LABOUR INTERMEDIARIES AND LABOUR MIGRATION IN THE EU – A FRAMING PUZZLE TO RULE THE MARKET (AND AVOID THE MARKET OF RULES)

October 2024

SUMMARY

Third-country nationals often rely on labour intermediaries for assistance when trying to obtain a work permit in EU Member States because the procedures can be onerous. These intermediaries are often involved in long and opaque subcontracting chains that companies use to cut labour costs.

The many exploitative practices that labour intermediaries engage in suggest that it would be a good idea to switch from a repressive to a preventive approach. The purposes would include, among other things: promoting direct employment by clarifying who the employer is; increasing labour market transparency by introducing an EU registration and licensing system for temporary work agencies and private employment agencies; and forbidding practices that negatively affect working conditions and trade union rights by banning or limiting temporary agency work and subcontracting.

ABOUT THE AUTHOR

Silvia Borelli is Professor of Labour Law at the University of Ferrara. She belongs to the Editorial Committees of *Lavoro e Diritto* and *Rivista giuridica del lavoro* (journal members of the International Association of Labour Law Journals) and is a member of the Academic Network on the European Social Charter and Social Rights (Réseau académique sur la charte sociale européenne et les droits sociaux). She has been involved in many research projects at national and European level, including the ETUC project Securing Workers Rights in Subcontracting Chains; the EFBWW project Cross-border Social Fraud/Abuse in Social Security; and the ETUI project Mapping the Rules on Posting and Short-term Migration of Third Country Nationals.

BACKGROUND

Third-country nationals (TCNs) seeking employment in the European Union (EU) face numerous challenges because of the absence of unified recruitment procedures. Each Member State imposes different conditions and requirements, creating confusion among third-country nationals regarding how to obtain a work permit. Often unfamiliar with their rights, they are exposed to exploitation, particularly when relying on labour intermediaries for assistance with visas, accommodation and transportation.

Different labour intermediaries step in to 'facilitate' the recruitment process for third-country nationals, making these workers dependent on them for various services. Furthermore, third-country nationals posted by their employers to other EU Member States are especially vulnerable. In fact, posted third-country nationals are doubly dependent on their employer because they have permission to reside as long as they are posted by him/her.[1] Therefore, 'posted third-country national workers are generally more exposed to abusive practices, such as fraudulent posting, labour rights violations, precarious working conditions or irregular payment or non-payment of social contributions' (European Commission, 2024: 33; Milieu Consulting SRL and EFTHEIA, 2023: 8). Often, they accept remuneration below what they are entitled to, but which is still much higher than what they can obtain in their country of origin (Ecorys, HIVA-KU Leuven, Spark Legal and Policy Consulting, and WMP Consult, 2024: 169). Furthermore, in the case of posting of workers, third-country nationals benefit from the right to equal treatment only with home state nationals (Article 12 Directive 2024/1233).

On many occasions, labour intermediaries operate in long and opaque subcontracting chains, often set up to separate

1 A state can require a residence permit for posted third-country nationals only after a three-month period of residence, if this is in the public interest and does not go beyond what is necessary in order to attain that objective (ECJ, 20.6.2024, C-540/22, § 102).

control and profit from risks and responsibilities and so cut labour cost (Borelli, 2022).

Hitherto the EU has relied mainly on a repressive ex post approach (adopted, for example, in Directives 2009/52, 2011/36, 2014/67) to fight abuse and exploitation with regard to labour rights violations and labour intermediaries. However, the many exploitative practices involving workers, especially in a cross-border context (European Commission, 2024: 20; Ecorys, HIVA-KU Leuven, Spark Legal and Policy Consulting, and WMP Consult, 2024: 129 and 133), suggests that it would make sense to adopt a more prudent approach and to better regulate these intermediaries.

Labour intermediaries can easily evade detection, especially in industries such as agriculture and transportation, where the workforce is mobile or scattered, and many third-country nationals, often not speaking the local language, are employed. Inspections are often too infrequent to deter violations because of a lack of resources and understaffed labour authorities. Furthermore, temporary work and recruitment agencies 'can be set up, dismantled and then set up again elsewhere relatively easily' (European Commission, 2024: 28). Therefore, inspections often arrive too late when abusive labour practices have already been readapted to elude controls and these agencies have vanished without paying workers their wages. Moreover, 'the complex employment relationships that are usually formed when temporary work agencies and labour market intermediaries are involved make monitoring and enforcement even harder' (Ecorys, HIVA-KU Leuven, Spark Legal and Policy Consulting, and WMP Consult, 2024: 133). This problem is exacerbated by the fact that labour intermediaries are not clearly defined in EU law, which makes regulation and oversight more difficult.

Clarification of the status of labour intermediaries is urgently required to establish which standards, obligations, liabilities and rules of operation should apply and which regulatory bodies should be responsible for inspection and enforcement (European Economic and Social Committee, 2016, § 7.1). This is even more urgent in relation to the growing role of technologies that help labour market intermediaries to provide online assessment, labour market information and employment services to job seekers and employers, offering a broad variety of services worldwide (European Commission, 2020a, § 3.6).

Currently, intermediaries are regulated by the Platform Workers Directive amidst considerable confusion. Furthermore, the terms 'labour intermediary' and 'labour market intermediary' are used by the European institutions in several other contexts, such as temporary agency work and human trafficking (European Commission, 2014, § 4.4; European Commission, 2016, § 3.1; European Commission, 2020, § 5.2; European Parliament, 2016, § 11), third-country nationals (European Commission, 2021), and the EU talent pool (European Commission, 2023). The risk that such confused terminology entails is that all these different practices may be deemed lawful, blurring existing regulations. This policy brief aims at clarifying the point that **an EU definition on labour intermediaries is not need.** Instead, the following are necessary: promoting direct employment by clarifying who the employer is; increasing labour market transparency by setting up an EU registration and licensing system for temporary work agencies and private employment agencies; forbidding practices that negatively affect working conditions and trade union rights by banning or limiting temporary agency work and subcontracting.

PROBLEMS OF DEFINITION: FORMAL AND SUBSTANTIAL EMPLOYER

The majority of EU countries have civil law legal systems. In this system, the employment relationship is based on two elements: recognition of a power to direct and control workers and prohibition of a separation between formal employer and actual employer. According to this second element, if the person who exercises the power to direct and control the working activity is different from the person formally named in the employment contract, then it is the former and not the latter who must be regarded as the employer in terms of the scope of employment protection (Corazza and Razzolini, 2014: 111).

The two elements of the employment relationship are strictly intertwined. The employer exercises the power of control and direction, and because employees are subject to this power, the employer has to meet certain obligations, introduced to protect workers. The prohibition of a separation between the formal employer and the actual employer stems also from the way in which labour legislation and collective agreements have been set up in all EU countries. In many circumstances, they depend on who the employer is. For example, some rules apply only to employers operating in certain sectors, having a certain number of employees or a certain turnover, being constituted in certain legal forms, and so on.

Therefore, if a person who is included in the employment contract only formally can be considered the real employer, labour law would cease to be mandatory and would be subject to the employer's whim. In this case companies would be able to choose which labour legislation and collective agreements apply to its workforce. This would amount to a *market for rules* in contrast to *rules for the market* (Supiot, 2005).

Currently, EU law does not provide a general definition of employer. In *AFMB*[2] the Court of Justice (ECJ) has stated that when the definition of the term 'employer' determines the applicable law and hence requires an autonomous and uniform interpretation throughout the European Union, the *substantive* or actual employer should prevail over the *formal* employer.[3] The ECJ thus rejected the *market for rules* (that is, the possibility for the substantive employer to decide which law shall apply to its employment relationship by operating

2 ECJ, 16 July 2020, C-610/18.

3 A similar approach was adopted in *Voogsgeerd* (ECJ, 15 December 2011, C-384/10) to determine the applicable law according to Article 8 of the Rome I Regulation.

through a formal employer) and stated the validity of the *rules for the market*, namely, the fact the EU law determines the rules to be respected in the single market to ensure fair competition and decent working conditions.

Considering the role played by the prohibition of separation between formal and substantive or actual employer to ascribe an employer's duties and responsibilities, it would be crucial to extend it to cover any instance in which EU law regulates the employment relationship. As stated by some scholars, when implementing Directives aimed at protecting workers' social rights, 'Member States may not diverge from the EU approach to the concept of the employer, if doing so is to the disadvantage of the worker' (van Schadewijk, 2021: 381).

In many Member States, the prohibition of separation between the formal and the substantive employer is a major remedy in case of illegal labour: being considered employed by the company for which they actually work (substantive employer), and not by the labour intermediary that has formally hired them (formal employer), workers can benefit from the regulations applicable to the substantive employer. This usually guarantees better rights. Moreover, the substantive employer (as well as the formal employer in countries where joint liability is implemented) is made liable for respecting labour regulations.

TEMPORARY AGENCY WORK

Temporary agency work is regulated by Directive 2008/104/EC. According to this directive, a temporary work agency (TWA) 'concludes contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction' (Article 3 § 1.b)[4]. Consequently, in case of temporary agency work the user undertaking exercises the power of control and direction and the agency just supplies the workers. By contrast, in the case of subcontracting the contractor (or subcontractor) provides a service by relying on its own business organisation and workforce, bearing the risks and the responsibilities and exercising the employer's powers of control and direction (Corazza and Razzolini, 2014: 112).

Despite the broad definition of temporary work agency under the 2008 Directive, several labour intermediaries do not come within its scope: one example is private employment agencies that match labour demand and supply, without hiring the workers. The lack of a European regulation on private employment agencies is becoming more and more unjustifiable given their growing role in national and transnational subcontracting chains[5] and the fact that since 1997 they have been regulated by an ILO Convention (ratified for the moment by only 13 countries).

Moreover, Directive 2008/104 regulates only temporary assignment of workers.[6] A permanent assignment would mean, for the worker concerned, working side by side with other people without having the same employer, the same working conditions and the same trade union rights. Job stability would be seriously threatened because the user can easily renounce the contract with the agency, which can then dismiss the worker. Worker representatives would be seriously affected because, on one hand, the threshold necessary to set them up in the user undertaking would be more difficult to reach and, on the other hand, agency workers cannot fully participate in and be represented by them. Therefore, permanent assignment of workers hired by a temporary work agency should be banned.

Other problems concerning Directive 2008/104/EC are related to the equal treatment principle. First, it is limited only to basic working and employment conditions[7]; second, it can be derogated in several ways, whose legitimacy is often not easy to assess[8]; third, its scope is limited to temporary agency work and it does not apply to other cases of labour supply and subcontracting chains.

Besides that, Directive 2008/104 does not establish any joint and several liability for the user, meaning the entity for which the temporary agency worker works and who effectively exercises the power of control and direction over them.[9] This aspect, as well as rules concerning trade union rights, should be strengthened in order to avoid the deresponsibilisation entailed by temporary agency work and to limit negative consequences for worker organisations.

Finally, it should be pointed out that temporary work agencies operating at transnational level are often involved in very opaque subcontracting chains. Besides that, transnational temporary agency work can promote the *market for rules*. In fact, instead of directly hiring their workforce, companies can benefit from the temporary agency workers assigned by an agency established in a country in which labour and social security law are less stringent. To prevent this risk, Directive 2018/957 has obliged Member States to guarantee posted workers the terms and conditions of employment that apply pursuant to Article 5 of Directive 2008/104/EC to temporary agency workers hired out by temporary-work agencies established in the Member State where the work is carried out (Article 3 § 1(b) of Directive 96/71). Moreover, host States are allowed to further extend the scope of terms and conditions that apply to posted temporary agency workers (Article 3 § 9).

Another important step in fighting the *market for rules* was taken by the ECJ in *Team Power*. According to the Court, for a temporary work agency established in a Member State to

4 The same definition appears in Article 2(h) of Directive 2009/52.

5 The development of private employment agencies has followed the ECJ decision in *Job Centre Coop* (11.12.1997, C-55/96), in which the Court denied the possibility to maintain public employment services as a monopoly because they were not capable of efficiently satisfying the needs of job seekers in the labour market.

6 ECJ, 22.6.2023, C-427/21, *Alb Fils Kliniken*, § 47.

7 On the interpretation of the concept of 'basic working and employment conditions' see ECJ, 22.2.2024, C-649/22, *Randstad Empleo*.

8 See, for example, ECJ, 15.12.2022, C-311/21, *TimePartner Personalmanagement*, § 50.

9 ILO Convention No. 181 demands that States determine and allocate the respective responsibilities of private employment agencies and of user enterprises, with a view to guaranteeing adequate protection to the workers concerned (Article 12).

be considered as such it needs to carry out 'a significant part of its activities of assigning temporary agency workers for the benefit of user undertakings established and carrying out their activities in the territory of that Member State'.[10] In this case only, the temporary work agency can post its workers abroad, continuing to apply the social security legislation of the home State.

PLATFORM LABOUR INTERMEDIARIES

In the debate on labour intermediaries platforms matter for two reasons: on one hand, some platforms can match supply and demand for work (that is, platforms can operate as recruitment agencies); on the other hand, platform work can be mediated by intermediate companies that engage workers and then provide services to the platforms.

The growing presence of online recruitment agencies and their potential capacity to provide services worldwide make the labour market even more opaque. Besides, these agencies threaten the national registration, licensing and certification system because they can easily operate at transnational level. Thus, their presence further supports the necessity of a European registration and licensing system.

To solve the problems generated by platforms resorting to labour intermediaries (Sabanova, Badoi, 2022: 12), the Platform Workers Directive obliges Member States to take appropriate measures to ensure that 'persons performing platform work who have a contractual relationship with an intermediary enjoy the same level of protection afforded under this Directive as those who have a direct contractual relationship with a digital labour platform. To that effect, Member States shall take measures, in accordance with national law and practice, to establish appropriate mechanisms, which shall include, where appropriate, joint and several liability systems' (Article 3).

The wording of Directive 2024/2831 is quite ambiguous. From the long list of definitions given by Article 2 of the Directive, it can be inferred that:

- a 'digital labour platform' organises work through automated monitoring or decision-making systems;
- these systems are used to take or support decisions that significantly affect persons performing platform work and to monitor, supervise or evaluate their work performance;
- individuals who perform platform work (that is, the work organised through a digital labour platform) can have a contractual relationship with the digital labour platform or the intermediary;
- the intermediary makes platform work available to or through a digital labour platform.

Which leads again to the question: who is the (actual) employer? And what is the role of a potential intermediary?

The Directive does not answer the first question. It affirms the *primacy-of-facts principle* for determining the existence of an employment relationship, adding that the relevant facts shall include the use of automated monitoring or decision-making systems. Where the existence of an employment relationship is established, the party or parties assuming the obligations of the employer shall be identified in accordance with national legal systems (Article 4).

If automated monitoring or decision-making systems imply an employment relationship, then the digital labour platform should be considered to be the *substantive* employer of these workers. As already pointed out (§ 2), the EU law does not generally oblige Member States to classify as employer the person who effectively directs and controls working activities; however, this can significantly disadvantage workers. Thus, Directive 2024/2831 missed an opportunity to specify this principle at EU level and risks jeopardising the protection assured to platform workers.

Article 3 of the Platform Workers Directive obliges Member States to guarantee to persons performing platform work who have a contractual relationship with an intermediary the same level of protection as those who have a direct contractual relationship with a digital labour platform. However, this rule concerns only the protection afforded under the Directive; consequently, workers who have a contract with an intermediary can have different wages, different working time, different annual leave and so on from what they would have in case of direct employment with the digital labour platform.

Besides, Directive 2024/2831 does not prevent platforms from resorting to intermediaries to circumvent employer obligations. Article 3 requires the adoption of joint and several liability systems, but only "where appropriate". Moreover, rules on joint and several liability can be implemented differently by Member States. For example, they can have limited scope (for instance they can concern wages only), can be ruled out when fulfilling due diligence obligations, and can apply only for a certain period (such as one or two years).

Intermediaries that conclude contracts of employment with workers in order to assign them to a digital labour platform should be considered temporary work agencies and comply with the corresponding regulation (De Stefano and Wouters, 2019).

In the event that, despite the use of automated monitoring or decision-making systems, persons performing platform work are classified as self-employed, the intervention of an intermediary creates a subcontracting chain: the digital labour platform is the client, the intermediary is the contractor and the persons performing platform work are subcontractors. In this case as well, Directive 2024/2831 missed an opportunity to limit long subcontracting chains, forbidding contractors to subcontract work to be performed by individuals.

10 ECJ, 3.6.2021, C-784/19, *Team Power Europe*, § 68.

Finally, it should be pointed out that the algorithmic management chapter of Directive 2024/2831 concerns only digital labour platforms and a general EU regulation on algorithmic management systems is currently lacking.[11]

CONCLUSIONS AND RECOMMENDATIONS

Taking into consideration the different roles played by labour intermediaries and the many shortcomings and loopholes of the current regulation, the following are recommended:

- **Promote direct employment** by clarifying that the prohibition of separation between the formal and the real employer operates in all cases in which EU law regulates the employment relationship. This clarification is urgent after the decision in *Omnitel Comunicaciones* (24.10.24, C-441/23) in which the ECJ applied Directive 2008/104 to any person who enters into an employment relationship with a worker in order to assign him/her to a user undertaking, even though that person does not have the relevant administrative authorisation. De facto, this decision risks facilitating the circumvention of national licensing systems and, consequently, breaching the prohibition of separation between formal and real employer.[12]

- **Increase labour market transparency** by setting up, at EU level, a registration and licensing system for all temporary work agencies and private employment agencies operating in the single market (even though they are established in a third country).[13] As underlined by Eurofound and by the UN Working Group on Trafficking in Persons,[14] making use of registration and licensing helps to "enforce and sanction labour market intermediaries which might be engaged at the entry point of trafficking" (Eurofound, 2016: 2).[15] This system should be set up at European level to harmonise the different national legislations currently existing (Eurofound, 2016: 20)[16] and to facilitate monitoring of transnational operations, data sharing and data exchange.

- License only those agencies that respect EU law and ILO Conventions, as well as *ILO general principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs*. Therefore, agencies operating in the single market shall not demand a recruitment fee from workers, confiscate workers' documents, discriminate against workers, or bind workers to a specific employer/user. They have to provide workers with reliable and understandable information on their conditions of employment before the effective beginning of their job and in a language they understand, as well as information on the procedure for obtaining the relevant permit and the rights, obligations and procedural safeguards of third-country workers and their family members.[17] To this end, the scope of the obligation to provide information established in Article 4 of Directive 2019/1152 should be extended to all private employment agencies and temporary work agencies operating in the EU.

- **Limit temporary agency work and subcontracting** or ban them for activities and sectors that present a high risk of negatively affecting working conditions.[18] Furthermore, "recruitment, placement, temporary work agencies and other intermediaries should not be allowed to provide workers in posting situations" (EFFAT, ETF, EFBWW, 2024: 11). Moreover, the maximum share of temporary agency workers should be limited, as well as the maximum duration of the assignment and the number of successive assignments (EFFAT, ETF, EFBWW, 2024: 11).

- Forbid Member States that have issued work permits to posted third-country nationals to refuse their readmission to their territory, for any reason whatsoever.[19] Back in their home country, third-country nationals should be guaranteed rights under the new Single Permit Directive (Directive 2024/1233). In fact, Article 3 §2(c) excludes posted third-country nationals from the scope of the Directive but only "as long as they are posted". Thus this shall not affect third-country nationals who return to their home country *after* having been posted.

  Moreover, host Member States shall enact mechanisms to ensure that posted third-country nationals may submit a claim against their employer and any jointly liable person for any remuneration or worker rights' violations. The host Member States shall also grant residence permits of limited duration, linked to the length of the relevant national proceedings.[20]

11 In Italy (Tribunal of Padua n. 550/2019) and in the United States (https://onlabor.org/august-23-2024/), the use of these systems has been taken into consideration in decisions to allocate an employer's duties and responsibilities to companies (such as Amazon) that exploit them.

12 National licensing systems, authorising only certain agencies to hire workers who are then subordinated to the user's power to direct and control, aim to limit derogations to the prohibition of separation between the formal and the real employer.

13 Registration and licensing were requested by European Parliament (2020, §53). ILO Convention No. 181 demands effective and transparent registration and licensing for private employment agencies to protect workers against human rights abuses in the recruitment process (Article 3).

14 https://www.unodc.org/unodc/en/treaties/CTOC/working-group-on-trafficking-november-2015.html

15 On the role of licensing labour market intermediaries see Davies (2020), p. 251.

16 Coordination of existing national systems is very problematic when agencies operate at transnational level because the host states cannot demand compliance with standards already complied with in the home state (ECJ, 17.12.1981, Webb, 279/80).

17 On the state's duty to inform third-country nationals see Article 16 of Directive 2024/1233.

18 See Article 5 of Directive 91/383. According to Article 2 §4 of ILO Convention No. 181, a Member may "prohibit, under specific circumstances, private employment agencies from operating in respect of certain categories of workers or branches of economic activity".

19 See Article 2 §5 of the Proposal for a Directive of the European Parliament and of the Council on the posting of workers who are third-country nationals for the provision of cross-border services (1999/C 67/09), COM(1999)3.

20 See Recital no. 27 and Article 6 §2 of Directive 2009/52.

- Make users and subcontractors accountable for compliance with the applicable labour and social security legislation and collective agreements, as well as for the sanctions imposed in case of their violation (full joint and several liability) within the framework of temporary agency work and subcontracting.

- Remove derogations established by Directive 2008/104 with regard to the right to equal treatment between workers in order to ensure decent working conditions and fair competition among companies operating in the single market. Equal treatment shall apply also to workers hired by subcontractors.

- Establish a complaints mechanism for workers, including third-country nationals, independently of their legal status, through which they can file a complaint in case the employer violates their rights or their own obligations directly or indirectly through third parties, such as trade unions or non-governmental organisations.

- Increase the number of labour inspections by national authorities and jointly coordinated inspections by the ELA.

- Implement dissuasive sanctions for agencies and companies involved in fraudulent recruitment practices, committing worker rights' violations or profiting from such violations (including revocation of licenses).

The many loopholes in the existing EU legislation and the exploitative practices (sometimes amounting to trafficking for the purpose of labour exploitation) that some labour intermediaries engage in cannot be dealt with by stepping up repressive measures only. In fact, *ex-post* controls will not be sufficient because of the shortage of labour inspectors and their lack of resources, not to mention the time-consuming controls that long subcontracting chains entail, especially in cross-border situations, and the bad effects on working conditions and trade union rights that result from third-party employment. The abundant evidence of abuse and exploitation demonstrates the need to **switch from a *repressive approach* to a *preventive approach,* aimed at promoting direct employment, increasing labour market transparency and forbidding practices that negatively affect working conditions and trade union rights.**

REFERENCES

Borelli, Silvia (2022): Subcontracting: Exploitation by design. Tackling the business model for social dumping. Study for The Left in the European Parliament; available at: https://left.eu/issues/subcontracting-exploitation-by-design-tackling-the-business-model-for-social-dumping/

Corazza, Luisa,/Razzolini, Orsola (2014.): Who is an employer?, Biblioteca '20 Maggio' no. 2/2014; available at: https://csdle.lex.unict.it/sites/default/files/Documenti/Articoli/2014-2_Corazza-Razzolini.pdf

Davies, Anne. 2020. Licensing of Employing Entities and Criminalization, in Bogg, Alan,/Collins, Jennifer,/Freedland, Mark,/Herring, Jonathan (. 2020eds.): Criminality at work., Oxford University Press.

Ecorys, HIVA-KU Leuven, Spark Legal and Policy Consulting, and WMP Consult (2024): 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; available at: https://op.europa.eu/en/publication-detail/-/publication/d06f8af4-02bd-11ef-a251-01aa75ed71a1/language-en

EFFAT, ETF, EFBWW (2024): Stop Exploitation! Available at: https://www.efbww.eu/publications/press-releases/efbww-effat-etf-european-action-subcontracting-chains-and-labour/3745-a

Eurofound (2016): Regulation of labour market intermediaries and the role of social partners in preventing trafficking of labour. Luxembourg: Publications Office of the European Union; available at: https://www.eurofound.europa.eu/en/publications/2016/regulation-labour-market-intermediaries-and-role-social-partners-preventing

European Commission (2014): Mid-term report on the implementation of the EU strategy towards the eradication of trafficking in human beings, Commission Staff Work Document, SWD(2014)318; available at: https://eur-lex.europa.eu/legal-content/NL/TXT/?uri=CELEX:52014SC0318

European Commission (2016): Report assessing the impact of existing national law, establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, on the prevention of trafficking in human beings, in accordance with Article 23 (2) of Directive 2011/36/EU, COM(2016)719; available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0719&rid=2

European Commission (2020a): Evidence on Demographic and Social Trends Social Policies' Contribution to Inclusion, Employment and the Economy accompanying the Communication Towards Social Investment for Growth and Cohesion – including implementing the European Social Fund 2014–2020. Commission Staff Working Document, SWD/2013/038: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52013SC0038

European Commission (2020b): Commission Staff Work Document accompanying the third report on the progress made in the fight against trafficking in human beings (2020) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, SWD(2020)226; available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0661

European Commission (2021): Communication on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, COM(2021)592; available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0592

European Commission (2023): Proposal for a Regulation establishing an EU Talent Pool, COM(2023)716; available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A716%3AFIN

European Commission (2024): Commission Staff Working Document accompanying the Report on the application and implementation of Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, SWD(2024)320;

available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52024SC0320

European Economic and Social Committee (2016) Opinion on 'The changing nature of employment relationships and its impact on maintaining a living wage and the impact of technological developments on the social security system and labour law', 2016/C 303/07; available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016AE0137

European Parliament (2016): Resolution on implementation of the Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims from a gender perspective (2015/2118(INI)); available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016IP0227

European Parliament (2020): Resolution of 17 December 2020 on a strong social Europe for Just Transitions (2020/2084(INI)); available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020IP0371

Milieu Consulting SRL and EFTHEIA (2023): Report on the cooperation practices, possibilities and challenges between Member States – specifically in relation to the posting of third-country nationals. Final Report, European Labour Authority; available at: https://www.ela.europa.eu/sites/default/files/2023-04/ela-report-posting-third-country-nationals.pdf

Sabanova, Inga/Badoi, Delia (2022): Online platforms & platform work. The Complex European landscape. Friedrich-Ebert-Stiftung; available at: https://library.fes.de/pdf-files/bueros/bruessel/19257.pdf

Supiot, Alain (2005): Le droit du travail bradé sur le "marché des normes", in: *Droit sociale*, 1087.

van Schadewijk, Matthijs (2021): The notion of 'employer': Towards a uniform European concept?, in: *European Labour Law Journal*, 363; available at: https://journals.sagepub.com/doi/pdf/10.1177/2031952521991159?download=true

CONTACT

Friedrich-Ebert-Stiftung
Competence Centre on the Future of Work
Cours Saint Michel 30e | 1040 Brussels | Belgium

https://futureofwork.fes.de/

Responsible Contact:
Dr. Inga Sabanova | **Inga.sabanova@fes.de**