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NOTE

From:	Presidency
To:	Permanent Representatives Committee
Subject:	Traineeships Directive - *Guidance for further work*

I. INTRODUCTION

On 20 March 2024, the Commission presented a proposal for a Directive on improving and enforcing working conditions of trainees and combatting regular employment relationships disguised as traineeships ('Traineeship Directive')[1]. The proposal was published as a package together with a 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[2].

The Traineeships package published by the Commission was preceded by a resolution of the European Parliament from 14 June 2023[3] calling on the Commission to update and strengthen the Council Recommendation of 10 March 2014 on the Quality Framework for Traineeships.

1 ST 8148/24
2 ST 8155/24
3 https://www.europarl.europa.eu/doceo/document/TA-9-2023-0239_EN.html

The proposed Directive seeks to:

- improve the working conditions of trainees, by ensuring that trainees are treated equally in terms of working conditions, including pay, compared to regular employees, unless different treatment is justified on objective grounds (Chapter II)

- combat cases where traineeships are used to disguise regular employment relationships, through controls and inspections (Chapter III)

- enforce the working conditions of trainees, by allowing workers' representatives to engage on behalf of trainees to secure their rights and by providing channels for trainees to report malpractice (Chapter IV).

In accordance with the proposed legal basis of Article 153(2)(b), in conjunction with Article 153(1)(b) of the Treaty on the Functioning of the European Union (TFEU), the Council is required to act with the European Parliament in accordance with the ordinary legislative procedure.

The European Parliament has not yet adopted its position at first reading.

The Economic and Social Committee adopted its opinion in its plenary session on 11 July 2024[4].

The Committee of the Regions has not yet adopted its opinion.

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[4] ST 12342/24

II. STATE OF PLAY

Since the publication of the Commission proposal, a total of six Working Party meetings were dedicated to the file.

Under the Hungarian Presidency, the Working Party on Social Questions met three times: 18 July, 2 October and 24 October, in order to advance the work towards a compromise text. The changes included in the latest Presidency compromise text (doc. 15615/24) are intended to respond to the concerns and comments raised by the delegations.

Namely, the Presidency responded to delegations' input and addressed concerns related to the legal basis by introducing a new Article 1a on the scope to clarify that the proposed Directive only applies to trainees who have an employment contract or an employment relationship as defined either by national rules or with consideration to the case law of the Court of Justice, and that it does not cover neither apprenticeships, vocational education and training and formal education, nor traineeships that are part of active labour market policies.

The Presidency compromise text also attempts to bring clarity to the definitions of "traineeships" and "trainee" in Article 2 as well as to Chapter II by more closely specifying how the principle of equal treatment applies to trainees. In line with definitions and the scope, Chapter III of the current compromise text aims at combatting practices where an employment relationship is disguised as a traineeship purportedly without and employment relationship.

Moreover, the Presidency compromise text intends to provide further flexibility for Member States in the implementation of Chapter IV, in order to better reflect the diversity of national systems and reduce administrative burden.

At this stage of the discussions within the Council, political guidance is needed to decide on future work on the remaining open issues, namely the orientation of Chapter III on how to combat cases where traineeships are used to disguise employment relationships.

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III. PRESIDENCY QUESTIONS

The Presidency intends to continue working towards a robust legally sound compromise text that delegations can support.

To that aim, delegations are asked to indicate their views on the following two questions.

1) Scope

Can you support the scope of the proposed Directive as set out in Article 1a of the Presidency compromise proposal (doc. 14615/24)?

If not, how would you prefer to modify the scope?

2) Orientation of Chapter III

The Presidency requests the delegations to indicate which of the following approaches they suggest being reflected in Article 4:

Option A) Article 4 shall aim at addressing situations where trainees purportedly do not have an employment relationship but should have one in accordance with Union law and national law, collective agreement or practice (in line with Presidency compromise text as set out in ST 14615/24).

Option B) Article 4 shall aim at addressing situations where an employment relationship is incorrectly labelled as a traineeship, with the effect of lowering the level of protection, including working conditions and pay, that the person concerned would be entitled to in accordance with Union and national law, collective agreements or practice.

Based on the guidance provided by the delegations, the Presidency will decide on the way forward with a view to the EPSCO Council on 2 December.

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IV. CONCLUSION

The Committee of Permanent Representatives is invited to:

– examine the Presidency questions as set out above; and

– respond to them in order to provide guidance for further work

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