contracting work.<br>The white-collar union GPA-djp created special websites (www.watchlist-praktikum.at and www.watchlist-prekaer.at) where workers can report anonymously the misrepresentation of employment contracts. | Commitment<br>Detection | The Austrian Economic Chamber (WKÖ) initiated an information and awareness-raising campaign in the field of traineeships; it supports the development of quality standards for traineeships, rather than new legislation.<br>A similar information and awareness-raising campaign has been devoted to self-employment. | Commitment |
| **BE** | The Social Information and Tracing Service was launched in 2006 (*Sociale Inlichtingen- en Opsporingsdienst/Service d'Information et de Recherche Sociale*, SIOD/SIRS).<br>Measures especially target certain sectors such as construction, transport, cleaning and the meat industry.<br>Coordination has been enhanced between various social security institutions. | Detection | Trade unions support the claims of workers involved in fraudulent use. | Detection | | |
| | Among other initiatives, SIOD/SIRS promotes sectoral roundtable conferences with employer and trade union representatives to facilitate the joint definition of concrete measures to combat social fraud. SIOD/SIRS contributed to the establishment of the databank 'Oasis', which links the databases of the various social security institutions to detect more effectively cases where social fraud, including fraudulent contracting of work, may be present. | | | | | Commitment |
| **CY** | A committee was established in 2012 to investigate terms and conditions of traineeships in the hospitality sector and to propose new measures.<br>The Ombudsman presented a report on the same topic in 2015.<br>Rules have been introduced about subcontracting in public construction. | Commitment<br>Clarification | Sectoral trade unions presented in 2010 a study on fraudulent traineeships in the hospitality sector. | Commitment | | |
| | | | Rules about subcontracting were included in the 2008–2010 collective agreement in the construction sector – currently, the agreement has expired and the rules remain controversial. | | | Clarification |

| | Government and public bodies | | Trade unions | | Employer associations | |
|---|---|---|---|---|---|---|
| **CZ** | Fixed-term work – clearer rules have been set out about the reiteration of fixed-term contracts in:<br>• the education sector (minimum duration of 12 months plus two consecutive reiterations only) from September 2016<br>• temporary work agencies (to abide by the general rules on fixed-term contracts, the maximum duration is three years and two reiterations). | Clarification | The Czech-Moravian Confederation of Trade Unions (CMKOS) together with the Czech Metalworkers' Federation (OS KOVO) raised the issue of illegal employment agencies. | Commitment | TAW employers' organisations have:<br>• encouraged actions to combat illegal 'pseudo' agencies through enhancing reputation and legitimation<br>• introduced a 'black list' of irregular employment agencies<br>There is cooperation with public bodies to combat fraudulent temporary agency work. | Commitment<br><br>Detection |
| | Monitoring activities have been strengthened to detect fraudulent use and abuse in the TAW sector by the State Labour Inspection Office (SLIO/SUIP) in the framework of a project of the Ministry of Labour and Social Affairs (MoLSA) and funded by the European Social Fund. | Detection | A 2014 cooperation agreement was approved between KOVO and APPS to ensure the enforcement of dignified working conditions and to combat illegal forms of employment.<br>In May 2014, the first collective agreement with temporary work agencies was signed at Škoda Auto between the union KOVO MB and the temporary work agencies ManPower, Trenkwalder and DP Work. | | | Clarification |
| | More generally, in 2012, a reform has strengthened the inspection capacity of SLIO. | Detection | | | | |
| | Legislation on self-employment (*švarcsystem*) has been tightened in recent years and penalties have been extended to self-employed workers when violations are detected. | Penalties | | | | |
| **DE** | In 2015, a draft bill was introduced for amending the Act on TAW and other acts, aimed at 'restricting temporary agency work to its core function' and seeking to 'combat the misuse of contract work'. | Clarification | DGB is campaigning for regulatory reforms to fight fraudulent forms of contracting work covering, among the others, bogus-self-employment, cross-border frauds and subcontracting chains. | Commitment | | |
| | A central public office to assess whether a person is self-employed or a worker was established in 2010 within the German Pension Insurance. | Clarification | | | | |
| | Increased monitoring: resources have been assigned to the Custom Service, responsible for monitoring the application of the Act on TAW, the Posted Workers Act, the Minimum Wage Act and for detecting undeclared work. | Detection | | | | |
| | Intergovernmental agreements have been signed with Austria (2013), Bulgaria (2010), the Czech Republic (2010), France (2001) and the Netherlands (2013) on combating irregular cross-border placement of (TA) workers and undeclared work; the cooperation between the German Customs Service and foreign public authorities was strengthened in controlling posted workers. | Detection | | | | |

| | Government and public bodies | | Trade unions | | Employer associations | |
|---|---|---|---|---|---|---|
| **DK** | Taskforce against social dumping has been established.<br>Data collection about the posting of workers has been enhanced through the creation of the RUT-Register. | Detection | Awareness-raising campaigns and initiatives have been launched by the United Federation of Danish Workers (3F) trade union in the construction sector, including through visits at workplaces and construction sites.<br>Assistance has been offered to foreign workers in their demands. | Detection | | |
| | | | Social partners in the construction sector (Dansk Byggeri, 3F, BAT Kartellet) run information campaigns and maintain information services for foreign employees to ensure compliance in employment and working conditions. | | | Commitment, Detection |
| **EE** | In October 2015, the Estonian Tax and Customs Board (EMTA) announced a new campaign on the correct use of subcontracting with individual entrepreneurs to avoid incorrect (fraudulent) use. | Clarification, Commitment | | | | |
| **EL** | The Greek Ombudsman has proposed new measures to tackle fraudulent use of fixed-term employment, self-employment and freelance work in the public sector, the broader public sector, and public services and utilities. | Commitment | The Greek General Confederation of Labour (GSEE) has taken various actions to demand new rules to fight fraudulent forms of contracting work. | Commitment | | |
| **ES** | In 2012, a programme against irregular employment and social security fraud was launched ('Plan de lucha contra el empleo irregular y el fraude a la seguridad social'), which included three main types of action:<br>• introducing regulatory reform<br>• strengthening the labour inspectorate<br>• reinforcing inter-administration cooperation.<br>Among others initiatives are:<br>• the National Office of Fight against Fraud<br>• an online box to collect reports about irregularities and fraud. | Clarification, Detection<br><br>Detection | Efforts are being made to highlight the increasing use of fraudulent forms of contracting of work, especially in the case of fixed-term contracts, and to request stronger monitoring and surveillance.<br>CC.OO in Extremadura, in cooperation with the Spanish Labour Inspectorate, has created an 'online mailbox' for workers to report fraudulent situations. | Commitment<br><br>Detection | | |
| **FI** | New rules on fixed-term contracts and temporary agency work were introduced in 2012. | Clarification | | | | |

| | Government and public bodies | | Trade unions | | Employer associations | |
|---|---|---|---|---|---|---|
| **FR** | A new regulation has been introduced for the clarification of apprenticeships, self-employment and the posting of workers.<br>New rules have been introduced on the representation of posted workers before the labour courts.<br>Monitoring competences have been increased to support and strengthen the action of the Labour Inspectorate (including the launch of the National Plan to Fight Illegal Work in 2012 – see box on p. 34 for details on implementation of the plan and the priorities for 2016–2018). | Clarification<br>Detection<br>Detection | | | | |
| | Social partners have signed partnership agreements with public authorities to fight fraudulent forms of contracting work at sectoral and regional levels and to develop an information and awareness-raising campaign against fraudulent forms of contracting work. | | | | | Detection, Commitment |
| **HU** | Regulatory reforms in 2010 and 2012 have made the labour market more flexible and increased the scope for atypical employment relationships involving lower labour costs, as in the case of special or simplified employment contracts. | Clarification, Preventative | Trade unions are campaigning against fraudulent use. | Commitment | | |
| **IE** | In recent years, the government commissioned studies (on zero-hours contracts), held consultations with the social partners (on temporary agency work) and set up an expert group on fixed-time contracts for school teachers.<br>New negotiated rules were introduced to reduce the maximum duration of fixed-term contracts for teachers before the contract is converted into an open-ended contract. | Commitment<br>Clarification | Trade unions launched an information campaign about fraudulent forms of contracting – for instance, in the temporary agency work sector and in the construction sector – especially regarding bogus-self employment. | Commitment | | |
| **IT** | New rules on collaboration contracts (a form of self-employment) were introduced in 2015 to prevent fraudulent use and convert contracts into subordinate employment.<br>Since the mid-1990s, measures were introduced to increase the social contributions (notably pension contributions) for collaborators as a general measure to reduce the economic incentives for establishing such contracts (not specifically focused on fraudulent use). | Clarification<br>Preventative | Trade unions are particularly vocal about the fight against fraudulent forms of contracting and are developing different information and awareness-raising campaigns.<br>A campaign is underway for legislative reforms to introduce stricter rules on non-standard contracts.<br>Trade unions support workers in individual disputes, in cases of alleged fraud. | Commitment<br>Detection | | |
| **LT** | In the mid-2000s, a legislative reform addressed the issue of fraudulent subcontracting by prohibiting the conclusion of a subcontracting agreement with individual companies registered in the same sector as the subcontracting entity (for instance, a construction company cannot hire an individual builder through a commercial contract). | Clarification | | | | |

| | Government and public bodies | | Trade unions | | Employer associations | |
|---|---|---|---|---|---|---|
| LU | New rules were introduced in 2013 to enhance the monitoring of the posting of workers (through the so-called 'social badge' to be acquired by online registration and a new registration platform launched in 2014).<br>A special taskforce was established within the Labour Inspectorate to tackle fraudulent posting and illegal work.<br>Since 2014, cooperation was reinforced with Belgium and the Netherlands to combat social fraud; bilateral cooperation agreements were signed with Belgium (2008), Poland (2010), France and Portugal (2011) to tackle the fraudulent posting of workers and illegal work. | Detection | Trade unions organise campaigns and awareness-raising measures, and support legislative initiatives to fight fraudulent forms of contracting work. | Commitment | | |
| LV | New rules on fixed-term contracts with stricter criteria were introduced in 2014. | Clarification | | | | |
| NL | In 2013, new criteria for fixed-term employment were introduced as well as provisions to clarify the rules on temporary agency work and to make fraudulent use more difficult, including through establishing a responsibility chain of user companies and introducing a certification system<br>New rules on posting were passed and entered into force in 2015–2016.<br>The Labour Inspectorates initiated specific campaigns to fight fraudulent forms of contracting work in specific sectors, such as agriculture, cleaning and the hospitality industry. | Clarification<br><br>Detection | Trade unions organise campaigns against fraudulent forms of contracting work.<br>The unions help to identify possible fraud, as in the case of on-call work and the posting of workers. | Commitment<br><br>Detection | | |
| | | | Social partners in the temporary agency work sector set up a bipartite committee to support compliance with legislation and collective agreements and to fight fraudulent use. | | | Commitment |
| NO | New measures have been introduced to improve regulation<br>There is enhanced cooperation with the social partners (especially in certain sectors such as transport, cleaning and hospitality), among different public bodies (labour inspectorate, welfare authorities, tax authorities, police) and with foreign administrations. | Clarification<br><br>Detection | Trade unions organise campaigns and awareness-raising measures, and support legislative initiatives to fight fraudulent forms of contracting work. | Commitment | The Confederation of Norwegian Enterprise (NHO) suggested a number of measures to tackle fraudulent forms of contracting work, focusing particularly on combating unfair competition. | Commitment |
| PL | New rules on fixed-term contracts are due to come into effect in 2016 | Clarification | Trade unions organise awareness-raising campaigns.<br>The unions support legislative initiatives to combat fraudulent forms of contracting work, notably concerning fixed-term work, temporary agency work and bogus self-employment. | Commitment | | |

| | Government and public bodies | | Trade unions | | Employer associations | |
|---|---|---|---|---|---|---|
| **PT** | The 2008 Tripartite Agreement for a New System of Regulation of Industrial Relations, Employment Policies and Social Protection (*Acordo Tripartido para um Novo Sistema de Regulação das Relações Laborais, das Políticas de Emprego e da Proteção Social*) includes a number of measures to improve regulation, enhance inspection activities and increase sanctions to combat fraudulent forms of contracting work; the agreement was translated into law in 2009 (Law 7/2009 of 12 February).<br>Rules to fight bogus self-employment were strengthened in 2013 through Law 63/2013 of 27 August.<br>In 2013, the Working Conditions Authority (*Autoridade para as Condições de Trabalho*, ACT) carried out an information campaign targeted at posted workers. | Clarification, Detection, Penalties<br>Commitment | Trade unions organise awareness-raising campaigns.<br>The unions support legislative initiatives to combat fraudulent forms of contracting work. | Commitment | | |
| **RO** | New rules were introduced to extend to self-employment tax rates and social contributions similar to those applied to employees, in order to reduce the incentive for fraudulent use of this type of contract (not specifically focused on fraudulent use).<br>In 2015, the definition of self-employed workers was revised, with a view to combating bogus self-employment. | Preventative<br>Clarification | | | | |
| **SE** | In 2015, the government proposed new rules on fixed-term contracts and to reinforce the collective bargaining rights of posted workers. | Clarification | Trade unions organise awareness-raising campaigns.<br>The unions support legislative initiatives to combat fraudulent forms of contracting work, notably concerning fixed-term work. | Commitment | | |
| **SI** | In 2013, new and stricter rules on fixed-term contracts and temporary agency work were introduced; a new employment status was established (somewhat close to the definition of 'economically dependent worker') with stronger protection provided than those for self-employed workers and higher taxes and social contributions granted for a number of atypical contracts (student work, contract work and copyright contracts).<br>Targeted inspections by the Labour Inspectorate were carried out, especially on bogus self-employment, in sectors such as construction, bars and restaurants, transport, food retail, education, health and bakery outlets. | Clarification, Preventative<br>Detection | Trade unions organise awareness-raising campaigns.<br>The unions support legislative initiatives to combat fraudulent forms of contracting work, notably concerning fixed-term work, foreign workers, workers posted abroad, internships and various forms of bogus self-employment. | Commitment | | |

| | Government and public bodies | | Trade unions | | Employer associations | |
|---|---|---|---|---|---|---|
| **SK** | New provisions were enacted especially for temporary agency work and bogus self-employment.<br>New rules on the posting of workers are currently under discussion. | Clarification | Trade unions organise awareness-raising campaigns.<br>The unions support legislative initiatives to combat fraudulent forms of contracting work, notably concerning fixed-term work and bogus self-employment. | Commitment | | |
| **UK** | New rules to fight bogus self-employment were introduced in 2014.<br>In 2015, to help tackle fraudulent unpaid internships, higher fines and enhanced monitoring were implemented.<br>Specific inspection campaigns were carried out in certain industries, such as the music industry, the fashion industry and the creative sector. | Clarification<br><br>Penalties, Detection<br><br>Detection | Trade unions organise awareness-raising campaigns.<br>The unions support legislative initiatives to fight fraudulent forms of contracting work. Specific actions have been launched – for instance, concerning bogus self-employment in the construction sector and against unpaid internships. | Commitment | | |

**Notes:** *For BG, HR and MT, there are no specific actions regarding fraudulent forms of contracting work – the main issue is undeclared work.*
**Source:** *Eurofound's network of European correspondents, 2016*

## French National plan against illegal work 2016–2018

The French report on the outcomes of the National plan for fighting illegal work (Le Plan national de lutte contre le travail illégal 2016–2018), published on 30 May 2016, highlights the government's priorities in the field. The emphasis is on combating the fraudulent posting of workers and the most serious types of frauds.

Interestingly, the report acknowledges the increasing complexity of the fraudulent actions:

> Each 'construction' is different. The objective of the fraud initiators is to create several screens aiming at confusing the control body, using various means:
>
> - Multiple companies, distinct in legal terms but cross-related, due to the identity or connection of the managers ('gang');
> - Empty shells or mere 'letter box' companies;
> - Endless waves of subcontracting, a well-known process that is much more difficult to pinpoint when the companies involved come from different countries;
> - Using temporary work agencies located abroad, almost in a systematic way; this allows the control agent to be kept at bay, as restricted by a mere 'national' competence.

Among its outcomes, the 2013–2016 plan mentioned the reinforced cooperation between services, but also the 'partnership conventions' developed between government and sectoral social partners' representatives, such as the one signed on 28 July 2015 in the removal sector and the one concluded on 23 February 2016 in the construction sector.

The 2016–2018 plan priorities remain fighting the fraudulent posting of workers and other forms of serious fraud in contracting work. Again some stress is put on the particularly complex fraudulent posting situation, underlying the various types used such as: the fraudulent creation of establishments, fraudulent posting especially through temporary agency work usage, or fraudulent intra-group posting. On the other hand, among the most serious frauds to be combated are the misuse of some employment relations such as self-employment and traineeships – and the emergent fraudulent use of digital platforms.

Among the responses for addressing the phenomenon, the report highlights:

- The importance of continuing to develop cooperation, between services as well as across borders;
- Enhancing the control agents' competence in dealing with this phenomenon and the awareness of all stakeholders, especially social partners' representatives;
- Continuous work on regulation, at European and national level;
- The need to pursue 'control campaigns' on targeted sectors and sites to get visible results and impacts;
- The need to launch a broad awareness campaign against illegal work.

# 6 Conclusions: Effectiveness and limitations of measures and actions

The report illustrates the many dimensions of fraudulent use of the contracting of work and explains the attention that this phenomenon attracts in the EU and Norway. It also points to some paths, still to be followed and improved on, for tackling fraudulent use.

## Reinforcing detection

As is usually the case in discussions around reducing violations, assessing the effectiveness of the various measures and actions taken to combat the fraudulent contracting of work becomes the most important issue; however, it is also the most difficult one to address.

Given the nature of this phenomenon, the only initiatives with immediate impact and producing measurable results are those aimed at detection – notably, inspection campaigns carried out by the public authorities. This kind of initiative requires important resources in terms of persons, time and effort, but it also has a clear pay-off. Inspection campaigns enhance deterrence and contribute to the identification of the number of fraudulent practices. Nevertheless, in this respect, it is worth mentioning at least two limitations.

The first limitation concerns the fact that, as national reports indicate, data on inspections seldom identify fraudulent practices in contractual terms as a specific violation. Indeed, inspections often focus on the effects of fraud – for instance, breaches of minimum wage rates, working time regulations, health and safety provisions, book-keeping and registration requirements. Therefore, even the assessment of efforts to combat fraud through data on inspection campaigns may be difficult due to lack of appropriate data.

In fact, although as indicated above, initiatives aimed at improving detection are relatively common, no systematic or detailed data could be provided by national correspondents on the outcome of such efforts in terms of the number of frauds detected. Reports were able to illustrate the content of the initiatives, but not the results. This aspect underlines how the improvement of data collection, with a particular focus on specifying the fraudulent contracting of work detected during inspections, is an important part of more effective intervention aimed at combating the fraudulent contracting of work.

A second limitation relates to the fact that the qualification of fraudulent practices is made through the courts. Therefore, even if the allegation of fraud is raised by control bodies, it is the final court ruling which determines the existence of actual fraud. Hence, data about inspection campaigns (if available) could be partly misleading as they could overstate the detection of fraud.

## Improving regulations

The second measure which seeks to address the problem of the fraudulent contracting of work 'by definition' is clarification of the legislative and regulatory framework, namely by eliminating loopholes or ambiguities.

Once again, this kind of measure can be effective as it focuses on specific aspects of regulation which are deemed critical. One potential drawback could be the unintended limitation of legitimate use (as noted above in the case of negative economic incentives to use certain employment contracts), which could be discouraged by stricter regulations. A second potential problem, if the legislative intervention is successful, is that fraudulent use may shift to other less regulated forms of contracting employment (as indicated, for example, in the case of Slovenia).

The first drawback calls for more balanced interventions to ensure that provisions are not too strict; otherwise, it could be deemed more reasonable to abolish the targeted contractual relations giving rise to fraud altogether. The second limitation points to an inherent problem regarding corrective interventions. Neither of these issues calls into question the key role that legislative intervention can and usually does play in the responses to the fraudulent contracting of work: clarification and enforcement measures remain at the centre of actions seeking to combat the fraudulent contracting of work.

## Sharing commitment to compliance

The risk that efforts to improve regulation simply shifts the problem to other contractual areas can be addressed through both a wide-ranging approach and softer forms of intervention. The wide-ranging approach requires a clear analysis of the phenomenon, while

'softer' forms of intervention should focus more on the 'cultural' dimension and on building a shared commitment to ensuring correct and fair employment conditions.

Indeed, after reinforcing detection and improving regulations, encouraging shared commitment is the third pathway highlighted by the national reports as being particularly important and promising. This type of intervention also shows the highest involvement of the social partners. It is possible to identify different ways of implementing it. For instance, trade unions usually focus on their constituency and try to increase awareness about employee rights as well as correct and fair terms of employment and working conditions. Employer associations provide guidance and support to their affiliates with a view to applying legislation in a rigorous way, and they also promote information campaigns.

Joint initiatives are also significant, often at sectoral level, providing information and assistance to companies and workers and helping to monitor the situation. For instance, in the Netherlands, the social partners in the temporary agency work sector set up a bipartite committee to support compliance with legislation and collective agreements and to fight fraudulent use. In Denmark, social partners in the construction sector (Dansk Byggeri, 3F, BAT-kartellet) run information campaigns and maintain information services for foreign employees to ensure compliance in employment and working conditions.

It is probably possible to associate these measures with the few jointly agreed initiatives seeking to clarify the regulatory framework, as reported by the national correspondents in Cyprus and the Czech Republic (see above). In fact, as well as helping to define the rules regarding use of certain forms of contracting work, these measures also set legitimate standards, contribute to better awareness and higher commitment, and create a framework for monitoring the use of specific contractual relationships.

More generally, it is possible to say that the role of collective bargaining in responding to the challenges of the fraudulent contracting of work seems to be underexploited. An example of potential integration between legislative measures and contractual relations can be found in Italy, through the recent labour market reform, the so-called 'Jobs Act', which included a multi-fold intervention on collaboration contracts.

## Using 'collaboration contracts' in Italy

The recent Italian labour market reform, part of the so-called 'Jobs Act' (Law No. 183/2014), included a multi-layered intervention on 'collaboration contracts', which was enacted by Legislative Decree No. 81 of 2015.

First, the reform outlawed the previous project-related collaborations. This represented a significant U-turn compared with the previous approach, which had tried to link 'collaboration contracts' to specific projects, with the aim of preventing subordinate employment from taking place under the guise of fraudulent self-employment. Second, the reform reintroduced the possibility to conclude collaboration contracts, but with stricter rules and stipulating the automatic transformation into subordinate employment under certain circumstances, notably when work is directed by the employer, with specific reference to the place and time of work. Third, the reform established that collective agreements at national level can define the economic and normative conditions of jobs and tasks to be assigned through 'collaboration contracts'.

In this way, the reform combines a clarification of the legislative framework with a definition of a new role for collective bargaining, thereby enabling the social partners to extend collectively agreed protection to formally self-employed workers. It also allows rules to be tailored to the specific situations of sectors as well as companies, and it introduces a dynamic element in the regulation system, since collective agreements can adapt norms to changing circumstances.

These provisions have not yet been implemented by sectoral agreements, but they could contribute significantly to better defining the current regulatory framework. They represent an example of how it may be possible to address the problem of introducing stricter regulations to combat fraudulent use. The combination of 'default rules' fixed in legislation and provisions set out in collective agreements, which may integrate or partly replace the former, represents a more flexible response which could help to reduce the risk of hindering legitimate use while trying to combat fraudulent use.

## Combining approaches

Finally, since the study focuses on the fraudulent contracting of work in each country, and the actions, measures and regulations have mainly been devised at the national level, the role of EU-level regulation has not been explored as such here.

Nevertheless, European regulations and actions, both in the legislative and industrial relations domains, can clearly provide a framework for national initiatives. In particular, EU actors could contribute in terms of awareness-raising campaigns and joint actions at sectoral level, with a potential role for the sectoral social dialogue committees. From the perspective of public actors, the support of cross-border cooperation can be crucial in order to detect and sanction the types of frauds involving a transnational dimension, as the Enforcement Directive (2014/67/EU) on the posting of workers underlines.

The fraudulent use of employment relationships remains primarily a national issue. Even the cross-border aspects of fraud mainly aim to circumvent national regulations. However, sham employment relations set-ups, subtly combining several regulations in various countries to circumvent most of them, also exist. These types of fraud still need to be analysed systematically. Fully assessing their impacts at national and European level remains a challenge for future studies.

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**The fraudulent contracting of work is an important issue in many European countries today. EU and national policymakers have turned their attention to violations of the basic protection provided by employment law and collective bargaining that are linked to the fraudulent use of certain employment or commercial contracts. This report looks at these practices across the EU and examines measures initiated by national authorities, including labour inspectorates and the social partners, to identify, prevent and combat such practices. While governments and public bodies focus largely on improving regulation – reducing loopholes in legislation and strengthening detection and inspection – the social partners endeavour to achieve compliance, particularly through organising information and awareness-raising initiatives. Based on 29 national reports, covering the EU28 and Norway, the research finds that the potential of collective bargaining to respond to the challenges of fraudulent use of contracting work is largely underexploited. It points to the contribution that EU actors could make, given the crucial role of cross-border cooperation in detecting and sanctioning fraudulent practices involving a transnational dimension.**



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