



European Commission proposals to improve the quality of traineeships in the EU

KEY MESSAGES

- 1** BusinessEurope continues to state its opposition to an EU directive on traineeships. A reinforcing of the existing Council Recommendation alone would have been sufficient to address perceived issues around the quality of traineeships in the EU, especially given the widely acknowledged lack of data on open-market traineeships and the limited evidence base for proposing a directive.
- 2** Significant changes need to be made to the existing proposal for a directive. This should start by making it clear that the proposal covers open-market traineeships only. Compulsory traineeships and those that serve as career guidance and education, as part of training and studies, should be excluded from the directive. Furthermore, Member States particularities in the organisation and legal structure of traineeships, i.e. whether or not a traineeship takes place under an employment relationship, and regulations on the protection of trainees already in place, must be better taken into account.
- 3** The proposal needs to better take into account the role and autonomy of social partners by clearly stating that social partners have room for negotiating solutions they consider best suited for trainees, at all the appropriate levels, including the possibility to deviate from the directive by jointly setting working conditions for trainees in the case of traineeships that fall under a contract of employment.

WHAT WE AIM FOR

- The provision of traineeships that focus on learning outcomes towards improving the employability and employment prospects of trainees across the EU. There needs to be a practical, realistic and understandable framework at the national level that does not put excessive and unnecessary administrative burden onto employers.
- An appropriate regulatory context, where schemes already regulated through third parties, such as collective agreements or national law are unbound by new regulatory demands and burdens. Thereby respecting national competences and taking into account the role of social partners within the context of diverse industrial relations systems and education and training practices across the EU.

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Introduction

1. This position paper is BusinessEurope's response to the European Commission's proposal for a directive to combat regular employment relationships disguised as traineeships and a reinforced Council Recommendation on a European Framework for Quality Traineeships.

General comments

2. It is important to highlight that employers consider all traineeships, whether part of education, or a professional qualification, or those that are open-market or provided as part of an ALMP, have the primary responsibility of developing skills while providing in-work experience. In addition, some of them are observation traineeships for pupils in compulsory education allowing them to discover a trade.
3. In most cases, traineeships provide a first work experience. They may also take place as part of a re-training perspective. Nevertheless, the purpose of a traineeship is to provide the skills that will increase an individual's employability and enhance their employment prospects. As such, all traineeships can be viewed as part of the learning experience. While the situation can differ from Member State to Member State, trainees are not regular employees.
4. In many cases, traineeships also help to provide career orientation and should be viewed as a way for young people to get a first-hand insight into what it is like in a specific workplace or environment. Without ending up in a cycle of traineeships, this form of work experience provides the possibility for young people to try out several different occupations, which can in turn help them to make informed decisions about their future career path, while enhancing their employment prospects. This is especially the case when traineeships take place as part of the formal education process and the possibilities for such traineeships and the involvement of enterprises needs to be encouraged.
5. BusinessEurope re-iterates its regret that the Commission has not taken into account the views of BusinessEurope, and other EU level employers' organisations, as concerns the proposals for reinforcing the existing Council Recommendation, which were outlined as part of the two-stage social partner consultation¹² and thereby not issuing a proposal for a draft directive.
6. BusinessEurope and its members continue to believe that reinforcing the existing Council Recommendation would be a more adequate, proportional, and appropriate response to the issues presented in the Commission's own evaluation report and the study conducted by Ecorys than pursuing a directive.

¹ https://www.busesseurope.eu/sites/buseur/files/media/position_papers/social/2023-09-12_busesseurope_response_first_stage_consultation_traineeships.pdf

² https://www.busesseurope.eu/sites/buseur/files/media/position_papers/social/2023-11-07_busesseurope_traineeships_second_stage_consultation_response_final.pdf

7. If the Commission retains its proposal for a directive, a number of aspects need to be re-worked in order to avoid the unintended consequence of discouraging employers from offering traineeship opportunities, which would harm young people's prospects of getting vital work experience. The draft directive would impact the regulation of traineeships that are provided in the context of societal benefit schemes, such as supporting the integration of refugees and other migrants, and which are already regulated through collective agreements or national law. This could lead to a sort of 'double regulation' of these schemes, which will harm the aptness of the schemes. Placing increased regulatory burdens on employers participating in these schemes, which are already well-regulated by third parties, is harmful and without added value. Instead, employers' participation should be encouraged.
8. Any administrative obligations for companies arising from a possible directive on traineeships must be kept to a minimum to ensure practical fulfilment. An obligation to provide information and justification before, during and after the traineeship confronts companies with a great deal of administrative burden. This makes offering traineeships complex, legally uncertain, expensive and generally less attractive and will lead to a reduced offer or potentially no traineeships at all.
9. Broad-based official controls of authorities need to be avoided. The focus of an EU action on traineeships must be on clearly suspected cases that have been reported or identified. Carrying out checks in companies at any time – regardless of suspicion – fails to effectively uncover misclassified internships. These official checks will inevitably result in bureaucracy and time-consuming work for both the public sector and, above all, for companies.
10. A crucial point for improvement is therefore to include in the draft directive a specific provision on the role of social partners. In line with diverse collective bargaining realities across Europe, the draft directive should allow the social partners to jointly set working conditions for trainees, which includes the possibility for them to be exempted from the equal treatment principle on objective grounds relating to the distinct nature of open market traineeships compared to other employment relationships.
11. In addition to the draft articles, a specific concern for BusinessEurope relates to recital 17 outlining potential overlap between the draft directive on open-market traineeships and apprenticeships that are carried out under a contract of employment. Firstly, it is important to avoid confusion around apprenticeships and traineeships, which are very distinct forms of work-based learning.
12. Moreover, while in some Member States apprenticeships are based on an employment contractual relationship, provisions are determined within the national context and it is important that the present directive on traineeships does not exclude the possibility for setting the terms and conditions of the work-based element of apprenticeships through means of national laws, regulations or administrative provisions or by means of collective agreements. In particular, the working conditions of apprentices as defined by collective agreements must continue to exist if agreed between the two sides of industry.
13. Likewise, there should be a similar possibility for ALMP's, which in several Member States will fall within the scope of the draft directive. Imposing new demands and regulation on companies offering traineeships through ALMP-schemes will significantly worsen the incentives for employers to participate in these schemes. Therefore, it should be possible for ALMP's regulated in national law to be unbound by the directive.

14. As concerns the revision of the Council Recommendation, BusinessEurope considers that the principles in the existing quality framework remain relevant. In the context of a potentially reinforced Recommendation, it is vital that Member States retain flexibility to implement the Recommendation, or the parts of it that are relevant to them, in the context of their national industrial relations system and education and training practices.

Specific comments

Proposal for a directive

Title of the directive

15. BusinessEurope proposes to simplify the title of the directive by making it clear that the proposal concerns trainees in open market traineeships only, i.e. “Directive on the conditions surrounding open-market traineeships in the EU”. In this respect, as referred to by the Commission³, open-market traineeships can be considered as those that are non-mandatory, bilateral, and private agreements between a trainee and an employer and are without any formal connection to education or training.

Article 2: Definitions

16. The proposal includes the definition of a trainee as “any person undertaking a traineeship who has an employment contract or employment relationship as defined by the law, collective agreements or practice in force in every Member State with consideration to the case law of the Court of Justice”
17. BusinessEurope is concerned that the proposed definition of a trainee defacto creates at EU level a new category of worker. Firstly, the definition of a “worker” is best left to the national context where national industrial relations traditions and practices can be taken into account. Additionally, trainees who are legally considered to be workers are already protected by extensive EU and national rules regarding working and employment conditions, employment relationship and the working environment. By proposing a definition of a trainee in this way, the European Commission is interfering with the competences of Member States and social partners.
18. BusinessEurope proposes to amend the definition of a trainee within the scope of this directive to be “*someone in an open market traineeship and with an employment contract*”. In combination with a change in the title of the directive, this would bring much greater clarity for the transposition and implementation.
19. Clarifying the focus of the directive in this way, would also help to more clearly distinguish between open-market traineeships and those that are carried out as part of active labour market policies (ALMPs) or an educational programme.
20. The Commission’s evaluation study of the existing 2014 Council recommendation on a European Framework for Quality Traineeships, found that 18 Member States have introduced national legislation to implement the principles of the quality framework for traineeships, while other non-legislative changes had also been introduced. In such cases, specific legislation has been introduced targeting ALMP traineeships, whereas regulatory approaches to open market traineeships were found to be more varied with some Member States regulating via specific legislation and others via general labour

³ European Commission Staff Working Document on Applying the Quality Framework for Traineeships.

law. In this respect, there appears to be a specific treatment of ALMP traineeships that is distinct to those in the open-market. Therefore, BusinessEurope considers that ALMPs traineeships are not a priority in the context of this initiative.

Article 3: principle of non-discrimination

21. This article makes the case for the equal treatment of trainees in open market traineeships with comparable regular employees in the same establishment as concerns working conditions and pay.
22. BusinessEurope emphasises that because trainees are primarily in the setting of work experience, including those that may fall under an employment relationship, it is not appropriate to compare trainees to employees who perform different tasks and whose roles are fundamentally different. There needs to be a broad interpretation of this article and the possibility to treat trainees differently to employees on objective grounds, such as different tasks, lower responsibilities, work intensity or the weight of the learning and training component. This can be considered a fair approach that protects the interests of trainees while simultaneously recognising that a traineeship is first and foremost a learning experience and, therefore, that a trainee should be distinguished from someone operating as a qualified and skilled employee.
23. Therefore, a lower level of compensation or remuneration for trainees, relative to a regular employee, is fully justified. There are numerous national examples that demonstrate the way in which this distinction is applied and regulated in the Member States, often through collective agreements:
 - In **Belgium**, open-market traineeships are legally regulated through the professional immersion agreement (“convention d’immersion professionnelle”). Between 2013 and 2015, the immersion agreement was not an employment contract and therefore the allowance was not qualified as salary but the employees were subject to social security. This was a legal status determined at the national level and was an example of why the flexibility afforded by a Council Recommendation is the best approach. However, since 1 July 2015, the work immersion agreement is no longer under the jurisdiction of the federal government (2 out of 3 regions have taken over this work placement scheme for non-student adults). The allowance corresponds to at least half of the minimum wage and is modulated according to age. Only work accident coverage is guaranteed but it is no longer subject to general social security, unless the criteria for dual training are met. This is the consequence of a unanimous opinion of the social partners.
 - In **Finland**, the majority of collective agreements contain provisions on trainees, in particular provisions on the salary to be paid during the traineeship and the duration of the traineeship. Apart from the salary, the same conditions of employment apply to traineeships as to regular employees.
 - In **Poland**, it can be noted that there are several provisions aimed at fostering the employment of young people. This includes a special act for trainees which provides for them to be compensated up to half of the minimum wage. The lower amount takes into account that trainees are still learning. Young people, including trainees, up to the age of 26 are also exempted from paying taxes on their earnings.
 - In **Denmark**, VET is mostly based on apprenticeships and under the current proposal these would be affected by the proposed directive on traineeships. Approximately two thirds of a VET-programme typically take place in an apprenticeship company. Apprentices and students (in VET) are as a minimum

entitled to the salary stated in the collective agreement that applies to the training area, confirmed in an employment contract/apprenticeship contract. The collective agreement contains a wide range of agreed terms and conditions and a framework for the rights and obligations of employers and workers. Furthermore, one of the main characteristics of the system is the active participation of the social partners in securing that the content of the individual VET programme meets the demands of the labour market and that the qualifications are recognised by business and industry. The social partners monitor the skills development in the labour market and, on that basis, recommend adjustments to existing programmes. Extra layers of regulation or administrative burdens will do extensive harm to the vital Danish VET schemes. Therefore, this helps to underline a broader point that it is essential that if there would be an EU directive on open-market traineeships, this must not interfere with existing national practices towards the regulation of apprenticeships and the role of social partners therein.

24. These examples demonstrate the relevance of social dialogue and collective bargaining in such matters and why, taking into account the national context, it is important to respect social partners autonomy when it comes to regulating the conditions for open-market traineeships.

Article 4: Measures to combat regular employment relationships disguised as traineeships

25. BusinessEurope agrees that national authorities should carry out checks and inspections, where necessary and appropriate according to national practices, as concerns the conduct of traineeships, in line with their existing role as the responsible national authorities for enforcing legislation and while being conscious not to increase reporting obligations for employers. Accordingly, it is important that existing national authorities or bodies perform this role, rather than creating a separate track for trainees. These points also apply to Article 6 on the implementation and enforcement of relevant Union law.
26. It also needs to be repeated that, as per BusinessEurope's views relating to Article 3, there are justifiable grounds for the different treatment of trainees and regular employees, even when the basis for a traineeship is that of an employment contract.

Article 5: Assessment of regular employment relationships disguised as traineeships

27. This article lists a number of elements to be considered in the assessment of a purported traineeship and which provide the basis for the competent national authorities to undertake controls and inspections, where considered necessary.
28. Having an *indicative* common understanding of what constitutes the misuse of traineeships would be a useful step to ensure that all relevant actors, especially employers, trainees, and regulatory authorities, have an objective set of criteria against which to assess the conduct of a traineeship. This would also have the benefit of circumventing subjective views and perceptions that can distort the reality, thereby bringing a more evidence-based perspective to future discussions around the quality of traineeships.
29. Article 5(2) should only constitute an indicative list of points that employers may be asked to provide information about. Too rigid legal requirements prevent internships from being customised, which is explicitly desired by both sides. Authorities in particular cannot use this list to make a generally valid and reliable decision in a large number of different cases. The directive needs to better take into account the significant administrative challenges resulting from the burden of proof that the current

formulation would put on companies, particularly SMEs. Information requests should be undertaken by the competent authorities in an effective and proportionate way.

30. Article 5(3) includes the notion of defining a time limit indicating excessive duration of a traineeship and of repeated, including consecutive, traineeships with the same employer.
31. However, the problem with the approach taken by this directive is that trying to frame all open-market traineeships in the same way, overlooks the nuances, and benefits, of existing national approaches. For example, in Finland, the same person can, for instance, first complete a traineeship for vocational school studies and then complete a traineeship for higher education studies at the same employer. In particular, the VET studies may include traineeships lasting longer than 6 months. In this case trainees are learning different skills and competencies and at different levels, which helps to better prepare them for life as a regular employee. The proposed approach taken in the directive would seemingly prevent this practice from continuing, which would be to the detriment of trainees and employers.
32. Therefore, a more sensible approach would be to adopt the same perspective as contained in the 2014 Council Recommendation whereby traineeships should typically not exceed a reasonable duration of up to 6 months unless this is justified under existing national approaches and conditions. Retaining this approach is a sensible way forward with the addition that this can include a single traineeship or several traineeships.
33. Article 5(3) also contains the obligation to publish working conditions, including remuneration. This is a problem from a data protection perspective: in conjunction with personal or personally identifiable data and the information from the internship advertisements, it is then possible to make clear assignments to individual persons. In addition, the publication of contractual elements, in particular the salary, could lead to unnecessary competition between companies and put small and medium-sized enterprises in particular at a disadvantage.

Article 8: Procedures on behalf or in support of trainees

34. BusinessEurope has some concerns with the provision whereby representatives of workers may engage in any relevant judicial or administrative procedure to enforce the rights and obligations arising from this Directive or from other Union law applicable to workers. The directive makes no reference to who counts as a representative of workers, which could result in organisations that are not appropriately representative trying to play this role towards trainees.
35. The directive should rather specify that representative trade unions may represent trainees – only in circumstances when trainees seek this support – and in unionised workplaces.

Article 9: Protection against adverse treatment and consequences

36. Under the assumption that in the context of this directive trainees are considered to be workers and operating under an employment relationship, it needs to be highlighted that workers are already protected in situations where they invoke their rights or if the employment relationship is terminated without justification. As such, this article appears to be contradictory and even unnecessary.

Article 13: Reporting and review

37. It is rightly recognised that there is a lack of reliable and comparable data on open-market traineeships. This has been a recurrent theme throughout various reports and studies that have been prepared in the lead up to the Commission's proposal, which again raises questions about the evidence-based nature of the proposal itself.
38. Looking ahead, it remains important to gather data about open-market traineeships in order to have a more factual assessment of the state of play.

Proposal for updating the Council Recommendation

Objective and scope

39. BusinessEurope re-states its opposition to broadening the scope of the Recommendation to all traineeships, including those that are part of formal education and training. As part of its analysis during into the two-stage social partner consultation process, the Commission rightly observed that traineeships that are part of formal education and training are already subject to structured and regulated governance systems with established learning outcomes, oversight and well-established quality assurance and certification systems at national level. Therefore, including these traineeships in the scope of the reinforced Recommendation would do little to improve the quality.
40. The trainees taking part in these traineeships are considered to be students and not workers. As such, these traineeships should be clearly excluded from the revision of the 2014 Council recommendation, noting that Articles 165 (4) and 166 (4) TFEU (relating to education and vocational training policy) exclude legislative action aimed at harmonising the laws and regulations of Member States.

Learning and working conditions

41. The content and learning outcomes of a traineeship, in terms of the improved skills and knowledge of the trainee, relative to the need that employers have for a competent and qualified workforce is the main determinant of the labour market chances of trainees and how quickly a trainee finds employment.
42. In this respect, BusinessEurope supports the principle of a common understanding of the learning outcomes to be gained, while noting that there also needs to be flexibility for these to evolve during a traineeship, depending on the nature of the tasks and assignments that are undertaken.
43. As such, BusinessEurope does not support establishing a legal obligation as concerns training objectives. Similarly, learning agreements do not necessarily have to be written. The main thing is that there is a learning and training content that is identified as relevant and appropriate by the employer and the trainee, but this does not have to be in a written form.
44. In the circumstances where trainees are in an open market traineeship and are considered to be workers according to national law then it is appropriate that they are subject to the applicable rules concerning remuneration and social protection and intellectual property. However, considering that trainees are often not defined as employees, with the possible exception of some open-market traineeships, and are in

the process of gaining new work experience, employers continue to consider that it is most appropriate to talk about compensation, rather than remuneration.

45. The emphasis on pay in relation to the quality of traineeships is not backed up by evidence. The results of the original impact assessment that was conducted prior to the adoption of the QFT showed that an unpaid traineeship cannot be considered as substandard.
46. Additionally, in-job training of young people entails indirect costs for enterprises such as the time dedicated by one of the employees or the entrepreneur him/herself to supervising a trainee. Part of his/her working time is then devoted to the training, resulting in a partial loss of productive capacity. This is particularly the case in smaller and micro-sized enterprises, whilst also impacting larger enterprises.
47. In terms of the duration of traineeships, as noted in context of the draft directive, limiting the duration to 6 months can also have a detrimental impact on trainees and so the possibility to have traineeships of a longer duration should be maintained.
48. As concerns the suggestion that there could be updated principles strengthening the provision of information on mentoring, supervision, and evaluation, it needs to be acknowledged that trainees are already typically assigned a mentor/supervisor in the company. A further call advising companies not already doing this to put such a structure in place would be sufficient. The notion of evaluation should not become too formal or bureaucratic to the point that it becomes a reporting requirement by companies. Upon completion of a traineeship a feedback session between the trainee and mentor/supervisor would be sufficient in terms of giving both parties the chance to comment on how the traineeship went and possible issues to address in the future.

Recognition of traineeships

49. BusinessEurope recognises the relevance of certifying traineeships in terms of aiding other employers in their understanding the tasks that a trainee has completed and the skills and competences acquired. How traineeships are attested should be left to individual companies to determine.

Cross border traineeships

50. While this can be a useful opportunity, it should be seen as a nice add-on, rather than a key component of the reinforced Recommendation. In this respect, BusinessEurope agrees with the relevance of improving information provision for employers and trainees when it comes to traineeship opportunities as well as the applicable legal framework in combination with simplified administrative procedures. This is something that the European Labour Authority, as the manager of EURES, would be well placed to work on in cooperation with the network of Public Employment Services (PES).

Additional elements to take into account in the reinforced Recommendation

51. BusinessEurope additionally proposes the following aspects that should be reflected in the reinforced Recommendation.
52. Further thought should be given to exploring where there may be added value from a revision of the existing Recommendation. This includes consideration to the impact of remote forms of learning and working that have been introduced as a result of COVID

and how this has impacted the provision of, and participation in, traineeships, likewise the impact of the green transition.

53. Complementing the existing Recommendation with additional supporting actions, notably mutual learning activities, could simultaneously help to raise awareness of the quality framework, and foster implementation through the exchange of good practices. This could be achieved through the creation of a dedicated group of Member States and relevant stakeholders, but without creating a new permanent structure.
54. To try to remedy issues around a lack of data, there would be merit in further exploring how to incorporate traineeships, especially open market ones, into EU wide data collection processes, i.e. through data collected in the labour force survey and Eurostat.
55. Lastly, it would also be relevant to consider the wider role of career guidance and advice that is available for young people, in order to best support them in the school-to-work transition. This is not specific to trainees and the context of the quality framework alone, but to all young people and the support they receive as they progress through different stages of education. Well-designed, effective career guidance and advice is an indispensable pillar in helping young people to orient their education and training pathway, including opportunities for practical work experience, such as a traineeship. It is crucial that such guidance and advice is connected to labour market realities and companies needs in order to prevent a further widening of the skills gap and skills mismatches. This can better help young people to transition from education into work.
