

# Sorry we subcontracted you

Silvia Borelli, Antonio Loffredo,  
Claire Marzo and Manfred Walser

Report 2025.02



EUROPEAN  
TRANSPORT  
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Report 2025.02  
european trade union institute

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## Abstract

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

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

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

# Conclusions

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This Report looks at subcontracting in last-mile logistics. It seeks to highlight the consequences of subcontracting for people's working conditions in this sector and for trade union rights. The four country case studies – covering France, Germany, Italy and Spain – converge in indicating that subcontracting can seriously harm working conditions and jeopardise trade union rights. One of the most vivid representations of the negative effects of subcontracting on the workers engaged in last-miles logistics is the 2019 film *Sorry We Missed You*, written by Paul Laverty and directed by Ken Loach. The title of this Report makes clear reference to it.

## 1. Overall trends in logistics

The four country case studies in this volume on subcontracting in last-mile logistics demonstrate two widespread trends in the sector: on one hand, **logistics has been growing rapidly** in the four countries under scrutiny, and it is a very profitable economic activity. On the other hand, **working conditions in logistics have been deteriorating** and consequently the staff turnover is massive. It is very difficult to recruit people, despite the increasing demand for workers in the sector. These two tendencies are only apparently contradictory. Indeed, the booming of logistics goes hand in hand with stiff price competition, boosted by the widespread **increase in e-commerce** and the consequent need to deliver goods to end consumers in the shortest possible time at the lowest cost.

The four case studies also demonstrate another tendency in logistics, namely the 'verticalisation' of supply chains. This tendency is caused by the increasing weight of big logistics players (including also the main e-commerce logistics companies), alongside the widespread use of subcontractors, which are mainly small companies. The vast majority of logistics companies in the countries under scrutiny are indeed small enterprises. A handful of large groups dominate the logistics sector<sup>1</sup> and usually outsource part of their activities to small companies whose contracting power is significantly lower. In this way, the big logistics groups can reduce the cost of their services<sup>2</sup>: they can decide how much to pay their contractors and subcontractors, and whether to replace them with other companies offering a cheaper service.

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1. See also TeamHub, *Background Report*, p. 13.

2. According to the Commission Staff Working Document on the application and implementation of Directive (EU) 2018/957 (SWD(2024)320), in sectors in which competition is based on labour costs, subcontracting has become 'the strategy to increase profits by lowering costs', p. 29.

The case studies in this Report demonstrate that in logistics **subcontracting is a prevalent business model** that leads to lower pay and poorer working conditions for the purpose of cutting costs and boosting profits. In fact, subcontracting further exacerbates the general problems present in the sector (see Section 2), generated by the need to maintain profitability in the very competitive and global logistics market. Subcontracting, as well as other forms of third-party employment (such as temporary agency work and self-employment), has further negative effects on working conditions and trade union activities. These negative effects include: (i) separating power and profit from risks and responsibilities; (ii) worsening job stability and working conditions; (iii) fragmenting the workforce and consequently hindering trade union activities; and (iv) making labour inspections much more difficult (see Section 3).<sup>3</sup> This is particularly true for last-mile delivery. In fact, while workers in warehouses are gathered together in one place and can be organised easily, staff engaged in delivery are rather ‘invisible’ and scattered in many places. Consequently, trade unions struggle to contact these workers in last-mile delivery and monitoring their working conditions is much more difficult. Besides, case studies confirm that subcontracting is used mainly in last-mile delivery, while temporary agency work is widespread among warehouse workers.<sup>4</sup>

Subcontracting is a strategy for cutting labour costs and shifting risks. It thus has a negative impact on working conditions and trade union activities. This has been widely demonstrated through reports published by national labour inspectors, as well as by our 11 interviews with trade unionists, lawyers and inspectors, and the national case law presented in the case studies. The French and Italian cases are emblematic. In both countries, the main logistics players (La Poste in France<sup>5</sup>; four of the top ten logistics companies in Italy<sup>6</sup>) have been involved in judicial proceedings. As the Italian prosecutor who investigated these cases put it, the unlawful practices caused by subcontracting were so deep-rooted that they can be considered part of a broader business model.

Despite clear evidence of the bad working conditions in logistics, however, important organisations such as the World Economic Forum (WEF), do not consider decent work to be a top priority for the future development of logistics. According to the WEF, ‘reducing emissions and traffic congestion are bound to be top priorities for cities and municipalities, whereas interventions that decrease delivery costs and minimize disruptions in current business models are more appealing to logistics players’.<sup>7</sup> In the four countries considered, national legislators have recently intervened to strengthen monitoring of logistics companies (for example, in Germany) or to regulate the algorithmic management systems that are increasingly being used in the sector (for example, in Italy and Spain). However, such interventions have not managed to solve both the general

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3. Borelli S., *Subcontracting: Exploitation by design. Tackling the business model for social dumping*, study for The Left in the European Parliament, 2022.

4. Team Hub, Final Report, May 2024, p. 6.

5. See French case study, Section 2.1.1.

6. See Italian case study, Section 2.1.

7. World Economic Forum, *The Future of the Last-Mile Ecosystem*, 2020, p. 20.

problems of workers in logistics and the additional problems generated by subcontracting in the sector.

The European Commission has reacted only timidly, recognising that, in long subcontracting chains, ‘the lack of transparency and accountability may make enforcement of the applicable rules very difficult due to problems in identifying the liable company. The direct responsibility and liability of the contractor may therefore be considerably reduced. This may also affect the recovery of unpaid wages.’<sup>8</sup> In the face of the frequently irregular practices, sometimes leading to labour exploitation and human trafficking,<sup>9</sup> the European Commission has recognised that ‘limiting the number of levels in subcontracting chains and/or extending the subcontracting liability to the full chain could help Member States [...] and where applicable social partners, to increase transparency and liability in subcontracting chains, on a proportionate and non-discriminatory basis’.<sup>10</sup> However, the European Commission has not proposed amendments to Directives 1996/71 and 2014/67, which currently regulate posting of workers within transnational subcontracting chains, to tackle the negative effects of subcontracting on working conditions and trade union activities.

## 2. General problems in logistics

All four country case studies find that working conditions in logistics are usually worse than in other sectors. First, the number of **precarious jobs** in logistics is very high. Temporary agency workers are frequently recruited in France, Germany, Italy and Spain, mainly in warehouses. The evidence from the country studies suggests widespread use of fixed-term contracts, which entails high levels of job insecurity, an increase in work accidents, a lack of professional skills and weakening of collective rights, whose enforcement has become ‘virtual’ because workers hesitate to engage in any trade union action as a result of their precarious working conditions. The 2021 Spanish labour reform was aimed at combating the abuse of temporary employment contracts, limiting the reasons that justify them and promoting open-ended contracts. Through such contracts, employees can work for certain periods and, during periods of inactivity, may obtain other employment or receive unemployment benefits.<sup>11</sup>

Self-employed persons currently play a minor role in last-mile delivery in Germany, Italy and Spain, but they are widespread in France, where the government has strongly supported self-employment, even creating a special status (so-called

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8. Report From The Commission on the application and implementation of Directive (EU) 2018/957, COM(2024), p. 10.
  9. Ecorys, HIVA-KU Leuven, Spark Legal and Policy Consulting, and wmp consult (2023) *Study supporting the Monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU – The situation of temporary cross-border mobile workers and workers in subcontracting chains*, Directorate-General for Employment, Social Affairs and Inclusion, 2024, p. 191.
  10. *REPORT FROM THE COMMISSION on the application and implementation of Directive (EU) 2018/957*, COM(2024), p. 14.
  11. See Spanish case study, Section 1.2.

*microentrepreneur*).<sup>12</sup> To reduce job instability created by widespread precarious contracts, the French legislator introduced the *Groupement d'Employeurs Logistique* (GEL). According to this legal arrangement, workers sign an open-ended contract with the GEL, which then seconds them to other companies belonging to it. Consequently, workers alternate periods of assignment with periods of inactivity and are guaranteed a minimum monthly pay.<sup>13</sup>

It is very difficult for trade unions to organise precarious workers. On one hand, as in the case of self-employed people in France, they are not within the mandate of traditional unions. On the other hand, precarious workers are very vulnerable because they suffer constantly from the threat of not having their contracts renewed and they hope, one day, to be recruited on an open-ended contract or to be directly hired by the user. Besides, precarious workers are more exposed to work accidents because they lack knowledge of the work environment and often are not adequately trained in health and safety measures.

Something else that exacerbates workers' vulnerability is migration law. As reported in all country case studies, many **third-country nationals** are employed in logistics. Their vulnerability is caused both by language barriers, lack of knowledge of their rights and possible different perceptions of trade unions in the country of origin. Moreover, the Germany and Italian case studies emphasise that migration law further increases migrants' vulnerability, linking their residence status to the employment contract.<sup>14</sup> Therefore, migrants are more likely to accept to work under poor working conditions and sometimes even tolerate unlawful behaviour on the part of their employer.<sup>15</sup>

Other problems pointed out in the four case studies include **violations of working time regulations and occupational health and safety laws**. The case studies report that workers in logistics are often forced to work overtime, have long shifts or night shifts, and unpredictable working time. Moreover, they often have to work over the weekend, work rhythm is intense and rest time is not respected. These working conditions generate work-related stress and therefore increase work accidents. Besides, the physical burden for workers in last-mile logistics is considerable. This issue has been addressed only by the German legislator, albeit with measures that seem insufficient.<sup>16</sup>

Problems related to working time and work rhythm are further increased by **algorithmic management systems**. These systems are set up to boost a company's efficiency and productivity. However, their use has developed into a 'digital Taylorism', in other words, 'a system of rigid division and control of work

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12. See French case study, Section 1.2.

13. See French case study, Section 3.1.

14. See German case study, Section 2.1.1. and Italian case study, Section 1.2.

15. The higher vulnerability of posted third-country nationals 'due to their potential dependency on their employer for the renewal of work and/or residence permits', has also been recognised by the European Commission. Report from the Commission on the application and implementation of Directive (EU) 2018/957, COM(2024), p. 11.

16. See German case study, Section 2.1.1.

as a result of the use of digital technologies'.<sup>17</sup> Data collected by companies, not only during working time, are exploited to organise their work more efficiently, in the sense of reducing the time required for each single activity and constantly controlling workers in order to deliver goods as quickly as possible. This is the goal of logistics: to find a way to transport a good from one place to another, in the shortest possible time, in the best possible way and at the lowest cost. The problem is that currently logistics must satisfy the desires of individual consumers who buy goods on a global scale, at any time of the day or night, and who want to have them delivered almost immediately.<sup>18</sup>

Some of the countries analysed are trying to react to problems generated by algorithmic management systems. A main example is the Spanish *Ley Rider* legislation, which has introduced the right of workers' representatives to be informed on the functioning of the algorithm used by the company to organise its workers<sup>19</sup>. Similarly, in Italy, from 2022 onwards, companies are obliged to provide workers and their representatives with information on the functioning of algorithmic management systems and on data collected through them. The French case study presents the recent decision of the National Commission on Freedom and IT (*Commission nationale de l'informatique et des libertés*, CNIL), which severely sanctioned Amazon France Logistics 'for having set up an excessively intrusive system for monitoring employee activity and performance' and repeatedly violating the EU General Data Protection Regulation (GDPR). Other recent European laws, such as the Directive on improving working conditions in platform work<sup>20</sup> and the Artificial Intelligence Act,<sup>21</sup> can certainly strengthen measures to limit the negative effects of algorithmic management on working conditions.

The case studies emphasise that, when the client provides subcontractors with digital devices and surveillance technologies, it has a strict control over workers hired by the latter. For this reason, in Italy, some courts have considered the client to be the real employer of these workers.<sup>22</sup>

Despite the many problems caused by algorithmic management, all the authors contributing to this volume agree on two things: first, technology is just a tool that can be exploited in positive or negative ways<sup>23</sup>; second, in logistics, a sector that is highly problematic, technology, as already mentioned, risks further increasing work rhythms and violations of occupational health and safety regulations.

17. This expression is used in the German case study (Section 2.2).

18. As mentioned in the French case study, 'e-commerce is leading to the individualisation of orders, which in turn is leading to a reorganisation of work' (Section 1.2.1).

19. See Spanish case study, Section 2.3.

20. Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work.

21. Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence.

22. Italian case study, Section 3.2. See also French case study, Section 3.1.

23. For example, the chrono tachograph helps to control the working time of delivery personnel.

Other problems flagged in the country case studies concern **low wages and unlawful behaviour in relation to remuneration**. Because of trade unions' weakness in negotiating higher wages and the low collective bargaining coverage, wages have stagnated and many workers are dependent on social benefits to top up their income in order to secure minimum subsistence.<sup>24</sup> Besides, wage violations, such as unjustified wage deductions, payments per parcel and expenses charged on workers, are widespread.

It should be highlighted that, in the four countries considered, in case of wage violations, as well as in case of other worker rights violations, workers (especially migrants) struggle to defend their rights because they do not want to risk losing their job and not finding a new one. This is even truer for third-country nationals who 'are economically dependent on their employer and fear losing their income as well as their status in the country if they lose their jobs'.<sup>25</sup> Sometimes, workers (especially migrants) are not aware of their rights and are not familiar with the cumbersome procedures involved in enforcing them. Moreover, workers often cannot bear the high legal cost and cannot wait until legal processes run their course, which may be a long time.<sup>26</sup> In the four countries considered, judicial action by trade unions suffers from several limitations. Thus, in Italy, such legal action has been authorised only recently but its efficacy is still limited.<sup>27</sup> In France, trade unions can initiate legal proceedings on behalf of their members but many workers (especially the most vulnerable, such as migrants and workers with temporary contracts) are not unionised.<sup>28</sup>

Finally, the four country case studies underline that in logistics **collective agreement coverage** is very low. There are a number of reasons why collective agreement coverage has contracted. In France, the main problem is that last-mile delivery is not covered by the collective agreement on the logistics sector; besides, collective agreements do not apply to self-employed workers.<sup>29</sup> In Germany, the low coverage of collective agreements in logistics is caused by the widespread use of third-party employment. In fact, both temporary agency workers and self-employed people are not covered by this collective agreement, a problem that is further accentuated by subcontracting (see Section 3). Besides, currently there is no specific employers' association active in the parcels sector in Germany.<sup>30</sup>

In Italy, the main difficulty is the *inter partes* efficacy of collective agreements, in other words, the fact that these agreements apply only to companies affiliated to the business associations that signed them. Therefore, several collective agreements exist for the logistics sector, some of which are signed by unscrupulous

24. See German case study, Section 2.1.1; French case study, Section 2.1.

25. Ecorys, HIVA-KU Leuven, Spark Legal and Policy Consulting, and wmp consult (2023) Study supporting the Monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU – The situation of temporary cross-border mobile workers and workers in subcontracting chains, Directorate-General for Employment, Social Affairs and Inclusion, 2024, p. 174.

26. Italian case study, Section 5.2.

27. See Italian case study, Section 5.2.

28. See French case study, Section 5.2.

29. See French case study, Section 3.1.

30. See German case study, Section 4.2.

business associations and trade unions in order to cut labour costs (so-called ‘contractual dumping’). Consequently, companies can freely decide to apply the collective agreement that best suits them.<sup>31</sup> Finally, in Spain the main difficulty is the competition between collective agreements. In fact, the company collective agreement can prevail over any other agreement. Therefore, company collective agreements may derogate from sectoral collective agreements even for the worse. Besides, many collective agreements exist in the logistics sector because the main level of negotiation is the provincial one.<sup>32</sup>

### 3. Problems enhanced or created by subcontracting in logistics

The four case studies provide evidence of the negative effects of subcontracting on working conditions. One major problem is the **separation of power and profit**, which are in the hands of the client and, to a certain extent, the contractor, **from risks and responsibilities**, which are shifted to subcontractors. As already mentioned, clients usually have greater contracting power; consequently, they can determine the conditions under which contractors and subcontractors must provide their services. This is further aggravated by companies’ need to control the entire logistics chain to increase its efficiency. Therefore, a set of corporate strategies ‘allows the main company to organise a decentralisation of activities while maintaining a management and coordinating role, as well as economic conditioning, over all companies that are part of the supply chain’.<sup>33</sup>

To oversee production processes and evaluate work efficiency, the main logistics companies sometimes demand that their contractors and subcontractors use algorithmic management systems. This practice further centralises monitoring and control throughout the entire supply chain.<sup>34</sup> Control over subcontractors is sometimes so strict that the client is considered the real employer of the workers the subcontractors hire. Clients’ use of algorithmic management systems is also relevant to the application of due diligence obligations. In fact, algorithmic management systems can increase a company’s leverage over its suppliers and consequently it can strengthen company obligations ‘regarding actual and potential human rights adverse impacts and environmental adverse impacts, with respect to their own operations, the operations of their subsidiaries, and the operations carried out by their business partners in the chains of activities of those companies’ (Article 1 of the Directive 2024/1760 on Corporate Sustainability Due Diligence).<sup>35</sup>

31. See Italian case study, Section 2.1.

32. See Spanish case study, Section 4.1.

33. Team Hub, *Background Report*, 2023, p. 16.

34. Rani U., Pesole A., González Vázquez I., *Algorithmic management practices in regular workplaces: case studies in logistics and healthcare*, Luxembourg, Publications Office of the European Union, 2024, p. 15.

35. See Potocka-Sionek N., How to regulate ‘digital piecework’? Lessons from global supply chains, in *Lavoro e diritto* 2021, p. 645.

Another problem reported in the case studies is **company volatility**, in the sense that subcontractors often operate only for a short period and are then replaced by other companies, sometimes set up by the same persons. It should be underlined that EU law has obliged Member States to simplify business creation.<sup>36</sup> Consequently, in all the countries under consideration, companies can be set up easily. Moreover, in France company volatility is boosted by the fact that the Organisation for the Collection of Social Security and Family Benefit Contributions (URSSAF) carries out checks mainly on companies that have existed for more than three years.<sup>37</sup>

In order to reduce company volatility, Germany's 2024 Postal Act requires all providers of postal services to be listed in a register kept by the Federal Network Agency. Company reliability is a prerequisite for registration; however, only compliance with the general requirements of trade union law is demanded. Furthermore, no in-depth investigation is planned.<sup>38</sup>

It should also be noted that sometimes subcontractors are letterbox companies, that is, companies that 'do not perform any economic activity but are only set up to lower labour costs or create fiscal optimisation strategies'.<sup>39</sup> Often these letterbox companies vanish without paying workers' wages.<sup>40</sup> This problem is a major issue in Italy where many big logistics players have made use of such companies to such an extent that the prosecutor who investigated these cases referred to the 'normalisation of deviance'.<sup>41</sup>

The widespread use of subcontracting has caused a **lack of transparency in logistics subcontracting chains**. This, in turn, produces two other consequences: often workers do not know who their employer really is and inspections become very difficult. This lack of transparency is coupled with a shortage of data on subcontracting in logistics, which all case studies in this report have flagged. Moreover, when data are available, as in Germany, they are often inconsistent.<sup>42</sup>

Despite the many negative effects of subcontracting on working conditions and trade union activities, subcontracting in logistics is not limited by law (except, to a certain extent, in public procurement) in any of the countries we looked at.<sup>43</sup> German trade unions have repeatedly called for the extension to logistics of the law adopted in 2022 for the meat sector, which forbids subcontracting and

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36. For example, Directive 2019/1151 on the use of digital tools and processes in company law enables online formation, registration of branches and filing of documents for limited liability companies.

37. See French case study, Section 1.2 and 3.3.

38. See German case study, Section 3.1.

39. SWD(2024)320, p. 31.

40. EFBWW, ETF, EFFAT, *Stop exploitation!*, 2024, p. 5.

41. Italian case study, Section 2.1.

42. In Germany, the trade unions have tried to collect more data on logistics to support their request to ban subcontracting in the sector (German case study, Section 4.3).

43. Moreover, in Spain, there is no numerical limit (neither in absolute nor percentage terms) on fixed-term contracts and temporary agency work (Spanish case study, Section 3.4).

temporary agency work for core business activities. However, their requests were not satisfied by the 2024 Postal Act.<sup>44</sup>

Two important tools for reconnecting power and profit to risks and responsibilities are the **substantive notion of employer** and **joint and several liability**. The four country case studies report that national courts have intervened in several cases to declare that the client was the real employer of workers engaged in subcontracting, because it directed and controlled them while the (sub)contractor merely supplied workers.<sup>45</sup> As Italian courts have ruled, in order for there to be a genuine (sub)contract, it is necessary to verify that the (sub)contractor provides a work or a service ‘through an effective and autonomous organisation of labour, exerting the power of management and control over its employees, using its own means and assuming the business risk’.<sup>46</sup>

Joint and several liability rules apply in Germany, Italy and Spain. In these three countries, these rules play a fundamentally preventive effect because they force companies to select their contractors and subcontractors properly, and also a deterrent effect because they make sure that those who benefit from activities performed by workers involved in the subcontracting chain but fail to comply with labour regulations are punished. Joint and several liability also serves as a guarantee because it better ensures the fulfilment of the employer’s duties. In fact, workers can address the client and the contractor(s) when their employer does not fulfil their obligations. However, joint and several liability regimes vary widely in terms of scope (that is, the employer’s duties to which they apply) and duration (how long they apply).<sup>47</sup> Besides, in none of the countries examined does joint and several liability concern health and safety obligations. This is considered a main shortcoming. In particular, the author of the German case study highlights that, in the case of temporary agency work, health and safety obligations bind both the agency and the user. This is also true for the other European countries because the user’s liability with regard to health and safety at work is established by Article 8 of Directive 91/383.<sup>48</sup>

On the contrary, joint and several liability is very weak in France where the client can easily rule it out by respecting some **due diligence obligations**.<sup>49</sup> In that country, a client can prevent joint liability by demanding that its contractors and subcontractors provide documents proving that they are complying with labour legislation. If the latter do not fulfil this request, the client can terminate the contract and escape from any liability. This is a clear example of bad interference between due diligence obligations and joint liability regimes. In order to strengthen the

44. See German case study, Section 4.3.

45. See German case study, Section 3.3; French case study, Section 3.1; Italian case study, Section 3.2; Spanish case study, Section 5.

46. Court of Cassation No. 12551/2020. See Italian case study, Section 3.2.

47. See Section 3.2 of the German case study; Section 3.2 of the Italian case study; Section 3.2 of the Spanish case study.

48. Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship.

49. See French case study, Section 2.1.2.

effectiveness of both these tools, their roles should be clearly differentiated: due diligence obligations are aimed at preventing environmental and human rights violations by imposing on companies the obligation to identify, prevent, mitigate and provide remediation for adverse impacts arising from their own operations, those of their subsidiaries and those of their business partners. In contrast, the joint and several liability regimes play not only a preventive effect (obliging the client to select its contractors and subcontractors properly), but also a guarantee effect because they better ensure respect for workers' rights. Therefore, the tools should mutually reinforce each other.

As reported in the French case study,<sup>50</sup> due diligence obligations can be used to increase transparency in a company's supply chain.<sup>51</sup> They also oblige the company to adopt measures to avoid (or limit) environmental and human rights violations in its supply chain. However, the effectiveness of these obligations depends on the degree of worker participation at all stages of the due diligence process: if a company can fulfil its due diligence obligations alone, there is a serious risk that this process will become merely a box-ticking exercise. In an ideal scenario in which the company complies effectively with national and European due diligence obligations, trade unions and worker representatives will both receive information on what is contracted out, to which companies and under what conditions (including working and employment conditions), and co-assess the risks present in the supply chain and co-determine the measures necessary to avoid or limit them.<sup>52</sup>

Due diligence obligations should avoid reinforcing the imbalance of power between the client and its contractors and subcontractors. As already mentioned, this happens in France, where companies can meet their due diligence obligations by terminating their contracts. Thus they can avoid any liability for worker rights violations in their supply chains. In this way, due diligence obligations do not achieve their objective, namely to better protect human rights by making the main company responsible with regard to the working conditions of subcontracted employees. On the contrary, in practice French legislation provides an easy way of evading liability.

Finally, it should be pointed out that technical standards, sometimes used to prove the reliability of a company (as in Italy<sup>53</sup>), should neither exhaust the due diligence obligations nor rule out joint and several liability. In fact, due diligence obligations are not limited to formal checks like those related to standards. Moreover, joint liability regimes pursue a guarantee effect that cannot be replaced by a formal check, such as the one characteristic of standards.

A further negative effect of subcontracting on working conditions is **job instability**. As already pointed out (Section 2), this is a problem in logistics because of the widespread use of precarious contracts. Subcontracting exacerbates

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**50.** See Section 2.1.1.

**51.** On this point, see also the Corporate Sustainable Reporting Directive.

**52.** See German case study, Section 3.1.

**53.** See Italian case study, Section 3.1.

job instability because the client and the main contractor can easily withdraw from a commercial contract, depriving workers engaged in subcontracting of their job.<sup>54</sup> None of the case studies report on legislation aimed at reducing job instability in subcontracting (certain measures have been implemented for public contracts, but they are rarely found in logistics). The Italian case study presents some measures adopted in the main national collective agreement on logistics and transport, although their effectiveness is very weak because the agreement applies only to employers affiliated to the signatory business associations.<sup>55</sup>

A third negative effect of subcontracting on working conditions concerns the **unequal treatment of workers hired by subcontractors**. Again, none of the case studies identified equal treatment clauses applicable to subcontracting, that is, clauses that guarantee to subcontracted workers at least the working and employment conditions that would apply if they had been recruited directly by the client to do the same job.<sup>56</sup> In Italy and Spain a certain degree of equality among workers engaged in the subcontracting chain is assured through the obligation to respect the main collective agreement for the sector. In Italy, in 2024 the legislator obliged contractors and subcontractors to guarantee to their workers ‘overall economic and regulatory treatment not less than that provided for in the national and territorial collective agreement signed by the most representative trade unions and business associations at the national level, applied in the sector and for the area closely related to the activity covered by the contract and subcontract’ (Article 29 § 1 bis of Legislative Decree no. 276/2003, added by Article 29 of Law Decree No. 19/2024).<sup>57</sup>

In Spain, the 2021 labour reform required contractors and subcontractors to respect the collective agreement in the sector regarding the activity referred to in the contract or subcontract, unless the contractor or subcontractor has their own agreement. Consequently, this reform has ended the application of the collective agreement on multi-services and multi-service companies are less and less present in logistics.<sup>58</sup>

The fourth negative effect of subcontracting concerns **health and safety at work**, because work accidents are widespread in logistics (Section 2). Subcontracting further worsens this situation, producing additional risks, such as those deriving from the simultaneous presence of several companies in the workplace (risks of interference). Moreover, clients and contractors foster competition among subcontractors that consequently are forced to reduce labour costs. Sometimes

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54. As stated in the French case study, this creates, de facto, a ‘hybrid status’ for logistics workers, ‘neither permanent nor precarious, but a fixed-term or open-ended contract in a user company, which is destined to disappear as soon as the multinational no longer calls on it’ (Section 3.1).

55. See Section 3.4.

56. In Germany the principle of equal treatment established by Directive 2008/104 for temporary agency workers is also circumvented de facto. In fact, German law authorises a collective agreement in force at the user undertaking to provide for deviations from this principle; such derogating collective agreements are used almost everywhere in the country (see German case study, Section 3.3).

57. See Italian case study, Section 3.3.

58. See Spanish case study, Section 3.3.

subcontractors fail to provide safety equipment and do not properly fulfil their obligations under occupational health and safety legislation. Subcontracted workers could also be more exposed to health and safety risks because of their longer hours, work intensity and bad working conditions.<sup>59</sup> As already pointed out, none of the countries examined obliges the client (or the main contractor) to jointly fulfil health and safety obligations pertaining to subcontractors.

This problem can be solved partly through correct enforcement of the due diligence obligations. In fact, as reported for France and Germany, where due diligence obligations are already established in national law, major companies have to apply vigilance measures in relation to their suppliers.<sup>60</sup> According to a decision of the Paris Court of First Instance in the *La Poste* case, companies must set out safeguarding measures and take additional concrete actions to tackle any risks detected in their supply chains ‘in association with stakeholders’.

A fifth negative effect of subcontracting on working conditions concerns **trade union activities**. The authors of the four case studies describe the low trade union density in logistics. This is especially true for workers engaged in last-mile delivery, who are difficult to organise because they are scattered in different places.<sup>61</sup> Consequently, subcontracting further fragments the working class, enhancing the negative effects on unionisation, already undermined by precarious contracts and the widespread resort to migrant labour (see Section 2). Besides, subcontracted workers do not benefit from collective rights pertaining to the client and the contractor and this further hinders their trade union activities.<sup>62</sup>

Subcontracting can also reduce collective agreement coverage. In Italy, the most representative trade unions have signed a national collective agreement for the entire sector (including transport, logistics and warehouses). However, subcontractors are free not to apply the main national collective agreement on logistics and transport and to apply a different (often cheaper) collective agreement or not to apply any agreement at all. It should be noted that, in Italy, trade unions have extensively bargained with the main logistics companies both to promote re-internalisation processes<sup>63</sup> and to improve the working conditions of their subcontracted workers.<sup>64</sup>

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59. Ecorys, HIVA-KU Leuven, Spark Legal and Policy Consulting, and wmp consult (2023) *Study supporting the Monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU – The situation of temporary cross-border mobile workers and workers in subcontracting chains*, Directorate-General for Employment, Social Affairs and Inclusion, 2024, p. 177.

60. See French case study, Section 3.2.2, and German case study, Section 3.1.

61. See Section 2.1 of the Spanish case study.

62. In Germany and Italy, temporary agency workers benefit from collective rights pertaining to both the agency and the user (see Section 3.3 of the German case study).

63. See also the re-internalisation processes promoted by German trade unions (Section 1.2.2 of the German case study).

64. See Section 4.2 of the Italian case study.

The working class fragmentation caused by subcontracting can also hamper the setting up of a works council.<sup>65</sup> In fact, subcontracting splits production among many small companies that often remain below the threshold required for establishing a works council. In this case, too, subcontracting worsens an already difficult situation. As reported in the German case study, the creation of works council is also hindered by the widespread resort to migrant labour and precarious workers in logistics, whose extreme vulnerability often prevents them from participating in trade union activities.<sup>66</sup>

The French and Italian case studies report the broad presence of grass-root trade unions in logistics. In France, this can cause problems among the representative unions because ‘the very small unions do not have the power to organise national action’.<sup>67</sup> In Italy, by contrast, grassroots trade unions have been important in denouncing labour exploitation in the sector. However, these unions have often organised spectacular protests and some trade unionists have been charged with criminal acts.<sup>68</sup>

The four case studies in this report emphasise that subcontracting makes **monitoring much more difficult and time-consuming**.<sup>69</sup> In fact, labour inspectors struggle to detect companies in the subcontracting chain, to reconstruct the constellation of contracts that bind them, and to identify the real employer of each worker.<sup>70</sup> This is even more true for last-mile delivery because of difficulties in checking vans moving through cities without tachographs.<sup>71</sup> In addition, many studies point to a shortage of inspectors at national level.<sup>72</sup>

Finally, all country case studies highlight that subcontracting further increases the existing problems with regard to **access to justice**. In fact, workers constantly face difficulties in providing evidence because of the complexity of subcontracting chains. All too often, workers do not even know who their employer is.

## 4. Recommendations

The country case studies broadly demonstrate the **unsustainability of the current logistics business model**. Despite the many problems in the sector,

65. According to the author of the German case study, ‘the avoidance of collective bargaining and codetermination often appears to be a key reason for companies to outsource’ (Section 2.1.2).

66. See Section 4.1 of the German case study.

67. See Section 4.1 of the French case study.

68. See Section 4.3 of the Italian case study.

69. See Section 5.2 of the French case study; Section 5 of the Spanish case study; Section 5.1 of the Italian case study; and Section 5.1 of the German case study.

70. “The lack of transparency and accountability in long subcontracting chains may make enforcement of the applicable rules very difficult due to problems in identifying the liable company” (Commission Staff Working Document accompanying the document REPORT on the application and implementation of Directive (EU) 2018/957, SWD(2024)320, p. 31).

71. Spanish case study, Section 2.1.

72. See, for example, <https://www.etuc.org/en/pressrelease/huge-fall-labour-inspections-raises-covid-risk>

created or increased by subcontracting, to date no European regulation has been introduced on either logistics or subcontracting. Some scholars have pointed out the ‘problem of non-government of logistics’, that is, the fact that politics does not, or is unwilling or unable to govern the problems generated by logistics. It is certainly true that e-commerce giants can operate beyond the scope of traditional political regulation, which is limited to local territories.<sup>73</sup> However, EU Member States, as well as the European Union as a whole, can still regulate the market, decide what goods can be sold in their territory, limit certain business models, and establish rules that must be respected when companies operate on their territory, if they have the political will.

It should also be highlighted that, currently, national and European law directly or indirectly facilitate labour exploitation, in terms of cutting costs and worsening working conditions. This promotes subcontracting (for example, it has become easier to set up a company) and increases workers’ vulnerability (precarious contracts are permitted; work permits for migrants are linked to the employment contract). Therefore, recommendations aimed at tackling the negative effects of subcontracting on working conditions and trade union activities cannot be confined to enforcement measures for tackling workers’ rights violations. Certainly, controls, remedies and sanctions are necessary and should be improved. However, it is also very important to reduce the benefits that companies gain through subcontracting in terms of lower responsibility and labour cost reductions.

Against such a background and based on the research conducted in a selected set of Member States, this study proposes the following policy recommendations with regard to subcontracting practices prevalent in logistics.

(i) Re-establish the link between power and profit and risks and responsibilities

A substantive definition of ‘employer’ should be clearly stated at EU level. The European Commission should clarify in a Communication that the principles laid down by the European Court of Justice (ECJ) in *AFMB*<sup>74</sup> have to be applied generally in order to implement and enforce European labour law. According to this judgment, a worker ‘must be regarded as being employed, not by the undertaking with which he or she has formally concluded an employment contract, but by the [...] undertaking that has actual authority over him or her, that does, in reality, bear the costs of paying his or her wages, and that has the actual power to dismiss him or her’ (§ 75). Therefore, supplying labour only should be forbidden, except in cases expressly permitted by national or European law (such as temporary agency work).

It also should be pointed out that the widespread use of digital devices and surveillance technologies provided by the client enhances the latter’s control over

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73. Messina P., E-commerce, logistica e territori. Riflessioni di sintesi e proposte, in Ires Veneto, Amazon nel territorio di Rovigo...un anno dopo, 2023, p. 56.

74. ECJ, 16 July 2020, C-610/18, *AFMB Ltd and Others v Raad van bestuur van de Sociale verzekeringsbank*.

its contractors and subcontractors, as well as over their workers. In these cases, it is therefore important to establish who the real employer is, that is, who directs and controls workers through the algorithmic management system.

Clarification of the substantive definition of employer is also necessary in order to better understand the role of labour market intermediaries, the definition of which was recently established by the Directive on Platform Workers.<sup>75</sup>

Joint and several liability regimes should be harmonised and strengthened. As demonstrated by the country case studies, the existing European rules on joint and several liability have been implemented differently by Member States. Furthermore, several countries (such as France) have limited their scope and/or have introduced the option of a due diligence defence.<sup>76</sup> Therefore, a new European regulation should be adopted that harmonises joint and several liability rules, extending their application to the full subcontracting chain and enlarging their scope beyond remuneration and social security contributions.<sup>77</sup>

#### (ii) Enhancing the transparency of the subcontracting chain

The transparency of the supply chain should be ensured by enforcing due diligence obligations established in the Corporate Sustainability Reporting Directive (CSRD)<sup>78</sup> and in the Corporate Sustainability Due Diligence Directive (CS3D).<sup>79</sup> The effectiveness of both directives depends on the degree of worker participation throughout the entire due diligence process. Consequently, the correct implementation of the collective rights introduced by the two directives should be strictly monitored. Besides, transnational cooperation among trade unions, as well as exchanges among worker representatives at different levels, should be strongly promoted.

It should be kept in mind that the scope of the two directives is limited, however. In particular, the CS3D applies only to 496 European logistics companies (there

75. Borelli S., Labour Intermediaries and Labour Migration in the EU – A Framing Puzzle to Rule the Market (and Avoid the Market of Rules), FES Briefing, 2024.

76. Ecorys, HIVA-KU Leuven, Spark Legal and Policy Consulting, and wmp consult (2023) *Study supporting the Monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU – The situation of temporary cross-border mobile workers and workers in subcontracting chains*, Directorate-General for Employment, Social Affairs and Inclusion, 2024, p. 193.

77. EFBWW, ETF, and EFFAT demand full chain liability that covers ‘remuneration (circumvention and evasion of), social security contributions and other social obligations, taxes, health and safety, and (violation of) the rights to organise and bargain collectively’, *Stop exploitation!*, 2024, p. 9.

78. Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.

79. Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859. In 2025, the European Commission suggested to amend both the CS3D and the CSRD in order to reduce companies’ obligations.

are 1,308,366 logistics companies in Europe).<sup>80</sup> Therefore, the new European regulation on subcontracting should extend to all companies the duty to inform worker representatives and national competent authorities about work and services contracted out, providing a complete list of companies involved in contracts and subcontracts. The working and employment conditions of workers employed throughout the subcontracting chain should also be a topic of information and consultation for worker representatives in the client company, at all levels (including the European Work Council).<sup>81</sup>

(iii) Fostering job stability for workers

The regulation on subcontracting should oblige Member States to introduce social clauses in case of changes of (sub)contracts; that is, the new (sub)contractor should be forced to re-engage workers previously employed by the former (sub) contractor.

The use of temporary contracts should be limited, establishing ‘the maximum share of agency workers, the maximum duration of the assignment in one user undertaking and the number of successive assignments to the same workplace’.<sup>82</sup>

(iv) Guaranteeing equal treatment of all workers

A clause imposing equal treatment between workers hired by subcontractors and workers hired by the client should be established. In other words, the working and employment conditions of subcontracted workers shall be, for the duration of the subcontract, at least those that would apply if they had been recruited directly by the client. This equal treatment clause would prevent any subcontracting aimed only at reducing labour costs.

Existing derogations from the principle of equal treatment in Directive 2008/104 on temporary agency work should be repealed.<sup>83</sup>

(v) Preventing work accidents in the entire subcontracting chain

The client and the main contractor should be obliged to set up risk assessment and risk management procedures aimed at preventing work accidents in the entire subcontracting chain. These procedures should be set up in accordance with trade unions and worker representatives. Moreover, the use of algorithmic management

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**80.** The number of EU27 companies present on Orbis with more than 1,000 workers and NACE codes 494 (Freight transport by road and removal services), 52 (Warehousing and storage), 53 (Postal and courier activities). Some 146 of these 496 are established in Germany, 59 in Italy, 43 in Spain and only 22 in France.

**81.** EFBWW, ETF, EFFAT, Stop exploitation!, 2024, p. 9.

**82.** EFBWW, ETF, EFFAT, Stop exploitation!, 2024, p. 11.

**83.** EFBWW, ETF, EFFAT, Stop exploitation!, 2024, p. 11.

systems should be negotiated with trade unions and systems aimed at intensifying work pace should be forbidden.

(vi) Supporting the development of trade union activities throughout the entire subcontracting chain

Trade unions should be able to mobilise workers along the entire subcontracting chain. Two sets of measures should be implemented to achieve this objective. First, worker participation in the client company should be strengthened to cover also the working and employment conditions of workers employed throughout the subcontracting chain (see Recommendation no. 2). Second, worker representatives at group level,<sup>84</sup> as well as on site, should be developed and supported, and cooperation among worker representatives and trade unions present in the subcontracting chain should be strengthened.

(vii) Boosting labour inspections and cooperation among national authorities, also at transnational level

Member States should perform additional labour inspections<sup>85</sup> and should promote data exchange, as well as other forms of collaboration among public authorities. In particular, the digitalisation of business registers can ‘increase transparency and facilitate the identification of employers and subcontractors and the checking of their activities’. In fact, ‘through digital company registers, regulatory oversight and audit would be significantly facilitated and would contribute to a much faster exchange of information’, also across borders.<sup>86</sup> Another digital tool that facilitates inspections and increases subcontracting chain transparency is the social ID card.<sup>87</sup>

Moreover, the role of the European Labour Authority (ELA) should be strengthened in order to facilitate mutual learning and exchanges between national authorities, and to encourage coordination among national inspectors in transnational cases.<sup>88</sup>

**84.** These are worker representatives who represent the workers of all companies belonging to the same group.

**85.** EFBWW, ETF, EFFAT demand to ‘adopt the ILO benchmark of a minimum of one labour inspector per 10.000 workers, supplemented with a minimum number of inspections to be carried out base on the specificities of each sector’, *Stop exploitation!*, 2024, p. 13.

**86.** Ecorys, HIVA-KU Leuven, Spark Legal and Policy Consulting, and wmp consult (2023) *Study supporting the Monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU – The situation of temporary cross-border mobile workers and workers in subcontracting chains*, Directorate-General for Employment, Social Affairs and Inclusion, 2024, p. 244.

**87.** EFBWW, ETF, EFFAT, *Stop exploitation!*, 2024, p. 13.

**88.** Ecorys, HIVA-KU Leuven, Spark Legal and Policy Consulting, and wmp consult (2023) *Study supporting the Monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU – The situation of temporary cross-border mobile workers and workers in subcontracting chains*, Directorate-General for Employment, Social Affairs and Inclusion, 2024, p. 143.

(viii) Facilitating access to justice

Member States must ensure that trade unions may engage in any necessary proceedings regarding alleged infringements of workers' rights. The costs and duration of trials should be contained. Countries must also support (also fund) trade union initiatives aimed at informing workers (especially third-country nationals) of their rights<sup>89</sup> and facilitating their access to justice.<sup>90</sup>

(ix) Limiting subcontracting

Facing the many negative effects of subcontracting on working conditions and trade union activities, the most important recommendation, which could help to achieve all the above listed objectives, is that **subcontracting has to be limited**. Both what can be contracted out and the length of the subcontracting chain need to be restricted. Therefore, a prohibition should be established on contracting out a company's core activities and the number of levels in subcontracting chains should be limited.<sup>91</sup> As a general rule, subcontracting needs to be justified by reasons other than pure profit because, according to national Constitutions and the European Charter of Fundamental Rights, pure profit cannot prevail over workers' rights.

And, sorry, this point cannot be missed.

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**89.** Commission staff working document accompanying the document report on the application and implementation of Directive (EU) 2018/957, swd(2024)320, p. 32. According to this document, the possibility for trade unions to access workplaces at national level should also be enhanced.

**90.** Commission staff working document accompanying the document report on the application and implementation of Directive (EU) 2018/957, SWD(2024)320, p. 35.

**91.** "The longer subcontracting chains become, the more opaque they are and the more difficult it becomes for workers to assert their rights. Capping the number of levels in the subcontracting chain can help prevent this, as this would make subcontracting chains less complex and therefore easier to identify the responsible entities" Ecorys, HIVA-KU Leuven, Spark Legal and Policy Consulting, and wmp consult (2023) *Study supporting the Monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU – The situation of temporary cross-border mobile workers and workers in subcontracting chains*, Directorate-General for Employment, Social Affairs and Inclusion, 2024, p. 243.



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**etui.**