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WORKING DOCUMENT

From: To:	General Secretariat of the Council Delegations
N° Cion doc.:	8148/24 ADD 1-5 + 8148/1/24 REV 1
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') - MS comments

Delegations will find attached the written contributions received from the AT, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, IE, IT, LT, NL, PT and SE delegations.

Comments by AT

- The Directive shall not lead to the creation of subcategories of employees, which do not receive the same level of protection under existing labour law.
- The text of the directive must correspond to the fundamental characteristics of national labour law. It must be clear that if the essential characteristics of an employment relationship are present, the persons are considered as employees.
- In this context the deletion of the term "open market traineeships" is welcomed by AT.
- AT opposes the deletion of Art. 6 lit. d, which included the obligation of MS to provide competent authorities with adequate resources.

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Comments by CY

Article 1a-Scope:

The main issue is regarding the **Scope**. We wish for ***traineeships in the context of Active Labour Market Policies***, to be clearly excluded from the whole Directive.

Comments by CZ

Czechia reserves the right to take a position on the final proposal at the forthcoming SQWP/Coreper meeting (apart from the problematic Article 6(f) (communication channels) and Article 9(4) (reversed burden of proof), the overall administrative burden on businesses resulting from the proposed Directive is being considered).

Comments by DE

Statement by the Federal Republic of Germany following the meeting of the Social Questions Working Party on April 30, 2025:

Preliminary remark:

Germany thanks the Council Presidency for the opportunity to submit a written statement following the Council Working Group meeting. This statement refers to the version of the proposed directive presented by the Council Presidency on April 22, 2025.

Germany remains deeply concerned that the directive would lead to avoidable and unjustified legal uncertainty and impose additional bureaucratic and financial burdens on public administration and traineeship providers within the meaning of the Directive, without this being justified by the vulnerability of the trainees concerned.

From Germany's perspective, the new proposal also requires significant changes. In particular, the scope of application (Article 1a) must have a narrower demarcation, and legal relationships

specifically regulated in Member State law, such as labour market policy measures and vocational rehabilitation measures must be excluded from the scope of application, so as to provide legal certainty. Furthermore, no additional tasks must be imposed on Member State authorities in connection with combating so-called false traineeships (Article 4), and no requirements must be set for examining the existence of false traineeships (Article 5). Indications of the existence of a false traineeship must not be regulated in a binding manner. Furthermore, Germany refers to its previous written comments.

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Article 1a:

The discussions in the Social Questions Working Party have shown that the mere addition of "without the involvement of a third party" (Article 1a, paragraph 1) is not sufficient for exempting legal relationships that should not fall within the scope of application. In particular, it remains unclear whether bilateral contractual agreements to which the employment agency or rehabilitation agency is not a contracting party itself, but the agencies are, however, part of the labour market policy measures or part of the vocational rehabilitation, fall within the scope of the directive. Therefore, it must be clarified that such traineeships are also excluded from the scope of application, even if third parties are – for example - only involved in the placement or initiation process of the contract or if third parties are involved in funding the traineeships. This must be expressly regulated directly in Art. 1a, or at least in a recital.

According to the Member States' previous statements, numerous legal relationships are specifically regulated under Member State law and do not need to fall within the scope of the Directive in order to adequately protect trainees. The scope of the entire Directive (and not just the scope of Chapters 2 and 4) must therefore be limited to voluntary traineeships conducted in the open labour market. From Germany's perspective, in addition to labour market policy and vocational rehabilitation measures, the areas of higher education, vocational education and training including preparatory internships, and the inclusion of people with disabilities and voluntary traineeships serving the common good must be excluded from the scope of the Directive. This must be expressly regulated directly in Article 1a, or at least in a recital.

Germany requests that the scope of the Directive be defined as follows:

„This Directive applies exclusively to traineeships that are based on non-mandatory, bilateral agreements between a trainee and a traineeship provider without the involvement of a third party, such as in the context of placement, and are unrelated to education and training. In particular, this Directive shall not apply to

a) traineeships which are regulated on the basis of a national law such as under school or higher education law or under vocational training regulations. Traineeships which are part of other, broader training, in particular other dual training, or which are are part of a course of stud yare also exempted. The same applies to traineeships undertaken in preparation for training or for a course of study or for the achievement of a specific degree,

b) traineeships for further or advanced vocational training or post-qualification,

c) traineeships as part of labour market or social policy measures, in particular measures to promote employment, the inclusion of disadvantaged people in working life, such as people with disabilities and traineeships, such as work trials in the context of vocational rehabilitation measures, and

d) traineeships that serve the common good, in particular in the social, ecological, cultural or scientific field or in the field of sport, integration or civil protection and disaster control."

DEU also considers it imperative to clarify in a recital that aspects of social security law are not subject of the employment law directive and cannot be due to reasons of competence.

Germany requests that recital 16 is specified as follows:

„This Directive does not apply to aspects of social security law, such as the social insurance classification and social protection of trainees. Chapter II and IV of …"

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<u>Article 3</u>:

The Polish Council Presidency stated in the last working group meeting that the list in Article 3 is not exhaustive and that the member states can provide further reasons to justify a differentiation. We therefore ask for clarification to this regard, at least in a recital.

Article 3, paragraph 1, should be worded as follows:

„Member States shall ensure that, in respect of working conditions, [...] ***as laid down in national law, collective agreements or practice,*** *trainees are not treated in a less favourable manner than comparable employees, unless different treatment is justified on* ***activity-related or other*** *objective grounds, such as different tasks, lower responsibilities, work intensity, the higher weight of the learning and training component* ***or the duration of the traineeship****."*

<u>Article 4</u>:

Germany remains opposed to the creation of new official tasks and structures and the burdening of existing official structures with new, extraneous tasks. We therefore request that the words 'and combat' and 'including, where appropriate, controls and inspections conducted by the competent authorities' be deleted. It is still unclear what further measures Member States would need to put in place to combat so-called false traineeships, in addition to measures to identify them.

Article 4 should read as follows:

„Member States shall provide for [...] measures in accordance with national law or practice [...] to identify [...] false traineeships."

<u>Article 5</u>:

DEU rejects harmonised requirements for the implementation of the assessment and in particular the obligation for national authorities to use abstract criteria. The criteria must be neither mandatory nor exhaustive. We therefore support the proposal of several member states to make the list indicative and to replace ‚shall' with ‚may' in sentence 2.

The term 'excessive duration' in Article 5 b) is vague and would lead to avoidable legal uncertainty. We request its deletion. In any case, a maximum duration of only six months, beyond which it is to be considered a so-called false traineeship according to recital 26a new, is not practical.

The data sharing obligations in Article 5 (2) also fall within the procedural autonomy of the Member States and must be deleted in order to avoid additional bureaucratic burdens.

Article 6:

Art. 6 (c) should be deleted. Members States must be able to assess for themselves whether and to what extent there is a need for additional regulation in their national law specifically to enforce the rights of trainees. Article 6 (f) should be deleted. The bureaucratic burden on the administration and companies resulting from the creation of new complaint channels would be disproportionate to the relatively small number of favoured trainees.

Compromise proposal: It would be conceivable to restrict the obligation exclusively to existing complaint channels.

In any case, it must be made clear in the regulatory text – as has already been done in recital 32 – that existing complaint channels under national law can be used.

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Comments by DK

Remarks from Denmark – based on the latest exchanges and PRES draft compromise text

As stated on more occasions, we attach importance to ensuring sufficient room for different labour market models and social partners role and autonomy.

Referring to the discussion in SQWP on 30 April, DK finds that the reference in article 3.3 to article 3.1 makes it clear that social partners, if a MS chooses to make use of this provision, are under the same obligations as Member States authorities.

We do not really see the need for a recital to add to this. Should this be decided, we find it necessary to revisit the proposed recital 22a as current wording is not clear vis-à-vis the article. We thank the Presidency in advance for involving us in such work.

Comments by EE

1) Traineeships provided within active labour market policies should be excluded from the scope of the directive in its entirety.
   Proposal for an amendment to Article 1a paragraph 2:

   "2. This Directive shall not apply to traineeships that are carried out within the national framework of education or training and traineeships within active labour market policies.".

   Traineeships within active labour market policies should also be excluded from chapter III on combatting false traineeships. The necessary protection is already in place under the ALMP/PES schemes; inclusion increases administrative burden and also reduces access to traineeships.

2) The obligatory elements for the assessment of false traineeship should be deleted from the operative part (Article 5.1) and reinstated in the recitals (Recital 26a) in the „may“ format. A new possible wording of Article 5.1 and Recital 26a should follow the wording of Article 5.1 and Recital 26a of the HU Presidency's proposal on general approach.

   It is the competence of competent authorities to decide which elements to use for the assessment, and what weight to give to each element in a particular case to identify what kind of relationship a trainee has.

3) Definition of „false traineeship“ should be deleted or reformulated in a way that takes account the understanding of an employment relationship disguised as traineeship provided for in Article 4 of the HU Presidency's proposal on general approach.

   From the start the definition of „false traineeship“ has been confusing and unnecessarily complicated and we do not see the need for a definition which causes legal uncertainty in the implementation phase.

   In general, we do not regulate false relationships in civil law, e.g. false sales contracts or false contracts for provision of services. If a relationship is not a traineeship in substance (does not meet the requirements provided for in the definition of traineeship), we can conclude it is any other legal relationship. Nature of the relationship should be analysed in the light of the definition of traineeship. If the nature of said relationship is employment, then we interpret it based on the definition of an employment contract and not according to the definition what is not employment contract (what is false employment contract). Same applies to any other legal relationship that is labelled wrongly. Therefore we shouldn't regulate „false“ relationships.

   Nor do we understand the illogical situation of „false traineeship“ from which we might find ourselves. A situation, where the claimed traineeship does not fulfill the requirements of a „traineeship“ definition, and does not result in a lower protection compared to a comparable worker, results in an understanding where this relationship is not „false traineeship“, despite of the fact that the relationship itself does not fulfill the conditions of a „traineeship“ definition provided by the directive.

   Taking the concept of Article 4 from HU's proposal on general approach, we could form a definition on „false traineeship“, such as *„false traineeship“ is an employment relationship disguised as a traineeship whereby trainees are not considered as employees by the*

PUBLIC

traineeship provider but should be, *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*. In our understanding we do not need a link to *resulting in a lower level of protection compared to comparable worker* in the definition of „false traineeship“.

4) The wording of Article 8 on procedures by workers representatives is legally uncertain and gives rise to different interpretations. We regret that the wording of Article 8 has not been reconsidered.

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Comments by EL

• In Recital 16 and Article 1a1 ("…and whose traineeship is not mandatory and is based on a bilateral agreement between the trainee and the employer without the involvement of a third party"), we consider it important to clarify what constitutes such a bilateral agreement and under which pillar it falls — that of employment or education — as it introduces concepts that require further elaboration. In order to explicitly address the scope of the Directive, we propose the rephrasing whose traineeship is not mandatory and is based on a bilateral **employmen**t agreement or **employment contract** between the trainee and the employer without the involvement of a third party.

With regard to Article 1a, we believe that the objective of the Directive should not be divided across its Chapters; instead, it should constitute a coherent framework that underpins the Directive as a whole. Furthermore, in paragraph 2, it would be appropriate to reiterate point 16a, which explicitly states the categories excluded from the scope of the Directive.

• The inclusion of the relevant sentence in Recital 19 is acceptable in principle; however, we believe that further clarification and analysis are needed regarding the notion of a "probationary period", in order to clearly distinguish it from other forms of engagement. The addition of the phrase "unless the probationary period is part of the traineeship period" adds significant complexity and fails to clearly distinguish what constitutes a traineeship and how it differs from a probationary period or a fixed-term employment contract.

Regarding point (e) of Article 2, it is not clear what the defining difference is between a trainee who is in an employment relationship and a regular employee of the company, given that the scope of the Directive explicitly covers trainees in an employment relationship or under an employment contract. Therefore, the addition of the final sentence does not appear to serve a clear purpose.

• In Recital 22, we consider that the word *"can"* in the phrase *“For the purpose of this Directive, 'pay' should be understood in accordance with national law and practice and [...] can include compensation whether pecuniary or in kind.”* should be deleted. A trainee in an open market traineeship, and therefore in an employment relationship, should evidently be remunerated. Additionally, in the final sentence of point (22), we believe that the phrase *"according to national law or practice"* should be added to ensure it is clear that such provision is only applicable if permitted under the national legal framework.

• In Recital 22a, we propose adding that social partners may define differentiated treatment of trainees in collective agreements, provided that the national legal framework or practice allows it.

• We express partial reservations with regard to point (26a new). In particular, while we agree that the appropriate duration of a traineeship may vary depending on its purpose and sector, a period of up to six months is generally considered sufficient to meet its objectives. However, when multiple consecutive traineeship periods are carried out with the same provider, this raises not only concerns about the genuine nature of the traineeship but may also constitute an indication of a fraudulent traineeship, as it exceeds the time needed to achieve the intended learning outcomes. Therefore, such cases should not merely be subject to careful assessment but should rather be avoided or prohibited. As such, the provision should be redrafted or its wording merged with that of point (26a).

• In paragraph 3 of Article 3, we consider it appropriate to add the phrase *"and according to national law and practice"*, as the agreement of social partners alone is not sufficient — it must also be permitted by the national legal framework.

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Comments by ES

Spain's priority is to establish a **common European framework of minimum standards** for all trainees, the vast majority of whom are young people. For the Directive to have real impact and be effective in achieving its objectives, it must apply to as many trainees as possible. We therefore support a scope of application as broad as possible, so that the Directive becomes a truly useful instrument.

Trainees are often subject to abusive situations in which they work full schedules like regular employees, without any training component, with the traineeship disguising what is in reality a regular employment relationship. These practices not only harm the individuals concerned, who are deprived of their labour rights and the social protection to which they are legally entitled, but also undermine the competitiveness of European companies. It is in everyone's interest to have a legal instrument that addresses this issue, and national particularities should not prevent us from firmly pursuing the objectives of the Directive.

That said, we are aware of the range of opinions and sensitivities involved. In this document, we outline the outstanding issues that we believe could still be reflected in the text at this stage, without renouncing to the positions and comments we have previously expressed:

Scope: article 1.a.1a: For the purposes of Chapters III **and IV** this Directive applies to any person engaged in a false traineeship.

Ensuring that Chapter IV applies to all individuals affected by the misuse of traineeships is key to the coherence, and effectiveness of the Directive

There has been no clear explanation as to why persons who are found to be in a false traineeship should be excluded from the scope of these protections. On the contrary, it is precisely in these situations of abuse where the guarantees of Chapter IV are most needed.

This includes the implementation and enforcement of relevant Union law, the right to redress, procedures brought by workers' representatives, protection against adverse treatment and consequences, and, very importantly, the application of penalties. These are essential mechanisms

designed to ensure that rights can be effectively exercised and defended, particularly in cases where individuals are in abusive situations.

Definition of false traineeship: article 2.e): "false traineeship" means any ~~employment~~ relationship, ~~as~~ either defined by national law, collective agreements, or practice in force in the Member State, with consideration to the case law of the Court of Justice, **<u>as an employment relationship or not</u>**, that is claimed by employer to be a traineeship but in fact does not […] meet the requirements of a traineeship in the meaning of this Directive and results in the individual concerned not enjoying the level of protection or working conditions afforded to a comparable employee."

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The concept of a false traineeship should explicitly include situations where a trainee does not have an employment contract or is not in an employment relationship. While the Presidency has indicated that this is covered by the current definition, we do not find that this is sufficiently clear in the wording as it stands.

We understand that there was broad agreement around the compromise text proposed by the previous Presidency, which recognised the need to address the situation of trainees who should be considered workers and thus be in an employment relationship, but are not. For this reason, we believe it should not be problematic to clarify this aspect explicitly in the text.

More importantly, including those trainees who lack a contract or employment relationship is essential to achieving the objectives of the Directive. Otherwise, a very large number of trainees will be left without protection.

Former article 5.3: To support the assessment referred to in paragraph 1, Member States shall take measures to:
(a) encourage the establishment of a reasonable time frame for the duration of a traineeship and for the use of repeated or consecutive traineeships with the same employer;
(b) promote the inclusion of essential aspects of the traineeship in vacancy notices or other relevant communications, where applicable.

We disagree with the removal of the former paragraph 5.3, as it does not establish burdensome obligations. On the contrary, it contributes significantly to the achievement of the Directive's objectives by enhancing transparency.

In a spirit of compromise, we propose this wording, which we believe could be acceptable also to other delegations.

Other considerations:

- We believe it would be helpful to properly narrow the exception under Article 1a(2), so that only ECT traineeships are excluded, if such an exclusion is to be maintained. For example: "T*his Directive shall not apply to traineeships that are carried out within the national* ***<u>oficial/formal</u>*** *framework of education or training".*

- We look forward to continuing work to ensure that the wording of **recitals 19 and 22bis** is satisfactory. Regarding the latter, we consider it necessary to include a clarification to avoid any doubt that, where social partners have competence to define the objective grounds for differentiated treatment, they must do so within the limits of the applicable legal minimum standards.

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Comments by FI

- We support the general objective of the proposal which is to ensure good quality traineeships.
- However, we have to find a balance in tackling the real problem without increasing the administrative burden unnecessarily.
- It is important to keep the formal education outside the scope of the directive. It is good that relevant recital entails the more detailed description of formal education.
- We still maintain our reservation on the proposal to extend the scope as regards chapter III.
- It is very important that the autonomy of social partners and the role of collective agreements is taken into account in relevant parts of the text. Therefore, article 3.3. is important to keep in the text as it is now. If further clarifications are needed in the recital, we are ready to continue the discussion on this.

Comments by FR

<u>Scope (article 1a and recital 19) :</u>

<u>Article 1a.</u>:

The French authorities repeat their wish to exclude active labour market policies from the scope of the text (see drafting suggestion (A) below). In the absence of an explicit exclusion of traineeships within active labour market policies from the scope of the directive, as in previous versions of the text, the French authorities are requesting that the exclusion of tripartite agreements be included at the end of article 1a (see drafting suggestion (B)). Traineeships covered by such tripartite agreements, associating the public employment service, require some degree of flexibility and are already subject to important controls. They respond effectively to the needs of the people it supports and it is important to prevent new legal constraints which may affect adversely their adequacy and results.

Article 1a

Scope

1a. For the purposes of Chapter III, this Directive applies to any person engaged in a false traineeship. (B) <u>The provision of this chapter shall however not apply to</u>

traineeships covered by tripartite agreements associating the public employment services.

2. **This Directive shall not apply to traineeships that are carried out within the national framework of education or training (A) or as part of active labour market policies.**

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Recital 19:

The French authorities believe that the wording of recital 19, as amended in the third Polish Presidency compromise, blurs the limits of the directive's scope and makes it impossible to clearly grasp its contours, which is a source of interpretation and therefore of legal uncertainty. To make the exclusion clearer, the French authorities propose to add « in accordance with national law or practice » at the end of the addition made, which will allow the various national provisions to be taken into account in a more secure way:

(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, or industrial and professional insights, with a view to improving employability and preparing them for future career opportunities and challenges. In the light of these elements, persons undergoing a probationary period should not be understood as trainees under this Directive, unless the probationary period is part of a traineeship, in accordance with national law or practice.**

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Definitions (article 2):

The French authorities consider that professional transition does not necessarily fall within the objectives of a traineeship. It seems to imply that the capacity for professional transition rests solely with the trainee, whereas under French law, the permanent adaptation of employees to the evolution of their jobs is an obligation of the employer. They are asking for a rewording that would remove this ambiguity and make it clear that this is a transition into the labour market.

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 with a view to improving employability and facilitating **~~professional~~** transition **into the labour market […];**

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Assessment of false traineeships (article 5 and recital 26a) :

While the French authorities are not opposed to the list of criteria proposed in Article 5, they are opposed to the obligation for the competent authorities to verify these elements. At national level, these elements are already verified by the labor inspectorate during inspections, or by the courts when a request for requalification is made. However, the competent authorities have a certain amount of freedom in their office, and the elements governing requalification are established by case law, and must remain sufficiently flexible to allow assessment on a case-by-case basis. Maintaining the term “shall” would therefore hinder the judge's office. It could also have difficult-to-predict side-effects when it comes to reclassifying other professional situations.

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For these reasons, the French authorities reiterate their requests for amendments to Article 5 and Recital 26a:

Article 5

Assessment of **[…]** ***false*** *traineeships*

1. In order to **[…] […] identify a false traineeship,** competent authorities shall make an overall assessment of **[…]** relevant factual elements**, in accordance with national law or practice.** That assessment ~~shall~~ **may** take into account, […] among others, the following **[…] indicative** elements:

(26a) For carrying out the assessment of all relevant factual elements, the competent authorities should take into account […] among others the following indicative elements: the absence of a significant learning or training component; the excessive duration or multiple consecutive traineeships with the same employer by the same person; and the levels of tasks, responsibilities and intensity of work. The competent authorities may take into account additional elements as matter of national law or practice.

Comments by HR

CROATIA has an major issue with the definition of so-called "*false traineeship*" (Art. 2(e)), nor the undertaking of measures by Member States with regard to identifying and combating such relationships (Art. 4), considering that such a solution would significantly burden Member States. In practice, it would be extremely difficult to distinguish between a "regular" employee and a trainee.

Moreover, in our domestic legal system, trainees who have signed an employment contract enjoy appropriate protection of their employment rights, just like all other workers. We believe that in this area, a greater risk regarding the exercise of such rights arises for trainees who are not in an employment relationship, even though—considering the nature of the work performed—they should be, but are instead working under various other types of traineeship agreements, including volunteering agreements, which offer significantly lower levels of legal protection. Therefore, we find the legal framework for the protection of trainees as proposed by the HU PRES to be more acceptable.

Therefore, we urge the Presidency to delete the definition of "false traineeship" in Art. 2(e) and adapting the text of the Art. 4 as it was proposed in HU PRES (general approach text proposal: st.16136/24):

> ***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 the law, collective agreements or practice in force in the Member State, with consideration to the caselaw of the Court of Justice.***

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Furthermore, regarding Recital 19, we propose deleting the part "*unless the probationary period is part of a traineeship,*" since including a probationary period is incompatible with the very purpose of carrying out a traineeship.

Concerning Art. 1(a) (Subject Matter), we consider it unnecessary to define trainees so broadly, since this is already clearly stated in Art. 1a (Scope) and Art. 2(e) (Definitions). Therefore, we propose shortening it, for example, to "*trainees in an employment relationship*," and to add the word "identify" in Art. 1(b).

Finally, although this is evident from the preamble, for the sake of legal clarity, we propose explicitly specifying in the operational part (Art. 1a) the forms of traineeship that will be excluded from the scope of the Directive, as was done in the HU PRES proposal.

Comments by IE

Article 1a – Scope

IE supported the HU text which went to Council (15664/2) in December 2024. Article 1a listed the forms of traineeships which the Directive shall not apply to in a succinct and clear manner. We understand that that the PL Presidency is trying to simplify the text, however IE again requests that the exclusions which have been moved to recital 16a are reinstated into Article 1a. These forms of traineeships are already well regulated and for legal clarity and certainty, their exclusion from the scope of the Directive should be included in the Articles of the Directive.

ALMP traineeships have been an ongoing point of discussion within the working party meetings. IE would share the concerns raised by other Member States regarding the potential inefficient use of the limited resources within competent authorities should they be required to carry out investigations regarding ALMP traineeships which are run and already subject to oversight by other State bodies.

Article 2 – Definitions

With regard to Chapter III, it was understood by IE that the intention of Cion's proposed Directive was to combat regular employment relationships being disguised as traineeships.[1] Based on this understanding and to enable Member States to implement the Directive, IE supported the text in Article 4 of the HU compromise text (15664/24) which read as follows:

[1] Commission to improve the quality of traineeships in the EU

"*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 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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Within the HU text, the situation which Member States were to combat was clear and IE supported this wording.

The current definition of 'false traineeship' in Article 2 has caused IE confusion as to what situations Chapter III is trying to combat.

Within the current definition of 'false traineeship' it appears that the determination of a 'false traineeship' centres on whether "*a traineeship meets the requirements of a traineeship in the meaning of the Directive and results in the individual concerned not enjoying the level of protection or working conditions afforded to a comparable employee*". It is this element of the current definition which causes confusion for IE for a number of reasons, including the following:

1) As explained above, it was understood by IE, from the Cion proposal and the HU compromise text brought to the December 2024 Council, that the objective of Chapter III was to address situations where "*an employment relationship is disguised as a traineeship whereby trainees are not considered as employees by the traineeship provider but should be*"[2]. This situation could result in lower levels of protection or working conditions compared to what the trainee should be afforded as a worker.

   The definition in the current compromise text does not reflect this as it is focusing its assessment on whether or not the trainee is participating in a traineeship as defined by the Directive. If a trainee is found to not be participating in a traineeship as defined by the Directive, it is unclear what action competent authorities would be expected take. What situation would they be remedying? Failing to meet the requirements of a 'traineeship' within the meaning of the Directive will not inform whether or not the trainee in question is a worker and therefore whether or not they are receiving a lower level of protection then what they are entitled to as a worker.

2) It is also unclear from the current definition if the employment relationship of the trainee is already recognised by the employer and therefore whether a 'false traineeship' is a person who is called a trainee with an employment relationship or contract but is found to not be participating in a traineeships as defined by the Directive. If this is the case, it is again unclear what Member States are expected to do to combat the situation. If they are already recognised as an employee, Articles 3 and Chapter IV address this situation. Additionally, if this is the case, Member States will not be expected to combat cases where an employment relationship is disguised as a traineeship (whereby trainees are not considered as employees by the traineeship provider but should be).

[2] 15664/24

3) The current definition of 'false traineeship' refers to the "*level of protection or working conditions afforded to a comparable employee.*" This causes additional confusion as it was understood that by IE that Article 3 dealt with cases of less favourable treatment between trainees with employment relationships and comparable workers, while the purpose of Chapter III, to which the definition of 'false traineeships' relates, was to address cases of regular employment relationships being disguised as traineeships. Therefore, the concern should not be whether they are receiving a lower level of protection or working conditions afforded to a comparable employee, as this is dealt in Article 3. Rather, the concern should be whether the trainee is not being considered as an employee by the traineeship provider but should be. If this is the case, then Member States can take effective measures to ensure the trainee is provided with the employment conditions and protections they are entitled to as a worker.

The previous HU text (15664/24) did not contain a definition of 'false traineeship'. Rather, within the HU text, Article 4 clearly articulated the objective of Chapter III:

"*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 the law, collective agreements or practice in force in the Member State, with consideration to the case-law of the Court of Justice*."

Therefore, providing for a similar approach in the next compromise text could improve clarity.

IE is available to discuss Article 2(e) bilaterally.

Article 5 – Assessment of false traineeships

- IE welcomes the removal of the term 'detect' and its replacement with 'identify' throughout the text.
- IE also welcomes the reintroduction of the words 'among others' in Art 5.1.
- IE requests that further amendments are made to reintroduce flexibility into Chapter III and would support proposals from other Members States to replace 'shall' with 'may' in Article 5.1.

Article 11

- It is important to Ireland that the proposal does not create a third category of worker. It is important that the text in Art 11.3 which confirms that the Directive does not impose an obligation on Member States to establish a specific employment status for trainees is maintained.

Comments by IT

Italy reserves the right to take a position on the final proposal at the forthcoming SQWP/Coreper meeting.

The clarification we had during the last SQWP on the understanding of Art. 1a, in the sense of the necessary fulfilment of all conditions for the application of the directive, is fundamental for us.

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Moreover, we can also support those Member States asking for the exclusion of traineeships that are part of active labour market policies from the scope of the text

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Comments by LT

Lithuania supported the Traineeship Directive text proposed to the Council (15664/2) in December 2024. A crucial element of that text for LT was the clear list of forms of traineeships that shall not fall under the scope of the Directive. Therefore, we aim to maintain clarity on this issue.

LT supports the PL Presidency's aim to simplify the text; however, this must not come at the expense of clarity or the creation of legal loopholes.

As stated from the beginning of the negotiations, including during the Council voting, we share the request of many other Member States to exclude ALMP traineeships. This form of traineeship is highly regulated at the national level, and additional regulation could result in inefficient use of the limited resources available to competent authorities.

Article 1a – Scope
To ensure a simple and understandable scope, we suggest reinstating the list from Recital 16a into Article 1a. All forms of traineeships now listed in Recital 16a are well regulated and should be clearly and unambiguously excluded from the scope of the Directive.

Article 2 – Definitions
Considering the Commission's presentation of the original Directive, LT understands that the aim is to combat regular employment relationships being disguised as traineeships. To meet this objective, we agree that it is necessary to have legally clear and certain definitions. At present, LT considers that the definition of "false traineeship" does not provide sufficient clarity or certainty.

The suggested definition sets up a situation in which a trainee may be in a false traineeship, but if it does not "result in the individual concerned not enjoying the level of protection or working conditions afforded to a comparable employee," the situation would not be recognized as a false traineeship.

LT suggests either strengthening the definition of a traineeship—establishing the principle that anything not aligned with that definition is false—or continuing to refine the definition of "false traineeship."

LT is available to discuss Article 2(e) bilaterally.

Article 11

- It is important to Lithuania that the proposal does not create a new category of worker.
- It is essential that the text in Article 11(3), which confirms that the Directive does not impose an obligation on Member States to establish a specific employment status for trainees, is maintained.

Comments by NL

Controls and inspections

For the NL, it is important that the directive allows for sufficient flexibility for the competent authorities to conduct its controls and inspections in the MS. We therefore propose a less prescriptive wording in the articles regarding controls and inspections. See a suggestion below for article 5:

Article 5

Assessment of […] false traineeships

1. In order to […] […] identify a false traineeship, competent authorities shall make an overall assessment of […] relevant factual elements, in accordance with national law or practice. That assessment shall take into account, **[…] for example,** the following elements:

Rationale: The Netherlands proposes to change the wording in article 5 in order to create the necessary flexibility for the competent authorities in undertaking an assessment to identify a false traineeship. The proposed change indicates that the listed elements are not exhaustive, but useful as examples. In this way, the respective authorities of the Member States can take all relevant facts and circumstances into consideration, in order to be able to make a comprehensive assessment of the employment relationship.

Scope

For the NL, it is important that traineeships with a probation period are not excluded from the scope of the directive. It should not be possible to easily circumvent and undermine the main purpose of the directive to protect trainees, by including a probation period in a traineeship.

Comments by PT

1. Chapters II and IV, (1) apply to "Open Market Traineeships" (OMT), which are carried out under an employment contract or which constitute an employment relationship, as defined by the legislation, collective agreements or practices in force in the Member State, taking into account the case law of the Court of Justice of the European Union.

2. Although Article 11(3) of the proposal states that the Directive will not impose an obligation on Member States to introduce a specific employment relationship for trainees in their national legislation, the obligation to transpose the entire Directive, according to Article 12(1), remains, and there has been no clarifying response on the non-obligation to transpose Chapters II and IV for Member States that do not have traineeships that constitute employment relationships.

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3. This is the case of Portugal, where the professional traineeship that correspond to OMT (see part 1 of article 2(1) of Decree-Law 66/2011 of 1 June) are carried out under a traineeship contract and not an employment contract, due to their characteristics, which have already been specified, despite the fact that several provisions of the regime applicable to employees are already stipulated to apply to trainees.

4. In addition to this issue, the following points should also be made:

- Mere reference to CJEU case law is not favourable to legal certainty and may create difficulties in transposing and applying the Directive;
- The need for the scope to clearly stipulate which types of traineeships are covered by the chapters, and for clear definitions of these types of traineeships;
- The need to explicitly mention in the exclusions of the proposed Directive (Article 1a(2)), in addition to the traineeships developed within the scope of the education and training systems that are already there, the traineeships that are developed within the scope of active labour market policies, given that these obey to specific regulatory frameworks, namely within the scope of public co-funding, adjusting accordingly the wording of recital 16(a).

Comments by SE

The scope

Due to the specific features and objectives of traineeships within the Active Labour Market Policies, SE believes, together with other MS, that these traineeships should be excluded from the scope of the Directive.

The principle of non-discrimination

The role and autonomy of the social partners must be respected, and it is vital that they have ample room of manoeuvre to conclude collective agreements that strike a balance regarding the needs of both employers and employees (including trainees). Article 3(3) needs to be safeguarded and as mentioned during the WP, Recital 22a needs to be adjusted. We're looking forward to work together with the Presidency in order to find a balanced formulation.

Control and inspections

It is vital that the Directive provides for enough flexibility for the MS to implement the provisions in accordance with their national models. Therefore, the provisions in chapter III could be improved by being less prescriptive.

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