



3. Recent decisions of the European Committee of Social Rights (ECSR) do not provide an explicit definition of ‘worker’, but they do imply that unpaid interns would come under this category (Complaint No. 150/2017, p. 8). Moreover, the ECSR has concluded that a number of Charter provisions apply to all workers, including the self-employed, such as Article 3 on the right to safe and healthy working conditions.<sup>2</sup> In the context of the ESC, the definition of a worker is thus not purely a matter of domestic law. Harris and D’Arcy (p. 68)<sup>3</sup> note that Article 7 is a supplement to Article 3 and should similarly apply to all workers, therefore refuting the government’s argument concerning the application of social security being determinative, and that Article 7 does not apply to unpaid interns. Furthermore, Harris and D’Arcy (p.74) comment that Article 4 applies to all workers; the ECSR has found that Article 4§4 on termination notice applies to part-time and atypical work, as well as to workers in the probationary period of a contract.<sup>4</sup>
4. The Flemish Authority underlines the need to differentiate between employment contracts and training (internship) contracts due to the different objectives pursued by each (p. 14). Article 7 of the Charter recognises a distinction between conventional employment contracts and the integration of employment and forms of education. Article 7(5) concerns fair wages for young workers and apprentices, recognising these as distinct forms yet both covered by the Charter, something the ECSR has reinforced in its practice (Harris and D’Arcy, p. 122). It therefore seems logical for Article 7 to cover internships. Furthermore, evidence has suggested that young interns are increasingly performing work that is essential to the functioning of their host organisation, acting as “extensions of, or replacements for, regular staff.”<sup>5</sup>
5. The Belgian Volunteer Rights Act of 2005 is unclear regarding the application of labour law to volunteer work, and what the limits of protection for volunteers are. The ambiguity has led to debate, with literature indicating that volunteers could be covered by the application of labour law, an argument that has been extensively developed by the European Trade Union Confederation in their observations (pp. 61-64, Case Document No. 4, Complaint No. 150/2017).
6. The European Youth Forum believes that individuals undertaking an unpaid internship under a volunteering contract or otherwise qualify as workers within the meaning of the European Social Charter and thus possess a right to a decent wage. They should therefore be entitled an appropriate contract, such as the Professional immersion contract (Convention d’immersion professionnelle).

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<sup>2</sup> Digest of the case law of the European Committee of Social Rights (p. 38), 2008

<sup>3</sup> Harris, D.J. and D’Arcy J., 2001. “The European Social Charter: The Protection of Economic and Social Rights in Europe (Procedural Aspects of International Law)”. Ardsley, New York: Transnational Publishers Inc., 2001.

<sup>4</sup> Digest of the case law of the European Committee of Social Rights (p. 47), 2008

<sup>5</sup> European Youth Forum, 2011 (p. 7). Interns Revealed. Available at: <https://www.youthforum.org/interns-revealed>

## **Data and supporting evidence on unpaid internships**

7. One of the issues raised by the government is the lack of reliable data on unpaid internships, allegedly making it impossible to draw conclusions from existing sources. The lack of data is however due in large part to the fact that, as acknowledged in Belgium's response (p. 2), the registration of unpaid and underpaid traineeships is not compulsory. The National Social Security Office states that, while organisations must keep a list of volunteers and the allowances they receive in case of inspection, volunteers do not have to be declared to the government<sup>6</sup>, a situation that also applies to unpaid interns holding a volunteering contract. The lack of data has contributed to the failure to properly regulate internships. Notwithstanding the lack of data, a selection of examples and supporting evidence are provided in the Annex.
8. The government states that unpaid and underpaid internships are not a problem specific to Belgium, as they exist in a number of international/intergovernmental organisations including the United Nations and European Union (p. 2). While true, this cannot be considered a valid argument against the regulation of internships. Unpaid internships constitute a violation of young people's economic and social rights under international law, often the same laws and rights international institutions promote.
9. The Belgian government mentions that a big part of trainee- and internships in Belgium, whether paid or unpaid, are performed with international institutions (p. 10 & p. 11). The European Union institutions offer a variety of remunerated traineeship schemes.<sup>7</sup> For example, the European Commission, European Parliament, and Council of the European Union all offer paid traineeships. Despite the existence of such schemes, unpaid traineeships still exist in the EU institutions. However, given that EU institutions usually offer a set number of paid traineeship positions, it is most likely that the majority of internships carried out with EU institutions in Brussels are paid. Although official figures on unpaid trainees in EU institutions are not always available, responding to a question in the European Parliament in October 2017, Commissioner Oettinger declared that on 1 June 2016, there were 202 atypical trainees in the European Commission, adding that such positions are not advertised.<sup>8</sup> The European Commission's Blue Book traineeship scheme, where trainees receive remuneration, receives 1300 trainees per 5-month period. Therefore on 1 June 2016, there should have been 1300 Blue Book trainees receiving remuneration, and 202 atypical trainees in the European Commission. Furthermore, the Youth Intergroup of the European Parliament carried out a survey amongst trainees in the Parliament,

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<sup>6</sup> <https://www.socialsecurity.be/employer/instructions/dmfa/fr/latest/instructions/persons/specific/volunteers.html>

«Formalités: Les volontaires ne doivent être déclarés ni en Dimona ni en DmfA. Afin de pouvoir exercer un contrôle sur la réglementation des volontaires, les administrations sont tenues de tenir une liste nominative dans laquelle, par année calendrier, les indemnités perçues par chaque volontaire sont mentionnées. Cette liste doit pouvoir être présentée à tout moment à l'Inspection de l'ONSS»

<sup>7</sup> A number of traineeship schemes are listed here:

[https://europa.eu/european-union/about-eu/working/graduates\\_en](https://europa.eu/european-union/about-eu/working/graduates_en)

<sup>8</sup> <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2017-004895&language=EN>

whose findings indicate a low percentage of unpaid trainees.<sup>9</sup> Thus, the problem of unpaid internships in Belgium is not limited to, or predominately prevalent solely within the EU institutions based in Brussels. Moreover, based on a decision of the EU Ombudsman from February 2017, the EU's External Action Service (EEAS) suspended its practice of offering unpaid traineeships in EU Delegations worldwide, opting to offer paid traineeships.<sup>10</sup>

10. In addition to internships carried out in international institutions, Actiris recognises that unpaid internships also exist in the representations and lobbying around the institutions (p. 11). While international institutions fall under a separate legal category, the organisations that carry out lobbying and advocacy around them are subject to Belgian law, and the government is therefore obliged to properly regulate such internships. It is difficult to estimate the number of lobbyists in Brussels, though in 2016 Transparency International suggested the number to be around 25,000.<sup>11</sup> While it may be very difficult to determine how many lobbyists are or may be unpaid interns, such a figure merits further investigation.
11. Furthermore, contrary to the Belgian government's mention of the International Labour Organization (ILO) among international institutions that do not pay their interns (p. 2), the ILO is one of the few bodies within the UN system that provides its interns with a stipend. Information on relevant ILO frameworks regarding internships are provided in a further section.
12. The European Youth Forum carried out research on unpaid internships advertised in the Belgian labour market, both on popular job-search engines, as well as on Belgian specific websites. Moreover, the European Youth Forum gathered a number of testimonies from young people who have undertaken unpaid internships either in Belgium or in Belgian Permanent Representations. Anecdotal evidence of unpaid internships carried out in Belgium, or with Belgian authorities abroad, is provided in Annex.

### **The implementation of the Volunteer Rights Act of 2005 violates the Charter**

13. The Belgian government provides extensive explanation regarding existing frameworks and schemes for trainee- apprentice- and internship schemes, however it does not address the implementation of the law *in practice*. Further, it acknowledges that any work done outside of existing frameworks and without the authorisation of the Public Employment or Training Services is considered as undeclared work (Case Document No. 5, p. 12). The European Committee on Social Rights, since its first decision on the merits of a collective complaint, Complaint No. 1/1998, International

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<sup>9</sup> In a survey carried out by the European Parliament Youth Intergroup, 8% of the 233 respondents indicated that did not receive any compensation or allowance. More information here: <https://www.facebook.com/youthintergroup/photos/a.663058023714764.1073741828.182628841757687/1490887050931853/?type=3&theater>

<sup>10</sup> <https://www.ombudsman.europa.eu/en/press/release/faces/en/86879/html.bookmark>

<sup>11</sup> How many lobbyists are there in Brussels? <https://transparency.eu/lobbyistsinbrussels/>

Commission of Jurists v. Portugal, has emphasised that compliance requires enforcement of the law as well as adequate legislation.

14. In the observations on the admissibility of the complaint submitted by the Belgian government (Case Document No. 2), the Fédération Wallonie-Bruxelles and the Région Wallonne state that in their case, while the competence to regulate traineeships has been transferred from federal to regional level via 6th State Reform (agreed in December 2011), legal changes or modifications have yet to be made. Furthermore, the Federal Public Service for Employment indicates that while it is no longer responsible for regulating traineeships, it continues to be responsible for 'disguised traineeships', i.e. work that is performed under the authority of an employee but for which no remuneration is received (Case Document No. 2). Thus in practice, young people can easily fall in a gap between the federal and regional levels, failing to benefit from any protection at all.
15. As highlighted in the European Trade Union Confederation's observations on the collective complaint (pp. 54-56, Case Document No. 4), a 2010 report on Volunteering in the European Union<sup>12</sup> mentions that "[...] the concept of volunteering and its distinction with paid work has been blurred" (p. 120). The report noted the lack of a clear legal framework or clear rules, such as definitions and notions of volunteer work/services and protection of social rights, as a key challenge. Further, the report notes that where the legal status of volunteers is defined, the clarification of the distinction between a volunteer and a paid member of staff proves to be relatively complex, particularly in relation to arrangements for welfare and/or tax benefits as well as health and safety insurance/protection. Moreover, the economic value of volunteering in Belgium is estimated to be between 1 and 2% of GDP.
16. In its submission, the Belgian government points to potential avenues of complaint which young people can make use of (pp.8-9). Social and labour inspection services can evaluate whether or not a contract is in line with legal provisions, for example. However, young people undertaking unpaid internships are unlikely to take legal action for several reasons. Firstly, young people are likely unaware of their rights and/or of the existence of social and labour inspection services. Secondly, and linked to the first issue, without a clear understanding of the process and possible outcomes, including success rates, interns are unlikely to seek legal remedies. Thirdly, even if they are aware of their rights and legal possibilities, interns are unlikely to exercise their rights in practice due to the imbalance of power between themselves and their host organisations. Most likely at an early stage in their career, interns are pursuing experience that will help them find a job; anticipation of a positive recommendation or the possibility of eventually being employed long-term by the organisation they are interning for are likely to dissuade them from pursuing legal action. Finally, adequate information relating to social and labour inspection is not accessible to those who do not speak one of the official languages of Belgium. This can create particular barriers for those involved in lobbying and advocacy around the international institutions in Brussels.

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<sup>12</sup> [http://ec.europa.eu/citizenship/pdf/doc1018\\_en.pdf](http://ec.europa.eu/citizenship/pdf/doc1018_en.pdf)

17. Labour inspection in Belgium has proven inadequate to address the issue of unpaid internships. Although organisations are subject to inspection and must keep an accurate list of all volunteers by calendar year, including allowances they receive, and have this available in case of inspection, inspectorates have avoided inspection of voluntary organisations that do not conduct commercial activities and serve a social purpose, and there is therefore hardly information on (potential) cases of abuse (Case Document No. 4, pp. 63-4). The European Youth Forum would welcome any information or statistics from the Federal Public Service for Employment regarding cases of remuneration for interns or trainees. If remuneration for interns has never or rarely featured in the work of the social and labour inspectorates, this is due to a lack of reporting and/or inspection rather than an absence of unpaid internships. The government must take further steps to ensure enforcement of legal standards for internships.
18. The European Youth Forum welcomes the proposal of the Federal Public Service for Employment to host a meeting with inspectorate services. However, as an international actor the European Youth Forum is not best placed to discuss solutions and procedures in Belgium at federal or regional level. The Flemish Youth Council, a member organisation of the European Youth Forum, as well as Trade Unions would be best placed to participate in such a meeting.

### **International legal frameworks: the right to work and the right to fair remuneration**

19. The issue of unpaid and underpaid internships must be considered in the context of international and European law, which creates both legally binding obligations on Member States, as well as non-binding recommendations. A number of relevant frameworks, conventions and conclusions at UN, Council of Europe and EU level address internships, either directly or indirectly, in the context of the right to work, the right to fair remuneration and the right to non-discrimination.
20. Relevant UN frameworks include:
- a. Universal Declaration of Human Rights: Articles 2 and 7 in relation to non-discrimination and equality before the law; Article 23 on the right to just and favourable remuneration; Article 26 on the general availability of technical and professional education.
  - b. International Covenant on Civil and Political Rights: articles 2 and 26 on non-discrimination and equality before the law.
  - c. International Covenant on Economic, Social and Cultural Rights: Article 2 on non-discrimination; Articles 6 and 7 on the right to work and fair remuneration; Article 10 on protection of children and young persons from economic and social exploitation.
  - d. The UN Committee on Economic, Social and Cultural Rights has issued a number of relevant General Comments (GC): GC No. 20 on Non-discrimination in economic, social and cultural rights; GC No. 18 on The

right to work; GC No. 23 on the right to just and favourable conditions of work, in particular Article 7(b) which mentions all categories of workers, including apprentices and interns, as well as Article 47(j) on the right to just and favourable conditions of work for unpaid workers, including unpaid interns.

- e. ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation, in particular Article 1.
- f. The 2014 ILO General Survey of the reports on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135). In its consideration of different minimum wages for apprentices and trainee workers, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) noted the use of unpaid internships to “evade payment of applicable minimum wages and to curtail employment opportunities.” (para.187). The CEACR further noted that “Recalling the principle of equal pay for work of equal value, [...] persons covered by apprenticeship or traineeship contracts should only be paid at a differentiated rate where they receive actual training during working hours at the workplace,” while governments were reminded to “[regulate and monitor] apprenticeship, internship and other work-experience schemes, including through certification, to ensure they allow for a real learning experience and do not replace regular workers.” (para. 188).

21. At Council of Europe level, relevant frameworks and conclusions include:

- a. The ECSR Conclusions on Belgium in 2014 found that “the situation in Belgium is not in conformity with Article 4§1 of the Charter on the grounds that: the average minimum wages of young workers do not suffice to ensure a decent standard of living”  
The above should therefore also apply to the situation of unpaid internships.
- b. In its interpretative statement on Article 7§5, the ECSR has noted that there is no reason not to pay the same wage for the same output. While it recognised that some reductions for young workers could be justified, it pointed out that they can not be substantial and last for a long time. The Committee further pointed out the need for statistics on salary rates of young workers and apprentices in all sectors in order to be able to estimate the extent to which the provision is being applied, deploring the lack of comprehensive data from most Member States.
- c. The ECSR has previously indicated concern regarding the possibility that voluntary work could lead to abuses. In its Conclusions XXVII-1 (2006) on Croatia, in the context of volunteer work the ECSR asked what guarantees were in place “to ensure that the waiving of remuneration does not lead to abuses,” although Croatia did not reply to the concern and there was no follow-up from the ECSR.
- d. The ECSR has highlighted the important role of financial assistance, in appropriate cases, in facilitating access to vocational training, in relation to Article 10§5.<sup>13</sup> A similar argument should therefore apply to unpaid internships, which can be considered a form of vocational training, particularly

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<sup>13</sup> Digest of the case law of the European Committee of Social Rights (pp. 79-80), 2008.

where they serve primarily as a training experience for young people entering the labour market.

- e. Committee of Ministers Recommendation on young people's access to rights CM/Rec(2016)7: the need for internships and apprenticeships to be decently remunerated and regulated is mentioned in the Annex, in relation to autonomy and social inclusion (3.2).
- f. Committee of Ministers Recommendation on access of young people from disadvantaged neighbourhoods to social rights CM/Rec(2015)3: Under employment and occupation in the annex, the need for inclusive apprenticeship, training and vocational programmes is mentioned, while governments are encouraged to ensure that internships are a secure and legal form of employment, providing a viable entry point into the labour market.
- g. Parliamentary Assembly Resolution 1855 (2012) on the young generation sacrificed: social, economic and political implications of the financial crisis: the Resolution calls for adequate remuneration and working conditions for young workers (6.1.3), as well as minimum guarantees for working traineeships (6.3.7).

22. At EU level, relevant frameworks include:

- a. EU Treaties - primary law
  - i. Treaty on the Functioning of the European Union (TFEU): Title X - Social Policy, Article 151 on social rights, including the promotion of employment and improved living and working conditions.
  - ii. Charter of Fundamental Rights of the European Union (CFREU): Articles 20 and 21 on equality before the law and non-discrimination, including discrimination on the grounds of age; Article 31 on fair and just working conditions.
- b. EU Directives - secondary law
  - i. Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation: Article 1 on combating direct and indirect discrimination, including on the grounds of age; Article 3 on the scope of the Directive, which applies to all persons (public and private sectors, including public bodies), and covers employment and working conditions, including pay; Article 6 on the justification of differences of treatment on ground of age; Article 9 on defence of rights for enforcement of the Member State obligations under the Directive.
  - ii. Council Directive 1999/70/EC on fixed-term work provides for the principle of non-discrimination in relation to employment conditions, although upon consultation exemptions can be made for vocational training and apprenticeship schemes.
  - iii. Council Directive 89/391/EEC on the health and safety of workers at work and Council Directive 2002/15/EC on working time of persons performing mobile road transport activities both explicitly include trainees and apprentices in their definitions of worker.

- iv. Council Directive 2004/114/EC on conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service provides definitions of ‘unremunerated trainee’ and ‘voluntary service scheme’, as well as specifying conditions for unremunerated trainees and volunteers.
- c. In her decision on a complaint regarding the EEAS practice of offering unpaid traineeships in EU Delegations<sup>14</sup>, the EU Ombudsman found that the EEAS practice of providing unpaid traineeships constitutes maladministration, recommending to the EEAS that it “pay all its trainees [...] an appropriate allowance [...] the allowance should be such as to respect the principle of non-discrimination and should ensure that young people will be encouraged to apply for a traineeship irrespective of their (or their family’s) financial status.” (para. 11). The Ombudsman also stated that “unpaid traineeships may perpetuate social exclusion [and] may, eventually, lead to fewer future job opportunities for the less privileged, initiating a vicious circle where ‘privilege follows privilege’.” (para. 7).
- d. In the “Balkaya” judgement, the Court of Justice of the EU stated 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,” adding that such a conclusion cannot be invalidated based on one’s productivity, duties, or small weekly working hours and thus limited remuneration.
- e. European Council Recommendation of 10 March 2014 on a Quality Framework for Traineeships provides guidelines for traineeships outside formal education to ensure fair working conditions, among others.
- f. European Parliament Resolution of 6 July 2010 on promoting youth access to the labour market recognises employers’ increasing use of traineeships to replace regular employment, and among others calls on Member States “to establish inclusive and targeted labour-market reforms,” for example through trainee arrangements that include financial aid.
- g. The European Commission’s 2007 Communication on promoting young people’s full participation in education, employment and society indicates that “internships with little or no pay [...] should be avoided” (para. 3.2) as well as that “voluntary activities are not a substitute for paid employment” (para. 5.2).
- h. The Opinion of European Economic and Social Committee of 13 December 2006 on voluntary activity underlines that “the purpose of voluntary activity is not to replace paid work” (para. 3.2).
- i. The European Pillar of Social Rights was proclaimed in 2017. Equal treatment in employment, including on the basis of age, as well as young people’s right to continued education, apprenticeship, traineeship or a job offer of good standing within 4 months of becoming unemployed or leaving education are included in Chapter I: Equal opportunities and access to the labour market.

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<sup>14</sup> Decision in case 454/2014/PMC concerning the European External Action Service’s practice of offering unpaid traineeships in EU Delegations, available at: <https://www.ombudsman.europa.eu/en/cases/decision.faces/en/83909/html.bookmark>

The right to fair wages that provide for a decent standard of living is covered in Chapter II: Fair working conditions.

### **Conclusion**

23. Pursuant to Collective Complaint No. 150/2017 and on the basis of the information provided herein in response to the observations submitted by the government of the Kingdom of Belgium on the merits of the complaint, the European Youth Forum requests that the European Committee of Social Rights declares the Kingdom of Belgium in violation of Articles 4 and 7 of the European Social Charter (Revised).

### **Annex**

24. The Annex outlines the results of online research carried out by the European Youth Forum on unpaid internships in Belgium. In particular, the Annex includes samples of unpaid internships advertised on popular online job-search engines, as well as promoted by the Federal Public Service for Foreign Affairs of the Kingdom of Belgium. Lastly, anecdotal evidence and testimonies from young people are also included in the Annex.