

# Position paper on the Commission's initiatives to improve the quality of traineeships in the EU

On 20 March 2024, the European Commission presented two initiatives to improve working conditions for trainees – a proposal for a Directive on improving and enforcing working conditions for trainees and combatting regular employment relationships disguised as traineeships and a proposal for a revised 2014 Council Recommendation on a Quality Framework for Traineeships. The current document presents Ceemet's views concerning these two initiatives.

## General remarks

Traineeships are an important tool to facilitate transitions into the labour market. They offer trainees the necessary skills and practical experience they need to start their professional career and grant access to professional networks which consequently increase their employability. Moreover, traineeships are a useful tool for employers, as they can help equip trainees with targeted skills and competencies to match the particular needs of their companies, as well as help employers to attract, train and retain young talent.

However, it is also necessary to consider traineeships' impact on the labour market integration and the capacity of companies, particularly SMEs to offer high quality traineeships. Undoubtedly, providing high quality traineeships is crucial. In this regard, the Council Recommendation on a Quality Framework for Traineeships adopted in 2014 (the Recommendation) is a key reference point for guiding and determining what constitutes a good quality offer of traineeships. Overall, the Recommendation is a suitable and necessary tool to address the issue of traineeships, always taking into consideration the peculiarities of SMEs. We also believe that the EU binding instrument such as a Directive is not an appropriate instrument in this respect.

## About Ceemet

Ceemet represents the **metal, engineering and technology-based industry employers** in Europe, covering sectors such as metal goods, mechanical engineering, electronics, ICT, vehicle and transport manufacturing.

Member organisations represent **200,000 companies** in Europe, providing over **17 million direct jobs** and **35 million including indirect jobs**.

Ceemet is a recognised European **social partner** at the industrial sector level, promoting global competitiveness for European industry through consultation

As regards the initiatives to improve the working conditions for trainees released by the European Commission on 20 March 2024, it is our strongest opinion that the scope of the proposed Directive has to be limited. The scope should not include apprentices since the matter of apprenticeships can be related to the educational policy and vocational training, that should be determined at the national level and not regulated on the EU level in line with Articles 165 and 166 of the Treaty on the Functioning of the European Union (TFEU). Furthermore, the definitions of “trainee” and “traineeships” must be further clarified in order to avoid legal uncertainty.

With regards to the proposal to revise the Recommendation, we also call on the limitation of the scope. We do not agree that the recommendation applies to all types of trainees. In our opinion, only traineeships that are part of active labour market (ALM) policies and open labour market traineeships should be covered by the Recommendation. We thus call for the exclusion from the scope of the Recommendation of traineeships that are part of formal education and training programmes as well as traineeships that are a mandatory part of professional training to access certain professions.

It is important to consider that the word “traineeship” is translated by a single word in some languages, whereas it refers to different legal situations. In the case of an imprecise definition of “traineeship” in the recommendation and the Directive, we fear that translation could lead to interpretation difficulties at the national level. For this reason, we believe it is necessary for the Recommendation and the Directive to include a specific paragraph excluding from their scope traineeships that are part of formal education and training programmes as well as traineeships that are a mandatory part of professional training to access certain professions.

With respect to the other proposed provisions, in our opinion, many of the provisions would be advantageous for the trainees but are not feasible nor realistic for SMEs that would not be able to apply them due to the very nature of the company. For example, companies are asked to designate a mentor and a supervisor. They are also asked to consult the trainee when setting the specific learning and training objectives as well as to include in their vacancy notices and advertisements an important number of points with regard to the terms and the conditions of the traineeship. Furthermore, they are also required to promote the cross-border mobility of trainees, all this within a limited period of 6 months. For Ceemet, the vast majority of SMEs are not in a position to comply with all these requests due to their limited financial resources, lack of personnel, absence of a dedicated human resources department, etc.

Therefore, we doubt that this recommendation does not end by deterring companies from providing quality traineeships to the detriment of young people, the NEET (not in Education, Employment or Training) population and the companies themselves.

Having said that, we do appreciate that the legislator calls on the Member States to consider support for SMEs in applying the recommendation.

## **On the proposed Directive**

### **No need for EU level legislation**

Generally, in our view the proposed Directive is not a suitable and necessary instrument to address the issue of trainees who are workers. First, due to the limited scope of Article 153 of TFEU, the issue of traineeships cannot be addressed by a directive in an effective way. Consequently, traineeships that are part of formal education and training programmes as well as traineeships that

are a mandatory part of professional training to access certain professions should be expressly excluded from the scope of the directive. Second, if a trainee is considered to be in a comparable position to a regular worker, then he/she will be protected by the legislation applicable to workers as laid down in EU and national legislation. Additionally, trainees are protected against non-discrimination, the principle which is mentioned in Article 3 of the proposed Directive. There is already an existing EU legal framework that provides protection against discrimination. The principle of equality is proclaimed in the text of the Treaties and the Charter of Fundamental Rights. Article 2 of the Treaty on the European Union says that *“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”* We believe that an additional layer of legislation in the form of a Directive would only bring confusion and create disincentives for the companies to hire trainees. The emphasis should be on the enforcement of existing legislation.

## Scope

The Tech and Industry Employers believe that the scope of the Directive has to be limited. The explanatory memorandum states that *“the proposed directive applies to trainees who have an employment relationship as defined by the law, collective agreements or practice in force in the Member States with consideration to the case-law of the Court of Justice, regardless of the type of traineeship”*. Thus, the Directive would apply to trainees who are workers. Furthermore, considering the Recital 17, it seems that the Directive would also apply to apprentices.<sup>1</sup> However, the regulation of apprenticeships in some Member States can be regarded as a matter related to educational policy and vocational training and thus has to be determined by the Member States and not regulated on EU level. In accordance with Articles 165 and 166 of the TFEU, the European Union should only support and supplement the actions of the Member States when it comes to education and vocational training. Therefore, apprenticeships or any other practices that relate to education or vocational training should be excluded from the scope of the Directive.

Further, Ceemet believes that it must be clearly stated that practices within the framework of labour market policy measures and training within the regular education system, which include mandatory workplace-based training for an approved degree, should not be covered by the Directive. Without such a limitation and clarity, Ceemet fears that there will not be enough internship positions available.

## Definitions

We believe that the current drafting of the definitions is too broad and too vague, which can lead to legal uncertainty. Currently, across the Member States, there are different situations regarding the way the topic of traineeships is addressed. In some Member States, there is no definition of a “trainee” or “traineeship”, some Member States offer various types of professional or educational practices that can be regarded as traineeships. Thus, it is very important to specify which categories

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<sup>1</sup> Recital 17 – ‘Work-based learning programmes falling under the definition of traineeship vary significantly across Member States. Hence, apprenticeships may fall within the scope of this Directive, insofar as apprentices fall under the notion of ‘worker’ as defined by the law, collective agreements or practices in force in the Member States, with consideration to the case-law of the Court of Justice of the European Union’

are covered by the definition of a “trainee” and those which are excluded from the scope. Moreover it is necessary to provide a more concrete definition of “trainee” and “traineeship” to avoid legal uncertainty. This is particularly important as the translation of the word “traineeship” can lead to confusion in certain languages. Traineeships that are part of formal education and training programmes as well as traineeships that are a mandatory part of professional training to access certain profession should be expressly excluded from the scope of the directive.

Ceemet observes that the text of the proposed Directive could introduce a new EU legal category of workers, namely trainees. Ceemet opposes such special regulation of workers. According to Ceemet, the special regulation of trainees who are legally considered workers leads to an undesirable fragmentation of employment law. Trainees who are legally considered workers are already protected by extensive EU and national rules regarding employment and working conditions, employment relationships, and work environment. Therefore, Ceemet is of the opinion that existing EU law is sufficient. Ceemet also anticipates risks of both double regulation and difficulties in drawing boundaries and application in relation to other employment-law regulations.

There is a significant risk that the definition of employee, which is to be determined at national level, will be affected. This is particularly the case in light of the fact that the directive in Article 5 establishes a number of criteria for determining whether an internship constitutes a regular employment relationship or not.

### **Equal Treatment**

Ceemet notes that the provisions on equal treatment protection is designed in the same way as non-discrimination provisions in other Directives, including the Fixed-Term Work Directive and the Part-Time Work Directive. However, it can be questioned whether such a design is directly transferable to a situation concerning trainees.

An important aspect to be considered is whether differential treatment can be justified by objective reasons. There should be a broad discretion when assessing differential treatment, especially when it comes to labour market policy measures. In this context, Ceemet wishes to emphasize that the European Court of Justice has, in its case law on when differential treatment is justified, repeatedly affirmed that the social partners have significant discretion, both in choosing the specific objective to be pursued as justification for differential treatment and in determining which measures are appropriate to achieve this objective. Ceemet would suggest including the provisions that state that the deviations from the principle of non-discrimination are possible based on the national legislation and national collective agreements.

### **Regular employment relationships disguised as internships.**

The proposed rules mentioned in Article 4 are based on the assumption that there are national authorities responsible for monitoring working conditions, including wages. However, compliance with working conditions are in some Member States primarily the responsibility of the social partners. In this regard, Ceemet proposes to consider including provisions aimed at facilitating the monitoring and compliance of conditions and collective agreements by the social partners.

### **Principle of subsidiarity**

Ceemet would like to highlight the importance of respecting the principle of subsidiarity enshrined in Article 5(3) of the Treaty on European Union. This principle aims to ensure that decisions are

taken at the closest possible level to the citizen. Furthermore, according to this principle the EU cannot take action (except in the areas that fall within its exclusive jurisdiction), unless it is more effective than an action taken at the national, regional or local level. In our opinion, the topic of traineeships should be addressed at the national level considering the different national systems and divergence among regulatory frameworks. In order to improve the working conditions of trainees it could be suggested to strengthen the enforcement and monitoring at the national level, and make sure that the Member States implement the suggestions highlighted in the 2014 Council Recommendation on a Quality Framework for Traineeships.

## **The Role of Social Partners**

Based on Article 152 of the Treaty on the Functioning of the European Union, the Union shall recognize and promote the social dialogue with regard to employment relations and shall take into account the diversity of national systems. Ceemet suggests that the Directive includes a provision which allows the social partners to deviate from, supplement, and specify rules through collective agreements.

## **On the proposal to revise the Recommendation**

As mentioned above, for Ceemet, the Council Recommendation on a Quality Framework for Traineeships adopted in 2014 (the Recommendation) is a key reference point for guiding and determining what constitutes a good quality offer of traineeships.

As regards the 2024 proposed revision of the Council Recommendation, we are of the opinion that to some extent part of its content overlaps with the content of the proposed Directive which can lead to uncertainty.

For Ceemet the scope of the proposed Recommendation should be limited. Furthermore, specific attention must be paid to the wording of the 2024 proposal, in particular under the chapter on working conditions in order to avoid any confusion between trainees and workers.

## **OBJECTIVE AND SCOPE**

### **Articles 1 and 2**

Ceemet does not support that the scope of the Recommendation would apply to all types of traineeships. From our point of view, this recommendation should only cover traineeships that are part of active labour market policies and open labour market traineeships.

Therefore, traineeships that are part of formal education and training<sup>2</sup> should be excluded from the Recommendation. These kinds of traineeships are linked to the education policies of the Member States and must be dealt with at national level. Furthermore, we consider that these traineeships are an opportunity for students to complete their education programmes and develop skills linked to the labour market. Excessive regulation in this area might be a disincentive for companies to hire trainees.

Likewise, traineeships that are a mandatory part of professional training to access certain professions should be excluded from the scope of the Recommendation. Indeed, the content of these traineeships is regulated under national law and, as their completion is a mandatory

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<sup>2</sup> traineeships undertaken with the aim of obtaining educational qualifications

requirement to access a specific profession, they are often organised with the relevant professional associations.

In a nutshell, from our perspective, the proposed scope is too broad taking into account the many different types and categories of trainees that exist at national level and the diversity of national systems with regard to their classification. This broad scope will only lead to confusion and legal uncertainty for companies and the trainees themselves. Thus, the Tech and Industry Employers call on the EU policy makers to limit the scope to traineeships that are part of ALM policies and open labour market traineeships.

With reference to the **objectives of the Recommendation** we concur with the European Commission that it should aim to improve the quality of traineeships, in particular, as regards the learning and training content as well as the working conditions of a trainee. Undoubtedly, for Ceemet, the content of the traineeships is one of the key elements contributing to the success of a quality traineeships. Indeed, one of the purposes of this work placement is for the trainee to gain practical and business experience in order to have a smoother access to the labour market. Trainees should thus be assigned a task, which helps them to acquire practical experience and employability skills and opportunities that they can use professionally at a later stage.

## QUALITY PRINCIPLES

### Written agreement

#### Article 3 and 4

Concerning the recommendation that traineeships have to be based on a written agreement, we believe that employers need to strive as much as possible to conclude traineeships agreements in writing to ensure that the terms of the traineeships are well documented and clear for both sides. However, we do not think that there should be an obligation to conclude such a written agreement, in particular in the case of SMEs, since due to the inherent peculiarities of small companies, such as the lack of a human resources department, the conclusion of such written agreement may not be feasible or may only be possible after the start of traineeship.

## LEARNING AND WORKING CONDITIONS

The use of the term "working conditions" in the title is inappropriate as trainees are not workers. Specific attention must be paid to the wording to avoid any confusion between trainees and workers.

### Article 5

Article 5 of the proposal stipulates that trainees have to be consulted when setting the specific learning and training objectives of the traineeship (...). In Ceemet's views trainees should be assigned a task, which helps them to acquire practical experience and employability skills and opportunities that they can use professionally at a later stage. However, we think that asking SMEs to consult a trainee when setting the specific learning and training objectives will only add additional burden to a company and will be a disincentive to provide traineeships, in particular for SMEs.

The Tech and Industry Employers consider that the future trainee should certainly be given a description of the tasks that he/she should undertake during the period of the traineeship scheme.



This description should be given in written in a simple manner and complemented orally by the training provider if needed.

If during the period of the traineeship, it is concluded that the assigned tasks are not serving the purpose of acquiring a genuine practical experience, the trainee and the training provider can mutually accommodate or agree on new tasks. The shifting of tasks is easily applicable in the case of small companies.

### **Article 6**

Regarding article 6 of the proposal, Ceemet considers that it would be better to use the term “adequate compensation” of a trainee, in line with national regulations and traditions. The term “remuneration” applies to workers and employment contract and the applicable legislation is thus different.

### **Articles 7 and 8**

According to the proposal to revise the Recommendation, training providers should designate a supervisor for guiding the trainee through the assigned tasks as well as a mentor acting as a supervisor to the trainee (...). While we believe that these are undoubtedly sound proposals, we have serious reservations about whether they can be implemented in practice. Indeed, if a company is legally required to appoint a supervisor and a mentor as prerequisite to provide a quality traineeship scheme, they may end up by not offering these types of programs at all. This is simply not feasible nor realistic, especially for SMEs.

Furthermore, we seek clarification as to whether a mentor and a supervisor can be the same person. These terms can lead to confusion and need to be further explained.

## **SOCIAL PROTECION**

### **Article 16**

The Tech and Industry Employers favour that trainees have access to adequate social protection in line with national regulations and circumstances and in due consideration of the complexity and diversity of social protection systems across Member States.

## **PROPER RECOGNITION OF TRAINEESHIPS**

### **Article 17**

The Tech and Industry Employers favour the recognition and validation of the knowledge, skills and competences acquired during the traineeship programme as this acknowledgement is essential for the personal and professional development of a trainee. Furthermore, as traineeship schemes, are on many occasions a trainee’s first work experience it is relevant that the skills and expertise acquired are validated – even if in an informal manner – in order to facilitate the trainee’s smooth transition and entry into the labour market.

We would also like to call on national policy makers to provide information, guidance and advice to SMEs on how to best assess and attest the trainee’s acquired expertise.

## **TRANSPARENCY REQUIREMENTS**

### **Article 18**

According to the proposal, training providers should ensure that many criteria are included in the vacancy notices and information advertisements as regards the terms and conditions of the traineeship.

Again, we would want to bring up the challenge that SMEs will face with these kinds of requirements. We think that this is neither realistic nor feasible for small enterprises that often lack a HR department and have to move forward with limited financial resources and insufficient personnel.

The Tech and Industry Employers believe that it would be more practical if companies, in particular SMEs, could simply publicize the provision of traineeships schemes and the information they find indispensable connected to them.

## **INCLUSIVE TRAINEESHIPS**

### **Articles 21-24**

The Tech and Industry Employers are fully supportive of facilitating the access to traineeships for people with disabilities. In certain cases, SMEs would need support, for instance, to adapt the workplace for others, to have the possibility to offer traineeships for people with disabilities. We also call on national policy makers to deploy targeted support for these situations.

Furthermore, when it comes to tailoring the traineeship programs to the specific needs of a trainee, Ceemet believes that other practical aspects of this matter have to be considered. We are of the opinion that this issue has to be addressed by introducing awareness-raising measures which target trainees with disabilities.

One way to facilitate the access to traineeships to people with disabilities is for example to promote remote/online traineeships.

## **CROSS BORDER TRAINEESHIPS**

### **Articles 25-29**

The Tech and Industry Employers fully favour the mobility of all kinds of learners, including trainees. Thus, we see cross-border traineeships as a positive element. However, we also believe that it might be challenging for companies, in particular for SMEs – both hosting and sending – to organize cross-border traineeships as this will certainly imply financial and administrative requirements.

Having said that, Ceemet supports the idea of providing better information on cross-border traineeships and national legal frameworks together with simplified administrative procedures. In this respect, strengthening the role of EURES network should be considered.



## **FRAMEWORK CONDITIONS**

### **Article 31**

The Tech and Industry Employers welcome the specific call on Member States to ensure the active involvement of social partners in the application of the Recommendation. Social partners are the key actors of the labour market and their involvement in the development and deployment of the measures linked to the proposed revision of the Recommendation is indispensable.

## **IMPLEMENTATION AT NATIONAL LEVEL**

### **Support to increase trainees' employability**

#### **Article 36**

Ceemet welcomes the call on Member States to support SMEs in applying this Recommendation.

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