

SUBCONTRACTING: EXPLOITATION BY DESIGN

TACKLING THE BUSINESS MODEL FOR SOCIAL DUMPING

EXECUTIVE SUMMARY



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IN THE EUROPEAN PARLIAMENT

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Following numerous scandals, subcontracting has become a topic of interest for academics and journalists alike, and its negative impact on employment and working conditions has been widely condemned.

This report sets out the various ways that subcontracting undermines labour laws in the EU. Using case studies we seek to demonstrate that subcontracting is not a temporary solution to deal with specific market situations or a necessary solution to performing tasks that do not belong to the company's core business, but is instead **the business model**, normalising exploitation and social dumping so that **companies can increase their profits**.

Subcontracting allows companies to **separate power and profits, on one side, from risks and responsibilities, on the other side**. In fact, the lead company and the main contractor(s) often decide the conditions that must be respected in the service provision or in the good production; instead, the risks and the responsibilities are displaced on subcontractors that, in order to comply with the conditions imposed by the lead company or the main contractor, are often forced to breach labour regulation.

Subcontracting also **affects the stability of work contracts** where workers employed by the subcontractor can be lawfully dismissed if the main contract or the subcontract end.

Due to different employers, collective agreements and applicable labour laws, it increases **unequal treatment between workers and fragments labour communities by hampering worker organisation**. Fragmentation of the production process among several companies hinders the achievement of the thresholds needed to create a worker representative.

Subcontracting makes controls by **labour inspectors** more difficult as the relationships between companies are often unclear and the relevant labour laws and working conditions are obfuscated.

Subcontracting is therefore often involved in both **legal and illegal forms of workers' exploitation** (i.e. practices aimed at progressively deteriorating working conditions) and **social dumping** (i.e. practices aimed at exploiting poor labour conditions with the aim of gaining a competitive advantage).

Despite the widespread presence of abuse in subcontracting chains, this report focuses mainly on the **legal forms of workers' exploitation and social dumping**. In this report, we argue that the exploitation of workers and social dumping result from not only legal breaches, but that these phenomena are actually supported by lawmakers. In other words, **lawmakers deliberately decide to facilitate subcontracting, despite its negative impact on labour**.

As a result, we are calling for intervention at EU level to ensure decent living and working conditions for workers involved in subcontracting chains.

This should be achieved by: limiting the length and level of subcontracting chains; promoting full joint and several liability; strengthening work stability; assuring workers' equal treatment; supporting trade unions and worker representatives along the entire subcontracting chain.

To do this our recommendations are two-fold:

1. A new **European Regulation on decent work in the subcontracting chain** that:

- **Limits the possibility to contract out and shortens the length of the subcontracting chain** by:
 - Prohibiting subcontracting or the possibility to further contract out when necessary to pursue a legitimate interest, such as the protection of workers' rights;
 - Giving powers to member states to oblige the main contractor to perform certain essential tasks;
 - Creating interconnected national databases to exchange information and white/black lists of reliable/unreliable business partners; and
 - Introducing a general duty of transparency on the entire subcontracting chain.
- **Promotes joint and several liability:** The EU legislation shall clarify that whoever exploits workers' activities must bear the duties linked to the contract of employment. Moreover, full joint and several liability for all companies involved in the subcontracting chain shall be introduced.
- **Strengthens work stability** by using social clauses currently present in public procurement legislation to protect workers when a new subcontractor takes over the work or service.
- Guarantees **equal treatment of workers**, applying the same terms and conditions of employment across the subcontracting chain.
- Supports **trade unions and worker representatives along the entire subcontracting chain and guarantees the right to strike.** To monitor the subcontracting chain and to participate in the entire due diligence processes, worker representatives shall be present and their role, including the role of the European Work Council, shall be strengthened.

2. Modification of the existing legal framework, in particular:

Amending the **Corporate Sustainability Due Diligence proposal** in order to:

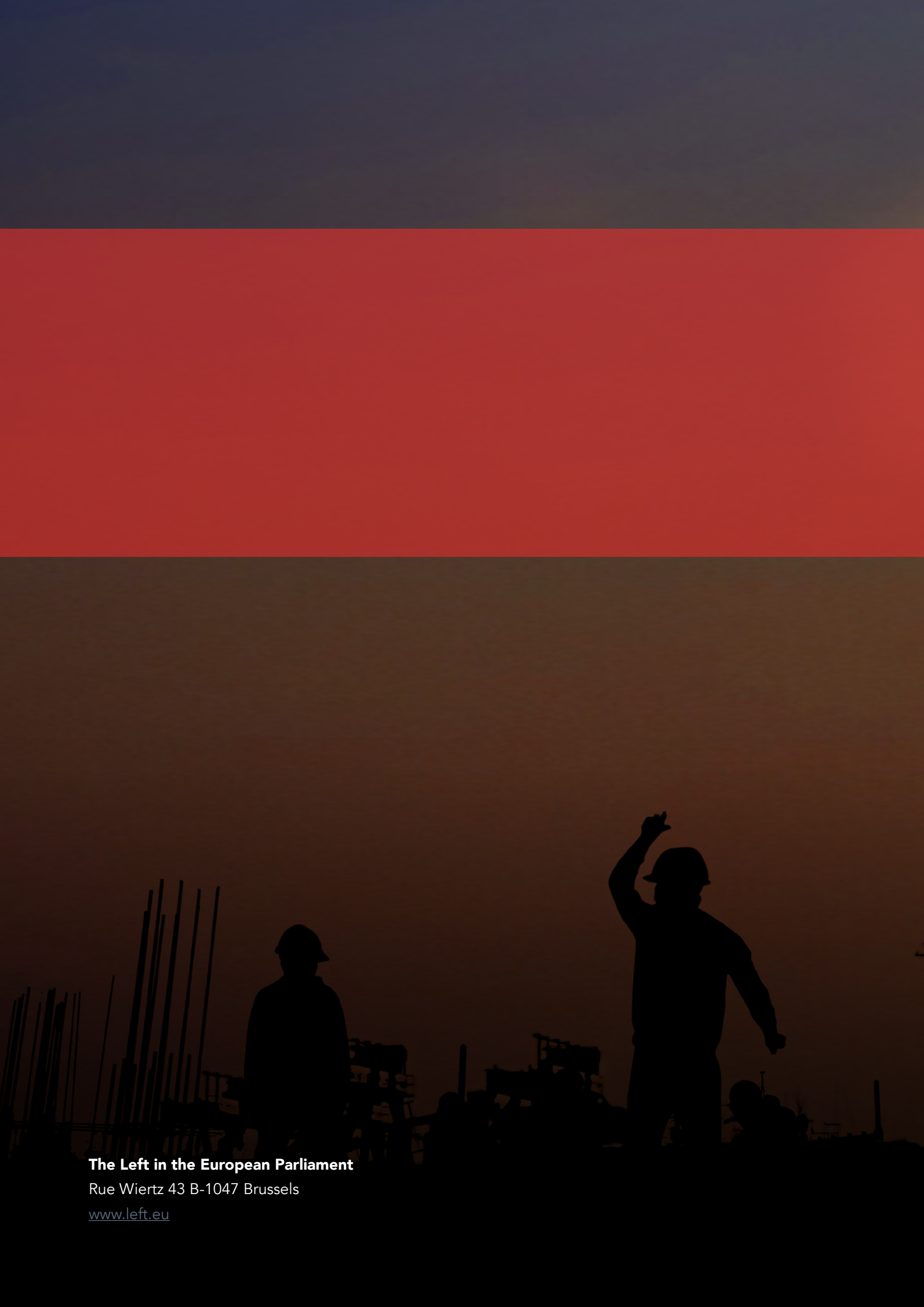
- Ensure transparency of the entire supply chain, obliging companies to disclose information on all the suppliers involved;
- Introduce a rule on joint and several liability for human right violations committed by suppliers;
- Limit the use of contract termination clauses and contractual insurance to avoid any risk of burden-shifting by the lead company onto its suppliers and to guarantee work stability in the supply chain;
- Strengthen the equality clause by:
 - Enlarging and making illustrative and non-exhaustive the lists of human rights and Treaties in Annex of the Directive on Corporate Sustainability Due Diligence (CSDD) proposal;
 - Obliging companies to monitor the respect of legislation that implement these Treaties (where it exists); and
 - Including collective agreements (including transnational collective agreements) in the human rights framework that companies have to respect.
- Ensuring the full involvement of trade unions and workers' representatives throughout the whole due diligence process, including the development and implementation process.

Amending the **legislation on public procurement** in order to:

- Introduce the possibility, for the contracting authority, to limit the length and level of subcontracting chains and the share of subcontracted contract, when needed to pursue legitimate interests;
- Strengthen the rule on joint and several liability, introducing a full liability along the entire subcontracting chain;
- State that social clauses aimed at strengthening work stability are consistent with EU law;
- Increase workers' equal treatment by obliging subcontractors to guarantee their workers at least the same treatment received by the main contractor's workers;
- to award companies that respect and promote trade unions rights along their entire subcontracting chain.

Supporting the creation of worker representatives along the entire subcontracting chains, as well as in sites and groups by:

- Amending **Directive 2002/14** to strengthen right of information and consultation as an integral part of company decision-making at all levels and throughout the entire subcontracting chain;
- Introducing a **new framework directive on workers' information, consultation and participation** for the various kinds of European companies and for companies that use EU company mobility instruments, in order to establish minimum standards on issues such as anticipating change;
- Amending the **European Works Council (EWC) Directive** so as to ensure: that the EWC's opinion is taken into account in company decisions and is delivered before consultation is completed at the respective level and before the governing bodies come to a decision. The amended Directive would also ensure efficient coordination of information, consultation and participation at local, national and EU levels; and effective sanctions when information and consultation rights are violated.



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