

The quest for labour rights and social justice

Work in a changing world

Part I edited by Marco Mocella and Elena Sychenko

Part II edited by Valentina Aniballi, Martina Bassotti and Anna Casalino



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Labour Law

IN NATIONAL, INTEGRATED AND
TRANSNATIONAL LEGALS SYSTEMS

Book series founded by Giuseppe Pera
Edited by Franco Liso, Luca Nogler
and Silvana Sciarra

FrancoAngeli 

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Within this innovative framework, we propose a new edition of the prestigious book series on labour law, formerly directed by the late Professor Giuseppe Pera. This series is now open to contributions elaborating on national and transnational regulatory developments, including those premised on law and economics analyses and on impact assessment methodologies. The editors encourage a correct use of the comparative method, opened to the analysis and the understanding of the socio-economic, cultural, and anthropological context.

The multinational and multidisciplinary composition of the Scientific Board seeks to reflect the intellectual aspirations and interest of the series which should promote a dialogue between labour law and other legal disciplines in order to understand its conceptual development in a European and global context.

In addition, this book series seeks to contribute to a conceptual and intellectual renewal of our discipline, which has been, and remains, at the core of the Italian academic general debate. The editors place a great weight on the quality of the scientific contributions which will be assessed by means of rigorous and impartial criteria of academic excellence.



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Fighting labor exploitation in traineeships: current issues and prospects for a regulatory reform

Marcella Miracolini¹

1. Introduction

It is widely recognized that traineeships have emerged as a key instrument of both national and supranational legal frameworks, facilitating the integration of young individuals into the labor market. By offering practical and professional experience, traineeships can ease – as a bridge – the transition into stable employment, operating as a strategic educational mechanism.

This aim aligns with the objectives of initiatives like the enhanced *Youth Guarantee*, which was revitalized following the pandemic and builds upon the pathway initiated in 2013. Additionally, the *National Program for Youth, Women, and Work* – part of the ongoing reform of active labor policies driven by the *Employability Guarantee for Workers* and the *National Recovery and Resilience Plan* (PNRR) – further supports this objective. The overarching goal is to utilize available European funds to remove barriers preventing young people from entering the labor market, while implementing a systemic strategy focused on creating quality jobs. And, in this context, traineeships and apprenticeships have assumed a central role in European youth employment policies. Accordingly, it is evident that this topic is connected to the broader PRIN research project, entitled “*YES – Youth Employment Strategy*”, within the scope of which this paper is included. It critically analyzes the regulatory frameworks employed by national and regional legislators within the context of EU employment policies, with a particular focus on the improvement of youth retraining and the facilitation of effective integration into the labour market.

¹ University of Palermo, Italy.

Young people, in fact, remain a particularly vulnerable group, for whom the transition from education and training to employment continues to present significant challenges. This is especially true when employers prioritize candidates with specific, transferable skills or prior professional experience, thereby creating formidable barriers to entry.

Recent data on youth employment presents a rather discouraging picture, especially in certain national contexts. According to Eurostat's latest surveys, published in May 2024 and referencing the year 2023, the percentage of NEETs (Not in Education, Employment, or Training), defined as inactive young people aged 15 to 29 who are neither employed nor engaged in education or training, averages 11.2%, with substantial variation across Member States². While some countries have already succeeded in reducing their NEET rates below the 9% target for 2030 (such as the Netherlands, Sweden, Malta, Slovenia, Ireland, Luxembourg, Denmark, Germany, and Portugal): Italy, for instance, registers a NEET rate of 16.2%, reflecting a modest improvement from the previous year but still the second highest in the EU.

In this precarious context, the Eurobarometer survey from April 2023 reaffirmed traineeships' strategic importance as steppingstones for young people, especially those vulnerable to labor market exclusion. Traineeships offer direct workplace exposure, enabling the acquisition of transferable professional skills and aiding in overcoming employment entry barriers.

However, despite the potential positive impact of the instrument, especially in countries with more advanced systems, practical experience has revealed a more troubling dimension over the years. This particularly occurs when traineeships are used to disguise genuine employment relationships, as a cost-saving mechanism for employers. In such cases, traineeships effectively mask full-time employment arrangements. Furthermore, the precarious nature of such positions within the contemporary capitalist system often exacerbates the exploitation of traineeships, positioning them as a prerequisite for future stabilization, without the protection promised by the legal system. This underscores the necessity of implementing a series of measures aimed at preventing the most egregious forms of abuse while preserving and enhancing the strategic function of traineeships. They should focus on increasing protections for young people entering the workforce.

² The data are available for consultation on the Eurostat website at the following link: ec.europa.eu/eurostat/statistics-explained/index.php?title=Education_and_training_in_the_EU_-_facts_and_figures.

2. A concise overview of the measures for traineeships in domestic law and their current state of the art

The necessity to safeguard the integrity of traineeships and to protect them from potential abuses has been recognized since a long time at multiple levels.

At the national level, legal frameworks have sought to emphasise the educational purpose of traineeships and to introduce sanctions addressing exploitative practices.

Setting aside the older and less organic phase³, the main first rationalisation of the discipline in this area can be traced to the so-called “Treu Law” (Law n. 196 of 24 June 1997), which formalised the practice of training internships and, in conjunction with the Ministerial Decree n. 142 of 25 March 1998, established parameters and conditions for their implementation. The law defined them as tools intended to “*facilitate moments of alternation between study and work*” and to “*assist in career choices through direct exposure to the labor market*” aimed at individuals who had completed their compulsory education (Varesi, 1998). Thus, the legislative framework clearly differentiated traineeships from employment contracts, a distinction famously characterized by legal scholars as the paradigm of “*I train you (potentially) for future employment*” (Napoli, 1997), with a foundational principle that has been reaffirmed in subsequent reforms, which tried to address the issue of low-quality traineeships lacking genuine educational content.

While these reforms have not altered the core elements of traineeships, they have focused on addressing the challenge of curbing the proliferation of low-quality traineeships or those lack of genuine educational content (Pascucci, 2008).

The initial efforts to confront these challenges, exemplified by Article 11 of Decree-Law n. 138 of 13 August 2011 (converted into Law n. 148 of 14 September 2011), evidenced only a modest impact and were later deemed unconstitutional for violating Article 117(4) of the Italian Constitution⁴. However, the Fornero Law subsequently introduced a more comprehensive set of measures.

Article 1, paragraphs 34, 35, and 36, of Law n. 92 of 28 June 2012 aimed

³ This phase was distinguished by a rather unsystematic approach to the matter and by an overlapping of provisions that had created a certain ambiguity: Article 16-*bis* of Law n. 285/1977 introduced an initial form of traineeships, which was defined as a period of on-the-job training in companies; Article 15 of Law n. 845/1978 addressed vocational training. Moreover, Decree Law n. 726/1984, converted into Law n. 863/1984, and Article 9 of Decree Law n. 148/1993, converted into Law n. 236/1993, introduced a further orientation traineeship.

⁴ Constitutional Court 19 December 2012, n. 287.

to guarantee the authenticity and quality of traineeships, but also to prevent the regulatory gaps that have permitted traineeships to evolve into unpaid apprenticeships or extended pre-employment probationary periods (Fili, 2012). Additionally, the law sought to establish consistent rules to guarantee uniformity across regional legislation: the law addressed the complex issue of power distribution between the State and the Regions, formulating general guiding principles and entrusting the task of drafting specific guidelines to the Permanent Conference for relations between the State, Regions, and Autonomous Provinces of Trento and Bolzano. This resulted in the adoption of the Guidelines on Traineeships on 24 May 2013, which were later updated by a subsequent agreement on 25 May 2017.

One of the most significant protective measures was the introduction of a legal obligation for host entities to provide trainees with a monetary “participation allowance”. However, despite the intention of this measure to prevent the misuse of traineeships, it has, in practice, on occasion resulted in a distortion of their purpose. Some employers have treated the payment of an allowance as a form of legitimization for using traineeships to meet their own productive needs, rather than focusing on the educational objectives of the program.

In general, despite these efforts, significant disparities remain among regional regulations, particularly concerning issues such as compensation levels, the identification of entities authorized to promote traineeships and the maximum number of traineeships an employer may offer.

The Guidelines introduced also a sanctioning framework, but it was not until 2021 that significant advancements were made in this area.

Indeed, the most recent legislative intervention can be found in Italy’s 2022 Budget Law, which significantly tightened the conditions for the use of traineeships (Article 1, paragraphs 720-726 of Law n. 234/2021) (Varesi, 2023).

The latest reform sought to comprehensively revise the traineeship framework, beginning with its definition, at paragraph 720, and, in line with previous regulations, reaffirmed that traineeship should not be utilized as a substitute for subordinate employment. In order to achieve this objective, a series of measures were introduced which were both prescriptive and punitive in nature: the intention was to reinforce the existing legal framework and to combat abuses in a more effective manner. For the first time, the legislation provided the offense of “fraudulent traineeship”, defined as traineeships used to disguise actual employment relationships.

Nevertheless, once again, the reform process remains incomplete three years after its enactment. The legislation required the introduction of novel guidelines to supplant those adopted in 2017, but the legislative process

was abruptly suspended following the Constitutional Court's judgement on 14 April 2023 (No. 70) (Pascucci, 2023). The Court ruled that a criterion limiting traineeships to individuals facing social inclusion difficulties was unconstitutional. This infringed on regional autonomy, as the regulation of “vocational training” – which includes traineeships – lies within the exclusive competence of the regions. Imposing such a criterion unduly infringed on regional authority by restricting their ability to adopt alternative approaches during the negotiation of the guidelines. Moreover, we can say also that the attempt to restrict traineeships to socially disadvantaged individuals overlooks the fact that young people, in general, are vulnerable during the transition from education to employment. While increased support for socially disadvantaged groups is essential, it would be unreasonable to exclude large groups of young people from access to this crucial tool for personal and professional development.

3. The European Commission's traineeship package and identification of potential gaps

While this is the domestic scenario, at the supranational level, on the other hand, the complexity of the regulations and the absence of uniformity across EU Member States, combined with insufficient capacity to monitor the fair use of traineeships, persists as a considerable obstacle.

To date, the 2014 Council of the European Union's Recommendation on a “Quality Framework for Traineeships” has served as a fundamental reference for defining the minimum standards of a “quality traineeships”. This framework has influenced national initiatives, as Italy's 2017 Guidelines. However, the fragmented and inconsistent implementation among Member States, due largely to the non-binding nature of the Recommendation, highlights the inherent inadequacies of this soft law instrument. Therefore, a central question remains: could a more robust approach within the multilevel legal system effectively address these deficiencies?

In response, in March 2024, the European Commission proposed a package of measures to improve traineeship conditions across the Union. This package includes a proposal for a Directive, designed to guarantee quality working conditions for trainees and to combat the misuse of traineeships as a substitute for regular employment. This so-called “Traineeships Directive” (COM(2024) 132 final) has entered the approval process and is accompanied by a new Council Recommendation (of 10 March 2024, COM(2024) 133 final), intended to review and replace the 2014 Recommendation on a Quality Framework for Traineeships.

This initiative follows the Commission’s evaluation of the 2014 Recommendation and the European Parliament’s 2023 Resolution calling for stronger legislative measures. Furthermore, it incorporates the results of consultation with European social partners as mandated by Article 154(2) TFEU, which requires the Commission to consult management and labour on the need for and possible direction of EU action, before submitting proposals in the social policy field⁵.

While a comprehensive examination of the stipulations is beyond the scope of this discussion and not feasible within the limited time frame, it should be noted that a preliminary assessment reveals both the strengths and potential concerns associated with the proposal for a Directive.

It undoubtedly represents a significant advance towards the harmonisation of regulations and the prevention of abuses. Nevertheless, initiatives of this scale must take into account the specificities of the legal systems of the countries concerned and the potential side effects of the introduction of new provisions.

A point of concern is the definition of a traineeship in Article 2 of the proposal of Directive, which defines it as *“limited period of work practice which includes a significant learning and training component, undertaken to gain practical and professional experience with a view to improving employability and facilitating transition to a regular employment relationship or accessing a profession”*. A “trainee” is further defined 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”*. This definition implies integration with EU case law, which has developed criteria for determining employment status on a case-by-case basis. However, the reference to an employment contract in connection with traineeships creates a potential legal conflict, particularly in systems like Italy, where traineeships are explicitly not considered employment relationships. It is precisely this element that serves to distinguish the contract in question from the apprenticeship one, which, despite including a training component, constitutes a distinct form of employment relationship, characterised by a unique nature, purpose and regulatory framework.

⁵ The consultative process was conducted in two phases: the first one involved the gathering of responses from 13 European social partners; the second phase was undertaken following the assessment of the necessity for legislative action, in accordance with Article 153(3) TFEU. The documents pertaining to the consultations can be accessed via the following links: ec.europa.eu/commission/presscorner/detail/en/ip_23_3746 and ec.europa.eu/commission/presscorner/detail/en/ip_23_4606.

The definitional ambiguity risks an unintended overlap between traineeships and employment contracts, making it imperative to clarify the distinction to prevent misinterpretation, as also recommended in the Opinion of the European Economic and Social Committee (EESC)⁶. The combination of disparate categories risks generating a problematic heterogeneity of purposes, potentially leading to unintended and adverse consequences.

The proposal for a Directive also provides for the adoption of measures based on several key principles, the first of which is the principle of non-discrimination. Article 3, in Chapter II, mandates that trainees should not be treated less favorably than comparable regular employees in terms of working conditions, including remuneration. Member States are required to ensure that trainees receive treatment comparable to that of regular employees at the same establishment or, in the absence of such employees, in accordance with collective agreements or national law. However, it allows for differential treatment based on objective reasons, such as the nature of tasks performed, the level of responsibility, and the intensity of work (“*unless different treatment is justified on objective grounds, such as different tasks, lower responsibilities, work intensity or the weight of the learning and training component*”). Although this clause is designed to protect trainees from exploitation, it gives rise to concerns about the potential for regulatory conflicts. In particular, in legal systems such as that of Italy, the very elements listed as justifications for differential treatment (as the lower intensity of work and responsibilities) are intrinsic to the nature of traineeships. These characteristics serve to distinguish traineeships from regular employment, and any conflation of the two could have the effect of undermining the legal clarity of the trainee’s status.

For this reason, a more suitable approach should lead to the adoption of a set of non-derogable minimum rights, rather than simply applying the principle of equal treatment. For example, it is crucial to ensure that trainees benefit from full workplace health and safety protections and are entitled to exercise trade union rights. Establishing such baseline protections would avoid the pitfalls of conflating traineeships with subordinate employment while still safeguarding train rights.

The following measures to combat regular employment disguised as traineeships are other positive aspects of the proposal. Chapter III sets forth provisions designed to detect and prevent abuses. In accordance with Article 4, Member States are obliged to implement monitoring and inspection

⁶ See Recommendations 1.1. and 1.2. of the Opinion of the European Economic and Social Committee – Employment Section of 28.06.2024, in eur-lex.europa.eu/legal-content/IT/TXT/HTML/?uri=PI_EESC%3AEESC-2024-01418-AS.

measures with regard to traineeships, with a view to addressing instances where such schemes are employed with the intention of circumventing the protections afforded to workers. Article 5 further requires that competent authorities conducting inspections evaluate a range of factors that may indicate the abuse of traineeships. Such factors include the already known absence of a meaningful learning component, or the excessive duration of the traineeship, and the assignment of tasks, responsibilities, and work intensity equivalent to those of regular employees.

Although not particularly innovative, the measures, when considered in conjunction with the enforcement procedures and sanctions delineated in Articles 6 through 10, represent a substantial stride forward in addressing exploitation. For instance, Article 6 establish that employers must inform the relevant authorities in order to facilitate their assessments. Moreover, there are “support measures” which aim, among other things, to ensure that the host institution provides clear, complete, and easily accessible information on the rights of trainees. This is in line with the broader process at the European level, which is guided by the principles of transparency and awareness as antidotes to labour exploitation, inequalities, and discrimination.

Conversely, the accompanying Council Recommendation poses fewer interpretative difficulties, also likely due to its more limited impact. It introduces innovative elements aimed at improving train protections, including advocating for adequate social protection and inclusive traineeships, recommending equal access for vulnerable groups, and adapting programs to meet individual needs. Also these suggestions are consistent with the overarching European goals of fairness and the promotion of social equity in the labor market, and their effective implementation could help reduce disparities and discriminatory practices related to traineeships across the Union.

It must be noted, however, that the Commission has not heeded the calls from social partners for more effective measures to support young people in particularly vulnerable situations, who frequently face greater difficulties in accessing traineeships. This is the case, for example, of young people from rural areas, from remote regions like the EU outermost regions or from lower socio-economic backgrounds, or young people with disabilities, with a migrant background, less represented ethnic minorities. In this regard, the implementation of targeted initiatives, such as the introduction of incentives for employ trainees after the traineeship or the expansion and improvement of the quality of remote or hybrid traineeships, could prove to be instrumental. Such measures have the potential to reduce the obstacles to traineeship access for vulnerable groups, thereby aligning the proposal with the principle of reasonable accommodation for trainees with disabilities.

4. Final considerations

The recent legislative developments within the European Union, in addition to the increased investment to expand traineeship availability, are commendable steps towards enhancing both the quality and accessibility of traineeships. These initiatives play a pivotal role in improving both the quality and accessibility of this instrument throughout Member States. However, caution is warranted to ensure that these efforts align with the specific legal frameworks of individual Member States, avoiding regulatory approaches that may inadvertently produce adverse effects.

Effective regulation, intended to safeguard both the authenticity and quality of traineeships, must prioritize the ontological and teleological dimensions of the traineeships experience. Traineeships are, and must remain, structured learning opportunities designed to facilitate the transition of young people into the labor market, offering a gradual progression from learning to stable employment. Unlike conventional employment, the primary purpose of them should not be economic remuneration (it is imperative that this is not lacking when the work is actually being done), but rather personal development and career orientation.

Ensuring fair compensation is essential, but it is equally crucial to maintain the distinction between traineeships and salaried employment. Blurring this line risks to create a class of “working poor” who are treated as employees yet compensated at significantly lower rates, thus defeating the purpose of the tool as a bridge to full employment and potentially disguising discriminatory outcomes. The European legislative framework must strike a balance between economic guarantees and the integrity of training and this oversight should extend across all phases of the traineeship relationship, ensuring that the educational and developmental aspects of the experience remain central.

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