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.

**Further information**

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