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Fraudulent Contracting of Work: Abusing Traineeship Status (Austria, Finland, Spain and UK)

Abstract

[Eurofound) In recent years, traineeships have become an important entry point into the labour market for young people across Europe. As outlined in a Flash Eurobarometer report (European Commission, 2013a), more young people report having done a traineeship (46%) than an apprenticeship or student job (both 26%). The report also shows that traineeships particularly apply to those aged between 25 and 29 (50%) but also those aged 30–34 (43%), with traineeships being more common among those who have graduated from university.

However, European and national stakeholders express growing concern regarding abuses of the system, poor working conditions and fraudulent practices, including the replacement of regular workers with trainees. A European Commission proposal for a quality framework for traineeships noted evidence of traineeships providing insufficient learning content (for example, trainees being asked to carry out menial tasks) and offering inadequate working conditions, with long working hours, unsatisfactory coverage in terms of health and safety and occupational risks, and little or no remuneration or compensation (European Commission, 2013b).

Keywords

fraudulent contracting, traineeship status, abuses, Austria, Finland, Spain, United Kingdom

Comments

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The European Foundation for the Improvement of Living and Working Conditions (Eurofound) is a tripartite European Union Agency, whose role is to provide knowledge in the area of social, employment and work-related policies. Eurofound was established in 1975 by Council Regulation (EEC) No. 1365/75 to contribute to the planning and design of better living and working conditions in Europe.

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Introduction

A traineeship is generally defined as an education and training programme combined with work experience, devised for certain groups – usually unemployed young people. Various types of traineeship are found across EU Member States: those that are part of active labour market policies for unemployed young people, those provided in the open market after completion of studies, and those that form part of mandatory professional training or academic and vocational curricula (Hadjivassiliou et al, 2012).

Traineeships have recently been actively promoted by the European Commission as a political response to persistent high youth unemployment rates – for instance, within the Youth Guarantee initiatives developed in most Member States. According to some evidence, these programmes help young people experience a smoother ‘school-to-work’ transition by tackling some of the barriers they commonly face when entering the labour market, especially those stemming from their lack of work experience and lack or inadequacy of work-related skills (European Commission, 2015). In short, the value of traineeships in favouring ‘school-to-work transitions’ is well recognised.

In recent years, traineeships have become an important entry point into the labour market for young people across Europe. As outlined in a Flash Eurobarometer report (European Commission, 2013a), more young people report having done a traineeship (46%) than an apprenticeship or student job (both 26%). The report also shows that traineeships particularly apply to those aged between 25 and 29 (50%) but also those aged 30–34 (43%), with traineeships being more common among those who have graduated from university.

However, European and national stakeholders express growing concern regarding abuses of the system, poor working conditions and fraudulent practices, including the replacement of regular workers with trainees. A European Commission proposal for a quality framework for traineeships noted evidence of traineeships providing insufficient learning content (for example, trainees being asked to carry out menial tasks) and offering inadequate working conditions, with long working hours, unsatisfactory coverage in terms of health and safety and occupational risks, and little or no remuneration or compensation (European Commission, 2013b).

Abuses of, and failure by, traineeships to meet quality requirements led the European Commission to propose guidelines to ensure high-quality learning content and adequate working conditions. These guidelines include a written traineeship agreement, clear objectives and learning content, and a limited duration. The guidelines were transformed into the *Council recommendation on a quality framework for traineeships*, which was adopted on 10 March 2014 (Council of the European Union, 2014). Nevertheless, this document is not legally binding and Member States enjoy a great deal of freedom in regulating specific traineeship conditions.

Several criticisms have been made of the Council recommendation, deemed insufficient by trade unions and youth organisations. According to the European Trade Union Confederation (ETUC), the proposal ‘contained few concrete measures for drawing a distinction between a real quality traineeship and the practices, or even abuses, of certain companies’ (ETUC, 2014). On the basis of this, it stated that the Council recommendation ‘would not provide a solution to the precarious situation of certain trainees in the EU’. And in the view of the European Youth Forum, the proposals did not include proper measures to ensure that employers pay interns or offer them social protection (European Youth Forum, 2014).

Reactions to the Council recommendation show how complicated it is to achieve a good balance between promoting traineeships and so facilitating enterprise, and limiting abuses and ensuring the quality of the traineeship.

National definitions of traineeship

Definitions of ‘traineeships’ are complex and somewhat blurred. This is despite the definitions used at European level – notably on the EURES Job Mobility Portal (EURES, 2015), which distinguishes between three situations:

- apprenticeships (legally binding, involving a contract, combining education and practical or work-related training)
- traineeships (work practice, not linked to a recognised qualification)
- internships (work practice mainly in professional fields, not linked to a recognised qualification).

At country level, these definitions are far from being straightforward, with denominations and delimitation depending on national regulations. The research focuses on particular traineeship programmes developed in certain countries where, according to country experts and national stakeholders, fraud is more widespread. It also adopts a narrow definition of ‘traineeship’, excluding those programmes regulated through labour contracts, as well as those that form part of mandatory professional training or academic and vocational curricula.

Beyond the uncertainty of the definition, the overall objective of a traineeship is to offer meaningful work experience, with a view to facilitating (re)entry to the labour market. Several programmes have been devised to address these issues; the majority target the difficulties faced by young people, while others target the difficulties of low-skilled or long-term unemployed people, independent of age.

Spain has a variety of traineeship programmes, mostly seeking to smooth young people’s entry into the labour market. Some have a legal basis, being regulated by royal decree. The most important are:

- voluntary traineeships (*practices extracurriculares*) aimed at graduate students and supervised by universities (Act no. 592/2014)
- non-labour grants (*becas no laborales*) targeted at young workers aged 18–25, which provide initial work experience to recent graduates (from either university or vocational training institutions) in their professional field (Act no. 1543/2011); these are implemented through an agreement signed by the company concerned and the public employment services (PES).

Employers are not required to provide any financial compensation for voluntary traineeships. However, since 2013, non-labour grants have since entitled the trainee to economic compensation and social security coverage in terms of pension rights. Others, created in particular companies, do not have a strict legal basis, such as ‘non-formal grants’ or traineeships (*becas no conveniadas*) which rely exclusively on an agreement between a company and a trainee.

In **Finland**, attention is paid to a special activation programme, the ‘work trials’ (*työkokeilu*), mostly targeting low-skilled workers. These programmes can last up to one year. People hired under this type of contract work for an employer in the private, public or third sector. The aim is to create an opportunity to introduce or reintegrate unemployed people into working life (Loikkanen, 2013), with the employer providing them with guidance and supervising them throughout their work experience. Workers hired under this type of contract receive their unemployment benefits and a daily food allowance, but no proper salary or work-related health insurance.

Even in **Austria** and the **UK**, where no specific legal definition exists, work experience is also carried out through some sort of traineeship. The situation is called *Ausbildungsverhältnis* or *Volontariat* in Austria, and ‘apprenticeship’, ‘internship’, ‘work experience’ or ‘volunteer’ in the UK. The purpose remains broadly the same: to give an opportunity to the person to get work experience. For instance, the UK’s Department for Education (DfE) traineeship framework for delivery in 2015–2016 clearly defines its purpose: ‘supporting young people to develop the skills for apprenticeships and sustainable employment’ (DfE and BIS, 2015).

Difficulty in identifying fraudulent practices

Along with the usual difficulty of identifying fraud, the key issue is to establish the distinction between a traineeship and regular work, and avoiding using the former to replace the latter.

Distinguishing between the two situations – work and traineeship – is crucial, especially as work necessarily forms part of traineeship. As the **UK** framework puts it, ‘work experience in traineeships should give the young person exposure to a real workplace so they can develop the skills, knowledge, confidence, attitudes and behaviours they need to succeed at work’ (DfE and DBIS, 2015, p. 7). Logically, to get useful work experience, at some point ‘real work’ should be performed. Differences between ‘real’ work and traineeship would be determined by the length and intensity of the activity performed and the existence of coaching and management.

In all four countries covered by this information sheet, fraud takes the form of situations in which regular work is disguised as a traineeship. In these situations, trainees are required to carry out tasks that are not differentiated from those performed by workers employed in the company.

When traineeship is defined as an ‘education programme including work experience’, trainees are not covered by labour law and collective bargaining provisions. Therefore, they perform regular work without enjoying most of the rights associated with employee status in terms of pay, working time and so on. In the **UK**, where the term ‘intern’ has no legal basis, fraud is mostly associated with non-compliance with national minimum wage (NMW) provisions. Fraud is also related to the inadequacy or lack of training content, guidance and supervision, in contrast to what some of the programmes analysed explicitly require in **Finland** and **Spain**.

Nevertheless, attention should be drawn to the fact that labelling a traineeship as fraudulent is a contested and controversial practice whose assessment is likely to vary depending on the stakeholder. This is partly explained by the fact that in a traineeship, the borders between work-related training and regular work are blurred, as in many cases trainees are supposed to carry out tasks that are related to a proper employment relationship. As employer organisations state in countries such as **Spain**, even if a trainee is required to carry out tasks linked to regular employment, this can be justified for training purposes.

Moreover, in **Austria** and the **UK**, the lack of legal definition means that the main criteria to distinguish traineeships from regular work are set up in case law; this lack of definition therefore requires going to an employment tribunal to challenge a fraudulent traineeship that disguises regular work.

Fraud related to traineeships is at stake in the political and social debate in the four countries covered. In **Austria**, the idea of ‘Generation Internship’ (*Generation Praktikum*) has received widespread attention and prominence in media and in the policy debate. It describes the situation faced by a growing proportion of young people who are forced to start their working career with an internship, which on occasion disguises regular work and rarely guarantees a first step towards regular employment. In **Spain**, the topic of fraud has also generated debate in the media and society in the context of a dramatic rise in youth unemployment; fraud is especially denounced by trade unions and new trainee-related associations. In the **UK**, the Low Pay Commission has received a substantial volume of evidence in recent years that suggests a growth in internships, work experience or volunteers covering unpaid activities that look like paid subordinated work and to which the NMW should apply (GMB, 2013). The Low Pay Commission recommended that the government raise awareness of NMW rules through improved guidance, while calling for better enforcement of existing regulations.

In **Finland**, the issue of traineeships is being discussed at policy level, since these programmes are being promoted by the government as a way of combating youth unemployment. Finnish trade union confederations have criticised the current government for its plans to increase different kinds of unpaid traineeships in the labour market (Jokinen, 2016), while the former president of the Federation of Special Service and Clerical Employees (ERTO) denounced the replacement of regular workers by interns. The misuse of traineeships as cheap labour has been also discussed in the media.

Drivers and enablers of fraudulent practices

Several factors give rise to fraudulent traineeships situations (as for other abused employment relationships).

Drivers – reducing costs, gaining opportunities

The search for economic advantage appears to be an important factor in the performance of fraud – for both parties. Behind most fraudulent uses of traineeships are the desire to reduce costs (on the part of the employer) and the hope of gaining future opportunities (on the part of trainees). All four countries report that employers can be tempted to use internships in a fraudulent way to fill regular or standard jobs, exploiting the advantages of the status – not having to pay social security contributions and wages and not having to respect the regulations on working conditions. Moreover, trainees themselves may contribute to the abuse of traineeship status, by continuing to perform genuine work in the hope of using the experience as a stepping stone to a more permanent job.

Enabling factors

Institutional features appear to be decisive in enabling fraudulent traineeships:

- legal uncertainty
- socioeconomic factors
- challenges of trade union representation.

Legal uncertainty

Legal uncertainty was especially reported as an enabling factor in **Spain** and the **UK**. In the **UK**, the term ‘intern’ is used to describe a range of people, some of them employed (usually paid interns on fixed-term contracts), others being volunteers or students. This legislative caveat complicates the assessment of whether a particular internship should be deemed formal work; furthermore, until now, employment tribunals have been the only avenue used to challenge unpaid internships.

In **Spain**, different programmes (some of which do not even have a strict legal basis) rely exclusively on the agreement between the company and the trainee. As a result of the complexity of this agreement, trainees may be unaware of the rights to which they are entitled. The fact that these programmes in Spain are not covered by employment regulations also implies that labour inspectorate bodies and trade unions do not have the formal competence and power to enforce the existing regulations.

Socioeconomic factors

Socioeconomic factors can indirectly foster fraud by leading young people to accept such situations as part of their transition to the labour market. (Such factors include the economic crisis and the related dramatic increase in youth unemployment, as well as the growth in competition for highly skilled professions and sectors). These factors were stressed in **Austria**, **Spain** and the **UK**. In addition, some stakeholders in **Finland** proposed as a factor the effect of traineeships on unemployment statistics: they can artificially improve these statistics, since interns are not officially classified as unemployed. This may favour a tolerance of abuse, with training goals (among other aspects) being neglected as a result.

Trade union representation

Trade unions have to make particular efforts to consider the interests and representation of the trainee population, as clearly it does not belong to their mainstream membership.

The problematic relationship between young workers and trade union organisations, with low youth membership rates and limited presence at company level, reinforcing youth

disengagement from trade union activity (Pulignano et al, 2016), implies a lower capacity on the part of trade unions to improve the rights of interns/trainees, as found in **Spain**. The emergence of a trainee-related association, the so-called Precarious Bureau (*Oficina Precaria*) in Spain can be seen as a response to this problem of representation.

A particular issue is the vulnerability of some groups of workers, such as migrants and asylum seekers, taking part in traineeships, as reported in **Finland**. In these cases, detecting fraudulent practices is complicated by the fact that – from the workers’ perspective – a traineeship might be preferable to unemployment. Furthermore, fear of retaliation and loss of income discourage workers in this situation from making complaints.

Consequences of fraudulent practices

Abuses related to fraud impact negatively on:

- businesses, by creating conditions for unfair competition
- workers' rights (worsening working conditions, income and labour rights)
- the wider society, in terms of tax and social protection regulations, labour laws and social cohesion.

Impacts on business competition

The impacts on competition for businesses are generally played down or not recognised at all. Although misuse and fraud of internships may have an obvious effect, the stakeholders interviewed considered other forms of fraudulent forms of contracting work prevailing in their countries as causing more harm. Moreover, in some countries (**Spain**), employer organisations stressed that 'inexperienced trainees are not productive' and therefore companies that hire them to replace workers or to avail themselves of a cheap workforce soon discover the limitations of this approach.

It can be even argued that competition in some sectors means businesses have come to rely on the less expensive option of hiring, and therefore turn to interns. Indeed, it may also be part of their system of recruitment: in the end, if the relationships are considered necessary, the company will transform them into regular employment.

In **Spain**, cases of fraudulent traineeships are evident in the media sector, favoured by the lack of available job vacancies and by intense competition. In the **UK**, fraud is especially prevalent in 'glamorous' professions (politics, fashion, creative industries and journalism). In **Austria**, where fraud is becoming a cross-sectoral phenomenon, problems have been especially observed in prestigious, high-paying sectors such as banking or finance, where interns are confronted with high pressure. In these sectors it is becoming increasingly common for employers to require prospective workers to go through a series of unpaid internships; in addition, fraud and abusive practices are becoming pervasive. As a result, the stakeholders interviewed had problems distinguishing the effects on business competition – given that the practices were so prevalent.

Impacts on working conditions and workers' rights

Negative effects on working conditions and workers' rights stem from the fact that – in order to benefit from period of work experience – interns have to perform a type of 'regular' work while not covered by labour laws and collective bargaining provisions. Therefore, they perform work without enjoying most of the rights associated with employee status.

Bearing this in mind, wage dumping was reported as the most pernicious effect in terms of working conditions; indeed, in the four countries covered, internships are often unpaid or paid only a very small compensation: programmes allow companies to offer wages below collective bargaining provisions (**Finland**) or below the NMW (**Austria** and **Spain**).

Second, the lack of social security coverage hinders (mainly) young people in accruing entitlement to social security benefits (pensions and unemployment benefits). This – it is highlighted – increases precariousness among trainees; in turn, this can increase the risk of poverty in old age (especially when people are in traineeship schemes for a long time) compared with previous generations (even if this problem has been partly addressed in countries such as **Spain**).

Third, negative effects on well-being associated with fraudulent internships were reported in **Austria**. Here, interns are confronted with high pressure, especially in prestigious, high-paying sectors such as banking or finance.

Fourth, negative effects on health and safety were reported in the **UK**, where the trade union interviewee indicated that health and safety violations are common in the creative industries where work is paid below the NMW.

On labour rights it has already been mentioned that trade unions face difficulties in defending trainees' interests. It is not obvious how traineeships are taken into account in social dialogue and industrial relations, since by definition trainees are not workers. Moreover, the ability of trade unions to intervene has become particularly difficult in recent years, due to the effects of the economic crisis and high unemployment rates. In **Austria** and **Spain**, the trade union representatives interviewed noted that when a company uses interns to disguise regular employment, some employers increase the degree of control over the rest of the workforce, threatening them with the possibility of being replaced by interns.

In addition, the proliferation of fraudulent and abusive internships was associated with negative effects on equality of opportunity, career development and living conditions.

Impacts on equality of opportunity

While traineeships are presented as a way to smooth entry to the labour market they also contribute to greater inequality of access by reserving work experience and potential future employment for certain socioeconomic groups. The diversity of traineeship conditions has also been underlined, depending on the workers' profile.

First, the stakeholders interviewed expressed concern about the barriers to entry in specific industries and the consequent impact on the diversity of talent. They argued that unpaid internships are elitist and impede class mobility. In the **UK**, previous research (Hope and Figiel, 2015) and the interviewees noted that unpaid internships perpetuate unequal access to opportunities and impede social mobility, particularly in the media, politics and the creative industries. Unpaid internships are an obstacle for young people coming from low-income strata, who are less likely to have financial support while they work for free. This reduced access to entry-level positions results in the underrepresentation of ethnic minorities and is especially blatant in the creative professions (BECTU, 2012).

In **Finland**, vulnerable young people – young migrants, for instance – are more likely to experience fraudulent traineeships. According to labour inspectors, it is common for employers in the cleaning and food service sectors to make fraudulent unwritten traineeship agreements with migrants, without envisaging any form of remuneration. Asylum-seekers represent a new and especially vulnerable group in this context.

Impacts on career and skills development

Stakeholders, especially in **Austria**, condemned the fact that fraudulent internships are usually not a first step towards becoming a regular employee, even though a regular job on completion of the internship is promised beforehand. Similarly, in **Spain**, in recent years taking several internships has been considered as the normal way of accessing the labour market in several sectors, especially for young graduates. In the current climate, young people in different sectors, are coming to accept this situation and to adjust their expectations accordingly – aware that they will have to go through several internships –even fraudulent – before achieving a more stable position in the labour market.

Some stakeholders interviewed in **Austria**, **Finland** and **Spain** challenged the view that internships actually improve the employability of interns or their labour market attachment. A trade union representative interviewed in **Austria** stated that a person who has completed more than three internships is viewed with suspicion by potential employers. In **Spain**, fraud is said to co-exist with abuses that lead, on occasion, to university students performing menial tasks unrelated to their academic studies, and thus not contributing to boosting their employability and career prospects. Similarly, in **Finland** it is reportedly common for interns to work independently without any guidance, even if the regulation of the activation programme requires the organiser of traineeships to provide interns with guidance and to

supervise them throughout their contracts. This suggests that people on traineeships actually provide their working activity in the same way as regular employees, and that this type of contract is therefore used to disguise permanent employment relationships instead of boosting unemployed people's skills and employability.

Impacts on living conditions

Several effects on living conditions indirectly associated with fraudulent practices and abuses were found. It appears that in countries such as **Austria** or **Spain**, internships are increasingly being held by young adults, which goes against the rationale of programmes that are mainly targeted at young people in an early phase of their career. These young adults are therefore facing problems in their transition to adult life proper by being forced to postpone such life decisions as leaving the parental home or starting a family.

Interns also face the problem of uncertainty and precariousness, especially when they are forced to accumulate several internships or to shift from internships to very short, fixed-term contracts, as is becoming common in **Spain**.

Finally, the widespread use of fraudulent internships in particular sectors (such as the media and creative industries) where atypical and non-standard working time patterns prevail, induces interns to accept precarious jobs in order to meet basic needs while juggling their work-time schedules. As reported in the **UK**, interns in the creative industries are often forced to take second and third jobs and/or to accrue large debts while working for free in rehearsals and at performances; these additional jobs are likely to be highly insecure and poorly paid, and frequently take the form of zero-hour contracts.

Measures to address issue

A range of practices aiming to combat the fraudulent use of traineeships was found. Some are quite innovative, going beyond the regular activity of labour inspectorate and enforcement bodies.

Reporting websites

Trade unions (**Austria**) and new organisations representing traineeships (**Spain**) have created websites that allow interns to share any fraudulent practices they might have encountered. In **Austria**, the Union of Salaried Employees, Graphical Workers and Journalists (GPA-djp), a trade union representing white-collar employees as well as employees working under atypical employment contracts (through its interest group ‘work@flex’), launched the online platform Watchlist Internship (*Watchlist Praktikum*) in 2014. This is a website where information on a previous or current internship can be entered (anonymously, if preferred). To assist in ascertaining the nature of the internship, the website lists indicators for determining whether a labour relationship, according to case law, is a proper, regular employment relationship. If it seems likely that internships are being used fraudulently, companies reported through the website are referred to auditing authorities (provided the reporting person agrees), which then carry out a joint examination (*Gemeinsame Prüfung*) audit. This is a detailed check of all expenses that a company has incurred in the past five years. Watchlist Internship has resulted in ‘hundreds of entries’ (according to the GPA-djp representative) by current or former trainees. Similarly, the newly established trainee association in **Spain** – the Precarious Bureau – allows interns to share any fraudulent practices they might have experienced through its website. This information is used to file complaints against companies with the Labour and Social Security Inspectorate (ITSS).

Campaigns for minimum wage

In the **UK**, activists from the actors’ trade union Equity have engaged with productions across large arts festivals to support the implementation of a contract that Equity has created, which includes provisions for minimum wage as well as other terms and conditions for the arts sector. Equity reported that, as a result, over GBP 1 million (over €1.1 million as of 5 June 2017) in wages are allocated to people for the first time. While Equity has not analysed the impact of the contract on the sector, research shows that Equity agreements have had a substantial impact on reducing the level of unpaid or low-paid jobs in the sector.

Company and trade union guidance

Also in the **UK**, Her Majesty’s Revenue and Customs (HMRC) – the body responsible for enforcing tax and social insurance regulation – has published sector-specific guidance and conducted educational campaigns in specific sectors addressed at employers, in an attempt to improve compliance with NMW legislation in those sectors with poor compliance records. HMRC has seen a large increase in funding to carry out this work from GBP 8 million (€9.1 million) to GBP 20 million (€22.8 million). In addition, there has been sector-specific work in areas such as hairdressing, where HMRC has partnered with the relevant employer organisation to support employers in paying the appropriate wages to their staff.

Finally, in **Spain** and the **UK**, guidance was developed to inform trade union representatives at company level on how to enforce trainees’ rights (in Spain) and interns on their rights, also with a view to combating roles that are unpaid or paid below NMW rates, as observed in the Equity campaign in the UK ‘Professionally Made, Professionally Paid’.

Policy pointers

In addition to well-known measures, such as developing preventive awareness raising campaigns and increasing systematic fines, a strong focus should aim to **strike the right**

balance between promoting traineeship as a way to smooth school-to-work transition and reduce youth unemployment, while **preventing abuses and fraud**.

Three policy pointers emerge from this goal.

Ensure that labour inspectorates and trade unions have the competences and power to enforce the rights of these specific ‘non-labour’ relationships: In an environment marked by a rise in traineeships, the allocation of additional resources to ensure that employers offer traineeships in line with policy purposes and do not engage fraudulent practices would also be recommended.

Clarify existing regulation: Traineeships should be well-defined and tightly regulated with a view to establishing clear boundaries with respect to regular employment relationships, including the specification of the learning content, the distribution of learning and working time, and the length and maximum number of traineeships that an organisation can host and an intern take up.

Provide financial support and social security coverage: To prevent the perpetuation of social inequalities or trainees’ taking poor-quality jobs, financial support should be guaranteed – especially for those internships that require irregular or atypical working hours or are considered an essential entry point in certain sectors. By extending social security coverage to internships, problems associated with the risk of poverty in old age could be mitigated.

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