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NOTE

From:	Presidency
To:	Permanent Representatives Committee
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') - *General approach*

I. INTRODUCTION

On 20 March 2024, the Commission adopted a proposal for a Directive on improving and enforcing working conditions of trainees and combating regular employment relationships disguised as traineeships ('Traineeship Directive')[1]. This 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].

1 2024/0068 (COD)
2 2024/0069 (NLE)

The 'Traineeships package' 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.

The Commission proposal for a Directive seeks to:

1) 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);

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

3) 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).

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[3] https://www.europarl.europa.eu/doceo/document/TA-9-2023-0239_EN.html

In accordance with the proposed legal basis of Article 153(2)(b), in conjuction 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 adopted its position at first reading yet.

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

The Committee of the Regions adopted its opinion in its plenary session on 7 October 2024[5].

II. STATE OF PLAY

The Commission proposal for a Directive on Traineeships was presented and the article-by-article examination was completed under the Belgian Presidency. In general, delegations welcomed the overall aim to improve the quality of traineeships, while acknowledging the complexity of the proposal, given the cross-cutting nature and its potential impact on national traineeships systems.

Under the Hungarian Presidency, the Working Party on Social Questions met four times: 18 July, 2 October, 24 October, and 18 November, in order to discuss, respectively, four compromise texts proposed by the Presidency and to advance work towards a shared approach with regard to the proposed Directive. The Presidency has aimed through each iteration of the compromise text to accommodate the concerns raised by the delegations.

4 12342/24
5 15673/24

On 6 November, the Presidency turned to Coreper for political guidance for future work on two recurring issues during the discussions at Working Party level, namely the scope of the proposed Directive and the orientation of Chapter III on how to combat cases where traineeships are used to disguise employment relationships. Based on the guidance provided by Coreper on 6 November, the Presidency presented a fourth compromise text at the Working Party on Social Questions on 18 November.

Following the inputs provided by the delegations during the Working Party, the Presidency has prepared a fifth and latest compromise text, which can be found in the Annex to this note. In this compromise text, the Presidency has incorporated the few changes needed to ensure a common understanding of the remaining issues raised by the delegations, while keeping the general balance of the text.

Changes compared to the previous Presidency compromise text (15403/24) are marked in **bold** or **bold underlined** and deletions with ~~strikethrough~~. Deletions of entire recitals, articles or paragraphs compared to the Commission proposal are marked by [deleted].

III. PRESIDENCY COMPROMISE TEXT

Chapter I: General provisions

Subject matter

The compromise text aligns the subject matter of the proposed Directive with the revision of the personal scope and the reorientation of Chapter III. The subject matter is twofold: to improve and enforce the working conditions of trainees in an employment relationship (Chapter II and IV) and to combat practices that disguise employment relationships as traineeships (Chapter III). The title of the proposed Directive was adjusted accordingly.

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Scope

Following the delegations' call to delineate which types of trainees and which types of traineeships are covered by the proposed Directive, the compromise text includes a new Article 1a on the personal scope of the proposal. The compromise text intends to specify that the proposed Directive only applies to trainees who have an employment contract or an employment relationship as defined either by national law, collective agreements or practice, with consideration to the case law of the Court of Justice.

Throughout the discussions at Working Party and Coreper level, delegations underlined the need to respect the diversity of national traineeships systems. Therefore, the latest compromise text clarifies in Article 11 (3) that the proposed Directive does not impose an obligation on Member States to introduce a specific employment relationship for trainees in their national law.

The compromise text further explains that due to their specific regulatory frameworks and the public interests they pursue, the proposed Directive does not cover vocational education and training, apprenticeships, formal education, traineeships that are obligatory to achieve a specific degree or qualification, professional traineeships as defined in Directive 2005/36/EC, nor traineeships within active labour market policies.

Definitions

The compromise text addresses the concerns raised by numerous delegations regarding the lack of consistency and clarity in the definitions of the proposed Directive.

The compromise text amends the definition of 'trainee' to refer to any person undertaking a traineeship and clarifies in Recital 19a that throughout this Directive the notion of "trainee" and the personal scope need to be read together.

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As regards the definition of 'traineeship', the compromise text explains in Recital 19 that the learning and training component of a traineeship is significant when trainees acquire or improve a skill set, practical experience, industrial and professional insights, with a view to preparing them for career opportunities and challenges.

Based on delegations' request, the Presidency removed the definitions of 'regular employment relationship' and 'regular employee' to avoid possible confusions and instead introduced a definition of 'comparable employee' to indicate whom the trainees should be compared with in the application of the principle of non-discrimination.

Chapter II: Equal treatment

The compromise text attempts to ensure that the specificities of the diverse labour market models in the Union are properly respected. In particular, in order to ensure the autonomy of the social partners, the compromise text introduces the option for Member Stats to empower social partners, if they jointly agree, to uphold or conclude collective agreements to establish the objective grounds under which different treatment for trainees are considered to be justifiable.

Following the delegations' call to respect the national competences in matters of 'pay', the compromise text clarifies that the notion of 'pay' should be understood in accordance with national law, collective agreements or practice in each the Member State and it can include compensation whether pecuniary or in kind (Recital 22). The compromise text opts for the term 'pecuniary' instead of 'in cash' in order to clarify beyond doubt that the used term does not refer strictly to notes and coins.

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Chapter III: Employment relationships disguised as traineeships

After exploring various options with the delegations and following the guidance provided by Coreper on 6 November, the compromise text attempts to clarify that the aim of Chapter III of the proposed Directive is to combat practices where an employment relationship is disguised as a traineeship, whereby trainees are not considered employees by the traineeship provider but should be considered employees in accordance with the law, collective agreements or practice in force in the Member State, with consideration to the case-law of the Court of Justice.

The compromise text addresses the delegations' call to respect the diversity of national labour market models by leaving flexibility for Member States to decide which effective measures they must take to combat such practices, including where appropriate controls and inspections. In addition, the compromise text acknowledges the role of social partners in the implementation of the proposed Directive (Recital 40) and that the measures to be taken as regards Chapter III can be entrusted to social partners as well (Recital 25).

In order to combat practices where an employment relationship is disguised as traineeship, an assessment of all relevant factual elements of the traineeship must be performed. The compromise text states in Recital 26a that the following elements, among others, may be considered for such assessment: the absence of a significant learning or training component, the excessive duration of the relationship; the levels of tasks, responsibilities and intensity of work; the requirement for previous work experience for candidates for traineeships in the same or a similar field of activity without appropriate justification.

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Following the delegations' request to avoid imposing further administrative burden, the compromise text provides for flexibility in the information elements that can be requested by competent authorities to the traineeship providers for the purposes of the abovementioned assessment.

Chapter IV: Enforcement and supporting measures

The compromise text provides for further flexibility for Member States in the implementation of the enforcement and supporting measures in Chapter IV.

Regarding the role of workers' representatives, the proposed Directive establishes that workers' representatives can engage in judicial or administrative procedures to enforce the rights and obligations arising from this Directive. In this respect, the compromise text seeks to clarify in Article 8 and Recital 34 that Member States are not obliged to introduce the possibility for workers' representatives to act on behalf or in support of a trainee if it is not foreseen in national law or practice.

The Presidency considers that the text in the Annex addresses the main concerns raised by the delegations and is a balanced compromise, reflecting the centre of gravity in the Council.

IV. CONCLUSION

The Committee of Permanent Representatives is invited to:

- examine and approve the compromise text as set out in the Annex; and
- submit it to the Council (EPSCO) with a view to reaching a general approach at its session on 2 December 2024.

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ANNEX

2024/0068 (COD)

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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on improving and enforcing working conditions of trainees and combating practices that disguise employment relationships as traineeships ('Traineeships Directive')

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 153 (2), point (b), in conjunction with Article 153 (1), point (b) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[6],

Having regard to the opinion of the Committee of the Regions[7],

Acting in accordance with the ordinary legislative procedure,

[6] OJ C , , p. .
[7] OJ C , , p. .

Whereas:

(1) In March 2014, the Council adopted the Recommendation for a Quality Framework on Traineeships ('2014 Recommendation') to provide Union-wide quality standards for traineeships. It recommends 21 principles for traineeships to improve the quality of traineeships, in particular to ensure high quality learning and training content and adequate working conditions to support education-to-work transitions and increase the employability of trainees. The 2014 Recommendation covers all traineeships except for those that are part of curricula of formal education and training and those regulated under national law and completion of which is a mandatory requirement to access a specific profession.

(2) [deleted]

(3) The reinforced Youth Guarantee[8] aims at ensuring that young people under the age of 30 receive a good quality offer of employment, continued education, apprenticeship or traineeship within a period of four months of becoming unemployed or leaving education. The 2014 Recommendation is an important reference point to measure the quality of traineeships offers under the reinforced Youth Guarantee.

(4) Labour shortages exist in many occupations and at all skills levels. They are expected to increase with the projected decline in the working age population and increasing demand for several occupations relevant for the green and digital transition. The lower labour market participation of young people contributes to these shortages. Quality traineeships can be a useful up- and/or reskilling pathway for persons of any age to acquire practical skills on the job to enter the labour market or take their career in a new direction.

[8] Council Recommendation of 30 October 2020 on A Bridge to Jobs – Reinforcing the Youth Guarantee and replacing the Council Recommendation of 22 April 2013 on establishing a Youth Guarantee 2020/C 372/01 (OJ C 372, 4.11.2020, p. 1).

(5) Traineeships can help people gain practical and professional experience, improve their employability, and facilitate their transition into stable employment. As such, traineeships constitute an important pathway to the labour market. For employers, traineeships provide opportunities to attract, train and retain people. They can reduce the cost of searching for and recruiting skilled staff, when trainees are offered a regular position after their traineeship. However, this can only be achieved if traineeships are of good quality and offer decent working conditions.

(6) Challenges persist regarding the problematic use of traineeships, including when employee positions are disguised as traineeships, depriving those workers of their full rights under Union law, national law and collective agreements and risking to trap them in precarious working conditions. Employment relationships disguised as traineeships distort competition between companies by putting compliant employers at a disadvantage, lead to the circumvention of employers' fiscal and social security obligations and to a substitution of permanent posts. In other cases, traineeship providers may not comply with all requirements stemming from Union law, national law, collective agreements or practice, depriving them of their full rights.

(7) Additionally, trainees are less likely to defend their rights due to their vulnerable positions in the labour market. The absence, complexity or diversity of regulatory frameworks for traineeships in various Member States alongside an insufficient enforcement of national legislation and the lack of capacity for controls and inspections, as well as a lack of clarity regarding the authority responsible for control and enforcement, are among the main factors leading to the problematic use of traineeships.

(8) Evidence shows that a significant proportion of trainees are subject to less favourable working conditions compared to employees, including regarding working hours, leave entitlements, and access to equipment as well as pay.

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(9) At Union level, existing legal instruments provide a framework for the protection of workers, including the directives on transparent and predictable working conditions[9], adequate minimum wages[10], working time[11], health and safety at work[12], equality and non-discrimination[13], work-life balance for parents and carers[14], information and consultation of employees[15], fixed-term work[16], part-time work[17], posting of workers[18] and on temporary agency work.[19]. This legal framework fully applies to trainees who have an employment contract or who are in an employment relationship as defined by law, collective agreements or practice in force in each Member State, with consideration to the case-law of the Court of Justice of the European Union. The Union legal framework also encompasses recommendations on the quality of traineeships[20] and apprenticeships[21] and on access to social protection for workers and self-employed[22].

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9 Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (OJ L 186, 11.7.2019, p. 105).

10 Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union (OJ L 275, 25.10.2022, p. 33).

11 Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, p. 9).

12 Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ L 183, 29.06.1989, p. 1).

13 Among others: Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16).

14 Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance (OJ L 188, 12.7.2019, p. 79).

15 Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community - Joint declaration of the European Parliament, the Council and the Commission on employee representation (OJ L 80, 23.3.2002, p. 29).

16 Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ L 175, 10.7.1999, p. 43).

17 Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time working concluded by UNICE, CEEP and the ETUC – Annex: Framework agreement on part-time work (OJ L 14, 20.1.1998, p. 9).

18 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 (OJ L 173, 9.7.2018, p. 16).

19 Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9).

20 Council Recommendation of 10 March 2014 on a Quality Framework for Traineeships (OJ C 88, 27.3.2014, p. 1).

21 Council Recommendation of 15 March 2018 on a European Framework for Quality and Effective Apprenticeships (OJ C 153, 2.5.2018, p. 1).

22 Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed (OJ C 387, 15.11.2019, p. 1).

(10) The Conference on the Future of Europe[23] put forward a proposal on ensuring that young people's internships and jobs adhere to quality standards, including on remuneration, as well as banning through a legal instrument unpaid internships on the labour market and outside formal education.

(11) The European Parliament adopted a resolution pursuant to Article 225 TFEU with recommendations to the Commission on quality traineeships in June 2023[24]. In its resolution, it called on the Commission "to update and strengthen the 2014 QFT and to turn it into a stronger legislative instrument". It further called on the Commission to include additional principles in an updated quality framework for traineeships. Specifically, the European Parliament called for the Commission to "propose a directive on open labour market traineeships, traineeships in the context of active labour market policies and traineeships that are a mandatory part of professional training, in order to ensure minimum quality standards, including rules on the duration of the traineeships, access to social protection in accordance with national law and practice as well as pay that ensures a decent standard of living in order to avoid exploitative practices".

(12) The Commission carried out a two-stage consultation of social partners at Union level under Article 154 TFEU on the need, objectives and legal avenues for a potential action further improving the quality of traineeships. There was no agreement among the social partners to enter into negotiations with regard to those matters. It is, however, important to take action at Union level in this area by adapting the current framework on traineeships while taking into account the outcomes of the consultation of social partners.

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23 Report on the final outcome, p.90 – May 2022.

24 European Parliament resolution of 14 June 2023 with recommendations to the Commission on quality traineeships in the Union (2020/2005(INL)).

(13) [deleted]

(14) Article 153(2) in conjunction with (1)(b) TFEU empowers the European Parliament and the Council to adopt Directives setting minimum requirements on working conditions with a view to achieving the objectives set out in Article 151 TFEU, namely the promotion of employment and improved living and working conditions.

(15) Considering the persisting challenges regarding the problematic use of traineeships in the Union, further action is needed to combat practices where employment relationships are disguised as traineeships and to ensure that the relevant Union and national law applicable to workers is fully implemented and enforced in relation to trainees. This Directive addresses these challenges by laying down minimum requirements to improve and enforce the working conditions of trainees in the Union and to combat employment relationships disguised as traineeships, by establishing a common framework of principles and measures necessary to ensure equal treatment and to implement and enforce Union and national law applicable to workers more effectively.

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(16) The provisions of this Directive should apply to trainees in the Union who have an employment contract or who are in an employment relationship as defined by the law, collective agreements or practice in force in the Member States, with consideration to the case-law of the Court of Justice of the European Union. In its case law, the Court of Justice has established criteria for determining the status of a worker, which is to be based on a case-by-case-analysis. ~~Trainees in~~ **Due to their specific regulatory frameworks and the specific public interests they pursue, the following should not be covered by this Directive:** vocational education and training relationships, apprenticeships, ~~and~~ traineeships which are carried out within the framework of formal education, including those that are a prerequisite to start ~~a~~ formal education or vocational education and training**,** ~~and those~~ **as well as traineeships** that are obligatory in order to achieve a specific degree or qualification**, professional traineeships as defined in Directive 2005/36/EC**, and traineeships that are within the framework of active labour market policies ~~should not be covered by this Directive, due to their specific regulatory frameworks and the specific public interests they pursue~~. This Directive therefore solely applies to traineeships performed in the open labour market.

(17) Work-based learning programmes falling under the definition of traineeship vary significantly across Member States.

(18) [deleted]

PUBLIC

(19) Traineeships are limited in time, include a significant learning and training component and are undertaken in order to gain practical and professional experience. The learning and training component of traineeships is understood as being significant when trainees acquire or improve a skill set, practical experience, industrial and professional insights, with a view to preparing them for future career opportunities and challenges. In the light of the preceding elements, persons undergoing a probationary period should not be understood as trainees under this Directive.

(19a) Throughout this Directive, trainee should be understood as any person undertaking a traineeship who is covered by the scope of this Directive.

(20) The principle of non-discrimination is suitable to combat abuses of traineeships, such as granting trainees less favourable working conditions or lower pay compared with **comparable** employees without appropriate justification. It can also help make traineeships more accessible to groups of workers in a vulnerable situation and improve the sustainability of traineeships as a pathway to stable employment opportunities.

PUBLIC

(21) It is therefore necessary to lay down the principle of non-discrimination for trainees which should apply in addition to Clause 4 of the Annex to the Council Directive 1999/70/EC[25] ~~of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP~~, which provides that in respect of employment conditions, fixed-term workers are not to be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation**,** unless different treatment is justified on objective grounds. Trainees who have an employment relationship qualify as 'fixed-term workers' within the meaning of that Directive. Its clause on the principle of non-discrimination, however, does not provide for comparison with other fixed-term workers. It also fails to recognise the particularly vulnerable position that trainees are in. It is therefore necessary to ~~guarantee~~ **ensure** that the principle of equal treatment with comparable employees applies to ~~all~~ trainees who have an employment relationship.

[25] **Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work conducted by ETUC, UNICE and CEEP (OJ L 175, 10.7.1999, p. 43).**

(22) Member States should therefore ensure that, in respect of working conditions including pay, trainees are not treated in a less favourable manner than comparable employees in the same establishment, unless different treatment is justified on objective grounds. For the purpose of this Directive, "pay" should be understood in accordance with national law and practice and may include compensation whether ~~in cash~~ **pecuniary** or in kind**.** The sole fact of being a trainee cannot constitute grounds for less favourable treatment compared to employees in the same establishment. At the same time, different tasks, lower responsibilities or work intensity in relation to comparable employees may constitute objective grounds for different treatment, where relevant, with regard to the ~~employment~~ working condition including pay at issue. The extent of different treatment should, however, be proportionate to those grounds. Social partners ~~are well placed to~~ **can** consider objective grounds for different treatment of trainees and ~~to~~ strike a balance i.e. in collective agreements considering the specifities of national contexts and the needs of different sectors.

(23) The application of the principle of non-discrimination requires the identification of a comparable employee engaged in the same or similar type of work or occupation as the trainee, due regard being given to circumstances such as professional experience, qualifications and skills as defined in national law or collective agreements.

(23a) Chapter III of the Directive aims at addressing the issue of employment relationships that are disguised as traineeships, i.e. when employers hire trainees outside of an employment relationship usually with a lower level of pay or worse working conditions than those which employees would be entitled to under Union or national law, collective agreements or practice.

(24) [deleted]

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(25) It is necessary to ensure effective measures in accordance with national law and practice, including where appropiate controls and inspections conducted by the competent authorities as they are essential to protect the rights of trainees, in order to ~~detect and~~ combat practices where employment relationships are disguised as traineeships. Where appropriate and in accordance with national law or practice, such tasks may be entrusted to social partners. Such controls and inspections should be targeted to avoid ~~the substitution of employees by~~ **practices whereby** trainees ~~who~~ are not considered as employees by the traineeship provider but should be~~,~~ **considered as employees** in accordance with ~~Union and national law, collective agreements or practice~~ **the law, collective agreements or practice in force in the Member State, with consideration to the case-law of the Court of Justice,** and to protect workers' rights.

(26) The assessment whether an employment relationship is disguised as a traineeship should be based on the factual circumstances and not on the formal designation of the contractual relationship. In order to determine whether an employment relationship is disguised as a traineeship, competent authorities~~, including national courts,~~ should perform an overall assessment of all relevant ~~facts~~ **factual elements** on a case-by-case basis.

(26a) ~~In order to facilitate the assessment of the employment relationship of trainees for competent authorities, specific elements that would support such assessment should be set out.~~ For carrying out the assessment of all relevant factual elements**,** the competent authorities may consider, among others, the following elements: the absence of a significant learning or training component; the excessive duration of the relationship; the levels of tasks, responsibilities and intensity of work; the requirement for previous work experience for candidates for traineeships in the same or a similar field of activity without appropriate justification.

(27) [deleted]

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(28) When competent authorities carry out their analysis of ~~the~~ **all** relevant ~~facts~~ **factual elements** to determine the existence of an employment relationship, the information needed to perform this analysis might not always be easily accessible to them. In order to enable competent authorities to perform their tasks, traineeship providers should be obliged to provide them with the necessary information that lies in their control upon request.

(28a) In the case of trilateral relationships where an intermediary facilitates the provision of traineeships, the traineeship provider should be understood as referring to the entity where the traineeship is undertaken.

(29) [deleted]

(30) [deleted]

(31) In addition to this Directive, Member States should ensure full implementation and enforcement of the rights enshrined in the Union acquis applicable to trainees in an employment relationship. In particular, Member States should develop the capability of the competent authorities, where appropriate following a risk-based approach.

(32) An extensive system of provisions should be included in this Directive to help ensure effective enforcement and defence of rights of trainees in an employment relationship stemming from this Directive and from other Union law applicable to workers. For example, channels to report ~~malpractice and poor working conditions~~ **alleged infringements arising from the application of this Directive** can support trainees in enforcing their labour rights. Existing channels can be used for that purpose.

PUBLIC

(33) Trainees should have access to effective and impartial dispute resolution and a right to redress, including adequate compensation. Trainees should be informed about the redress mechanisms for the purpose of exercising their right to redress. Having regard to the fundamental nature of the right to effective legal protection, trainees should continue to enjoy such protection even after the end of the traineeship giving rise to an alleged breach of rights under this Directive.

(34) To provide a more effective level of protection of trainees, **Member States should ensure that** workers' representatives ~~should be~~ **are** able to engage, in accordance with national law or practice, in **any relevant judicial or administrative** proceedings in order to defend any of the rights and obligations arising from this Directive. Where such action is admissible pursuant to national law or practice, ~~they~~ **Member States should ensure that workers' representatives are** ~~should be~~ able to act on behalf or in support of a trainee**.** Member States which do not ~~enable~~ allow workers' representatives to act on behalf or in support of **a** trainee~~s~~ should not be ~~compelled to open any such action~~ **required to do so.**

(35) Trainees should be provided with adequate judicial and administrative protection against any adverse treatment and consequences in reaction to any complaint lodged with the employer or resulting from any proceedings initiated with the aim of enforcing compliance with the rights provided for in this Directive. In particular, trainees in an employment relationship should be protected from dismissal or its equivalent and all preparations for dismissal or its equivalent for exercising the rights provided for in this Directive.

(36) Member States should lay down rules on effective, proportionate and dissuasive penalties for cases of infringement of the rights provided for in the scope of this Directive. Penalties can include administrative and financial penalties, such as fines or the payment of compensation, as well as other types of penalties.

(37) This Directive lays down minimum requirements, thus leaving untouched Member States' prerogative to introduce and maintain more favourable provisions. Rights acquired under the existing legal framework should continue to apply, unless more favourable provisions are introduced by this Directive.

(38) Since the objectives of this Directive, namely to enforce working conditions of trainees in an employment relationship and combat practices where employment relationships are disguised as traineeships, cannot be sufficiently achieved by the Member States, but can, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(39) In implementing this Directive Member States should avoid imposing unnecessary administrative, financial and legal constraints, in particular if they hold back the creation and development of micro, small and medium-sized enterprises. Member States are therefore encouraged to assess the impact of their transposition measures on those enterprises in order to ensure that they are not disproportionately affected, paying particular attention to microenterprises and to the administrative burden, to publish the results of such assessments, and to provide support to those enterprises as necessary.

PUBLIC

(40) Member States may entrust the social partners with the implementation of this Directive, where the social partners jointly request to do so and provided that the Member States take all the necessary steps to ensure that they can at all times guarantee the results sought under this Directive. They should also, in accordance with national law and practice, take adequate measures to ensure the effective involvement of the social partners and to promote and enhance social dialogue with a view to implementing the provisions of this Directive.

HAVE ADOPTED THIS DIRECTIVE:

PUBLIC

Chapter I
General provisions

Article 1

Subject matter

This Directive lays down a common framework of principles and measures to improve and enforce the working conditions of trainees in an employment relationship and to combat practices that disguise employment relationships as traineeships.

Article 1a

Scope

1. This Directive applies to trainees who have an employment contract or who are in an employment relationship as defined by the law, collective agreements or practice in force in the Member State, with consideration to the case-law of the Court of Justice**.**

2. This Directive shall not apply to:

   (a) vocational education and training relationships,
   (b) apprenticeships,
   (c) traineeships which are carried out within the framework of formal education,
   (d) traineeships that are obligatory in order to achieve a specific degree or qualification **and to professional traineeships as defined in Directive 2005/36/EC**, nor to
   (e) traineeships within active labour market policies.

PUBLIC

Article 2

Definitions

For the purposes of this Directive, the following definitions apply:

(a) ‘traineeship’ means a limited period of work practice which includes a significant learning and training component, undertaken to gain practical and professional experience.

(b) ‘trainee’ means any person undertaking a traineeship;

(c) [deleted]

(d) [deleted]

(da) "comparable employee" means a person with an employment contract or employment relationship in the same establishment, who is not undertaking a traineeship and is engaged in the same or similar work or occupation, due regard being given to circumstances such as professional experience, qualifications and skills.

PUBLIC

Chapter II
Equal treatment

Article 3

Principle of non-discrimination

1. Member States shall ensure that, in respect of working conditions, including pay as laid down in law, collective agreements or practice in each Member State, trainees are not treated in a less favourable manner than comparable employees, unless different treatment is justified on objective grounds such as different tasks, lower responsibilities, work intensity or the higher weight of the learning and training component.

2. Where there is no comparable employee in the same establishment, the comparison shall be made by reference to the applicable collective agreement, or where there is no applicable collective agreement, in accordance with national law or practice.

3. (new) Member States may, on the condition that the national social partners jointly agree, give the social partners, at the appropriate level and subject to the conditions laid down by Member States, the option of upholding or concluding collective agreements establishing the objective grounds that are considered to justify a different treatment**, in accordance with paragraph 1.**

PUBLIC

Chapter III
Employment relationships disguised as traineeships

Article 4

Measures to combat employment relationships disguised as traineeships

Member States shall provide for effective measures in accordance with national law or practice, including where appropriate controls and inspections conducted by the competent authorities, to combat practices where an employment relationship is disguised as a traineeship whereby trainees are not considered as employees by the traineeship provider but should be, in accordance with ~~Union and national law, collective agreements or practice~~ **the law, collective agreements or practice in force in the Member State, with consideration to the case-law of the Court of Justice.**

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Article 5

Assessment of employment relationships disguised as traineeships

1. For the purposes of Article 4, **Member States** shall ~~provide for~~ **ensure that** an overall assessment of all relevant factual elements of the traineeship **is perfomed** ~~,~~ in accordance with national law or practice.

2. For the purpose of the assessment referred to in paragraph 1, **Member States shall ensure that** traineeship provider**s** ~~shall~~ **provide**, upon request, ~~provide~~ the competent authorities ~~and institutions~~ with the necessary information, which may include the following:

   (a) the number and employment status of trainees and the number of persons in an employment relationship hosted by that traineeship provider**;**

   (b) the duration of traineeships;

   (c) the tasks and responsibilities of trainees and of comparable employees.

3. [deleted]

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Chapter IV
Enforcement and supporting measures

Article 6

Implementation and enforcement of relevant Union law

Member States shall take effective measures in accordance with national law or practice to ensure that all relevant Union law applicable to workers is fully implemented and enforced in relation to trainees. In particular they shall:

(a) ensure that information on the rights of trainees is publicly available in a clear, comprehensive and easily accessible way;

(b) develop guidance for employers of trainees regarding the legal framework for traineeships, including adequate level of information on relevant labour law and social protection aspects;

(c) provide for effective measures in accordance with national law or practice, including where appropriate controls and inspections conducted by the competent authorities, to enforce relevant labour law in relation to trainees;

(d) [deleted]

(e) develop the capability of the competent authorities, in particular through training and guidance, to proactively target and pursue non-compliant employers;

(f) ensure, in cooperation with the competent authorities or social partners, that channels are in place for trainees to report alleged infringements arising from **the application of** this Directive, and provide information on those channels.

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Article 7

Right to redress

Member States shall ensure that trainees, including those whose employment relationship has ended, have access to effective and impartial dispute resolution and a right to redress, including adequate compensation for the damage sustained, in the case of infringements of their rights arising from this Directive.

Article 8

Procedures by workers' representatives

Member States shall ensure that workers' representatives are able to engage, in accordance with national law or practice, in any relevant judicial or administrative procedure to enforce the rights and obligations arising from this Directive and are able to act, where admissible pursuant to national law or practice, on behalf or in support of a trainee in case of an infringement of any right or obligation arising from this Directive, with the trainee's approval.

PUBLIC

Article 9

Protection against adverse treatment and consequences

1. Member States shall introduce the necessary measures to protect trainees or their representatives from any adverse treatment by the employer and from any adverse consequences resulting from a complaint lodged with the employer or resulting from any proceedings initiated with the aim of enforcing compliance with the rights provided for in this Directive.

2. In particular, Member States shall take the necessary measures to prohibit the dismissal or its equivalent, and all preparations for dismissal or its equivalent, of trainees on the grounds that they have exercised the rights provided for in this Directive.

3. Trainees who consider that they have been dismissed, or have been subject to measures with equivalent effect, on the grounds that they have exercised the rights provided for in this Directive, may request the employer to provide duly substantiated grounds for the dismissal or the equivalent measures. The employer shall provide those grounds in writing.

4. Member States shall take the necessary measures to ensure that, when trainees referred to in paragraph 3 establish, before a court or other competent authority or body, facts from which it may be presumed that there has been such a dismissal or equivalent measures, it shall be for the employer to prove that the dismissal or equivalent measures were based on grounds other than those referred to in paragraph 2.

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5. Member States shall not be required to apply paragraph 4 to proceedings in which it is for the court or other competent authority or body to investigate the facts of the case.

6. Paragraph 4 shall not apply to criminal proceedings, unless otherwise provided by the Member State.

Article 10

Penalties

Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive or the relevant provisions already in force concerning the rights which are within the scope of this Directive. The penalties provided for shall be effective, proportionate and dissuasive.

PUBLIC

Chapter V
Final provisions

PUBLIC

Article 11

Non-regression and more favourable provisions

1. [deleted]

2. This Directive shall not constitute valid grounds for reducing the general level of protection already afforded to workers, including trainees, within Member States.

3. This Directive shall not affect Member States' prerogative to apply or to introduce laws, regulations or administrative provisions which are more favourable to workers or to encourage or permit the application of collective agreements which are more favourable to workers. **At the same time,** nothing in this Directive ~~should~~ **shall** be construed as imposing an obligation on Member States to introduce a specific employment ~~status~~ **relationship for trainees in their national law.**

3a. This Directive is without prejudice to other rights conferred on workers by other legal acts of the Union.

Article 12

Transposition and implementation

1. Member States shall take the necessary measures to comply with this Directive by [2 years after entry into force **of this Directive**]. They shall immediately inform the Commission thereof.

2. When Member States adopt the measures referred to in paragraph 1, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

3. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

4. Member States shall, in accordance with their national law and practice, take adequate measures to ensure the effective involvement of the social partners and to promote and enhance social dialogue with a view to implementing this Directive.

5. Member States may entrust the social partners with the implementation of this Directive, where the social partners jointly request to do so and provided that Member States take all necessary steps to ensure that they can at all times guarantee the results sought under this Directive.

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Article 13

Reporting and review

1. By [5 years after the date of transposition **of this Directive**], Member States shall communicate to the Commission relevant information concerning the implementation of this Directive that is necessary for the Commission to draw up the report referred to in paragraph 2. That information shall include relevant data on traineeships for the purposes of allowing the proper monitoring and assessment of the implementation of this Directive.

2. By [6 years after the date of transposition **of this Directive**], the Commission shall, after consulting the Member States and the social partners at Union level and taking into account the impact on micro, small and medium-sized enterprises, submit ~~the~~ a report on the implementation of this Directive to the European Parliament and to the Council. The report shall, if appropriate, be accompanied by a legislative proposal.

Article 14

Entry into force

The Directive shall enter into force on the twentieth day following **that of** its publication in the *Official Journal of the European Union.*

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Article 15

Addressees

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This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*