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## COMMISSION STAFF WORKING DOCUMENT

### Subsidiarity Grid

#### *Accompanying the documents*

**Proposal for a Directive of the European Parliament and of the Council on improving and enforcing working conditions of trainees and combating employment relationships disguised as traineeships**

**and**

**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**

{COM(2024) 132 final} - {COM(2024) 133 final} - {SEC(2024) 97 final} -  
{SWD(2024) 67 final} - {SWD(2024) 68 final}

## Subsidiarity Grid

<b>1. Can the Union act? What is the legal basis and competence of the Unions' intended action?</b>
<b>1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?</b>
<p>The proposed directive is based on Article 153 (2)(b), in conjunction with Article 153 (1)(b), which allows the Union to adopt directives setting minimum requirements with respect to working conditions.</p> <p>The proposed Council Recommendation is based on Article 292 TFEU, in conjunction with Articles 153, 165 and 166 TFEU. Article 153 TFEU allows the Union to support and complement Member States' activities in the field of, inter alia, working conditions, social security and social protection of workers, the integration of persons excluded from the labour market and the combating of social exclusion. Article 165 TFEU allows the Union to contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action. Article 166 TFEU provides the legal basis for the Union to implement a vocational training policy which shall support and supplement the action of the Member States.</p>
<b>1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?</b>
<p>In the case of social policy and in particular working conditions (Article 153(1)(b) TFEU), the Union's competence is shared with the Member States. For the area of education and training (Articles 165 and 166 TFEU), the Union has supporting competences.</p> <p><i>Subsidiarity does not apply for policy areas where the Union has <b>exclusive</b> competence as defined in Article 3 TFEU<sup>1</sup>. It is the specific legal basis which determines whether the proposal falls under the subsidiarity control mechanism. Article 4 TFEU<sup>2</sup> sets out the areas where competence is shared between the Union and the Member States. Article 6 TFEU<sup>3</sup> sets out the areas for which the Unions has competence only to support the actions of the Member States.</i></p>
<b>2. Subsidiarity Principle: Why should the EU act?</b>
<b>2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2<sup>4</sup>:</b>
<ul style="list-style-type: none"><li>- Has there been a wide consultation before proposing the act?</li><li>- Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level?</li></ul>
<p>A two-stage Treaty-based consultation of the European Social Partners under Article 154 TFEU was carried out by the Commission. The first stage (11 July – 15 September 2023) sought their views on the need for and possible direction of EU action to address the challenges, while the second stage (28 September – 9 November 2023) consulted them on the possible content of the EU action.</p> <p>Various stakeholder consultation activities were carried out to collect factual evidence and stakeholder views on possible problems and necessary measures to improve the use and quality of, and the access to traineeships in the EU.</p>

<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E003&from=EN>

<sup>2</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E004&from=EN>

<sup>3</sup> <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E006:EN:HTML>

<sup>4</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN>

As part of the dedicated Flash Eurobarometer 523, between 15 and 24 March 2023, 26,334 people between 18 and 35 years from all EU Member States were surveyed online about their perceptions on integration into the labour market, with a particular focus on traineeships. The Commission also conducted a dedicated “SME Panel” survey. 170 responses were received between 12 October 2023 and 9 November 2023.

Additional consultation activities were organised by an external contractor in the context of a study supporting the preparation of the Impact Assessment (targeted online survey with national stakeholders to gather information on current practices and targeted interviews with EU-level stakeholders). Annex 2 of the Impact Assessment provides the outcomes of the stakeholder consultation (Synopsis report).

The European Parliament called for improvements in its [2023 resolution](#) on quality traineeships in the EU (2020/2005(INL)). The resolution calls on the Commission to update and strengthen the 2014 Council Recommendation on a Quality Framework for Traineeships and turn it into a stronger legislative instrument and contains 2 annexes with proposals for legislative action. The Commission has also taken into account opinions by the [European Economic and Social Committee](#) and the [Committee of the Regions](#) and the final report of the Conference on the Future of Europe.

As part of the Commission's [2023 evaluation of the 2014 Quality Framework for Traineeships \(QFT\)](#), a public consultation was held. The evaluation also entailed targeted consultations of national and regional authorities responsible for education, training and employment policies, social and economic partners, education and training providers, academic experts working on labour market issues, organisations representing young people, young (former, current and potential future) trainees, as well as other relevant stakeholders at European, national and regional level.

**2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission’s proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?**

The 2014 QFT has helped Member States, in particular those with less developed traineeship systems to implement policy and legislative changes. However, significant challenges in the use and quality of, and access to traineeships occur in all Member States. An EU initiative can help to coordinate and focus Member States’ efforts on measures which can address the specific problems identified across all types of traineeships. While fully respecting the specificities of national systems, the initiative would support Member States’ upward regulatory convergence in terms of quality and access of traineeships and lead to better enforcement of existing labour rights, contributing to a level-playing field for trainees and traineeship providers in the EU. EU action would also improve the transparency and mutual understanding of traineeship systems across the EU. This would also have a positive impact on cross-border mobility of trainees in the EU. The identified challenges must therefore be tackled at EU level. However, given the diversity of national systems and rules on work-based learning and the diversity in types of traineeships and given the need to respect the principles of subsidiarity and proportionality, Member States will be able to adapt the measures to the specificities of their national systems, in particular when it comes to regulatory enforcement and the independence of labour inspectorates, (vocational) education and training and (access to) regulated professions.

**2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?**

The objectives of the proposed initiative cannot be sufficiently achieved by the Member States acting alone. Given the common challenges and need to better use the potential of traineeships to

<p>provide a genuine learning and work experience resulting, an EU initiative can help to coordinate and focus Member States' efforts on measures which can address the specific problems identified across all types of traineeships.</p>
<p>(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?</p>
<p>It is estimated that the prevalence of cross-border traineeships has increased between 2013 and 2023 from 9% to 21%. The Commission evaluation of the 2014 QFT showed the importance for trainees of reduced regulatory fragmentation, common quality requirements and transparent information about applicable rules to further facilitate their cross-border mobility in the Single Market.</p>
<p>(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty<sup>5</sup> or significantly damage the interests of other Member States?</p>
<p>The EU Treaties promote well-being, employment and improved living and working conditions. While the absence of EU level action might not significantly damage the interests of other Member States, only EU action can ensure a consistent approach to improving the use and quality of, and access to traineeships and to contributing to better labour market outcomes of traineeships. A level playing field for trainees and traineeship providers and the enforcement of existing rights is increasingly relevant to both social inclusion and business competitiveness, given the skills mismatches, labour shortages and the significant increase of cross-border traineeships in the EU.</p>
<p>(c) To what extent do Member States have the ability or possibility to enact appropriate measures?</p>
<p>In accordance with the Treaty legal base of this initiative, Member States have broad discretion in setting and enforcing the rules on use, quality and access of traineeships. However, an EU initiative can help to coordinate and focus Member States' efforts to improve implementation. The assessment in the Commission evaluation and the supporting impact assessment pointed to persistent and considerable gaps in conformity between national and regional regulatory frameworks and revealed significant potential to further improve the 2014 QFT implementation in national legislation.</p>
<p>(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?</p>
<p>The problem and its causes generally do not vary substantially within Member States, while there are some divergences between Member States in particular regarding the prevalence of trainees, how developed or fragmented their regulatory framework for traineeships and the enforcement mechanisms are. For the Member States that already have effective measures to tackle the identified problems, the direct impact of the EU initiative might be smaller, but they would benefit from the coherent and better coordinated approach across the EU.</p>
<p>(e) Is the problem widespread across the EU or limited to a few Member States?</p>
<p>Significant challenges in the use and quality of, and access to traineeships occur in all Member States, albeit to a different extent per Member State and per traineeship type. Importantly, the estimates about the prevalence of (paid) traineeships in the EU suggest that DE, ES, FR, IT and PL account for</p>

<sup>5</sup> [https://europa.eu/european-union/about-eu/eu-in-brief\\_en](https://europa.eu/european-union/about-eu/eu-in-brief_en)

more than 80% of paid trainees, whereas seven other Member States (BE, DK, IE, EL, HR, AT, FI) also have total numbers of over 10 000 paid trainees per year on average.

(f) Are Member States overstretched in achieving the objectives of the planned measure?

The proposed measures are proportionate. They impose few administrative burdens on Member States while bringing substantial social benefits when fully implemented (e.g. increased fiscal revenues, improved quality of traineeships, including better working conditions and more adequate access to social protection for trainees). In assessing the policy options, due consideration was given to the need to afford sufficient discretion to Member States in implementing the measures into their respective national systems, in accordance with the principles of subsidiarity and proportionality and the Treaty legal base for social policy measures.

(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?

In the preparation of this initiative the views of authorities were gathered in an online survey (60 responses from national public authorities) and during the public consultation under the 2023 evaluation of the 2014 QFT (public authorities represented 85 out of 259 respondents). The public authorities expressed the highest support for the 2014 QFT and its added value in improving the quality of traineeships across the EU, while they have heterogeneous views on how to address the identified challenges.

**2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?**

The main added value of EU action is to create a consistent common framework of principles and minimum standards across all Member States to improve the use and quality of, and access to traineeships to contribute to better labour market outcomes of traineeships and to foster cross-border mobility of trainees. It should trigger upward social convergence and enhance the coherence of the Single Market, by supporting Member States in ensuring a level playing field, the enforcement of applicable rules and a consistent and fair level of protection of trainees in the EU. It will also enlarge the pool of (future) workers with relevant skills, contributing to supporting the competitiveness of businesses and fostering social inclusion.

(a) Are there clear benefits from EU level action?

The initiative would support Member States' upward regulatory convergence and better enforcement of existing labour rights, contributing to a level playing field for trainees and traineeship providers in the EU. Such a level playing field is increasingly relevant to both social inclusion and business competitiveness, given existing skills mismatches, labour shortages in the EU and the significant increase of cross-border traineeships within the EU.

(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?

EU action can yield advantages by ensuring a level playing field across various economic operators investing in and benefitting from traineeships (including cross-border traineeships), as well as helping mitigate issues related to skills mismatch, one of the drivers of labour shortages in the EU internal market.

(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?

The EU initiative would support Member States in ensuring a level playing field, the enforcement of applicable rules and a consistent and fair level of protection of trainees in the EU. It will also enlarge the pool of (future) workers with relevant skills, contributing to supporting the competitiveness of businesses and fostering social inclusion. However, given the diversity of national systems and rules on work-based learning and the diversity in types of traineeships, the initiative allows Member States to adapt the measures proposed, including those in the directive, to the specificities of their national systems, in particular when it comes to regulatory enforcement and the independence of labour inspectorates, (vocational) education and training and (access to) regulated professions.

(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?

The initiative will not lead to loss of competences of the Member States. It consists of a directive focused on the enforcement of existing rights and an update of the 2014 Council Recommendation, leaving a lot of possibilities to Member States to adjust the measures to the national specificities.

(e) Will there be improved legal clarity for those having to implement the legislation?

The proposed directive will improve legal clarity on the minimum measures to put in place to improve and enforce working conditions of trainees and to combat employment relationships disguised as traineeships.

### 3. Proportionality: How the EU should act

**3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?**

This proposal sets minimum requirements, thus ensuring that the degree of intervention will be kept to the minimum necessary in order to reach the objectives of the proposal. Member States which already have more favourable provisions in place than those put forward in this proposal will not have to change or lower them. Member States may also decide to go beyond the minimum standards set out. The costs linked to this proposal are reasonable and justified in light of the objective of strengthening the enforcement of working conditions of trainees.

The principle of proportionality is respected considering the size and nature of the identified problems. For instance, employers must provide authorities with information on traineeships upon request only. The impact assessment accompanying this initiative assessed and compared the policy options as to their proportionality relative to the baseline. The preferred option leaves room for Member States to define the method and form of intervention to achieve the objectives. Thus, it does not go beyond what is necessary to address the problems identified and achieve the specific objectives.

**3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?**

The proposed initiative is appropriate to achieve the objectives of improving the use and quality of, and access to traineeships across the EU, so that they provide a genuine learning and work experience facilitating education-to-work and job-to-job transitions by improving and strengthening

the enforcement of working conditions of trainees who are considered as workers under EU law, and by providing recommendations to improve the quality of traineeships covering all trainees in the EU. The proposed legislative measures are limited to the aspects that Member States cannot achieve satisfactorily on their own and, while costs can be anticipated for traineeship providers and national authorities, these are reasonable and justified in light of the objectives. Furthermore, the proposed binding measures leave enough flexibility for Member States for implementation.

(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?

Yes, the initiative is limited to the aspects that Member States cannot achieve satisfactorily on their own and where the Union can do better. The Commission evaluation of the 2014 QFT: 1) revealed significant potential to further improve its implementation in national legislation, 2) pointed to missing elements to improve the quality (in particular regarding remuneration and access to social protection) of, and access to traineeships, and 3) highlighted the need to strengthen the practical implementation and enforcement of the 2014 QFT's principles in Member States' labour markets. While Member States could adopt measures at national level, the EU initiative will help to coordinate and focus Member States' efforts. EU action can contribute to establishing a consistent level of minimum protection for trainees across the EU, benefitting also the increasing number of trainees and traineeship providers operating in a cross-border context.

(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?

The relevant legal basis allows for the adoption of binding (minimum) requirements only in the form of Directives and only for trainees considered as workers. Including all trainees, also unpaid, in the personal scope of a legislative initiative was therefore not possible given that "pay" constitutes an essential element of the definition of a "worker" in the jurisprudence of the Court of Justice of the European Union (CJEU). To address the problematic uses of traineeships and poor-quality traineeships, both binding and non-binding options were considered. Regarding addressing unequal access to quality traineeships only a non-binding option is possible. The preferred package includes a Directive applying to trainees who are workers under EU law and an updated Council Recommendation covering all trainees.

(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument or approach?)

The EU initiative leaves much scope for national decisions. When it comes to binding rules, these are focused on improving the enforcement of rules and prevention of unjustified treatment of trainees considered as workers while not prescribing to Member States binding rules on remuneration. This leaves space for Member States to implement them according to their specific circumstances in a proportionate way. Sufficient scope for national decisions is also allowed under the Council Recommendation, for example with regard to improving access to social protection and setting of maximum duration of traineeships, in view of the uncertainty on the size of problem across Member States and differences across Member States and by type of traineeships. Thus, the initiative does not go beyond what is necessary to address the problems identified and achieve the specific objectives. Member States which already have more favourable provisions in place than those put forward in this proposal will not have to change or lower them. Member States may also decide to go beyond the minimum standards set out.

(d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?

The initiative creates some costs for traineeship providers and national governments which are reasonable and justified in light of the objective of strengthening the enforcement of working conditions of trainees and combating employment relationships disguised as traineeships.

The main costs of the legislative measures for traineeship providers relate to a possible increase in labour costs and administrative or judicial procedures and penalties. These would mainly apply to traineeship providers where controls and inspections identify work relationships disguised as traineeships or non-compliant traineeships. Small costs could arise from the inclusion of traineeships in existing controls and inspections and administrative costs from having to provide competent authorities (upon request) data and information regarding trainees and their contracts.

Labour costs could also arise for traineeship providers who are treating trainees unequally compared to other/entry-level workers and no grounds for such an unjustifiable treatment can be identified. Where such objective grounds can be identified, labour cost could arise to ensure that the differentiated treatment should be proportionate to the grounds). However, it should be noted that for individual traineeship providers these costs could be expected to be relatively small, especially for SMEs, in relation to their overall labour cost. This is because trainees represent a small fraction of the overall labour force. It is roughly estimated that costs could be around EUR 41 million (under the minimum wage benchmark) and EUR 81 million (under the comparable entry level worker benchmark)<sup>6</sup>.

Regarding public administrations, the main costs of the legislative measures would be linked to a possible increase in enforcement costs to strengthening the capacity of competent inspection authorities and adjustment costs to ensure channels to report malpractice. The former costs could be roughly estimated to EUR 27,000 (if only training would be provided to existing inspectors) to around EUR 1.1 million (if Member States decide to hire and train additional staff in line with the ILO recommendations on the optimal number of inspectors per/10,000 employees). No continuous reporting or other administrative requirements are imposed.

Some stakeholders expressed concerns that these costs could reduce the offer of traineeships, especially paid traineeships. The majority of these potentially lost traineeships are likely to be problematic and/or poor-quality traineeships, in line with the aim of the initiative. The effect on the reduction of paid traineeships is expected to be small, given the benefits for traineeship providers, demographic trends and tight labour markets. The risk of a reduction in the number of paid traineeships is expected to be further mitigated due to a fairer competition between law-abiding traineeship providers.

The costs of non-legislative measures would depend on the degree of implementation by the Member States.

(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?

The initiative respects national competencies and allows Member States to adapt the measures taken to the specificities of their national systems, in particular when it comes to regulatory enforcement and the independence of labour inspectorates, (vocational) education and training and

<sup>6</sup>Under the assumption that 22% of paid trainees are not fairly/proportionately remunerated.



(access to) regulated professions. In particular, the initiative gives Member States enough scope to put in place monitoring and enforcement arrangements taking into account national systems and prerogatives while it avoids prescriptive rules regarding working conditions. Furthermore, despite the proposed single regulatory approach across all types of traineeships, the proposed measures have in-built flexibility, where relevant, which allows for a differentiated approach depending on the specificities of the various types of traineeships, taking into consideration their objectives and characteristics, as well as specific national conditions. The principle of proportionality is also respected considering the size and nature of the identified problems. For instance, employers must provide authorities with information on traineeships upon request only.