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# Traineeships and Youth Employment Strategies: The Italian Case in Light of Upcoming European Reforms

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**Abstract:** The April 2023 Eurobarometer survey confirms that traineeships are vital for young people’s transition to stable employment, though they can also lead to exploitation. This arises from traineeships being used to disguise actual employment relationships or from their inherent precariousness. While Italy’s 2022 Budget Law tightened traineeship conditions, reform is still ongoing. The lack of common EU legislation poses challenges, despite the 2014 Council Recommendation on “quality traineeships”. The European Commission’s proposal for a Directive aims to ensure quality traineeships across the Union, supported by an enhanced Council Recommendation. This paper assesses the EU’s proposals, highlighting systemic concerns that require further examination.

**Keywords:** *Traineeships; Exploitation; Proposal for a Directive; Recommendation; Quality Traineeship.*

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## 1. Introduction: Context and Key Data on Traineeships

Traineeships can be considered a key instrument within both national and supranational legal frameworks, facilitating the integration of young individuals into the labour market. They represent a strategic approach to training, providing practical experience and, at the very least, holding the potential to ease young people's transition into stable employment. This aim aligns with initiatives such as the enhanced *Youth Guarantee*<sup>1</sup>, revitalised after the pandemic and building on the framework initiated in 2013. Additionally, the *National Programme for Youth, Women, and Work* – part of the ongoing reform of active labour policies driven by the *Employability Guarantee for Workers and the National Recovery and Resilience Plan* (PNRR) – further supports this objective<sup>2</sup>, enabling traineeships with cost

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<sup>1</sup> Since 2013, the *Youth Guarantee*, supported by the *Youth Employment Initiative* funding stream, has served as the cornerstone of European policies aimed at combating youth inactivity and promoting employment. This initiative was launched in response to the Council Recommendation of 22 April 2013. In Italy, the Recommendation was implemented through the *National Plan and the Youth Employment Initiative Programme* (PON IOG), which was managed by the National Agency for Active Labour Policies (ANPAL) and executed by the regions. The initiative provided funding for active labour market policies targeting young NEETs (those aged 15 to 29 who are neither in education, employment, nor training). For Italy, the *Youth Guarantee* represented a key opportunity to standardise interventions and tools across the regions under a coordinated national framework, introducing significant innovations to services and active policies. In 2020, the EU reaffirmed its commitment to supporting youth employment through a coordinated response by adopting a new Recommendation on the *Youth Guarantee* (Council Recommendation of 30 October 2020), which relaunched the initiative originally introduced in 2013. See A. Eleveld, T. Bazzani, A. De Le Cour, E. Staszewska, *Implementation of the European Youth Guarantee and the Right to Work: A Comparative Analysis of Traineeship Programmes Under the Eu Active Labour Market Policy*, in *International Journal of Comparative Labour Law and Industrial Relations*, Vol. 38, n. 3, 2022, 269-297.

<sup>2</sup> In response to the economic crisis triggered by the pandemic, the European Union provided exceptional financial support aimed at stimulating and sustaining growth. This effort has been primarily channelled through the *Recovery and Resilience Facility* and the *Next Generation EU* initiative, which prompted the Italian Government to implement the *National Recovery and Resilience Plan*. A key component of this plan is the *Workers' Employment Guarantee Programme* (Mission 5C1), which introduces a comprehensive reform of active employment policies, as formalised by the Interministerial Decree issued by the Ministry of Labour and Social Policies and the Ministry of Economy and Finance on 5 November 2021. The *National Programme for Youth, Women, and Employment* aligns with the PON IOG, which, in the previous programming phase, served as a pivotal pilot initiative in defining and standardising a set of active policy measures to be delivered uniformly across the country.

coverage for employers, benefiting from an inevitable productive contribution.

Essentially, the overarching goal has been to utilise available European funds to remove barriers hindering young people's entry into the labour market, while implementing a systemic strategy focused on creating quality jobs. In this context, traineeships and apprenticeships<sup>3</sup> have assumed a central role in European youth employment policies.

Young people 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 prioritise candidates with specific, transferable skills or prior professional experience, acting as significant barriers to entry for others.

The most recent data on youth employment rates present a rather discouraging picture, particularly in certain national contexts. The latest Eurostat surveys, published in May 2024 and referencing the year 2023, indicate that 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 considerable variations across Member States<sup>4</sup>.

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), many others still display rates well above the average. Italy, for example, registers a NEET rate of 16.2%, reflecting a modest improvement from the previous year but still the second highest in the EU, after Romania. Furthermore, the employment rate of young people in Italy is influenced

<sup>3</sup> See, *ex alia*, E. Ghera, D. Garofalo, *Contratti di lavoro, mansioni e misure di conciliazione vita-lavoro nel Jobs Act 2*, Bari, 2015; F. Carinci, *E tu lavorerai come apprendista, (l'apprendistato da contratto "speciale" a contratto "quasi unico")*, in *Arg. dir. lav. Quaderni*, 11, 2012, 9-83; M. Tiraboschi (ed.), *Il testo unico dell'apprendistato e le nuove regole sui tirocini. Commentario*, Milano, 2011; D. Garofalo, *L'apprendistato*, in A. Vallebona (ed.), *I contratti di lavoro*, in P. Rescigno, E. Gabrielli, *Trattato dei contratti*, Torino, 2009, II, 1505-1564.

<sup>4</sup> The data are available for consultation on the Eurostat website, in [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Education and training in the EU - facts and figures](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Education_and_training_in_the_EU_-_facts_and_figures). It is important to note that data on youth unemployment are not entirely comparable, as they include both young people who are actively seeking employment and those who would be willing to accept a position if the opportunity arose. The average youth unemployment rate across the EU is approximately 14.4%, with Italy exhibiting a notably higher rate of 20.2%. The second category of data can be accessed via the following link: <https://ec.europa.eu/eurostat/en/web/products-euro-indicators/w/3-30052024-ap>.



by territorial factors, with higher rates observed in southern regions, particularly in Sicily, followed by Campania, Calabria, and Apulia.

In this precarious context, the Eurobarometer survey from April 2023 on “Integration of Young People into the Labour Market” reaffirmed the strategic importance of traineeships as steppingstones for young people, particularly those vulnerable to labour market exclusion. Among respondents aged 18 to 35, four out of five reported having attended at least one traineeship (of any kind), representing a more than 30% increase since the previous survey in 2013<sup>5</sup>. Furthermore, 68% of this group indicated that they had secured employment as a result of their traineeship. This success can be attributed to the direct exposure traineeships provide to the workplace, helping young people acquire transferable professional skills that can be applied in various work environments, thus overcoming barriers to employment.

Since 2014, public funding from European programmes has supported the creation of over 1.5 million extracurricular traineeships in Italy<sup>6</sup>. These traineeships are those not linked to formal educational pathways within regional, school, or university systems, and involve a diverse range of social categories. Indeed, if they can be utilised in conjunction with the education system, these resources can also be applied within the context of active policy measures to support the integration of individuals entering the labour market for the first time following training, as well as unemployed individuals, non-EU residents, and those requiring support for social inclusion<sup>7</sup>.

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<sup>5</sup> The data pertains to the survey detailed in the first of the two Eurobarometer surveys: the 2013 survey entitled “*The Experience of Traineeships in the EU*”, which, although not statistically representative, allows for the delineation of trends, particularly when compared across countries.

<sup>6</sup> The data were presented in the *Fourth National Monitoring Report on Extracurricular Traineeships*, published in February 2024 and produced by ANPAL in collaboration with INAPP, with reference to the situation during the period 2020-2022. The full report can be accessed at the following link: <https://www.anpal.gov.it/documents/552016/587068/IV+report+traineeships.pdf/484ae195-aea0-152f-a6e6d01a2f22a77b?t=1709022413808>.

<sup>7</sup> In this regard, it should be noted that, according to Note No. 320 of 14 February 2023, the Italian National Labour Inspectorate, assuming that national and regional regulations permit citizens of non-EU countries to benefit from internships, specified the following: a foreign citizen already present in Italy with a residence permit (for study or vocational training) may engage in all “curricular” traineeship activities provided for by the course of study or vocational training for which the residence permit was issued; a foreign national who has entered Italy with a residence permit for study or vocational training may engage in a “non-curricular” traineeship activity, provided that such activity is

However, despite the potential positive impact of this instrument, especially in countries with more advanced systems, practical experience has revealed a more troubling dimension. The “marketless” or “market-devalued” space in which traineeships operate can facilitate exploitative labour practices, particularly when they are used to disguise genuine employment relationships or serve as cost-saving mechanisms for employers. In such cases, traineeships effectively mask full-time employment arrangements. Moreover, the intrinsic precariousness of such positions within the contemporary capitalist system often exacerbates the exploitation of traineeships, positioning them as prerequisites for future stability without the legal protection promised.

This highlights the importance of implementing measures to prevent severe forms of abuse, while simultaneously preserving and enhancing the strategic function of traineeships and increasing the protection afforded to young people entering the workforce.

This paper, beginning with a concise analysis of the current state of Italian legislation on traineeships, aims to focus on the potential impact of the recent package of measures proposed by the European Union. These measures seek to complement existing employment policy frameworks. Although they can be regarded as a positive step, a preliminary assessment reveals some systemic concerns and gaps that warrant further exploration.

## **2. Protective Measures for Traineeships in a Multilevel Framework: A Brief Review of National Legislation**

The need to safeguard the objectives of traineeships from potential distortion and misuse has long been a concern at various levels of legal regulation. Indeed, nearly two decades ago, an authoritative legal scholar cautioned against the potential risks associated with the inappropriate use of “*stages*”<sup>8</sup> as a “*picklock*” to establish camouflaged labour relations<sup>9</sup>.

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consistent with the completion of the course of study or vocational training that underlies the issuance of the entry permit. In the latter case, it is irrelevant whether the activity constitutes an employment relationship, in accordance with Article 14, Paragraph 4, of Presidential Decree No. 394/1999.

<sup>8</sup> For an understanding of the term “*stages*” in a non-technical but descriptive sense, commonly used to identify a variety of different situations that have a training intervention in common, see G. Canavesi, *Stage* (voce), in *Enc. giur. Agg.*, Treccani, Rome, 2022, 1-6.

<sup>9</sup> M. Napoli, *Prefazione*, in P. Pascucci, *Stage e lavoro. La disciplina dei tirocini formativi e di orientamento*, Giappichelli, Torino, 2008, XVII.

In response to these concerns, the national legal system has gradually sought to emphasise the educational purpose of traineeships while simultaneously introducing measures to dissuade exploitative practices. Without intending to present a detailed and systematic reconstruction, it can be stated that, while the regulatory framework initially exhibited a lack of coherence and organisation<sup>10</sup>, a more structured and systematic approach has since been adopted. The primary rationalisation of the discipline and regulation of traineeships can essentially be traced back to the so-called “*Treu law*” (Law No. 196 of 24 June 1997). This legislation formalised the concept of training internships and, in conjunction with Ministerial Decree No. 1427 of 25 March 1998, established the parameters and conditions for their utilisation<sup>11</sup>.

Training and orientation internships were defined as instruments designed to facilitate transitions between education and work, and to assist in career choices through direct exposure to the labour market, aimed at individuals who had completed their compulsory education. Therefore, on one hand, the training and guidance aspects of this relationship were emphasised; on the other, it was established as distinct from the typical synallagmatic contractual relationship and, more specifically, from a subordinate employment contract. This is exemplified by the paradigm “*I train you (potentially) for future employment*”<sup>12</sup>, later confirmed by further regulatory interventions aimed at preventing the proliferation of low-quality

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<sup>10</sup> This phase was characterised by an unsystematic approach and the overlapping of relevant provisions, leading to a degree of ambiguity. This uncertainty was such that even legal scholars questioned the coherence of the phenomenon being regulated. For instance, Article 16 bis of Law No. 285/1977 introduced an early form of traineeships, defined as a period of on-the-job training within companies. Similarly, Article 15 of Law No. 845/1978 addressed vocational training. Moreover, Decree-Law No. 726/1984, converted into Law No. 863/1984, and Article 9 of Decree-Law No. 148/1993, converted into Law No. 236/1993, introduced additional forms of orientation traineeships. See, *ex alia*, G. Loy, *Formazione e rapporto di lavoro*, Franco Angeli, Milano, 1988; M. Napoli, *Gli stages nel diritto del lavoro*, in M. Napoli, *Questioni di diritto del lavoro*, Giappichelli, Torino, 1996, 154 ff.

<sup>11</sup> See P.A. Varesi, *Art. 18. I tirocini formativi e di orientamento*, in M. Napoli (ed.), *Il «Pacchetto Treu» (L. 24 giugno 1997, n. 196 - Norme in materia di promozione dell'occupazione [...])*, *Commentario sistematico*, in *Leggi civ. comm.*, 1998, 1359 ff.; A. Maresca, S. Ciucciiovino, *Regolamentati i tirocini formativi e di orientamento*, in *Dir. prat. lav.*, 1998, 1571-1576.

<sup>12</sup> M. Napoli, *Disciplina del mercato del lavoro ed esigenze formative*, in *Riv. giur. lav.*, 1997, I, 267.

traineeships or those lacking training content, without ever questioning the essential elements of the instrument<sup>13</sup>.

Following the declaration of the illegitimacy of Article 60 of Legislative Decree No. 276/2003 on summer orientation traineeships<sup>14</sup>, an attempt was made to establish a systematic framework within the discipline through Article 11 of Legislative Decree No. 138/2011<sup>15</sup> (converted into Law No. 148 of 14 September 2011). However, this approach was ultimately deemed inadequate and was ruled unconstitutional for violating Article 117(4) of the Italian Constitution<sup>16</sup>.

The so-called “*Fornero Law*” represented a significant step forward in addressing the issue more incisively, introducing a comprehensive set of measures. Article 1, paragraphs 34, 35, and 36, of Law No. 92 of 28 June 2012 aimed to guarantee the genuineness and quality of traineeships and to prevent regulatory gaps that allowed traineeships to be transformed

<sup>13</sup> See P. Pascucci, *Stage e lavoro. La disciplina dei tirocini formativi e di orientamento*, Giappichelli, Torino, 2008; M. Tiraboschi, *Problemi e prospettive nella disciplina giuridica dei tirocini formativi e di orientamento*, in *Dir. rel. ind.*, 2001, 1, 61-77.

<sup>14</sup> Constitutional Court 28 January 2005, No. 50 in *Giur. cost.*, 2005, 4, 3370, with a note by I. Pellizzone, *La «concorrenza di competenze» ovvero la formazione professionale tra ordinamento civile e competenze regionali*. In addition, see A. Garilli, *La riforma del mercato del lavoro al vaglio della Corte costituzionale*, in *Riv. giur. lav.*, 3, II, 425-440; V. Fili, *La “Riforma Biagi” corretta e costituzionalizzata. Appunti dopo il decreto correttivo ed il vaglio costituzionale*, in *Law. giur.*, 2005, 405-419; G. Canavesi, *La giurisprudenza costituzionale sulla potestà legislativa in materia di lavoro, con particolare riferimento alla formazione professionale e alla previdenza sociale*, in *Dir. merc. lav.*, 2005, 479-516.

<sup>15</sup> See P. Pascucci, *La disciplina dei tirocini formativi e di orientamento: ieri, oggi e... domani (ovvero prima e dopo l'art. 11 del d.l. n. 138/2011)*, in *WP C.S.D.L.E. “Massimo D’Antona” .IT - 135/2011*; M. Tiraboschi, *Tirocini e apprendistato: impianto e ragioni della riforma*, in *Dir. rel. ind.*, 2011, 4, 947-970.

<sup>16</sup> Constitutional Court 19 December 2012, No. 287, in *Foro it.*, 2013, 2, 1, 458. In this case, the Court was tasked with determining whether the exclusive legislative competence of the State, as outlined in Article 117, paragraph 2, letter m) of the Constitution, included the “determination of essential levels of services concerning civil and social rights that must be guaranteed across the national territory”. Regarding Article 11, one could argue that the intention was to limit the number of individuals eligible for apprenticeships, modify their duration, and introduce a national framework to regulate training experiences, albeit with some degree of subsidiary application. The Court identified an “undue invasion” of the national legislature into the domain of exclusive regional legislative competence in vocational training. This interpretation was grounded in the view that the State’s competence under Article 117, paragraph 2, letter m) of the Constitution applies only to specific services for which national legislation defines the essential level of provision. See A. Cardone, *Il riparto di competenze legislative in materia di “formazione professionale”: alcune questioni aperte alla luce della sentenza n. 287 del 2012*, in *Dir. lav. rel. ind.*, 2013, 3, 429-436.

into “a sort of apprenticeship without pay or a long probationary agreement”<sup>17</sup>. Additionally, the law identified common provisions to prevent inconsistencies in the regional regulatory framework, which had been reaffirmed by the 2001 reform as falling within the exclusive legislative competence in the field of training (Article 117, paragraph 4, of the Constitution).

In this regard, the law addressed the complex issue of the division of competencies between the State and the Regions, setting forth 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, with the ultimate aim of harmonising and coordinating regional legislation<sup>18</sup>. This effort resulted in the adoption of the *Guidelines on Traineeships* on 24 May 2013, which were later updated by an additional agreement signed on 25 May 2017.

Nevertheless, despite these efforts, considerable discrepancies remain between regional regulations, particularly concerning key issues, such as the stipulation of the allowance amount, the identification of authorised entities for traineeship promotion, and the maximum number of traineeships that can be initiated by the host entity<sup>19</sup>.

Among the significant protective measures were the prohibition on replacing employees with trainees during periods of peak activity or replacing absent staff on account of holidays, maternity, or illness with trainees. Additionally, traineeships cannot be initiated if the trainee has had an employment relationship with the same host within the two years preceding the activation of the traineeship.

Furthermore, a legal obligation was introduced for host entities to provide trainees with a financial contribution, designated as a “participation allowance”. This was intended to prevent the misuse of the traineeship for

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<sup>17</sup> P. Pascucci, *La disciplina dei tirocini formativi e di orientamento: ieri, oggi e... domani (ovvero prima e dopo l'art. 11 del d.l. n. 138/2011)*, in *WP C.S.D.L.E. “Massimo D’Antona” .IT - 2/2011*, 337; and see also V. Filì, *Riforma Fornero. Politiche attive e servizi per l’impiego*, in *Lav. giur.*, 2012, 10, 19-45; Id., *Politiche attive e servizi per l’impiego*, in F. Carinci, M. Miscione (ed.), *Commentario alla Riforma Fornero (Legge n. 92/2012 e Legge n. 134/2012)*, suppl. a *Dir. prat. lav.*, 2012, n. 33, 192-199.

<sup>18</sup> See M. Casiello, *La genuinità dei tirocini extracurricolari nell’inestricabile intreccio di competenze legislative*, in *Labor*, 2023, 5, 467-482.; M. Barbieri, M. D’Onghia, *I tirocini formativi*, in P. Chicco (ed.), *Flessibilità e tutele nel lavoro. Commentario della legge 28 giugno 2012 n. 92*, Bari, 2013, 173-198.

<sup>19</sup> With regard to the transposition of the guidelines by regional laws see S. Donà, *Garantire l’attivazione di tirocini di qualità: gli obiettivi delle ultime riforme legislative in materia*, in *Riv. it. dir. lav.*, 2019, 3, 137-153.

productive purposes. However, in practice, the payment of a fee has frequently been used to justify the reduction of the educational scope of the programme, aligning it with the operational needs of the host organisation.

Conversely, the Guidelines established a system of sanctions, the implementation of which accelerated significantly in 2021<sup>20</sup>.

The most recent legislative intervention in Italy can be traced to the Budget Law of 2022, which introduced significant restrictions on the conditions for the use of traineeships (Article 1, paragraphs 720–726, of Law No. 234/2021)<sup>21</sup>. This reform sought a comprehensive revision of the traineeship framework, beginning with a more precise delineation of the instrument. Paragraph 720 defines traineeships as educational programmes structured to alternate between study and work, with the intention of providing professional orientation and training while improving the match between labour supply and demand. This is commonly referred to as an “extracurricular” traineeship, historically a focal point for regulatory concerns. It is kept distinct from the so-called “curricular” traineeship, which is defined in the second sentence of the provision as being functional to the attainment of a formally recognised qualification.

In accordance with previous legislative regulation, the law reaffirms that a traineeship must not be used as a substitute for subordinate employment and, to this end, introduces a series of prescriptive and punitive measures to reinforce the existing legal framework and combat abuses more effectively. The law explicitly identifies, in particular, for the first time, the unlawful case of the so-called “fraudulent traineeship,” which occurs when the traineeship is used to disguise an actual employment relationship. Article 1, paragraph 723, of Law No. 234/2021 imposes a penalty of EUR 50 for each trainee involved and for each day of the traineeship, without prejudice to the possibility, at the trainee’s request, of recognising the existence of an employment relationship as from the court order<sup>22</sup>.

<sup>20</sup> It should be noted that other measures have been provided, for example, by the Decree Law No. 76/2013, converted into Law No. 90/2013, for which see C. Garofalo, *I tirocini formativi e di orientamento*, in *Lav. giur.*, 2013, 11, 47-58.

<sup>21</sup> P. Varesi, *Tirocini formativi e di orientamento*, in *Dir. prat. lav.*, 2023, 20, 1235-1239; P. Galeotto, *Il tirocinio e le sue molteplici articolazioni nell’incrocio tra definizioni nazionali e regolazioni regionali*, *Adpat. Materiali di discussione*, n. 4, 2022.

<sup>22</sup> In this regard, the Italian National Labour Inspectorate has issued a note (Note No. 1451 of 11 July 2022), which provides further clarification. It states that, to contest the newly established offence, the inspector identifying the illicit situation may focus solely

Nevertheless, although these provisions mark a significant advance, the reform process remains incomplete, even three years after its enactment. The law mandated the adoption of new guidelines to replace those of 2017; however, progress was abruptly halted due to the Constitutional Court's ruling of April 2023, which declared one of the criteria set forth in paragraph 721(a) to be unconstitutional<sup>23</sup>. The Court ruled that limiting traineeships to individuals facing social inclusion difficulties infringed on regional autonomy over “vocational training” – under which traineeships fall – and lies within the exclusive competence of the Regions. The imposition of such a criterion constituted an undue infringement on regional authority, effectively limiting their capacity to adopt alternative approaches during the negotiation of the guidelines. Furthermore, it can be argued that the attempt to restrict traineeships to socially disadvantaged individuals fails to acknowledge the fact that young people, in general, in the transition from education to employment, are transversally vulnerable and require specific attention. While it is undoubtedly crucial to provide targeted support for socially disadvantaged groups<sup>24</sup> – already addressed in the 2017 Guidelines (e.g., promoting traineeships through therapeutic communities or extending the maximum traineeship duration for individuals with disabilities) – it is unjustifiable to deny substantial segments of young people access to this essential instrument for personal and professional growth. Traineeships serve as a bridge between education and employment, and limiting access to this opportunity risks exacerbating youth unemployment and social exclusion.

### 3. The EU Perspective: A Preliminary Assessment of the European Commission's Traineeships Package

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on demonstrating that the traineeship was conducted in a manner akin to a subordinate employment relationship. This is because, as outlined in the legislation, the essence of fraudulence lies in the exploitation of workers under the guise of trainees. Moreover, the illicit traineeship is classified as a continuing infraction, as the unlawful conduct carried out by the employer (pseudo-host) is characterised by an intent to circumvent the legal provisions, which is evidenced by the significant continuity of the unlawful act. For further details see P. Rausei, *Tirocinio extracurricolare: norme e prassi per contrastare gli abusi*, in *Dir. prat. lav.*, 2024, 4, 217-221.

<sup>23</sup> Constitutional Court 14 April 2023, No. 70 in *Riv. giur. lav.*, 2023, 4, 486 with a note by P. Pascucci, «Detto» e «non detto» nella recente giurisprudenza costituzionale in tema di tirocini extracurricolari.

<sup>24</sup> See V. Fili, *L'inclusione da diritto a obbligo*, in M. Brollo, C. Cester, L. Menghini (ed.), *Legalità e rapporti di lavoro. Incentivi e sanzioni*, EUT, 2016, 132 ff.

This brief overview aims to foster a comprehensive and systematic approach to the discipline, including its relationship with the European framework. Indeed, the role of traineeships as a mechanism for enhancing employability has also been recognised at the supranational level, where, however, the complexity and the lack of common standards among EU Member States, along with their insufficient capacity to monitor the fair use of traineeships, still pose significant challenges.

The 2014 Recommendation of the Council of the European Union on a “Quality Framework for Traineeships” has constituted a fundamental reference point for defining the minimum standards of a “quality traineeship”. This framework has also inspired national initiatives, such as Italy’s 2017 Guidelines.

The Recommendation provides a definition of a traineeship, at EU level, as “a limited period of work practice, whether paid or not, which includes a learning and training component, undertaken in order to gain practical and professional experience with a view to improving employability and facilitating transition to regular employment” (Considerando No. 27). Thus, according to the definition, the characteristics of the phenomenon should be found in both the work component and the learning/training component, while excluding from the scope of the Recommendation those curricular traineeships that are an integral part of formal education and training programmes (ECT - Education Curricula Traineeships) and those that are mandatory for access to a specific profession (MPT - Mandatory Professional Traineeships)<sup>25</sup>. Conversely, it should include the hypothesis of what are commonly referred to as non-formal placements, both in the form of the so-called Open Market Placements (OPM), which aim to provide initial work experience and on-the-job training, and in the form of placements carried out within the framework of Active Labour Market Policies (ALMP) and therefore activated by a tripartite agreement between the employer, the trainee and the public employment services.

However, despite the broad framework that it sets out, the Recommendation lacks a precise and unambiguous definition, which blurs the distinction between traineeships and other legal schemes that similarly aim to provide young people with work and learning opportunities (the prototypical example being apprenticeships<sup>26</sup>). It has not significantly

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<sup>25</sup> Considerando No. 28 of the Proposal for a Council Recommendation of 10 March 2014 on a reinforced quality framework for traineeships. COM(2014) 133 final

<sup>26</sup> Also at the EU level, it is important to distinguish between the two cases, although “in the literature, the definitions of apprenticeship and traineeship are not always distinct, and some features may overlap. [...] Some of the characterising elements of this



altered the European legal landscape or provided substantive guarantees<sup>27</sup>. Although it has encouraged the adoption of more concrete forms of internal regulation to guarantee the required quality standards, the situation across EU Member States remains highly fragmented. The legal systems regulating the phenomenon are not easily comparable, and the soft law nature of the Recommendation has failed to consolidate a uniform approach.

It thus becomes necessary to consider whether an approach to the multilevel legal system by means of stronger instruments can lead to effective improvements.

In response, in March 2024, the European Commission proposed a package of measures to enhance the conditions of traineeships across the Union. It includes a proposal for a Directive (referred to as the “Traineeships Directive”<sup>28</sup>), currently undergoing the approval process, which aims to guarantee quality working conditions for trainees and to combat the misuse of traineeships as a substitute for regular employment; and a new Council Recommendation, to revise and replace the 2014 Recommendation on a Quality Framework for Traineeships.

This initiative is a consequence of the evaluation conducted by the European Commission of the 2014 Recommendation and the European Parliament’s 2023 Resolution (in accordance with Article 225 TFEU), which called for the implementation of more robust legislative measures.

The proposal for a Directive, aligned with Article 153(1)(b) TFEU – concerning the advancement of employment and the enhancement of living and working conditions through the implementation of hard law instruments – signals the intention to utilise more binding measures, as demonstrated by the proposal’s legal basis, Article 153(2)(b) TFEU. This

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definition apply to certain types of traineeships (e.g. MPT), but, in general, traineeships do not satisfy all of the relevant characteristics and are typically of much shorter duration than apprenticeships”, C. Alcidi, C. Astarita, H. Crichton-Miller, T. Kiss-Galfavi, A. Ounnas, L. Westhoff, L. Lechardoy, G. Stazi, *Study exploring the context, challenges and possible solutions in relation to the quality of traineeships in the EU*, European Commission, Publications Office of the European Union, May 2024, 39-40. This recent study, conducted as part of the activities of the European Commission, provides a general interesting valuable overview of the discipline, of the use of the instrument and of initiatives.

<sup>27</sup> J. Helme, *The problems and paradoxes with the EU’s regulation of Traineeships: a way forward*, in *Industrial Law Journal*, 2024, 1-32.

<sup>28</sup> “This Directive lays down a common framework of principles and measures to improve and enforce the working conditions of trainees and to combat regular employment relationships disguised as traineeships”, Article 1 of the Proposal for a Directive of the European Parliament and of the Council (COM(2024) 132 final).

authorises the adoption of directives establishing minimum requirements, including those related to “working conditions”, rather than non-binding recommendations, with the consequence that any development is thus potentially bound to have a different and greater impact on the internal systemic framework.

It is the result of an extensive process of analysis and discussion with stakeholders. It considers the feedback provided by the consultation of the European social partners, under Article 154(2) TFEU, which requires the Commission to consult management and labour on the necessity and potential direction of EU action prior to the submission of proposals in the field of social policy. It was therefore developed in a two-stage process: the first phase, which concluded on 15 September 2023, involved the gathering of reactions from 13 European social partners (four trade union organisations and nine employers’ organisations). The second phase, which began shortly thereafter, was undertaken once legislative action was deemed necessary, in accordance with Article 153(3) TFEU<sup>29</sup>.

The results present a partially innovative and undoubtedly complex picture, which, upon preliminary and general assessment, highlights both key aspects and potential pitfalls (that are open to re-evaluation).

While the advantages of this initiative are clear and substantial, representing a significant step towards a virtuous process of integrating and harmonising disciplines and addressing exploitative practices, the complexities and specificities of the legal national frameworks require a prudent and methodical approach.

Regarding the proposal for a Directive – which comprises a total of five Chapters and 15 Articles – the first critical considerations pertain to the identification of its scope of application, as this has already emerged during the examination and discussion of the initiative at the Committee for EU Policies of the Italian Chamber of Deputies. The definitions set out in Article 2 give rise to the preliminary question of the nature of traineeship and its integration with the domestic system. And this is not merely a formal detail; rather, it raises substantial questions regarding the nature of the instrument itself.

According to the proposal for a Directive, a “traineeship” is to be qualified as “a 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

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<sup>29</sup> The documents accompanying the consultations can be accessed at the following links: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_3746](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3746) and [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_4606](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4606).

facilitating transition to a regular employment relationship or accessing a profession” (Article 2, letter a); while 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” (Article 2, letter b). This implies, therefore, a systemic integration with EU case law, which has developed criteria for determining a worker’s employment status on a case-by-case basis.

In any case, it can be seen that the provision, at the very least in its definition of the term “trainee”, makes a clear and unambiguous reference to the existence of an employment contract. This, in turn, raises the question of whether the proposal seeks to equate the status of a trainee with that of a subordinate employee, thereby aligning traineeships more closely with the parameters of employment relationships and, indeed, potentially leading to a misalignment with several national legal systems. As previously stated, for instance, in Italy, a traineeship is not considered to be an employment relationship. This is one of the defining characteristics of an apprenticeship, which serves to distinguish it from other forms of training contracts. Although apprenticeships may include a training element, they are, in essence, an employment relationship, characterised by differences in terms of their nature, purpose and disciplinary aspects.

These concerns were underscored during the aforementioned examination of the proposal at the European Union Policies Commission of the Chamber of Deputies, in light of the feedback provided by the social partners during the hearings. A risk identified is that the provision will lead to the subsumption of traineeships into the broader category of subordinate employment, effectively nullifying the distinctive characteristics of domestic regulations.

A different interpretation is warranted, notably in view of the fact that the definition of a traineeship (unlike that of a trainee) does not explicitly refer to a “contract of employment or an employment relationship as defined by law”. Furthermore, the proposal appears to presuppose the existence of traineeships that cannot be classified as an employment relationship under European law<sup>30</sup>. This would suggest that the proposal

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<sup>30</sup> This is exemplified by the Considerando No. 16 of the Proposal for a Directive of the European Parliament and of the Council, which specifies that the “Directive should apply to trainees in the Union who have an employment contract or employment relationship as defined by the law, collective agreements or practice in force in the

does not intend to impose an automatic equivalence. Conversely, by indiscriminately categorising them as employees, it is, in effect, making a distinction based on the status recognised by the Member States. In other words, the proposal for a Directive would pertain solely to that group of trainees who could conceivably be classified as employees. Consequently, in the section dealing with the application of terms and conditions of employment, the proposal makes reference to the term “trainees” (and not to the concept of traineeships)<sup>31</sup>.

However, this approach not only generates a degree of uncertainty but also risks leaving the current framework unchanged. The reconstruction suggests that the European Commission’s proposal would not obligate Member States to categorise every form of traineeship as employment. Instead, it would mandate that trainees employed under an employment contract, as opposed to other legal forms devoid of a training component, be granted the protections typically afforded to ordinary workers.

This, within the Italian legal framework, gives rise to questions regarding the applicability of the directive and the specific hypothesis to which the proposal should be referred, given the general exclusion of traineeships from employment relationships in national legislation. In practical terms, the question arises as to what legal framework would need to be implemented to ensure compliance with European requirements if a potential directive were to be adopted. While it is true that the proposals must take into account the specificities of each legal system (in this case maintaining the prerogative of the legal system not to classify traineeships as employment relationships), it is equally true that such a “definitional ambiguity” risks undermining the objective of bringing coherence to an extremely fragmented landscape that currently lacks a common basis. Unless one imagines a distortion of basic legal assumptions, the risk is to nullify the effects of the desired instrument and its potential to achieve the objectives of improving the conditions of a wide target group and combating exploitation.

It is evident that the question currently remains unresolved at this stage.

By the way, it is also notable that Article 2 defines the “trainee” in a manner that encompasses not only the practice in force in every Member State but also with consideration of the case law of the Court of Justice.

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Member States, with consideration to the case-law of the Court of Justice of the European Union”.

<sup>31</sup> A more detailed examination of this interpretation is provided by G. Impellizzieri, *La proposta di direttiva UE sui tirocini: problemi definitivi e principio di non discriminazione*, in *Professionalità studi*, 2024, 2, 232-252.

This is an important aspect to consider, as the case law of the CJEU demonstrates a tendency to categorise trainees as if they possessed the status of workers<sup>32</sup>.

Therefore, in light of these concerns, it would appear prudent to provide immediate clarification on the qualification level, as also recommended in the Opinion of the European Economic and Social Committee (EESC)<sup>33</sup>, in order to prevent unwarranted overlap and a dangerous heterogeneity of objectives.

The proposal for a Recommendation, in turn, offers no specific clarification in this regard: while acknowledging the limited impact of its non-binding nature on domestic regulations, it must be recognised that it extends its provisions to all traineeships, including those designated as curricular and compulsory vocational traineeships, which were previously excluded from the 2014 Recommendation (“This Recommendation should cover all trainees, regardless of their employment status, including trainees who are workers only insofar and to the extent that equivalent or more favourable provisions are not laid down in Union law”, Point No. 2), combining distinct categories and potentially leading to confusion and legal ambiguity.

#### 4. Further Considerations: Disciplinary perspectives and Open Questions

Following the preliminary delineation of the prospective scope of the proposal for a Directive, which is characterised by a certain degree of ambiguity, the text proceeds to set forth measures based on several key principles, the first of which is the principle of non-discrimination.

Article 3, in Chapter II, establishes that trainees should not be treated less favourably 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

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<sup>32</sup> By way of example: CGUE, 26 febbraio 1992, C-3/90, *Bernini v Minister van Ondernijns en Wetenschappen*; CGUE 9 luglio 2015, C-229/14 *Ender Balkaya v Kiesel Abbruchund Recycling Technik GmbH*; CGUE 13 ottobre 2022, C-344/20 *LF v SCRL*; CGUE 10 febbraio 2022, C-485/20, *XXXX v HR Rail SA*, in [https://curia.europa.eu/en/content/juris/c2\\_juris.htm](https://curia.europa.eu/en/content/juris/c2_juris.htm).

<sup>33</sup> See Recommendations No. 1.1. and No. 1.2. of the Opinion of the European Economic and Social Committee - Employment Section of 28 June 2024, available at the following link: [https://eur-lex.europa.eu/legal-content/IT/TXT/HTML/?uri=PI\\_EESC%3AEESC-2024-01418-AS](https://eur-lex.europa.eu/legal-content/IT/TXT/HTML/?uri=PI_EESC%3AEESC-2024-01418-AS).

accordance with collective agreements or national law (“Member States shall ensure that, in respect of working conditions including pay, trainees are not treated in a less favourable manner than comparable regular employees in the same establishment [...] Where there is no comparable regular employee in the same establishment, the comparison shall be made by reference to the applicable collective agreement, or where there is no applicable collective agreement, in accordance with national law or practice.”). 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”).

While this clause aims to safeguard trainees from exploitation, it raises concerns about potential regulatory conflicts. First, if one accepts the premise that the directive should only apply to traineeships that can be classified as employment (and for as long as there remains space for the concrete application of it), the provision could be understood as a specification of the principle of non-discrimination in a manner comparable to that which applies to fixed-term work or temporary agency work.

However, in its current form, and in view of the critical issues relating to the coordination of discipline with the internal regulatory frameworks, the provision risks creating a real short-circuit. In addition to the danger of “flattening” the figure of trainees to that of employees, specifically, in legal systems like Italy, the very elements listed as justifications for differential treatment (such as the lower intensity of work and responsibilities) are intrinsic to the nature of traineeships.

These characteristics are fundamental to distinguishing traineeships from a conventional employment relationship. If these distinctions are disregarded or blurred, the legal clarity regarding the trainee’s specific status could be further compromised, leading to the erosion of the safeguards and guarantees associated with traineeships.

For this reason, a more suitable approach would be to adopt 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 trainee rights. Moreover, it represents a crucial step in addressing not only the misuse of traineeships but also the issue of

“poor-quality” traineeships. This implies interventions not only on the learning component but also on fair remuneration, social protection, transparency of working conditions, and the learning element<sup>34</sup>.

In this regard, the question of compensation, to which the proposal for a Recommendation refers by using the term “fair remuneration” (Point No. 6), is one that should be assessed differently. This is particularly important given that its scope also extends to traineeships defined as curricular and that its risks obscuring the training component that remains the distinguishing feature of the institution. A few years ago, a legal scholar admitted the existence of “*forms of work services that do not constitute a formal subordinate employment relationship and are not accompanied by remuneration*”, which are supplementary to the main obligation. This is exemplified by traineeships, where the possible absence of a fee does not constitute “free labour,” even when unpaid<sup>35</sup>.

Lastly, the measures to combat regular employment disguised as traineeships, outlined in the following chapters, appear to be less problematic.

Chapter III outlines provisions to detect and prevent abuses. Article 4 requires Member States to adopt measures to monitor and inspect traineeships in cases where they are used to evade protections for workers. Article 5 further requires competent authorities conducting inspections to evaluate a range of factors that may indicate the abuse of traineeships, including the absence of a meaningful learning component, the excessive duration of the traineeship, the assignment of tasks, responsibilities, and work intensity equivalent to those of regular employees, etc.<sup>36</sup>

These measures, combined with the enforcement mechanisms and sanctions outlined in Articles 6 to 10, represent a significant step forward in addressing exploitation. For instance, Article 6 establishes that employers must inform the relevant authorities to facilitate their assessments. Furthermore, there are “support measures” that aim, among other things, to ensure that the host institution provides clear, complete,

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<sup>34</sup> C. Alcidi, C. Astarita, H. Crichton-Miller, T. Kiss-Galfavi, A. Ounnas, L. Westhoff, L. Lechardoy, G. Stazi, *Study exploring the context, challenges and possible solutions in relation to the quality of traineeships in the EU*, op. cit., 80-87.

<sup>35</sup> M. Grandi, *Osservazioni critiche sulla prestazione gratuita di lavoro subordinato*, in *Arg. dir. lav.*, 2000, 3, 439-465.

<sup>36</sup> The European Economic and Social Committee has indeed emphasised, for example, that the absence of a tutor should also be included among the elements to be taken into consideration; or, again, that the conditions legitimising the excessive duration of a traineeship should be better specified (see Point No. 2.5 Opinion of the EESC).

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.

Additionally, a series of supplementary stipulations are set forth, pertaining to the establishment of effective mechanisms for reporting unfair practices and the implementation of inspection systems capable of imposing meaningful and deterrent sanctions (see Articles 7-10). Nevertheless, the same limitation in the scope of application persists, as evidenced by the Italian experience. If these provisions were to be interpreted as applying to forms of traineeships that are assimilable to employment, they would effectively be irrelevant in practice. This reinforces the overarching necessity to resolve the definitional issues.

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's outermost regions or from lower socio-economic backgrounds, or young people with disabilities, with a migrant background, young LGBTIQ people, and underrepresented ethnic minorities. To address this gap, the implementation of targeted initiatives, such as the introduction of incentives to employ trainees after the traineeship or the expansion and improvement of the quality of remote or hybrid traineeships, could prove 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.

Conversely, this strategy may also result in a reduction in associated costs for employers, particularly small and micro-enterprises. Notably, the Commission has not given significant attention to this aspect in the proposal for a Directive, as it does not encompass any specific provisions aimed at addressing this concern.

For its part, the accompanying Council Recommendation advocates for adequate social protection and inclusive traineeships, recommending equal access for vulnerable groups and adapting programmes to meet individual needs. It is an innovative element that, despite being attributed to a non-binding instrument, is to be hoped will be more fully actualised, along with others. One such example is the additional recommendation to ensure access to adequate social protection for trainees, including



adequate coverage in line with the national legislation of the Member State.

These suggestions are also consistent with the overarching European goals of fairness and the promotion of social equity in the labour market, and their effective implementation could help reduce disparities and discriminatory practices related to traineeships across the Union.

## 5. Concluding Remarks

The recent legislative developments within the European Union, along with the increased investment aimed at expanding the availability of traineeships, are commendable steps towards enhancing both the quality and accessibility of traineeships. These initiatives play a pivotal role in improving the quality and accessibility of this instrument across EU Member States.

However, these concerns are not insignificant, considering that the primary risk lies in the current ambiguity regarding the specific scope of the directive and the particular scenarios it would encompass. To a certain extent, there exists a risk of future non-compliance by Member States, as it may prove challenging to identify the appropriate framework for implementing the measures.

Nevertheless, even a preliminary and comprehensive examination reveals the necessity of assessing the distinctive characteristics of domestic systems and clarifying several unresolved issues. This is essential to ensure that these efforts align with the specific legal frameworks of individual Member States, avoiding regulatory approaches that may inadvertently lead to adverse effects.

Effective regulation, intended to safeguard both the authenticity and quality of traineeships, must prioritise the ontological and teleological dimensions of the traineeship experience. Traineeships are, and must remain, structured learning opportunities designed to facilitate the transition of young people into the labour market, offering a gradual progression from learning to stable employment. Unlike conventional employment, the primary purpose of a traineeship should not be economic remuneration (though it is imperative that it is not lacking when work is actually being done); rather, it should focus on personal development and career orientation. The educational component is the element that, more than any other, must retain a central role and help prevent the concealment of “bogus traineeships.”

A particularly illustrative example is the intervention in which the European Committee of Social Rights noted Belgium’s violation of the

European Social Charter. In examining the applicability of Article 4(1) of the Social Charter and determining whether the trainee should be considered a “worker,” the Committee should indeed take into account the nature of the work performed by the intern and whether the educational aspect is predominant in the work context, including a substantial learning and training component<sup>37</sup>.

While ensuring fair compensation is essential, it is equally crucial to maintain the distinction between traineeships and salaried employment. Blurring this line risks creating a class of “working poor” who are treated as employees yet compensated at significantly lower rates, thus defeating the purpose of traineeships as a bridge to full employment and potentially concealing discriminatory outcomes<sup>38</sup>.

The European legislative framework must strike a balance between economic guarantees and the integrity of training. This oversight should extend across all phases of the traineeship relationship, ensuring that the educational and developmental aspects of the experience remain central<sup>39</sup>. Hence, for example, there is a desirability for a greater focus on the actors involved.

An additional consideration concerns the silence of the proposal for a Directive on public sector traineeships. Despite the significant role played by the public sector in employment creation, as evidenced by recent measures, the directive remains silent on this issue. In certain cases, public sector traineeships have constituted a preliminary step towards the establishment of a long-term employment relationship. It should be noted that, at the national level, the principles and criteria outlined in the 2017 Guidelines are explicitly applicable when the host entity is a public administration, thereby ensuring substantial convergence between public and private sector practices. Nevertheless, the public sector is not immune

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<sup>37</sup> The reference is to the ruling of the European Committee of Social Rights (ESCR) of 16 February 2022 (Complaint No. 150/2017 – European Youth Forum v. Belgium). The Belgian government was found to be in breach of the European Social Charter due to its failure to effectively detect and prevent the phenomenon of “bogus traineeships”. These traineeships take the form of disguised employment, where individuals are engaged in work activities for the benefit of the employer but are not recognised as such.

<sup>38</sup> See the European Committee of Social Rights, which, in relation to the Belgian case, highlighted that the so-called “false trainees” were effectively denied the fundamental right to fair remuneration, a privilege extended to other workers engaged in comparable roles with conventional employment contracts.

<sup>39</sup> About the role of training in active labour market policies, see the contributions of D. Garofalo, *Rivoluzione digitale e occupazione: politiche attive e passive*, in *Law. Giur.*, 2019, 4, 329 ff.; Id., *Formazione e lavoro tra diritto e contratto. L'occupabilità*, Cacucci, Bari, 2004.

to the abuse of traineeships, which can deviate from their intended purpose.

The complexity of public sector traineeships arises when public administrations act as both the promoter and the host entity<sup>40</sup>. In this context, challenges include budgetary constraints and the applicability of sanctions. Constitutional limitations prohibit the conversion of an abusive traineeship into a formal employment relationship within the public sector, restricting the available remedies.

Given these complexities, it is evident that more specific regulatory measures may be required, particularly with respect to public sector traineeships, to ensure that the system operates fairly and effectively while achieving its intended objectives.

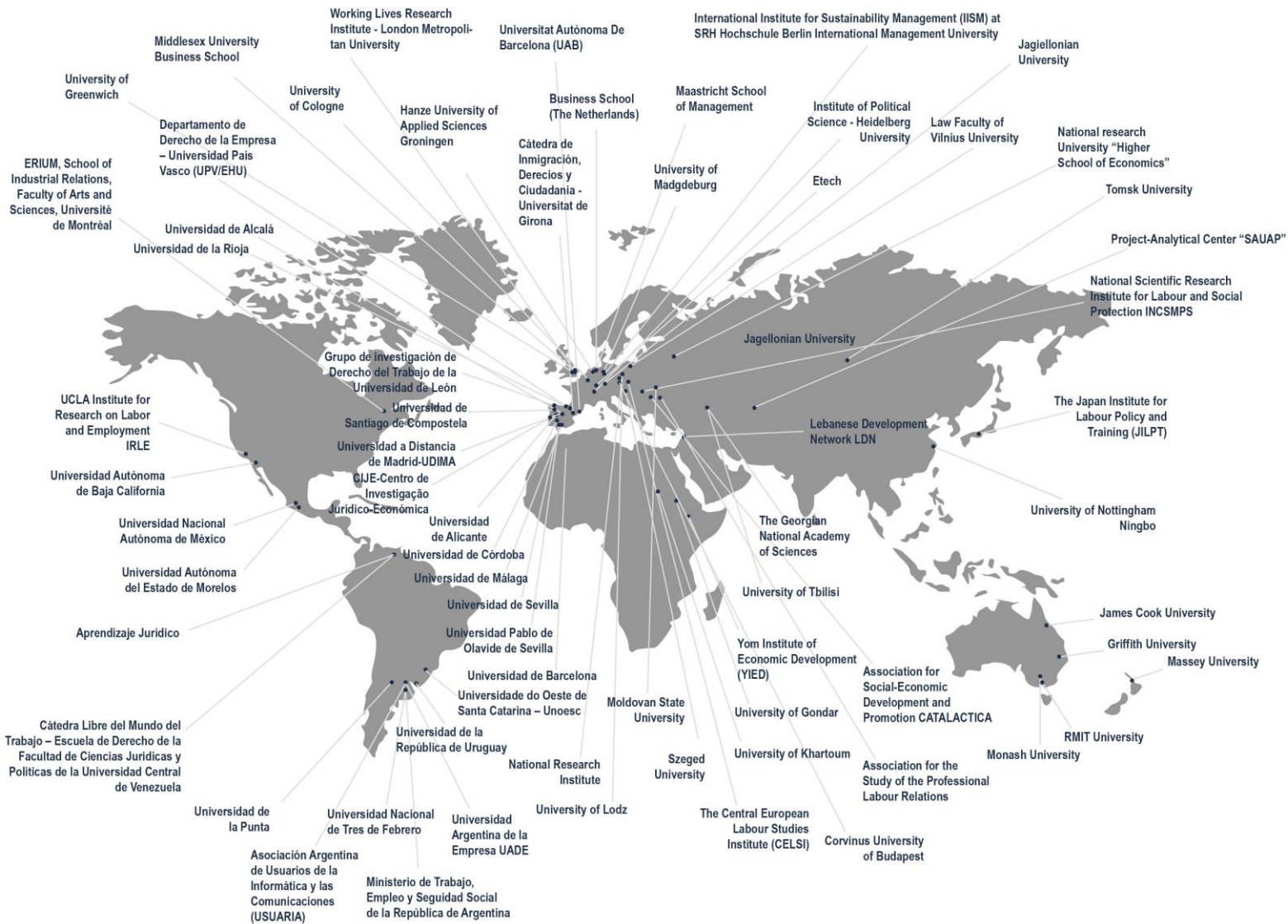
The European Commission's package of measures has the potential to harmonise traineeship regulations across the EU effectively, in its various profiles. By addressing long-standing concerns about the abuse of traineeships and aiming to ensure fair and equitable treatment for trainees, the proposal for a Directive and accompanying Council Recommendation could drive meaningful change.

However, as with any legislative initiative, the success of these measures will depend on careful consideration of national legal contexts and the avoidance of unintended consequences, such as the conflation of traineeships with regular employment. Ensuring that trainees receive appropriate protections while preserving the distinct educational nature of traineeships will be key to achieving the desired outcomes.

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<sup>40</sup> Regarding the Ministry of Justice trainees who were employed in the Milan Court offices and who sought to have their salaries adjusted on the grounds of accrued differences, see App. Milano 3 marzo 2023, n. 975 in *Labor*, 2023, with note by di A. Poso, *Il tirocinio «imperfetto» degli stagisti di supporto al personale amministrativo delle cancellerie presso gli Uffici giudiziari del distretto milanese. La subordinazione è nelle cose o nomen (iuris) omen?*

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