



Council of the
European Union

193149/EU XXVII. GP
Eingelangt am 17/07/24

Brussels, 17 July 2024
(OR. en)

12342/24

Interinstitutional Files:

2024/0068(COD)

2024/0069(NLE)

SOC 580
EMPL 378
ECOFIN 886
EDUC 299
JEUN 210
CODEC 1677
IA 164

COVER NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	8148/1/24 REV 1 + ADDs 1-5 - 2024(COM) 132 final 8155/24 - COM(2024) 133 final
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving and enforcing working conditions of trainees and combating regular employment relationships disguised as traineeships ('Traineeships Directive') Proposal for a COUNCIL RECOMMENDATION on a reinforced Quality Framework for Traineeships and replacing the Council Recommendation of 10 March 2014 on a Quality Framework for Traineeships - <i>Opinion of the European Economic and Social Committee</i>

Delegations will find attached a copy of the above-mentioned opinion¹.

¹ The opinion is available in all language versions on the following website:
<https://dmsearch.eesc.europa.eu/search/opinion>



OPINION

European Economic and Social Committee

Traineeship Directive and a Reinforced Quality Framework for Traineeships

Proposal for a Directive of the European Parliament and of the Council on improving and enforcing working conditions of trainees and combating regular employment relationships disguised as traineeships ('Traineeships Directive')
(COM(2024) 132 final – 2024/0068 (COD))

Proposal for a Council Recommendation on a reinforced Quality Framework for Traineeships
(COM(2024) 133 final)

SOC/805

Rapporteur: Nicoletta MERLO

www.eesc.europa.eu

EN

Advisor	Emanuele DAGNINO (to the rapporteur) Robert PLUMMER (to Group I)
Legislative procedure Referral	EU Law Tracker European Commission, 29/5/2024 Council, 4/7/2024
Legal basis	Article 153(2) and 304 of the Treaty on the Functioning of the European Union
European Commission documents	COM(2024) 132 final – 2024/0068 (COD) COM(2024) 133 final
Relevant Sustainable Development Goals (SDGs)	SDG 4 – Quality education SDG 8 – Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all
Section responsible	Employment, Social Affairs and Citizenship
Adopted in section	25/6/2024
Adopted at plenary session	11/7/2024
Plenary session No	589
Outcome of vote (for/against/abstentions)	186/6/31

1. RECOMMENDATIONS

Concerning the proposal for a directive, the European Economic and Social Committee (EESC):

- 1.1 **underlines** that apprenticeships and traineeships are two distinct work practices entailing learning and training, and should not be mixed up. The reference in recital 17 to overlap between the two should therefore be removed.
- 1.2 **recommends** that the definitions laid down in Article 2 not entail any obligation for Member States to classify traineeships as an employment relationship where, according to the regulations in the Member States, this work practice falls outside the definition of ‘trainee’ set by the directive.
- 1.3 **proposes** that Article 3 allows the social partners to jointly determine the working conditions of trainees, including the possibility to derogate from the principle of equal treatment for objective reasons related to the distinct nature of traineeships from regular employment relationships.
- 1.4 **emphasises** the importance for Member States to provide sufficient human and financial resources to the competent authorities in charge of control and inspection according to article 4, and to formally recognise the important role that social partners can play in control, monitoring and enforcement efforts, taking into account existing national practices.
- 1.5 **suggests**, without prejudice to the assessment of whether the trainee has an employment relationship according to national practices and the case law of the Court of Justice of the EU, that the elements listed in Article 5, as amended, are taken into account by competent authorities and all relevant actors to identify a regular employment relationship disguised as a traineeship.

Concerning the proposal for a Council Recommendation, the EESC:

- 1.6 **recommends** defining minimum quality criteria for each type of traineeship throughout the EU and suggests including a list of illustrative justifications on objective grounds for derogation, without prejudice to existing national approaches, in order to ensure high standards and a common basic framework in all Member States.
- 1.7 **believes** it is crucial to gather data and collect and share examples of good national practices for each type of traineeship at EU level, as part of the review and implementation process.
- 1.8 **stresses** the importance of fair compensation which also takes into account the possible costs of participating in the training activity and the related living requirements, in order to ensure equal access to the traineeship experience for all, and underlines that possible differentiations in compensation could be considered due to the different types of traineeships.
- 1.9 **calls** for the inclusion of trade union representatives in both proposals where reference is made to workers’ representatives, and for provisions that ensure that they can always act to safeguard trainees, even if the traineeship does not constitute an employment relationship where it is allowed according to national legislation and practices.

2. EXPLANATORY NOTES

The EESC emphasises that traineeships are first and foremost a training and learning experience to develop skills and competences (especially those of young people) leading to improved employability and job prospects, and contributing to the formation of an entrepreneurial mindset.

The EESC shares the objective of improving the quality of traineeships across the EU (in particular with regard to learning and training content and working conditions), with the aim of facilitating the transition from education, unemployment or inactivity, and of ensuring that traineeships are genuine and not used to disguise employment relationships. Furthermore, the EESC draws attention to the fact that traineeships require considerable investment from companies and entrepreneurs in terms of time and resources dedicated to ensure a successful traineeship.

Proposal for a Directive of the European Parliament and the Council on improving and enforcing working conditions of trainees and combating regular employment relationships disguised as traineeships ('Traineeships Directive')

Argument in support of recommendation 1.1

- 2.1 **Possible overlaps between traineeships and apprenticeships (recital 17):** The proposal suggests that the proposed Traineeship Directive could possibly cover certain aspects of the Recommendation on Quality and Effective Apprenticeships. However, the EESC underlines that apprenticeships and traineeships are two distinct work practices with different aims and different regulations in the Member States, and should not be mixed up. The principles contained in the Council Recommendation on Quality and Effective Apprenticeships sufficiently address aspects related to the quality and effectiveness of the instrument. The reference to an overlap should be removed from the draft directive.

Argument in support of recommendation 1.2

- 2.2 **Definitions (Article 2) and personal scope:** The directive's scope of application is determined through the definitions of 'trainee' and 'traineeship'. The first is based both on the national definition of 'employee' and on the definition adopted by the EU Court of Justice. The definition of 'traineeship' seems to be broader and include any kind of traineeship, making no reference to the type of contract or employment relationship, and speaks only of work practice that includes a significant training component. While 'traineeship' is predominant in the section devoted to disguised employment relationships, the section on enforcement is built around the notion of 'trainee'. More clarity on how the two notions interact with regard to the different provisions would be needed.

Furthermore, taking into account that many Member States consider traineeships to be genuinely outside of employment, and regulate them as such, it should be clarified at least in the recitals that the directive does not commit Member States to transforming their regulatory

models towards the employment one. Since the directive is mainly aimed at stopping the use of traineeships to disguise employment relationships, Member States adopting those models should be called on to respect the recommendation, to adapt their regulation to better assess when an employment relationship is disguised, and to foster the enforcement of the rights of the ‘disguised trainee’.

Argument in support of recommendation 1.3

- 2.3 **Principle of non-discrimination (Art. 3):** Considering that the trainee, for the purposes of the proposed directive, is a worker engaged in a learning experience and, consequently, that this situation can be distinguished from that of skilled and specialised workers, the definition of objective reasons justifying a derogation from the principle of non-discrimination is supported. The EESC proposes, in line with diverse collective bargaining realities across Europe, that the draft directive should allow the social partners to jointly set working conditions for trainees, which include the possibility for them to derogate from the equal treatment principle on objective grounds relating to the distinct nature of traineeships compared to regular employment relationships. However, certain working conditions such as health and safety should always be respected.

Argument in support of recommendation 1.4

- 2.4 **Measures to combat regular employment relationships disguised as traineeships (Article 4):** Effective controls and inspections conducted by the competent authorities play a key role in combating regular employment relationships disguised as traineeships. In this regard, Member States should be required to support these authorities with sufficient human and financial resources, tailored to the needs of the national context, to enable them to perform this crucial task. Alongside the competent authorities, the EESC emphasises that the social partners, if relevant according to national legislation and practice, can play an important role in control, monitoring and enforcement efforts.

Argument in support of recommendation 1.5

- 2.5 **Assessment of regular employment relationships disguised as traineeships (Art. 5):** This article lists a number of elements to be considered in the assessment of a purported traineeship. The wording of the provision is vague regarding the kinds of mechanisms it establishes and, specifically, the roles that the different elements play. The EESC considers that, in order to facilitate common understanding of what constitutes misuse of traineeships, Article 5 should be phrased so that it provides competent authorities and all relevant actors with an indicative objective set of criteria against which to assess a purported traineeship. Such assessment shall take into account, among others, the indicative elements listed in Article 5 in order to identify a regular employment relationship disguised as traineeship, without prejudice to the assessment of the existence of an employment relationship for the trainee according to national practice and the case law of the Court of Justice of the EU. In addition, the absence of a supervisor should also be included among the elements to be taken into consideration (Article 5(1)(a)) and, similarly, the information to be provided by the employer (Article 5(2)) should also include information on the existence of a supervisor. Finally, the conditions legitimising an excessive

duration or repetition of a traineeship with the same employer should be better specified (Article 5(3)(a)), including the possibility to derogate from this where justified under existing national conditions.

Additional comments

- 2.6 **Procedures on behalf or in support of trainees (Art. 8):** According to this article, workers' representatives should be entitled to engage in procedures on behalf or in support of trainees. On the one hand, the use of the term 'trainee' risks preventing workers' representatives from intervening in support of those working in positions disguised as traineeships if they are not under a contract of employment (see Article 2(b)). On the other hand, in many cases trainees are not inclined to exercise their rights for fear of losing a future employment opportunity. The provision should be framed in a way that ensures that, in national contexts where national legislation or practice allows trade unions to act without the need for the consent of the worker concerned, to protect the collective interest they pursue, workers' trade union representatives may act even without trainees' consent.
- 2.7 **Protection against adverse treatment and consequences (Art. 9):** This article is to be understood as applying where there are no protections applicable to trainees as workers in the Member States' legal systems that guarantee an adequate level of protection on this point.

Proposal for a Council Recommendation on a reinforced Quality Framework for Traineeships

Arguments in support of recommendation 1.6

- 2.8 The proposal aims to cover all the different types of traineeships, but it does not take adequate account of the differences between the various types of traineeships and their different applications in the Member States. The EESC recommends defining minimum quality criteria for each type of traineeship throughout Europe, in order to ensure high standards and a common basic framework in all Member States.
- 2.9 **Objective and scope (2):** The scope of the recommendation is very broad. While the provisions are quite flexible, the proposal only considers the different nature of traineeships as far as trainees in an employment relationship are concerned. Other differentiations are considered only in the context of the various recitals (e.g. duration, in recitals 24-26). More attention could be paid to the matter in order to provide guidance to the Member States on the application of the principles and measures established in different situations.
- 2.10 **Objective grounds for derogations:** Certain recommended measures could be derogated on objective grounds: reasonable duration, consecutive traineeships and previous work experience. This general clause could be interpreted in numerous ways within the Member States, and it may be appropriate to include a list of illustrative justifications, without prejudice to existing national approaches.

Argument in support of recommendation 1.7

- 2.11 As part of the review and implementation process, in the light of the heterogeneous nature of the instrument, the different scopes it can serve and its different applications in the Member States, the EESC believes it is crucial to gather data and collect and share examples of good national practices for each type of traineeship at EU level, especially open market traineeships.

Argument in support of recommendation 1.8

- 2.12 **Fair compensation (6):** In response to requests from some sectors to ban unpaid traineeships, the Commission has recommended that traineeships be fairly paid, ‘taking into account elements such as the trainee’s tasks and responsibilities, the intensity of the trainee’s work, and the weight of the learning and training component’. In this regard, and except in cases where the traineeship is considered an employment relationship (which is covered by the proposed directive), it might be appropriate to use the term ‘compensation’ instead of pay and to link this support to the possible costs incurred by the trainee to participate in the traineeship, as well as the associated living requirements (e.g. travel, food, accommodation, etc.) and to provide it in the form of a participation allowance. Possible differentiations in compensation could be considered due to the different types of traineeships. This seems to be a balanced approach that recognises that a traineeship is framed in the context of work experience with a strong training component, and that the tasks performed are not the same and are not on the same level as those performed by regular employees, but at the same time ensures equal access to traineeships opportunities for all.

Arguments in support of recommendation 1.9

- 2.13 **Channels for reporting malpractice (15):** The channels for reporting malpractice should be available to trainees, trade unions and workers’ representatives in accordance with national rules and practices.
- 2.14 **Role of representatives of workers (33):** see above on trainees’ consent (point 2.6).

Additional comment

- 2.15 **Role of employment services and other providers of career guidance (20):** Where involved in the promotion of traineeship activities, their role could be extended to include assessing the quality of the traineeship opportunity by analysing vacancy notices and information on advertisements, especially when financed with public money (e.g. the Youth Guarantee).

3. PROPOSED AMENDMENTS TO THE LEGISLATIVE PROPOSAL OF THE EUROPEAN COMMISSION

Proposal for a Directive of the European Parliament and the Council on improving and enforcing working conditions of trainees and combating regular employment relationships disguised as traineeships ('Traineeships Directive')

Amendment 1

linked to recommendation 1.1 and 1.2

Recital 17

Modify

Text proposed by the European Commission	EESC amendment
(17) Work-based learning programmes falling under the definition of traineeship vary significantly across Member States. <i>Hence, apprenticeships may fall within the scope of this Directive, insofar as apprentices fall under the notion of 'worker' as defined by the law, collective agreements or practices in force in the Member States, with consideration to the case-law of the Court of Justice of the European Union.</i>	(17) Work-based learning programmes falling under the definition of traineeship vary significantly across Member States. <i>Despite the definition of trainee foreseen in this proposal, Member States that do not consider traineeships as an employment relationship and regulate them accordingly do not have to transform their regulatory models into employment ones. In such cases, this proposal should be applied by Member States to better assess when an employment relationship is disguised and to promote the enforcement of the rights of the 'disguised trainee'.</i>

Reason
See point 2.1 and 2.2.

Amendment 2
linked to recommendation 1.4
Article 4
Modify

Text proposed by the European Commission	EESC amendment
<p><i>Article 4</i></p> <p><i>Measures to combat regular employment relationships disguised as traineeships</i></p> <p>Member States shall provide for effective controls and inspections conducted by competent authorities to detect and take enforcement measures against practices where a regular employment relationship is disguised as traineeship with the effect of granting lower levels of protection, including working conditions and pay, than the worker concerned would be entitled to under Union or national law, collective agreements or practice.</p>	<p><i>Article 4</i></p> <p><i>Measures to combat regular employment relationships disguised as traineeships</i></p> <p>Member States shall provide for effective controls and inspections conducted by competent authorities to detect and take enforcement measures against practices where a regular employment relationship is disguised as traineeship with the effect of granting lower levels of protection, including working conditions and pay, than the worker concerned would be entitled to under Union or national law, collective agreements or practice.</p> <p><i>The social partners, if relevant according to national legislation and practice, can play an important role in control, monitoring and enforcement efforts.</i></p>

Reason
See point 2.4.

Amendment 3

linked to recommendation 1.5

Article 5

Modify

Text proposed by the European Commission	EESC amendment
<p style="text-align: center;"><i>Article 5</i> <i>Assessment of regular employment relationships disguised as traineeships</i></p> <p>1. In order to determine whether a purported traineeship constitutes a regular employment relationship, competent authorities shall make an overall assessment of all relevant factual elements. That assessment shall take into account, among others, the following indicative elements:</p> <ul style="list-style-type: none">(a) the absence of a significant learning or training component in the purported traineeship;(b) the excessive duration of the purported traineeship or multiple and/or consecutive purported traineeships with the same employer by the same person;(c) equivalent levels of tasks, responsibilities and intensity of work for purported trainees and regular employees at comparable positions with the same employer;(d) the requirement for previous work experience for candidates for traineeships in the same or a similar field of activity without appropriate justification;(e) a high ratio of purported traineeships compared with regular employment relationships with the same employer;(f) a significant number of purported trainees with the same employer who had completed two or more traineeships or held regular employment relationships in the same or similar field of activity, prior to taking up the purported traineeship. <p>2. To enable competent authorities to carry out the assessment referred to in paragraph 1, the employer shall, upon request, provide</p>	<p style="text-align: center;"><i>Article 5</i> <i>Assessment of regular employment relationships disguised as traineeships</i></p> <p>1. In order to determine whether a purported traineeship constitutes a regular employment relationship, competent authorities shall make an overall assessment of all relevant factual elements. That assessment shall take into account, among others, the following indicative elements <i>in order to identify a regular employment relationship disguised as traineeship:</i></p> <ul style="list-style-type: none">(a) the absence of a significant learning or training component in the purported traineeship <i>and the absence of a supervisor;</i>(b) the excessive duration of the purported traineeship or multiple and/or consecutive purported traineeships with the same employer by the same person;(c) equivalent levels of tasks, responsibilities and intensity of work for purported trainees and regular employees at comparable positions with the same employer;(d) the requirement for previous work experience for candidates for traineeships in the same or a similar field of activity without appropriate justification;(e) a high ratio of purported traineeships compared with regular employment relationships with the same employer;(f) a significant number of purported trainees with the same employer who had completed two or more traineeships or held regular employment relationships in the same or similar field of activity, prior to taking up the purported traineeship.

<p>those authorities with the following information:</p> <ul style="list-style-type: none"> (a) the number of traineeships and regular employment relationships (b) the duration of traineeships; (c) the working conditions, including pay, tasks and responsibilities of purported trainees and of regular employees at comparable positions; (d) the descriptions of the learning and training components of traineeships; (e) the vacancy notices for traineeships. <p>3. To facilitate the assessment referred to in paragraph 1, Member States shall:</p> <ul style="list-style-type: none"> (a) define <i>a</i> time limit <i>indicating excessive duration of</i> a traineeship and <i>of repeated, including consecutive, traineeships</i> with the same employer; (b) require employers to include information on the expected tasks, working conditions, including pay, social protection, learning and training elements in the vacancy notices and advertisements for traineeships. <p>Member States may provide for exceptions to the time-limit in point (a) in cases where a longer duration is justified by objective grounds.</p>	<p>2. To enable competent authorities to carry out the assessment referred to in paragraph 1, the employer shall, upon request, <i>and unless the same information is directly accessible to the authorities</i>, provide those authorities with the following information:</p> <ul style="list-style-type: none"> (a) the number of traineeships and regular employment relationships (b) the duration of traineeships; (c) the working conditions, including pay <i>or compensation</i>, tasks and responsibilities of purported trainees and of regular employees at comparable positions; (d) the descriptions of the learning and training components of traineeships; (e) <i>the presence of a supervisor</i>; (f) the vacancy notices for traineeships. <p>3. To facilitate the assessment referred to in paragraph 1, Member States <i>with the involvement of social partners</i> shall:</p> <ul style="list-style-type: none"> (a) define <i>an indicative maximum</i> time limit <i>for</i> a traineeship and <i>establish the exceptional conditions that justify its repetition or extension</i> with the same employer; (b) require employers to include information on the expected tasks, working conditions, including pay <i>or compensation</i>, social protection, learning and training elements in the vacancy notices and advertisements for traineeships. <p>Member States may provide for exceptions to the time-limit in point (a) in cases where a longer duration is justified by objective grounds.</p>
--	--

Reason
See point 2.5.

Proposal for a Council Recommendation on a reinforced Quality Framework for Traineeships

Amendment 4

linked to recommendation 1.8

Point 6

Modify

Text proposed by the European Commission	EESC amendment
6. ensure that trainees are fairly <i>paid</i> , taking into account elements such as the trainee's tasks and responsibilities, the intensity of the trainee's work, and the weight of the learning and training component.	6. ensure that trainees are fairly <i>compensated</i> , taking into account elements such as the trainee's tasks and responsibilities, the intensity of the trainee's work, and the weight of the learning and training component, <i>as well as the possible costs of participating in the training activity and the related living requirements, while taking into account the possible differentiation in compensation models in different types of traineeships.</i>

Reason
See point 2.12.

Brussels, 11 July 2024.

The president of the European Economic and Social Committee
Oliver RÖPKE

* * *

N.B.: Appendix overleaf.

APPENDIX to the OPINION
of the
Section for Employment, Social Affairs and Citizenship

The following amendments, which received at least a quarter of the votes cast, were rejected in the course of the debate (Rule 74(3) of the Rules of Procedure):

AMENDMENT 1

SOC/805

Traineeship Directive and a Reinforced Quality Framework for Traineeships

Tabled by:

BLIJLEVENS René

DANISMAN Mira-Maria

MINCHEVA Mariya

POTTIER Jean-Michel

SCHWENG Christa

Point 2.8

Amend as follows

<i>Section opinion</i>	<i>Amendment</i>
The proposal aims to cover all the different types of traineeships, but it does not take adequate account of the differences between the various types of traineeships and their different applications in the Member States. The EESC <i>recommends defining minimum quality criteria for each type of traineeship throughout Europe, in order to ensure high standards and a common basic framework in all Member States.</i>	The proposal aims to cover all the different types of traineeships, but it does not take adequate account of the differences between the various types of traineeships and their different applications in the Member States. The EESC <i>recalls that the quality principles of the 2014 Quality Framework Recommendation for traineeships were considered valid and takes note of the quality principles as indicated in the proposal for a Council Recommendation and recommends that these must be applied without prejudice to existing national approaches.</i>

Reason
The quality principles now proposed in the proposal for Council Recommendation should always be applied in a manner that respect different national models and practices.

Outcome of the vote:

In favour: 90

Against: 116

Abstentions: 11

AMENDMENT 2

SOC/805

Traineeship Directive and a Reinforced Quality Framework for Traineeships

Tabled by:

BLIJLEVENS René

DANISMAN Mira-Maria

MINCHEVA Mariya

POTTIER Jean-Michel

SCHWENG Christa

Point 1.6

Amend as follows

<i>Section opinion</i>	<i>Amendment</i>
<i>recommends defining minimum quality criteria for each type of traineeship throughout the EU and suggests including a list of illustrative justifications on objective grounds for derogation, without prejudice to existing national approaches, in order to ensure high standards and a common basic framework in all Member States.</i>	<i>recalls that the quality principles of the 2014 Quality Framework Recommendation for traineeships were considered valid and takes note of the quality principles as indicated in the proposal for a Council Recommendation and recommends that these must be applied</i> without prejudice to existing national approaches.

Reason
The quality principles now proposed in the proposal for a Council Recommendation should always be applied in a manner that respects different national models and practices.

Outcome of the vote:

In favour: 90

Against: 116

Abstentions: 11