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Policy Brief

# Pathways for a directive to ban unpaid internships

## Introduction

Internships are a type of work placement which facilitate young people's transition from education to the labour market. There are many different types of internships: those in curricular settings, in the labour market, in recognised professions, remote or cross-border. However, despite differences in their purposes, tasks, or learning objectives, they all share one common characteristic: a lack of regulation at European and (in many cases) at national level.

Unpaid internships boomed after the financial crisis of 2008. As per the European Commission's [Eurobarometer survey on the integration of young people in the labour market of 2023](#), the majority of the respondents have done at least two internships, and only approximately half have received financial compensation, which can represent as little as transport reimbursement.

Research tells us that remuneration is the single key criteria of what constitutes a quality internship.<sup>1</sup> It also tells us that low-quality internships (i.e. not paid, underpaid, without any guidance and support) do not lead to any productivity gains.<sup>2</sup> Trainees do not benefit from these work placements, nor do employers.

Working for free is against international human rights law<sup>3</sup>, and there have been several calls in recent years to stop this unfair practice which keeps those in situations of vulnerability from accessing these types of work placements and promotes indirect discrimination.

This policy brief outlines how an EU Directive can drastically contribute to guaranteeing quality working conditions for internships in the open labour market and close the social and economic inequality gaps perpetuated through unpaid internships.

## I. Need for Action. Now!

The current [Council Recommendation on Quality Traineeships in Europe](#) (QFT), adopted in 2014 and enumerating 21 principles of what a quality traineeship should look like is not a binding document, and more worryingly, it does not include principles on remuneration and social security protection. Furthermore, it only targets internships outside of education. Almost ten years have passed, and interns keep being exploited as free labour in Europe.

In the European Youth Forum's study "[The Costs of Unpaid Internships](#)", we observed how this is affecting those in most vulnerable situations, as young people coming from marginalised backgrounds are **eight times less likely to do an unpaid internship in comparison with those from a higher socio-economic background**. It comes as no surprise, since unpaid internships cost **over 1000 EUR (EU average) per month**.

The rise of the internship economy, and unpaid internships in particular, are part of a larger phenomenon of growing precariousness in the labour market, where young people are unfortunately over-represented. The International Labour Organisation warned already in 2012 against the risks of traineeships becoming a "disguised form of employment".<sup>4</sup> Risks have also been observed at the G20 level.<sup>5</sup> Precarious forms of employment are snowballing into the rest of the labour market, impacting sectors which are traditionally known for stable employment, such as public services for example.

**The European Youth Forum is calling on the European institutions to adopt an EU Directive which effectively ensures access to remuneration and social security protection for interns in the labour market. Our [petition collected 8400 signatures](#)<sup>6</sup> and underlines the urgency of**

1 O'Higgins, Niall and Pinedo Caro, Luis (2021) 'What makes for a 'good' internship?' in Stewart, Andrew, Owens, Rosemary, O'Higgins, Niall and Hewitt, Anne (eds.), [Internships, Employability and the Search for Decent Work Experience](#), ILO – Edward Elgar

2 [European Parliament Research Service \(2022\) "The quality of traineeships in the EU"](#)

3 [Universal Declaration of Human Rights](#) (1948), Article 23 (3) "Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection"; International Covenant on Economic, Social and Cultural Rights (1966), Article 7(a)(i) "Fair wages and equal remuneration for work of equal value without distinction of any kind..."

4 Stewart, Andrew, Owens, Rosemary, O'Higgins, Niall and Hewitt, Anne (eds.), [Internships, Employability and the Search for Decent Work Experience](#), ILO, 2021, p. 19

5 Ibidem

6 The European Youth Forum's petition to ban unpaid internships ran until June 2023, when it was handed to Commissioner Nicolas Schmit.

tackling this issue. In June 2023, the European Parliament adopted a resolution calling on the European Commission to introduce a legislative proposal guaranteeing remuneration for interns in the open market. Commissioner Schmit has also expressed his strong commitment to this, while the Commission's Communication of the European Year of Youth from 10 January 2024 includes commitments to 'update its quality framework for traineeships in 2024 to address issues including fair remuneration and access to social protection. In particular, the Commission intends to follow up the Parliament's resolution with a proposal for a legislative act.' In the lead up to the EU elections, young people are looking to the Commission to uphold their commitments.

## II. A way forward

**Adopting an EU Directive is the only way to guarantee minimum standards on the rights of interns across the European Union.** The current EU treaties as they stand, allow the EU to adopt binding legislation linked to working conditions, as they represent a shared competence.

The principle of subsidiarity is the guiding compass when it comes to adopting initiatives falling under the shared competences domain. This means that the EU can put forward a binding instrument when Member States are not achieving the goals of the Union by themselves, in order to complement the actions of the Member States. **When there are people still being exploited as free labour, then there is enough reason to act at European level.**

### a. Legal basis for an EU Directive

Our demands for an EU Directive draw on the legal basis of **Article 153 (1) indent (b) and (h) of the Treaty on the Functioning of the European Union (TFEU)**, which states:

<sup>7</sup> "The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

To this end the Union and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Union economy.

They believe that such a development will ensue not only from the functioning of the internal market, which will favour the harmonisation of social systems, but also from the procedures provided for in the Treaties and from the approximation of provisions laid down by law, regulation or administrative action."

- *Article 153(1): With a view to achieving the objectives of Article 151,<sup>7</sup> the Union shall support and complement the activities of the Member States in the following fields:*
  - *indent (b) working conditions;*
  - *indent (h) the integration of persons excluded from the labour market, without prejudice to Article 166 TFEU.*

Drawing on this legal basis, we recall that:

- The current QFT was also adopted in conjunction with **Articles 153 and 166 TFEU**, on working conditions and vocational education and training respectively. **Article 1 of the QFT** thus recommends Member States to "improve the quality of traineeships, in particular as regards learning and training content and working conditions". Therefore, **the EU has already assumed its competence in adopting a measure supporting and complementing the activities of Member States in relation to the working conditions of traineeships in the labour market, without ambiguity.**
- The interpretation of the term "worker" and "working conditions" under Article 153 TFEU, and within that framework, have not been interpreted yet by the Court of Justice of the European Union (CJEU). While certain indents clearly refer to workers, others such as indent (b) on working conditions, do not. As such, **Article 153 TFEU would therefore not - and should not - exclude from its scope forms of work at the frontiers of the employment contract.**
- **Indent (h) refers to the 'integration of persons excluded from the labour market', which can refer to the inclusion of unpaid trainees in the labour market.** Moreover, trainees can also be considered as **future workers**, given they are placed in the labour market and such traineeships are in place to ease transitions from education to employment in the open market.

- While **freedom of movement of workers** is part of the economic freedoms set on building a single market, **Article 153 TFEU gives competence to the EU to develop its social policy, thus involving a wider concept of worker not necessarily connected to the 'primary labour market'**.
- The interpretation and application of the above listed can be further supported by the **CJEU's ruling in C-229/14 Balkaya, paragraph 50**, which states:

*"In that regard, it must be recalled, in the first place, that it is clear from the Court's well-established case-law that the concept of 'worker' in EU law extends to a person who serves a traineeship or periods of apprenticeship in an occupation that may be regarded as practical preparation related to the actual pursuit of the occupation in question, provided that the periods are served under the conditions of genuine and effective activity as an employed person, for and under the direction of an employer. The Court has stated that that conclusion cannot be invalidated by the fact that the productivity of the person concerned is low, that he does not carry out full duties and that, accordingly, he works only a small number of hours per week and thus receives limited remuneration (see, to that effect, inter alia, judgments in Lawrie-Blum, 66/85, EU:C:1986:284, paragraphs 19 to 21; Bernini, C-3/90, EU:C:1992:89, paragraphs 15 and 16; Kurz, C-188/00, EU:C:2002:694, paragraphs 33 and 34, and Kranemann, C-109/04, EU:C:2005:187, paragraph 13)."*

## b. Legal basis against any derogations against an EU Directive and further interpretations by the CJEU

With regards to other provisions of the TFEU, we also consider:

- **Article 153(5):** *The provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.*

- **Article 166(4):** *The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt measures to contribute to the achievement of the objectives referred to in this Article, excluding any harmonisation of the laws and regulations of the Member States, and the Council, on a proposal from the Commission, shall adopt recommendations.*

Regarding these provisions, we note that:

- While the CJEU has had a restrictive interpretation of **Article 153(5) TFEU relating to pay**, this does not exclude the EU from adopting legislation related to remuneration. **While it cannot determine the levels of remuneration, it can set a framework for adequate pay.**
- While the previous QFT was adopted in line with both Article 153 TFEU on working conditions and Article 166(4) TFEU on vocational education and training, which only allows recommendations to be adopted under its scope, there is reason to believe that **an EU Directive can be adopted solely under Article 153 TFEU, as labour market traineeships refer to non-mandatory, private and bilateral agreements.**

## c. Other EU obligations

Adopting an EU Directive would be in-line with numerous goals aimed at advancing the European project, including:

- the **European Pillar of Social Rights**, namely Principle 4: Active Support to Employment, Principle 6: Wages, and Principle 12: Social Protection;
- the **2021 Porto Social Summit Declaration** committing to work towards a Social Europe and reinforcing social cohesion;
- **Article 31 of the EU Charter of Fundamental Rights on fair and just working conditions;**
- the **International Covenant of Economic, Social and Cultural Rights**, to which all EU Member

States are a State Party to, notably **Article 7(a) (i) on fair wages and equal remuneration**; and,

- **recommendation 47(5) of the Conference on the Future of Europe** demanding the 'banning through a legal instrument unpaid internships on the labour market and outside formal education'.

### **III. Fighting for an EU Directive that works for young people**

It is long overdue that work must be paid. Internships, and unpaid internships in particular, are a symptom of a larger problem of precarious employment where young people are overrepresented. This has negative consequences on their financial security, long-term career prospects, access to social security benefits, pension schemes, and mental health.

It is urgent to tackle exploitation in the labour market and to stop precarious forms of employment from spilling over. Adopting an EU Directive is the only way to protect the rights of interns and to safeguard a labour market oriented by stable and quality employment.

**European institutions cannot turn their backs on young people now, especially so close to the European elections! They must follow their commitments not only to empowering young people, but also as per the Conference on the Future of Europe, and the legacy of the European Year of Youth.**



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