

Second stage of the consultation of the social partners to improve EU framework on quality of traineeships

1. What are your views on the objectives of possible EU action set out in Section 6.1?

Traineeships are an important bridge between the education system and the labour market. For many young people, especially from disadvantaged backgrounds, traineeships are an opportunity to discover the world of work, gain professionalizing competences, explore different careers, and build their own career path.

However, several abusive practices are taking place, which have the effect of diverting the scheme from its main objective. Poor quality internships can have a negative impact on a person's future, so it is essential to take steps to ensure that it goes as effectively as possible.

While internships can be a differentiating factor in a career path, access to them is highly unequal. Finally, widely differing legal regimes still coexist within the member states of the European Union. In this context, as laid out in section 6.1, measures at European level are needed to improve the use, quality, and accessibility of traineeships across the EU.

In complement to the objectives mentioned, and as stipulated in our response to the first-phase consultation, traineeships need however also to be integrated into a lifelong learning perspective. Traineeships should have a purpose for the trainees, the employers, as well as for society. With the growing importance of continuous up-skilling and re-skilling of the workforce for the digital and green transitions, among other changes, traineeships should be integrated into career pathways and lifelong learning policies and schemes.

While EU law remains vague on the definition of workers (Articles 45 and 157 TFEU) and the ECJ points out that there is no single definition of worker in EU law, it can be argued that trainees are in a relationship of subordination, under a written or oral agreement constituting an employment-like relationship in the view of employment. This implies also that working condition provisions apply to trainees. The argument that "the existence of a remuneration is an essential feature of the definition of a 'worker'" is tautological and redundant since labour law protects unremunerated workers.

The absence of protection for unremunerated workers, including trainees, infringes the principle of non-discrimination, especially in consideration of evidenced socio-economic and other differences in the access to traineeships and the quality of traineeships. Lastly, it should be noted that Article 45 TFEU states that “any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment”.

2. What are your views on the possible avenues for EU action set out in Section 6.2?

CEC shares many of the observations made by the European Commission in this second consultation document. Following on from the points we raised in the first consultation phase, we have identified a number of points on which we would like to make additional comments or proposals, which we will detail below.

The figures presented by the Commission are clear: 11% of internships carried out in the EU last longer than 6 months, contrary to the Council recommendation of 10 March 2014 on a Quality Framework for Traineeships. Furthermore, with the growth in hybrid work, only “54% of respondents agreed that they received adequate guidance and mentoring to carry out their tasks remotely.” Thus, the non-binding recommendations adopted at European level have not been enough to change abusive practices in this area.

Limiting the duration of internships to a maximum of 6 months should be a central element of the future European legislative initiative. A 6-month period is consistent with the need to discover the host organization, carry out assignments over a sufficient period of time and acquire skills. The Commission also mentions the need to limit the succession of internship contracts, which would divert the scheme from its objective. CEC supports this proposal.

Following on from these two measures aimed at combating the problematic use of internships, our organization would like to raise a third point of vigilance relating to limiting the number of interns per mentor, which often is ensured by a manager. It is essential to ensure that the organization creates the right conditions to support the trainee by providing the mentor with adequate resources, and in particular sufficient time to devote to supporting the traineeship.

In addition to these measures, the European Commission addresses the issue of monitoring compliance with European and national legislation. It is essential to enable the competent national authorities to carry out the necessary checks to guarantee the effectiveness of trainees' rights.

The question of trainee remuneration remains a key issue for our organization to guarantee fair access to traineeships in the EU. Yet the Commission seems to rule out European action on internship remuneration, on the grounds of incompatibility with the division of competences between the EU and the Member States based on Article 153 of the Treaty on the Functioning of the European Union (TEU).

Firstly, the ban on unpaid internships is a necessary measure, as proposed by the European Economic and Social Committee, the Committee of the Regions and the conclusions of the Conference on the Future of Europe. The data presented by the Commission in the consultation document are edifying: 5 member states account for 90% of all paid trainees in the Union, and 44% of those questioned in the Eurobarometer survey said they had not received any financial compensation for their traineeship. It is therefore urgent to enshrine the ban on unpaid internships.

Furthermore, while our organization recognizes the impossibility for the Commission to define a level of remuneration, it can nevertheless enshrine a qualitative criterion to be applied in the process of setting a decent and gradual minimum level of remuneration by member states, as provided for in directive 2022/2041 on adequate minimum wages in the EU.

To this end, the minimum level of remuneration for trainees should be set in the light of criteria linked to the standard of living in each Member State. As with directive 2022/2041, such a measure would be likely to improve working conditions, while being compatible with the TEU in that it could not be considered as directly interfering with wage determination. Indeed, the Court of Justice of the European Union (CJEU) has established a consistent body of case law¹ which sheds light on the viability of the measures contained in directive 2022/2041, which would therefore also be valid for the future directive on internships if we reason by analogy.

Furthermore, the educational component of internships must be enshrined to guarantee their quality. Indeed, we reaffirm that internships should not be a means of entry into the workplace.

¹ *Del Cerro Alonso* ruling, C-307/05 of September 13, 2007 and *Dellas* ruling, C-14/04, of December 1, 2005. This is also corroborated by Council legal service opinion 6817/21 of March 9, 2021 on the Directive on adequate minimum wages in the European Union.

Internships must remain a form of training, with an adapted workload. Under no circumstances should they become a recruitment method for companies, replacing a trial period. There are several reasons for this position, notably the difference in remuneration between the two situations.

Another point to watch out for is the Commission's suggestion that internships can be a way of alleviating labour shortages in the Union. Our organization would like to draw the Commission's attention to the fact that this is not a sustainable solution. There are other factors at the root of the labour shortage that need to be addressed: working conditions, remuneration, job attractiveness and sustainability, job complexity and the geographical mismatch between employers and employees are the main ones. Furthermore, CEC is campaigning to ensure that public support does not fuel high staff turnover, which would not encourage companies to implement better working conditions.

Improving the quality of internships also requires a better match between the pedagogical training received by interns and the tasks performed within the host organization. Our organization would be in favour of certification of internship programs (certified companies and tutors) to identify companies and organizations with the capacity to host interns. Such certification would be accompanied by regular audits to ensure a sufficient level of quality and working conditions for trainees over the long term.

The forthcoming European legislative initiative could also include a requirement for a detailed training plan to ensure that learning objectives are clear and accessible, particularly for the trainee, from the outset of the internship. Finally, post-internship follow-up should be developed, particularly for trainees over the age of majority, to help them make the transition from internship to employment.

Furthermore, ways of facilitating the transition of trainees into a job could be promoted through non-legislative measures, such as coaching and mentoring, access to online education etc. These could also be integrated into an EU-level platform (integrated with existing platforms such as EURES) with revised traineeships that could improve the transparency of offers and the quality of traineeships, and potentially offer a platform for trainees to exchange and learn from the experience of others, including in other member states. Such a platform, which could be co-developed by youth organizations, social partners, and public services, could also be linked to an EU-level funding mechanism to support trainees, particularly in the case of cross-border internships.

Considering that Erasmus+ is the most successful, supported, and trusted EU initiative, extending EU action as promoter of opportunities through (transnational) learning and exchange seems highly legitimate, particularly at a time of growing distrust towards the EU and a challenging world of work.

Facilitating access to internships for all applicants is indeed a priority and could be supported by measures such as setting up a mobility fund for interns, or a European platform for internship offers. Particular attention will need to be paid to the question of how to feed this platform, as it would be added to a multitude of pre-existing national platforms. On this last point, to remove the obstacle linked to place of residence and facilitate trainee mobility, CEC proposes, for example, recommending that vacant rooms in student residences in member states be made available to trainees as soon as circumstances allow.

3. What are your views on the possible EU policy instruments presented in Section 6.3?

The absence of a common normative framework for traineeships at European level creates dysfunctions and inequalities in the Member States. Council Recommendation 2014/C 88/01 of 10 March 2014 on a quality framework for traineeships laid the groundwork for a common framework in this area.

However, shortcomings remain, and the quality of traineeships is very uneven both between Member States and from one establishment to another within the same country. For this reason, CEC reaffirms the need for a binding legislative initiative in the form of a directive to build a common normative foundation for internships at European level.

The aim of such a directive would be to ensure that internships are high-quality training experiences, by limiting the duration of internships and the number of consecutive internships carried out in the same position and/or by the same trainee, as well as provisions to guarantee a decent level of remuneration, ensure good-quality mentoring and improve access to internship opportunities in the EU.

While EU law remains vague on the definition of workers (Articles 45 and 157 TFEU) and the ECJ points out that there is no single definition of worker in EU law, it can be argued that trainees are in a relationship of subordination, under a written or oral agreement constituting an employment-like relationship in the view of employment. Without coming back on the legal definition of a worker, we should consider that working condition provisions apply to trainees.

The absence of protection for unremunerated workers, including trainees, infringes the principle of non-discrimination, especially in consideration of evidenced socio-economic and other differences in the access to traineeships and the quality of traineeships.

4. Are the European social partners willing to enter into negotiations with a view to concluding an agreement under Article 155 TFEU with regard to any of the elements set out in Section 6.1?

CEC European Managers is available to initiate a dialogue under Article 155 TFEU should the Commission conclude that legislative action at EU level is needed under Article 153 TFEU.